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Agriculture Committee  
February 05, 2013

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[LB166 LB354 LB431]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, February 5, 2013, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB354, LB166, and LB431. Senators present: Ken Schilz, Chairperson; Norm Wallman, Vice Chairperson; Dave Bloomfield; Tom Hansen; Burke Harr; and Jerry Johnson. Senators absent: Ernie Chambers; Steve Lathrop.

SENATOR SCHILZ: We've got a few people, a few senators out that are introducing bills or are otherwise occupied, so we'll go around, I'll introduce everybody. To my right over here, we have Senator Harr from Omaha; Senator Bloomfield from Hoskins; walking into the room is Senator Wallman from Cortland; on this side over here, we have Senator Hansen; I guess Wallman is over here, too, and then I'm Ken Schilz and I'm the Chair of the committee. To my right is Rick Leonard. He's the research analyst and over here to the left is Jamaica Erwin and she is the committee clerk for today. We have a page around somewhere, her name is Cicely Batie, and she's from Lexington. And with that, just a couple more notes. How we'll do this is we'll bring up and on this first bill, we've got a little different order that we're going to run in. We've got some folks here that were gracious enough to come over from Iowa, so we're going to let Senator Larson introduce the bill. We'll let a couple of his main proponents go and then we'll bring up Craig and his folks from Iowa to let them go and let them get back. And they will be a little bit out of order because they are testifying in the neutral position I understand, but we'll let them go and let get out of here so they can get back and try to be productive yet today. If you do plan on testifying, please fill out a testifier sheet prior to that testimony. They're available at the doors and just hand them to Jamaica here, our committee clerk, as you get there. Please, on those, make sure you indicate who you are representing, if it's yourself or if it's an organization. State...when you get up here, please state your name, spell it, and then indicate who the testimony is for. If you have handouts, please provide ten sheets. If you don't have ten sheets, that's fine, our page can get those around for you, so just let her know. And I'm not going to put...we do have a light system. I'm not going to put them on today but I would tell you we like to keep the testimony around five minutes per person, so be cognizant of that so that we don't take up too much time and we get the information out there, so appreciate it. If you don't plan to testify but you still want to indicate how you feel about a bill or what your position is on a bill, there is a sheet by the door where you can do so. You just write your name, put whether you're for or against, and these will be made part of the hearing record. However, only persons who verbally testify will be indicated on the committee statement as either being proponent, opponent, or neutral. Would also ask at this time that you turn your cell phones down, keep the electronic noises to a minimum. Understand that sometimes that happens and you need to be ready for that, but as little distraction as possible is good. And then always, during committee hearings we don't verbalize or make any statements as to whether we support a testifier or don't support it, so I'd appreciate that decorum as well. And then I guess that takes care of all the

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housekeeping. So at this point I would welcome Senator Larson to come and introduce LB354. Thank you, Senator Larson. Good afternoon.

SENATOR LARSON: Thank you, Senator Schilz and members of the Agriculture Committee. I am Senator Tyson, T-y-s-o-n, Larson, L-a-r-s-o-n, and I am here today representing District 40 from O'Neill, and I would like to introduce LB354. LB354 is a bill to restructure the Nebraska Corn Board. The Nebraska Corn Board was created in 1978 as a checkoff program that would help market the corn produced in the state of Nebraska. Throughout the past 35 years, it has developed into a critically important asset that has provided the support to the state's corn producers and overall agricultural economy. This bill was brought in response to concerns voiced by myself last year, and Nebraska Corn Board members regarding the frustrations they face as a state agency. LB354 attempts to cure some of these issues by eliminating the Nebraska Corn Board as a state agency and allowing it to function as its own independent entity. Right now there are several issues with the Corn Board on how it is structured that limits its accountability to its members and limits the efficiency of its operations. First, Corn Board members are appointed by the Governor. Grower members have no input as to who represents them and their interests on the board. Second, participation in the checkoff program is mandatory. For every bushel of corn marketed in the state, the first purchaser is required to pay half a cent fee that goes to the Corn Board to help them support its programs. There is no refundability option available to growers as is available to growers in most other states. Third, as a state agency, the Corn Board is subject to the administrative regulations of the state. It has to deal with the same red tape issues that other state agencies face, and its employees are restricted by the same guidelines and requirements of other state employees. In fact, the Corn Board is unique in how it functions compared to other...compared to most states with similar commodity boards. Most other states allow elections for Corn Board members, provide a refundability option for those who pay assessments to the state, and allow their agencies to operate outside the parameters of a state agency. LB354 seeks to put the Nebraska Corn Board on par with most other states by giving them the same advantages. LB354 has a few major components to it. The first is the election of board members. The bill establishes a board with eight members who are elected by eligible growers from each respective district. A ninth board member is then elected from among the eight board members. Having elections for board members establishes some additional accountability to the growers who fund the Corn Board's operations and ensures that their interests are being adequately represented. LB354 also allows members paying the state assessment, which has been left at its current rate, to request a refund of the assessment they pay. This makes the program optional. If a grower does not approve of the activities of the Corn Board, it can elect to take back the funds contributed. The grower members will have a say in any increase of the state assessment rate. LB354 requires that any suggested increase in the assessment be voted on and approved by the eligible grower members in a special referendum. Most importantly, however, is the fact that LB354 takes the Nebraska Corn Board out of state

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government and allows it to operate in its own independent entity carrying on essential functions of the state. This does a number of things that benefit the overall efficiency of the Corn Board. It will allow it...it will allow it to staff its organization the way it sees fit and will allow additional flexibility in how it carries out its mission to promote Nebraska's corn production industry. The Nebraska Corn Board is a vital resource to our state's agricultural industry. Not only does it promote our corn growers and their products throughout the country, it also serves as a research tool, an educational service, and an outreach organization to ensure Nebraska's corn market is successful and productive. We owe it to our hardworking corn producers in the state to have a Corn Board that will be as effective as possible, and LB354 is a step in the right direction to make that happen. Thank you, and I'll attempt to answer any questions that you may have. [LB354]

SENATOR SCHILZ: Thank you, Senator Larson. Are there any questions? Senator Harr. [LB354]

SENATOR HARR: Thank you. Thank you, Senator Larson, for coming. I have a couple questions on the bill. You establish eight separate districts. Are those districts established to be close in population, or is it by acres farmed, or is it by bushels produced? [LB354]

SENATOR LARSON: It's the...essentially we set it up currently as the Nebraska Corn Board and it's closer to the bushels produced. That way we have...to do by population, essentially would give a nonagricultural population such as Omaha or Lincoln undue influence on, or more influence on a board in which they, you know, they don't produce enough bushels. So, as is current state law, we're following in that tradition of going by production model in terms of... [LB354]

SENATOR HARR: Okay. And that's bushels produced over the last ten years, five years, because I know with the change in corn prices, it seems as though there's been a large transition in row crops over to... [LB354]

SENATOR LARSON: Right now, currently, the Nebraska Legislature has to change the districts of the Nebraska Corn Board. I don't know how often the Legislature has changed the districts. I'm sure the executive director of the Corn Board can answer that exactly when the Legislature changed the districts. If you've read the bill thoroughly, we set the districts at first, but we do give the authority to the Nebraska Corn Board to change the districts as they see fit moving forward based on production. Currently, you know, we could go 40 years without changing the districts if the Legislature chose to do so, and, therefore, you know, creating an imbalance in terms of the districts. [LB354]

SENATOR HARR: Okay. And then we're taking money away from us...well, we're eliminating a state agency basically. Is there a constitutional issue? Have you

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investigated which...? [LB354]

SENATOR LARSON: Which constitutional issue are you speaking to directly? [LB354]

SENATOR HARR: Well, that was what I was getting to before you interrupted. So what I'm trying to get at, is there a constitutional issue and have you asked the AG as far as you are now collecting basically a tax, and that money is going to an outside agency, not the government? [LB354]

SENATOR LARSON: The power to tax still lies with the state. The power to tax...the power to collect the tax lies with the state and the power...you know, we as the Legislature are levying the tax. We do, in the...what? [LB354]

SENATOR HARR: But we're not spending. The problem is we're not spending it, we're giving it to an outside agency or group. [LB354]

SENATOR LARSON: We are allowing...it's not an outside agency. It's a corn promotion fund. So essentially, we are taking it out of the bureaucratic mess, which is state government. We are levying the tax, we are saying that the Corn Board can work with the Department of Agriculture, contract the Department of Agriculture to help collect that tax, but passing it through to that agency to promote the products of the corn industry. [LB354]

SENATOR HARR: Okay. But I guess my question is that new agency a state agency or is it an outside agency with no oversight by the state? [LB354]

SENATOR LARSON: To say that it has no oversight from the state would be wrong because again, if you read through the bill, you would see that we put a substantial amount of oversight in terms of the State Auditor can go through the corn promotion fund, research where is the corn promotion fund spending their money. Are they spending their money in the duties that the Legislature has set? The bill does not delegate any of the state's rule-making or enforcement powers to the Corn Board. Essentially, we as a state are keeping those powers within state government, therefore, letting the State Auditor go through and audit their books. So you can say that, yes, you're taking them out of state government, but I feel there are substantial checks and balances within this bill to ensure that as though we are assessing the tax as a Legislature, and we are giving the State Auditor the ability to audit that program. [LB354]

SENATOR HARR: And for the record, I have read the bill, okay? So I wouldn't make that assumption. Second of all, and again, I was the one who said you could take it out of state government. That was your words, you said out of the morass or the complications of state government. So I was just trying to clarify the record. Have you

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asked for an AG Opinion on that or are you thinking about asking for an AG Opinion on that issue? [LB354]

SENATOR LARSON: I'd be happy to ask the Attorney General for an Attorney General's Opinion on this bill. [LB354]

SENATOR HARR: Okay. And then, finally, you have money going to allow a percentage to go to federal lobbying, is that correct? [LB354]

SENATOR LARSON: Correct. [LB354]

SENATOR HARR: Okay. And it can't go to state lobbying though, right? [LB354]

SENATOR LARSON: Uh-uh. [LB354]

SENATOR HARR: And is there a reason...number one, what is the reason for federal lobbying, and then, number two, what is the reason not to allow state lobbying? [LB354]

SENATOR LARSON: I think the idea of allowing federal lobbying, that has been in the corn promotion, or in the Corn Board for...since its inception in 1978, I believe. We actually have the introducer of that bill here today, and they put the concept of federal lobbying in, in order to help corn growers across the state of Nebraska in case there were issues whether it dealt with the marketing or promotion of those funds on a federal level, or whether it dealt with something such as the 2012 farm bill that we were looking...that was extremely important to the state of Nebraska to send our Corn Board representatives to Washington to lobby on those efforts to ensure that the economy of the state of Nebraska continued to function because of its agriculture...because of the agricultural importance of the economy. In terms of not putting state lobbying in there, again, it wasn't included in the original bill that passed in 1978. And I think the concerns that were on terms of having state lobbying is it was actually a state agency at that point and essentially will continue to be with the restrictions that we put in terms of the Auditor having the ability to audit their funds, and even though it's a...will be a...we aren't compelling them with the refundability option. We just don't feel that it's the Nebraska Corn Board's job to lobby on state issues, especially since they can only draw within funds from people within the state of Nebraska. [LB354]

SENATOR HARR: So it is your contention, though, that it is okay for a government agency to lobby another government agency? [LB354]

SENATOR LARSON: I think you'd have to look at the transcripts from the 1978 hearing in terms of lobbying the federal government, you know, the benefits that a state lobbies, X, Y and Z. I think, that happens on the federal level a lot. And, you know, whether or not we want to keep the federal lobbying portion in this bill will be up to this committee

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and the Legislature as a whole. But I think the federal lobbying portion of this bill does offer the farmers in Nebraska a useful tool...or the corn growers, I should say, not just the farmers, the corn growers in Nebraska a useful tool to make sure they protect their industry on the federal level, especially as we...rural America continues to lose representatives in Congress to more urban districts and more...or more urban states. So I think it's very important in the whole that we work with our federal counterparts in terms of the agricultural industry. [LB354]

SENATOR HARR: Okay. So, I think you answered the question, but I'm not sure. So is the question, is it okay for...because this is still, I would say a quasi-government agency, is it okay for a government agency to lobby, in your opinion, another government agency? And I think based on your answer, the answer is yes, but I can't... [LB354]

SENATOR LARSON: I'd say...I'd say in terms of lobbying the federal government, I wouldn't say that lobbying another state government agency or the Corn Board saying, you know, which is it. You talk about a quasi-governmental agency. You know, we as a Legislature are setting...are still the assessing power. We are the one that are assessing the tax. [LB354]

SENATOR HARR: Okay. So then a government agency... [LB354]

SENATOR LARSON: So for the Corn Board to be able to, you know, to lobby us on the state assessment or whatnot, I think you can...you know, you can say, you know, that's...you have to have certain separations of powers. But since the federal government isn't the one assessing the tax on the Nebraska Corn Board, you know, the policies that, you know, we deal with directly affect the, you know, the Corn Board since they are essentially a creation of us. You know, we as the Legislature created them, but as you start to move forward, you know, the federal government is obviously, I'd say, is the different beast. You know, they did not create the Nebraska Corn Board and you can talk about the beef checkoff and things of that nature which the federal government did create, and hence, you know... [LB354]

SENATOR HARR: The difference. [LB354]

SENATOR LARSON: The difference. [LB354]

SENATOR HARR: The distinction, okay. [LB354]

SENATOR LARSON: So I think there's a definite distinction in there in terms of the federal lobbying versus the state lobbying. [LB354]

SENATOR HARR: I appreciate that answer and all your other answers. Thank you very much. [LB354]

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SENATOR LARSON: Thank you, Burke...Senator Harr. [LB354]

SENATOR SCHILZ: Thank you, Senator Harr. Senator Bloomfield. [LB354]

SENATOR BLOOMFIELD: Thank you, Senator Schilz. Senator Larson, as this moves away under your bill from government control, who would then set the amount of the checkoff? [LB354]

SENATOR LARSON: We, as a Legislature still have essentially the power to set the assessment. As you read through the bill, you'll notice that the corn farmers around the state will be able to hold a referendum in five years, I believe, is the first time they can hold a referendum to choose, if they wish, for that assessment to raise. [LB354]

SENATOR BLOOMFIELD: If the corn producers decide to raise the rate, does the Legislature then still have oversight over that or does it just happen without any government input? [LB354]

SENATOR LARSON: I'd have to double-check, but I'm pretty sure they have the authority to raise it a certain amount and then the Legislature would have to give them essentially the ability to assess more after that. [LB354]

SENATOR BLOOMFIELD: Would the Governor have any veto power over that? [LB354]

SENATOR LARSON: No, essentially, the Governor wouldn't have veto power. [LB354]

SENATOR BLOOMFIELD: Thank you. [LB354]

SENATOR LARSON: He has veto power over the bill, but... [LB354]

SENATOR SCHILZ: Thank you, Senator Bloomfield. Senator Hansen. [LB354]

SENATOR HANSEN: Thank you. Senator Larson, I have a short series of questions for you. On Section 3, and that's on page 3, at the bottom of the page it makes it very clear the board shall not be considered a state agency. And that's what I was under the assumption too. And then when we turn to page 14, Section 16, there are...there, within the bill, there is a reference to the State Treasurer to take the corn promotion fund money; an investment officer, I assume to invest that money; and then the Auditor of Public Accounts. That one does have a place there for it, can be reimbursed. The Auditor can be reimbursed. I'm still...and I'll wait for the people behind you to explain how you can say this is not a state agency anymore, yet we rely on state constitutional officers to do our accounting, do our money "receptance," and then investment,

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especially the investment because you know you might be able to find an outside investor would be doing a better job. Just those three questions. And then...that's all I've got for you. So if you have an answer, that would be great. [LB354]

SENATOR LARSON: Yeah, essentially... yeah, yeah, I'll try to answer it as best as I can. In terms of...as we move through the constitutional issues of this bill, the power to assess the tax must stay with the Legislature. And we continue to model it off of other states. Obviously, this is a novel concept in the state of Nebraska since it's always been a state agency. But as we looked at the bill, this bill would...you know, we modeled it off of other states that their corn boards are, you know, outside of state agencies, but not state agencies, but do have, you know, these protocols on them, if you want to call them that. Essentially, within the bill, we say that the Nebraska Corn Board can contract...or the Corn Promotion Fund can contract with the Department of Ag in terms of helping collect the funds. Again, to ensure the constitutionality, it goes through the State Treasurer. Because...to ensure that we can continue the good work that the Corn Board does, we want it to have some oversight. We do not want a promotion fund that the Auditor cannot look at. We don't want a board that can go out and make rogue decisions on, you know, the basis of what their directors want when we as a Legislature, you know...they are a state agency currently and we want to be able to have some oversight in terms of what they're doing to ensure that they're doing what we as the Legislature have set them out to do and that is promote corn growers and agricultural producers in the state of Nebraska. And, you know, to Senator Bloomfield's question before, you know, the Governor...no, the Governor won't have veto power over an increase in the checkoff. But at the same time, who is to say that, you know, the Governor should have that increase? I think we have to really consider what local producers want and, you know, we have to empower them as much as possible. Right now, the Governor appoints Corn Board members. I'd say, you know, that's unfortunate because these board members need to be elected and right now they have no right of refundability. Right now, they just have...they have to pay the checkoff whether they agree with what the checkoff is doing or not, which, you know, legally it's called government speech. But I don't think that's necessarily something that we need to look at and the ability to have...let corn producers not only have the right of refundability but also the ability to elect their own board members, I think it's important to give them the opportunity to choose whether or not they, as producers, feel that it's best whether or not to raise their own checkoff. Because at that point, it's them deciding for themselves, it's not the Legislature or the Governor saying yes or no, yes or no, which I think they as an industry need to have those conversations. [LB354]

SENATOR HANSEN: One last question I have and that's about the makeup of the board. I live in North Platte, which is Lincoln County, and if I would have pivot acres there, just, I mean, one pivot on the Keith-Lincoln border which happened to be in Keith County, yet most of my acres are in Dawson County, we're closer to the feedlots and ethanol plants, but our family LLC is addressed in Lincoln or Lancaster County. Where



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would we vote? Do I get four? [LB354]

SENATOR LARSON: No, I think under the...and maybe there might be a little clarification that's needed in the terms of the bill of where exactly you would vote, but I would say you vote where your residency is, you know, just because you... [LB354]

SENATOR HANSEN: Where the LLC residency is and not a family member? [LB354]

SENATOR LARSON: I would say where the family member, so...anybody that's...those that are able to vote in this bill are those that have essentially a direct relationship to the corn growing process. So if you just...it's my understanding that, you know, if you grow corn or you crop share, then you personally will have a vote probably in the district in which you reside whether or not your land is in a different district or not, will probably in the district in which you reside. It's kind of like saying, you know, Senator Hansen, you live in North Platte but you own land in Keith County. Does that mean you get to vote in our school board elections? No. You vote where you...you know, you vote where you live. [LB354]

SENATOR HANSEN: Thank you. I just want to make it clear that I don't own any corn acres, so that was it. (Laughter) That was totally hypothetical. Thank you, Senator. [LB354]

SENATOR SCHILZ: Thank you, Senator Hansen. Any other questions for Senator Larson? Senator Bloomfield. [LB354]

SENATOR BLOOMFIELD: Thank you. I want to go back to the definition of a corn grower in Section 4. It says you will be at least 18, have been actually engaged in growing corn in the state for a period of five years. At what age can you be actually involved in producing corn? [LB354]

SENATOR LARSON: I would say at that point you can be actively involved in producing corn at whatever age that your parents, you know, give you a stake in the operation or let you get involved in the operation. Obviously, you can...right now the age is 21 instead of 18 that we kept, you know, we kept the five years. But I know as I grew up, you know, we didn't grow corn, but I was definitely actively involved in the operations that my family had in terms of cattle and horses. You know, I know I owned my own horse at the age of 13. Who is to say that, you know, a 13-year-old can't...you can say, you know, they legally can't enter into contracts or things of that nature, but it doesn't necessarily mean that they can't be actively involved at a younger age whether that's owning, you know, parts of the equipment or having a portion of the ownership in the family stake or things of that nature. [LB354]

SENATOR BLOOMFIELD: Yeah, I'm not trying to be argumentative here. I think

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perhaps we need a little clarification there that somewhere along the line, you know, it has to be said that...at 13, you don't own any machinery because technically you can't. So I question the legal involvement of an individual at age 13. [LB354]

SENATOR LARSON: You can legally. Obviously, there will be a caretaker at the age of 13, but I think if we start getting into trust litigation and inheritance litigation, you as a 13-year-old can own then all the equipment and whatnot, but oftentimes there will be a power of attorney or somebody that is appointed to oversee the decisions that you're making at that point. [LB354]

SENATOR BLOOMFIELD: Without going too far into the weeds here, as you recall a year ago we had things come down from the federal government that didn't want you to be able to look at corn until you were 18. I think perhaps we could help your bill a little bit here if we clarified that just a little bit. [LB354]

SENATOR LARSON: Be happy to discuss that with you, Senator Bloomfield. [LB354]

SENATOR BLOOMFIELD: Thank you. [LB354]

SENATOR SCHILZ: Thank you, Senator Bloomfield. Any other questions? Thank you, Senator Larson. Appreciate that. And at this point we will accept the first proponent for LB354. Welcome. [LB354]

TIM SCHEER: (Exhibit 1) Thank you, Senator Schilz and members of the committee. I'm Tim Scheer, T-i-m S-c-h-e-e-r, and I currently serve as the chairman of the Nebraska Corn Board and I live on a farm near St. Paul. I am here today both as a resource and a representative of the Nebraska Corn Board in support of restructuring the Corn Board to allow us to be more efficient, effective, and also accountable to the corn producers who invest the one-half cent checkoff. LB354 is the outcome of years of research on increasing the accountability back to producers, becoming more efficient, and understanding how other states are structured. This was accomplished through interim studies and hearings that were led by and attended by members of this committee, and with input from the very agriculture groups that are represented here today. The Nebraska Corn Board was established as one of the first corn checkoffs in the nation. Corn farmers took it upon themselves to invest through the checkoff to develop markets, educate consumers, conduct research, and promote all aspects of the corn industry. As other states adopted checkoffs, they chose a structure outside of state government to allow for greater accountability back to the producers and to operate more efficiently. LB354 proposes increasing the accountability to Nebraska corn farmers by having a board that is elected versus the current appointment process. It also includes a refund provision and referendum process, again allowing producers a greater voice. In addition to being more accountable to producers, the restructure continues to provide full accountability to the state of Nebraska; it continues with accountability to the

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State Auditor; continues reporting to the Agriculture and Appropriations Committees; the Director of Agriculture continues to serve as one of the ex officios; and the board may continue to contract with the Nebraska Department of Ag for the collection, first purchaser auditing, and election process. Restructuring would also allow the board to gain efficiencies by eliminating the time and resources spent to verify sole source providers and submit deviation requests every year. And since we are cash funded, being required to furlough an employee, as per state rules, did not result in saving the General Fund revenue. There are some of the inefficiencies that have obligated significant time and resources. Additionally, longer term, we believe greater efficiencies can be gained by sharing office space with other commodities or ag organizations, thus providing increased opportunities for partnership and collaboration in promotion of Nebraska's leading industry. There should be no question of the importance of agriculture to our state's economy. We all know that agriculture is the backbone of Nebraska. With that said, corn is the lifeblood of the value-added agriculture industries that make ethanol and feed livestock and also produce biodegradable plastics and a host of other products. Corn is a diverse commodity from starch to protein to oil to properties that make it biodegradable. That grain is Nebraska's raw resource, much like coal is to Wyoming. Agriculture would not be the progressive industry we are today without the many investments made by commodity checkoff programs. As state and federal resources diminish for these types of investments, it is checkoff dollars that carry the load. Recently, agriculture and our way of life have been threatened by those that want to describe it as factory farming, industrialized, inhumane, and the cause of obesity and starvation around the world. It takes resources to confront these myths. It takes resources to conduct distillers grain research. It takes resources to defend animal agriculture, which is also critical to our economy. And checkoff programs have become the resource to defend and expand agriculture across the state. In closing, for over 30 years the Nebraska corn checkoff program has been successful in representing the 23,000 corn producers across the state. Just as times have changed, the industry has advanced along with those changes. Now is the time for the structure to advance with the industry and expand the success by allowing greater accountability to producers and increasing the efficiencies that we as producers all strive for in our own operations. Thank you for the opportunity, and I welcome any questions and I would welcome any of the previous questions if there's anything that we could add from the Corn Board side. [LB354]

SENATOR SCHILZ: Thank you, Mr. Scheer. Appreciate that. Any questions for...Senator Hansen. [LB354]

SENATOR HANSEN: Thank you. Tim, it's good to have you here today. Going back to the employee and you mentioned that here where they furloughed state employees and that didn't help anything. When this bill is passed, are those employees state employees anymore? [LB354]

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TIM SCHEER: No, I... [LB354]

SENATOR HANSEN: Are they...go ahead. [LB354]

TIM SCHEER: I'm sorry. I do not believe that they would be. We would not be. [LB354]

SENATOR HANSEN: Okay. Are they...will they be recipients of state benefits from years of...I mean, will they get a pension from the state some day? [LB354]

TIM SCHEER: And I don't fully understand that. I'm sure there's somebody here that could answer that. I believe that they would still be acceptable into the...whatever they were, I guess, tenured into or whatever, but anything from now on would be different. [LB354]

SENATOR HANSEN: And then, so this bill passes from that day forward, whenever it becomes effective, then you're responsible for their benefits and healthcare and anything else. [LB354]

TIM SCHEER: Yes, sir. [LB354]

SENATOR HANSEN: One last one, on your testimony here you said that the corn is the grain, Nebraska's raw resource much like coal is to Wyoming. Remember, they excise tax the heck out of coal coming out of Wyoming, so be careful with that. (Laugh) [LB354]

TIM SCHEER: Okay. [LB354]

SENATOR HANSEN: I mean we could do it. I mean, this is the place to ask for that, if you want, so. (Laughter) Thank you. [LB354]

SENATOR SCHILZ: Thank you, Senator Hansen. Senator Wallman. [LB354]

SENATOR WALLMAN: Yeah, thank you Senator Schilz. In regard to the refunds, would the terminals have the track of this, keep track of this then? [LB354]

TIM SCHEER: The terminals, as in the elevators? [LB354]

SENATOR WALLMAN: Yes. [LB354]

TIM SCHEER: No. There would be a form that would be filled out and be forwarded to our office that would end up being...the refund would come through our office. [LB354]

SENATOR WALLMAN: Thank you. [LB354]

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SENATOR SCHILZ: Thank you, Senator Wallman. Any other questions for Mr. Scheer? Mr. Scheer, thanks for coming in today. [LB354]

TIM SCHEER: Sir, can I ask one quick question? [LB354]

SENATOR SCHILZ: No, I'm sorry. You can ask that out of the committee hearing but during the committee hearing the senators are the ones who ask the questions. [LB354]

TIM SCHEER: All I was going to ask if I could address earlier questions? [LB354]

SENATOR SCHILZ: As soon as I'm done asking the questions, then we'll...I'll give you a little time to answer a couple of those that were answered. [LB354]

TIM SCHEER: I'm sorry. I apologize. Thank you. [LB354]

SENATOR SCHILZ: We talked a little bit about...Senator Larson was asked a little bit with respect to the lobbying that is done. I'm not really familiar with how much lobbying is done, what you use that for, and how that works. So could you explain that a little bit to us and how that's come about over the years, and what specifically you've used it for, examples maybe. [LB354]

TIM SCHEER: Well, I think...I mean, it's been a very small proportion of our budget. We have spent...I guess I wouldn't even venture a dollar amount but it's a very small proportion of our budget at this time. They're all federal issues. They are nothing that is a state-related issue, which is by statute we can't. And I understand that fully. I understand that a lot of state issues, I do not want to pay a checkoff in that's going to pit me neighbor against neighbor. I think more times than not the opportunity for federal legislation is a bigger issue that I think most of us probably agree on or we all have the same thought process, and we can work through and work on some lobbying. You know, farm bill was one of those issues that I think, you know, recently that we worked on very strongly to get... to try and get a five-year farm bill passed rather than just an extension. You know, there are several other issues over the years that have been worked on. Does that answer your question, sir? [LB354]

SENATOR SCHILZ: Sure. I guess just a follow-up on that. I know that it's, I think it's set at 25 percent right now. [LB354]

TIM SCHEER: Correct. [LB354]

SENATOR SCHILZ: Have you ever come close to... [LB354]

TIM SCHEER: No. [LB354]

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SENATOR SCHILZ: ...to using that much money? [LB354]

TIM SCHEER: No. [LB354]

SENATOR SCHILZ: Maybe somebody coming up later can tell us how much. [LB354]

TIM SCHEER: I would say that if we've ever come close to 5 percent would be a closer ballpark at most. [LB354]

SENATOR SCHILZ: Okay. Thank you very much. And now, I'll give you an opportunity to address a couple of those questions. [LB354]

TIM SCHEER: Okay. Yeah, I apologize, And I guess Senator Harr's not here so I don't know if I can really necessarily ask his...almost have to have him re-ask as now I'm looking back on my notes and I'm thinking what was the question to what my answers were. (Laughter) The constitution, the constitutionality issue with Senator Harr again, you know, I think the power to tax is obviously the state's. And our understanding is that with the right of refund and election process that kind of takes care of some of the constitutionality issues if there's anything in that form. I address the lobbying issue, you know, state is a little closer to home, federal is more homogeneous. Again, if somebody has a federal lobbying issue they can ask for a refund if they really don't agree with us on what we want. I will say as a Corn Board member, very few times have I been asked about how we're doing research promotion, education, and market development. Several times I've been asked, what are you doing for me on farm bill? What are you doing for me on dust regulations? What are you doing for on other federal things? So I think the corn producer actually looks at us and thinks that that is part of what they are putting their dollars forward for. Oh, a question, Senator Bloomfield, I think you said up to one cent increase I think is...the Legislature had given us that opportunity with, you know, the last pass, and that's what this one says, it will be up to one cent after that. Obviously, we come back to the Legislature and the referendum process would get us to that one cent, so. Any other questions? [LB354]

SENATOR SCHILZ: Any questions for Mr. Scheer? Mr. Scheer, thank you very much. Appreciate it. [LB354]

TIM SCHEER: Thank you. [LB354]

SENATOR SCHILZ: Next proponent, please. Good afternoon. Welcome. [LB354]

ANDY JOBMAN: (Exhibit 2) Thank you. Good afternoon, Senator Schilz and members of the Agriculture Committee. My name is Andy Jobman, spelled A-n-d-y J-o-b-m-a-n. I appear before you here today on behalf of the Nebraska Corn Growers Association, or

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NeCGA, in support of LB354. After graduating from the University of Nebraska-Lincoln, here, I returned to the farm to farm with my dad and my younger brother near Gothenburg. We have a diversified grain and livestock operation. In addition to my farming interests, I also own and operate an independent crop consulting business. Finally, I also am on the board of directors for NeCGA, representing Dawson County. Just a quick summary, NeCGA was formed 40 years ago to represent the interests of Nebraska's corn farmers. In 1978 NeCGA members were instrumental in passing legislation to create Nebraska's corn checkoff program. This self-help program provides funds for corn market development, research, promotion, and education programs. At our last two annual meetings, our delegates approved a policy position recommending structural changes to the checkoff program that provide a higher level of accountability to the corn farmers who are paying that checkoff. Our delegates support the election of members to the corn checkoff board by corn growers who pay that checkoff. We believe the election process is an extremely good tool creating a different platform for dialogue and accountability. Accountability is further enhanced in LB354 by the addition of a refund provision. A refund provision gives those corn farmers who have a significant objection about the corn checkoff an opportunity to request a refund. To maintain the financial stability of the corn checkoff, the governing board will be more proactive and responsive to corn farmer concerns. A referendum process allows corn farmers to approve proposed changes to the corn checkoff rate. This process provides corn farmers the opportunity to determine the program's value and reasonableness of the rate, and then express their opinion for an increase or decrease with a recorded vote. NeCGA members remain staunch supporters of Nebraska's corn checkoff program. The accountability enhancements in LB354 will further strengthen this vital program. Thanks for the opportunity, and if you have any questions, I'd be happy to attempt to answer them. [LB354]

SENATOR SCHILZ: Great. Thank you, Mr. Jobman. Any questions for Mr. Jobman?  
Senator Hansen. [LB354]

SENATOR HANSEN: One statement. It's certainly good to see some young people involved in agriculture, and it sounds like you're quite ambitious with your crop business besides growing corn, so thank you for doing that. [LB354]

ANDY JOBMAN: Thank you. [LB354]

SENATOR SCHILZ: Any other questions? Seeing none, I'd like to welcome Senator Johnson here from Wahoo. And thank you, Mr. Jobman, for your testimony. [LB354]

ANDY JOBMAN: Thank you. [LB354]

SENATOR SCHILZ: Okay, at this time we're going to go just a little bit out of order as we usually do. I'd like to invite Craig Floss, Julie Kirby and Julius Schaaf from the Iowa

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Corn Promotion Board to come up and testify in the neutral capacity, I believe. Good afternoon. Thank you for making the trip. [LB354]

CRAIG FLOSS: Good afternoon, Senator Schilz and the rest of the committee. Very much appreciate you allowing lowans to cross the river, come into the great state of Nebraska, and to your beautiful Capitol today. [LB354]

SENATOR SCHILZ: We normally let you come here, we just don't necessarily let you go home. (Laughter) [LB354]

CRAIG FLOSS: To let you stay. (Laughter) [LB354]

SENATOR SCHILZ: No, we might want to keep you. [LB354]

CRAIG FLOSS: (Exhibit 3) My name is Craig Floss, C-r-a-i-g F-l-o-s-s. I'm the chief executive officer of the Iowa Corn Promotion Board and the Iowa Corn Growers Association. I'm here with Julie Kirby, to my right. She's our director of finance and business operations, and to my left is Julius Schaaf, a farmer leader and a former chair of the Iowa Corn Promotion Board. We're here to provide neutral testimony for LB354. The proposed language of this bill is very similar to the way the Iowa Corn Promotion Board has operated for over 35 years. Our program was initiated through the Iowa Legislature in 1977. In addition to our elected board members, we have several ex officios serving on our board, including our Secretary of Agriculture, director of the Iowa Economic Development Authority, and the Dean of College of Agriculture at Iowa State University. There are also two people appointed to represent the first purchasers who collect the checkoff, i.e., from elevators and/or co-ops, could be ethanol plants, any first purchaser. The Iowa Department of Agriculture and Land Stewardship, or IDALS, is responsible for certain program oversight including referendum measures and auditing of the checkoff collection process with those first purchasers. The treasurer, state of Iowa, collects the checkoff, and then the Iowa Department of Revenue and Finance sends those funds to the Iowa Corn Promotion Board. Our checkoff program is audited annually by the auditor, state of Iowa. The Iowa Corn Promotion Board allows for elections of our board members by other farmers and also supports our numerous efforts of market development, research, promotion, and education. The program does offer a refund provision. Our mission is very similar to Nebraska in that we both fund programs with the U.S. Grains Council, the U.S. Meat Export Federation, the National Corn Growers Association, along with our state affiliated corn grower association. Over the years, Iowa has grown its checkoff rate on corn to what is currently one penny per bushel. We have 45,000 to 50,000 farmer producers who derive a full-time living growing corn and soybeans in Iowa, and 7,000 dues-paying grower association members. I'm also proud to say that we are getting an "A" as we maintain 93 percent of our gross checkoff revenue, which means we only have a 7 percent refund rate. As you can see, there are already many similarities between the Nebraska and Iowa programs,



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but the bill that is proposed brings our two programs closer together in structure. As you well know, agriculture is the backbone of both of our states and the checkoff programs play an integral role in keeping our corn producers profitable and sustainable. We also depend on healthy ethanol and livestock industries and try to add value to our corn and promote exports. We'd now be more than happy to answer any of the questions you might have, either of myself, of Julie Kirby, or of Julius Schaaf, our farmer leader. Thank you. [LB354]

SENATOR SCHILZ: Great. Thank you, Mr. Floss. Appreciate it. Any questions? Senator Wallman. [LB354]

SENATOR WALLMAN: Thank you, Senator Schilz. Yeah, thank you for coming here from Iowa. Our children live in Iowa so glad to have you here. They farm too. [LB354]

CRAIG FLOSS: Very good. I can give you an association membership form if you'd like to make sure we're members of the...always recruiting. (Laughter) [LB354]

SENATOR WALLMAN: Getting back to the business at hand, on this refund thing, is that large producers or average producers, or would you say you have any idea? [LB354]

CRAIG FLOSS: Well, it varies really all over the board. We know that in some cases we get the request for refund and it can be less than a dollar or it can be for hundreds of dollars. It all depends on what's marketed at the time. So when a producer goes to the elevator, co-op, or wherever he or she is selling their corn, if they choose to refund, they can ask for a form. They submit the refund form. That comes to us, they include all the necessary information, weigh tickets from the sale, and then they have 60 days to do that, and we have then 30 days to turn that payment around, no questions asked, and it goes back to them. [LB354]

SENATOR WALLMAN: Thank you. [LB354]

CRAIG FLOSS: You're welcome. [LB354]

SENATOR SCHILZ: Thank you, Senator Wallman. Senator Hansen. [LB354]

SENATOR HANSEN: Oh, thank you. I didn't quite get done writing my question. Years ago we used to sell a lot of cattle to Iowa to farmer-feeders. So is there a first purchaser there; would those bushels of corn ever get to...go through the checkoff? [LB354]

CRAIG FLOSS: The way that it works and this is sort of reciprocity between states, it's wherever the corn is marketed. So if...if in our case, I'll use the flip side. We have a lot of Iowa corn that comes to Nebraska to the Blair facility. If that does not pass through a

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first purchaser in Iowa, Iowa corn growers or Iowa Corn Promotion Board does not collect a checkoff assessment on that, but your checkoff here in Nebraska would, of course, apply. [LB354]

SENATOR HANSEN: But I'm talking about someone in Iowa, the farmer-feeder in Iowa that we used to sell cattle to, after they buy the cattle and they feed your own corn. Is that... [LB354]

CRAIG FLOSS: Oh, I see. Thank you for the clarification. [LB354]

SENATOR HANSEN: Does that corn ever get checked off? [LB354]

CRAIG FLOSS: We do not collect any checkoff on farm feed. So if a farmer grows corn and feeds his own corn to his own livestock, that is not assessed to checkoff. However, if that cattle producer is maybe a member of a feed co-op and he takes his corn and it goes through a first purchaser and comes back as finished feed, then it would go through the first purchaser and a checkoff assessment would be collected. But if he keeps it on farm for his own use, we do not collect. So on average right now, we are...of the total number of bushels that we are producing in Iowa, we would collect on average over the last ten years, 86 percent of the total bushels grown, which means about 14 percent of the corn grown most likely never passes through a first purchaser and is being fed on farm. And we have seen with the change in the livestock industry, that number of percentage of collection, it has gradually gone up over the years. When I started 16 years ago at Iowa Corn, we were in the mid-60 percent collection rate. [LB354]

SENATOR HANSEN: And I would say here in Nebraska it's probably going the other way where we're feeding more corn through those co-ops, or just joint groups of people. Would you recommend that policy for Nebraska then? I mean, no checkoff if used on farm, used in a group of feedlots that also own corn ground? [LB354]

CRAIG FLOSS: You know the goal of the checkoff program, of course, is to provide the ultimate value-added benefit back to both the corn farmer as well as to the broader corn industry in the state or in the agricultural industry. I would say from our perspective, we believe that if a farmer is using his own corn to feed his own livestock, we think that's one of the best forms of value-added that you can have and we would not ever try to collect an assessment on farm...on farm feed. [LB354]

SENATOR HANSEN: Okay. Is the 1 cent per bushel that you're currently addressing, or assessing, is that your max? Do you have a max set in Iowa? [LB354]

CRAIG FLOSS: Well, we do currently have...we are set at one penny max. We just, for the first time, held a referendum this past summer and it was passed by 73 percent of

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the farmer voters to move from three-quarters of a cent to one penny. And again, that is our current max. And so if we would like to change that, we actually need to go back to our state Legislature to ask them to increase the cap. [LB354]

SENATOR HANSEN: Okay. And so that could be vetoed by your Governor? [LB354]

CRAIG FLOSS: Absolutely. Yeah, it would go through a process very similar to what you're doing here today. And, in fact, we have some legislation before our Legislature as we speak where we're changing our board structure slightly to be actually more similar to what Nebraska is proposing with a slightly lower number of board members than what we currently have. And one of the things are, we would like to change that cap which would give us that down the road, whether that's three, five, or ten years from now, give us that ability to ask farmers for a referendum. [LB354]

SENATOR HANSEN: And last question, do you have good attendance through the University of Iowa State, and whoever the groups were that you said, are they ex officio too? [LB354]

CRAIG FLOSS: Yes, they are. We have actually excellent participation. Our dean participates personally in both our research committee as well as at our board meetings. We have a very good rapport with her and again, regular participator. The Secretary of Agriculture and our director of the Iowa Economic Development Authority, they have appointees and it's in the code that says that it's either those folks directly or an appointee that can come. Usually the Secretary of Agriculture and the head of the IEDA will participate at least once a year, otherwise, their designees are always in our meeting. They also participate in our committees. [LB354]

SENATOR HANSEN: Thank you. [LB354]

CRAIG FLOSS: You're welcome. [LB354]

SENATOR SCHILZ: Thank you, Senator Hansen. Senator Bloomfield. [LB354]

SENATOR BLOOMFIELD: Thank you, Senator Schilz. Mr. Floss, I have several questions, one following up on Senator Hansen. If I, as a corn producer, sell corn straight to my neighbor down the road that doesn't raise enough corn to feed the cattle that he is feeding himself, is there any way that refund gets collected or do we just kind of slide under the radar there? [LB354]

CRAIG FLOSS: We have no way of tracking that. The only way that our checkoff is tracked is for those people who have a grain dealer's license. So technically, if in your example there was a farmer-to-farmer sale but they were dealing in excess of 50,000 bushels per year, which is our threshold for having a grain dealer's license in the state

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of Iowa, that farmer would technically be violating the law. If it's smaller than 50,000 bushels and it's farmer-to-farmer sales, not going through a first purchaser, there's no tracking. [LB354]

SENATOR BLOOMFIELD: Okay. Thank you. You also said the government is involved some in handling the money as it comes in. [LB354]

CRAIG FLOSS: Yes, sir. [LB354]

SENATOR BLOOMFIELD: Do they keep a portion of that or does that...does the government end up working for free for you, which would be a nice change? [LB354]

CRAIG FLOSS: The state treasurer does not collect a fee. That's the first place that the money flows to. They're in charge of overseeing the Corn Promotion Fund, which is what it's referred to in our enabling legislation. The Department of Revenue and Finance does not keep a fee. They simply are the administrative services, I believe you call it here in Nebraska, that sweeps the dollars that come in, into our account. The Department of Agriculture for certain services performed do...we do pay for their services in this fashion. This past year, for example, when we held our referendum, the process is that, first of all, the Iowa Corn Promotion board must vote to ask the Secretary of Agriculture to conduct a referendum, so our board has to approve it first and then in what amount. We then go to the secretary and ask his or her permission to move forward. If they agree, then it comes back and they actually are the party that is responsible for holding the referendum vote itself. So any fees incurred in having our Department of Agriculture conduct that referendum, we would reimburse them on an at-cost basis. We also pay a fee to the Iowa Department of Agriculture annually for any work that they do under our Grain Warehousing Bureau. They're the ones that conduct the audits and monitor the first purchasers in the grain dealer's license. And so we are assessed whatever time they spend in checking out the first purchasers around the state and making sure that they're remitting the checkoff properly. So there are some fees associated, but again, it's on an as-cost basis and it's only at the Department of Ag level. [LB354]

SENATOR BLOOMFIELD: Okay. Thank you. You mentioned, too, that you just had a referendum? [LB354]

CRAIG FLOSS: Yes, sir. [LB354]

SENATOR BLOOMFIELD: And it passed by 73 percent. What percentage of the growers actually voted in that referendum? Do you have that number? [LB354]

CRAIG FLOSS: I don't know it as a percentage. Like so many elections, it's very difficult to get people to vote. I'm always amazed that they...how few people want to take...and

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so we would have had somewhere between...would have been right around 1,500 farmers that would have voted total. [LB354]

SENATOR BLOOMFIELD: Okay. [LB354]

CRAIG FLOSS: I don't know what that would be as a percentage. It depends on how you want to calculate the total number of active producers. USDA says we have 90,000 corn growers in Iowa. We think there's somewhere between 45,000 and 50,000 as I mentioned earlier that actually derive a full-time living. [LB354]

SENATOR BLOOMFIELD: So it's actually a pretty small percentage of voters then. [LB354]

CRAIG FLOSS: It is a smaller percentage, yes, sir. [LB354]

SENATOR BLOOMFIELD: Okay. And let me add my thanks to the committee for you people coming over. We appreciate your expertise. [LB354]

CRAIG FLOSS: Absolutely. Thank you. [LB354]

SENATOR SCHILZ: Thank you, Senator Bloomfield. Any other questions? Senator Hansen. [LB354]

SENATOR HANSEN: I have one quick question for Mr. Schafe, (phonetic) is it? [LB354]

JULIUS SCHAAF: Schaaf. [LB354]

SENATOR HANSEN: Schaaf. So you're a former chairman. [LB354]

JULIUS SCHAAF: Yes. [LB354]

SENATOR HANSEN: So how long has this been set up in Iowa, if you've already become a former? (Laughter) [LB354]

JULIUS SCHAAF: How long has what been set up? I'm sorry. [LB354]

SENATOR HANSEN: Well, the Corn Promotion Board. Is it...? [LB354]

CRAIG FLOSS: 1977. [LB354]

JULIUS SCHAAF: It was...yeah, 1977 was when we first...we tried to get it started two times before that by referendum and it went down to defeat. And so it was the third time in 1977 that it was actually started and initiated. [LB354]

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SENATOR HANSEN: As formed...as it's formed now? [LB354]

JULIUS SCHAAF: As is formed now, it's evolved. We now meet as a joint board with the growers and the promotion side. When I first came on in 2004, we had two separate boards and the growers had to come to the promotion to get funding for the projects that they needed that required promotion dollars and they would spend six months, a year, developing a plan and they would get 20 minutes to come before the Promotion Board to try to get funds to develop this plan and move forward with it. And it might get vetoed by the Promotion Board because we haven't...we don't have the involvement in the discussion and now we, as joint boards, we have involvement with all the discussions from the beginning. We really have a chance to evaluate the ideas that come forward and it's just a much better situation since it's evolved, since I started in 2004. [LB354]

SENATOR HANSEN: So at one time you had two boards and now they've merged, is that correct? [LB354]

JULIUS SCHAAF: We still have two boards and they still have separate chairmen and separate directors...or executive committee. But we meet as a joint board, and we also can meet separately if on certain issues if it's so deemed. Anybody can call a separate meeting. That happens very...you know, hardly ever because it's so much better if everybody is in the room. We hear the whole discussion. We're all in the same business. We all want the same thing, and so it's really been a great experience to hear the whole story. [LB354]

SENATOR HANSEN: But sometimes the regulators get in the mix, and the way your corn board is set up now, can you lobby within the state or are those still regulated by federal laws? [LB354]

JULIUS SCHAAF: The association can lobby within the state, but the Promotion Board cannot lobby. [LB354]

SENATOR HANSEN: Okay. But can you lobby at the federal level? [LB354]

JULIUS SCHAAF: No. The Promotion Board cannot lobby. [LB354]

SENATOR HANSEN: Just can't lobby, period. [LB354]

JULIUS SCHAAF: And I'd like to state that I can see Nebraska from my farm, so. (Laughter) But, yeah, I'm sorry to move away from your question. Yes, we, Promotion Board is not allowed to lobby. [LB354]

SENATOR HANSEN: Okay. Well, thank you for doing that volunteer job, so. [LB354]

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SENATOR SCHILZ: Thank you, Senator Hansen. Senator Wallman. [LB354]

SENATOR WALLMAN: Thank you, Chairman Schilz. Yeah, getting back to your promotion and your boards, do you have a certain budget for percentage what you use here for like export business, for ethanol promotions, or product use? [LB354]

CRAIG FLOSS: We don't have a specific formula, but, Senator Wallman, I can tell you that I did bring some figures just in case I was asked to make sure I have it right. Checkoff dollars in 2012, our most recent fiscal year, 40 percent of those dollars went into market development; 26 percent into education; 18 percent into research; and 16 percent was administration. [LB354]

SENATOR WALLMAN: Thank you. [LB354]

CRAIG FLOSS: You're welcome. [LB354]

SENATOR SCHILZ: Thank you, Senator Wallman. Any other...Senator Bloomfield. [LB354]

SENATOR BLOOMFIELD: Just a quick question. Mr. Schaaf, if you can see Nebraska from your farm, did you get your feet wet a couple of years ago? [LB354]

JULIUS SCHAAF: Oh, yeah. (Laughter) [LB354]

SENATOR SCHILZ: Thank you, Senator Bloomfield. Anybody else? Mr. Floss, I guess I would have a couple questions. We talked a little bit about collecting the fees and you've heard some questions on how that's done, is it a state assessment? Can you just kind of go through how that starts from beginning to end as how that all works? [LB354]

CRAIG FLOSS: Sure. If I could I'd like to defer to Julie Kirby, our director of finance and business operation. [LB354]

SENATOR SCHILZ: Absolutely. Julie, if you could before you start, could you please spell...say and spell your name? [LB354]

JULIE KIRBY: Julie Kirby. It's J-u-l-i-e K-i-r-b-y. [LB354]

SENATOR SCHILZ: Very good. Thank you. [LB354]

JULIE KIRBY: Are you talking about from the producer how it flows through, or once it's collected after that? [LB354]

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SENATOR SCHILZ: I guess if you could just...I kind of understand the producer how that's going to work. I want to know how it got set up in state government, how you were able to do all that because there's a lot of questions here about, you know, is it a state agency, isn't a state agency, can you collect taxes, can you spend tax dollars, all those? That's kind of what I'm looking for if that makes sense. [LB354]

JULIE KIRBY: We have always been considered a quasi-state agency since it was established in 1977. The checkoff, because of the taxing authority, will go through the treasurer, state of Iowa. They deposit it in a fund and every 24 hours the Department of Revenue and Finance then sweeps that into a bank account that is under the Iowa Corn Promotion Board's name, and then we have the ability to write checks and invest as necessary. [LB354]

SENATOR SCHILZ: Uh-huh. And then how is the...are there checks and balances on that to make sure that as you go forward... [LB354]

JULIE KIRBY: The state of Iowa sends out auditors every year to go through our financial. They will read all our board minutes to know the intent set forth by the board. Did we adhere to that? And make sure that we are using the funds as the board intended. [LB354]

SENATOR SCHILZ: Okay. Great. Thank you. I have a couple more here, just have to figure out. Some of these have been answered. I guess one other question, we've heard the question here about who is a producer and who should get to vote, and all that. How does Iowa define a "producer"? [LB354]

CRAIG FLOSS: Specially in our code there is a definition of a producer and it is any corporation--they've got several different things--or individual that has produced and marketed 250 bushels of corn in the previous marketing year. [LB354]

SENATOR SCHILZ: I see. Okay. And then one other question I had, we talked a little bit about feeding and things like that, and we talked that if we were feeding, if someone was feeding their corn to their cattle, that was no problem. If someone is...would be a custom feedyard and would charge others for that feeding, would they then have to pay the checkoff on those bushels that are fed to other's cattle? [LB354]

CRAIG FLOSS: Again, the threshold is if it passes through that first purchaser and the threshold is 50,000 bushels, if you were dealing, either selling or marketing or feeding that amount of grain on behalf of some other individual or on behalf of a corporate entity, then you would need to have a grain dealer's license. And, of course, any feedlot of any size is going to certainly deal in that amount of grain. So if it passes through a first purchaser, then yes, checkoff would be collected. But then, of course, they also have the right to refund. So ultimately it is in the farmer's hands or the farmer feeder's



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hands in this case to your question, and they would have that opportunity to ask for the refund. [LB354]

SENATOR SCHILZ: Right. Absolutely. Okay. Great. Any other questions? Senator Bloomfield. [LB354]

SENATOR BLOOMFIELD: Yeah, thank you. Mr. Floss, I need to come back for some clarification. You said you had roughly 1,500 people voted in that referendum? [LB354]

CRAIG FLOSS: I believe that's what the total was, yes, sir. [LB354]

SENATOR BLOOMFIELD: And you said your total number of producers, the feds say you have 90,000 but you think you're probably close to 50,000? [LB354]

CRAIG FLOSS: Again, as you know, from USDA numbers, they count everybody, that includes weekend farmers, etcetera. For our purposes, and again this is not scientific to be fair, we estimate that there are somewhere between 45,000 and 50,000 farmers that would derive a full-time living from growing corn and soybeans and feeding livestock in the state of Iowa. [LB354]

SENATOR BLOOMFIELD: Okay. Unless my math is off, and that's entirely possible, that's only 3 percent that voted, is that right? [LB354]

CRAIG FLOSS: That's true. That's true and to that point, we do everything we can to advertise what we're doing so we've got some...there's some specific rules that the Secretary of Agriculture needs to follow to make sure that there's proper notice out. Again, we put the notice out, we have elections in every county. When you vote in the referendum, you go to the extension office and that's all publicized. I like to think that though there is a low number of people voting, and we know that we maintain 93 percent of all the money that's collected, it must mean that we're doing something right. Because as you well know, contested elections are when a lot of people come and vote when they're not happy about something. So I give ourselves a passing grade simply because we don't have...we don't have...people are not up in arms about what we're doing. They're very supportive and I think that there's...unfortunately, I would like to see more people participate, but you can't make people go vote. [LB354]

SENATOR BLOOMFIELD: Okay. Thank you. [LB354]

CRAIG FLOSS: You're welcome. [LB354]

SENATOR SCHILZ: Thank you, Senator Bloomfield. Well, folks, Mr. Floss, Mr. Schaaf, and Ms. Kirby, thank you so much for coming in today. We appreciate you coming from Iowa and have a safe trip home. Appreciate it. [LB354]

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CRAIG FLOSS: Thank you very much. [LB354]

SENATOR SCHILZ: Okay. We will now move back to proponents for LB354. Senator, good afternoon. [LB354]

LORAN SCHMIT: (Exhibit 4) Thank you, Senator. Senator Schilz and members of the Committee on Agriculture, my name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I'm pleased to be here this afternoon to testify in support of LB354. Pleased to have Senator Larson ask me to come before the committee. It is not often that former members can be invited on a friendly basis to testify, and I hope I get better treatment than Senator Hagel got when he testified. (Laughter) Hope you treat me more like they treated Senator Corzine when he testified. And anyway, I am pleased to be here. It's kind of interesting to be able to look back and watch what has happened for the last 35 years. And there's been some questions raised and I have some prepared testimony I'll go through and then I'll try to answer some of the questions that were raised and I'm sure you might have some other questions. As Senator Larson indicated, I was one of the original introducers of the legislation. Senator Pappas is here also. He was also present. Senator Kahle was present and was very active in the passage of that legislation back in 1978. I want to say that I'm very pleased with the performance of the Corn Board since that time. And I think if you look back and...Senator Larson, of course, wasn't around at that time, but most of you, many of you were, and the farmers and the corn growers did not have a good market in those days. And so the goals of the Corn Board and the corn growers, I think, have remarkably been met to a certain degree, not that we're going to rest on our laurels. Nebraska corn producers have benefited substantially from the work of the Nebraska Corn Board and the Nebraska Corn Growers. The Nebraska Corn Board and the Nebraska Corn Growers have worked effectively with the Nebraska Ethanol Board, their staff, and the Legislature to help create the Nebraska ethanol industry. The Nebraska ethanol industry has played a major role in the improvement of the economic conditions of all Nebraskans. In addition, the Nebraska Corn Board has worked with the Nebraska livestock industry to improve the economic conditions of the livestock producers. As you know, they've been major proponents of the livestock industry recognizing critical parts that the livestock industry plays in the benefits and the progress of the Nebraska corn producers. The Nebraska Corn Board has promoted the export of corn to foreign markets and that has not been easy during these past 35 years. The Nebraska Corn Board has acted responsibly and has proven to be good stewards of the funds provided to them by legislative action. I support the new legislation and I know that the committee, under Senator Schilz's direction, will cooperate to draft acceptable legislation that will enable the Corn Board to continue their excellent work and improve their already fine record on behalf of Nebraska farmers. Again, I commend the Corn Board for their record and ask the committee to advance LB354. Thank you, and I'd be glad to answer any questions. [LB354]

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SENATOR SCHILZ: Thank you, Senator Schmit. Senator Hansen. Do you have a question? [LB354]

SENATOR HANSEN: No, but I will. I will, that's a will. [LB354]

SENATOR SCHILZ: Oh, I'm sorry. Are you sure? I mean...(Laughter) [LB354]

SENATOR HANSEN: But just a comment and it's good to have you here, Senator Schmit. [LB354]

LORAN SCHMIT: Thank you, Senator. [LB354]

SENATOR HANSEN: And it's really good to hear someone who authored something back in 1978 and approves of a redo in the Legislature in 2013. [LB354]

LORAN SCHMIT: Thank you. [LB354]

SENATOR HANSEN: So... [LB354]

LORAN SCHMIT: Well, we're very fortunate, I think Senator Pappas would agree, that not all of our ideas, and I'm sure you will have the same experience, have turned out as well as this has. The Corn Board has a (inaudible) I've indicated. It's kind of interesting because if you...they all get a small turnout at their referendum; but if the corn growers were upset, they would be out there 100 wide and 1,000 deep and lets them know very quickly how they felt about issues. We're inclined to think, all of us in agriculture, to be complacent when things are going good. It's when things get tough so we have to kind of get together. The question was asked earlier about why we put language in the bill that would allow the Corn Board to lobby at the federal level. And very frankly, there wasn't a lot of activity at that time taking place and from Nebraska to the national level and the corn growers were unhappy with that. They felt they could play a part and there was opposition to that language as there was opposition to letting the Corn Board lobby at the state level. Frankly, if I'd had the votes, we would have lobbied at the state level but we didn't quite have the votes. That was what it boils down to. The issue of the referendum was also contested and we felt that there was nothing wrong with referendum because that was a thing that might come on later. The issue of the refund was discussed and certain organizations wanted a refund. However, those of us at the corn growers felt that this was a new agency, a new entity, that we would be better off to try to put this agency together and see how it worked. If it worked well, the future Legislatures could do what you're doing today, discuss perhaps the possibility of a refund. Kind of interesting when we passed legislation to provide for the ethanol fund, we provided for a refund on 1 cent of the 1.5 cent checkoff, and less than 20 percent of the persons who contributed asked for the refund. As farms become larger and more intense, and some of those get into farm management areas, I'm concerned a little bit

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about what might become an increased tendency to ask for refund. But the...I think the committee can discuss that and I'll be happy with whatever you decide. But I think the basic premise that we started out with, the corn growers ought to have the right to tax themselves, to promote their product, to do so in the way they felt best, has worked, and I commend them for it. And I (inaudible). From time to time they probably have done things I didn't approve of, but no one really asked me, and this is one of the first chances I've got. (Laughter) But they have essentially operated well. And I think that...they're the kind of folks we can talk to and the other boards again pretty well also. So I think it has worked. Thank you very much for being here. [LB354]

SENATOR SCHILZ: Thank you. Senator Bloomfield. [LB354]

SENATOR BLOOMFIELD: Thank you. Senator Schmit, thanks for being here. I share a little bit of your concern about the possibility of increased refunds. You said, I believe, that roughly 20 percent of the producers with the ethanol asked for the refund. Do you have any recollection of what the percentage of the dollars might have been on that? [LB354]

LORAN SCHMIT: It was 20 percent of the dollar, Senator. [LB354]

SENATOR BLOOMFIELD: Okay. So it was of the dollars, not of the producers? [LB354]

LORAN SCHMIT: Yes. I believe that's right, yes. [LB354]

SENATOR BLOOMFIELD: Okay. Thank you. [LB354]

LORAN SCHMIT: And I might add that it was the larger producers who asked for the refund, which caused me a little bit of heart palpitation because today we have large corn growers. And not saying anything derogatory, but it might be that they might be more inclined to ask for refunds. [LB354]

SENATOR BLOOMFIELD: You and I will share those palpitations especially when I see only 3 percent of the people turning out to vote. It looks to me like we're maybe taxing some 97 percent and the 3 percent doing it. [LB354]

LORAN SCHMIT: I want to share that concern and this, you know, we all know that the people who show up are the ones who run the government. That's true at any kind of capacity; and if you can't get the folks out to vote, you can't do much about it. But if they are unhappy, I still believe they will come out and vote. [LB354]

SENATOR BLOOMFIELD: Thank you. [LB354]

LORAN SCHMIT: You bet. [LB354]

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SENATOR SCHILZ: Senator Johnson. [LB354]

SENATOR JOHNSON: I'll just make a comment. I was in the elevator business 40 years and we were usually 10 to 12, 15 years behind Iowa in whatever we were doing and you're only one year behind in the Corn Board, so that's accomplished. (Laughter) That's my only comment. [LB354]

LORAN SCHMIT: Thank you, Senator. That's not too bad. Thank you very much. [LB354]

SENATOR SCHILZ: Thank you, Senator Schmit, for your testimony. [LB354]

LORAN SCHMIT: Thank you. [LB354]

SENATOR SCHILZ: Other proponents for LB354? Steve, good afternoon. [LB354]

STEVE NELSON: (Exhibit 5) Good afternoon, Senator Schilz, committee. My name is Steve Nelson, S-t-e-v-e N-e-l-s-o-n. I'm a farmer from Axtell where my son and I raise irrigated corn, soybeans, and hybrid seed corn. I currently serve as president of Nebraska Farm Bureau and am pleased to be here today on behalf of Nebraska Farm Bureau to offer our organization's conditional support for LB354. Nebraska Farm Bureau is a longtime supporter of Nebraska's commodity checkoff programs. Checkoff programs are key to creating new market opportunities for their respective commodities, and have played a pivotal role in promoting agriculture by investing in research in new uses for commodities. The Corn Board is emblematic of these activities through their efforts to support Nebraska corn farmers and their many efforts to support Nebraska's livestock industry. Nebraska's corn, ethanol, livestock connection is a major reason for Nebraska's continued economic prosperity; and the investment that the Corn Board has made in these areas has been a tremendous value to our state. LB354 provides somewhat of a quandary for us in that there are provisions in the bill consistent with our policy which we can support, but there are also provisions that run counter to our policy we would like to see changed before we can offer our full support for the bill. Provisions in the bill we can support include the election of board members, mandatory checkoff with the right of refund, and the requirement for a referendum on any checkoff rate changes. However, our policy also clearly states that checkoff dollars should not be used to influence legislation. LB354 would allow the corn checkoff program to use up to 25 percent of its funding to influence national legislation. To fully support LB354, we would ask the Agriculture Committee and Senator Larson to remove this provision from the bill. I've handed to the committee an amendment which would remove the language and would ask the committee to adopt that language into the bill. There are several reasons our members believe lobbying activities should not be funded through checkoff programs. At the current corn checkoff rate, the board would have roughly \$7 million per

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year to spend. Thus with the current law, the board could spend almost \$1.75 million in checkoff dollars on federal lobbying activities. With all the needs for promotion, education, and research, we do not believe it is wise to authorize the spending of money for lobbying. Number two, philosophically, our members believe tax dollars should not be used for lobbying. Farmers and ranchers...farmers paying the checkoff may disagree with the position taken by the Corn Board. Their checkoff dollars are then being used to lobby for a position that they don't agree with. Providing a refund while mitigating the problem still forces a farmer through the process and paperwork of seeking a refund, when in our opinion lobbying should not be allowed in the first place. Litigation--this is number four--litigation at the national level has raised the issue of checkoff programs and First Amendment rights. Continuing to allow lobbying increases the exposure of the state checkoff to potential litigation. And number five, in looking at other states with the corn checkoff program, Kansas and Indiana specifically prohibit the use of checkoff dollars for lobbying. As we've heard earlier, Iowa does not allow checkoff dollars to be used for lobbying either at the state or national level and our understanding is that Missouri's law is not specific in prohibiting lobbying, but they do not authorize it either. For those reasons we encourage the committee to adopt the amendment we offer. We greatly appreciate the opportunity to offer our comments on LB354, and I'd be happy to answer any questions you might have. [LB354]

SENATOR SCHILZ: Thank you, Mr. Nelson. Any questions for Mr. Nelson? Seeing none, thank you very much for your testimony. Appreciate it. Next proponent for LB354. Good afternoon, Pete. [LB354]

PETE McClymont: Good afternoon, Senator Schilz, members of the committee. For the record, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm vice president of governmental relations for the Nebraska Cattlemen and I am here testifying in support. Our board met last week and supported it for many of the same reasons that were outlined by previous testifiers, but also the caveat we have with this bill is the lobbying provision. We believe there should be a separation of church and state and the ability to lobby can be done by the advocacy groups, whereas the checkoffs are primarily designed for promotion, research, and education. And so it's for those reasons, not to be repetitive from previous testifiers, that we're here to testify in support with that one exception. So, with that, Senator Schilz, I'll conclude my testimony and answer any questions, if there are any. [LB354]

SENATOR SCHILZ: Thank you, Mr. McClymont. Any questions for Pete? Seeing none, thank you for your testimony. Appreciate it. [LB354]

PETE McClymont: Thank you. [LB354]

SENATOR SCHILZ: Next proponent. John, welcome. [LB354]

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JOHN HANSEN: Good afternoon. Good afternoon, Mr. Chairman and members of the committee. For the record, my name is John K. Hansen, J-o-h-n, Hansen, H-a-n-s-e-n, and I am the president of Nebraska Farmers Union and appear today before you as my organization's lobbyist as well. Our organization did support, in 1978, the creation of the Nebraska Corn Board as we also supported the creation of the ethanol board. And I would say I don't remember any commodity boards that we didn't support the creation of, and as history unfolds and as things go forward, you know, you learn sometimes through experience what kind of what you thought worked and what didn't. And as we went forward in time, our policy on checkoffs changed. And so, we came to support refundability, and we thought that became a big enough issue within our shop that we...our policy finally changed on that. And we have asked for a long time that more commodity boards be elected by producers to give us more direct opportunity to elect folks that we think would do a good job, and that that provides producers a little...well, substantially more control over who represents them. So to that extent, we are supportive of Senator Larson's bill for the most part. And as the Farm Bureau testimony went forward, we were also in a quandary on this bill on several of the provisions. And so those...we've also asked the question, what nature beast is this new critter? Is it a governmental entity? Is it not? Our best judgment is that it's a quasi-state entity. If it were not, I imagine we wouldn't be before the Legislature going over language about the form and the function and the protocol for a private entity. So we're assuming that there's still a remedy and an oversight here at the state level. You still have the Auditor. You still have the Attorney General...or the Treasurer doing things, so there is a certain amount of continued oversight. The issue got our attention several years ago when there was like, most organizations, ag organizations, I think were pretty united when they became quite alarmed at the prospect of having our commodity board's treasuries cleaned out to fund general activities in the state, especially when those commodity boards in a lot of cases, especially the smaller ones, have to accumulate dollars slowly over time in order to do bigger lists. And so if those funds went in there with that clear understanding of what their mission was, and so the prospect of having those dollars cleaned out for General Fund activities caused a lot of us a lot of heartburn. So I...that caused us to also rethink our position and so we support the idea of a quasi-state entity. Our concerns that I would list would be these: That the...we're very conflicted, I'll just be quite honest, in our shop. We have folks who...it all comes down to what is it that they might lobby for, whether they would be for or against it. They almost all think that 25 percent is way too much, that 5 percent would be more reasonable. And we have folks in our shop who make the case that to not lobby at all is irresponsible when there's major things confronting corn consumption: renewable energy, ethanol legislation, for example, at the national level. When you look what a big percentage that is of utilization, to not lobby would not be responsible. So we have a brokered position, is best we could do, would be to entertain efforts to reduce it to 5 percent. It wouldn't break our heart altogether if that section altogether was removed, but we do have a substantial number of folks in our organization who support it. So in the case of the refund itself, 60 days was thought to be a little too short, especially if you're going

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through one of those harvests that we had a couple of years ago where you've got a long, wet, never-ending, painful harvest that just drags on and on. And so then you're having to stop and, you know, trying to remember what the window of opportunity is and try to, you know, bring in your settlement sheets and getting all of that lined up, you know, numerous times, perhaps, by the time you start to the time you get finished. And so a wider window of 90 or 120 days was a suggestion from our leadership core and we thought that was a reasonable suggestion. There were questions raised about the referendum that if the board of directors could initiate a referendum for a price or a checkoff rate increase, do the producers have a corresponding referendum that would be driven by the producers themselves in order to bring a particular issue to the attention of the board? And that seemed like a reasonable provision that there would be a corresponding referendum on the part of the producers. And the final issue that I would bring up that got a lot of discussion was the issue of having a particular commodity organization that is that closely tied to a checkoff. And there's...some of that was...concern was reduced by the fact that it was refundable, but there is still some concern that when you're using checkoff dollars they ought to be used for really checkoff things. And research, market development, all of those kinds of things, but they really shouldn't be the source of primary revenue for one organization who represents corn growers. And I would just make the argument that if you look at the total numbers of members of the Nebraska Farm Bureau or the Nebraska Farmers Union, those are very substantial numbers of corn growers. And that we also have our own particular take on representing the interest of corn growers on policy. And that we're at a distinct disadvantage with a particular organization who gets a very, very substantial share of their total dollars from checkoff dollars. So those are my concerns, and thank the committee for their time and consideration, thank Senator Larson for having the courage to bring this bill forward, and we would be glad to answer any questions and also to be a part of any kind of process if there's amendments or considerations to be made. Thank you. [LB354]

SENATOR SCHILZ: Thank you, Mr. Hansen. Any questions for Mr. Hansen? Senator Bloomfield. [LB354]

SENATOR BLOOMFIELD: Thank you. Mr. Hansen, given your long association with these kinds of issues, do you see the soybean board and the wheat growers following rapidly behind if we were to pass this? [LB354]

JOHN HANSEN: I don't know. If this model is tried and it's successful, some of their...some of their concerns would be similar. The total dollar value of the amount of money collected by the Corn Board makes it a fairly ripe target if you were to just plunk money out of a treasury for general fund activities. So it becomes a bigger target, but by the same token the smaller groups might, even though it's a lot fewer dollars, might be hurt worse by that should that happen because it takes them longer to build up the dollars because they have less total take. And so they have to kind of save up their



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pennies for more major types of efforts. So I don't know. I've thought about that and I've wondered what...you know, whether it would be or not and I don't know. [LB354]

SENATOR SCHILZ: Thank you, Senator Bloomfield. Anybody else? Seeing none, Mr. Hansen, thank you. [LB354]

JOHN HANSEN: Thank you very much. [LB354]

SENATOR SCHILZ: Thank you. Next proponent. Any other proponents? Seeing none, do we have opposition to LB354? Opposition? Seeing no opposition, any neutral testimony? No neutral testimonies. Senator Larson, would you like to close? [LB354]

SENATOR LARSON: First of all, thank you, members of the Agriculture Committee, for listening to the many proponents that have come up here today in an attempt to move our state forwards and towards what other states currently have, and to...in our attempt to make for more efficient and productive corn promotion board. I think John Hansen...I'll start...I'm just going to touch on a few points. John Hansen from the Farmers Union put it great when he said, this is moving us more towards possibly if you want to consider it a quasi-governmental agency in which our commodity funds can finally be truly protected from whether the Appropriations Committee that I sit on, or the Governor, as one of us tries to see that big million dollars that they have in their bank, and take it from corn producers that have worked hard to make sure that money is going to promote the activities that best serve them. To touch on a few other things, I think Senator Bloomfield raises good questions about, you know, the turnout and the referendum process. Obviously, the state of Iowa had a low turnout but I would still argue that I would rather have 1,500 farmers deciding whether or not to raise their checkoff than 49 state senators that don't necessarily have much agricultural background, especially as 25 of them are now from Omaha and Lincoln. So I think it's very important that we move this towards the actual individuals, and if the individuals feel that it's worthy enough to vote, then they will. Just on the simple fact that, you know, very few of us have agricultural backgrounds to our names, and I think the...I know Senator Bloomfield also raised the question, concerns about the refunds, you know, large farmers requesting refunds and small farmers just continuing to pay. Obviously, that small board had about an 80 percent participation rate. And the gentleman from Iowa, Mr. Floss, said that Iowa was...I think he said right around 95, 93...93 percent. Obviously, there's always going to be concerns of, you know, people not paying, large farmers, but I think it's evident that even in other states that a majority of producers feel that this is a very worthwhile investment to promote their corn product. And so I understand the concerns, but I think evidence from other states show that we will have high participation rates in the state of Nebraska as well, which I think is very important. You know, I'm more than happy to talk with groups about the lobbying. Obviously, that seems to be the heartburn for a few groups. I think the Corn Board did a good job explaining, you know, what they lobby on. I think, you know, Mr. Hansen from Farmers

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Union brought up a good point that, you know, at times it might be irresponsible not to lobby the federal government on some issues to make sure that, you know, we use the current Republican leadership in the House currently, you know, Speaker Boehner, and Congressman Cantor and, you know, to send our representatives out there to tell them how important a five-year farm bill is and what that means to our state and what it means to the industry, and the agricultural industry. So be more than happy to work with organizations on that. But I think the key to this is, and Senator Schmit brought this up, you know, in 1978 they did what they had to do to get this done. And I think the Corn Board has served corn producers well in this state, and I think it is executing its function the best of its ability. But time has evolved in the last 35 years, and I think we have to look at, you know, how do we want to move this forward. Is it the best structure now? Is, you know, the Governor appointing members, is that the best thing? And I would argue no. I think it is time that we let the corn growers themselves decide who represents them. You know, the mandatory checkoff, 1978. There were questions of whether or not a checkoff could be sustainable without making it mandatory. I think that question has been answered by other states. You know, obviously, I think we've answered the constitutionality questions and tried to make sure that moving forward the corn promotion fund that this bill, LB354, lays out is the best thing we can do for ag producers or corn producers throughout the state. And, hopefully, we can continue to move forward, and I'll be open to suggestions from the committee, and I'll try to answer any questions if anyone has any right now. [LB354]

SENATOR SCHILZ: Thank you, Senator Larson. Any final questions for Senator Larson? [LB354]

SENATOR LARSON: Appreciate it. Thank you. [LB354]

SENATOR SCHILZ: Thank you and that closes the hearing on LB354. We'll open the next hearing, LB166. [LB354]

SENATOR WALLMAN: Good afternoon. [LB166]

SENATOR SCHILZ: Good afternoon, Senator Wallman. Thank you. I'm here today. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm here to introduce LB166. LB166 was brought to me by folks that would like to authorize labeling of cool season lawn and turf grass seed mixtures to utilize a "sell by" date disclosure to inform consumers of seed shelf life for the germination percentage claimed on the label. This would incorporate into the Nebraska seed law a revision of the recommended uniform state seed law, the Association of American Seed Control Officials recognizing the longer term retention of germination rate qualities of cool season grass seeds. The Nebraska seed law currently requires labeling disclosure on package grass seed mixtures of the testing dates for determination of germination percentages of each seed component. The additional "sell by" option would be more understandable to ordinary consumers

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and would reduce waste in retail sectors. It's a pretty simple bill. Basically all it would do is--as the green copy reads--it would take it from what it is 12 months now to 18 months. We do have an amendment because I think almost all of the other states that have done this have taken it out to 15 months. And so we have that amendment prepared and we are ready to put that in. But it's that simple, guys. It's a pretty easy bill and we do have some folks here to testify that know a little more about it. [LB166]

SENATOR WALLMAN: Okay. Any questions? Yes, Senator Bloomfield. [LB166]

SENATOR BLOOMFIELD: Thank you, Senator Wallman. The fatal flaw, it's a simple bill. (Laughter) Why do we keep it just to grasses? I experienced buying pea seeds of which I planted five rows about 20 feet long and two plants came up, and it was supposedly a high germination seed and I questioned just how long that might have been out of date. [LB166]

SENATOR SCHILZ: Maybe it was mislabeled. Well, I can tell you this. The reason that LB166 only addresses cool season grasses is because that's what was brought to me by the industry and if we'd like to expand from there, I'm... [LB166]

SENATOR BLOOMFIELD: We'd look at that. [LB166]

SENATOR SCHILZ: We might want to look at that. [LB166]

SENATOR BLOOMFIELD: Okay. Thank you. [LB166]

SENATOR WALLMAN: Senator Schilz, is there enough personnel in our Department of Ag to test all this stuff, or...? [LB166]

SENATOR SCHILZ: You know, I think that's how that works. But there's others here that can better answer that question. I would leave that to them. [LB166]

SENATOR WALLMAN: Okay. Thank you, Senator. [LB166]

SENATOR SCHILZ: Yes. I'll go ahead and come back up. At this time we'll take proponents. Alice, welcome. [LB166]

ALICE LICHT: I was going to oppose. [LB166]

SENATOR SCHILZ: Yeah. (Laughter) [LB166]

ALICE LICHT: (Exhibit 1) Chairman Schilz, members of the Ag Committee, my name is Alice Licht, that's A-l-i-c-e L-i-c-h-t, and I'm the executive vice president of the Nebraska Agri-Business Association. The association represents fertilizer, chemical and the seed

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industry in Nebraska. And as we found evolved over the years, seed has become an integral part of even our local cooperative and independent retailers who are selling to farmers, so that is why we're here supporting this bill today. We do appear in support of LB166. We want to thank you, Senator Schilz, for introducing the bill and we do support the 15-month amendment. The legislation follows model language by RUSSL, which is a Recommended Uniform State Seed Language recognized by state Departments of Agriculture. And with me today, I have Brian Herrington, who is the government affairs manager with the Scotts Miracle-Gro Company, who has had experience with this in several states, and I would respectfully defer to him to be part of my testimony and be able to answer your questions because he's worked on this legislation in several other states. So with that, thank you for allowing me to testify. [LB166]

SENATOR SCHILZ: Thank you, Alice. And we were going to have a conversation if you were going to decide to oppose the bill. (Laughter) I appreciate it. Any questions for Ms. Licht? Thank you very much for your testimony. [LB166]

ALICE LICHT: Thank you. [LB166]

SENATOR SCHILZ: Further proponents for LB166? Good afternoon. Welcome. [LB166]

BRIAN HERRINGTON: (Exhibit 2) Good afternoon, Chairman Schilz and members of the committee. Thank you for allowing me to testify today. My name is Brian Herrington, B-r-i-a-n H-e-r-r-i-n-g-t-o-n, and I appear before you on behalf of the Scotts Miracle-Gro Company and, as well, the American Seed Trade Association, who we are working with on this legislation as well throughout the country. We are here today to testify in support of LB166. This bill adopts model language covering grass seed...cool season grass seed, which has been passed in 23 states as of today. We'd like to thank you for introducing the bill, and on behalf of the seed industry, the Nebraska Agri-Business Association, and the American Seed Trade Association, I'll try and give you a little background on this legislation now. In 2002, the American Association of Seed Control Officials amended their model uniform code, RUSSL, to permit a 15-month test period for cool season grass seeds only. This 15-month period is also permitted under the Federal Seed Act. Science has well documented that this change to testing period does not affect the viability of the quality of the seed sold. A 15-month testing period reduces the burden on manufacturers, retailers, and seed officials to track and update cool season grass seed labels. This results in freeing employees to actually focus their time on products that may not be acceptable for consumer consumption. We also support the addition of the "sell by" dating system as provided in this bill which would apply to all grass seed sales. The current testing period system is informative for regulators, but consumers do not know the shelf life of grass seed. So for them to understand that is very confusing. So we support the addition of the "sell by" system to help consumers identify viable grass seed with greater ease. This is similar to the "sell by" system you see for milk and eggs out there in retail stores. So the consumer would be able to make

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that same identification to grass seed as well. This system is also recommended under the RUSSEL model code. In summation, the proposed bill promotes greater consistency among state seed laws, regulatory burdens are reduced, and employee resources are freed up for both state inspectors and retailers and manufacturers. Labels will be easier to be read and understood by consumers, and retailers are also able to keep more viable seed on the shelves for a longer period of time and better serve consumer demand. Thank you again for allowing me to testify today, and I'll be happy to take any of your questions. [LB166]

SENATOR SCHILZ: Thank you, Mr. Herrington. Any questions? Seeing none, thank you for your testimony. We very much appreciate it. [LB166]

BRIAN HERRINGTON: Thank you very much. [LB166]

SENATOR SCHILZ: Any other proponents? Seeing none, any opponents? Seeing none, neutral testimony? Seeing none, that will...I'm going to waive my closing, and that will close the hearing on LB166. Thank you very much. I think we're waiting for Senator Karpisek, so we'll go ahead and take a little break and wait for him to get here. Thank you, everyone, for your patience. At this time, we'll introduce Senator Karpisek to come up and introduce LB431. Senator Karpisek, it's all yours. [LB166]

SENATOR KARPISEK: Thank you, Senator Schilz, members of the Ag Committee. I'm glad to see you got a little better digs today than upstairs. (Laughter) For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB431 really has to do with the processing of deer, is my goal behind it. If I look...as I look over it again, I probably should have put in the definition. We said a private home or other area with less than five game animals are processed, stored, or sold would not be a food kitchen. Probably should have said, for profit. The problem is there, that everybody trades with their...do their deer for their friends or they trade this or that, or lo and behold they maybe even just give cash. My problem with this is, we have...I had a meat market for 20 years and there are a lot of guys out on the farm that do almost as many deer as I did a year. They're not inspected, they don't have anyone there to make sure that their coolers work, that they use their sanitation right, any of the things that anyone who is inspected has to do. And it's all just kind of a wink and a nod and everybody kind of giggles about it. Well, when I have a food inspector come in and I have to spend thousands of dollars on new equipment or fixing equipment, I don't think that it's funny when the guy out on the farm can be...not have a clue what he's doing, but he's doing it cheaper, and so a lot of people take it to them. What started...well, it's always been a bur under my saddle, but last year in Ag Committee we heard from the Department of Agriculture talking about food safety and how serious it is and how seriously they take it. Great. If we take it that seriously, then I think that we'd better look into these people who are making food for people and doing it as a business out of their home. I looked at the fiscal note. I have some issues with that. The one says the

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Department of Ag believes there are many of these facilities across the state, so they would need to hire another inspector. What they don't take into consideration is how much the inspection fees would negate this extra cost, because then it says that they have no idea how many there would be. But they know there's a lot, but they don't know how many. So that's kind of one of those issues. Again, I'm not after the guy that has a few buddies come over and they all do their deer together and make a little party out of it or however they do it. I get that and that's wonderful. But the person who is doing a lot of deer, and I'm not stuck on the number of five, but (laugh) it can't be too many or it turns into a business. And that's what this bill is about and I guess if the...how much ever \$50,000, \$60,000 for another inspector is too much, then I don't know where our big worry about food safety is and maybe we should do away with the whole thing. I'd be glad to try to take any questions. [LB431]

SENATOR SCHILZ: Thank you, Senator Karpisek. Senator Bloomfield. [LB431]

SENATOR BLOOMFIELD: Thank you. Senator Karpisek, I have a couple questions. I fiddle around on Craigslist every now and then. I see there's a fellow west of town here that invites you to come in and buy one of his sheep and butcher it on his facility. You do the butchering, the processing, but you use his sink, and is that going to...I don't even know how he qualifies. I've always kind of scratched my head when I saw that. You know how that works and how this would affect him? [LB431]

SENATOR KARPISEK: I don't. I'd have to think through that because when you butcher you have to be federally inspected. [LB431]

SENATOR BLOOMFIELD: Well, you're doing your own butchering. So you bought the animal, you're butchering your animal. [LB431]

SENATOR KARPISEK: That's true. I suppose that's a way around it. I'd have to really think about that one. [LB431]

SENATOR BLOOMFIELD: Yeah, I would like to look into that a little more because I do think he's circumventing the intent of everything that... [LB431]

SENATOR KARPISEK: And I don't know if he's inspected or not, either. Should be. But if you're doing your own, I don't know. [LB431]

SENATOR BLOOMFIELD: Yeah, but I'd like to look at that one a little closer then. I had another wonderful question, too, but it escapes me at the moment. [LB431]

SENATOR SCHILZ: Maybe it will come back to you. Thanks, Senator Bloomfield. Senator Johnson. [LB431]

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SENATOR JOHNSON: Is there any policing if food...the Department of Ag finds out about something like this going on that they can go out and do anything about it? [LB431]

SENATOR KARPISEK: Not that I know. And it sounded like the questioning I gave them last year was, no. [LB431]

SENATOR JOHNSON: Okay. [LB431]

SENATOR SCHILZ: Thank you, Senator Johnson. Anyone else? Senator Karpisek, I have a question. You talk about these inspection fees for a facility like you had. What was that? Was it an annual fee? Was it... [LB431]

SENATOR KARPISEK: It was an annual fee and I'm just going to say that it was roughly \$125 a year, but there's...I think maybe the base is about \$60 or \$65 and then you can add a catering license, and you can add if you handle eggs, I think goes on there. And there's a few other things then. And not to even mention in any of that is you need, if you have a scale, you have to have Division of Weights and Measures come out and check your scale. And you have to pay for that. And if your scale isn't right, you have to go buy a new one, which isn't even included in any of this. So if they're weighing meat to know how much to charge, you would think they should have that too. But that's, I guess, even on a tangent to this. [LB431]

SENATOR SCHILZ: Sure. And that's just a state inspection, right? We're not talking a federally inspected facility? [LB431]

SENATOR KARPISEK: No, correct, right. Federally inspected would be if you are butchering for someone and...well, and selling it to someone else. You bring me a steer, I butcher it, and I sell it out of my counter, or sell it to Senator Wallman. Even if you do custom exempt work, you bring me a steer, I butcher it, you come get it, you still have to be federally inspected. [LB431]

SENATOR SCHILZ: Or you're supposed to be anyway. [LB431]

SENATOR KARPISEK: Supposed to be, correct. Now the feds don't mess around so much, and I had the feds come more than one time to my place to make sure that the meat I had was inspected, that I wasn't bringing in a steer and butchering it, and then reselling it. [LB431]

SENATOR SCHILZ: Okay. Thank you. Any other questions for Senator Karpisek? Senator Bloomfield. [LB431]

SENATOR BLOOMFIELD: The light came back on and I wrote it down. You mentioned

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you maybe should have added "for profit." Are you going to bring that as an amendment? [LB431]

SENATOR KARPISEK: I could or I'd talk to the committee, and I don't know...I did think of it at the time and I didn't know if it was needed because, again, there's so many ways around that. Well, I'm not charging for it, I'm doing it for my good pal, Senator Bloomfield. [LB431]

SENATOR BLOOMFIELD: And he appreciates it. (Laughter) [LB431]

SENATOR KARPISEK: Yeah. Just doesn't taste very good. (Laughter) [LB431]

SENATOR SCHILZ: Thank you. Maybe he'd donate something. [LB431]

SENATOR KARPISEK: (Laughter) Maybe. [LB431]

SENATOR SCHILZ: Yeah, I understand. Thank you. Senator Wallman. [LB431]

SENATOR WALLMAN: Yeah, thank you, Senator Schilz. Thank you for bringing this out, Russ. It's pretty bad around Beatrice, worse than around Wilber and Crete, I think. [LB431]

SENATOR KARPISEK: It could be and there are places that are butchering that shouldn't be. [LB431]

SENATOR WALLMAN: But I don't do it. [LB431]

SENATOR KARPISEK: You don't. Well, now we know. You know, I think there's people who cut hair in their houses. I don't agree with that. There's people that have businesses that they should get the business. I don't agree with the doing it at home stuff, especially if there's a health issue. [LB431]

SENATOR SCHILZ: Another question. Senator Bloomfield. [LB431]

SENATOR BLOOMFIELD: You're surely not suggesting there that mother can't be allowed to cut her son's hair. [LB431]

SENATOR KARPISEK: No, absolutely not. [LB431]

SENATOR BLOOMFIELD: I was hoping you were not. (Laughter) [LB431]

SENATOR KARPISEK: No, absolutely not. As long as they have the right size bowl, Senator, they can go for it. (Laughter) [LB431]



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SENATOR BLOOMFIELD: Should be good, okay. [LB431]

SENATOR SCHILZ: Thank you, Senator Bloomfield. Any other questions? Thank you, Senator Karpisek, I appreciate that. [LB431]

SENATOR KARPISEK: Thank you. [LB431]

SENATOR SCHILZ: Are you going to stick around for closing? [LB431]

SENATOR KARPISEK: Oh, yeah. [LB431]

SENATOR SCHILZ: Okay. Okay, proponents for LB431. Any proponents? Any opponents for LB431? Neutral testimony? Seeing none, now he waives. Okay, that will end the...oh, Senator Karpisek waives closing. That will end the hearings today. Thank you very much for coming and we will see you next Tuesday. Thanks so much. [LB431]