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Agriculture Committee
February 22, 2011

[LB354 LB355 LB356]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, February 22, 2011, in Room 2101 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB354, LB355, and LB356. 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.
[LB354]

SENATOR CARLSON: Okay. Welcome to the February 22 Agriculture Committee hearing. I'm Tom Carlson, Chair of the committee. And to my right is our research analyst, Rick Leonard, whom I think most of you know. And then to my left is our committee clerk, Barb DeRiese. Our page is Kate DeLashmutt. She must be chasing somebody down but...she'll be happy to help anybody that needs some help. Over here is Senator Tyson Larson who is from O'Neill, and to my right, Senator Norm Wallman from Cortland, and then Senator Lydia Brasch from Bancroft, and Senator Dave Bloomfield from Hoskins. And Senator Steve Lathrop should be joining us before too long, and Senator Russ Karpisek and Senator Burke Harr. Now today our hearing pertains to the procedure that we went through prior to the session on LR542, so looking at different options out of the budget. And you senators that are new, you weren't in on this procedure, but we look for those things that were options and I would say that none of the options that we have...are going to discuss today were taken into account when the budget was put together. But we'll listen carefully to what your ideas are on these, and could be that one or more of them might be taken up later. We will conduct this as a regular hearing, so if you're going to testify, please fill out a green sheet and bring that up with you to the chair, and before you testify. And if you have material to hand out to the committee, give that to our page and she'll hand it around to the committee. When you do testify, please state your name first, and spell it for the record, and then go ahead with your testimony. So how many of you intend to testify today? Okay. All right. Well, I've asked our counsel, Rick Leonard, research analyst, to present these bills even though my name is on them. And so, Mr. Leonard, go ahead with LB354. [LB354]

RICK LEONARD: (Exhibits 1 and 2) Thank you, Chairman Carlson and members of the committee. My name is Rick Leonard, that's L-e-o-n-a-r-d. As Senator Carlson mentioned, I'm the research analyst for the Agriculture Committee, introducing LB354 on behalf of the introducer, Senator Carlson. LB354 is the first of three bills we're hearing today, as Senator Carlson mentioned, that implement LR542 options identified by the Agriculture Committee. These are three bills that are three of additional options that included other items, including some of the agency modifications, and utilizing LB910 funds from last year to cash fund the dog and cat program. These were three additional options that were part of the committee's package of ideas. LB354 would redirect the portion of expiring transfers from the Petroleum Release Remedial Action

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Fund that currently go to the EPIC Fund, to temporarily replace...be available for replacement of General Funds supporting regulation of petroleum product dispenser devices under the Weights and Measures Program. Each year since 2004, \$1.5 million has been transferred out of the...what we used to call the LUST Fund, and I'll use that from here on out. It's easier to say, for the Petroleum Release Fund. It has been transferred to the EPIC Fund to help meet the obligations of the Ethanol Production Incentive Program. Under current law, the last EPIC transfer will occur July 1 of this year. LB354 would direct \$400,000 in each of the next two bienniums to the Weights and Measures Program beginning in July 1, 2012, which would leave approximately \$1.3 million that would be retained in the petroleum fund, or the LUST Fund than is currently the case. Petroleum Product Release Fund is composed of petroleum products storage tank fees and an excise tax of nine-tenths of a cent a gallon for gasoline and three-tenths of a cent for diesel. The fund is utilized, as you probably know, as state aid for assessment and cleanup response to leaking underground fuel storage tanks. The incident of the excise tax and the tank fees were looked at in part because they would roughly correspond to the incidents of the Weights and Measures license and inspection fees that fuel marketing system pays. The transfer is contemplated in a spill, and I would point out in your books in the inside cover I provided two items of reference for the committee. One is a review of Weights and Measures Program, inspection program, and the distribution of cash in General Funds for that program. And you see that I've split out or marked off those that are petroleum product dispenser device inspection program. The other one is a analysis, or basically it's from DEQ's annual report of their petroleum release activity, and so those are referenced for you as we go along. Inside that, it's difficult to see...somewhat difficult to see but there's a chart that shows a projection of the Petroleum Release Cash Fund even after contemplating the...the transfer is contemplated in this bill. The concept for temporarily cash funding the Weights and Measures petroleum dispenser device inspection was considered in conjunction with the related Ag Committee option. The committee examined for the potential of implementing a privatized system for scales, and potentially other regulated devices similar somewhat into Kansas model for scale...scale certification regulation in lieu of the government provide annual inspection and certification. The committee included the privatized option only as a study option since the lead time required to implement such a system would not translate in the budget savings system this biennium. Additionally there are numerous, as I think the committee was aware, numerous policy and technical issues if that were an issue that depending on how the budget situation continued to evolve, that the committee felt it would want to look into more carefully. In any event, as Senator Carlson has stated, the privatization option would be seriously considered only if the state budget situation were to continue to deteriorate. Senator Carlson...his bill was introduced in consultation with the petroleum marketers who, while not necessarily endorsing the proposal, has said that they would accept this as an alternative to either privatizing or potentially an alternative if the budget situation were to call for even more drastic action of fully privatizing...cash funding the inspection program, which we calculated during the LR542 process would

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fully cash fund the program, would take anywhere from about two-thirds to 70 percent increase in inspection and license fees. I'll just point out saying that as pointed out in committee comments a Appropriations Committee preliminary budget has been released and at this point that committee has not incorporated any of the LR...this, or any of the other LR542 options put forth by this committee beyond the department's agency modifications. And before I close, Senator, by drawing the committee's attention to staff comment, and it will reflect also...be reflected in the fiscal note, I've suggested two amendments to the bill. One to correct a drafting oversight. This bill would insert a late penalty. We would reclassify what's called a late penalty as a late filing fee for registration and inspection fees. The bill inadvertently only refers to registration fees. It should say both. And additionally, as I've discussed with you, Senator, the bill calls for a one-time transfer of \$400,000 during the second year of the biennium. After discussing with Fiscal Office and the department, there's some issues with...create some cash flow issues for the department. And it would be better to either take \$200,000 a year during the upcoming biennium or maybe skip the first year and just do a second year biennium. The committee amendment I have would just, instead of \$400,000 in 2012 and \$200,000 the next two years, would do just \$200,000 each of the four years, upcoming four years. [LB354]

SENATOR CARLSON: Okay. Thank you, Rick. And Senator Lathrop has joined us in the committee. Any questions of the committee on this bill? I've got some comments but I'm going to wait until we listen to some of our testifiers, so thank you. Is there anybody that wants to testify as a proponent of the bill? Okay, anybody as an opponent of the bill? [LB354]

STEVE MALONE: Good afternoon, Senator Carlson and members of the Ag Committee. My name is Steve Malone. That's S-t-e-v-e M-a-l-o-n-e, and I'm from Martell, Nebraska. And I'm here on behalf of myself. Let me give you a little background why I said that. I formerly, until January 31, was an employee at the Nebraska Department of Agriculture and was the administrator of the Weights and Measures Program for about 32 years. The reason I'm testifying today is that I believe it's necessary that the Weights and Measures Program continue to be funded in the manner that it is, and that means, general...a portion of the program being funded by General Fund appropriation. For those of you that may not be familiar with the program and what Weights and Measures actually does, if you don't mind I'll give you a little brief description. The state has had a Weights and Measures law since it became a state. Actually when we were a territory there's been laws in place dealing with standards for measurement and mass, or for weight. The Department of Agriculture over the years enforces the Weights and Measures Program and requires that all commercially used weighing and measuring devices be licensed by the department and registered and inspected on an annual basis for performance accuracy to ensure that both the buyer and seller are getting what they buy or what they sell. In addition to the device inspection portion of the program, the department does a lot of inspections relating to

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prepackaged commodities. For example, Senators, Mountain Dew is sold by 16 fluid ounces. Well, the department has the ability to go out and determine that that container actually contains the 16 fluid ounces. So if you think of the millions of products that are packaged and in the supermarket, the department this year will probably have in their hands around 100,000 packages that they will actually determine if the package contains what's stated on the label. So you can see that this is definitely a consumer protection program, but we like to think it's also a business protection program because we're making sure there's a level playing field...the department is making sure there's a level playing field for both the buyer and seller and that there's fair competition between businesses, and no one is taking advantage of these representations that they make. Interesting point that you may not know, about \$34 billion of the state's economy is determined by weight, measure, or count. So Weights and Measures has a pretty large impact on the state's economy and a relatively important program to the state. I think most of us...we're all consumers of course. We all buy and sell things. But when we pull up to the gas pump, I think most of you step out and you have a lot of integrity in that measurement. You don't question it. You don't question when you go to the elevator and deliver your corn normally about the moisture, about the weight. So these are things the public pretty much takes for granted. But without the Weights and Measures Program providing some of that assurance with these annual inspections, that wouldn't happen. And that's why I'm saying that I don't believe the funding mix, as far as what it is today, should be changed. And to me, the reason I oppose this bill, is that in three years, in 2015, this bill provides no funding for that petroleum pump inspection. We're going to work off the EPIC Fund or the underground storage tank fees for approximately three years. And then there's no funding source in the future for that portion of the program. To me what that would mean is either in two or three years we're going to have to decide how we're going to fund it now. And once you give up the General Funds, they're not coming back. So either the industry through user fees is going to support a bigger portion of it, which I would assume that would be the next avenue unless you can retain money out of the LUST Fund. So my thoughts are that the public is being protected here by the activities of the Weights and Measures Program. They receive benefit from it, and this is one of those things that needs to be funded, a portion of it needs to continue to be funded by the taxpayers. This is something the taxpayers cannot do for themselves. There's no way you can determine if you've got 5 gallons in your fuel tank. There's no way you can hold that package of hamburger in your hand and determine that it weighed 1.36 pounds. It's just impossible. So this is a function of government that should be continued to be funded by a portion of it by the taxpayers. There's a few things in the bill that I marked down as questions and I think Rick indicated some concerns with them. The first is that there's...it doesn't speak of funding for fiscal year July 1, 2011, to June 30, 2012. My assumption would be that would mean that the General Funds are staying for that year. And right now according to, I guess, what the Appropriations Committee has said, that is the case. But the bill would provide \$400,000 on July 1, 2012, for that fiscal year and I assume the attempt was to make up for the \$200,000 that might have been lost in 2011-12. But there's actually no

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appropriation for that additional \$200,000 in '12-13. And, of course, the main concern is after 2014 there is no funding source to make up this \$200,000 that would be coming from the EPIC Fund. Last is the item that Rick mentioned with respect to the penalties. There's a 25 percent penalty fee for people who don't pay their device, inspection, and registration fees on time. And in the renaming of that, it only speaks to the registration portion of the fees and it needs to include the registration and inspection fees. They're two separate fees in the current statute. Having said that, I'm happy to work at anytime in the future with the committee or anyone else on legislation that improves the Weights and Measures Act. And if...I have no further comments. If you have any questions, I'd be happy to address anything I could. [LB354]

SENATOR CARLSON: Okay, Steve, thank you for your testimony, and thank you for your service over these years. Any questions of the committee of Mr. Malone? What are your feelings...there are a few states that have looked into privatizing. What are your feelings about that? [LB354]

STEVE MALONE: Well, let me first say that for four years...I started with the department in 1972 and in 1979 I went out on my own in a private business, which was a service company that maintained...calibrated, and sold meters for farm delivery trucks, propane and gasoline and diesel fuel. So I have been in the service business. I will guarantee you, if you privatize, you're going to see a shift in the performance accuracy of the devices in the state. Because as a private company, I worked for the person who hired me, and I set those devices in favor of that person. Okay? So you're going to see a shift in where the devices are at now from one point to a more positive place in favor of the device owner. They'll still probably be within the tolerances, but people do use the tolerances to their advantage. And we're talking millions of dollars, not just little amounts. Just an example on gasoline, there's 880 million gallons of gasoline sold in Nebraska on a yearly basis. If you move the distribution of the air from where it is today one cubic inch in favor of the service station or the device owner, you're looking at \$25 million lost to the consumers. So these little tiny fractions that we're talking about accumulatively have massive impacts on the consuming public. So I understand the idea. And if it did take place, I think what you have to remember is the state of Kansas, they spend as much time now investigating and following up on their private agencies in as much manpower and dollars as we spend...as the state of Nebraska spends now checking the devices on an annual basis. So to do it right, you've got to monitor now 145 people in the state of Nebraska, individuals, compared to the devices. Monitoring people is a lot different than checking a mechanical piece of equipment, and it's not a cheap thing. So that's my opinion. [LB354]

SENATOR CARLSON: Okay. Thank you. Any other questions? Thank you for your testimony. [LB354]

STEVE MALONE: Thank you. [LB354]

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SENATOR CARLSON: Anyone else testifying in opposition? All right. Anyone testifying in a neutral position? Welcome. [LB354]

GREG IBACH: Hi, Senator Carlson. Senator Carlson and members of the Agriculture Committee, my name is Greg Ibach, G-r-e-g I-b-a-c-h. I'm the director of the Nebraska Department of Agriculture. I'm testifying on LB354 in a neutral capacity. The bill, has been explained, transfers \$400,000 from the Petroleum Release for Remedial Action Cash Fund to the Weights and Measures Administrative Fund on July 1, 2012, and also transfers \$200,000 more each year between these two funds on the 1st of July, 2013, and the 1st of July, 2014. The bill requires this transferred money to be used to conduct petroleum product dispenser licensing and inspection functions. I'd like to highlight some background of the Department of Agriculture's Weights and Measures Division's activities with petroleum product dispensers. Currently, the department inspects and regulates 23,058 petroleum devices. Under the current funding mix of General Funds and cash funds for the 2010-2011 fiscal year, industry fees fund approximately \$290,000 or 59 percent of the \$490,000 cost to inspect and regulate petroleum devices and state General Funds are used to fund the rest of the cost of approximately \$200,000. In my prepared testimony I had highlighted the discrepancy in the transfer of the \$400,000 in the second year of the biennium, and so I won't go ahead and highlight that since Rick already pointed that out and has proposed an amendment to address that. The other point that we wanted to make that Rick did not address in the preamble was the point that...was brought up by the previous testimony that the bill only transfers money through fiscal year 2014-15. And thus, it is unknown from where continued program funding for this area is to come after that year, if the Legislature desires an ongoing program as currently statutorily required and implemented to this point. I also had in my prepared testimony the point about the two different...the late fees, and so I won't go ahead and highlight those again. I understand the difficult choices facing the Legislature and the work this committee has put forth as part of the process of LR542. I hope you will use the department as a resource as this process moves forward. With me today I have Paul Moyer, who would be Steve Malone's replacement as administrator of the Department of Weights and Measures, and we are happy to answer any questions you might have. [LB354]

SENATOR CARLSON: Okay. Thank you, Director Ibach. Senator Wallman. [LB354]

SENATOR WALLMAN: Thank you, Chairman Carlson. And, Greg, thanks for coming down here. This...do you do also the ethanol blends and everything like that too? [LB354]

GREG IBACH: Yes, there is...we have the capability to check those blends at the same time, and we work in concert with the Attorney General if we find that there's discrepancies in the labeling of those as well. [LB354]

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SENATOR WALLMAN: Thank you. [LB354]

SENATOR CARLSON: Okay. Any other questions? Seeing none, thank you for your testimony. [LB354]

GREG IBACH: Thank you. [LB354]

SENATOR CARLSON: Anyone else in a neutral position? Seeing none, then from up here, I'm going to make a...just a comment as we close LB354. Again, every committee was looking for options that might be appropriate. This one, in my opinion, coming from the Department of Agriculture was not appropriate because it's not a cut. It's not an elimination of a service. But again, looking at what are the possibilities, I think that this was one of those and so we've had conversation with DEQ as well as the Petroleum Association and listened to what they had to say as well. We're closed now on LB354, and open the hearing on LB355. [LB354]

RICK LEONARD: Thank you again, Chairman Carlson and members of the committee. Again, I'm Rick Leonard, that's L-e-o-n-a-r-d, research analyst for the committee. LB355 again is a second in a series of legislation that would implement certain LR542 options identified by the Agriculture Committee. LB355 specifically amends Section 2-3815 to insert express authorization for the Department of Agriculture to employ an agricultural trade representative who reports directly to the agency director. The bill further states the legislative intent that the department seek to fund this position 50 percent with cooperative funding in cooperation with other entities having a responsibility and interest in expanding and serving international markets for Nebraska agricultural products. You may be aware that the department currently does employ...has created the position of agricultural trade representative and does employ that person. While the department's agricultural promotion program has always worked to promote Nebraska products in international markets, the distinct position of agritrade representative was created in 2007 by the current director. The department's agricultural promotion program is one of the few statutory assignments to the department where the Legislature is granted broad general authority and largely leaves it to the discretion of the department the means deployed to accomplish agricultural promotion objectives. For this reason, it has been an area of the department's budget that has been...or the brunt of budget cuts over the years. This option was, therefore, partly offered as a means of help...of helping to manage potential of additional cuts that may be forthcoming. Additionally, it was envisioned that the department would take a lead role as stated further down in Section 2-3815 in coordinating various ag promotion efforts, including export promotion efforts of various groups such as commodity checkoff programs, trade associations, DED, the private sector, and others. The premise of the bill to seek cooperative funding to fund the position of ag trade representative was seen as additional aid in helping to accomplish the coordination that was envisioned, that's envisioned by this section. The

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Department of Agriculture has from time to time obtained cooperative funding or utilized cooperative funding for specific projects. Given the magnitude of the budget shortfall, that was one option that the committee considered that other entities that do benefit from this program may wish to...may be asked to share in the cost of maintaining this position. Again I would mention that the Appropriations Committee has not incorporated LB355 into preliminary budget. And with that, I would answer any questions. [LB355]

SENATOR CARLSON: Okay. Thank you, Rick. Any questions concerning this bill? Okay. Thank you. Do we have anybody testifying as a proponent of LB355? And anybody as an opponent of LB355? Welcome. [LB355]

JAY REMPE: Good afternoon, Senator Carlson, members of the Agriculture Committee. My name is Jay Rempe, that's J-a-y R-e-m-p-e. I am vice president of governmental relations for Nebraska Farm Bureau, here today on behalf of Nebraska Farm Bureau in opposition to LB355. While we certainly appreciate the spirit or the thought behind the introduction of the bill in looking for, maybe thinking out of the box in trying to achieve different budget savings for General Fund budget, we do have a couple concerns with the approach that's brought forth in LB355. Let me explain those real briefly. First, we're concerned with the way the approach is taken, the continuity of funding from year to year for the trade promotion efforts, and the trade promotion position within the Department of Agriculture. As you no doubt know, trade in exports are very important to Nebraska agriculture. We rely heavily on them and the Department of Agriculture and the Governor and the trade promotion efforts there do a big service in promoting Nebraska products overseas. And one of our concerns is that if you rely on private funding to carry that on, a lot of times it takes many years of effort to get yourself established in an overseas market. And all of a sudden if private funding dries up for a year or two just because of the economy or something else coming up, then that puts a crimp in what you're trying to do overseas in some of those efforts. So we have some concerns, I guess, with the assurance and the continuity of funding from year to year. Secondly, we're concerned with...a lot of times when people...if you rely on private funding, there's probably going to be some strings attached. So commodity organizations or private companies and others that want to promote their product could contribute to the Department of Ag to help fund this position, but they would expect their commodity to be the one promoted overseas. And so there's some smaller commodities in Nebraska that today the Department of Ag can promote overseas and try to help facilitate sales overseas that might lose out if we go to this kind of funding scheme to promote the position. So those are a couple of concerns that we have. We're certainly willing to visit about the issue and continue to dialogue. But we do have those concerns, and so we oppose the bill, so. Be happy to answer any questions. [LB355]

SENATOR CARLSON: Okay. Thank you, Jay, for your testimony. Any questions? Pretty clear. Thank you. [LB355]

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JAY REMPE: Okay. Yep. [LB355]

SENATOR CARLSON: All right. Anyone else in opposition? Anyone testifying in a neutral position? [LB355]

GREG IBACH: Senator Carlson and members of the Agriculture Committee, my name is Greg Ibach, G-r-e-g I-b-a-c-h. I am the director of the Nebraska Department of Agriculture, and I'm testifying on LB355 in a neutral capacity. This bill provides express authority for the Department of Agriculture to employ an agricultural trade representative. The bill also adds legislative intent that the department seek to fund half of the annual salary and expenditures of the agricultural trade representative position through cooperative funding from private and public entities. The Department of Agriculture currently employs a person who fills the role of ag trade representative. I designated Stan Garbacz to this position in September of 2005 and utilized the title at that time as an indicator of the importance of this function. The agricultural trade representative position advocates for all Nebraska producers to open and expand domestic and international markets. For example, NDA recently teamed with members of the Nebraska Dry Bean Commission to explore opportunities for Nebraska dry bean exports to China. During the same visit, we were able to conduct visits designated to further pork genetic exports as well as prepare for what we hope will eventually be an open market for beef into China. Late last summer we were able to secure an agreement with Taiwanese companies for the purchases of corn, soybeans, and wheat that will total \$436 million to \$516 million over the next two years. In any of these visits we take the opportunity to work on a trade lead that is appropriate, including appointments to discuss other agricultural goods such as irrigation equipment or grain bins. At times we've even discussed the possibility of agricultural education exchanges. The focus is to match Nebraska's producers with markets for the benefit of all Nebraska producers and the state's economy. I can tell you that it's my intention to advocate for all agricultural industries in Nebraska from the largest industries to the smallest industries. I certainly understand the intent of LB355 and I've given this bill considerable thought, and I see it working out in one of three ways. First, public and private entities work with the department to come to some agreement on how to fund half the trade representative position. Second, there are no parties willing to provide funding towards this position, and the state loses a valuable resource. Third, there's willingness by entities to fund the position, but may require the trade representative to dedicate a certain portion or amount of their time promoting their industry. Thus, the funding for some commodities is minimal at best or nonexistent. This may prove formidable in trying to promote all Nebraska agricultural products. Overall, this may limit the opportunities to promote Nebraska products. Because the intent language is permissive and the bill does not prescribe an amount that shall be provided by the entities, it would be difficult to determine whether adequate funding would be available to cash flow this position from year to year, if funding is not continued as currently. Again I understand the difficult issues facing this committee. I hope this gives you some understanding of

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the Department of Agriculture's trade representative and would be happy to answer any questions that you might have. [LB355]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions concerning the trade representative? Senator Brasch. [LB355]

SENATOR BRASCH: Thank you, Chairman. And thank you, Mr. Ibach. I'm not sure I understood. If a Department of Agriculture representative goes to China, can China pick up the expense of travel? I mean, do we allow that today that whoever we're trading with can sponsor...? [LB355]

GREG IBACH: There are times and instances where we have participated in that type of an arrangement. China probably would not be a country that would be interested in that. Taiwan, at times, has done that as part of their efforts to gain attention from U.S. states. But the larger trading countries that have lots of people wooing them aren't as likely to do that. But, yes, we have done that. [LB355]

SENATOR BRASCH: And so in the past, underwriting on behalf of an interested party is acceptable and no strings attached. Basically, it's just a business... [LB355]

GREG IBACH: And, you know, that has...initially a year before the budget downturn we, the department hesitated to accept funding from...to pay for the basic service. If they wanted to do a promotional activity as part of that trade trip, then we would have like the Beef Council fund that beef promotional activity, like an in-store promotion or a reception where we invited vendors. But the basic department staff and travel expenses we didn't seek to be reimbursed. The trip to China that was outlined where we worked with the Dry Bean Commission, the Dry Bean Commission did pay for the director's expenses on that trip, because we were trying to address the, you know, budget shortfall and the expenses. [LB355]

SENATOR BRASCH: Very good, because I was trying to visualize this if there's a policy in place that we will not accept foreign dollars or certain commercial vendors, or does the representative go over there wearing a jacket full of patches saying Cargill, John Deere...? [LB355]

GREG IBACH: No, it wouldn't say, it wouldn't have companies like that on it, right. [LB355]

SENATOR BRASCH: ...you know, that type of thing that they go over like a race car, you know, how all the stickers are. You know how you identify, or you think corporate sponsors--the State Fair has corporate sponsors--and I didn't know if this position would be, you know, a position to recognize the private dollars contributed. [LB355]

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GREG IBACH: I think that anytime that, as my testimony outlined, that companies would provide funding or commodity boards that, you know, they have a fiduciary responsibility to the people that contribute those dollars to show how they were invested at some point in time in an audit process. And so I think that they would have...we would have to develop some reporting method or some method to give them credit for the funds they invested over time, yes. [LB355]

SENATOR BRASCH: Thank you, Mr. Ibach. Thank you, Chairman. [LB355]

SENATOR CARLSON: Okay. Any other questions? Okay. Thank you for your testimony. [LB355]

GREG IBACH: Thank you. [LB355]

SENATOR CARLSON: Anyone else in a neutral position? Okay. Seeing none, that closes the hearing on LB355, and we'll go to the hearing on LB356. [LB355]

RICK LEONARD: Thank you again, Senator Carlson. Rick Leonard, you may remember me from LB354 and LB355. (Laughter) But again, Rick Leonard, L-e-o-n-a-r-d, introducing LB356. LB356 amends Section 2-2103 to state legislative intent that the department seek to secure agreements as necessary to authorize expenditure of Rural Rehabilitation Trust assets for administrative costs in implementing the Beginning Farmer Program. The Beginning Farmer Tax Credit Act, if you're familiar with that, was enacted in 1999 with enactment of LB630. Under the act, the owners of agricultural property may qualify for refundable income tax credit by entering rental arrangements with qualified beginning farmers. The incentive to asset owners is in the form of a refundable state income tax credit. The act creates the Beginning Farmer Board that reviews and approves application for certification as a beginning farmer and approves rental agreements as qualifying for the income tax credit available to landowners. Under the program, the department provides staffing and other administrative services to facilitate the board in carrying out its functions. The major program costs include the part-time managerial and clerical FTE, cost of publications and travel, and other expenditures to promote the program in various forms. The department currently expends approximately \$45,000 in carrying out its Beginning Farmer Program responsibilities. The Rural Rehabilitation Trust is a somewhat obscure funding source that the department accounts for in budget sub program 564, ag development. Under this program is authorized by Sections 2-2101 through 2107, the department's ag development division administers the assets of the Rural Rehabilitation Funds. There's somewhat of a history. I'll give you a very shortened history, and I won't go into the history of that but I'll be happy to in questions. But it's the residual fund left over from actions taken in the Great Depression for some agricultural relief funds that came to Nebraska that was...those funds eventually, through a series of a number of events, that round up into a trust fund that we are able to administer at the state level, under federal

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law and pursuant to an agreement with USDA Farm Service Agency, and that's the fund that we're talking about here. Nebraska has maintained the principal in the trust and uses only interest earnings to underwrite ag education programs and leadership programs. I would draw the committee's attention again to the staff comment. When this option was being developed, it was based on an assumption of \$184,000 interest earnings to the fund that were available for expenditure. In the inside cover, I've provided another referenced document that will show a cash flow analysis of the Rural Rehabilitation Trust Fund, as well as on the opposite side, an accounting from the department's budget of current programmatic expenditures for that fund. As you'll see, the actual revenues to the fund include both, and counted in that \$184,000, both gain in the value of the underlying trust asset, its investment value, as well as donations in the form of tuition and donations that are contributed for the various programs, including the Ag Youth Institute, the LEAD Program, etcetera. And so the actual interest from this fund for the most recent year was, I believe I have this misstated here, I think it was...I have \$103,000, so the program could and certainly is an option to look at gaining the permissions and the agreements necessary to utilize this fund in this manner. Likely when this was developed, it was an assumption that adding this additional use of the fund would likely absorb funds that were identified as reinvesting back into the principal to grow the principal. Likely, that funding the \$45,000 would take...would likely come at the cost of displacing other programs that are currently funded by that. These programs are uses of the fund that the directors over years have negotiated with USDA on behalf of the state of Nebraska, but they're not legislated activities. LB356 would...again summarize, as department seek approval to include Beginning Farmer administrative cost as permitted expenditures of trust assets. This was...that will conclude my testimony. [LB356]

SENATOR CARLSON: Okay. Thank you, Rick, for that. Any questions of the committee? Okay. Seeing none, thank you. Do we have anyone testifying as a proponent of LB356? Anyone as an opponent? You're kind of disagreeable today, but go ahead. (Laughter) [LB356]

JAY REMPE: I'm hard to get along with today. Again, my name is Jay Rempe, J-a-y R-e-m-p-e, vice president of governmental relations with Nebraska Farm Bureau, here today on behalf of Nebraska Farm Bureau in opposition to the bill. And I'll just pick up exactly where Mr. Leonard or...on what he said, I guess, or build on what he said. He talked about the possibility of what this bill would displace funding for other programs, and that's where our concern comes in. And it's a tough one for us because we're very supportive of the Beginning Farmer Program and Beginning Farmer Tax Credit Act. We've worked with many senators and groups over the years to try to make that act, the whole program work as well as it can and does. And so we certainly want to see funding for that, but we think General Fund dollars continue to be the appropriate source of funding for that. And where these rural...these rehabilitation funds are going, a lot of them are going to ag education and youth and leadership training programs, which we

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think also are very vitally important to the state. And so much so, that we've invested in them as well both in financial resources but in-kind contributions in terms of staffing and providing help to these programs. But it's programs like Nebraska FFA program, the Nebraska LEAD program, which stands for Leadership and Activity, something, I can't remember the D part of that, and then Ag in a Classroom Program which works to educate elementary kids about agriculture in the state and build a base of knowledge about the state's number one economic driver in this state or number one industry. So those programs have always...are also very near and dear to our heart as well. And so our concern is exactly what Mr. Leonard said that this bill would displace funding for those programs and then cause some problems for them as well, and they not be as effective as we want them to be. So with that, I'll be quiet and I'd be happy to answer any questions. [LB356]

SENATOR CARLSON: Okay. Thank you, Jay. Any questions? Seeing none, thank you. [LB356]

JAY REMPE: Thank you. [LB356]

SENATOR CARLSON: Anyone else testifying in opposition? And anyone testifying in a neutral capacity? [LB356]

DON ANTHONY: (Exhibit 1) Good afternoon, Senator Carlson, members of the Ag Committee. Thank you for allowing me to be here to testify today. I am Don Anthony. I'm a farmer near Lexington, Nebraska. I am chair of the Nebraska Beginning Farmer Board and I am here to testify in a neutral capacity on LB356. And I forgot to spell my name, I apologize, D-o-n A-n-t-h-o-n-y. The board is charged with administering the Beginning Farmer Tax Credit Act. To do this, we must have funding to pay the administrative costs, plus reimburse board members for their costs in attending meetings. I recognize that the Nebraska Department of Agriculture budget proposal for the next biennium includes General Funds for these purposes, and that LB356 does not mandate a different source of funding, only that the director be authorized to use funds from the Rural Rehabilitation Trust Fund, if agreeable with the USDA. By taking this approach, I am aware of several items I would like to bring the committee's attention to. First, it's my understanding that the board may not qualify for the Rural Rehabilitation Funds as this would need to be approved by USDA, and that's not a given. Second, the board would not be assured of obtaining the funds annually, as applying for the monies is a competitive process, and this fund is highly variable. The average income from the fund for the last ten years is \$202,522, but it has gone from a negative \$50,387 in fiscal year '03-04 to a high of \$370,146 in fiscal year 2000-2001. The average annual variance, one year to the next, is \$179,169. The third and perhaps the most important item is that the fund has been used to finance the Nebraska Ag Youth Institute, Ag in the Classroom, FFA contests, the Nebraska LEAD program, and the Farmers and Ranchers College, all of which are targeted at youth and agriculture. Under LB356 the

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Beginning Farmer Board, whose mission is to aid the entry of beginners into agriculture, will be competing for funds against these programs which are designed to educate and interest youth in the industry. Difficult decisions will have to be made as to which programs to fund in a capacity that allows them to fulfill their purpose. In conclusion, I ask that you consider our concerns about the board's qualification for the Rural Rehab Funds, the variability of the funds, and how the usage of the funds might affect other programs if you enact this bill. Thank you. I'd be happy to answer any questions.
[LB356]

SENATOR CARLSON: Okay. Thank you. Any questions of Mr. Anthony?
What...summarize what the board does. [LB356]

DON ANTHONY: The board oversees the administration of the act. We have applications from beginning farmers for their machinery tax property credit. We have to be sure that the beginning farmers have the required net worth, required education, and...trying to think of the other qualifications, but that they meet the requirements of the act. And then for the landlords that are applying for the property tax credit, we have to be sure that the leases...the biggest problem we have is being sure that the leases guarantee that they are taking a risk in renting to the beginning farmer. That's the purpose of the act is to incent the landowners to take that risk that you inherently have with a beginning farmer. And so we just make sure that these...we have forms and criteria to be sure that we meet the requirements of the act in these applications.
[LB356]

SENATOR CARLSON: How many beginning farmers on the average per year do you deal with? [LB356]

DON ANTHONY: I was a little bit prepared for that one. Let me get to the right number here, Senator. It increased dramatically a couple of years ago when we opened up for related parties and raised the net worth a ways. We have run from a low of 5 in 2006 to a high of 126 in '07-08. Last year we had 83 total applications that we went through.
[LB356]

SENATOR CARLSON: But if it's total application, 83, how many were you able to help?
[LB356]

DON ANTHONY: We had 52 eligible beginning farmers and a total of 88 eligible asset owners that were in the program. Now the program is a three year, so the numbers I give you would include for people in the second and third year. I'm sorry, I don't have a breakout of individual. [LB356]

SENATOR CARLSON: So in terms of total dollars, this might be worth...there's a three multiplier there, then? [LB356]

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DON ANTHONY: Right. For last year the total tax credits paid to owners was \$1,526,899. Let's see...well, we don't have a figure yet on what beginning farmers are getting because that's just implemented a year ago. [LB356]

SENATOR CARLSON: Okay. Okay. Yes, Senator Bloomfield. [LB356]

SENATOR BLOOMFIELD: Thank you. On the Beginning Farmer, I have some issue with the classification I guess. We cash rented the farm out, opened it up for new bids last year, and we had three guys come in under new farmer programs. Their dads were mega farmers with thousands of acres. This guy's going to be out of college in two years. We could blend him in under this, leaves a little suspect of some of it. [LB356]

DON ANTHONY: That's a difficult thing for us to sort out. We do our best. That's all I can say, Senator. We know there's games being played. We do our best to counter them. You know, we have no audit function. We look at the applications and, you know, quite honestly we've seen applications where you'll see a mortgage for, you know, a land mortgage but there will be no offsetting piece of land so we reject it and say...you know, or ask the question, you've got to explain this before we will approve it. But that's...yeah, it is a problem and we do our best. [LB356]

SENATOR BLOOMFIELD: Yeah, thank you. [LB356]

SENATOR CARLSON: Okay. Senator Lathrop. [LB356]

SENATOR LATHROP: Oh, that's very interesting. (Laughter) I learned something today in Ag Committee. I remember when this went through. We just made it a lot easier two years ago, didn't we? Senator Schilz had a bill that relaxed the criteria. [LB356]

DON ANTHONY: Right. [LB356]

SENATOR LATHROP: And now you're telling us today that sometimes...and I didn't realize this, sometimes people are coming in and...the purpose of the Beginning Farmers is to encourage people and provide them with some resources so they can start up on the farm, right? And what you're getting is some people that are second generation folks who have plenty of resources, they're just taking advantage of the program? [LB356]

DON ANTHONY: They are second generation. Senator, I am a fifth generation farmer. I did not have this program when I started, but I have over the years built my equity to buy out one sister and well on the way to buying out the other sister if I don't retire first. So even though they may be second, third generation that doesn't necessarily mean they have the assets in themselves. And we, you know, we try to be sure that they are

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at that very beginning stage, but we... [LB356]

SENATOR LATHROP: Do we need to tighten up the criteria so that that's what we're doing? I'm troubled. I'm going to tell you, I'm very troubled to hear what Senator Bloomfield just said because I can remember when this bill passed, or when Schilz bill passed and we made it easier to get, or we appropriated more money or made it easier to get into the program... [LB356]

SENATOR CARLSON: Lifted the net worth. [LB356]

SENATOR LATHROP: Lifted the net worth. We lifted the net worth and I can remember some other things, you know, we're now spending more money on the program as a consequence. And if we have people who are...they're not scamming it, because that would suggest that they don't belong there under the criteria we've set, but if we need to tighten the criteria, I'd be interested in working with somebody on that. Because if they're going into farming anyway and they have the resources anyway, it's a little bit like the children of affluent people getting scholarships based on the fact that they don't have a job. [LB356]

DON ANTHONY: You can draw that analogy. The number that we have, that we have problems with, is very, very small, but it does happen. We do try to catch them the best we can. A bigger problem we have is with landlords not wanting to take the whole risk. They want to figure out a scheme whereby dad backs the beginning farmer up. And those are easily fixed because it says so in the lease. If the lease doesn't say it's to this beginning farmer and this beginning farmer alone, we reject it. You know, one of the problems we also work with is, part of it, we encourage share cropping because that's a shared risk and it helps the beginning farmer. But we convert that to a cash equivalent for purposes of the credits. And we have just been working with Dr. Mark back here to develop a spreadsheet to come up with a uniform price. Because, for example, if you were to have submitted an application last July, you probably would have used a price below \$4 for corn. If you submit it today, you're probably going to use a price north of \$6 and neither one is wrong. So we are working to develop some models and stuff to create standards that they have to fall in or justify why they do not. But it's an ongoing and evolving situation. [LB356]

SENATOR LATHROP: What does the Beginning Farmer Act cost the state of Nebraska each year? [LB356]

DON ANTHONY: Presently, we are...tax credits are getting up to about a million and a half, which is where it was originally projected. For many years, it ran down below \$100,000. In fact, up until we opened it up, it never went over \$100,000. [LB356]

SENATOR LATHROP: What's the most anyone, beginning farmer can get for a credit?

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[LB356]

DON ANTHONY: I have Marian Beethe here, our administrator, and I'm going to ask her. [LB356]

SENATOR LATHROP: You can ballpark it. I'm not going to hold you to... [LB356]

DON ANTHONY: I honestly could not give that number. Marian, can you help me with this one? [LB356]

SENATOR CARLSON: We're going to have to go by procedures here. She would need to come up and give her name, so. [LB356]

SENATOR LATHROP: Okay. If you don't know, we can... [LB356]

DON ANTHONY: I'm sorry, Senator, I don't have that number. [LB356]

SENATOR LATHROP: Okay. Thank you. [LB356]

SENATOR CARLSON: Senator Brasch. [LB356]

SENATOR BRASCH: Thank you, Chairman. Thank you, Mr. Anthony. I just wanted to, I guess, agree that it's not always as clear as it could be simply and to clarify for Senator Lathrop, I am aware of a few different scenarios or situations where dad is a very healthy 65-year-old and plans on farming until the Good Lord takes him away, which could be 80 years old. There's multiple...or later, 100, or you know, and there are multiple siblings who would love to get into agriculture, but there's not...and so they basically leave the farm operation and they have to start from ground zero. They...and the farms could have quite a bit of debt on them where it's not as it seems sometimes. You know, that could have happened but I think that's probably the exception that there are many young people I'm aware of trying to get into agriculture today. And it's, you know, with combines at \$200,000 and, you know, all the equipment and the startup costs that, you know, having a program like this is very valuable and needed. In our district the average age of today's farmer is 57 years old and we're trying to encourage young farmers. But that situation, you know, may exist, but I know more multiple ones, that even though it's third or fourth generation, the family just cannot afford to hand over the farm to the next generation, and there's competition sometimes between siblings for that farm. Would you agree that could happen? (Laugh) [LB356]

DON ANTHONY: Absolutely, Senator. Thank you. You did a much better job than I did. [LB356]

SENATOR BRASCH: All right. Thank you, Mr. Anthony. Thank you, Chairman. [LB356]

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SENATOR CARLSON: Okay. Senator Harr. [LB356]

SENATOR HARR: Thank you, Mr. Chairman. And while I can be sympathetic to your comment, my dad was a lawyer. I'm a lawyer. I did not get any help from the state. And I think lawyers provide a benefit to the state. And there's a lot of up-front costs to going to law school. And there wasn't a program out there for...in my situation. So I think, you know, is this good? Yes. But I think we have to be careful and I think it needs to be done in a proper manner. Are we doing it as a proper...and look at what the criterias are and what the qualifications are and make sure there isn't abuse. And you say you guys do a good job filtering it out. I guess is it a formal or is it an informal process that you filter it, is my question? [LB356]

DON ANTHONY: I'm not quite understanding your... [LB356]

SENATOR HARR: You said to Senator Bloomfield that you guys filter out the ones that you think are most suspicious, the applications. [LB356]

DON ANTHONY: We have a set of standards as the applications come in, criteria that they have to fall into that our administrators...if they're not, send them back, say, you know, you don't fall into it. And then they come to the board and we go through them line by line, you know, looking...trying to understand what the operation is and how they're going at it. If we can't understand it, we send it back and said we need more explanation. If we find things that are outside the bounds, they automatically reject them. And that's...it's both a formal and informal in terms of, we have representative of the bankers, we have two ag producers, we have a representative of the Department of Revenue. And you...as you read through them, you get a picture of what's going on for the most part. And if they're really trying to pull something on you, it probably gets muddy somewhere and that's what we look for and try to pick up. [LB356]

SENATOR HARR: Okay. That helps me. Thank you. [LB356]

SENATOR CARLSON: Okay. Good questions. Any other questions? Yes, Senator Lathrop. [LB356]

SENATOR LATHROP: Do we have any idea how many beginning farmers this makes a difference to? In other words, they would never get on the farm or never start their own farm but for this program? [LB356]

DON ANTHONY: Do not have that number. I don't know how you would measure that. We have a number... [LB356]

SENATOR LATHROP: Well, can you answer this? What percentage of people that get

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a credit under this program each year would have got into farming anyway? [LB356]

DON ANTHONY: They probably would have taken a stab at it. The success rate of it I think would be significantly lower. You know, if you want...my gut feeling is that probably 80 percent of them would have tried it anyway, 80 to 90 percent. I would guess that this act probably increases the success rate by 30 to 40 percent, maybe more than that. It's always a pleasure to have different places that we'll run into people and boy, I got into this and I don't qualify anymore. My net worth is too high. That's just exactly what we're looking for that they've created the growth. [LB356]

SENATOR LATHROP: And my next question may be heresy on the Ag Committee, but the ground is still going to get farmed, isn't it? [LB356]

DON ANTHONY: By someone. [LB356]

SENATOR LATHROP: No, but whether the beginning farmer is there or somebody else, it's not like the ground is going to go unfarmed, am I right? Somebody is going to do the farming. [LB356]

DON ANTHONY: Someone will. [LB356]

SENATOR LATHROP: Okay. Well, it looks like somebody is going to have an answer to my Ag Committee heresy, but...(Laughter) And I'm just trying to understand it because this really, truly is unique. We do not...there's very few things that we offer a credit for and I think we've talked about it, certain credits to try to get internists or family doctors out into rural Nebraska and I understand the social function that serves. And I understand what we're trying to do here so I'm not...I'm just asking questions to make sure I better understand so when this stuff comes around, I'll have the background I need. [LB356]

SENATOR CARLSON: Senator Karpisek has joined us during this discussion, but Senator Larson's got a question. [LB356]

SENATOR LARSON: Senator Lathrop makes a good point that the ground is probably going to be farmed either way, but at the same time would you agree that the number of farmers continues to decline in America? [LB356]

DON ANTHONY: It does. And this is an effort to slow that. [LB356]

SENATOR LARSON: And this is an effort as we are attempting to ensure that we have a sustainable food source throughout the rest of the world that it's important that we educate and help our young farmers as much as possible? [LB356]

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DON ANTHONY: Absolutely. [LB356]

SENATOR LARSON: So this program does have relevance in maintaining well-being for the future of this country and the world? [LB356]

DON ANTHONY: Absolutely. [LB356]

SENATOR LARSON: Thank you. [LB356]

DON ANTHONY: Thank you, Senator. [LB356]

SENATOR CARLSON: Any other questions? I'm going to ask you to give the figure again because as you gave those, I'm sitting here thinking, well, it works because you said that the tax credits were never over \$100,000 for several years until we increased the net worth, and then it's gotten up to \$1.5 million. Well, that's a million and a half lost tax dollars. But it works, where it didn't work before if we didn't have people that could qualify so that combined they never reached \$100,000, just as well not do it. It isn't having any impact. And I guess even a million and a half spread over 80 people isn't a huge amount either. But, any other questions? Okay. You kind of got...oh, Senator Brasch, okay. [LB356]

SENATOR BRASCH: I was going to try and keep it down here. And, Chairman, thank you and thank you, Mr. Anthony, and respectfully, Senator Harr, because I do not want to put lawyers against farmers. (Laughter) [LB356]

SENATOR LATHROP: That's a good idea. [LB356]

SENATOR BRASCH: But I do...but in the sense of law school versus ag school, definitely we need to promote and encourage more people to...in the agricultural industry. And perhaps there are scholarships and mentoring organizations in the bar association and other areas, but I think this is probably one of a few programs that assist starting farmers. And I believe it was recently started out of necessity seeing more people leave the farms and move...and to being lawyers perhaps, (laughter) because of the less risk, less overhead. But respectfully, I thank you, both of you. [LB356]

SENATOR CARLSON: Yeah, we're losing a little control here. Senator Bloomfield. [LB356]

SENATOR BLOOMFIELD: We'll comment more on this probably in Exec Session but I don't disagree that the program needs to exist, but I do think we might want to look at some of the scams that are going on within the program. And I think we can maybe look at that and discuss that more in Exec Session. [LB356]

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SENATOR CARLSON: Okay. Any other questions? Don, we worked you over but thanks for coming. (Laughter) Appreciate your testimony. [LB356]

DON ANTHONY: I thought I had brief testimony. (Laugh) Thank you. [LB356]

SENATOR CARLSON: Anyone else in a neutral position? [LB356]

GREG IBACH: I'm trying to jot a few notes down in case you ask me some of the same questions. Senator Carlson and members of the Agriculture Committee, my name is Greg Ibach, G-r-e-g I-b-a-c-h, and I am the director of the Nebraska Department of Agriculture. I'm here testifying on LB356 in a neutral capacity. The intent of LB356 is for the department to seek funds, seek approval from USDA to authorize the use of Rural Rehabilitation Funds to fund expenditures in administering the Beginning Farmer Tax Credit Program. This program is currently a general funded program in which our agency's base General Fund appropriation is approximately \$45,000. As background, the Rural Rehabilitation Funds originated in 1929 in reaction to the Great Depression. The federal government established rural rehabilitation corporations in each state to assist the agriculture industry. In 1937 USDA dissolved the corporations, took back the funds, and up through 1971 administered the funds for the states. In 1971 USDA executed a liquidation agreement that permitted the remaining assets to be returned to states for administration by the individual states. The Nebraska Legislature enacted legislation to accept the provisions of the liquidation agreement and the Director of Agriculture was designated as the official to represent the state of Nebraska in the administration of funds. The original use agreement provided for six uses of the fund, but it has been amended over the years to address emerging issues. In my opinion, the Nebraska Department of Agriculture has been a good steward of these dollars maintaining principal in a manner that ensures an ongoing investment...source of investment income. Other states have not been as dedicated and no longer have access to these funds. There are criterion in which the use agreement on how these funds can be invested...in the use agreement on how these funds may be invested and the investments are handled by the State Investment Council. In the 2000-2003 time period, earnings on the assets were in excess of \$300,000 annually. However, in the past few years total earnings have averaged far less than that. We have prioritized the use of these funds over the past decade for projects that enable our youth and young adults to acquire knowledge and skills that will assist them in becoming active, productive participants in our agricultural industry. To that end we have devoted a significant portion of the funds to the Nebraska Agricultural Youth Council for the Nebraska Agricultural Youth Institute, a week-long seminar held in Lincoln each summer for 120 high school juniors and seniors interested in agriculture. Other major projects funded are in Ag in the Classroom, FFA leadership development, Leadership Education Agricultural Development or LEAD, and the Nebraska Young Farmer and Rancher Training Program. If we seek and gain approval of an amendment to use...to

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our use agreement with USDA to add Beginning Farmer Program administration to the list of projects, it will result in fewer resources available for the programs that currently benefit from these funds. In addition, I want to note that the Nebraska Department of Agriculture is limited by the use agreement to use only up to 3 percent of the funds for administration. At present, the department is utilizing this 3 percent to fund a small portion of several positions filled by staff members who work on issues relevant to the fund's purpose. If we added the Beginning Farmer administration to the rural rehab portfolio of projects, there's a potential for these activities to be labeled as administrative, and we would be forced to find another source of funds to cover those salaries. Thank you for allowing me to outline some of the details of the Rural Rehabilitation Fund, and I'll be happy to answer any questions you might have. [LB356]

SENATOR CARLSON: Okay. Thank you. Any questions of Director Ibach? Okay. Thank you for your testimony. Anyone else in a neutral position? Okay. Seeing none, this closes the hearing on LB356. Thank you for coming. Thank you, those of you that testified, and now we'll kind of ask you to leave because we need to go into Executive Session, but thank you for coming. [LB356]