

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

[LB6 LB7 LB11 LB14]

The Committee on Agriculture met at 1:30 p.m. on Monday, November 9, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB11, LB7, LB14, and LB6. Senators present: Tom Carlson, Chairperson; Annette Dubas, Vice Chairperson; Brenda Council; Merton "Cap" Dierks; Russ Karpisek; Scott Price; Ken Schilz; and Norman Wallman. Senators absent: None.

SENATOR CARLSON: Welcome to the November 9, 2009, hearing of the Agriculture Committee. I'm Tom Carlson, Chair of the committee. Committee clerk over here to my left is Barb DeRiese. Our research analyst to my right is Rick Leonard, and we have two pages helping us today: Tim Freburg from Holdrege and Megan Loberg from Wayne. Megan must be on a...behind...no wonder, you're hiding behind Senator Schilz. That's understandable. We'll have other senators joining us as the procedure moves forward, and I'll introduce them when they come. Over here to my right is the Vice Chair of the committee, Senator Annette Dubas from Fullerton. To my left is Senator Scott Price from Bellevue; and Senator Ken Schilz from Ogallala. And as I said, as others come I will introduce them. Please turn off your or silence your cell phones. Those wishing to testify on a bill should come to the front of the room to be heard. As someone finishes testifying, the next testifier should move to one of these two chairs on either side and be ready in position. If you do not wish to testify but would like your name entered in the official record as being present at the hearing, there's the white form by the door that you can sign and this will be made a part of the official record of the hearing. This year we're using a computerized transcription program. It's important to complete the sign-in sheets, the green sheet for testifiers, complete that before you testify. They need to be done and then put in the box there by Barb. Senator Cap Dierks from Ewing is just entering so we'll welcome him. If you're testifying on more than one bill, you need to submit a form for each one. Please print on the green form so that we can read it. If our transcribers have questions about your testimony, they use the information on the green sheet to contact you. As you begin your testimony, please state your name and spell it for the record, even if it's a simple name. That clarifies everything so that we know that we're listening to the right person. Please keep your testimony concise. And today we've got the lights here in front of you. As you testify when you start, the green light will be on and that will be on for four minutes, and then the yellow light comes on for one minute, and that's a total of five minutes. The red light comes on it's time to wind it up so please pay attention to the lights there. Senator Brenda Council is just coming in to join the Ag Committee. Senator Council is from Omaha. If you have handout material as you give your testimony, please give it to one of the pages and they'll distribute it to the committee. If you do not choose to testify, you may submit comments in writing and have them read into the official record. However, you will not be listed on the committee statement unless you come to the microphone and actually testify, even if you simply state your name and position. Let there be no displays of support or opposition to a bill, vocal or otherwise. There may be some of you here today that if you testify this may be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

your first time in front of a committee in the Legislature, and know that this whole process is an important part of the Unicameral. Every bill that is introduced has a hearing scheduled and the purpose of that hearing is to allow you, the second house of the government, since we're a Unicameral, to come forward and give your thoughts about a bill and give your opinions as to what you think should or should not be done. So it's an important part of the procedure. And if you haven't testified before, try not to be nervous. Just relax and see if you can't enjoy it. Senator Russ Karpisek from Wilber has just joined us and then Senator Norm Wallman from Cortland over there on the far end and I think we're complete now as a committee. The first bill that we will hear this afternoon is LB11, and I'll ask Senator Dubas to introduce that bill. []

SENATOR DUBAS: (Exhibits 1, 2) Good afternoon, Senator Carlson, members of the Ag Committee. My name is Annette Dubas and I represent District 34 and that's A-n-n-e-t-t-e D-u-b-a-s. The work that we have before us in the next few days is both difficult and challenging. I think we might not agree on a lot of things, but I think we can agree on that. So while we should have everything on the table and really look in detail to what we need to be doing, that doesn't mean that everything should end up being included in this budget discussion. And I feel that the commodity checkoff funds are among those items that should be removed from this discussion. I wish I had some visuals with me. I was watching Senator Pahls this morning in his hearing, and he had stuffed animals on the table to make his point. And the visuals I would have with me are some of the ad campaigns that have been done. I think we're all familiar with commercials that we've seen on TV and in print ads: "Milk does the body good." "Got milk?" "Pork, the other white meat." "Beef, it's what's for dinner." Or "the incredible edible egg." I think those are ones that most of us in this room could be familiar with. Those were all paid for with checkoff dollars. If you look at the many business budgets, you'll see a large portion dedicated for advertising and promotion as well as research and development. Farmers and ranchers do not have the individual capacity to do an organized ad campaign or invest in product research. So collectively we decided to impose a fee on ourselves and create commodity boards that could use those fees to promote our products as well as conduct research. No matter what anybody's opinion may be about checkoffs, the fact of the matter is these are not state tax dollars. This is a self-imposed fee for a very dedicated purpose. If we move forward with the taking of these dollars, we will essentially kill any future product checkoffs because no producer will support a checkoff effort if they feel that the government can raid those funds whenever they felt necessary. Not all checkoffs are conducted in the same manner--some are federal, some are state, I believe most are mandatory, and some are refundable. But quite simply these fees implemented by a vote of the producers they serve. And while it may appear these funds have surplus cash balances, that is not the case. Just like farmers, we only get our income at certain times of the year and then we have to spread that out to take care of our bills and responsibilities, these commodity boards receive their money when producers sell their products. So they, too, have to budget accordingly and make that money last throughout their year. If you would do an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

Internet search on commodity checkoffs, a very long list would appear: honey, blueberries, mohair, the list was quite long, papayas, I think just about every kind of commodity almost has a checkoff. These checkoff dollars show a great return on an investment, and they help generate income for farmers and ranchers. And the more dollars means more income and sales tax for our General Fund coffers. I truly believe if we move forward with the taking of these dollars we will set a precedent, and it's a precedent that would put us in a very precarious position. And I'd be happy to answer any questions, but I think there's going to be some people coming behind me who would really be able to give you more of the specifics about their particular checkoff. I know as a producer when I get my check it's on my check that those dollars have already been deducted from the product that I've sold. And I was able to vote whether I believed we should have a checkoff or not in a legally binding election so that's my experience with the checkoffs. But as I said, I think there's some people behind me who will be able to answer any specific questions you may have. I also have a couple of letters that I received that I'd like entered into the record and passed out to the committee if you would, please. So I'd be happy to entertain any questions you may have. [LB11]

SENATOR CARLSON: Okay. Thank you, Senator Dubas. Are there any questions of the committee? Senator Council. [LB11]

SENATOR COUNCIL: Yes, thank you, Senator Dubas, and I appreciate your introduction of this legislation. I'm just curious as to whether you've had an opportunity to see and, if so, form an opinion with regard to the Attorney General's Opinion that your bill falls outside the scope of the call of the session. []

SENATOR DUBAS: I did see that opinion. I'm still trying to wrap my mind around how a bill happens to fall into a call, and I know a lot of it deals with the semantics and how things are crafted. I mean I totally feel that this is germane to the issues that we're talking about. If the Governor is saying we can take these funds, it seems to me that it's germane that we should be able to say, no, you can't take those funds. So I think on the point of germaneness it seems logical to me, but I'm not an attorney so I won't profess to understand the technical merits of the ruling. [LB11]

SENATOR COUNCIL: Okay, But would you agree that the practical effect of the opinion saying that your bill is outside the call is to essentially say we can't say no? [LB11]

SENATOR DUBAS: It would feel that way anyway. But again, I feel very strongly and I think when we've had some briefings and things in the past, we are the Legislature. We control the budget. We control the purse strings. So I think we should be able to have those discussions and make those decisions. Again, just trying to understand how calls exactly work and what's in it and what's out of it is still something I'm trying to understand. But again, if we're looking at germaneness, this seems germane to me. [LB11]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

SENATOR COUNCIL: Okay. And finally with your indulgence, Chairman Carlson, transferring these funds in the manner proposed by the Governor, would you agree that then the checkoff essentially becomes a tax? [LB11]

SENATOR DUBAS: It would appear that way. I mean we're taking these dollars and we're putting them into the General Fund coffers, and that's where our state tax dollars go. So...and if you're taking this money away from these commodity boards, their only alternative is to either go back and try to increase their checkoff or decrease their services. So you're imposing another tax in a sense on the farmers and ranchers. [LB11]

SENATOR COUNCIL: Thank you. [LB11]

SENATOR CARLSON: Senator Wallman. [LB11]

SENATOR WALLMAN: Thank you, Chairman Carlson. Thank you, Senator Dubas, for being here. Other states I think...have they used checkoffs in their General Fund budgets? Do you know? [LB11]

SENATOR DUBAS: To my knowledge, no. I know of an instance in Arizona, and I don't have all of the specifics, but it was questioned whether they could legally do that. [LB11]

SENATOR WALLMAN: Thank you. [LB11]

SENATOR CARLSON: Any other questions of Senator Dubas? Okay, hearing none, thank you. We're ready for our first testifier. And we will go in order of those testifying in favor of the bill to begin with and then those opposed and then those testifying in a neutral position. Do we have anybody in a positive...and while you're coming forward, I'm going to make a couple of comments that I think I really intended to make before we got into this first bill. All four bills that we're considering today are declared outside of the call for this special session. So none of these four bills will be advanced from the Ag Committee. But we had the hearings scheduled and so we will proceed with the hearing today. This whole thing is a painful process of trying to cut budget to the tune of \$334 million. And the fact is there is no department or division of government that is exempt from consideration for a budget or program reduction. Nobody is exempt. And so we will conclude with our special session here in who knows how many days, but it may well be that additional cuts during our regular session that begins in January will be necessary, depending on the revenues and how they come in or how they don't come in. But none of these four bills will be advanced out of this committee in this session. Okay, thank you for your patience. [LB11]

SENATOR COUNCIL: Senator Carlson, point of personal privilege. [LB11]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

SENATOR CARLSON: Yes, Senator. [LB11]

SENATOR COUNCIL: I appreciate the position that you are taking as Chair, but it is my understanding of the law and it's my understanding of the weight of an Attorney General's Opinion that it's entitled to some weight, but it's not controlling as to the authority of the Legislature to discuss any issue. And certainly I don't intend to sit through hearings on these bills without having an opportunity to vote as to whether these bills need to be advanced to the floor. Again, the mere fact that the Attorney General has issued an opinion that he believes these matters are outside the call are not controlling on the legislative body. And I would trust that we would have an opportunity as members of this committee to go to a vote on each and every one of these bills. [LB11]

SENATOR CARLSON: I think I misspoke, Senator Council, in saying that none of these would be advanced. As a practical matter, certainly we can vote up or down on a bill, and that can become known procedurally unless an opinion would change if that came out to the floor it wouldn't be heard on the floor. But you're correct and that's the way that we will proceed. [LB11]

SENATOR COUNCIL: Thank you, sir. [LB11]

SENATOR CARLSON: Okay. [LB11]

BRANDON HUNNICUTT: (Exhibits 3, 3a) Good afternoon. My name is Brandon Hunnicutt, B-r-a-n-d-o-n H-u-n-n-i-c-u-t-t. Mr. Chairman and members of the Ag Committee, the Nebraska Corn Growers Association would like to extend our support for LB11. We'd also like to thank Senator Dubas and the cosponsors for introducing this legislation to ensure the future of Nebraska's agriculture. This week this body will consider the state's budget concerns. Although we face a shortfall, Nebraska should appreciate the level of shortfall when compared to other states across the country because a large part of the stable economy we have experienced is a direct result of agriculture. Farmers and ranchers have invested in the future of their respective industries by self-imposed checkoff fees which are managed by producer leaders. These investments have benefited the producers that invested into it and the Nebraska economy as a whole through the increased economic activity. Nebraska Corn Growers Association supports LB11 and its intent to ensure producers that their checkoff investments are managed in the manner that they were designed and intended. We believe it is simply wrong to have checkoff resources used for the General Fund. Farmers already pay their fair share in property tax, income tax, and sales tax. To redirect their checkoff investment only creates a new tax on the back of production agriculture. We would request the committee to advance LB11 to ensure that Nebraska's checkoff programs, which were initiated by farmers, managed by farmers,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

funded by farmers, retain its original purpose. And for your information, I have provided some information from both our organization and the Nebraska Corn Board that hopefully will be of benefit to you on the background of the checkoff program. Thank you. [LB11]

SENATOR CARLSON: Okay, thank you for your testimony. Questions? Senator Wallman. [LB11]

SENATOR WALLMAN: Thank you, Chairman Carlson. Thank you for being here, Brandon. If we do revert these funds from checkoff funds, do you think it would be fair to say that the corn producers would vote to quit the checkoff? [LB11]

BRANDON HUNNICUTT: You know, I would think there would be some discussion thereof of what to do as we move forward, whether it's an ending or privatization or some fashion of that. I think there would be some discussion brought forward by the producers of the state in response to what we have seen. [LB11]

SENATOR WALLMAN: And going a bit further on that, if you change your constitution to some of the other states, would that protect your monies? [LB11]

BRANDON HUNNICUTT: Could you repeat that question, please. [LB11]

SENATOR WALLMAN: You change the constitution of your organization, the Corn Board? [LB11]

BRANDON HUNNICUTT: Have we changed it? [LB11]

SENATOR WALLMAN: Yeah. [LB11]

BRANDON HUNNICUTT: As far as the Corn Board is concerned, I cannot answer that. [LB11]

SENATOR WALLMAN: Okay. [LB11]

SENATOR CARLSON: Senator Dierks. [LB11]

SENATOR DIERKS: Senator Wallman asked my question. [LB11]

SENATOR CARLSON: Okay. Are there other questions? I have a question and I asked this the other day and didn't really have an answer. On your checkoff that you pay, do you get a deduction for that? [LB11]

BRANDON HUNNICUTT: Do we get a deduction? [LB11]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

SENATOR CARLSON: State or federal deduction for the amount that you pay? [LB11]

BRANDON HUNNICUTT: Not that I'm aware of. I don't...I would say I don't think so. [LB11]

SENATOR CARLSON: Well, we'll ask the others as they come forward. They can clarify that. [LB11]

BRANDON HUNNICUTT: Yeah, I would say as looking around I don't believe we have. [LB11]

SENATOR CARLSON: Okay. Okay. Any other questions? Okay, thank you for your testimony. [LB11]

BRANDON HUNNICUTT: Thank you. [LB11]

SENATOR CARLSON: Next. [LB11]

CURT FRIESEN: Good afternoon, Chairman Carlson, members of the Ag Committee. My name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n, and I'm from Henderson and I'm here representing myself as a corn farmer. When I started farming around 1976, corn was priced around that \$3.20 a bushel and we were probably raising around 160 bushel average. Today the corn price is around \$3.50 a bushel again and now we're raising 220 bushels an acre average, roughly. The highest priced I received in all my years of farming has been around \$7 a bushel just in the last year or so. But the lowest price I was paid for my product was \$1.25. I'm not that old. When I started farming, the grain markets, as everybody remembers, in the 1980s we had a downturn in the economy and it was pretty serious. So it seems as though many times our expenses have outpaced our income. There have been many good years in agriculture and there have been a number of bad ones where a number of producers have quit the profession. When the corn growers asked the Legislature to enact legislation in 1978 creating the Corn Development Utilization Marketing Board, we put our faith in state government that this money would only be used for its requested purpose--to do research, promote our product, create new markets. I never thought that I would have to stop harvesting my crops to come to Lincoln to protect my checkoff dollars from being used as general tax purposes. These are producer dollars, dollars that have helped make Nebraska the envy of the nation in an era of extreme budget shortfalls across the country. Our ag economy has been the reason that Nebraska has escaped the worst of the economic collapse that has occurred in this country. These dollars have funded much-needed research at the University of Nebraska; they have helped make us the largest red meat producing state in the country; and we've been made the second largest ethanol-producing state in the country. These are producer dollars that were raised to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

help create these markets for our product so that our increases in yield would not drop the price below our cost of production. We are constantly looking for new uses of corn so that the demand keeps pace with our increased ability to raise more bushels. Please consider passing LB11 so that the integrity of the commodity checkoff programs in the state is protected from this type of action in the future. We in agriculture have many challenges facing us, starting with the threat from HSUS, cap and trade legislation, and new regulations in the reformulated fuels program. Corn has been blamed for everything from obesity in America to reduction of rain forest in the Amazon. We need all the dollars that are available to combat these issues. I thank you for your service to the state, and I appreciate being able to testify. [LB11]

SENATOR CARLSON: Okay. Thank you, Curt, for your testimony. Senator Dierks, we'll start with you so Senator Wallman can't ask your question. (Laughter) [LB11]

SENATOR DIERKS: Thank you, Senator Carlson. Curt, you gave us some statistics about when you started and what it is today. When you were first into farming, how many acres would a bag of seed corn plant? [LB11]

CURT FRIESEN: Well, we were still planting about the same number of acres with a bag of seed. We get around 2.9 acres to a bag of seed corn. But the price of that bag was around, if I remember right, it was around \$45 a bushel, and now they're running in the \$250 a bushel. [LB11]

SENATOR DIERKS: That's kind of what I wanted to hear. I thought it was somewhere around...and not too many years before that it was probably around \$7 or \$8 a bag. But now I heard it was up to \$300 a bag of corn now. Anyway, the cost of production has increased horrendously--the cost of equipment, the cost of repairs, everything you buy has had an increased cost, fuel. And for the government to take away your checkoff seems like maybe right next to a mortal sin, but I'm not sure. [LB11]

CURT FRIESEN: Pretty close. [LB11]

SENATOR DIERKS: Thank you. [LB11]

SENATOR CARLSON: Other questions? Senator Wallman. [LB11]

SENATOR WALLMAN: Thank you, Chairman Carlson. Thanks for being here, Curt. I'm a farmer myself. It would be nice to be in the field. [LB11]

CURT FRIESEN: It would be. [LB11]

SENATOR WALLMAN: And in regards to this budget shortfall like the chairman mentioned, we still have some rainy day funds left. Would you be open to take more out

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

of that, you know, and take a chance what's going to happen? You know, that's why we have it there. What is your feeling? [LB11]

CURT FRIESEN: I don't appreciate your position here. I feel for you. I would use more of the rainy day funds I guess. But, you know, there are cuts to be made and you guys are in a difficult position. I just, my point on this, these funds, I guess, is they should be off the limits. [LB11]

SENATOR WALLMAN: Thank you. [LB11]

SENATOR CARLSON: Other questions? Senator Schilz. [LB11]

SENATOR SCHILZ: Senator Carlson, thank you. Curt, thanks for coming in today. It's too nice a day to be out of the field, but I appreciate you coming in. You know, when the Governor came down with this plan and he said, you know, that everyone should share some of the pain, I mean, you know, I understand it. Do you think that agriculture in the state of Nebraska, producers are contributing in that and sharing the pain? Or do you think that we need to go a step further? [LB11]

CURT FRIESEN: Well, when I look at what some of the talk of the budget cuts that are going to be made, I think some of it is going to be made to state aid to schools. And when that happens, I'll just speak for the Henderson district, they get very little state aid. So I don't know if there's going to be a huge impact there, but there will be some. But so it's going to force them to raise my property taxes, which I guess I already feel I have to contribute a disproportionate share of property taxes to support state aid to or schools, the school funding. So from that standpoint, I guess I feel we're already sharing in the pain. And this is asking us a little bit more than what I feel we should be forced to do. If you recall, the other checkoff that was the EPIC fund has already been taken by the Legislature a couple of years ago. And the distress that that caused already and what we're going to have to do to make up for those down the road is also an issue to me. [LB11]

SENATOR SCHILZ: Okay, thank you. [LB11]

SENATOR CARLSON: Other questions? Just a comment, Curt. I'm going to disagree with you just a...well, first of all, do you get a deduction for your checkoff dollars, federal and state? [LB11]

CURT FRIESEN: We do not ever see those dollars so we don't report them as income. There is no deduction based on that, but we also don't report that income because it's withheld from our paycheck when we get paid for our commodity. [LB11]

SENATOR CARLSON: That's what I thought. It's not a deduction. [LB11]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

CURT FRIESEN: Right. [LB11]

SENATOR CARLSON: Okay. Now where I'm going to disagree with you a little bit, we're in here going through this exercise, a painful exercise. You acknowledged that it is. And everybody has got to feel this to a certain degree. So if it ends up a portion of it in state aid, that does not make it mandatory property tax increase. The same tough decision needs to be made locally as maybe is made at the state. [LB11]

CURT FRIESEN: I would tend to agree with that. [LB11]

SENATOR CARLSON: Okay. Thank you for your testimony. Okay, welcome. [LB11]

MIKE KELSEY: Good afternoon, Senator Carlson, members of the Agriculture Committee. My name is Michael Kelsey, that's M-i-c-h-a-e-l K-e-l-s-e-y. I'm the executive vice president of the Nebraska Cattlemen and stand before you this afternoon to testify on their behalf. Let me begin by saying the beef checkoff is not, as you're fully aware, not a part of the proposal, either through the Governor or in LB11, and the reason being is, is because the beef checkoff is a federal program and not a state program. That being said, though, let me be very clear the Cattlemen very much stand side by side with our brothers and sisters in agriculture regarding our checkoffs. We have firm belief that these checkoffs are established by us, paid by us for the benefit of our particular commodity. You've heard much of that today. And one thing I want to compliment Senator Dubas on, not only in the introduction of the bill as well as those senators who signed on, but she made a very key statement in her opening, several keys, but one I want to call attention to is that is there's a lot of debate, if you will, on how checkoffs can be used, how much in terms of percent of advertising or percent of research, product promotion, issues management, all of those types of things. Some of it's dependent upon that particular checkoff. But the point that she made so very well is that we're all in agreement as producers that the checkoff should be producer run. Those decisions should be made by producers and not be appropriated to state government. So I think that was a very important point that Senator Dubas made and wanted to call that to you. So again, understanding that there are some who will be up here a little bit later or have been that had their particular checkoff is affected by or could be affected by this decision, did want to share with you our support of LB11 and our commitment to stand with our brothers and sisters in agriculture in the defense of our checkoffs. I'd be happy to answer any questions that you might have, Senator Carlson and committee. [LB11]

SENATOR CARLSON: Okay. Thank you for your testimony. Are there questions of Mr. Kelsey? Seeing none, thank you. [LB11]

MICHAEL KELSEY: Very good, okay. [LB11]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

SENATOR CARLSON: Next. [LB11]

JAY REMPE: Senator Carlson, members of the Agriculture Committee, my name is Jay Rempe. That's J-a-y R-e-m-p-e. I am vice president of governmental relations for Nebraska Farm Bureau, here today in support of LB11. And first, want to express our appreciation to Senator Dubas and all the senators that signed onto the bill. I'll make this short and sweet. While we certainly appreciate the task that is before you and the Governor in trying to balance the state's budget, we think as you go about doing that there should be certain principles involved. And one of those is that you don't use checkoff dollars to help balance the state's budget. Our members have for many years felt very strongly about that. It's been a longstanding policy within Farm Bureau and for all the many reasons that have already been outlined before about these being self-help programs that farmers pay to promote their product, to invest in research, and educate folks about their product. And with that, I'll keep it short and sweet and be happy to answer any questions you might have. [LB11]

SENATOR CARLSON: Okay. Any questions of Mr. Rempe? Yes, Senator Karpisek. [LB11]

SENATOR KARPISEK: Thank you, Chairman Carlson. Thank you, Mr. Rempe. Can you tell us...I know that the corn checkoff is in state statute. [LB11]

JAY REMPE: Um-hum. [LB11]

SENATOR KARPISEK: Is there any others that are in statute... [LB11]

JAY REMPE: Yes. [LB11]

SENATOR KARPISEK: ...or are they all in state statute that we're looking at? [LB11]

JAY REMPE: They're not...well, the ones that are subject to the cuts, all of those are part of state statute: soybean, or not soybean, sorry, grain sorghum, corn, dry bean, poultry industries, and I'm missing one, but they're all part of state statute. The ones that aren't part of it, like the beef checkoff or soybean, are not part of state statute. [LB11]

SENATOR KARPISEK: When they became state statute, would you say were the producers favorable for that? I mean was this a...did they want these checkoffs to become state statute so they'd be there so people would use them? [LB11]

JAY REMPE: Oh, yes. Producer groups came to the Legislature and said we want to create these programs. We want to create these self-help programs and invest in our industry and our future. And so they came to the Legislature and were very supportive

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

of the programs. [LB11]

SENATOR KARPISEK: Great, thank you. Thank you, Senator. [LB11]

SENATOR CARLSON: Any other questions? Jay, you stated how that these corn checkoff dollars should only be used for the purposes for which they were originally intended so they shouldn't be used for water challenges, even though that's a big challenge. [LB11]

JAY REMPE: Right, yeah. That's consistent with our position that we've held on that issue as well. Yes. []

SENATOR CARLSON: Thank you. Thank you for your testimony. [LB11]

JAY REMPE: Um-hum. Thank you. [LB11]

LARRY SITZMAN: (Exhibit 4) Chairman Carlson, members of the Agriculture Committee, my name is Larry Sitzman, L-a-r-r-y S-i-t-z-m-a-n, and I'm the executive director of the Nebraska Pork Producers Association, which is not affected by this seizing of funds, as I call it. Senator Dubas, thank you very much for introducing this bill. It's a travesty of justice that it's been deemed unconstitutional, but thank you. Senator Wallman, Arizona government did seize state checkoff funds. A judge ruled it illegal and ordered the funds to be returned to the producers' funds. I was going to testify this afternoon in front of the Appropriations Committee, and I laid my testimony over there and came over here instead. If you can fit the entire population of the world into a community of 100 people, 14 of those people would be Americans from North, South, and Central America. Six of those people would possess 59 percent of the wealth of the world and they'd all come from the United States. This affluence presence in America allows the donation of millions of dollars from good-meaning but misdirected citizens that are used to challenge the very structure, if not the fabric, of American production agriculture. One of their very first targets is animal agriculture, followed closely by production row crop agriculture. Nebraska has been allowed the formation of checkoff boards that collect funds used for a variety of designated uses that include education, promotion, and research. These funds are not collected or used or spent by the general Nebraska public, the Legislature, or the Governor. The transfer of these funds from their designated programs, I will guarantee you, will and is creating an immediate distrust of Nebraska government and the checkoff programs in general. The use of these funds help educate Nebraska citizens about the quality of food and fiber production while ensuring them that the production is done humanely, environmentally, and responsibly, not only to feed Nebraskans, but millions of citizens, including the malnourished and starving of the rest of the world outside of our borders. Research accomplished with these funds has helped increase yield, as has been mentioned, and it has helped develop new uses while lowering the uses of commercial fertilizers, pesticides, and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

water. In other words, these checkoff funds can and are used to counter very negative and misleading millions of other dollar effects against agriculture. The cap wearing, skin-wrinkled, and tanned Nebraska agricultural productionists that pay these checkoffs are today very concerned and alarmed that these funds have been identified to be transferred. Some of these movements are direct transfers, while some, and please remember this, like poultry, potato, and dry bean are listed as cash funds in the Department of Agriculture. Our state is composed over 1.5 million people, but the decision agriculture is looking at rests in the fate of 49 state senators. It is our hope and faith in the 49 senators that this decision does not transfer checkoff funds or the movement of commodity checkoff cash funds. Our state and national pork boards have utilized our reserves this past year and have lowered our budgets 25 percent for next year due to this economic downturn. We recommend similar utilization of the state reserve fund that was established by all Nebraskans. Now I'll add one thing: a person that you all know that is a pork producer in this state and you all respect talked to me today and his message was do like the rest of us--stop spending money or go broke. Thank you. I would answer any questions. [LB11]

SENATOR CARLSON: Okay, thank you for your testimony. Any questions of Mr. Sitzman? Senator Dierks. [LB11]

SENATOR DIERKS: Larry, I have a question about checkoff policy, and maybe it was in effect when you were Director of Agriculture. I'm in conversation with a lady from Kansas who pays a checkoff on her wheat when she takes it to the elevator. And when she moves it from the elevator into Nebraska, she pays a checkoff again. She thinks that's double taxation. What do you think? [LB11]

LARRY SITZMAN: I think there's somebody in the room that can answer the question better than I with a closer memory. But as I recall, if she took it to the elevator and sold it, it should have been checked off. [LB11]

SENATOR DIERKS: She didn't sell it. [LB11]

LARRY SITZMAN: So she just stored it there? [LB11]

SENATOR DIERKS: Yep. [LB11]

LARRY SITZMAN: Then it should not have been checked off. [LB11]

SENATOR DIERKS: Well, this was in Kansas. [LB11]

LARRY SITZMAN: Well, maybe their law is different. But I think someone else in this room could answer that question better than I. But as I recall, it can only be checked off once unless you buy it from me so I pay the checkoff and then you sell it to Senator

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

Carlson. [LB11]

SENATOR DIERKS: Yeah. No, I recognize that but she feels like she had to pay it twice and that upsets her. [LB11]

LARRY SITZMAN: I agree that it's incorrect, but I'm not sure what Kansas law is. [LB11]

SENATOR CARLSON: Any other questions? [LB11]

SENATOR DIERKS: I had another one but I lost track of it. [LB11]

LARRY SITZMAN: Ask me later. [LB11]

SENATOR DIERKS: That's good. Anyway, I'll think of it later. [LB11]

SENATOR CARLSON: Okay, all right. Thank you for your testimony. [LB11]

LARRY SITZMAN: Thank you. [LB11]

SENATOR CARLSON: Next testifier. [LB11]

LORI LUEBBE: (Exhibit 5) Good afternoon, members of the Agriculture Committee, and Senator Carlson. I'm Lori Luebbe, L-o-r-i L-u-e-b-b-e, and I am executive director of the Nebraska Soybean Growers Association. And I just wanted to make a statement here that our group is in favor of advancing LB11. Our group, even though it is a federal national checkoff, we do support all commodity checkoffs and their intent. And it is our desire that these checkoffs remain under the intent as what they were supposed to be used for so we just wanted to make sure and get it in the record here today. Is there any questions? [LB11]

SENATOR CARLSON: Thank you. Any questions? Senator Council. [LB11]

SENATOR COUNCIL: Yes, thank you for your appearance and testimony. So please educate this city girl on how certain product checkoffs are federal while others are state. [LB11]

LORI LUEBBE: Are state. The national soybean checkoff was enacted in 1990 as part of the 1990 farm bill. It was a group of farmers with our organization that went forth and decided we wanted a one unified checkoff nationwide so every soybean producing state pays into a national soybean checkoff where some of your other commodity organizations, such as corn and possibly wheat, which are not national, certain states do not have checkoffs in place. So it was the grassroots effort of our membership grower organization that brought that forth so we can kind of all be on a level playing

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

field. [LB11]

SENATOR COUNCIL: Okay. But the intent, nevertheless, of those funds is the same... [LB11]

LORI LUEBBE: Correct, yes. [LB11]

SENATOR COUNCIL: ...whether the checkoff is provided pursuant to federal legislation or state statute is to make those funds available for use to promote those particular products. [LB11]

LORI LUEBBE: That's correct--promotion, education, and research are what our checkoff dollars can be used for. Our checkoff dollars cannot be used for any lobbying whatsoever. So we are very restricted at federal and state level of using any checkoff dollars to lobby. That's why we have a membership voluntary dues base organization that does the legislative arm. [LB11]

SENATOR COUNCIL: Okay. And I suspect that if the Congress of the United States introduced legislation to transfer all the federal checkoff funds to reduce the federal deficit you'd be appearing to testify before Congress. [LB11]

LORI LUEBBE: Yes, we would. [LB11]

SENATOR COUNCIL: And just as an aside, extend greetings to your president who hosted me for a day and I could learn firsthand about soybean production. [LB11]

LORI LUEBBE: Yes. She would have been here today, but she's running a grain cart so. [LB11]

SENATOR COUNCIL: And doing what she's supposed to do. Thank you. [LB11]

SENATOR CARLSON: Any other questions? Okay, thank you for your testimony. [LB11]

LORI LUEBBE: Thank you. [LB11]

ZOE OLSON: (Exhibit 6) Hello, Senator Carlson, members of the Agriculture Committee. My name is Zoe, Z-o-e, Olson, O-l-s-o-n, and I'm the executive director of the Nebraska Wheat Growers Association so I'm probably the person that can answer Senator Dierks's question. [LB11]

SENATOR COUNCIL: Hint, hint. [LB11]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

ZOE OLSON: I represent the Nebraska Wheat Growers Association who came before the Legislature and asked for our wheat checkoff. Ours is one of the oldest checkoff programs in this state. It was enacted in 1955 so it's a 54-year-old checkoff. Our checkoff has never been raised since its inception. It's 1.25 cent per bushel on the first sale of wheat in our state. Okay? I have a letter of support from our organization. Again, our producers are in the field because they don't just produce wheat. Our wheat was harvested in the summer, but they are harvesting other crops. And so I would just like to say that Nebraska Wheat Growers Association is in strong support of LB11. And we want to thank Senator Dubas for bringing this before your committee. I'd like to take any questions at this time. [LB11]

SENATOR CARLSON: Thank you for your testimony. Are there questions? Senator Dierks. [LB11]

SENATOR DIERKS: I think I'd better ask the question. Zoe, can you explain what I was asking about with regard to the checkoff in Kansas? [LB11]

ZOE OLSON: Yes, because I think that lady calls our office every year. Kansas...I'm not completely familiar with theirs, but they do fund their checkoff. Theirs is more voluntary. They can get a refund. Whereas in our statute in our wheat checkoff statute, we do not refund. It is simply an excise tax that is placed at the first sale of wheat. And so we don't refund and that's why she believes she's being double taxed. [LB11]

SENATOR DIERKS: Do you think this lady could get a refund from her... [LB11]

ZOE OLSON: She can get a state...yes, I know they refund in Kansas. They're not happy about it, but they do. [LB11]

SENATOR DIERKS: Okay, thank you. [LB11]

ZOE OLSON: Um-hum. [LB11]

SENATOR CARLSON: Any other questions? Okay. Thank you for your testimony. [LB11]

ZOE OLSON: Thank you. [LB11]

SENATOR CARLSON: How many more testifiers do we have as proponents? Okay. [LB11]

ED WOEPPEL: (Exhibit 7) Senator, I'm Ed Woepfel with the Nebraska Cooperative Council, and that's W-o-e-p-p-e-l. Bob Andersen had intended to be here today and I'm submitting his remarks that he was going to share. Unfortunately, he couldn't make it for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

the hearing today. But I just want to spend a moment to probably readdress these issues that have come up. Our organization is in support of LB11. We feel that that's important that we allow producers to do what they want to do in terms of the self-imposed fees that they have enacted. And we really feel that this is probably a matter of trust in terms of state government and the usage of those funds. Because when that was enacted, those folks believed that it was for education, market research, and those kinds of issues. So with that, I don't think we need to plow the same ground again. So if there are any questions, I'd certainly respond, but. [LB11]

SENATOR CARLSON: Okay. Thank you for your testimony. Are there questions? Hearing none, thank you. Anyone else as a proponent? [LB11]

PAT PTACEK: Yes, Mr. Chairman, members of the committee, my name is Pat Ptacek, that's P-a-t, last name P-t-a-c-e-k, executive vice president of Nebraska Grain and Feed Association, just wishing to go on record that we do support LB11 and we do, as being probably the major association representing the majority of first purchasers, we've come to appreciate and benefit from the checkoff programs through the various cooperative projects that we have done with the, particularly corn and wheat and soybeans. And it has been a pleasure working with those folks. And I've worked in the Legislature back in the early eighties for Senator Loran Schmit, and I remember some of the create, you know, the ideas and the producers at that time that stepped forward and basically said this would be an outstanding self-help group, an association is great, but there are bold and dynamic leaders out here that would like to take this money and to implement it for purposes that would benefit not only the market but the research development. And as it's been pointed out and I think the Corn Board advertising that we hear a lot on the public radio, a sustaining innovation is truly something that you have to take notice about how much more production we're getting on an acre of corn than we did 40 years ago or how much less fertilizer that we are using because of the research dollars, much of those that have gone from those checkoff boards to the universities and land grant colleges to help them out. So with that, that's all I wanted to do. I appreciate it. All I have to say is thank God there's no grain indemnification fund. (Laugh) [LB11]

SENATOR CARLSON: Okay, all right. Thank you for your testimony, I think. Any questions of Mr. Ptacek? Okay, thank you. [LB11]

PAT PTACEK: Thank you. [LB11]

SENATOR CARLSON: Proponent? [LB11]

ALAN TIEMANN: Yes. [LB11]

SENATOR CARLSON: Okay. Are there any other proponents following this gentleman? Okay. [LB11]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

ALAN TIEMANN: I really have no testimony other than just and to say thank you...
[LB11]

SENATOR CARLSON: Your name and spell it for us, please. [LB11]

ALAN TIEMANN: Oh, sorry. Alan Tiemann, A-l-a-n T-i-e-m-a-n-n. I really have no testimony other than to thank those that have gone before me. I'm on my way over to the Appropriations Committee hearing. I currently serve as chairman of the Nebraska Corn Board. The executive director, Don Hutchens, and I have just stepped in here momentarily. Just wanted to make ourselves available to any questions you might have for us. [LB11]

SENATOR CARLSON: (Exhibit 8) Okay, thank you. Any questions? Thank you for your testimony. We have a letter here of support from Donald Bloss, president of Nebraska Grain Sorghum Producers Association to be read into the record. Do we have those in opposition to LB11? Anyone testifying in a neutral capacity? Seeing none, Senator Dubas, would you like to close? [LB11]

SENATOR DUBAS: First of all, I'd like to thank all the testifiers who came forward today. I think they were able to give you a little bit better feel about all the variety of checkoffs and what they do. And it was mentioned that ag is really the foundation of our state's economy. We are an ag-based state. I'm very proud to represent one of the largest grain-producing districts in the state. I'm also proud to be one of those producers who produces grain and livestock. There's not much in agriculture that we can control. We're price takers, not price makers. We can't control the weather. In fact, it was just pointed out a couple of weeks ago I think in the Omaha paper that for the first time in ten years our entire state has no colors on it. We are out of a drought. My family suffered through that drought for quite a few years. And, you know, we hung on by our fingernails and we're coming out the other end. So it's difficult enough to battle Mother Nature, but then when your state government comes in and wants to try to take those very funds that you use to try to keep your industry alive and vital and moving forward and hopefully bring that next generation into the fold. It becomes even that much more difficult so I appreciate those of you who are willing to cosign this bill, all of those who came forward to testify today, and I hope that this is the last time we'll have to talk about takings commodity checkoff dollars to use to help us with our budget difficulties. Again, I understand the dilemma that we're in and that if we don't use these funds we're going to have to make them up somewhere else. But I just feel very strongly that this is not the route for us to go. Thank you. [LB11]

SENATOR CARLSON: Thank you, Senator Dubas. And before officially closing the hearing on LB11, being a little bit unusual circumstances, I want to try and clarify something. By the fact we're going through this hearing and even though this bill in its

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

form would be judged not within the call, that doesn't mean that this hearing is not being heard and doesn't have an effect on the overall process because it may well be that the Appropriations Committee will make a decision that would favor what's in this bill. Or it may well be on the floor of debate. There can be an amendment that would do the same thing, and that's true possibly with each one of these bills being heard today. So there is a reason to continue with the hearing. With that, we'll close the hearing on LB11 and we'll proceed with the hearing on LB14. Okay, we're proceeding with LB7. And I'll ask our research analyst, Rick Leonard, to present the bill. [LB11]

SENATOR COUNCIL: Mr. Chairman. [LB7]

SENATOR CARLSON: Yes. []

SENATOR COUNCIL: I wish to be excused. I have a bill that's being heard by the Appropriations Committee. []

SENATOR CARLSON: Okay. Thank you. []

RICK LEONARD: (Exhibit 1) Thank you, Mr. Chairman, Chairman Dierks and members of the Ag Committee. My name is Rick Leonard, R-i-c-k L-e-o-n-a-r-d. And as Senator introduced me as research analyst for the Agriculture Committee. LB7 would amend Section 2-2634 of the Nebraska Pesticide Act to change disposition of pesticide product registration fees. There are currently \$60 of the registration fees remitted to the Buffer Strip Incentive Cash Fund and \$30 to the noxious weed cash fund. LB7 would increase an additional \$5 of the fee to the noxious weed control cash fund and to replace the remaining General Funds supporting Department of Ag's responsibilities under Noxious Weed Control Act. The amount of the registration fee remitted to the Buffer Strip Cash Fund is simultaneously reduced by \$5. As the fiscal note suggests, the bill as introduced would result in \$55,000 annual increase in revenues to the noxious weed program and a corresponding reduction to annual or net revenues to the Buffer Strip Cash Fund. I provided a handout of the projections of the buffer strip program as it currently stands. The printout does not show the effect of either of the Governor's recommendations for transfer of Cash Funds to the General Fund or the effects of this bill. The committee...this legislation was brought, Mr. Chairman, when we learned that the Governor's recommendation was to take essentially \$200,000 over two years out of the buffer strip program was...the fact preserve some...our course of action. As you know, we have LB581 pending from last session which would have increased a portion of the pesticide registration fee deposited into the noxious weed cash fund by \$10 and reduced the proportion deposited in buffer strip by \$10. That bill was introduced both to respond to a structural surplus of revenue that was perceived at the time then accruing in the buffer strip program and also to reallocate surplus revenues to the noxious weed program, which at that time was facing impending reductions in General Fund support and a corresponding reduction in program activity. It was the goal of LB581 to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

completely Cash Fund the noxious weed program or at least provide flexibility to absorb additional General Fund reductions that were pending, even before the special session, that we enacted last session and then additional General Fund reductions to the department that are pending before the Ag Committee now or before the Appropriations Committee at this time. As you know, LB581 was a competing measure with LB98 which this committee advanced, and that was eventually enacted which provided for a one-time transfer of \$500,000 from the buffer strip program to help fund, partially fund the riparian vegetation initiative. At the time, it would have been difficult to go forward with both bills as it was at least perceived revenue projections was we couldn't proceed with both bills at both times. That reduction to the buffer strip program would have required a drastic reduction in program activity there and potentially so that we maintained our obligations in line with projected revenues. As you're aware, the Governor's budget recommendation for this special session calls for a transfer of nearly \$200,000 out of the buffer strip cash fund over the next two years, the Governor identifying these as surplus funds beyond projected obligations. LB7 was introduced as an attempt to preserve options to this committee to accomplish the purposes of the special session, i.e., to reduce General Fund appropriations by providing a cash revenue source to replace what remaining General Funds were going to the noxious weed...presumed to be going to the noxious weed program. When the Legislature adjourned last year, the General Fund support for the benefit of the noxious weed program had been cut further, but the amount of the reduction would have left a residual \$20,000 assumed General Fund appropriation to the department for the noxious weed program. LB7 was introduced as a shell bill actually. The amount needed to replace \$20,000 would amount to a reduction of about \$2 of the pesticide or reallocation of \$2 of the pesticide fee. Additionally, however, to accomplish that it may have been necessary to work with the Appropriations Committee to reduce the amount of the Cash Fund transfer contained in LB1 to reallocate...to reflect this reallocation of fees. Additionally may have been necessary to make this bill relevant to the call to include some intent language that any reductions of the...any reductions of General Fund appropriation to the department would be applied to the noxious weed program ability to reduce that because of some additional Cash Fund revenues made available. However, it's my understanding, subsequent to the introduction of this bill we've learned that the department has at this time cut its inspection force. The noxious weed program is now serving with two less inspectors than we had just two or three years ago, as well as one of the...a position that formerly was General Funded or partially General, partially Cash Funded has been assigned to the Cash Funds that we assigned under LB98 to the riparian initiative. And so as I mentioned to the senator, the bill in its current form, it's my understanding there are no General Funds now currently applied to the noxious weed program. It's completely Cash Funded at a much lower level of activity. And therefore, the bill...technically there's no General Funds offset. So to leave it at that, as well, we had an Attorney General's Opinion this morning that suggested that this bill was outside the call. As I suggested that while I agree with the Attorney General's analysis, there was an additional issue that I would have brought up with the Attorney General if we

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

wish to pursue this bill. There's an analogous situation where we had to change to a substantive legislation that enabled us to carry out an intent for reductions in the General Fund bill. That was Attorney General's Opinion 146 in 1985. However, I will say at this time without any General Funds to offset with this bill, there may not be a point in going forward with it. [LB7]

SENATOR CARLSON: Okay. Thank you, Mr. Leonard. Any questions? Okay. Thank you. Do we have anybody that wishes to testify in regard to LB7? Seeing none, we'll close the hearing on LB7, and we'll open the hearing on LB14. Senator Louden. [LB7]

SENATOR LOUDEN: Thank you, Senator Carlson and good afternoon, members of the Agriculture Committee. My name is LeRoy Louden, the last name is spelled L-o-u-d-e-n, and I represent District 49. I'm here today before you today to present LB14, a bill I introduced to remove the Nebraska Brand Inspection and Theft Prevention Fund from the Governor's budget recommendation package. I realize and support the Governor on the issues of resolving a shortfall in state revenues. And that is where the many differences of opinion probably come to light. We must remember we are in a revenue shortfall, so I believe we must find a way to lower spending primarily before we raid old purses or as the Governor's budget office calls them, Cash Funds. Most of these Cash Funds are being used continuously. And the one I'm interested in here today is the Brand Inspection and Theft Prevention Fund. This operation is completely funded from inspection fees, brand recording fees and such and has never received any appropriations from the General Fund since its inception as a state agency in 1941 from the then called Nebraska Stock Growers. Prior to 1941, the Nebraska Stock Growers handled brand recordings and theft investigations. As of 10-31-09, that's last October 31, the committee has on hand \$512,508.36. This is the only funds available to operate the entire staff and inspectors that are on duty to inspect brands, investigate theft, and round out all other business of the Brand Committee. The recommendation a few years ago was for the committee to have at least 20 percent of budget as a cash reserve. And if it exceeded 45 percent, then the inspection fees would be lowered. That has happened. The inspection fees have happened, but at the present time, they are at the 9 percent of budget. The money in the brand inspection fund in no way affects the state budget. The Brand Committee sets the fees within what is allowed in statute. And at this present time, they're maxed out at 75 cents per head for inspection fee, and they conduct the business without any appropriations from the General Fund or any state grant money. The employees are state employees, but their jobs are at the discretion of the committee and are fully paid for from the committee resources. The committee did not give a 2 percent raise to the employees last year. And if this year's appropriation of \$111,404 this year and \$222,218 in fiscal year '10-11 is allowed, the commission will be in such jeopardy that I'm sure fees will have to be raised. I attended a meeting in Holdrege this summer along with Senator Carlson and others to discuss ways to keep the Brand Committee solvent without raising inspection fees significantly. There are ideas being considered now how to alleviate the commission's shortfall in revenue. And

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

with the raid such as the Governor's budget recommendation is carried out, there would have to be legislation passed to allow an increase in inspection fees. In this time of economic shortfall, this should not be the case. I would ask that you would advance LB14 so that we can keep a viable Nebraska Brand Committee. I understand Senator Carlson mentioned earlier that the bills won't get out of this committee because of the Attorney General's Opinion. My understanding is that the bills can be advanced out of committee. They can be put on the floor. They can be voted and passed. The difference is they're vulnerable to challenges of whether or not they were constitutional. So it isn't a matter of whether you have to or don't have to pass mine. You can do whatever you want to. You're members of the committee and you're members of the Legislature. It's just the fact that the situation of the bill after it's out there on the floor could be challenged. At the present time, the Appropriations Committee has I think it's Agency 39 that they'll be discussing. We have to see where that goes. But the reason I introduced this bill is more or less as a fallback point. We have to have something. We can't just let it lay out there and wait to see what happens for somebody else's committees or someplace else to go. So that was the reason I introduced this bill, and I would like to see something carried out on it or at least held until we see where the Appropriations Committee comes out on their bill. With that, I would answer any questions. [LB14]

SENATOR CARLSON: Okay, thank you, Senator Louden. Any questions? Senator Wallman. [LB14]

SENATOR WALLMAN: Thank you, Chairman Carlson. Thank you, Senator Louden, for coming here, this esteemed committee (laugh). And as you realize, if we touch these checkoff dollars, that's a terrible, you know, thing to tell the rest of the producers, isn't it? [LB14]

SENATOR LOUDEN: Well, true. Now you want to remember, Senator Wallman, these aren't checkoff dollars. These are inspection fees, the same as if...well, at the ranch I have to have an inspection fee for the scales in order to do business over those scales. This doesn't have anything to do with checkoff. It's a fee and that's used to operate the commission, the Brand Committee in the state of Nebraska, in the western what, about three-fourths from Grand Island west is about where the line is. And that's the sole source of their revenue to take care of brand thefts, brand inspection. And you want to remember in Nebraska you can't move cattle out there unless they're brand inspected. So you got to...this is something you have to have. And at the present time, we're quite fortunate that if I call the guy up and tell him to be there at 8:00 in the morning or something like that, there's only been one time in all the years I've ranched that that guy wasn't there at that time and we had to hold those cattle in the corral until he got there because, see, you can't load them on trucks or anything until they've been brand inspected. And that was just here in the last year or so that that happened. And part of that is that if they lose this funding there will be less inspectors and there will be people sitting around. And you get somebody that's got a few truckloads of cattle at a feedlot

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

and they want to go to the packinghouse with those cattle and they've got to sit there and wait two hours before they can load those cattle out, there's going to be some very unhappy people about it, besides the fact that that's all part of our production in Nebraska, keeping our resources open to deliver those cattle to the packing plants or wherever we have to deliver them. That's the job of doing business. [LB14]

SENATOR WALLMAN: Thank you. [LB14]

SENATOR CARLSON: Okay. Any other questions? Senator Dierks. [LB14]

SENATOR DIERKS: Senator Louden, will there be someone here from the Brand Committee to testify? [LB14]

SENATOR LOUDEN: I don't know. You want to remember they're 400 miles out there. [LB14]

SENATOR DIERKS: Yeah. [LB14]

SENATOR LOUDEN: Yeah, there's my whisker gentleman back there. So I didn't know if he would make it back or not. But he had to come last, what, Thursday or Friday or whenever and testified at the Appropriations Committee. And I mentioned to him to be here today, but he hadn't made it back. And this does put quite a hardship, you know. From here to Alliance, it's over 400 miles one way. [LB14]

SENATOR DIERKS: I'll ask him the hard questions then. [LB14]

SENATOR LOUDEN: Very good. I'd just as soon you did. (Laughter) [LB14]

SENATOR CARLSON: Any other questions of Senator Louden? Okay, thank you for your testimony. Proponents. [LB14]

STEVEN STANEC: (Exhibits 1, 2) Good afternoon, Senator Carlson, members of the Agriculture Committee. Some of the things that I'm going to talk about this afternoon.. [LB14]

SENATOR CARLSON: Name and spell it, Steve. [LB14]

STEVEN STANEC: Oh, sorry, excuse me. My name is Steven Stanec, last name is spelled S-t-a-n-e-c. I'm the executive director of the Nebraska Brand Committee. And as I attempted to allude to, I'm going to probably echo some of the things that Senator Louden said. However, I have materials that I've supplied with you that may make more sense if I happen to touch on them through my testimony. So I will go ahead and follow through with the testimony that I have prepared and possibly answer a lot of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

questions you may have. I'm here today on behalf of the Brand Committee in support of LB14 which would specifically prohibit transfers and lapses from the Nebraska Brand Inspection and Theft Prevention Fund. I can't impress enough on this committee just how critical this issue is to the viability of the Nebraska Brand Committee. And I applaud Senator Loudon and his cosponsors' efforts as this is the right thing to do in not allowing these funds to be transferred. It is vital that the committee maintains a cash-on-hand balance of approximately 20 percent of its budget to be able to perform its functions that the cattle industry has come to expect, especially when the committee is assessing the maximum statutory inspection fee and other related fees. The Nebraska Brand Committee is a noncode, self-supporting agency that in its 68 years of existence has never received nor asked for or requested, you know, any general state tax fund money. The committee's duties and responsibilities are to protect Nebraska brand livestock owners from the theft of livestock through established brand recording, brand inspection, and livestock theft investigation. It relies solely on the fee assessments for the services it provides to operate, which is directly related to cattle numbers inside the boundaries of the Nebraska brand inspection area. All fees and money deposited into the fund are also directly related to the fluctuation in activity in the cattle market. As you can see by the enclosed total cattle inspection by years form, which is included in the handouts, inspection numbers can vary greatly from one year to another. During fiscal year 2003-04, the numbers decreased from the year prior by over 400,000 head. At the current rate of 75 cents, that's \$300,000 or more a year. In 1996-97, there was an increase of 224,599 head from the year prior. This drastic fluctuation in the number of cattle movements and sales has a major impact on the Brand Committee's revenues. This illustrates the need for a Cash Fund reserve balance, especially when the agency has reached its maximum inspection fee as 87 percent of the agency's revenues derives from the per head fee. Also in the enclosed copy of "Profit and Loss by Months" report from July 1, 2008, through June 30, 2009, justifies the need to have a fund reserve to meet the cash flow requirements of the Brand Committee to protect against cattle market fluctuations. As you can see in the report, those figures can go from \$116,809 deficit in July to a \$71,000 gain in August, which there again is directly related to the activity in the cattle industry. Because the Brand Inspection and Theft Prevention Fund sustains the operations of the committee, a cash reserve is required to meet the needs of the agency during the months of greatest cash outflow and in the event of revenue downturns. This is echoed throughout a September 1992 analysis of the fund per LR127 by the Legislative Fiscal Office. Although we recognize the state is trying to deal with the decline in revenues, that is a common place that the Brand Committee struggles with constantly. The Nebraska Brand Committee has, throughout its history, felt that the cattle industry provides a support for the agency and the service it provides by paying the fees to keep it viable. As such, the committee has lowered the brand inspection fee four times since 1941. The last time the fee was lowered was in January of 1998 when it was lowered from 60 cents per head to 55 cents per head. This fee remained at that level for five years, returning \$1,250,000 to the industry. As recommended by the analysis report, the committee does have a minimum/maximum

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

cash fund, cash on hand policy which gives consideration to inspection fee changes by raising assessments when their cash balance reaches a low of 20 percent of the annual budget. And if the cash balance exceeds 45 percent of the budget, it considers lowering the fees as it did in 1998 and years prior. A prior report made mention of 25 percent being an accurate number relative to cash on hand for those reasons mentioned. Currently, the percentage of cash on hand is about 9.6 to 10 percent of its annual budget. It would merely sustain the committee for about two months of a complete downturn in inspection fees, keeping in mind that all our functions are defined in statute to provide those services to the industry. Any cash on hand that would be above and beyond the necessity of the committee through those months or years of a downturn are returned rightfully so to the industry. Although the appropriation figures look good at \$4,456,000, that's a little deceiving in the fact that it's a spending authority alone. The committee received receipts of \$3,992,000 this last fiscal year and had disbursements of over \$4,000,000, calculating a loss of \$74,000 because our numbers are down. Our cost of doing business skyrocket, \$550,000 annual for mileage reimbursement. Our inspectors travel a million miles a year. A mere 5 cents in that reimbursement could jump our expenditures \$50,000 a year. As Senator Louden alluded to, the committee has made our own cuts--2.9 cost of living increase was not authorized or approved by our committee. We've cut back two full-time positions. And by transferring any funds out of the Brand Theft Fund certainly would appear now would be penalizing a committee for trying to do a good job. [LB14]

SENATOR CARLSON: Steve, I'm going to interrupt you just a minute. You've come from Alliance. You've got less than a page to go so you go on even though the red light is on. [LB14]

STEVEN STANEC: Okay, all right. You can certainly read this over at your leisure, but I want to make the comments that currently our brand inspection fee is assessed at 75 cents per head. That's a good price or a good fee and a good service for that price because the state of Wyoming right now is assessing \$1.50 and South Dakota fee is 80 cents per head. Ultimately our cattle industry is our oversight, if you will, and directly involved in all of our meetings. The industry expectations at all, and I emphasize this, the dedicated monies generated and the fees against the cattle industry are in turn utilized strictly to protect their interest in preventing lost and stolen livestock through the committee's programs and not be diverted to any unrelated state programs. If funds are transferred to the General Fund from the Brand and Theft Fund, the cattle industry is the big loser in all this. The Brand Committee would have to look to them to increase revenues to replenish the fund, putting a bigger tax burden on cattle producers who are paying the fees. Reason being, that fluctuation in the market in those cattle numbers from month to month, year to year. On behalf of the Brand Committee, I would ask that you review the materials and information presented to you. Look at the numbers and the statistics. I honestly believe that they speak for themselves, and from that hope you come to the conclusion that this bill or some other mechanism not to allow the transfer

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

of those funds is the right thing to do. Having said that, I thank you for your consideration in allowing me to give testimony today, and I'd be glad to try to answer any questions you may have. [LB14]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Senator Dubas. [LB14]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you for making the trip twice in less than a week I understand. [LB14]

STEVEN STANEC: No problem. [LB14]

SENATOR DUBAS: So I think that in and of itself really demonstrates just how devastating this would be if we would move this transfer forward. You mentioned that in the last year you've cut two full-time positions. What were those positions? [LB14]

STEVEN STANEC: Full-time in charge brand inspector positions. [LB14]

SENATOR DUBAS: And so how many inspectors do you have now? [LB14]

STEVEN STANEC: Total employees is 106. We have 53 full-time inspectors and 50 intermittents, and the balance of those is administration/clerical (inaudible). [LB14]

SENATOR DUBAS: So by eliminating those two full-time inspection positions, how much more stress are you putting on your existing positions, your existing inspectors? [LB14]

STEVEN STANEC: Certainly it raises considerations as Senator Loudon did. We have provided in the past a service that when they needed an inspector we have people available to perform those inspections. The livestock industry, the cattle industry is an industry that is perishable, if you will, in the fact that if cattle are standing around off of water and off of feed, they're going to shrink and that's going to hurt that producer that has to wait. If we cut back any more personnel with the numbers we currently have, somebody may have to wait. [LB14]

SENATOR DUBAS: Are you at all concerned about burnout with your existing inspectors and the demands that are being placed on them? [LB14]

STEVEN STANEC: Well, certainly they...summertime, which we've just gone through, would show on that one financial statement there of a considerable loss. Cattle are not moving in the summer. Sale barns usually shut down, things of that nature. So they have some time to recuperate, if you will. But when the fall run hits, they're working 50, 60-some-odd hours a week trying to keep up with the mandates. And so by spring,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

they're ready for some time off and take some vacation. I will say this. They're not happy with not getting the 2.9 percent cost of living increase. I will add to that that our salary, average salary, is \$2,000 to \$3,000 less a year than the state average. Also our employees have an average years of service of 17 years. The state average is somewhere in the neighborhood of 13 so they're not being reward for having loyalty to the state and to the committee. Those are some of the things that they look at, you know. We have had problems in the last year getting applications for open positions. We've had young people that have come to work for us and have left employment after a year or two because they found jobs that pay better. So those are the difficulties that we've run into when we're at a situation where we're only 9 percent of our budget. [LB14]

SENATOR DUBAS: Thank you. [LB14]

STEVEN STANEC: You bet. [LB14]

SENATOR CARLSON: Senator Dierks. [LB14]

SENATOR DIERKS: Thank you, Senator Carlson. Steve, thanks for coming over. Senator Dubas got most of the questions asked that I was going to, but I did want to ask you to explain to us a little bit about the difficulties that you had with the Auditor and how you came to an agreement with your salary schedule and the Auditor. [LB14]

STEVEN STANEC: Well, certainly our salary schedule hasn't changed. The biggest thing that happened a few years ago and relative to the 40-hour work week was the definition of what considered on-call time is. Our inspectors are unique in that they are the only ones in the state to provide that service. No one can step in, State Patrol, sheriff's department, no one can step in and provide that function. We have to have personnel available to do that. Our inspectors are not allowed to leave their area, geographical area of assignment without taking vacation. They're subject to call seven days a week from sunup to sundown. On sale days sometimes they work till midnight. But they cannot leave their area of assignment. Basically, they're on call. However, there are some allowances for them as long as they're available to leave and be to a particular producer's location within 15 minutes of them getting the call, they've been allowed to go out and fix fence or whatever as long as they're reachable. But there again, they can't load up their family at night after 5:00 and go to the neighboring town or neighboring county to go shopping because they are subject to call seven days a week. However, because of the statutory requirement that they work 40 hours a week, all of our full-time brand inspectors work 40 hours a week unless they are on vacation, utilizing comp time, or off on sick leave. [LB14]

SENATOR DIERKS: Thanks, Steve. There was one statement that Senator Louden made I think in his opening that to move cattle in the state you've got to have a brand

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

inspection. That's just if you have cattle in the brand area. Is that right? [LB14]

STEVEN STANEC: Right. And those requirements are up there subject for sale, consigned for sale or shipment out of the brand inspection area or sold for slaughter and things of that nature. There are other states like Wyoming has county-to-county inspections. That's not a requirement in Nebraska, only if they leave our brand inspection area. [LB14]

SENATOR DIERKS: Thank you. [LB14]

SENATOR CARLSON: Senator Wallman. [LB14]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yeah, thanks for being here. In regards to the fees, you know, and your staff, you have a committee set this or? [LB14]

STEVEN STANEC: The committee's board is five producer members that are appointed by the Governor to serve four-year terms. They set policies relative to the fees. We do have public hearings whenever we lower or raise those fees and invite all representatives from the cattle industry to participate in those fees, whether they're raised or lowered. [LB14]

SENATOR WALLMAN: Thank you. [LB14]

STEVEN STANEC: You bet. [LB14]

SENATOR CARLSON: Yes, Senator Price. [LB14]

SENATOR PRICE: Senator Carlson, thank you. Steve, just to make sure I also understand, that also includes when they're brought back into a brand area, right? If you take and put them on corn out of the brand area, they're inspected and then you bring them back they're inspected again? [LB14]

STEVEN STANEC: Depending on the circumstances, in not all situations. If they come back and are changing ownership, yes. If you as a producer live inside the brand area and you take your cattle outside the brand inspection area to be on cornstalks, you must have those inspected to leave. They may come back in without an inspection unless there's a change of ownership. Now if you're a producer from another state, you must notify us that those cattle are coming in and that where they're at by land descriptions, etcetera, so we know that they are there. Then when they leave again, they're subject to brand inspection. Keep it in mind the reason for brand inspection when it was created back in 1888 was to protect those producers inside that area from missing cattle by someone loading them up and hauling them to another state and things of that nature. We're not so worried about them coming in as we don't want them to leave without that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

inspection. [LB14]

SENATOR PRICE: All right, thank you. [LB14]

SENATOR CARLSON: Senator Schilz. [LB14]

SENATOR SCHILZ: Thank you, Senator Carlson. Do you...you talk about the brand inspection area. Do you...then is that the only place that you do investigations and stuff? [LB14]

STEVEN STANEC: We do criminal investigations. There are four deputy state sheriffs within our organization that we rely on these fees to support their function... [LB14]

SENATOR SCHILZ: Sure. [LB14]

STEVEN STANEC: ...is statewide function. [LB14]

SENATOR SCHILZ: Right. [LB14]

STEVEN STANEC: We provide criminal investigation statewide. [LB14]

SENATOR SCHILZ: Okay, thank you. [LB14]

SENATOR CARLSON: Okay. Any other questions? Okay, Steve, thank you for your testimony. [LB14]

STEVEN STANEC: Thank you very much. [LB14]

MICHAEL KELSEY: Good afternoon, Senator Carlson, members of the committee. My name is Michael Kelsey, that is M-i-c-h-a-e-l K-e-l-s-e-y. I'm the executive vice president of the Nebraska Cattlemen, here before you this afternoon to testify in support of LB14 on behalf of the association. I want to thank Senator Loudon, as well as those who signed on to the bill as cosponsors, for bringing this to your attention and to the attention of the Legislature as well as other interested individuals. A lot has been already presented, both in Senator Loudon's testimony and in Mr. Stanec's testimony that we would very much agree with in terms of the establishment of the Brand Committee, why it was established, how it's funded, how our feelings are, if you will, in terms of those funds, in terms of protecting the integrity behind the establishment of the program, and so forth. So I won't belabor that other than to share with you that we are strong supporters of the Brand Committee, its function. We were the Stock Growers, if you will, until 1988 when the Stock Growers and two other associations merged into the Nebraska Cattlemen. So the folks that I represent were the ones who formed the Brand Committee and then actually turned it over in 1949, as Mr. Loudon has already

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

indicated to you. So we have a strong history in support of the Brand Committee, and we continue to have that support today as well as in the future. If I could answer any questions on behalf of the industry, I'd be happy to do that, Senator Carlson. [LB14]

SENATOR CARLSON: Okay, thank you. Questions of Mr. Kelsey? I guess not. Thank you. [LB14]

MICHAEL KELSEY: Okay, thank you. [LB14]

SENATOR CARLSON: Any other proponents? Are there any opponents to LB14? Anyone wishing to testify from a neutral position? Okay. Senator Louden, do you want to close? [LB14]

SENATOR LOUDEN: Well, thank you, Senator Carlson. I wish to thank those that testified: Steve Stanec and Michael Kelsey. Steve is a lead investigator for the Brand Committee and the director. And most all of these things I certainly agree with. I would like to see that there's some probably trivial questions that some of you that are from the cities probably didn't know, but you know, the cattle have to be brand inspected in the daylight. There's only very few instances where they can be brand inspected with a spotlight so it isn't like you can do this at 4:00 in the morning unless the sun is already up. And then as brand inspector applications, as Mr. Stanec pointed out, they are having more problems with that. And this year I had the privilege to break in a brand new brand inspector. He came down there. We had a couple hundred head of steers or so to brand inspect. And he was a railroader all of his life. His dad was a rancher but genes don't necessarily follow through on brand inspection. You know, you've got to have some experience in there. And we worked with him and got the job done and hopefully he's a better brand inspector now than he was the day that he drove in to the ranch. As with the Auditor deal, a lot of that was the way the bookkeeping was done, because I remember at the time I was involved in that and I remember one of the brand inspectors, I think Dell Clark was his name, and they claimed he didn't...what is it you got to have, 2,080 hours to make your 40-hour week for a year, something like that, and they claimed he didn't have that. And yet he brand inspected over 35,000 head of cattle that year and I said, you know, how on earth could somebody brand inspect them when they can only inspect in the daylight and not have enough hours in there? And then that's when it kind of come about that, well, if they weren't physically looking at cattle they weren't going to be allowed to look at that. So we have had some problems in that and it is getting resolved and it is a good operation. I think when you asked Mr. Stanec whether...where they investigate cattle and he said in the state of Nebraska, but he isn't old enough to remember. I remember when some cattle were shipped from our county out there and they were shipped to Minnesota. The guy owned them but, nonetheless, he had to pay the brand inspector to go to Minnesota to brand inspect them. So that was something that has to be done. The brands turned out all right in Minnesota so nothing else has come of it. But nonetheless, things do happen with the brand

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

inspector. It's a very important job that the Brand Committee has to do. With that, as I mentioned before, I would like to make sure that we have something from the Appropriations Committee before we drop this thing down the hole, so to speak. So with that, I would appreciate your consideration. If there are any more questions that you have, I'd be pleased to answer them. [LB14]

SENATOR CARLSON: Okay. Thank you, Senator Louden. Any further questions? Yes, Senator Karpisek. [LB14]

SENATOR KARPISEK: Thank you, Senator Carlson. Thank you, Senator Louden. I think maybe if you could talk just a little bit about the problems that are out there. Being from this side of the state, where we don't have brand inspections, maybe it's hard to fathom why you need them and why you need brands out there. So if you could just tell us a little bit about no fences, that sort of thing. [LB14]

SENATOR LOUDEN: I guess there was an old guy that I grew up around there and he always did the branding at these brandings, you know. He knew how to. He'd build a wood fire, which I don't think anybody knows how to do that nowadays, probably people like me. But anyway, he always built the fire and he did the branding and he always said I want to put a good, big, clean brand on my cattle to keep my neighbors honest. And that's what it's mostly all about, is to...so there isn't a chance for theft. There's thousands of cattle out there in Nebraska, in western Nebraska, and some of them you don't get to see that much of. Every week we get the report from the Brand Committee on the cattle that are stolen and there's a lot of them from eastern Nebraska area. You're talking about seven or eight head at a time that somebody has hauled off or they've disappeared or what. Well, they went someplace. Whereas, as you get farther west, that those cattle are loaded up in one county and hauled over to a sale barn in another, there's got to be a brand clearance go with them someplace. If they start going across state lines, they can be stopped to check for that brand clearance that the trucker has to carry. Whenever the cattle are brand inspected, there's about three sheets made out and one of them that the trucker carries and he's got to have that in his truck in case he's challenged on what he has in there. One of them the owner gets, and then you get a receipt on what you sold. But all of those are issues that has to be done. It's a bookkeeping job, is what it is, on livestock. [LB14]

SENATOR KARPISEK: Very good. Thank you, Senator. [LB14]

SENATOR CARLSON: Okay. Any other questions? Thank you for your testimony. [LB14]

SENATOR LOUDEN: Thank you. [LB14]

SENATOR CARLSON: With that, we close the hearing on LB14 and I'll turn this over to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

Senator Dubas. [LB14]

SENATOR DUBAS: Welcome. [LB6]

SENATOR CARLSON: (Exhibit 1) Thank you. Thank you, Senator Dubas and members of the Ag Committee. I am Senator Tom Carlson, that's spelled C-a-r-l-s-o-n, representing District 38, and I reluctantly present LB6. As the special session approached, we were asked to examine potential ideas for budget savings to reconcile a projected budget shortfall in excess of \$330 million over the current biennium and the potential for even larger deficits beyond. As you're aware, the Governor's budget package for this special session includes across-the-board reductions of 2.5 percent in the current fiscal year, and 5 percent during fiscal year '10-11. In somewhat of an unprecedented manner and scale, the Governor has also extended these reductions to the expenditure authority of cash funded activities coupled with a transfer of cash funds to the General Fund. The need to reduce General Fund expenditures across government by 2.5 and 5 percent will be necessary despite this influx of revenues to the General Fund. Inevitably, the ability to meet these reductions will likely result in the need to reduce statutory obligations under some programs, finding non-General sources of funding to continue others, or perhaps elimination of some programs entirely. Although not stated explicitly in the Governor's package, LB6 is, therefore, perhaps an example of things to come as a result of necessary actions this special session. The purpose of LB6 is to restore more flexible language regarding the inspection program in the Department of Ag to maintain under the Dog and Cat Operator Inspection Act. This bill amends 54-628 of the Commercial Dog and Cat Operator Inspection Act by eliminating language requiring regular inspection of licensees, performed at least once in a 24-month period. The revisions would revert to previous language prior to the enactment of LB12 in 2007 that merely authorized and directed the department to establish an inspection program. The intent of the revision is to restore flexibility in the scope of inspections required to be performed under the act. LB12 enacted dramatically changed the scope of the program. Prior to this time inspections of breeders and other pet facilities were performed primarily on a complaint-only basis and was essentially funded entirely on cash funds. Existing cash revenues were sufficient to employ only one inspector and a part-time clerical staff. LB12 in 2007 required the department to perform precursors inspection for each new license applicant and to perform regular inspections of licensees at least once every two years. This dramatically increased the workload of the department and required a substantial increase in its inspection force. This increase was funded through a combination of increased cash revenue and General Funds. Currently, the existing administrative, inspection staffing and enforcement effort is funded approximately 50/50, General and cash funds. Per LB12A appropriation, the department received about \$237,000 General Funds actually annually to supplement cash revenues to enable the department to employ five inspectors and additional administrative staff. The current state budget adopted last session already reduces General Funds during the second year of the current biennium by an amount

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

approximately equal to the cost of hiring one inspector during the second year of the biennium. Thus, the General Fund appropriation to the department includes \$237,000 for fiscal year '09-10 and \$182,000 for fiscal year '10-11. There is sufficient fee discretion to increase license fees revenues to replace lost General Funds to continue the cost of this inspector. The license fee is statutorily on a sliding scale, depending on the size, with an annual maximum fee of \$250. By statute, the department may increase the schedule of fees, up to a maximum of \$350. I want to be clear, I do not oppose the more robust inspection program that we are currently having. I believe the last two years have witnessed a steady improvement in the state of the industry, although there's much work remaining to raise the standards followed by pet breeders and marketers and, if necessary, find and eliminate those that refuse or fail to meet standards of care. In normal budget times I would not want to even consider reducing resources to this inspection effort. However, I think we need to be realistic. We cannot fund every program at current level out of General Funds no matter how meritorious. You have handouts containing excerpts from the most recent annual report of the Department of Ag, of program activity and associated revenues and expenditures to support those activities. I would refer you to the information in Table 4 that provides data on inspection activity by various categories. You'll note that by far the largest inspection burden currently imposed by law is the regular inspection of licensees at least once every two years, representing about 60 percent of the inspection burden. It will be difficult to maintain this inspection requirement with the reduced resources already scheduled under the budget and additional reductions that are in the foreseeable future for this and other programs. With that, I will try to answer questions that you may have concerning this bill. [LB6]

SENATOR DUBAS: Thank you, Senator Carlson. Questions? Senator Wallman. [LB6]

SENATOR WALLMAN: Thank you, Senator Dubas. Yeah, thank you, Senator Carlson, for being here on this issue. It's a kind of contentious issue. But as far as breeders here...dealers, I mean, is that all the dealers we have in Nebraska, six? [LB6]

SENATOR CARLSON: At the present time. And if you were to ask me what that really means, I don't know. But if you look at in the total column down at the bottom... [LB6]

SENATOR WALLMAN: Sure. [LB6]

SENATOR CARLSON: ...we have reduced from 685 in 2006 to 651. And some of that I believe has to do with the effect of these additional inspections. They've been able to locate some bad operators. That's good. So I think the law has had a positive effect. [LB6]

SENATOR WALLMAN: Okay. Thank you. [LB6]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

SENATOR DUBAS: Other questions? Senator Price. [LB6]

SENATOR PRICE: Thank you, Senator Dubas. Senator Carlson, on this paperwork we have, on Table 4, is there somebody who's going to come behind you to discuss Table 4? [LB6]

SENATOR CARLSON: I don't know that. You can fire at me and see if I can answer. [LB6]

SENATOR PRICE: No, I was just doing some arithmetic and I just want to go behind the numbers. [LB6]

SENATOR CARLSON: Okay. Okay. [LB6]

SENATOR PRICE: So there's no need. Thank you. [LB6]

SENATOR CARLSON: Okay. [LB6]

SENATOR DUBAS: Other questions? Seeing none. [LB6]

SENATOR CARLSON: Thank you. [LB6]

SENATOR DUBAS: We have our first proponent for LB6. Any proponents? [LB6]

SENATOR PRICE: Slim pickings there. [LB6]

SENATOR DUBAS: Seeing none, we'll have our first opponent of LB6. Welcome. [LB6]

CAROL WHEELER: (Exhibit 2) Good afternoon, Senators. I'm Carol Wheeler, W-h-e-e-l-e-r. I am director and founder of Hearts United for Animals, a shelter and sanctuary in Nemaha County in operation for 20 years. One of the programs of Hearts United for Animals is receiving dogs from breeding operations when they are released by the breeders or when the breeding businesses have been closed by authorities. This has been an active program since 1996. In the past year and a half, huge national publicity regarding puppy mills and the failing national economy have resulted in hundreds of breeder dogs being released from breeding facilities. the entire Midwest is flooded with these dogs. Since April of 2008, Hearts United for Animals, in collaboration with other shelters and breed rescue groups, has rescued...has received 619 dogs from Nebraska breeders. Documentation of the condition of these dogs is an extensive body of evidence proving that the majority of them live in pain and fear. Increasing numbers of people have become aware of the standards of profit-driven dog breeding businesses and they are repulsed and sickened. I am submitting pictures of two breeding establishments in Nebraska. The first one is located near Grand Island; the second is in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

Morrill. I believe that anyone looking at these pictures would believe that ambition, knowledge, standards of performance are not nearly adequate to transform these places into anything acceptable. These are licensed, inspected facilities in Nebraska and, to my knowledge, still in business. From my experience, I have to believe that for every 1 breeder in Nebraska who is doing some of the things that would give his dogs health and comfort, there are 50 others who are not. This program that is meant to give protection to the animals is weak and ineffective. This is not the fault of the inspectors. Laws and regulations have never been adequate, but even more significant than that, there is an attitude of unimportance and disrespect for a program that should help prevent the suffering of animals. LB6 furthers these conclusions and it has been introduced at a time when other states are improving laws and enforcement to try to shed their images as puppy mill states. Many of the people attending this hearing today are those who have driven their vehicles hundreds of miles to load them with dogs. They volunteer at shelters and take foster dogs into their homes. They have spent untold hours giving comfort and trying to mend broken bodies and spirits. They have given huge sums of money for veterinary care. They do this all for only one reason--because they care so very much. There are many Nebraskans who care. Seventy percent of Nebraska homes have domestic animals and the well-being of dogs and cats is dear to their hearts. I ask, in representation of the good people of this state, that you do not favor LB6. Thank you. Are there any questions? [LB6]

SENATOR DUBAS: Thank you, Ms. Wheeler. Questions? Seeing none, thank you. [LB6]

JUDY VARNER: Thank you, Senator Carlson. Where did he go? [LB6]

(UNKNOWN MALE): He's right here. [LB6]

JUDY VARNER: (Exhibit 3) Oh. Thank you and members of the Agriculture Committee. I would also like to thank you for making a very important bill a priority of this committee, under the leadership of Senator Carlson last year, that helped button up a lot of the loopholes in this program. I think some people have been under the impression that Senator Carlson and other committee members are not in support of this program and I think that's not true. My name is Judy Varner, V-a-r-n-e-r. I'm the president/CEO of the Nebraska Humane Society. We are the largest humane society in the state of Nebraska and one of the largest in the country. We respond to requests for assistance throughout the state from law enforcement and prosecutors. We work very closely with the inspectors for the Commercial Dog and Cat Act when asked to rescue dogs. We also work closely with statewide commercial dog breeders associations. We all want the same things, the same things all of you want--a decent standard of living for dogs being used as breeding dogs in kennels and families being able to take home healthy puppies. What you have before you is a picture of a puppy mill that was operating in Nebraska. The picture was taken about four weeks ago. While we have hundreds of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

pictures just like this one, I brought it because it is a state-licensed kennel that has dropped horribly in its level of care. The white dog on its side is dead. the others were so matted they could not defecate. Had they waited much longer, they would have died as well. There was no one to file a complaint. For many of the puppy mills there is no one who ever sees the dogs because they're sold over the Internet, so families don't visit them, nobody visits them. The breeders can close their blinds, shut their doors, and no one ever knows the horrors that go on inside. It was only because we have enough inspectors to continue to make visits that this case was discovered. I am asking that you do not pass LB6 out of this committee for two very simple reasons. Number one, inspections can simply not return to complaint driven. The picture is testimony as to why. The commercial dog and cat program in Nebraska is weak, at best, just due to the limited funding and the limited number of inspectors. To reduce inspections is to commit thousands of dogs to a life of misery. The other reason LB6 must die in this committee is the Department of Agriculture should not be given the authority to determine when the inspections take place. This needs to remain a legislative decision. The department has made it clear they do not want to enforce this program. This is made evident by public statements that this program does not fit within their mission statement, as well as the fact that even though the law was changed to enable the inspectors to enforce state cruelty laws, this has never taken place. Whenever budget cuts are asked from the Department of Agriculture, this program is always the first one they put on the chopping block. The cuts offered are not cuts that will trim the budget; they're cuts that will dissolve the program. Nebraska used to be known for producing sick puppies. Now we're the only state I know of in which good commercial breeders, horrified at the existence of puppy mills, and humane societies and rescue groups are working together for the good of the dogs. Nebraska is becoming a model for the country. Please do not let LB6 out of this committee. That concludes my testimony and I would answer any questions. [LB6]

SENATOR DUBAS: Questions for Ms. Varner? I would have one for you. [LB6]

JUDY VARNER: Uh-huh. [LB6]

SENATOR DUBAS: As with almost anything, it always comes down to dollars... [LB6]

JUDY VARNER: Uh-huh. [LB6]

SENATOR DUBAS: ...and how do we make those dollars stretch and get the most bang for our buck. Are there things, are there more public-private partnerships we could form, are there some other things we could do that we wouldn't necessarily have to rely so much on state dollars but could improve...? [LB6]

JUDY VARNER: I appreciate that question. That's an important question. This program is very young. LB12 was, what, 2007. Right now the top limit for fees is a kennel of 50,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

so a kennel can have 350 breeding dogs and they're paying the same thing as a kennel of 50. There need to be more layers in that. And I think that that could pick up quite a bit. I think there's an opportunity for public fund, but to gut this program and send it back to ground zero is the wrong thing to do. This is a new...we had one negative vote from the Legislature when it went through, one no vote, and it passed through the Governor. I think to kill it now is a big mistake. I think it needs time to grow. It needs to have some room in those levels of fee structures. Yeah, I think there's a lot that could be done. [LB6]

SENATOR DUBAS: Does local law enforcement have any ability to step in and get involved, you know, if there is a complaint or...? [LB6]

JUDY VARNER: Yes. Yes, and that's frequently where we get called because we are very aggressive in terms of animal cruelty cases. So local prosecutors will sometimes call us, or county attorneys, and either talk to our attorneys or talk to our investigators. Our investigators will also go out to the counties, as requested, to help them just understand animal laws. Animal laws are not laws that a lot of local prosecutors want to handle, so if we can help in any way we try to. [LB6]

SENATOR DUBAS: Thank you. [LB6]

JUDY VARNER: Uh-huh. [LB6]

SENATOR DUBAS: Other questions? Senator Karpisek. [LB6]

SENATOR KARPISEK: Thank you, Senator Dubas. Thank you, Ms. Varner. So I know you've said it. I want to hear one more time. The bill that we just passed you feel has done a lot of good of getting rid of bad, the puppy mills. It's working. [LB6]

JUDY VARNER: It's absolutely working. The inspectors are doing an amazing job. I think to send this back would be horrific, just horrific, and it's not...it's not...obviously, we're interested in the welfare of dogs but it's the families that are going out and buying sick dogs. It's the dogs that are coming to shelters because their separation anxiety is so bad they can't...they can't be a normal pet. Yes, I think to take this back would be a great travesty and I have it on the advice of a number of people that are on the Appropriations Committee that they made it clear to the department this program was to stay intact. [LB6]

SENATOR KARPISEK: Thank you, Ms. Varner. Thank you, Senator Dubas. [LB6]

SENATOR DUBAS: Senator Price. [LB6]

SENATOR PRICE: Senator Dubas, thank you. Mrs. Varner, thank you for being here.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

Are you familiar with Table 4 that we had in the packet? [LB6]

JUDY VARNER: I've not seen that. I'm sorry. [LB6]

SENATOR PRICE: At some point in time I'd like to provide it for you and have someone resolve some of these numbers. [LB6]

JUDY VARNER: Okay. That probably...I assume the department prepared that. [LB6]

SENATOR PRICE: Thank you. [LB6]

SENATOR DUBAS: Other questions? Seeing none, thank you. Wait. Whoa. Whoa. Senator Dierks. [LB6]

SENATOR DIERKS: Well, I really don't have a question, Senator Dubas. I just wanted to thank Judy for her presence here today and her activities over the years. We've had a long involvement with trying to protect animals since I've been involved with it and I sure appreciate your help. [LB6]

JUDY VARNER: Cap, Senator Dierks introduced the first bill in 1992 and fought hard until I believe 2002, when it finally passed. We appreciate your support. [LB6]

SENATOR DIERKS: Yeah. [LB6]

SENATOR DUBAS: Any other questions? Thank you. [LB6]

DON WESELY: (Exhibit 4) Senator Dubas, members of the Agriculture Committee, I'm Don Wesely, representing The Humane Society of the United States. I have some testimony from HSUS that I'm passing out, I will not read. You can take a look at it at your leisure. There are a couple points I do want to make in that information. I'll wait till that's sent around. As was mentioned earlier, Senator Dierks was a leader on this issue till the passage in 2001 of the original Commercial Dog and Cat Operator's Inspection Program, and that went in place until 2007, when LB12, introduced by Senator Mines, former Senator Mines in the back of the room there, which then enhanced the inspection program and dealt with some of the problems we found with it. As was mentioned, that bill passed 44 to 1, and again last year some enhancements further to the program were made. So members of this committee have been very solidly in support of that and we appreciate your support for the program. And, Senator Carlson, we understand the circumstances. As you've mentioned, the state budget is in terrible shape. We understand that. Our suggestion is that already fees cover, I think, close to about half of the cost of the program, and so...and it's expected next session again to have a reduction in General Fund with an increase in fees. So fees are paying a pretty big part of the cost of the program, as it stands right now. One of the things I was going

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

to mention, there were some horror stories that I won't go into. If you look at page...bottom of page 2 and top of page 3, it talks about just a couple of examples and...but, Senator Karpisek, you've raised the question about when you do have animal cruelty and the costs involved, and I know you have legislation coming in next session. If you look on the third page, several paragraphs down, there's a paragraph I will read: While the HSUS does not have specific data on the costs of puppy mill raids or seizures in Nebraska, law enforcement in Washington State estimated at \$330,000 the cost of cleaning up a puppy mill from which they removed 371 animals in June of this year. Costs associated with the seizure of 249 animals from a Buxton, Maine, puppy mill have been estimated at \$510,000. And so the idea here is to head off a problem before it gets to that point and then has that kind of a cost impact to a county or to the state of Nebraska. So this is, in a sense, preventive medicine, and there is a cost but it's a shared cost and it will save money in the long run, save a lot of pain from these animals in these puppy mills, and also provide when a consumer does buy a puppy or another animal that the animal is healthy. With that, again, we stand in opposition to LB6. [LB6]

SENATOR DUBAS: Questions for Mr. Wesely? Seeing none, thank you. [LB6]

DON WESELY: Thank you. [LB6]

SENATOR DUBAS: Any other opponents to LB6? (See also Exhibit 5) Anyone in the neutral capacity? Senator Carlson, would you like to close? [LB6]

SENATOR CARLSON: I want to thank those who came to testify and we've got a large number in our group that did not come up verbally but I think I know what their feelings are. I would like to have some discussion with some of the members that have come forth today. If I did my figuring correctly, if fees were raised 225 percent, it would be operate like a cash fund, like the Brand Commission. That's a huge increase but it would be...it's been brought up that fees need to be looked at and so that would be a figure that I think is probably fairly accurate, and I'd be open to discussion on that. But thank you for your indulgence on this issue today. [LB6]

SENATOR DUBAS: With that, that closes our hearings for the day. [LB6]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
November 09, 2009

Disposition of Bills:

LB6 - Indefinitely postponed.
LB7 - Held in committee.
LB11 - Placed on General File.
LB14 - Placed on General File.

Chairperson

Committee Clerk