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Agriculture Committee
February 15, 2011

[LB91 LB107 LB394 LB473]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, February 15, 2011, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB91, LB107, LB394 and LB473. Senators present: Tom Carlson, Chairperson; Norm Wallman, Vice Chairperson; Dave Bloomfield; Lydia Brasch; Burke Harr; Russ Karpisek; Tyson Larson; and Steve Lathrop. Senators absent: None. [LB91]

SENATOR CARLSON: Welcome to the February 15 Agriculture Committee hearing and I'll start through the preliminaries. We're one person short of a quorum, but I think they'll be here by the time that I finished. I'm Tom Carlson, Senator from District 38, Chair of the Agriculture Committee. Our research analyst to my right is Rick Leonard, and our committee clerk to my left is Barb DeRiese, and our page today is Kate DeLashmutt from Burwell. And if you need something copied or you need some help...if you have material to hand out, give that to Kate as you come to the front to speak and she will hand that out to the committee. As members of the committee, to my right is Senator Norm Wallman from Cortland, he's the Vice Chair of the Ag Committee; Senator Lydia Brasch from Bancroft; and Senator Burke Harr is in the empty chair. (Laughter) He will be here, hopefully, and Senator Dave Bloomfield from Hoskins. And I'll introduce the others as they come. As I indicated a couple of minutes ago, if you are going to testify, pick up a green sheet and have that filled out before you begin testifying. And please fill out the form in its entirety and then this gives us a good accurate record. Senator Tyson Larson from O'Neill is just entering and now we do have a quorum so we can officially move forward. When you come to the front to testify, please immediately give your name and spell it and that's to keep everything accurate on the transcript. If you don't do that, then I'm going to stop you and have you spell your name for us, so that keeps everything in order. Please do that. Senator Burke Harr from Omaha just entered. He's another member of the committee. And I've talked about, if you have handouts, there needs to be twelve copies, so if you're going to do that, if you're short on some copies, then Kate, our page, will help you out on that. If you don't want to testify but you want your name entered in the record, there's a white sheet by the green sheets that you can sign and that will make you an official part of the record. And Senator Lathrop from Omaha, another member of the committee, has just entered. Now I'm talking to myself, too, and either turn off your cell phones or put them on vibrate. And I have to tell you last week in Natural Resources, I couldn't have been more embarrassed because I always have my phone on vibrate, and I was zeroing in on a testifier and asking him questions and just as I got to the important question, my phone rang. And I couldn't have been much more embarrassed, but he was pretty quick on the trigger, he said, that's my attorney, so. (Laughter) And in our hearings there is no display of support or opposition to a bill, and we keep things in an orderly fashion. So before we start today, does anybody have any questions? As you come up to speak, now Senator Price is going to introduce his bill and the senator that introduces the bill is the exception. He can take as much time as he wants. But beyond that, when you come forward to testify,

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you have five minutes. And as you start, the green light will be on in front of you, and then at the end of four minutes, it will go to the yellow light that tells you, you have one minute. And when the red comes up at the end of five minutes, please finish your testimony quickly or I'll have to interrupt you. And then we open it up for the committee to ask questions. So that's the way that we can keep things in an orderly fashion. Any questions before we begin? Okay, Senator Price, you're recognized to open on LB91. []

SENATOR PRICE: (Exhibit 1) Thank you very much, Senator Carlson and members of the Ag Committee. It's a pleasure to be before you and even while I had sat in one of these chairs for the past couple of years, it's no less intimidating to sit here. Again, my name is Scott Price, S-c-o-t-t P-r-i-c-e, and I represent the 3rd Legislative District in Sarpy County. And I'm here today as a primary introducer of LB91. And now right out the gates here and off the bat, I want you to know this was a bill that Senator Price came up with. No one asked Senator Price to carry this bill. No one said, could you wait a year or two or wait until you're off the committee before you carry a bill, before you get to your committee. My timing is just what it is. It's a bill that I had an interest in and I'm carrying this bill. And what this bill does, it changes the minimum horsepower for tractor testing at the University Tractor Testing Laboratory from 40 horsepower to 100. Pretty simple, not like one of our complex bills we have, but it's not as simple as all that. As we know, bills get more complex once we start to pull them apart. The Tractor Test Lab was created by the Legislature in 1919 as there were many manufacturers in those days and there were no consumer protection either. And the Legislature felt the need to create this lab for the protection of our agricultural producers and that is true today. That should not change, and I don't want this bill be something that will change that. We need to keep that at the heart of everything we do. Now in the 1980s they did amend the bill. It went from 20 horsepower to today's 40 horsepower. I would tell you I have a riding lawn mower at home that pushes that envelope and I'm sure that many other people do too. Now what we're going to see here today, people will come in and they'll testify. There's a lot of information. There's information on fee schedules, permit schedules. And I really appreciate all the help that was given to me by Mr. Hoy and all the other people who have worked with this bill. We are not doing this in the dark and springing anything on anybody here and I really do appreciate. I want that to be on the record for their help and their willingness to educate me on some of the finer intricacies of what we're trying to do here. Now I do have an amendment, if you don't mind helping me out. This amendment I offered up, I've spoken to a couple of different senators. And by opening it up and saying, hey, we want this new threshold to be at 100 horsepower, the issue came in, implement dealers may come in, there may be those out there who don't have any testing done, and we don't have a way to get to them. In my opinion, what happened with the tractor lab is, in the days when they first started this, a lot of people out there trying to sell a tractor to a farmer and maybe they didn't...there wasn't full truth in disclosure in their product as some people could have been harmed by that. So we started the tractor lab. And I didn't want to reintroduce that element into our economy. So what I've done here is, I've decided to do something like, basically, a slot.

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And to say, if we were to say between 50 and 100, you would still get tested unless you had equipment that had exceeded that threshold. Now we may dicker on that threshold. But the idea being is, if you're a John Deere or a Case IH and you had something being tested at the higher threshold, you wouldn't have to come in at the low one because you have skin in the game. You're very, very conscientious of what happens to your brand name and your brand loyalty, and you'll be doing all the right things. But when we get above 100...well, now you say, why above 100? In my understanding working with and talking with people there aren't too many individual farmers out there who are going to pull a 12-row planter or deep disk with a 100-horsepower tractor. I don't know if they do it with 160 horsepower. And I was just looking out there, I saw standing right next to me like a great big John Deere 9360, I don't know if that's the right series, but know the tires are two feet taller than I am, and I dare say that probably had more than 100 horsepower. All right. So on the big primary tools, we definitely want to make sure we're keeping a good command and control and that we're protecting people. And if you had that big tractor tested, you'd want to make sure that anything else you were doing followed suit. And when your PTO was being tested, your hydraulic is being tested. So what implements are being used below 100 horsepower is the question. What are we trying to protect here? Well, what we have, we have people running augers. They're running other things on their farm. They're doing other work. Some hobby farmers, they call them. I wouldn't call that a hobby. It's a full-time job. But you have them doing things. You have wineries, running around carrying big front-load buckets full of grapes. You have people who are using it to clear their lots. You know, maybe they're not using it as a primary agricultural tool. The other reason...so that's part of what we're dealing with, the sizing. Another thing that concerns me is the border bleed. Now all around and outside of my area, and I know outside of Senator Brasch's area, everybody who lives anywhere near a border, a Nebraska citizen can go across the border, buy a tractor and bring it over here and use it and everything is fine. There's no law. We don't have a border guard saying you can't bring this tractor in here. What we have said, though, is, our implement dealers are not allowed to sell it unless it gets tested by the infamous Nebraska testing lab. Well, what happens when that individual goes across the border and enters into a relationship to buy this piece of equipment with another dealer? They build a long-term relationship. Oh, which, by the way, includes the fact that they won't pay for any taxes on their parts or on their service. So our implement dealer here on our side can't compete. It's not a level playing ground. So now we're left to balance between the two, and that's what I was looking at. What is the balance? Is the balance 40 horsepower? With the changes in metallurgy and engines and lubricants and technology, the GPS are running themselves on these large ones. All right. Are we at the right place to stay at 40? So I picked 100 as a breakpoint. Are we going to work on that breakpoint? Absolutely, I will work with the committee on that and we'll go forward on that. But I wanted you to know why I brought the bill. I think it's negatively impacting Nebraska businesses. We're not protecting our farmers because we don't have border police say you can't bring it in, we didn't test it. So that protection really isn't there. What it is providing, it is providing a great marketing tool. This tractor was tested. So it gives a

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level of confidence to the buyer. But Senator Lathrop probably would be able to talk to us and Senator Harr, the access to a legal system in 2011 and 2012 is a little bit more robust than it was in 1919. Is it enough? We'll talk about it. But that's why I brought the bill. That's my purposes for coming to you with the bill and I just want to be sure that we understand that my intent here is not to harm or to get rid of the tractor lab. It's a venerable institution in Nebraska and that is not my intent at all. But what my intent is, is to have the discussion to balance protection of the farmer in Nebraska, the protection of our businesses, and to say, what is the value added here. It is a cash-funded entity and where are we going in the future with this as we change from 1919, 1985, and 2011? And with that, I'd entertain questions. [LB91]

SENATOR CARLSON: Okay. Thank you, Senator Price. And Senator Karpisek from Wilber has joined us, so now we're a full complement on the Ag Committee here. Are there questions from the committee to Senator Price? The main thing in the amendment that you handed out is simply that if the company that's selling the tractor has already been tested for something over 100 or over, and they bring a tractor that's less than that, they don't have to be tested. [LB91]

SENATOR PRICE: That is correct. [LB91]

SENATOR CARLSON: Okay. All right. Thank you. Any other questions? Yes, Senator Lathrop. [LB91]

SENATOR LATHROP: The effect of that amendment would be that no matter who the company is that manufactures the tractor, they would only bring in the biggest tractor they sell, have that tested, gets the gold seal, and they don't have to bring in anything that has fewer horses. [LB91]

SENATOR PRICE: I don't think that's completely correct in my mind in that you wouldn't bring in your 360 horsepower and that would be it because you still have to do anything at 355, 320, down to the threshold. Once you exceed the threshold...everything above that threshold would be tested. [LB91]

SENATOR LATHROP: Okay. Okay, I get it. [LB91]

SENATOR PRICE: I'm just trying to say that you wouldn't come in from somewhere else and have no skin in the game, no ability to reach out and touch that company if something wasn't right. [LB91]

SENATOR LATHROP: Well, okay. So your bill that you introduced would say you don't have to test a tractor at or below 100? [LB91]

SENATOR PRICE: Below 100. I think at 100 and over, you do. [LB91]

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SENATOR LATHROP: Below 100, okay. And the amendment says that you don't have to test a tractor below 100 if you've had one tested above 100 that's passed. [LB91]

SENATOR PRICE: Correct, until you get to the lowest threshold. Then it would be like it is today. [LB91]

SENATOR LATHROP: But if it's 40 or below or below 40, they get to pass no matter... [LB91]

SENATOR PRICE: Right. I believe 50 is the number we have in there, but yes. [LB91]

SENATOR LATHROP: Okay. I get it. Thanks. [LB91]

SENATOR CARLSON: Any other questions? Senator Bloomfield. [LB91]

SENATOR BLOOMFIELD: Thank you. My understanding again to the amendment, if you come in, you're a new manufacturer, you come in with an 80-horsepower tractor, you either have to have it tested or you can't sell it, using your 100 horsepower as the threshold. [LB91]

SENATOR PRICE: That would be correct. It would be just as it is today. [LB91]

SENATOR CARLSON: Okay. Any other questions? Okay, thank you for your testimony. You going to be here to close? [LB91]

SENATOR PRICE: Yes, I will. And there will be people behind me who can address this much more adroitly. Thank you. [LB91]

SENATOR CARLSON: Okay. Thank you. How many people do we have here to testify either for or against on this bill? Okay. Well, we'll start with the proponents, those that are in favor of the bill. And again, we'll have the five-minute light working, so first testifier come forward. And don't be bashful, let's...we're a pretty friendly group, most of the time. (Laughter) Welcome. [LB91]

MITCH MERZ: (Exhibit 2) Welcome. I'm Mitch Merz, M-i-t-c-h M-e-r-z. I'm from Falls City, Nebraska, Merz Farm Equipment. I'm third generation in our business. We've been there since 1953. My grandfather started it, actually then left the business to be a state senator, so. I spent four years at TractorHouse, so I worked with a lot of dealers outside of the state of Nebraska. I worked with them on the West Coast mainly. Came home to our family business when there was an opening for...my uncle had retired. We're located within three miles of Kansas and nine miles of the state line to Missouri. Twenty-five miles to the east we have a John Deere dealer, 18 miles to the south we

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have a John Deere dealer, 18 miles we also have a Case and a New Holland dealer. Within the 20 miles, we have one Massey Ferguson dealer just like us. There's a lot of situations that come up from time to time, whether it's a government bid from a county or a city, anything of that sort, where those four or five dealers are in the game. They've set the tractor that they want. If the state of Nebraska has that tractor not on its list for me to sell, my hand is out of the game. Those four can go at it but even if it's the city of Falls City, or the county of Richardson County, they're going to go to Missouri or Kansas to buy the tractor because I can't sell it in the state of Nebraska. Most of our tractors are tested. It's not always a problem. We have eight models that are not tested. They are all between the 40 and 80 range, so the 100 would be excellent in our case. One of the major things that I have is, I'm 27 years old, came home to the family business, our building was built in 1975. Something is going to get addressed. It's just me and my father in the business right now. We're in the discussion point. We've flown to Atlanta to see some different building ideas. By the end of the summer, by the end of the year, we're going to have in place what we're doing as far as the building in the future. You know, with the sales tax law, with the Nebraska state law, there are just extra hurdles in my step in thinking, maybe I don't want to continue to remodel a 40-year-old building, maybe I want to build a new building. And if I'm going to build a new building, what's stopping me from four miles south or ten miles east? I don't have sales tax. I don't have...I can sell any tractor that my manufacturer is offering, so. And just saying that, I put down on the sheet there that we have 60 percent of our customer base is actually out of the state of Nebraska in the first place. We actually sell 44 percent of our equipment over to the state of Missouri where we only sell 37 percent of it in the state of Nebraska. So I'm not changing my customer base by moving ten miles to the east. That customer base is...actually, I'm moving probably closer to my customer base by moving there. Now I don't want to do that. I mean, we've been in Falls City for 58 years. I want to stay in Falls City, but if there's these situations that are occurring, I got to think of it on the business side and there's a lot of pros to moving ten miles to the east or four miles to the south. So that's kind of what I've got. Again I'm not against the Tractor Test Lab in any way. We use it in a lot of different sales calls on a daily basis. You know, we bring up the fact that, hey, this is where we're at, this is where our competitor is at. It's not just me saying that. Here's the third-party test results, so. On the high horsepower, I don't want to touch it. There's no reason to. I use that on a daily basis. But on the certain models where it is, that's where I am in favor of the 100 horsepower. [LB91]

SENATOR CARLSON: Okay. All right. Thank you for your testimony. Do we have questions from the committee? Senator Bloomfield. [LB91]

SENATOR BLOOMFIELD: Thank you. What percentage, volumewise, tractors do you sell that are over 100 horsepower versus in the utility class that would be under a horsepower (sic) or under 80? [LB91]

MITCH MERZ: Our dealership, I would say is probably fifty-fifty. We're within 90 miles,

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100 miles of Omaha. On that second sheet I've got a 50-mile and 100-mile radius circle drawn. So we're 100 miles from Omaha, Kansas City, Topeka, Manhattan, Lincoln, so we get a lot of those hobby farmers that are moved to the outskirts of those cities that we sell a lot of compact tractors to. But we're also 100 miles from any of those places, so we're in the rural district where professional farmers are our immediate customers. But we do get a lot of...so, I would say 50 percent are under 100 and 50 percent are over 100 horsepower. [LB91]

SENATOR BLOOMFIELD: Thank you. [LB91]

SENATOR CARLSON: Okay. Any other questions? Senator Karpisek. [LB91]

SENATOR KARPISEK: Thank you, Senator Carlson. Mr. Merz, thanks for coming. I understand what you're saying. I was in business for 20 years, I understand. If 44 percent of your customers are coming from Missouri, though, why are they coming to you instead of buying from in Missouri? [LB91]

MITCH MERZ: A lot of them are former Massey dealers. We had a Massey Ferguson dealer 20 miles to the east of us in the state of Missouri through the '80s. They didn't make it. We actually ended up buying that building. We had a dealership in the state of Missouri for about ten years. My uncle ran it. He was one of the first brothers to retire, so when he ran it, we just didn't have the staff over there so we closed it. [LB91]

SENATOR KARPISEK: How close is your next Massey dealer? [LB91]

MITCH MERZ: The next Massey dealer would be over to Savannah, Missouri, or St. Joe, Missouri, so you're looking 60 miles. [LB91]

SENATOR KARPISEK: I guess my question is, is then, you know, you said you're getting into Kansas City and there, why would they come to you instead of going to St. Joe to buy a tractor if they don't have these...? [LB91]

MITCH MERZ: Basically, we've kind of established where we're a family business. Like I say my dad and his two brothers, my uncles ran the business. Grandpa ran it. Now I'm back. They always know we're not big corporate business. We're not, you know, the Caterpillar dealerships like some of them are where there are eight branch locations and they kind of all have numbers where they work off those numbers. They come to us because they deal with Mitch Merz, with Bruce Merz, with Dennis Merz and Gale Merz. They work... [LB91]

SENATOR KARPISEK: Customer service. [LB91]

MITCH MERZ: Yeah. [LB91]

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SENATOR KARPISEK: All right. Thanks for being here. Thanks, Senator Carlson.
[LB91]

SENATOR CARLSON: Okay. Any other questions? Seeing none, thank you for your testimony. [LB91]

MITCH MERZ: Thank you. [LB91]

SENATOR CARLSON: Okay, next testifier. Welcome. [LB91]

PAMELA HOGE: (Exhibit 3) Thank you, Senator Carlson. My name is Pamela Hoge, P-a-m-e-l-a H-o-g-e. I'm here as president and co-owner of Wells Implement, Inc. in Plymouth. We're a third generation ag equipment dealership that began in 1940. My presence today is in support of LB91. There are two reasons I think it's time to make this change. First of all, the intent of the original law, and secondly, advances in technology that need to be reflected by the legislation. Historically, this law has been about tractors for use in the production of agricultural products. The original law had no mention of horsepower. It merely said, all tractors, the assumption being that all tractors manufactured when the law was passed in 1919 were for production ag use. It wasn't until 1961 that the first horsepower minimum was set at 10, and four years later in 1965 construction tractors were exempted from testing. By 1967, the minimum horsepower for testing was set at 20, because lawn and garden tractors were beginning to fall in this range and were clearly outside of ag use. Then in 1986, the minimum horsepower was revised to 40 horsepower, again apparently because tractors were getting bigger and tractors under 40 horsepower were no longer considered as being used in production agriculture. With that history of intent, it's clear that this law has been changed over time to keep up with technology and that's what LB91 will do. Currently, at the Nebraska Tractor Test Lab, 40- to 99-horsepower tractors are only tested for PTO horsepower. PTO and drawbar tests are done on tractors of 100 horsepower and over. The implication is that tractors in the 40- to 99-horsepower range are no longer the staple of production agriculture because today's field equipment is larger than tractors in this horsepower range can handle. Most, if not all, dealers also now have expensive dynamometers in their own shop that can and do test PTO horsepower. I believe the intent of the original law was to put the burden on tractor manufacturers, but the ultimate result has been a burden on Nebraska dealers. At our dealership we felt this when our manufacturer, AGCO Corporation, determined about three years ago that they would no longer test the high-tech German built Fendt, and that's F-e-n-d-t, Fendt tractors at the Nebraska Tractor Test Lab because they felt sales of this brand in Nebraska didn't warrant it. Prior to that time, we had been invited to be a dealer for this brand and had invested tens of thousands of dollars in sales and service personnel training, some of which happened in Germany, in stocking parts, in signage, and in buying special tools. Now, however, when one of our Fendt customers comes in to trade up, we have to send

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him to a dealer out of state. Do any of you understand what it means to send a customer to a competitor? It means creating an opportunity for that customer to establish a relationship with another dealer and risking never seeing him again, not because we sold him an inferior product, but because we can't continue to meet his needs and stay within the law. To those who would say that Nebraska dealers are trying to close the test lab, I would remind them that that's not what the record shows. The lab was threatened in the 1980s because of the demand on manufacturers to test both according to the codes of the Organization for Economic Cooperation and Development, the OECD, and according to the Nebraska Tractor Test Lab law. When manufacturers indicated they would opt for OECD testing only, our dealer association vigorously supported the legislation that allowed the test lab to be OECD accredited. Our association does not act without approval of its dealer members but acts on their behalf. If our association staff had not worked to get this legislation passed, the lab might well have ceased to exist at that time. The Nebraska Tractor Test Lab is a unique facility, the only one of its kind in our country, and Nebraskans can be proud of it and its heritage. But please remember the lab exists because dealers are here selling tractors. Without us, there's no need for the tractor test facility in Nebraska. If you cannot advance this bill to General File as proposed, please consider changing the horsepower minimum to 80 or even 60. Historically, this law has been changed to keep up with technology and it's time to do that again. The increase from 40 to 100 horsepower is not unreasonable given the rapid advances in technology we're seeing today. As a dealer, I'll admit there are times when I see the test lab as an adversary but it shouldn't be that way. Both the lab and dealers are trying to do what's best for those involved in production agriculture in Nebraska. Bringing this law up to date by passing LB91 could make us partners in doing so. [LB91]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Yes, Senator Wallman. [LB91]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yes, welcome to the Legislature. Do you feel that the tractors under 100 horsepower perform up the way they should? [LB91]

PAMELA HOGE: Yes. I was speaking with our service manager the other day and he said what they're finding is they go through the test lab and then we get them into the shop and the horsepower is a great deal beyond what they have been tested at. [LB91]

SENATOR WALLMAN: Thank you. [LB91]

SENATOR CARLSON: Any other questions? Senator Bloomfield. [LB91]

SENATOR BLOOMFIELD: Thank you. Does Fendt have any tractors you test? [LB91]

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PAMELA HOGE: Not right now. They did at a time so we were able to sell them but they have...didn't feel we sold enough in Nebraska. However, we have customers who really like them and when they trade up we'll have to send them to Kansas dealers. [LB91]

SENATOR BLOOMFIELD: Okay. Thank you. [LB91]

SENATOR CARLSON: Any other questions? Now to follow up Senator Bloomfield's question, if Fendt has not had any tractors tested, they would need to have one tested. [LB91]

PAMELA HOGE: They did have tractors tested at one time. [LB91]

SENATOR CARLSON: Oh, they did. Okay. Okay. I didn't follow that. [LB91]

PAMELA HOGE: And what we sold the current models at that time but they have not kept up with the testing. They have current models that have not been tested. [LB91]

SENATOR CARLSON: Okay. All right. Thank you. Any other questions? Thank you for your testimony. [LB91]

PAMELA HOGE: Thank you. [LB91]

SENATOR CARLSON: Next testifier, please. [LB91]

DON PARTRIDGE: (Exhibit 4) My name is Don Partridge, D-o-n P-a-r-t-r-i-d-g-e. Senators, thank you for this time today. I'm the general manager of Bobcat of Omaha and Omaha Tractor. We are a Kubota tractor dealer and Bobcat compact equipment dealer located in Omaha, Nebraska. Our main business is providing equipment and services to the construction, landscaping, municipal, agricultural, utility, homeowner, and acreage owner markets. I'm here today on behalf of many dealers just like myself in support of LB91 to raise the horsepower on ag tractors from 40 to 100 horsepower. Tractors and agriculture has changed since the original law was introduced in 1919. The Tractor Test Lab is an important part of the history of tractors in agriculture to the state of Nebraska and will be in the future, providing much needed information on the performance of tractors serving farmers. However, changes come and the current law does not meet today's marketplace. Ag tractors today are much larger even when the law was modified in the '80s up to its current 40-horsepower requirement. Averages from tractors tested at the lab over the last few decades we have found, in 1920 the average horsepower of a tractor tested was 23.3 horsepower. In 1940 it was just under 35 horsepower. In 1960 the average horsepower tested was 54.5 horsepower. And only 30 years ago, in 1980, the average horsepower was over 100 horsepower, the average tractors tested. In 2004 that average test was 146 horsepower. I point this out to bring up the differences in what tractors have been over the years. My great uncle, Vern

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Partridge of Minden, Nebraska, was a Fordson tractor salesman in the late '20s. That tractor that he sold was primarily for farmers and was less than 30 horsepower. The tractors that we sell today less than 30 horsepower are typically to a homeowner to maintain an acreage of anywhere from three to five acres. Today's tractors are used also for so much more than ag purposes: commercial mowing, landscaping, grading, construction, snow removal, and acreage maintenance. The customers today are demanding a larger tractor and increasing the horsepower test just makes sense to me. The current law tends to be punitive to many of the small tractor dealers of tractors of smaller lines in the state. Increasing the tested horsepower would seem to more fit the market and the reality of today, thus allowing consumers in the state to purchase those larger utility tractors that don't necessarily fit the definition of an ag tractor. The dealers in Nebraska for smaller tractor lines like myself, are put at a major disadvantage compared with larger manufacturers that have many dealers. We are a Kubota dealer and there are only six Kubota tractor dealers in the state. And with our manufacturers offering many different models of tractors and the high cost of testing and permitting each of those tractors in the state would make it economically impossible to sell our full line of tractors. However, many other dealers in the United States can and will sell to Nebraska without any testing and many times without even collecting sales tax on those transactions. We've had customers that have purchased tractors from Iowa, South Dakota, Colorado, Wyoming, Texas, Kentucky, and even New York. It seems to me if the tractor test law's sole purpose for which it was created was still in use today, it would be for the benefit of Nebraska farmers and for promoting fairness in the industry. Today it seems the intent of the law has turned into a use of revenue generation and protection of market share for the major manufacturers. It has become a barrier to free trade. Raising the horsepower limiting these tractors tested to 100 is more in line with the intent and fairness of the original law. I would like to keep the Tractor Test Lab going, but let's make this law fair to everyone and increase the horsepower to 100 horsepower. Thank you. [LB91]

SENATOR CARLSON: Okay. Thank you for your testimony. Senator Larson. [LB91]

SENATOR LARSON: What's the average horsepower for a Bobcat? I know we have three of them, so. [LB91]

DON PARTRIDGE: For a Bobcat, average horsepower is approximately 45 horsepower. [LB91]

SENATOR LARSON: Forty-five. [LB91]

SENATOR CARLSON: Okay. Other questions of the committee? In your location then, obviously, Bobcat has had tractors tested. What's the advantage of tractor testing to Bobcat? [LB91]

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DON PARTRIDGE: The advantage is from a marketing aspect to prove the tractor maintains its limits, but the majority... [LB91]

SENATOR CARLSON: Pardon? I'm sorry. [LB91]

DON PARTRIDGE: To make sure the tractor performs up to its specification. [LB91]

SENATOR CARLSON: Now this may sound like it's negative toward tractor testing, I don't mean it that way at all. But if you have a Bobcat tractor that's tested in Nebraska, and then you've got a Bobcat dealer in Iowa that's selling, why is it an advantage to you? [LB91]

DON PARTRIDGE: There is no advantage to us. The disadvantage to us comes if in the larger horsepower tractors, the dealer from Iowa can take that tractor, bring it into Nebraska, and sell it. So I'm in the process of selling you a tractor, Senator, and you decide, I'd like a little more horsepower in my tractor. Well, I have to stop and say, well, I'm sorry we can't sell you that tractor and have to send you over to a competitive dealer. [LB91]

SENATOR CARLSON: So the big tractors, in a sense, you're on the same plane as...same playing field as somebody in Iowa, big tractors. [LB91]

DON PARTRIDGE: Yes, on the big tractors. [LB91]

SENATOR CARLSON: But there's no additional advantage simply because you're from Nebraska. That doesn't help you. [LB91]

DON PARTRIDGE: We have no advantage because we're from Nebraska. We're at a terrible disadvantage. [LB91]

SENATOR CARLSON: Okay. Any other questions? Senator Harr. [LB91]

SENATOR HARR: Thank you, Senator Carlson. I just want to make sure I understand this correctly. I'm a produced manufacturer of tractors. I'm the one who pays for the testing, correct? [LB91]

DON PARTRIDGE: That's correct. [LB91]

SENATOR HARR: So the cost of a tractor technically wouldn't be any greater in Nebraska than it would be Iowa since you sell in the same place. Or do you experience that the manufacturer punishes Nebraska and charges more wholesale for the tractor? [LB91]

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DON PARTRIDGE: No. We're not allowed...for example, Kubota, it's the main line. Kubota has been in this debate for many, many years. The tractor, the fees...let's say, for example, a 40-horsepower tractor, in the range of a 40-horsepower tractor, they produce maybe 12 to 15 different models or styles of tractor. They would have to test each individual one of those tractors. So what happens, they say, stop, we're not going to do that. We're not going to test that tractor. So it's what has happened to us, is if you look at, for example, Kubota dealers you'll find three or four dealers on the border. Okay, so we have Clarinda, we have Treynor, Council Bluffs, dealers that are very close located to us and their philosophy is on the larger tractors, they will just ship them into Nebraska, don't pay the fee. That's not right, you know, that's not right either. But we're penalized as a dealer. If we were to break the law and sell that tractor, the customer who bought that tractor, if he bought that tractor from me that wasn't tested, the manufacturer is not on the hook, I'm on the hook. So if you decided you had that tractor for 30 years, that tractor met all your requirements, but because we broke the law and sold you a tractor that wasn't tested, I would have to buy that tractor back from you at the price you paid for 30 years later. The manufacturer is off the hook, it's me. It penalizes the dealer and that's why...and those tractors are marginal. The bill is advertised as agricultural tractors. Well, there is that fine line. A landscaping contractor, he might plant a tree. Well, the advertising, we're advertising toward landscaping contractors planting trees, well, that's agriculture. Well, the gal never put a soil engaging piece behind that tractor but because it's advertised at it, we can't sell that tractor. And that's the in-between where we're in trouble. [LB91]

SENATOR HARR: And how many manufacturers do you find don't test? I guess, on your personal experience. [LB91]

DON PARTRIDGE: I don't know. I mean, I think if this bill passed, it's one...if we increased, we might have more tractors sold in the state. I think there might be more tractor manufacturers that would test. So I think it would be good for business in general. But basically, you have the major players, the Case, the John Deere, the New Holland will test the tractors. [LB91]

SENATOR HARR: Thank you. [LB91]

SENATOR CARLSON: Okay. Any other questions? Thank you for your testimony. [LB91]

DON PARTRIDGE: Thank you. [LB91]

SENATOR CARLSON: Next testifier. Welcome. [LB91]

MARK OTHMER: (Exhibit 5) Good afternoon, Senator Carlson and members of the Agriculture Committee. My name is Mark Othmer, M-a-r-k O-t-h-m-e-r. I am the

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Nebraska field director for the Iowa-Nebraska Equipment Dealers Association. I-NEDA is a trade association whose mission is to support the efforts of dealers to improve business conditions and their abilities to sell, service, and maintain equipment used in farming, construction, and outdoor power operations in the state. We currently have some 150 member-owned locations in Nebraska which are multibillion dollar industry. In a survey I-NEDA conducted in the early 2000s, it was determined that dealers in Nebraska sold over \$3 billion worth of equipment and services annually and had employment of over 3,000 people. Since then the number of dealer locations has not decreased and the size of these locations has increased in number of employees. The average dealer location today employs somewhere between 20 and 30 people. Also, the value of equipment and services they sell has increased tremendously. When I left the farm equipment dealership in 1997, the current 200-horsepower model tractor was selling for about \$115,000. I am told today that that price has probably doubled or more due to the technology increases along with the productivity increases of the product. I-NEDA supports the operation of the Nebraska Tractor Test Lab and the information it supplies to the industry. As was stated earlier, in the mid 1980s the lab was threatened for closure due to manufacturers choosing not to test to the Nebraska tractor test standards, rather choosing to test to the OECD test. OECD is Organization of Economic Cooperation and Development. Because of this threat, I-NEDA helped the Nebraska Tractor Test Lab become an approved location that now test to OECD standards. We also were involved and helped modify the policy, both legislative and regulative language, for the Nebraska law to accept the OECD test as the standard rather than the old Nebraska tractor test. Partly because of this, we believe that NTTL has become a world renowned and recognized test facility. I-NEDA believes that the standardized test data that NTTL supplies is relative and pertinent information a customer needs to evaluate and choose proper production in their operation. We also believe that market conditions would force this kind of standardized test data to be made available whether the law was requiring it or not. It is our opinion that manufacturers would choose to continue their current testing practices to have the ability to verify and prove their stated claims of superior performance, whether it be horsepower, fuel consumption, hydraulic lift capacity, or cab sound insulation. It stands to reason that if a manufacturer believes in the product, they will want to independently verify it. Some feel that if the law were changed the consumer would lose protection from manufacturers that may sell an inferior product. In today's world, that doesn't seem that likely. In fact, there are protections in place that are available to the consumer. There are lemon laws in Federal Uniform Commercial Code, there is a whole truth in advertising division in Federal Trade Commission, and liability laws available to anyone who can find a lawyer. I think we might find some in this room. That doesn't even speak to the fact that there is a whole industry, equipment dealerships, that are in the business of selling products to customers, developing lifelong relationships of service to them. Why would a dealer ever intentionally sell an inferior product to their customer? And in the highly unusual occasion that a customer did purchase an inferior product from a dealership, why would the dealership not take the corrective actions to cure the defect? I-NEDA feels that the

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consumer can ensure themselves of receiving a quality product by choosing a quality dealer to buy it from. In 1919 when this law was originally established, the intent was to protect farmers from buying tractors for their farm that would not perform to advertised claims. Tractors were purchased through catalog companies, traveling salesmen, out of a suitcase, and at best, the local blacksmith shop. As stated earlier, those conditions do not exist today. One more point that I would like to make if I could. What we're really attempting to do here is to define what an agricultural tractor is. Originally the law applied to all tractors because that's all they were used for, farming. Today tractors are used for a variety of different operations on and off the farm and thus the definition has become blurred. While Nebraska permit law requires the Test Board of Engineers review advertising materials to determine if a tractor is for agricultural use or not, this really isn't a reliable way for determination. One must actually see Nebraska's farming operations to determine what a tractor really does and what a tractor used for agriculture really is. Once again, the line is very blurred. One thing I know is that times have changed, and horsepowers have increased over the years. The horsepower limit for permitting has been changed in the past, and I-NEDA feels the time has come again. We ask that the committee advance LB91 without amendments. [LB91]

SENATOR CARLSON: Okay. Thank you, Mark. Any questions of the committee? Seeing none, thank you. Other testifiers as proponents of the bill? All right, we're ready to listen to opponents of the bill. Please come forward. Welcome. [LB91]

ROGER HOY: (Exhibit 6) Thank you. My name is Roger Hoy, that's R-o-g-e-r H-o-y. Senator Carlson and Senators on the Committee on Agriculture, my name is Roger Hoy. I'm a professor of agricultural engineering in the Department of Biological Systems Engineering at the University of Nebraska. I presently serve as the director of the Nebraska Tractor Test Laboratory. The Board of Regents has not taken a position on this bill, so the University of Nebraska neither supports or opposes this bill. My testimony here today is my own. However, it has been reviewed and is supported individually by the faculty and professional staff associated with the Nebraska Tractor Test Lab. I don't have the time to cover this whole list of testimony I'm giving you in five minutes, so I...maybe we can get some of that during questions. But I thought I would just touch on a few highlights. We do five basic tests at the tractor test lab for tractor performance. We test power takeoff performance, we test drawbar power, we test the lifting capacity of the three-point hitch which is used to raise and lower implements, and we test the hydraulic power that the tractor can provide to implements as well as noise that the operator and bystanders are exposed to. If a tractor is less than 100 horsepower, we do not require the drawbar power to be tested. However, the other tests are deemed important for these tractors for agriculture. There's been a lot of testimony about history and I think some of the dates and facts may be wrong but I think what's in my testimony is the correct version, at least the museum tells me it is. But some have suggested that conditions today are more similar to those that existed in 1919 than at any other time in the intervening years. Although dealer service and support has

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tremendously improved and no longer resembles what existed in the early years of the 20th century, the market is currently experiencing a proliferation of new tractor manufacturers, primarily from Asia, and specifically India, China, and Korea. The Bobcat tractor we were speaking about, that is not a Bobcat Skid Steer. That's actually a cooperative partnership Bobcat has with a Korean company called TYM that's coming in under a Bobcat name. You know, so that's not something made here in this country. An argument has been made by proponents of a higher power threshold for the law that tractors lower than 100 horsepower are not actually agricultural tractors and should, therefore, not be subject to the test law. I've looked at a lot of definitions for agricultural tractors and I've included some of those in my written testimony to you. But the one that I think is most appropriate is the American Society of Agricultural and Biological Engineers. They have a standard, S390.5, that defines agricultural tractors and they go a little farther than just what a tractor is. They also provide 10 or I think about 12 definitions for specific types. But the basic definition is, a traction machine, intended primarily for off-road usage, designed and advertised primarily to supply power to agricultural implements. An agricultural tractor propels itself and provides a force in the direction of travel and may provide mechanical, hydraulic or electrical power to agricultural implements to enable them to perform their intended functions. You might have heard the term utility tractor. There is no definition in this standard for utility tractor. There is a definition for a compact utility tractor which is a tractor of less than 40 PTO horsepower. This standard was most recently revised last month. So that's a current state-of-the-art definition for the U.S. You'll find other definitions from OECD, from U.S. OSHA which are in here. I'll go on to say that advertising literature supplied by the tractor companies is very instructive in determining this. Company advertising can easily be found over the Internet and such advertising clearly depicts tractors under 100 horsepower engaged in agricultural farming applications. The vast majority of applications targeted by such advertising for tractors 60 horsepower and up is clearly farming. Maybe 80 percent of the applications are farming and lower than 60, there still are agricultural applications seen. You've got some statistics attached in here of tractor test reports that we provide. Our reach is very large. We had visitors last year from 38 states in the country and a number of foreign countries and over 100,000 reports for requests for information in our Web site where all this tractor data is stored. It brings great recognition to the University of Nebraska and it serves as training ground for future engineers for Nebraska and surrounding states. I believe that 40 horsepower remains an appropriate lower limit for mandatory performance testing and one could make a case for an even lower limit. I recommend that this bill not be passed so that agricultural tractors between 40 and 100 horsepower continue to be tested and their performance data continue to be made available to Nebraska farmers and interested parties around the world. Thank you. [LB91]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Senator Larson. [LB91]

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SENATOR LARSON: Thank you, Senator Carlson. In your estimation, is it true that some tractor companies might choose not to test some of their tractors because of the cost of the Tractor Testing Lab? [LB91]

ROGER HOY: I don't know if it's because of the cost. I mean... [LB91]

SENATOR LARSON: Cost, hassle... [LB91]

ROGER HOY: Maybe cost, hassle. For an under 100-horsepower tractor, the cost of performing the test is \$11,000. If they've gone to an OECD station elsewhere, the cost to get permitted in Nebraska is around \$2,200, \$2,300, something like that. When you're looking at these tractors that you're selling thousands of, I mean, we're talking about like the cost of a hamburger or something per tractor. So I don't think it's really a money issue. Some of it's philosophy, some of it's because they don't know about us. I think a lot of it is just opportunism. You're coming into North America and you have 49 other states that you don't have to worry about it, so I think a lot of them get their feet wet by saying, we just won't worry about it right away. [LB91]

SENATOR LARSON: Thank you. [LB91]

SENATOR CARLSON: Okay. Senator Bloomfield. [LB91]

SENATOR BLOOMFIELD: Thank you. In the testing that you do on hydraulics and horsepower and stuff, do you look at any safety issues like PTO shields and things like that that...? [LB91]

ROGER HOY: We don't directly do safety analyses of tractors as part of the required performance test. We do conduct rollover protective destruction testing to SAE and OECD test codes, and we do provide third-party certification for manufacturers for that. [LB91]

SENATOR CARLSON: Okay. Other questions? Senator Brasch. [LB91]

SENATOR BRASCH: Thank you, Chairman. I'm curious, are these tractors from all over the state and all over the country put on a flatbed and wheeled into your campus or what are we talking on at testing? [LB91]

ROGER HOY: Well, because of the OECD reciprocity we have with other stations, most tractors are tested in the country of manufacture. So what that means for us is, we have flatbed trailers rolling in from Waterloo, Iowa, with green tractors on them. They come from Racine, Wisconsin, with red. They come from Jackson, Minnesota, and Hesston, Kansas, with yellow tractors. Some come from California that are orange. But generally it's U.S.-made tractors and I would say the bulk of the domestic manufacturing is here in

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the Midwest in neighboring states. [LB91]

SENATOR CARLSON: Okay. Senator Harr. [LB91]

SENATOR HARR: Thank you, Mr. Chairman. I guess I have a question on this, you say it's necessary for this testing. Is there a problem with the horsepower that is advertised being inaccurate or what percentage of the tractors that you test, is the horsepower inaccurate? [LB91]

ROGER HOY: I've been with the Tractor Test Lab for four and a half years and we have not yet had a tractor that did not meet its horsepower claim. And I think that's largely because if the tractor does not meet its horsepower claim, then the manufacturer is required to notify every customer that may have bought this tractor on a temporary permit, and either correct that tractor so that it performs as advertised or repurchase the tractor or otherwise satisfy the customer. So that's something manufacturers don't miss on. When they come out of here, they make it. Now there's lesser performance claims that we don't impose such a serious penalty. If a claim on torque rise or power bulge or how loud the tractor is, is missed, then we simply put a note into our test report that says, this tractor did not meet its sound claim of 72 decibels or something. And that seems to work because their competitors usually find out about it within hours of it going up on the Web site. [LB91]

SENATOR HARR: And then to follow up then, if there's a 50-horsepower tractor, if this bill passes, who would test to make sure that it's 50 horsepower to get at your first situation to make the customer right? [LB91]

ROGER HOY: What would normally happen with a 50-horsepower tractor is when the manufacturer was ready to sell the tractor, he would come to the tractor lab and he would make a deposit for a test slot or he would provide us evidence that he's going to test this tractor overseas. And then the Tractor Test Board of Engineers, it's mentioned in the law, would look at the advertising this manufacturer had supplied, and they would recommend to the State Department of Ag that a temporary permit for sale be issued. And then when the testing is completed, the actual test results would be compared to the advertising. And that's when the judgment would be made about did the tractor meet its claims or did it not, and a test report would be prepared. And should they not meet a major performance claim like PTO power, of course, that's when the Department of Ag would start the enforcement action, and they generally would send a letter saying, well, what are you going to do about this and so on. [LB91]

SENATOR HARR: So is there a body that tests it besides Nebraska, though, to ensure? [LB91]

ROGER HOY: No. And you've heard shop dynos mentioned. I haven't met a shop dyno

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yet that wasn't calibrated to read 20 or 30 percent higher than actual performance. You know, we've tested a number of shop dyno tested tractors on our calibrated equipment. And I don't think this is really the dealers. It may be the people that make these things, but it sort of makes sense. You know, you have a customer complaining about power, you'd like to be able to come in and show him on your own dyno you at least exceeded whatever we found during testing. But if the dyno were actually calibrated, I don't think the numbers would be quite so high. [LB91]

SENATOR HARR: Thank you. [LB91]

SENATOR CARLSON: Okay. Senator Brasch. [LB91]

SENATOR BRASCH: Chairman, just one more question. I do plan on a tour sometime. I'm curious, is the equipment you use to calibrate, is it scalable? Is this going to be a problem to change settings, or all new equipment you have to order, or does it just decrease your volume? Is the technology there for you that it's a simple change? [LB91]

ROGER HOY: It's...I would say it's a simple change. We're fully traceable all the way back to the National Institute for Standards and Technology that maintains standards for things like mass and time and length, for example. And so for us, for calibration we start off with certified calibration weights and scales. The Nebraska Department of Weights and Measures actually performs, checks those calibration fixtures and weights for us every year so we're fully traceable. [LB91]

SENATOR BRASCH: And it's a volume decrease that you're anticipating if we change the horsepower? [LB91]

ROGER HOY: Yes, if you change...if the law were to go through at 100 horsepower, that would be a serious shock to the lab. That would be about 30 percent of our income would evaporate. [LB91]

SENATOR BRASCH: Thank you. Thank you, Chairman. [LB91]

SENATOR CARLSON: Okay. Senator Karpisek. [LB91]

SENATOR KARPISEK: Thank you, Senator Carlson. Mr. Hoy, thank you. How are the tractors selected or do you just go grab one off the line or do they send you the one they want? [LB91]

ROGER HOY: Well, the OECD test standards address this and it says it should be a unit selected from normal production by both the manufacturer and the test laboratory. So our criteria is, we work with the tractor manufacturer to select a tractor that is in production. We don't want anything preproduction. And then when the tractor comes in,

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we verify that the tractor is performing within specifications. For example, fuel rates is a big one because if you get more fuel going through you get more power. If you, maybe some of them don't want to run it less fuel than is specified by the EPA requirements. So that's one of the checks we make to make sure that the tractor is, in fact, production and within its own specification. [LB91]

SENATOR KARPISEK: So you don't think that they pick this one, and let's make sure this baby is really good, and get it dialed in? [LB91]

ROGER HOY: No, I don't think that occurs in Nebraska. We've had some doubts about some other OECD test stations. One thing I should mention, our philosophy is, we would like the tractor to have its very best day at the Tractor Test Lab. So when a tractor first arrives, before it goes on official test, we typically set it up on our PTO dynamometer. We always insist the tractor manufacturer provide appropriate representatives and we'll operate that tractor for two or three or four hours. And if they want to make some adjustments to it, we'll allow that so long as it stays within their own specifications. And then we have them sign that tractor over to us on test and... [LB91]

SENATOR KARPISEK: Just like if something wasn't working in the field, the tech would go out...the mechanic would go out and tweak it a little? [LB91]

ROGER HOY: Possibly, yeah, although it's a little harder these days, it's all computerized and it's very difficult...you used to be able to turn a little screw to crank the fuel up and the days of that being possible are long gone. [LB91]

SENATOR KARPISEK: Kind of like a car. [LB91]

ROGER HOY: Yes. [LB91]

SENATOR KARPISEK: Okay. Thank you. [LB91]

SENATOR CARLSON: Okay. Senator Bloomfield. [LB91]

SENATOR BLOOMFIELD: Thank you. The cost to have a tractor tested versus what the university collects, is that pretty much a wash? [LB91]

ROGER HOY: We try real hard to keep it that way. We have a committee of manufacturers that work with us on a variety of subjects. One, of course, is determining the U.S. position on OECD matters, but we share on an annual basis what our income and expenses were and anything that might be untoward, and then typically if we're going to adjust our fees, we do it in such a way that we stay revenue neutral. We're not in this to make a profit, just to break even. [LB91]

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SENATOR BLOOMFIELD: But we're not losing anything for the university either as I understand. [LB91]

ROGER HOY: Right. We're not supported by state tax dollars. We're not supported by tuition fees. It's entirely off of the fees we generate for testing tractors. [LB91]

SENATOR BLOOMFIELD: Okay. Thank you. [LB91]

SENATOR CARLSON: Okay. Any other questions? Does the cost of testing vary by the size of the tractor? [LB91]

ROGER HOY: Well, under 100 horsepower without the drawbar test is \$11,000 and I should qualify that. Sometimes we test four or five tractors that are...you know the hydraulic system may be the same, the three-point lift system may be the same, and we only perform that testing on one so the first would be \$11,000 and the next ones might only be like \$7,000 or \$8,000. If a tractor is more than 100 horsepower, we have a fee of \$18,900 for 20 hours of test time, which a well-prepared manufacturer can achieve. If the manufacturer is not well prepared and we end up using more than 20 hours, then it is ratioed based on the horsepower of the tractor, just to kind of offset the extra fuel that we would use for operating it. [LB91]

SENATOR CARLSON: Okay. Now on the fiscal note, it says here that the University of Nebraska estimates an annual revenue loss of \$150,000, a \$56,000 decrease in expenditures, so a net revenue loss of \$94,000. I think I understand that but explain that to me. [LB91]

ROGER HOY: Well, the income loss would be simply the test fees from both translating other OECD reports to a Nebraska format and for testing all tractors under 100 horsepower. The expense side is really just a variable cost associated with not running those tests, not having the fuel spent on it, having fewer students working at the lab that would have been supporting that. Some costs we didn't roll into there. You know, for example, we didn't contemplate reducing permanent staff. We didn't contemplate using a smaller lab footprint or something that might be more appropriate if we weren't testing those tractors. So it's really just the variable expense associated with under 100 horsepower tractors after keeping all the rest of the overheads paid for elsewhere. [LB91]

SENATOR CARLSON: Okay. Senator Karpisek. [LB91]

SENATOR KARPISEK: Thank you, Senator Carlson. Can...are you being able to do all the tractors that you need to in a year now? Are you keeping up or do you have a backlog? [LB91]

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ROGER HOY: No, we're keeping up pretty well. I mean, we have testing reservations scheduled out for two years but that's really by choice, the manufacturer. This fall is going to be a busy time for us. I think we have about 17 tractors coming in, but we're going to be able to handle that. [LB91]

SENATOR KARPISEK: Okay. And have you seen the amendment that Senator Price brought? [LB91]

ROGER HOY: The first I heard of it was when he introduced it today, so I haven't had a chance to analyze that. [LB91]

SENATOR KARPISEK: Then I won't ask you to comment on it. Thank you. Thank you, Senator Carlson. [LB91]

SENATOR CARLSON: Okay. Thank you. Any other questions? Then unless reading through the amendment might change anything in your thinking, you're simply opposed to the bill with any changes at all? [LB91]

ROGER HOY: Yes, sir, I think so. I mean, we could probably argue its very lowest horsepowers a little bit and I'd be happy to work with you guys on that, you know. I will admit, you know, 60 horsepower and up, to me, means clearly agricultural. And 40...even below 40 horsepower, there's a lot of agricultural application. But I think it really would be more of the decision of this committee to say, do we want half of the tractors to be in production ag or do we just want some of them or how that would go. You know the law was changed in '56 to pretty well define we wanted to focus on agricultural production. But, you know, I think that's probably something that you all are better suited to decide what's best than I would. And I know there are some other people here behind me I think that may testify better than I could about what some of these tractors really are used for. [LB91]

SENATOR CARLSON: Okay. One final question. When I go back to my boyhood, which is going a lot further back than you, we never had a Ford tractor, but I always thought a Ford tractor was kind of cute. I wished we had one. And you kind of know what Ford tractor I'm talking about. [LB91]

ROGER HOY: You're thinking of the 8N or the 9N or...? [LB91]

SENATOR CARLSON: I don't know the numbers. How many horsepower would that have been? [LB91]

ROGER HOY: Oh, I don't know, probably somewhere 35, 40 horsepower, something like that. [LB91]

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SENATOR CARLSON: Okay. All right. Thank you for your testimony. [LB91]

ROGER HOY: Thank you. [LB91]

SENATOR CARLSON: Next testifier in opposition. Welcome, John. [LB91]

JOHN HANSEN: (Exhibit 7) Mr. Chairman, members of the committee, for the record my name is John K. Hansen, H-a-n-s-en. I'm the president of Nebraska Farmers Union and appear before you today as our president and also our lobbyist. We have been in support of the tractor test bill since 1990. And the tractor test bill was brought about for consumer protection. And so the fundamental underpinnings of the purpose of the Tractor Test Lab is to provide farmers and ranchers and folks who buy these kinds of tractors and implements with impartial third-party information. And that need hasn't changed. Marketing has changed. The number of foreign manufacturers has increased the skill and the specificity of marketing is much more precise. We're a lot better marketers as a whole and so as we look at this issue, there's overwhelming support from our membership, from agriculture tractor buyers as a whole as I travel around the country, is one of the things that the University of Nebraska is known for. Not just football or gymnastics or women's volleyball, but also the ag community comes up to me time and time again said, we use that information that we get from the Nebraska Tractor Test Lab. And we use that to make buying decisions. Several years ago we had a similar bill that was a 70-horsepower change and we circulated petitions at Husker Harvest Days. We gathered thousands of signatures. We had farmers and ranchers standing in line and we weren't passing out lemonade or iced tea or anything else, standing in line so they could sign those petitions. So we find overwhelming support on the part of consumers. Our concern is that this is a standalone entity at the University of Nebraska. We're in a very difficult financial climate. I think there's no disagreement about that, and if we take a dollar out of the kitty that it takes to operate the Tractor Test Lab, then there needs to be a dollar go back in. And so with none of the bills that I've worked in the last 21 years, where there's been efforts to try to change the horsepower requirement, has there ever been an offer on the part of the tractor dealers to ever put a dollar back in that they took out? And so if you're taking a third of the revenue away from the University Tractor Test Lab and you undermine the viability of the Tractor Test Lab, it collapses or it operates in a very reduced form. So then we're not getting information. So when you reduce the testing requirements, two things happen. One is, that you undermine the financial viability of the test lab itself, and you're also not generating the information that our folks want and need in order to make informed buying decisions. And so both of those in the end go in the opposite direction that we think that we ought to go. And I am not unsympathetic to the border bleeding issue, but I think most folks who are in business know and understand that the tax treatment of equipment and parts has more to do with border bleeding than any other particular item. That alone has a huge impact. We've certainly supported bills in the Revenue Committee to try to deal with that, and we worked with the rest of the ag lobby and the

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Tractor Dealers Association in that matter. The Revenue Committee, as you may know, are a fairly tough bunch of folks. And they have not given up that revenue and in this climate I suspect they're not going to give up that revenue right now. But that's really the primary drive in terms of unfair competition. And most of the reasons that I've ran across in all of the years that I've been doing this for folks not to test is usually from a manufacturer has a good reason not to want to test. And so with that I would close my testimony and be glad to answer any questions if I could answer. Thank you. [LB91]

SENATOR CARLSON: Okay. Thank you. Any questions? I will ask one because if you hadn't referred to it I was going to ask you anyway. But the border problem, so your solution to the border problem is to...for us to go with no sales tax on labor and parts, which is about as unlikely as anything we could talk about today, I suppose. [LB91]

JOHN HANSEN: Well, Senator, you're starting to sound like you're a member of the Revenue Committee really. (Laughter) And that was kind of the response we got from them and it creates an unfair economic advantage, there's no question about it. When you have one side of the border that taxes an item higher or lower than another, one does, one doesn't, yeah. And so if you're a farmer, and we talked about that pretty openly in the testimony just last year, if you're going to buy a whole bunch of parts and you're close to a border, and you're going to drive into Kansas or a neighboring state and they don't have sales tax, and you're going to buy a few thousand dollars worth of parts, is that worth it for you to do that? Well, probably. So do folks do that? Yeah. And so do we have a collection problem there? Sometimes, yeah. [LB91]

SENATOR CARLSON: Okay. Thank you. Thank you for your testimony. [LB91]

JOHN HANSEN: And thank you, Mr. Chairman, and good luck. [LB91]

SENATOR CARLSON: Next testifier. Welcome. [LB91]

BEVERLY HEIRD: (Exhibit 8) Good afternoon. My name is Beverly Heird, B-e-v-e-r-l-y H-e-i-r-d. I'm the manager of public affairs for John Deere for the ag and turf division. Chairman Carlson, with your permission, I'd like to read the prepared testimony from Doug Durant. He is the global manager for agricultural standards. Unfortunately, he became ill last night and so could not make it here today. I don't think he wanted to pass around what he had. So with your permission I'd like to go ahead and read that. [LB91]

SENATOR CARLSON: You have four a half minutes, so go ahead. [LB91]

BEVERY HEIRD: Thank you. So Doug Durant, who would have been here if he could have, has served in the role of global manager for agricultural tractor standards for John Deere for 15 years. He has had the opportunity to be involved in standards activities at both the national and international levels involving organizations such as ASABE, SAE,

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CSA, and most importantly, ISO and OECD, which you have heard mentioned here today. He currently serves as the international chair of ISO, which deals with ag machinery performance testing, which is very much related to OECD testing in the Nebraska Tractor Test Lab. In addition, he has previously served as the chair of the OECD U.S. Coordinating Committee for a term of approximately 12 years, therefore, is knowledgeable of the subject we are discussing today and the previous bills that have been introduced since 1996. In the introductory remarks I made reference to the organization OECD, which is Organization of Economic Cooperation and Development. OECD was initiated in 1961 under the United Nations and is the main worldwide reference for the certification and standardization of certain agricultural commodities, one commodity being agricultural tractors. OECD provides a centralized third-party approval method for certified tests, which provides international official recognition. The Nebraska statute for tractor performance testing recognizes the OECD test codes and the Nebraska Tractor Test Lab, referred to as NTTL, as the official designated test station for conducting the OECD tests in the United States. Before proceeding to my specific comments, John Deere is opposed to LB91, a bill that would increase the horsepower level at which tractors must be tested at the Nebraska Tractor Test Lab, or any certified OECD test station around the world, from the current 40-horsepower to 100-horsepower level. Since 1996 when the Nebraska LB192, introduced by Senator Dierks, the most significant changes in the industry other than the changes in technology is the globalization of manufacturers. With this globalization, we are experiencing more than ever the distribution of agricultural tractors from many regions to other parts of the world, including imports to the United States. Considering that a large percentage of these imported products are in the 100-horsepower or less range, it appears that the benefit of the Nebraska Tractor Test Law is increasing as globalization continues. Over the years many of the benefits have been covered by testimonies provided by manufacturers and organizations along with the University of Nebraska that have documented the benefits of the current law. I would like to cover six of these key benefits. The first one, the Nebraska law protects buyers of agricultural tractors from fraudulent performance claims by the manufacturer. A fraudulent claim, for example, may be associated with the manufacturer advertising in product literature the maximum PTO horsepower available for a given tractor model. However, the product sold does not meet that claim. These claims could be related to other performance information such as fuel efficiency, drawbar pull, and hitch lifting capacity. Number two, the NTTL testing provides accurate and unbiased third-party tractor performance data used by consumers throughout the United States. As an example, manufacturers like Deere, Case, New Holland and AGCO utilize the data as an industry mark that drives machine efficiency, which is an important part of many farmers' buying decisions. These farmers are broken into various segments. One of these is the lifestyle farmer, which is the 40 to 100 horsepower, and are the most vulnerable should this data no longer be available. You can read from the additional information provided, number four, number five, and number six. One idea that I want to bring up, though, is our support of making the Nebraska Tractor Test Standards at a federal level. As you may not know, this has been

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done in the past and we support that measure because that ensures that the information is not only within Nebraska and limits potential border bleed, but provides the same statutes across all 50 states. As a final closing remark, I believe that one simple analogy can clearly put into perspective the importance of NTTL and the Nebraska Tractor Test Law. Nebraska is known for many great things, a lot of them tied to agriculture, mostly the Cornhusker football comes up to mind when you mention Nebraska. Within the agricultural community, the Nebraska Tractor Test has the same notoriety. It is a true champion for everyone, including the agricultural segment in the 40 to 100 horsepower. Thank you for your time. If you have any additional questions, I will try to answer them. If not, we'll pass them along to Doug Durant as well. [LB91]

SENATOR CARLSON: Okay. Thank you for your testimony. And Mr. Durant is from Waterloo? [LB91]

BEVERLY HEIRD: Yes, sir. [LB91]

SENATOR CARLSON: Okay. So it's interesting that he would make that kind of analogy in regard to the tractor testing facility. [LB91]

BEVERLY HEIRD: He might have had a little help. (Laughter) [LB91]

SENATOR CARLSON: Oh, he might have had...oh, it's good you told me that. Senator Harr. [LB91]

SENATOR HARR: How many tractors do you sell in the 40- to 100-horsepower range? [LB91]

BEVERLY HEIRD: I'll reserve answering that. Our next person, Mike Gause, is a division sales manager within the ag and turf division for this area and he will answer that for you. [LB91]

SENATOR HARR: Okay. [LB91]

SENATOR CARLSON: Okay. Any other questions? Okay, you've done a good job with your duty today. Thank you. [LB91]

BEVERLY HEIRD: Thank you for your time. [LB91]

SENATOR CARLSON: Welcome. [LB91]

MICHAEL GAUSE: (Exhibit 9) Good afternoon. My name is Mike Gause, G-a-u-s-e. Thank you, Chairman Carlson and the Ag Committee members, for this opportunity to speak to you today in regard to LB91. I'm the division sales manager for John Deere

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Company. My area of responsibility is the state of Nebraska, southeast Wyoming, eastern Colorado, western Kansas, western Oklahoma, and Panhandle of Texas, and also northern New Mexico. So basically, Nebraska is my primary state of business. The division sales manager position is responsible for all sales of ag and turf products through the dealer channel within the aligned area of responsibility. With this responsibility, I have a deep customer understanding of the requirements for products and services by our customer segments. Based upon this, I would like to discuss the importance of the Nebraska tractor tests for the customers who purchase new and used 40-horsepower to 100-horsepower tractors. At John Deere we utilize customer segmentation to align our resources with customer needs. Through customer segmentation, founded upon market research, we are able to identify key customer attributes for product and service development. The customer segments are primarily categorized based on gross farm revenue. Over 60 percent of customers who purchase 40-horsepower to 100-horsepower tractors are generating gross farm revenue of \$250,000 or less. John Deere defines this customer segment as part-time producers. As you may already know, there are currently 2.2 million U.S. farmers in the U.S. Based upon our categorization, 87.3 percent of the U.S. farmers are part-time producers, those who generate, again, \$250,000 or less in gross farm revenue. This customer segment relies upon the 40-horsepower to 100-horsepower tractor market to produce and generate on-farm income. The tractor is a tool for the equipment associated with this product. In other words, the tractor needs to perform at a specific level to meet the requirements of hay tools, loaders, cutters, etcetera. These activities are critical in the operation of this customer segment and directly impact the profitability. The part-time producer segment is a customer who works off the farm to support a lifestyle. Our data suggests that there are two types of part-time producers, lifestyle and transition. The majority of the 1.9 million part-time producers are lifestyle customers. They seek to raise their family on the farm and find a relaxation through production agriculture. The off-farm household income supports the lifestyle and provides buying power within the marketplace. It is interesting to note that the majority of the 40-horsepower to 100-horsepower customers keep and maintain their equipment for eight to ten years prior to purchasing a new replacement. It is the time to purchase equipment, our data states that the part-time producer purchases this new equipment 44 percent of the time. The buying process for this customer segment is done most often at work and/or off business hours. This requires the part-time producer to research their purchases independently through various resources. Our data indicates that the customer segment does not trust manufacturer data. Instead, the 1.9 million customers seek and desire reliable, balanced data that will yield the best purchase decision. The unbiased data that this customer segment seeks is exactly what the Nebraska Tractor Test Lab provides. The 40-horsepower to 100-horsepower tractor segment is production agriculture and requires standard testing to eliminate any marketplace confusion. Why are these tests important to the part-time producer? Without standardized testing for 40-horsepower to 100-horsepower tractor segment, these customers will not be able to successfully right size the equipment to the associated tools. In other words, the customer who is buying

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equipment must understand the true capability of the product so they can effectively identify the right hay tools, loaders, cutters, and planters to pair with the power unit. If they fail to size the solution correctly, it could lead to potential safety issues with the equipment and ultimately failure of productivity. Since these customers rely upon data to make this buying decision, the elimination of standard testing would create huge challenges in the marketplace. It could be expected that new products may enter the marketplace that don't meet the minimum standards. It would be up to the buyer to identify if the manufacturer's data is accurate. Unfortunately, this would come with a big expense to the overall production of their operations. As I mentioned before, these customers typically hold on to their equipment for eight to ten years prior to purchasing a replacement unit. Why is this important? The importance is similar to the consumer who is purchasing a washer and dryer. This is a purchase that is not made every year, which creates a challenge for selecting the right product for their needs. Based upon this, the consumer relies upon third-party data, such as Consumer Reports, to assist in removing the noise around the marketplace to make the best buying decision. The fact is, this is no different than the buying experience for the part-time producer when it comes to tractors. In closing, customers who purchase 40-horsepower to 100-horsepower tractors are in production agriculture. In fact, they are the biggest customer segment for production agriculture with over 1.9 million customers in the United States. These customers rely upon balanced data to assist in sizing the equipment for their operation. In many ways, the information that they glean from third-party sources is more important due to the trade cycle of their equipment. If unbiased data is not available and there are no standards for testing equipment, this could result in the purchase of equipment that is not properly sized for their operation. I mentioned a safety concern earlier. An example might be buying a piece of equipment that does not meet the stated hydraulics. If that is the case, possibly the steering will not operate correctly going down when they're doing roadside mowing. So it is very important for these things to have the proper testing. Further, the John Deere dealer channel within the state...oh, sorry. Can I make one last comment? [LB91]

SENATOR CARLSON: Okay. [LB91]

MIKE GAUSE: The John Deere dealer channel within the state of Nebraska has the same capabilities to sell just like any of the other states in the United States. That's because John Deere tests all products here in Nebraska. So there is no border bleeding issue in Nebraska for John Deere dealers. [LB91]

SENATOR CARLSON: Okay. Thank you for testimony. Senator Brasch. [LB91]

SENATOR BRASCH: Thank you, Chairman. Thank you, Mr. Gause, for your testimony. Would there be any reason why you could not continue your testing, I mean, at 40 and above, and be an industry leader? And then maybe New Holland and Case IH and everyone else will say, we want to be just like Deere and certify it. I mean, there's

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nothing stopping you from continuing going to the center, is that correct? [LB91]

MICHAEL GAUSE: That's correct. We could definitely continue to participate with the tests. [LB91]

SENATOR BRASCH: Do you think that will happen, or...? [LB91]

MICHAEL GAUSE: I would not be in the position to answer that. [LB91]

SENATOR BRASCH: Okay. All right, thank you. Excellent. Thank you, Mr. Chairman. [LB91]

SENATOR CARLSON: Okay. Senator Harr. [LB91]

SENATOR HARR: Thank you, Senator Carlson. I just want to make sure I understand your testimony. Sixty percent of the...as you call them, part-time producers...well, let's talk about the segment, 40- to 100-horsepower tractors. Sixty percent of those people who purchase the 40 to 100 are part-time producers, is that your...? [LB91]

MICHAEL GAUSE: Correct. Based on the definition of \$250,000 or less in GFR. [LB91]

SENATOR HARR: I call them gentlemen farmers, but I think yours is probably a little more politically correct. Of that 60 percent...oh, I guess, how many tractors is that 60 percent then? [LB91]

MICHAEL GAUSE: We typically don't disclose the quantity of tractors but it's in the tens of thousands. Again that's from an industry perspective. Then again, it goes back to the...you know, 1.9 million of the total 2.2 million farmers are, in fact, part-time producers, so that is the largest category of equipment and that's why you're seeing more offshore companies coming in because that is the largest segment to grow. [LB91]

SENATOR HARR: All right. Thank you very much. [LB91]

SENATOR CARLSON: Senator Bloomfield. [LB91]

SENATOR BLOOMFIELD: Thank you. Without disclosing numbers of units, what percentage is going to be under a horsepower versus over 100-horsepower? [LB91]

MICHAEL GAUSE: We would say that, so there's...obviously, the most profitable products are the large ag products. The small ag products probably outnumber large ag. And I would not feel comfortable saying that...without giving you the specific number but I could get back to you on that. [LB91]

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SENATOR CARLSON: Other questions? Senator Karpisek. [LB91]

SENATOR KARPISEK: Thank you, Senator Carlson. Mr. Gause, thank you for being here. You talk about buying a washer and dryer, but are those tested? [LB91]

MICHAEL GAUSE: There's no standards requirement for testing. However, I think we've all, you know, looked on the Internet and done our research through Consumer Reports and other unbiased testing prior to making that purchase. And to most homeowners it's a pretty significant purchase. So that was kind of my analogy for that. [LB91]

SENATOR KARPISEK: And I'm very, very supportive of the Tractor Test Lab. The issue for me isn't what is an ag tractor and what is not. My issue is what do we tell our border implement dealers that are getting hurt by somebody driving across the border? That's my point. Now I don't know, if I would ask you, you would probably say, well, they should test all their tractors as John Deere does. [LB91]

MICHAEL GAUSE: Well, I think from a John Deere dealer perspective, they have the capability to sell all products regardless of what state they're located in. Other manufacturers, if they choose not to test and it's not important to them, then that's their decision. [LB91]

SENATOR KARPISEK: And would any of your dealers be able to hook up with a...I don't even know another brand, some off name brand from out of the country and sell them at all? Is that even a possibility for them? [LB91]

MICHAEL GAUSE: There are dealers in the United States that are John Deere dealers and other brands located in the same facility. Obviously, we do not recommend that but that does happen. [LB91]

SENATOR KARPISEK: Are there any in Nebraska that you know of? [LB91]

MICHAEL GAUSE: None in Nebraska. [LB91]

SENATOR KARPISEK: Okay. Thank you. [LB91]

MICHAEL GAUSE: Thank you. [LB91]

SENATOR CARLSON: Okay. Thank you. Any other questions? Why, I have one question. Because you're very pro the tractor testing facility and so if we leave the facility alone, obviously, that has an advantage to Nebraska. It employs people, brings in dollars. What are the other advantages to Nebraska versus Iowa, Kansas, or Missouri by the tractor lab being in Nebraska? [LB91]

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MICHAEL GAUSE: The advantages for having a Tractor Test Lab, I think from a Deere perspective, is proximity to our factories. But I would say from a Nebraska citizen perspective, probably the recognition of being the leader in the testing of standards that they put on tractors, if that makes sense. So it's kind of difficult for me to provide that answer to you. [LB91]

SENATOR CARLSON: Okay. All right. Thank you for your testimony. [LB91]

MICHAEL GAUSE: Yes, thank you. [LB91]

SENATOR CARLSON: Next testifier in opposition, please. Welcome. [LB91]

NED MEIER: Welcome. Thank you very much, Senator Carlson and committee. My name is Ned Meier. I'm president of an organization called Supporters of Nebraska Tractor Test. We're an organization that started in... [LB91]

SENATOR CARLSON: Would you spell Meier, please. [LB91]

NED MEIER: That's a good question. There's a lot of ways to distort Meier, M-e-i-e-r. That's the only correct way, by the way. (Laughter) I am the president of an organization called Supporters of Nebraska Tractor Test. We've been an organization since the mid-1990s. We are here and we're organized because of legislation that has come before the Legislature that either would restrict or possibly even create the shutdown of the Nebraska Tractor Testing Lab. I am...our organization has members from 17 states and 4 different foreign countries, so we are a broad-based organization. I am a farmer right now. I was a research engineer at a large industrial equipment manufacturer, and I have also actually ran all of the tests that are currently...no, I have run all the tests except the hydraulic test that are currently used in the Nebraska tractor test because as a student I was an employee of the Nebraska Tractor Testing Lab. There's one thing that hasn't been brought up today that I think is kind of important. A lot of the testimony that has been given here, and especially the recent testimony pertaining to what is a utility tractor, who needs the information, and all that type of stuff has been covered much better than I could have done it. But there is one thing that I think hasn't been brought up is that Nebraska tractor test does not have minimum requirements or does not have mandates. There is nothing in the law that says you have to achieve anything. You can advertise anything you want to. The only stipulation that you have is, you have to verify it. If you want to claim that the paint on your particular vehicle produces 10 more horsepower than your competitor, you're free to do so. All you have to do is come and verify that that is exactly true. So this is one of the laws that I think has tremendous impact because it does not require any kind of a minimum standard. Competition is the one thing that it generates more than anything else. And when I worked at the Tractor Testing Lab, the measurement of a sound was one of the things that was a new issue on the landscape at that time. And I had a tractor engineer come to me and tell me that

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until Nebraska even talked about measuring sound, his supervisors would not let him purchase a sound meter. And so what happened when they decided to start talking about measuring sound, everybody got on board with respect to how loud is my tractor. I told you I was a research engineer at one of the large equipment manufacturers, industrial equipment manufacturers and when I went there, the only thing that they had to do was to meet federal standards, which were OSHA standards at the time, which was 85 decibel. That's all we worried about was 85. Agriculture at that time far exceeded 85 without any laws requiring them to do so because the red ones saw that the green ones had this number, we can't allow them to have one better than what we are, and so for that reason they went through the competitive process and that is probably why we have the equipment we have today. The 40-horsepower tractors...the thing that bothers me a lot is, if a manufacturer does not want to verify their claims, in my estimation that says an awful lot about their equipment and their company. I personally would not...I would personally not buy a piece of equipment from any manufacturer that refused or was hesitant to have their equipment tested at Nebraska and have their claims verified. I am opposed to entering...to increasing it from 40 to 100 horsepower, and I would answer any questions that you may have. [LB91]

SENATOR CARLSON: Okay. Thank you, Mr. Meier. Any questions? Senator... [LB91]

SENATOR BLOOMFIELD: No, but I would make a statement. I was ready to believe everything the man said until he came up here and spelled Meier, M-e-i-e-r. (Laughter) My wife, M-e-y-e-r, has assured me for years that was the only correct spelling. [LB91]

NED MEIER: We'll have to have a politically correct discussion about that. (Laughter) [LB91]

SENATOR CARLSON: Okay. Any other questions? Thank you for your testimony. [LB91]

NED MEIER: Thank you. [LB91]

SENATOR CARLSON: Oh, excuse me, where do you live? [LB91]

NED MEIER: Grand Island. [LB91]

SENATOR CARLSON: Okay. Thank you. Next. Welcome, Craig. [LB91]

CRAIG HEAD: Good afternoon, Senator Carlson and members of the committee. My name is Craig Head, that's C-r-a-i-g, and the last name is H-e-a-d, and I'm the state director of government relations for the Nebraska Farm Bureau Federation. I appreciate the chance to come before you today on behalf of the organization in opposition to LB91. Our members have longstanding policy and have had many discussions about

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support for the Nebraska Tractor Testing Lab. Our policy does currently support the Tractor Testing Lab and it makes two very straightforward points. One, is that we should work with manufacturers, equipment dealers, and the university to make sure that the lab stays open. That's a primary concern to our members. They derive great value out of the reports that are put together from the lab and we've been supportive of that. And our policy also speaks to making sure that we do have tractors tested here in the state. We come before you today in opposition to LB91 over concerns about the long-term viability of the lab with the way the bill was introduced, going from 40 to 100 horsepower. I think it has been alluded to earlier, making that change today would cost the lab about 30 percent of their revenues. And if you take that away, what does that mean for the future of the lab? What does that mean for future opportunity for our members to get the reports that they need as was stated by many of the previous testifiers? So for those reasons, we're here in opposition. I do appreciate Senator Price bringing the amendment that he did. I'm not sure if that addresses our concerns. But I would tell you as a committee, that if there was a horsepower threshold that could be raised to that would provide some more flexibility to the dealers to address some of the issues and concerns that have been raised today, but would also make sure that we're not significantly harming the lab, we would be interested in that conversation with the committee and with all the parties involved. So with that, I would just lay it on the table. We certainly appreciate the chance to testify today, and be glad to entertain any questions you might have. [LB91]

SENATOR CARLSON: Okay. Thank you. Any questions? I'll ask you one. Do you have any suggestions? I think what has come out in testimony today, two things, that those on the border are struggling with and one is the sales tax issue, and the other is tractors being able to be bought across the border and brought back in. Do you have any comment on that? [LB91]

CRAIG HEAD: Not much more than the conversation you had previously. I'm not sure the first is addressable at this point in time. I sure don't know how to address the issue of them going outside the state and buying the tractors. And that's certainly a concern. I guess if there's a way to make this a little bit more competitive, that might help address the issue. But I don't have a (inaudible) on that one. [LB91]

SENATOR CARLSON: Well, I ask you that because you know that I have another bill that brought a lot of attention as far as fairness is concerned, and so we've got to as best we can be sensitive to those issues and try to address them. So thank you for your testimony. [LB91]

CRAIG HEAD: Yes. And I appreciate that comment. Thank you very much. [LB91]

SENATOR CARLSON: Okay. Any...next testifier. How many more do we have in opposition? Okay. Welcome. [LB91]

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JOE FRYMAN: (Exhibit 10) Thank you, Senator Carlson and members of the Ag Committee. My name is Joe Fryman, J-o-e F-r-y-m-a-n. Thank you for the opportunity to speak today. I'm a farmer living near Blair, Nebraska, in Washington County, currently president of the Nebraska State Grange. And I just might mention, the Grange has been advocating for agriculture since 1872. I'm here today to speak in opposition of LB91, which would raise the minimum horsepower from 40 to 100 horsepower. Removing this segment of 40- to 100-horsepower tractor from the testing requirements would eliminate a valuable source of unbiased information used by farmers, ranchers, and acreage owners. The test lab provides accurate data to anyone while not placing a burden on the Nebraska taxpayer. With all the brands of tractors on the market, both foreign and domestically manufactured today, nonbiased information is of great value to potential buyers. In my operation, we use seven tractors. Three of these are above 100 horsepower and four are below 100 horsepower. Some of you may be familiar with the John Deere 4020 tractor. It's a popular tractor manufactured in the late '60s, early '70s. I have one of thousands that are still in use today. It's a 95-horsepower tractor that, under this proposed legislation, would be a size no longer required to be tested. Testing information gathered by the Nebraska Tractor Test Lab on these older tractors is still useful when comparing efficiencies of the older models to the newer model. Some of these analogies that I'm going to go into have already been brought up, but some of you may have never bought a tractor before or ever plan to buy one. However, I am sure some of you had considered buying a new car. I have with me a manufacturer's window sticker from a new vehicle. And along with a description of the options and the price, in the bottom in bold print is an evaluation of the expected efficiency of a car expressed in terms of miles per gallon in the city and miles per gallon on the highway. This information is, for most buyers, something of interest to them. And it's found on all new car stickers from subcompacts to the large SUVs. Why should the expectations or exceptions be made for smaller tractors? And as was mentioned before, appliances. Maybe you've shopped for a new stove, refrigerator, washer or dryer, there's a yellow sticker on those appliances, and what that is, is an efficiency rating. So as you compare it to other models similar to it, it doesn't make any difference if it's a 10 cubic foot refrigerator or a 30 cubic foot refrigerator. They're all tested. Federal exhaust gas emission requirements continue to be more stringent and while these new requirements currently are focused on the larger horsepower models, there will come a time in the not too distant future when the smaller models will be subject to tighter regulations. And I believe it's important for buyers to know how these emission regulations are going to affect the performance of these models. It has been suggested border bleed is a reason to raise the minimum horsepower requirement. And I do have concern for that. It's been mentioned several times. That is an issue. But I believe border bleed is an issue that should be addressed between dealers and manufacturers. Having manufacturers provide a level playing field for the dealers is preferable to dismantling an important segment of the Nebraska tractor test requirements. It seems to me that manufacturers are doing a disservice to their dealers if they're not willing to test their tractors so they

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can be sold legally in Nebraska. The sales tax issue. I'm about as close to a dealer in Iowa as I am in Nebraska, but I do business with my Nebraska dealer. We've established a relationship. It's based on service, not on the amount of sales tax I pay on parts. I purchased a new tractor last year from a Nebraska implement dealer. Nowhere on the invoice could I find a fee for Nebraska tractor testing. It's an expense paid for by the manufacturer and spread out over all the tractors produced. Prior to my purchase, I went to the manufacturer's Web site to "bill my own tractor" and couldn't find anywhere there was a difference in the price between Nebraska and Iowa. Senators, I ask you not to bring LB91 out of committee. I ask you to keep our nationally recognized, self-sustaining Nebraska Tractor Testing Program in place as it now exists. Thank you for your time. [LB91]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of Mr. Fryman? Seeing none, thank you. Next. Welcome. [LB91]

VERN JANTZEN: Good afternoon, Senators, members of the committee. My name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. When I read in my latest issue of the Successful Farmer that this bill had come before this body, I was not happy, and so I thought maybe I should come and share some of my questions and concerns with this committee. And so, I am a farmer near Plymouth, Nebraska, and I have two tractors that are below 100 horsepower that I use quite a bit for doing chores on my farm. If the day ever comes that I will replace them, I will value the information that is available from the Tractor Testing Lab to help me make my decision. I think...I guess I want to ask you several questions that I think you will have to need to answer before you decide if this bill needs to be advanced to the body. You need to look at who this bill...or who the tractor test bill, who that was designed to protect, what it was designed to do? Is that concern that those original drafters had still valid for the farmers in this state? Is it a bill for farmers or is this protection for farmers or is this protection for tractor dealers? You need to look, and the testimony has been presented, how many tractors in the 40- to 100-horsepower range are being sold, and what people are using those tractors? You need to look at if this information that's provided by the Tractor Test Lab is still good information, is it still necessary? Do people still use it? You have to look at what does this have a cost to the state and you also have to look at if we pass this bill, does that have a cost to the state? Or, well, what are the downsides to passing this bill? I think the fact that this information is available on a Web site without charge for those who want to use it is a good thing. And that should be taken into consideration. The other thing you need to think about a little bit is, are the people who are manufacturing tractors in this size range having my best interest at heart when I read their marketing material? I think if Mr. Leonard ever has a little downtime some time, he should do a little checking and see if some of the tractors that are not tested in this lab have been tested at a different lab at a different location in the world, and if you would compare those results to some of the tractors that have been tested, maybe the reason they don't want to test them here is the results do not match up with the competition. And so that's an interesting

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thing to consider. The issue of the border and the tractor dealers and the challenges they face, that is a real issue and it was presented here today. My problem is, can we fix all those issues by...are we pinning stuff onto this tractor test bill to drop the 40-100 testing, is that a proper vehicle to address the border issues that the dealers have? We're dealing with a tax policy issue here. We're dealing with the fact that other states are using our...the fact that we have a Tractor Test Lab, then they don't have to. They can use our tests without having their own lab. And so that's a policy maybe that needs to be addressed on a federal level that everybody who sells a tractor in the United States has to use the test lab results before they can sell a tractor. And I don't think it's fair that we put that against the Tractor Test Lab here in Nebraska or that...and it's been mentioned that this is a dealer issue. Why do dealers penalize their Nebraska dealers by not allowing tractors to be tested that everybody can sell across the United States? I think that in the end you need to ask yourself, if we want to have a policy where we trust but we want to verify, how are we going to do that? And so in conclusion I would say, if it isn't broke, please don't fix it. [LB91]

SENATOR CARLSON: Okay. Thank you for your testimony. You said, but I missed it, where are you from? [LB91]

VERN JANTZEN: I'm from down by Plymouth. I'm a farmer. Mr. Karpisek is my senator. He will vouch for me. [LB91]

SENATOR CARLSON: Okay. All right. That's good to hear. [LB91]

VERN JANTZEN: That I am a real person in Nebraska. (Laughter) [LB91]

SENATOR CARLSON: Okay. Any questions of Mr. Jantzen? Hearing none, thank you for your testimony. [LB91]

VERN JANTZEN: Thank you. [LB91]

SENATOR CARLSON: Anyone else testifying in opposition? Okay. Seeing none, do we have anyone testifying in a neutral capacity? Okay. Senator Price, you're recognized to close on LB91. [LB91]

SENATOR PRICE: Thank you, Senator Carlson and members of the Agriculture Committee. We've heard a lot today. It's been somewhat mind boggling. I took notes and I'll try not to cover all the points. I'll try to keep it salient to what we're talking about today and what the testifiers had to say. I appreciate everybody coming up. Of course, what I heard when we look at the fiscal note, it says that 23 less tractors will be permitted. And we've heard testimony that permitting and testing are different things. Your main tractor in 1919 that was doing all your work, and your main tractor today are a big difference. What's pulling 12-row implements is different. We heard about chores,

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hobby, we're a lot different classifications. But we didn't hear about just the big ones. We didn't hear in our definition of agricultural equipment, sprayers, combines, and other ag producing machinery. We don't test those. Those aren't important enough to be tested by the tractor lab. Or they're so well manufactured that no one has a question or maybe it's just that if you sell a piece of junk, you won't sell many of them. Now I had heard that the fees remitted for testing aren't the big burden for the manufacturers. I actually heard at one point in time today it's a mere pittance. The question I have for you, as a matter of public policy, are we here to use a public institution to further a private enterprise when we look at that as a marketing tool? Isn't that what we've really said here today? It's a great marketing tool. When you get that sticker, you can say, I've got the sticker. And you use it as a marketing tool because if you don't have the sticker, we heard, I wouldn't buy one from one that wasn't tested. So the tractor lab is performing an essential function of marketing to many of these because we don't see the requirement in all the other states. We didn't hear that there are 49 other states that will not allow you to sell a tractor if it doesn't have the Nebraska Tractor Testing Lab certification. We didn't hear that. There are some. I heard maybe in Oregon they might have it, but really the only state that gets penalized is the state of Nebraska. The citizens of Nebraska are penalized, not the ones in Pennsylvania or New York. We heard that this cost is passed out...the price of a hamburger. But that means the people in New York are paying for it and Florida and Georgia. They're paying for that tax because a business is going to pass that cost of peanut butter all the way across to satisfy a requirement in Nebraska. So are we picking winners and losers? That's a good question. Now let me address some of the specific items that were brought up. First, I was concerned when I heard...and I really appreciate Mr. Hoy coming in. But if you will go back and let the record reflect, we had no one testify in neutral. He came in and said he was someone with the university but he's testifying on his own but he talked all about the lab. So I was confused where he was on that. I think he testified on his own, not as representing the university, and the university didn't testify at all. We've heard testimony that submitted that there's unfair competition across our borders. It seems that that's okay. We also heard in testimony, as I look at...oh, yes, we have ISO testing, and we have the OEDC testing, and then we have Tractor Testing Lab. Everywhere else worldwide, it's ISO. Anybody who does manufacturing, anybody who has any interaction with that, ISO is the world standard, not the Nebraska Testing Lab. Now I don't have anything against the testing lab and I've already stated that clearly. But I want to make sure that when we compare and we look at things of how we measure, you know, when you buy something electronic has a UL lab listing on it, maybe. Or it would be ISO, you have a ISO certified business. ISO certification takes over a lot of places in our industries. But in Nebraska, it's the Tractor Testing Lab. And I didn't want it to be confused amongst all of you where we were. What we're saying is, in Nebraska the testing lab is the gold standard, but it only applies to Nebraskans. It doesn't apply in Iowa. I'd also like to say here, we heard that by having this we eliminate competition, the tractor lab eliminates competition, because you can only sell one here that is tested by the lab. We're eliminating competition, which again plays to picking winners and losers.

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And we heard constantly about the marketing aspect of it. What we also heard is, what will happen to the tractor lab? Let's paint a picture. What will happen when they lose the permitting of possibly 23 tractors? We don't know. But what we did hear is we are hurting Nebraska businesses today. That's what we know. What we don't know is what happened. Now if you use the free market example, and many people said I won't buy one that doesn't have a ticket in it, and nothing is going to stop anybody from getting tested for a pittance. So if you're going to bring your tractor in, you want to be a leg up on something, you say, hey, I'm going to send it to a lab, they're going to test it, they still are going to get that revenue, which is revenue neutral, I would tell you. They're still going to test the tractors and they're going to put that marketing stuff up and it's going to sell. And the people who don't, they're not going to sell and they're going to go, you know, that was a dumb idea, we're going to get our stuff tested. But we're not going to mandate it. We're not going to mandate it in the only state in 50 states. So I'd ask you to consider that. And the other thing is, are all versions of all tractors tested for the purposes of selling those tractors outside of the state of Nebraska? No, they don't. Now, why is that? What it boils down to is the tractor lab performs an essential function and protects our farmers, particularly when they buy their large agricultural tractors. But at the lower end, we heard them compared to refrigerators, washing machines, and trucks and cars. Now when you go buy you a car, is Ford told they cannot sell that Ford in the state of Nebraska if they don't have that information? I don't think so. Why? Because Ford says, we're going to sell more cars if we can prove our equipment is better than the other. We get better gas mileage. It's not a burden. No one says you can't sell it here if you don't do it. It's just plain dumb and stupid if you don't, because you lose market share. So I pledge to the committee, I will work with the committee. If the answer and the thresholds in the bill aren't right, if the amendment doesn't scratch the itch well enough, I will work with you to find what does work that does answer the issues that are before Nebraska that deal with the things that we know today. Today we harm Nebraskans. We don't know what the future holds though if we change it. And with that I would entertain any questions the committee might have. [LB91]

SENATOR CARLSON: Okay. Thank you, Senator Price. Any questions? Yes, Senator Bloomfield. [LB91]

SENATOR BLOOMFIELD: You and I discussed this briefly off the...out of committee here one time the possibility of, if we increase the horsepower threshold of putting something on the tractor so that people in Nebraska realize it has not been tested, that you're amenable to that? [LB91]

SENATOR PRICE: Absolutely. I think that's a fantastic point. I'm glad you brought it up. What Senator Bloomfield said was, if we make the change what we're going to have, is we're going to have a buying public that's going to say, I knew what the standard was when I bought my tractor in 1970, and now we've changed it and I'm looking at a tractor that doesn't have a tag in it, we could cause a lot of confusion. So what Senator

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Bloomfield said, hey, what if we make sure that we put in the legislation that we say, any tractors for a period of time sold that are above that in the new threshold, that they would carry some disclaimer that was made abundantly apparent, whether it's in a window or the bill of sale to say, hey, this tractor was not tested by the tractor lab because of the passage of LB91, and it is within compliance of the law, but it did not need to be tested so we don't cause an uneven playing field. And I believe...did that capture it? [LB91]

SENATOR BLOOMFIELD: It's awfully close. [LB91]

SENATOR PRICE: Absolutely, I definitely will work with the committee on that. [LB91]

SENATOR CARLSON: Okay. Any other questions? Seeing none, thank you for your testimony. [LB91]

SENATOR PRICE: Thank you. [LB91]

SENATOR CARLSON: And with that, we close the hearing on LB91. (See also Exhibit 11) We have three more bills to go through. We're going to take a five-minute break. And thanks to those of you that came in to testify on this bill today. [LB91]

BREAK

SENATOR WALLMAN: Good afternoon, everyone. Good afternoon, Chairman Carlson. You may open on your bill, LB107. [LB107]

SENATOR CARLSON: (Exhibit 1) Okay, thank you, Senator Wallman. I am Tom Carlson, spelled C-a-r-l-s-o-n, representing District 38 and I'm pleased to present LB107. LB107 is the result of collaboration of the Nebraska Sorghum Producers Association and the Nebraska Sorghum Board. The Grain Sorghum Resource Act was enacted in 1981 to provide for a producer, self-funded program of market development, research, and consumer information similar to other checkoff programs. The program is wholly cash funded from a marketing assessment not to exceed one cent per hundredweight collected from producers by first purchasers. The act creates the Grain Sorghum Development, Utilization, and Marketing Board, Sorghum Board, to develop programs of research and promotion and to oversee the expenditure of the checkoff funds for that purpose. Currently, the board has a typical membership composed of seven members as follows: six grower members appointed by the Governor from corresponding districts, and one grower member appointed by the Sorghum Board representing the state at large. The bill is brought to address the growing inequity in representing sorghum production because the districts, as currently drawn, increasingly do not accurately reflect where sorghum is grown. I've invited neutral testimony by the Sorghum Board to provide the committee with graphics and other details demonstrating

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the geographic shifts of the sorghum production that have taken place. LB107 would substitute that a producer may place his or her name in nomination by submitting a gubernatorial appointment application, a statement of interest in serving, two letters of endorsement by other growers, and documentation to substantiate the person's qualifications to serve on the board. Secondly, because sorghum production is a rotation crop that may not be annually grown on each farm, the bill would change qualifications for eligibility by eliminating a requirement that implies continuous production over a five-year period. The bill also strikes that a person is required to derive a substantial portion of income from sorghum production, and only require that they derive income from sorghum production. Now if you take the material that I've handed out, and I'd ask you to pick this up and turn to the second page first, because the second page illustrates the districts under current law. And you can see by those that the concentration of production, when this was done, was in southeast Nebraska. That production has moved. And so the proposal is for the first page, which would divide the state into four districts instead of six from east to west, and this better balances the production of sorghum. And finally...well, let's go to the third page. The third page shows the existing members of the board and how they would be assigned with the new district assignments. So we're not having new elections or new appointments. This would allow them to serve out their terms in accordance with this recommendation. And then the final page is a letter in support from Donald W. Bloss, the president of the Nebraska Grain Sorghum Producers Association. And so I would...I have referred to the letter by Mr. Bloss and he's not able to be here today, but this endorses LB107 on behalf of the association. I think this is a straightforward request. I think it's a reasonable request. I think there's thinking that's gone into this request and it better reflects sorghum production today in Nebraska and how future board members would be appointed in the application process. I'd be happy to try to answer questions that you might have in regard to this request. [LB107]

SENATOR WALLMAN: Seeing none. [LB107]

SENATOR CARLSON: Okay. [LB107]

SENATOR WALLMAN: First testifier, proponent. Neutral, or opponent. Neutral. Could you spell your last name, please, and fill out a sheet. [LB107]

LARRY DEDIC: (Exhibit 2) Okay, my name is Larry Dedic, that's L-a-r-r-y D-e-d-i-c. Thank you, Senator Carlson and members of the committee. I live at 1942 Denton Road in Pleasant Dale, Nebraska. I'm a dryland no-till farmer in the Pleasant Dale, Milford, area and I am one of the farmer directors of the Nebraska Grain Sorghum Board. I'm representing the Grain Sorghum Board here today upon the invitation of Senator Carlson, to be available during this hearing, to be available to answer any questions that you may have, that the committee may have. The script that I handed out I will not be reading, but it does reflect the feelings of the board as to the justification and purpose

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for the proposed changes. I'll present a condensed version. As Senator Carlson pointed out, due to the reduction in sorghum acres and the shift in Nebraska that has taken place since 1981 when the board was first...or the law was first enacted. And mainly the shift has been from the southeastern portion and it is mainly concentrated now in the southern portion, southern tiers of Nebraska. And I think Senator Carlson pointed out, these two maps shifting the number of districts from six to four, it would still be a seven-member board, but presently it's six from a district, one from each district and one at large that the board appoints. The proposed change would be one from each of the four districts, plus two appointed by the Governor at large, and one at large appointed by the board. So we still remain at seven board members. It creates...because of the shift with the petition process, followed the example of the Wheat Board in eliminating the 50 signature petition process, which is quite cumbersome and quite limiting as to who is interested in going through all that effort and expense to apply for a voluntary job. So if there are any questions, I'll take them at this time. [LB107]

SENATOR WALLMAN: Any questions? Senator Harr. [LB107]

SENATOR HARR: Thank you, Senator Wallman. And thank you for coming to testify today. [LB107]

LARRY DEDIC: You bet. [LB107]

SENATOR HARR: And I guess my question is more of an edification. Why has sorghum...the area switched from the southeast to all of south Nebraska? [LB107]

LARRY DEDIC: Well, it was in the south. I probably misstated that. There used to be quite a concentration in southeast Nebraska, but there is less acres now in southeast Nebraska and across the entire state. Back in '81 when it was established, former Senator George Coordsen was on that board, first year, I guess. There were roughly 2 million acres in Nebraska and right now there's barely 10 percent of that. But it's still an important dryland crop, but the dynamics have changed. And with the old map of the six districts kind of reflect where the concentration was. Well, now with corn hybrids that are a little more drought tolerant and the implementation of no-till farming systems, corn has removed...replaced some of those acres as well as CRP. And then, of course, center-pivot irrigation in the last 30 years has had quite an impact of adding more irrigated acres in Nebraska. And so that has..all those things probably contributed the most to the reduction in acres. And so it's primarily a dryland crop in the areas that, unfortunately, frequently, are a little short of rainfall. And, of course, the crop is mainly...the biggest acres are in our neighbor to the south in Kansas and Texas and Oklahoma. [LB107]

SENATOR HARR: Thank you for answering that. I appreciate that. [LB107]

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LARRY DEDIC: You bet. [LB107]

SENATOR WALLMAN: Anybody else have a question? I have a question. Do you know Mr. Bloss personally? [LB107]

LARRY DEDIC: Yes. [LB107]

SENATOR WALLMAN: I do too. Does he still grow sorghum? [LB107]

LARRY DEDIC: Pardon me? [LB107]

SENATOR WALLMAN: Does he still grow sorghum? [LB107]

LARRY DEDIC: I'm quite sure he does. [LB107]

SENATOR WALLMAN: Okay. Anybody else want to testify in the neutral position? Thank you. [LB107]

LARRY DEDIC: You're welcome. [LB107]

SENATOR WALLMAN: Anybody else? Would you like to close, Senator? [LB107]

SENATOR CARLSON: I'll simply...thank you. I'll simply remind the committee that we have the positive testimony and he would have intended to be here as a positive testifier and couldn't be because of a funeral. So that's why the letter was provided, and I think there was good explanation given of the reduction in acres. And the fact that that's occurred, it's a pretty burdensome rule to have a petition with 50 signatures of sorghum producers. And I think this change is much more reasonable and makes sense, so would appreciate your consideration. Any questions? Okay, thank you. [LB107]

SENATOR WALLMAN: Thank you, Chairman Carlson. (See also Exhibit 3) [LB107]

SENATOR CARLSON: So we've closed the hearing on LB107 and we're ready to move to the hearing on LB394. Senator Schilz, welcome to the committee and you're recognized to open. [LB107]

SENATOR SCHILZ: (Exhibits 1, 2, and 3) Thank you, Senator Carlson and members of the Ag Committee. Nice to be back. I'm handing out right now...oh, wait, I guess I'll just start in. Good afternoon, Chairman Carlson and members of the Agriculture Committee. For the record, my name is Ken Schilz, K-e-n S-c-h-i-l-z, and I represent District 47, and I'm here today to introduce LB394. First, I've got two letters of support that we're handing out right now. One is from the Nebraska Dry Bean Growers Association and

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the other is from the Nebraska Dry Bean Commission. LB394 simplifies provisions and changes provisions for the process of nominating persons to serve on the Dry Bean Commission. The bill would require that the commission appoint two grower members, one whom resides within district 1 and 2, one whom resides within districts 3 and 4. These members serve a full term of three years at which point they're eligible for reappointment or a successor may be appointed. LB394 also requires three processor members of the commission to be appointed by the Governor. The grower wishing to be placed on candidacy list for the appointment is to present an application from the Governor's office to the commission along with a statement of interest...this is going to sound familiar, two letters of recommendation from other growers, and suitable documentation to validate qualification to serve on the commission. After the commission reviews the candidate's qualifications, they're to provide copies to the Governor along with their assessment of each candidate's qualifications to serve on the commission. And then the Governor and the commission make the appointments based on their reviews of the applications and qualification information. I also had some correspondence with the Nebraska Dry Bean Growers and they've also included an amendment which I've also handed out. One change they made is to allow the Governor to appoint at-large grower members if any district has more than one position open for longer than one year. And they claim that this would help fill those commission positions that have...and they've got a few of those positions that have remained empty for a considerable period of time. The second change would, obviously, it would say the same required two letters of endorsement from dry bean growers, but they would like to add a letter of endorsement from the Nebraska Dry Bean Growers Association. I present those to you on behalf of the group so that you can see it. It's up to the committee on what you want to do with that, but I respectfully submit those. And with that, I encourage you to support LB394, and I'd be happy to try to answer any questions that you might have. [LB394]

SENATOR CARLSON: Okay. Thank you, Senator Schilz. Any questions? Yes, Senator Wallman. [LB394]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yes, Senator Schilz, how come you didn't bring any dry beans? (Laughter) [LB394]

SENATOR SCHILZ: Well, I have to be honest with you, I don't...my farm doesn't actually grow any dry beans, but I have been known to pick a few up off the neighbors every once in a while, so. But I didn't bring any today. [LB394]

SENATOR WALLMAN: Well, thank you. [LB394]

SENATOR SCHILZ: You're welcome. [LB394]

SENATOR CARLSON: Any other questions? Okay. Thank you, Senator Schilz. Do we

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have anyone testifying as a proponent of LB394? Anyone testifying as an opponent of LB394? Or anybody in neutral position? Seeing none, Senator Schilz waives closing. Thank you. And that closes our hearing on LB394. It takes us to our fourth hearing. If Senator Louden...so we'll sit at rest for a few minutes until Senator Louden is able to come in. Senator Louden, you are welcome to take the spot and open on LB473. (See also Exhibit 4) [LB394]

SENATOR LOUDEN: Well, good afternoon, Senator Carlson and members of the Agriculture Committee. My name is LeRoy Louden, that's spelled L-o-u-d-e-n, and I represent District 49. I'm introducing LB473, known as the Black-Tailed Prairie Dog Management Act, because constituents and county officials have pointed to the need for control of the species in some areas in Nebraska. There are instances of these species migrating to nearby property and the owner of the property that receives the migration doesn't have any recourse to a control of the migration. Thus, it could cost a landowner large sums of money to control the animals on their property only to have a reinfestation from a nearby colony that isn't managed. LB473 doesn't require eradication of the rodents. It requires that a landowner upon his or her or its property to prevent the expansion of black-tailed prairie dog colonies to adjacent property if the owner of the adjacent property objects to such expansion. A county may adopt, by resolution, and carry out a coordinated program for the management of black-tailed prairie dogs on property within the county consistent with the Black-Tailed Prairie Dog Management Act. When a county adopts such a resolution, the county shall assume the authority and duties provided in the act and the act shall be applicable to persons owning or controlling property within the county. And a county may, by resolution, discontinue a coordinated program for the management of black-tailed prairie dogs. LB473 outlines the procedure needed to notify a landowner that isn't managing animals on their property. And the reason LB473 is called a management act is because some research has shown that black-tailed prairie dog can be confined to an area by planting tall grass or brush type vegetation. And the Forest Service out in western Nebraska have been practicing things like that for the last, oh, two or three years, ever since the drought back there in 2003 and 2004 when we had such a problem with prairie dogs out in western Nebraska. Since then, there's been more rain and more vegetation, so the problem isn't arising like it did in those days because they're not migrating. But we do have situations where some of them need to be controlled on local areas. And I would ask that you would approve and advance LB473 and I'd be happy to answer any questions. [LB473]

SENATOR CARLSON: Okay. Thank you, Senator Louden. Any questions concerning LB473 of Senator Louden? I have a question. I'm not sure, how many are going to testify on this bill? Okay. Are the provisions that you have here, are they going to be interpreted as unreasonable? [LB473]

SENATOR LOUDEN: Well, we were hoping they wouldn't be because it's mostly...well, if anybody doesn't...hasn't, when you deal with some of those...well, let me put it this

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way. There are some people you deal with that whatever you do is unreasonable, I guess. (Laughter) But ordinarily you'd think common sense would prevail. [LB473]

SENATOR CARLSON: What kind of time are we talking about in spreading from one piece of property to another? [LB473]

SENATOR LOUDEN: Well, I don't know if there's a time frame, but if they're starting to go over, they're just starting to go over. I mean, I don't think you can say, well, there's only been two go over. The idea of the bill is, if one migrates off of there and starts migrating then something will probably have to be done. Usually what happens in these areas is, you'll be...people will get eradicated dog town on their property and a nearby property they didn't. So just a matter of time that they get enough, why they go over there and the houses are already built. All they've got to do is clean it out and move in and you're right back where you are again. And that's where we're having people having to spend considerable amount of money, and it seems like there's no end to it because they keep getting reinfestation. [LB473]

SENATOR CARLSON: Well, and then there's...seems like there's two circumstances. One, when they've got a ready-built house. So that can't take very long to migrate over there. The other would be where they don't, but that still probably doesn't involve a lot of time, does it? [LB473]

SENATOR LOUDEN: Well, yeah, anytime I've been around them, when they've moved in, it's just...one day, oh, my goodness, here's a mound out there, you know, one day and nobody seen them digging it. And I don't think they work at night, but anyway the mounds showed up and there it was. And it wasn't long they got family and friends. (Laughter) [LB473]

SENATOR CARLSON: All right. Any other questions of Senator Louden? Okay. Thank you. And are you going to be here to... [LB473]

SENATOR LOUDEN: Yeah, we're done for the day downstairs. (Laughter) [LB473]

SENATOR CARLSON: Oh, okay. All right. All right, testifiers in support of the bill. [LB473]

LARRY DIX: Good afternoon, Senator Carlson. My name is Larry Dix, spelled L-a-r-r-y D-i-x. I'm executive director of the Nebraska Association of County Officials appearing today in front of you in support of LB473. And I just want to make a couple opening comments from the association's point of view, and then we're fortunate enough to have one of our county board members and a member of our NACO Board here with us today that will be testifying following me here in a little bit. But some of you have been around long enough to remember when Senator Louden had brought this bill before us

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previously, and we talk about that from time to time, about the prairie dogs. One of the things that is different, certainly, in this bill, if you will remember back in previous years there was a fiscal note associated with it because there were some provisions in there for the Department of Ag to participate, and those certainly have been taken out of the bill. This puts the onus squarely on the back of the counties. The other thing that's very much different in this bill, is that it's very, very permissive from county to county to county. Now do I think that we're going to see 93 counties adopt the...make sure I get it right, the prairie dog? No, we're not going to see 93 counties do that because this problem isn't in 93 counties. But when we were visited by some county board members from the western part of the state, it's a serious problem in those counties. And it isn't just that the county board members are saying, you know, we want to do something about it. The county board members are being approached by many of their constituents saying, you know, how can you help us, what can we do. And so it is with that, and that reason, that a number of the county board members in the western part of the state brought it to us. We want to work with them and Senator Louden. We certainly appreciate Senator Louden for introducing this. But it's with that intent that this bill was brought forward, because it is a problem in a few of the very western counties. So with that, I'd try to answer any questions full well-knowing there's going to be someone coming behind me that probably has more details on the day to day, what happens on a day to day, and how it impacts counties. So be happy to answer any questions that you may have. [LB473]

SENATOR CARLSON: Okay. Thank you, Larry, for your testimony. Any questions?
Seeing none, thank you. [LB473]

LARRY DIX: Thank you. [LB473]

SENATOR CARLSON: Next testifier as a proponent of LB473. Welcome. [LB473]

ALLAN GUSE: Thank you. Good afternoon, Senator Carlson and members of the Agriculture Committee. My name is Allan Guse, and that's A-I-I-a-n G-u-s-e, and I'm from Longmont, Colorado. And I'm here today on behalf of my brother-in-law, Dr. Donald Dreyer and Mr. Wayne Dreyer of Hay Springs, Nebraska. And I appreciate the opportunity to take part in this hearing on the bill sponsored by Senator LeRoy Louden. And I apologize not to have any handouts but I found out Sunday night that I was being asked to come out here, so I spent yesterday driving from Colorado. So I guess to start off, you may wonder why somebody from Colorado is here today supporting a Nebraska bill. My brother-in-law, Dr. Dreyer, was unable to attend and Wayne Dreyer found himself in the middle of calving, but both felt that it was...strongly enough about this bill that they asked me to attend in their stead. So just a little background. I was born in Scottsbluff, so I'm familiar with the western part of Nebraska. I grew up in York, Nebraska, and the past 50 years I've been in Colorado. The past 30 years I've been going up with my brother-in-law to work on the ranch up in the Panhandle of Nebraska,

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which is in Hay Springs, just south of Hay Springs, we're just south of Walgren State Reservoir and park in that area. I even committed to let my son come back here to Nebraska and play football a few years back, so. So the past two years since my retirement from IBM and as a district executive of Boy Scouts of America, I've been spending almost all of my time up there starting in March through November working as the hired hand, ranch hand, and about every other hand that you want to get, so. I think my ties to Nebraska are the reason for my support on this bill. So during this time in days and years gone past, we might have had maybe 20 acres where we had prairie dogs back there. Over the years, right now, we're estimating we probably have over 400 acres, and that's been with aggressive poisoning and trying to maintain the prairie dogs. And all of these...basically, we're looking at an average of about \$2,500 a year just for the poisoning. That doesn't take into account the man-hours. Typically, there's three of us that are spending about four days twice a year walking those pastures and fields out there trying to take care of applying the poison in the correct manner to protect livestock and other wildlife. All of this is a direct result of neighboring landowners providing no control. It's really depressing to see all this beautiful pasture land that basically has turned into mounds of dirt, so you lose not only...and especially in western Nebraska, grass is hard to come by, a little harder than it is back east, so for us. And when you look at these pastures that have been in my brother-in-law's family for over 70 years that are turning into dust piles out there to match some of the neighboring that's, I think, what really catches our attention. We've actually tried other measures besides the poisoning type thing. I think Senator Louden mentioned the idea of grasses. We've actually gone out and fenced off with an electric fence, strips, border strips of pasture to keep our cattle from grazing so that we would keep the prairie dogs off, not too good a result. When you get dry times, they still make their way through. Plus the fact that we're giving up that much grazing, and cattle grazing and just, you know, not even counting the loss of time, how long it takes to get out there and string the electric fence out there where we could be doing other fencing, other projects out there. It's not that we don't see, you know, the need and the interdependency of the prairie dogs, the black-footed ferrets, the burrowing owls, and how the raptors, you know, require feeding and things like that. But for years, we've planted thousands of trees out there to try and, you know, provide habitat for wildlife. And we think right now there's enough effort being provided on these sanctuaries...I think they're talking about one now in central Sandhills of providing a sanctuary for prairie dogs that will be controlled and give them the opportunity to interact with these other species. It's really...it's not just the effect of the black-tailed prairie dogs on the land and the livestock, not to mention the plague carrying possibilities that they can do out there, but to us in a daily, we see safety of human beings. And we now have about a quarter-mile stretch of a public road out there that prairie dogs have built mounds and we're aware of it, but if somebody comes down that road they may very well either hit it, wreck their vehicle, or could even cause a turnover and they'll be done. So in conclusion, we're not advocating control of the freedom of landowners to do as they wish with their land, but when that freedom affects other landowners by increasing the cost and ability to earn a livelihood, then it's time for

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action such as this bill to ensure that they are not forced to bear the burden unjustly. I thank you for your time. Any questions or... [LB473]

SENATOR CARLSON: Okay. Thank you for coming. [LB473]

ALLEN GUSE: I say, I apologize, I couldn't get written things together. [LB473]

SENATOR CARLSON: Thank you for coming from a distance and testifying today. Do we have questions? Senator Lathrop. [LB473]

SENATOR LATHROP: And I apologize to my colleagues on the committee because I was down introducing bills in Banking and Insurance and so I didn't hear the problem these things cause. That was probably done by Senator Louden in his introduction but, and I don't want the long version. Can you just give me the short version on what problems this causes to a landowner. [LB473]

ALLAN GUSE: Basically what happens is if the other landowners are not taking care of their prairie dog problem, they will migrate because they've eaten up all the food that's provided there. [LB473]

SENATOR LATHROP: Oh, I get that part. Tell me what one of these things or a colony of these does to... [LB473]

ALLAN GUSE: What a colony can do is basically wipe out our pasture lands, our grounds. [LB473]

SENATOR LATHROP: Do they eat the grass, is that... [LB473]

ALLAN GUSE: They eat the grass, they create the mounds, and they fan out in, almost like star shape octagon colonies with trails. Now you've got... [LB473]

SENATOR LATHROP: Do the critters...do the cattle break their legs in their holes? [LB473]

ALLAN GUSE: Cattle. Not only cattle, but other wildlife, deer and stuff. We've found...years and years, we've found animals out there that have actually stepped in holes and broken legs and stuff like that. [LB473]

SENATOR LATHROP: Okay. I just want to apologize for missing the introduction. [LB473]

SENATOR CARLSON: Okay. Senator Wallman. [LB473]

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SENATOR WALLMAN: Thank you, Chairman Carlson. Do you think in the great scheme of things, you know a guy in Texas told me they had trouble with this, that when they got rid of the rattlesnakes, this problem came about? [LB473]

ALLAN GUSE: You know, it's kind of...you kind of wonder sometimes because a lot of times when the prairie dogs built all of this, it actually attracts the rattlesnakes sometimes because now you've got the clearing. Plus, the fact that by burying all of this where you don't have the grasslands and stuff, we actually open it up for more noxious weed growth and things like that, like Canadian thistle and some of the other weeds to come in on those bare open spots where there's no longer grass to choke it out. So it's multi-pronged, it just keeps working. Being from Boulder, where I am in that area, we've been dealing with that problem back there in Colorado for a long time. A lot of issues. [LB473]

SENATOR CARLSON: Okay. Any other questions? Okay, I have...you talk about the neighbors out there. Are they ranchers? [LB473]

ALLAN GUSE: Yep. [LB473]

SENATOR CARLSON: What does their spread look like? [LB473]

ALLAN GUSE: A lot worse than ours. Some of them have got some pretty good reputations in that part of the country and they basically...we've actually helped some neighbors that didn't have the time. We've actually gone to them and said, we'll put the labor in if you'll help us pay for the poison and we'll try and put borders. We started that on one pasture, a horse pasture, and we ended up doing the whole pasture for the guy because it was worse than we ever even saw it. When you talk about them moving in, they'll move in overnight. You may think you've got it clear, and the next year you turn around, and they're right back out there again. And you won't see anything, because they'll go down the holes and stay down there for hours too. [LB473]

SENATOR CARLSON: Well, if the neighbors have this problem and don't handle it, they must have a big enough spread that it doesn't matter to them or they just...are they lousy ranchers? [LB473]

ALLAN GUSE: That's been a real question for a lot of us for a lot of years, is how can you let your pastures go into absolute...there's no way to run cattle on them or do anything else on them. And so we're sort of befuddled after all these years when you try and maintain your land and try and use it, you know, because we're losing. I don't say, we're personally, because I'm retired. I'm doing this because I enjoy doing it and I like doing it. But for Wayne and people like that, they're just common western Nebraska people that are trying to maintain and create a living. And it's tough when you put these additional costs on top of that and the time. [LB473]

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SENATOR CARLSON: Okay. Thank you. Any other questions? Well, thank you again for your testimony. [LB473]

ALLAN GUSE: Thank you. [LB473]

SENATOR CARLSON: Next testifier. [LB473]

PETE McCLYMONT: Good afternoon, Chairman Carlson and members of the Ag Committee. For the record, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm here as vice president of legislative affairs for the Nebraska Cattlemen, and we are here in support of Senator Louden in LB473. Six years ago, if you were here, Senator Louden put in a lot of time and effort on this bill, and so I appreciate him coming back with this same measure this year. Your two previous testifiers did a great job. The only things I'd like to add on to that in terms of encroachment only, if any of you have ever had to manage musk thistles in your operations, if you don't take care of musk thistles, they cross fences and boundaries real quick and your neighbors can have a big problem if you don't take care of yours. Prairie dogs are the same way. Basically, they can have, on average, a brood of four, possibly eight. And so when the males get to two years of age, then they expand their colony. So, you know, this topic can be seen as humorous and it's a cute little rodent but the reality of it is, to the previous testifier's comments, it will create havoc with your pasture, your grass and, you know, also to the animals, so. Another point also is to emphasize Mr. Dix's comments, you know, this is not prescriptive. It allows the counties to make a decision based on their needs so they can do their due diligence as a county and local government. So with that, we'd like to thank Senator Louden in bringing LB473 and support him, and happy to answer any questions. [LB473]

SENATOR CARLSON: Okay. Thank you, Pete, for your testimony. Any questions? Seeing none, thank you. [LB473]

PETE McCLYMONT: Thank you. [LB473]

SENATOR CARLSON: Any more testifiers as a proponent of the bill? Welcome. [LB473]

JACK ANDERSEN: (Exhibit 2) Hello. Thanks, Senator Carlson and members of the Agriculture Committee. My name is Jack Andersen, J-a-c-k A-n-d-e-r-s-e-n. I am testifying today on behalf of the Sheridan County Board of Commissioners in support of LB473. The board took action to support this legislation and I believe that they are in support of all of my comments today. However, I did not have a chance to have them more than read the draft and I didn't see any red flags go up. It does need to be understood that prairie dogs are not dogs. The prairie dog is a member of the rodent

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family, which has been pointed out. And I'm not here advocating the eradication of the species, but rather control or containment. When one visits an area heavily infested with these rodents, the finding is an area where the vegetation is clipped very close to the ground. Upon close inspection one may find vegetation clipped and laying on a surface. In addition to the amount used for food and bedding, a range specialist tells me that as a defense mechanism, the rodents mow down the vegetation so that they can better see predators. When walking through these areas, one should be wary as the burrows they create also tend to make great homes for rattlesnakes. Each year during valuation protests, our board of equalization is presented with testimony from landowners claiming their land is less valuable due to problems with these rodents. Local real estate agents tend to validate that conclusion. I've presented a letter from one of those agents. He happens to be my brother. He claims that he's the good looking one. (Laughter) And another agent recently told me that selling land near an uncontrolled prairie dog town is difficult and the price usually reflects the impact of the rodents' presence. While a sale is impacted by a nearby prairie dog town, this agent said that selling property in an area where neighbors are taking an active part in control or containment is less difficult. At first glance, this may seem to be a localized problem only affecting a small area. In Sheridan County, our assessor has not yet set up market areas. With our mass appraisal system, sales of a class of land in an area where there is a rodent problem affect the assessed value throughout the entire county. This agricultural land assessed within...assessed values 80 miles away are affected by those sales. And the reverse is also true. A sale 80 miles away from the problem area is used to determine the assessed value of a class of land in the affected area. It is a countywide concern that can even affect the assessed values of land in adjoining counties. What about a property owner that doesn't mind 20 or 40 acres of those cute little rodents? Maybe they even see them as to provide additional income by providing prairie dog shoots for a fee. And in one of the cases that you visited about a bit ago, I believe that is the case. Some studies have indicated that foraged nutrients are actually enhanced by the presence of these rodents. I certainly am not qualified to argue that point, but I suspect that any benefit derived could be offset by an overpopulation of the rodents. When a town becomes overpopulated, the adults move on to expand the town or create a new one. Now neighbors that are trying to make a living through traditional agricultural endeavors see their income reduced and costs increased. I believe the answer is control and containment. If our city cousins were faced with an uncontrolled rodent problem in their neighborhood, I believe a city ordinance would be implemented to address the problem. Counties do not have ordinance authority, so we are here asking that you provide us with a tool we can use to control this problem. LB473 does not require any action. It does allow action to be taken. I do not wish rodent cop be a part of my job description, but for the good of our county, it appears that maybe it should be added. Possibly, because I'm not holding my breath, if there were statutes that could be utilized, landowners, where a problem exists, would take it upon themselves to control or contain the rodents. And I would be glad to try to answer any questions. [LB473]

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SENATOR CARLSON: Okay. Thank you, Mr. Andersen. Any questions from the committee? Senator Lathrop. [LB473]

SENATOR LATHROP: I just want to ask very briefly, again, the short answer if I can. Is poison the answer for these things or shooting them or how do you contain them? [LB473]

JACK ANDERSEN: There are many different things that...the thing is to try to keep the numbers, in my opinion, down to where they don't just spread all over. A combination of all those things. And our county agent said that, and the previous testifier mentioned that they had tried fencing off an area. Our county agent indicated that probably some grasses would need to be introduced because the native grasses that are there might not create a barrier that they would not penetrate. So if the person wants to keep the things fenced in, let's try, give them a chance, let's try some introduced grasses. Of course, one of the first things that came to my mind then is, we've got to be sure we don't bring in a grass that we...causes us more damage, and... [LB473]

SENATOR LATHROP: Yeah, we've done that with the fish where we brought in some fish to eat the others and then they become the problem. But do you poison these things? Is that generally how you eradicate? [LB473]

JACK ANDERSEN: That's the method that is often used, yes. [LB473]

SENATOR LATHROP: And do you put some poison down a hole? I'm just wondering how you not poison your cattle in the meantime. [LB473]

JACK ANDERSEN: There are different types of poison. There's a poison oat that you put out that you have to kind of bait them first because they won't eat the thing with the poison on it. And you have to plan it in the right time of the year, and you need the cattle out of there, and you come in and you feed them some of this in the time when there isn't much vegetation and they supposedly get to liking it and then you come along and slip them some that's... [LB473]

SENATOR LATHROP: I'm just wondering why you don't get those Omaha hunters out there. Do you guys discourage the Omaha hunters? [LB473]

JACK ANDERSEN: No, and that was... [LB473]

SENATOR LATHROP: Because they kind of got a bad reputation and I think they might be useful. In the end they might be helpful to this process. [LB473]

JACK ANDERSEN: I think actually there are at least two outfitters in Sheridan County that provide prairie dog hunts. Personally, I'm not into hunting and I'm surely not into

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hunting something I can't eat. (Laughter) [LB473]

SENATOR LATHROP: I think there's people that do. [LB473]

JACK ANDERSEN: I know there are and one of the places that is really heavily infested, I think he does subsidize his income by charging people to come out and shoot them there. But that does nothing for the guy that is trying to make a living farming next door. [LB473]

SENATOR LATHROP: Farming, right. Okay. Thanks. I appreciate your answers. [LB473]

SENATOR CARLSON: Senator Harr. [LB473]

SENATOR HARR: First comment is, after you kill one or two, they all go down. You lose them when you do do that type of hunting. Because I am one of those awful Omaha hunters. [LB473]

SENATOR LATHROP: I know somebody else (inaudible). [LB473]

JACK ANDERSEN: Come on out. We've got a big enough town that... [LB473]

SENATOR HARR: I had fun doing it. I go as far as Cherry County, though. [LB473]

JACK ANDERSEN: Well, we're just one more over. [LB473]

SENATOR HARR: Quick question. And this is more of a policy question than anything. This is adapting the...or adopting the noxious weed policy. As a county board member, do you think this is the best manner? Do you think there needs to be work done on the noxious weed, also this, or what are your feelings about the noxious? [LB473]

JACK ANDERSEN: In our county we've got an excellent weed superintendent. I would put her up against anybody in the state and she does a tremendous job. I don't have a problem at all with the way the weed program is working in our state, and this is somewhat...it's pretty much follows after. In Sheridan County we also have an animal damage control officer that's partly federally funded that the question would be, you know, like...and people...those two would work together very well. What I foresee there is if we were to have this kind of a control and if we have a problem that the landowner doesn't decide to take care of once he finds out he's going to have to do something, then I believe that those two would work excellent together. And I'm not wanting to get rid of every prairie dog in the state. All I want to do is keep them down so they're not taking over the county and down...bringing down the valuation 80 miles away in the part of the county where I live. Of course, that would be an advantage because then taxes

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would go down. [LB473]

SENATOR HARR: Okay. I just wanted to make sure that you were okay with noxious, that whole formula. [LB473]

JACK ANDERSEN: I think it's a wonderful thing. It does...we've had real bad problems with leafy spurge in localized areas. We've made tremendous progress on it. We've still got problems, but nothing like we would have had if we hadn't had an excellent weed superintendent. [LB473]

SENATOR HARR: Thank you. [LB473]

SENATOR CARLSON: Okay. Thank you. Any other questions? Thank you for your testimony. [LB473]

JACK ANDERSEN: Thank you. [LB473]

SENATOR CARLSON: (Exhibit 1) Further testifiers in support? I do have some letters of support. One is from Doug Andersen Real Estate. We have James Lees, director of the Upper Niobrara White Natural Resources District. We have Tony Hindman from Hay Springs; Fred Jungck from Hay Springs; Merle Metcalf from Rushville; Wayne Dreyer from Hay Springs; and Don Dreyer, veterinarian, from...that was our testifier from...that's your brother. [LB473]

ALLAN GUSE: Brother-in-law. He's the landowner. [LB473]

SENATOR CARLSON: Okay. That's those that have sent letters in support. Now do we have people in opposition? Welcome. [LB473]

JAREL VINDUSKA: (Exhibit 3) Thank you. Senator Carlson and members of the Agriculture Committee, my name is Jarel Vinduska, J-a-r-e-l, last name is Vinduska, V-i-n-d-u-s-k-a. I'm going to be giving testimony on behalf of the Nebraska Wildlife Federation and myself. First off, I want to state up front I'm a little self-conscious of testifying here today on this issue because we have a farm in eastern Nebraska here, and eastern Nebraska farmers aren't confronted with the problem of trying to make a living off the land and coexist with prairie dogs. So in that regard, I don't have any personal experience at it and I do sympathize with...like I say, it is hard to make a living off the land and your profit margin is generally pretty slim so you don't want to share your...if you're a farmer or a rancher, you don't want to share your forage too generously with wildlife species. But that being said, the reason I'm here today is, I guess, it's twofold. Well, first off, next Thursday, this Thursday of this week, we're going to be, in the Natural Resource Committee there's going to be LB391 that deals with invasive species. They're going to try to make a whole new committee and council to deal with

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invasive species in Nebraska and we're...we've got a big problem in that regard. Leafy spurge was just mentioned and there's a host of others all up and down through and about Nebraska. Especially in the Platte River corridor, you've got purple loosestrife, phragmites. In the east here in the woodlands, we've got garlic mustard. We've got a host of others. Now in the lakes we're worrying about zebra mussels and I could go on and on. That's the way our world is coming nowadays is we're mixing the populations of plant and animal species from the whole world everywhere, and somehow we're going to have to deal with them. But in this regard, we're talking about prairie dogs. We're talking about a native species. And I think it's bad public policy to take a native species and, basically, take away a person's private property rights and say that you have to control them on your property. I understand that when you have a huge population they do go across boundaries and eat forage that livestock could use, but that isn't the only wildlife species we have that does that. I mean, it may be the most prominent that you notice the most, but deer and elk can do that on haystacks. And even down on insects, grasshoppers can have breeding grounds on one person's land and he doesn't spray for them and they move to the other person's land. But I think from public policy it's just wrong to go down that road to take a native species and say that a person has to eliminate on his land if it goes to somebody else's land because where do you draw the line? How far back do you kill them off from your line? Do you kill them 10 feet? Do you kill them 100 feet, a quarter mile, a mile? If you have any population on your land, that population can move to somewhere else. So basically, if you've got an over...you would hope that county commissioners would be reasonable, but if you do have an overzealous county board that just hates prairie dogs and would like to see every one of them eliminated off the earth, they could say, well, this colony over here a mile away or a half mile away moved on to this guy's land, so let's kill them. And I don't think that's right. I think as hard as it is for the rancher, I think the only way that respects somebody's ability to keep them on his land, if he wants to, and respects his property rights to be able to do that, we have to use the fence line as the boundary. If they cross the fence line, then you have to kill them, if you don't want them. And if they're on the other side of the line and that guy wants them, he should be able to keep them. And they are a signature species of the Great Plains. They are a species that we've already determined that to have black-footed ferrets and burrowing owls and rattlesnakes and salamanders and lizards and all the other things that are part of the prairie ecosystem, they need those prairie dog holes. And so I don't think we should say as a society that you got to get rid of them because I say you have to, and you've got to pay for it, if I say you have to. So that's about all I've got to say. I've submitted a letter on behalf of the Nebraska Wildlife Federation. I'm a board member. And if you have any questions that I could answer, I'd be happy to do it. [LB473]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Yes, Senator Larson. [LB473]

SENATOR LARSON: Thank you for coming in and testifying. You bring up the point of

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property rights and not letting...you know, landowners should not have the obligation to get rid of them. Do you see any comparisons between this and noxious weeds? I mean, right now counties require people to take care of the weed population that's on their land because they do spread on to other...their neighbor's land. Is that different than this or similar or...? [LB473]

JAREL VINDUSKA: I think it's very different because musk thistle, I think you're referring probably to musk thistle and several other thistle species that are introduced species. I think the difference would be if you took a native thistle species and said, the guy needed to get rid of those, I don't think that's justified, a nonnative one that blows on the wind that can go far and wide. You know, these prairie dogs, they're terrestrial so, you know, they're not going to...granted I'm not going to dispute any of these people who testified before me because, like I said at the start, I don't have that much experience with them, but I suspect that they're not going to just in a whole army just show up. And if you kill them up, the next year the same army is back again. Whereas thistles...and I do sympathize, I do agree with them, if you disturb the prairie and make it real short, thistles do get started a lot easier. So I know they're correct on that. Even in eastern Nebraska, you see that if you overgraze a piece of property, you do have a thistle problem. But yeah, there's a...I guess the distinction I draw is we've said wildlife in Nebraska are the property of all the people of the state, and we've charged the Nebraska Game Commission with managing it. And if we say...if we single out prairie dogs as a species that we say, it's causing trouble, what's to say...like on our farm, we produce a lot of deer and turkeys. If those deer and turkeys go to our neighbor's farm and start, you know, preying on their corn, I'd hate to have the Game Commission say, you've got to come over here and kill these deer or turkeys because they're eating too much of my neighbor's corn. Well, they should be managed as a wildlife species. And this is, in my mind, no different. I mean, I know they're looked at as a pest, but they're still a native wildlife species that's very important for the prairie, for the prairie ecosystem. It's not maybe very important for cattle raising. (Laugh) [LB473]

SENATOR LARSON: Thank you. [LB473]

SENATOR CARLSON: Okay. Thank you. Any other questions? Okay. Thank you for your testimony. [LB473]

JAREL VINDUSKA: Thanks. [LB473]

SENATOR CARLSON: Next testifier in opposition. Seeing none, is there anybody testifying in a neutral position? Seeing none, Senator Louden, you're recognized to close on LB473. [LB473]

SENATOR LOUDEN: Thank you, Senator Carlson and members of the committee. As you've noticed, I suppose, in the bill, the county board or county commissioners can

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adopt this by resolution. They don't have to have a vote of the people, and it isn't something that everybody in the state of Nebraska has to adopt. If they don't have prairie dogs, they don't have to adopt the legislation. So with that, I would point that out that this is something that's back to local control. I don't know if any of you...if you drive down Interstate 80, why, there, I think it's this side of Kearney someplace if you look on the south side there, why, you can spot a dog town and it isn't hard to do. All the grass is gone and you see these little mounds. And, of course, an old dog towner like myself, I can spot them for a long ways off. There's another dog town right in there just west of Cairo here in Nebraska, and it's getting to be a pretty good sized one over there. And to me it looks like it's on probably public land of some sort. I know that one along the Interstate is on public land. What we're trying to do with this is set it up so that if they're spreading from another person's, you can...you have to, I guess, maintain them or control them on your own land. There's a lady south of Gordon there, Jean Parker, that had a dog town for 20 years or so on her land. She called me up the other day and I said, well, as long as it don't spread out, it won't bother. And she said she put a steel post there around the edges of it in different places and it hasn't gotten any bigger for years. So evidently, she's got hawks, birds, dogs, or perhaps a badger. Badgers are great to control prairie dogs, that takes care of them and keeps them from multiplying like they do in other areas. So there is other ways of managing them and this is what this bill is all about. I think the one...Pete McClymont that testifying for the stock growers mentioned about the bill, or I guess it was Larry Dix mentioned about the bill we had before. And that one did state that they couldn't be over so many acres and they had to be controlled a certain distance back from fences. This doesn't have anything to do with that. Just as long as they don't go on someone else's property, you can raise all the prairie dogs you want to. And that's what we're trying to do. They talked about the ecosystem and native species and, of course, there are a lot of native species that we don't allow. I mean, we're passing legislation here the last two years on how to get rid of deer down here in eastern Nebraska. I think Lautenbaugh had several bills in to work at it some way or another in order to get rid of too many deer that were running into your cars. Well, it's the same thing. Of course, the deer migrate more than prairie dogs will. But, nonetheless, prairie dogs will migrate when they're hungry. And some of the native species they talk about, usually they always mention ground owls and you don't have to have prairie dogs to have ground owls. We don't have prairie dogs on our ranch and every year there's three or four colonies of ground owls that will usually go find a badger hole and rim them out. It's a lot bigger for them than a prairie dog hole. So that isn't part of it. When you mention that...I think Senator Carlson said they must have a lot of land. Usually, the ones where the problems are is people that don't have much land and they have another means of making a living, and they have this property out there and it doesn't matter whether it makes them any money or not. And so they just, consequently, don't do anything about it. And that's more times than not where the problem arises is. Those people that are interested in making what they can and make a living off the land usually take care of it. I don't think there's any better stewards of land than farmers and ranchers for taking care of their land. And the...again it's a county

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resolution and that's the way I tried to make it. It was...the reason I done that or I guess my thinking on some of this is that tourism bill that I introduced when I first came down here, and that was done the same way. They could introduce that occupation tax on lodging in a county and do it with a resolution. And one county already got in such a quagmire out there they voted to back out of it. So I don't know what they're going to do about tourism, but that's their problem at the present time. But I would ask you if you could advance this bill, and I'll be willing to answer any questions if you have some. [LB473]

SENATOR CARLSON: Okay, thank you, Senator Louden. Any questions? Senator Lathrop. [LB473]

SENATOR LATHROP: Can I just ask what a ground owl is? Is that really a bird that goes and lives in a hole? [LB473]

SENATOR LOUDEN: Oh, yes. They're about that tall and, you know, yeah, they're about this tall. And they're burrowing owls, I think. I don't know if they're called burrowing owls or ground owls, but they'll find holes out there in the prairie and usually a badger hole. And they'll clean that all out and they'll go ahead and nest down in that hole and raise their young in that hole. [LB473]

SENATOR LATHROP: Are they a problem? [LB473]

SENATOR LOUDEN: No. [LB473]

SENATOR LATHROP: No. What do they...I guess, I can talk to you about this tomorrow on the floor. (Laughter) I'm learning a lot here in the Ag Committee though. [LB473]

SENATOR LOUDEN: Well, if you get it out on the floor... [LB473]

SENATOR LATHROP: I had never heard about a burrowing owl before. [LB473]

SENATOR LOUDEN: Oh, yeah, well, Senator Lathrop, you need to expand your horizons. (Laugh) [LB473]

SENATOR LATHROP: Well, I think I need to get out to western Nebraska to check out these prairie dogs myself. (Laughter) I have a brother that goes on a tour and does that from time to time. [LB473]

SENATOR CARLSON: Senator Bloomfield. [LB473]

SENATOR BLOOMFIELD: Senator Louden, I've got a few hundred coyotes I'd be willing to loan you if you'd want to take some out there. [LB473]

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SENATOR LOUDEN: Some what? [LB473]

SENATOR BLOOMFIELD: Coyotes. [LB473]

SENATOR LOUDEN: Coyotes. Well, no, we've got enough. In fact, 5:00 this morning my son had to shoot one that was on a cow there and luckily in the dark and all, why, he had the tools to do it with, and we have all we need. Now do you have mange in yours? [LB473]

SENATOR BLOOMFIELD: Not so much. [LB473]

SENATOR LOUDEN: Oh, well, you've got to get mange back in them. That will take care of your coyotes. (Laughter) [LB473]

SENATOR CARLSON: All right. Any other questions? Okay, thank you, Senator Louden. [LB473]

SENATOR LOUDEN: Yeah, thank you. [LB473]

SENATOR CARLSON: (Exhibit 4) I did neglect to indicate there were two letters of opposition, one from Ken Winston of the Nebraska Sierra Club in opposition to the bill, and then as well as the Nebraska Wildlife Federation, Duane Hovorka with a letter in opposition. With that, we close our hearing on LB473. Thank you for coming and testifying. I would ask the committee to remain and let's go into Executive Session. [LB473]