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Agriculture Committee
February 20, 2007

[LB515 LB632 LB633 LB634]

The Committee on Agriculture met 1:30 p.m. on Tuesday, February 20, 2007, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB515, LB632, LB633, and LB634. Senators present: Philip Erdman, Chairperson; Annette Dubas, Vice Chairperson; Ernie Chambers; Merton "Cap" Dierks; Russ Karpisek; Vickie McDonald; Don Preister; and Norman Wallman. Senators absent: None. []

SENATOR ERDMAN: Good afternoon, ladies and gentlemen and welcome to the Agriculture Committee. I will go through a few housekeeping issues that we need to address and the agenda is posted outside of the door. My name is Philip Erdman. I've been elected Chair of the Ag Committee. I will introduce to you the members of the committee who are here. And as I said briefly earlier, there are a couple of members who are in other committees that will be joining us shortly. I will start down here near to the door: Senator Norm Wallman from Cortland, Nebraska. Next to him is Senator Vickie McDonald from St. Paul, Nebraska. Senator Annette Dubas is the Vice Chair of the Ag Committee. She's from Fullerton, Nebraska. To my immediate left is Linda Dicken; she's our committee clerk. To my right is Rick Leonard, our research analyst. Senator Don Preister from Omaha is to his right. And Senator Chambers is to Senator Preister's right and Senator Chambers is also from Omaha. We would ask this afternoon that if you have cell phones to either turn them off or to make sure that the ringer doesn't go off during the course of our testimony today. That will assist us in making sure we hear the testifiers as well as making sure that the transcriber's office doesn't have to figure out where they left off from all the ringing. If you'd like to testify, there are testifier sheets. They are on the corner of the desk near Senator Wallman. Try to have those filled out prior to your testimony. And if you would, we'll have you put those in the box and one of the things that we need to make sure that you do is before you begin testifying that you spell...you state and spell your name for us. We'll also probably have a page grab that form from you so that we have it here to make sure that as we begin this transcribing process that it's done up front. And we'll also ask that for every bill that you do plan to testify on you have to have a separate sheet so that way we have an individual record for each one of those. If you don't want to testify, we'll have a sheet that you can sign that states your position. That will be added as an exhibit to the record. If you do need assistance of any kind that our pages can assist you with, Steve and Erin; Steve Scharf is from Lincoln. He's a political science major at the University of Nebraska. And Erin Frank is from Bassett and she is an environmental studies major also at the University of Nebraska. They'd be happy to assist you with handing out any information or if you need something to drink as you are giving your testimony, they're here to help us and they're probably the most vital part of our hearing process today. The last thing that I'll share with you is that we'd rather you not do the wave or give each other high five's or things like that after you get done testifying. As much fun as it is to come before a legislative hearing and, you know, give a great

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speech, we know a great speech when we hear one and we'll give you kudos appropriately. But try to refrain from public displays of support or opposition as sometimes these discussions can lead to emotion. With that, I will also say that Senator Dierks will be joining us later. He has a small bill in front of the Education Committee. He plans to be there for a while, and he will be back. The agenda for this afternoon is going to be LB515, followed by LB632, LB634, and then LB633. So you'll notice that they're not in numbered order and that's at the request of Senator Dierks to have LB633 run as the last bill. We will start with the introducer, then we'll go to proponent testimony, opponent testimony, and if anyone is in a neutral position and then the introducer of the bill, if it's the senator, will have a chance to close. If it's the staff, they will not be afforded that opportunity per our rules. With that, we will open the hearing on LB515. Senator Stuthman, you are recognized to open. []

SENATOR STUTHMAN: (Exhibit 1) Thank you, Senator Erdman and members of the Ag Committee. First of all, I have an amendment that I would like to have passed out. I am Senator Arnie Stuthman, S-t-u-t-h-m-a-n, from Platte Center; and I am here introducing LB515. First of all, I'm going to give you a little bit of the background of why I introduced LB515. This originally came as one of my attempts, very few people, you know, engaged in efforts of helping me introduce this bill. What I originally set out to do was to simplify the process one must complete to obtain a conditional use permit for livestock production. After talking with a number of individuals and groups, we came up with a compromise that I hope would be agreeable to the committee, and that is the amendment that was passed out. AM434 to LB515 would restore all of the language stricken which I had stricken out of that Section 23-114.01 and would remove all the language that was added in that same section. At the end of subsection 4, language would be added that would direct the county board to approve an application with any special conditions or requirements as long as the application qualifies under the county's standards that have been adopted by the county board. And I will just read you the portion of the amendment of what I'm inserting in there. And "On page 6, line 16, after the period insert 'Once it has been determined that the applicant qualifies under the standards adopted by the commission and approved by the county board of commissioners or supervisors for livestock operations and all special conditions or requirements have been determined.'" Now I'm just going to go over that one more time. It states that if the applicant qualifies under the standards adopted by the commission, those are the standards adopted by the planning and zoning commission. Those qualifications that are adopted by the planning and zoning commission, which are also approved by the county board of supervisors or the county board of commissioners, so those qualifications that are set up in the regulations of the planning board of commissioners, then the county board, if all of those requirements are met, then the county board of commissioners or supervisors shall approve the application with any special conditions or requirements. One of the reasons for this is I will state that my county doesn't have planning and zoning, but I've attended many, many of the planning and zoning hearings in adjoining counties. What seemed to me was part of the situation

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was people that put in for an application for livestock permits to expand or start a new operation to add another operation to keep family members on the farm, it seemed like you could meet all of the qualifications that were needed to be done and you would be approved by the planning and zoning commission board. But then when it moved on to the next level, then it would get voted down. What I'm trying to do here is that I want all of the decisions to be based on sound science and I want them to follow the regulations. That I want them to do. I want this all to be done, you know, that they are following the regulations. That's the most important thing. But the thing that concerned me was, you know, that even if everything was met and approved by one of the processes, it was denied by the next process. And that was a concern that I have. I want to give you a little bit of...a little information as some of the statistics that we got from the USDA. I don't have them from Nebraska, but it would reflect in the same percentages as on the national level. There used to be 1,300,000 cattle operations nationwide in 1990, and in 2006 it's under 1,000,000 right now. That's nationwide. In regards to swine, in 1982 just fewer than 500,000 hog operations existed in the United States, and that number is down to under 100,000 right now. So from 500,000 in 24 years, 25 years, it's down to under 100,000 operations at the present time. With that, those are my opening comments. What I'm realistically trying to do, I'm not trying to simplify it as far as not doing the right thing, but I'm trying to simplify it as far as what the process has to be to go through to hopefully get an approval on an operation. [LB515]

SENATOR ERDMAN: Thank you, Senator Stuthman. Any questions? Senator Dubas. [LB515]

SENATOR DUBAS: Thank you, Senator Erdman. Just so that I'm clear on this, are you still...is your amendment addressing that there still will be a hearing at the county level? There will still be two public hearings? [LB515]

SENATOR STUTHMAN: Yeah. There can be two. [LB515]

SENATOR DUBAS: There can be. [LB515]

SENATOR STUTHMAN: There can be two. [LB515]

SENATOR DUBAS: But there doesn't have to be. [LB515]

SENATOR STUTHMAN: Well, I'm not...it depends upon what the county board decides. [LB515]

SENATOR DUBAS: As their standards. [LB515]

SENATOR STUTHMAN: As their standards. You know, the standards that are set up in the planning and zoning commission which the board approves, which the county board

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approves the planning and zoning commission's comprehensive plan, and in that comprehensive plan we found that, you know, there is a hearing process in that plan. But I am not sure whether every county board has that in their regulations, whether they have to have a hearing process. [LB515]

SENATOR DUBAS: Well, it's my understanding that they're... [LB515]

SENATOR STUTHMAN: And, and it... [LB515]

SENATOR DUBAS: ...as a former planning and zoning board member that that's a part of the process. [LB515]

SENATOR STUTHMAN: And it's very possible that it can be. But, you know, if all the requirements are met, you know, then the county board shall approve it. [LB515]

SENATOR DUBAS: Okay. [LB515]

SENATOR STUTHMAN: And I would emphasize again, if all the requirements are met, you know, that are set up by the planning and zoning commission and approved by the county board, then the board needs to approve it. [LB515]

SENATOR ERDMAN: Thank you, Senator Dubas. Senator Chambers. [LB515]

SENATOR CHAMBERS: Senator Stuthman, I don't want to carry you over a lot of material you may have covered so I'll ask a couple of questions. It's true that this commission is appointed by the county board. [LB515]

SENATOR STUTHMAN: Yes, it is. [LB515]

SENATOR CHAMBERS: The county board is elected. [LB515]

SENATOR STUTHMAN: Yes. [LB515]

SENATOR CHAMBERS: So we're going to make a commission appointed by the elected officials, we're going to place them in control of the elected officials by compelling the elected officials to yield to the will of the appointed commission with this amendment. Isn't that true? [LB515]

SENATOR STUTHMAN: No. [LB515]

SENATOR CHAMBERS: I thought you said that the county board shall accept the commission's recommendation. [LB515]

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SENATOR STUTHMAN: Senator Chambers, if all...I discussed this a little bit before when you was out. [LB515]

SENATOR CHAMBERS: Okay. [LB515]

SENATOR STUTHMAN: And what this really is, is it states in there on the first couple lines and I'll go over that again, you know. Once it is determined that the applicant qualifies under the standards adopted by the commission, see there's...when a planning and zoning commission is initially started, they develop their comprehensive plan. That comprehensive plan as to, you know, what they're going to do, that has to be approved by the county board of supervisors and commissioners. [LB515]

SENATOR CHAMBERS: But here's what I'm getting at. Each one of these should be decided on its own merits. Maybe it's not appropriate that one of these applications be granted. Even if in general the county board sets up certain rules, and I'm oversimplifying it, the commission has an applicant which applies, I meant which complies with all of those requirements set up by the county board. The commission agrees with the applicant, then the county board has to accept what the commission said. But the county board as elected officials should always have the power to exercise their discretion. They should be able to say no. They appointed this board. This is the tail wagging the dog. [LB515]

SENATOR STUTHMAN: They have appointed the board, but yet they have approved of the qualifications and standards that have to be met, which... [LB515]

SENATOR CHAMBERS: But what you're saying is that this board is given carte blanche to bind the county board. The appointed board can bind the elected officials. In other words, I'm the father. It's my house. My children can order me what to do in my own house. That's the way I see it, but that's the issue I was raising and that's all that I will tie you up on at this point. Thank you. [LB515]

SENATOR STUTHMAN: Okay, thank you. [LB515]

SENATOR ERDMAN: Thank you, Senator Chambers. Further questions for Senator Stuthman? Senator Stuthman, to follow up I guess on some of Senator Chambers' questions, you made a comment to Senator Dubas that they may have two hearings, depending on how the county has chosen to be organized and their process. Some of the language as I see it on page 6, and I don't know that you're striking this or that you're reinstating this, but on line 8, if you have a copy of the bill in front of you, it talks about when the determination of a special condition or requirement has been made the final permit approval may be withheld subject to only final review by the county board. So as I understand what Senator Chambers is getting at, who is going to make the final say, it would seem to me that this language specifies that it's the county board that has

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that authority to deny that or to make that determination. You're not changing that, right?
[LB515]

SENATOR STUTHMAN: No. [LB515]

SENATOR ERDMAN: You're preserving that the elected board has the ultimate say in denying that permit. Is that accurate or am I just not understanding your... [LB515]

SENATOR STUTHMAN: What I am trying to accomplish with this amendment here is that after everything has been met, you know, all of the regulations have been met then the county board of commissioners or supervisors shall, you know, approve the application. And that can be, you know, with the double hearing process, you know, all the conditions have been met, you know. And that if they meet all of those conditions, you know, then they shall approve the application. [LB515]

SENATOR ERDMAN: Okay. I need to do some more reading here, but thanks for the clarification. Further questions for Senator Stuthman? I see none. [LB515]

SENATOR STUTHMAN: Thank you. [LB515]

SENATOR ERDMAN: Will you stick around to close? [LB515]

SENATOR STUTHMAN: Yeah. [LB515]

SENATOR ERDMAN: Do you plan to close? [LB515]

SENATOR STUTHMAN: Yes. [LB515]

SENATOR ERDMAN: Okay. Can I see a show of hands of those who wish to testify on LB515? I see three, actually I see more once Senator Stuthman sits down. I see five, six. Okay. [LB515]

SENATOR STUTHMAN: I might not be able to close. [LB515]

SENATOR ERDMAN: Again, as you come forward, try to have your testifier sheet filled out ahead of time. We'll welcome proponent testifiers first to start with if there are any. Don't everybody rush up at once. Oh, it looks like there's one. [LB515]

DUANE GANGWISH: We were arguing who was going to be first. Good afternoon, Senator Erdman, members of the committee. My name is Duane Gangwish, that's D-u-a-n-e G-a-n-g-w-i-s-h. I appear before you as registered lobbyist for Nebraska Cattlemen and on their behalf. We rise in support of the amended portions of the bill. We obviously, and by our policy, support the process of local input on all local land

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decisions and uses. We would be remiss to say if there aren't...to think that there are not challenges when it comes to how we might use those in any given locale, and we have been a part of that process and we pledge to be a continued part of the process and in order to be a part of the solution. We feel that this is an appropriate amendment because what it does is it puts the stakes in the hands of those that were elected to decide. Once you've met the requirements and you have investigated those, met those requirements and then begin to move forward, that there is an approval of that process. So I would offer our support and offer to answer any questions, attempt to answer any questions. [LB515]

SENATOR ERDMAN: Thanks, Duane. Any questions for Mr. Gangwish? Senator Chambers. [LB515]

SENATOR CHAMBERS: By way of an analogy, if there are certain requirements an applicant for a liquor license must meet and the applicant meets those requirements, is the Liquor Commission required under the statute to grant that liquor license or does it exercise discretion to determine whether it ought to or not? [LB515]

DUANE GANGWISH: Senator, I'm not familiar with the statutes and the liquor license. I apologize. [LB515]

SENATOR CHAMBERS: Okay, then let's go to this. This in effect converts the county board into a rubber stamp for this commission. Isn't that true? Because it has no power to say no. [LB515]

DUANE GANGWISH: I don't believe so, Senator. [LB515]

SENATOR CHAMBERS: Then let me read this sentence and then I'm going to be through with you because I don't want to be argumentative. [LB515]

DUANE GANGWISH: Okay. [LB515]

SENATOR CHAMBERS: You said you approve of the amended version. [LB515]

DUANE GANGWISH: Yes, sir. [LB515]

SENATOR CHAMBERS: "Once it has been determined that the applicant qualifies under the standards adopted by the commission and approved by the county board of commissioners or supervisors for livestock operations and all special conditions or requirements have been determined, then the county board of commissioners or supervisors shall approve the application." Now the commission is the one who is going to make this recommendation. Is that true? [LB515]

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DUANE GANGWISH: The county board, the...yes, sir, that's correct. [LB515]

SENATOR CHAMBERS: And then the county board is required... [LB515]

DUANE GANGWISH: Yes, sir. [LB515]

SENATOR CHAMBERS: ...to accept this. Doesn't that make it a rubber stamp of what the commission recommends? [LB515]

DUANE GANGWISH: In your analogy, sir, yes, it does. [LB515]

SENATOR CHAMBERS: Okay, just so you understand the point I'm making even if you don't agree with the way I've characterized it. That's all I have. Thank you. [LB515]

DUANE GANGWISH: Thank you. [LB515]

SENATOR ERDMAN: Thank you, Senator Chambers. Further questions for Duane? Senator Preister. [LB515]

SENATOR PREISTER: Duane, I should have asked this of Senator Stuthman. Do you know if this amendment was turned in and put in the Journal so the public had notice of it or is it just being introduced today here? [LB515]

DUANE GANGWISH: I'm sorry, Senator. I'm not privileged. [LB515]

SENATOR PREISTER: Okay, thank you. [LB515]

SENATOR ERDMAN: Thank you, Senator Preister. Duane, just again a follow-up to Senator Chambers' question and maybe more on the process. It's the county board ultimately that sets those zoning regulations regardless of what the planning commission recommends. Is that accurate? [LB515]

DUANE GANGWISH: I believe that's accurate. With my limited experience and exposure to this, the planning commission offers those to the board and then the board approves them and then they're relegated to apply those in each of their dealings. [LB515]

SENATOR ERDMAN: So maybe a different analogy would be a bill gets introduced before the Nebraska Legislature and gets referenced to a committee. And that committee makes a recommendation to the Legislature and that recommendation could be a number of things. And once that bill gets to the floor, the Legislature as a whole makes the ultimate decision on what that policy will be and fords that through the appropriate channels. That's kind of how I understand the zoning and special use

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process to be, and that is that there's a committee that makes a recommendation that ultimately has to be approved by the elected officials as a whole. That then becomes the basis for any approval or denial of permits in the state of Nebraska and then, in fact, I believe are processes in place that if you don't follow those you have to have sound reasonings why you didn't. Otherwise, you could be subject to legal challenge on behalf of the county. The individual could take your county to court and potentially win the lawsuit because you didn't follow any basis for denying their permit when they've met the standards. So that's maybe an analogy that I have and maybe that's not a good one and Senator Chambers could respond in his opportunity. But is that kind of how you envision this to work, whether or not the language is written that way or do you have a different perspective than that? [LB515]

DUANE GANGWISH: It was a long question so if I followed it accurately... [LB515]

SENATOR ERDMAN: It wasn't much of a question. I guess it was probably a grandstanding statement of, as I said earlier, we know a good speech when you hear one and that probably wasn't it so. I guess again the analogy would be a committee of the Legislature sends a bill out to the full Legislature. The full Legislature ultimately has to vote on whether that policy becomes law and can amend or make changes. And when you go through the planning and zoning process, the commission, the planning commission makes recommendations that ultimately have to be approved in the best interest of the community as a whole and different guidelines that they follow. Is that how you understand the planning process? And then is that how you see...because that seems to be the rub here is who has the ultimate say? The county board had to approve whatever was there and it was their opinion that set those standards. It wasn't the commission alone. [LB515]

DUANE GANGWISH: To some extent, Senator. To the extent that a committee in this body offers a recommendation out to the larger body for consideration and debate, there is that process in the beginning when the zoning, to my understanding, when the zoning rules and regulations are formulated. There is quite a process by which the interested parties come together and agree upon those rules and regulations. And then the elected body would then approve those regulations. And then at that point is where sometimes the...some of the challenges come in. Although maybe I as an individual citizen may have met all of those requirements, there is still a moving target, if you will. So I'm not sure that the analogy makes true to this particular body here in the Legislature, but others might have a better answer for you. I apologize. [LB515]

SENATOR ERDMAN: Sure. I apologize for the poor questioning. Senator Dubas. [LB515]

SENATOR DUBAS: As a former planning and zoning board member, I'm understanding the process that as the board we make the recommendations. The county board has

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another hearing. They are the final say. And so I've seen instances where the commission has recommended denial, the board has saw fit not to uphold that recommendation and has approved it. So under this scenario, if the commission...if the zoning commission recommends denial, does that automatically say that the supervisors or county commissioners are held...are they held...even though they are the deciding body, are they held by the word "shall" to whatever recommendation comes from the zoning commission? [LB515]

DUANE GANGWISH: That would be my understanding, Senator. [LB515]

SENATOR DUBAS: It was always my understanding as a zoning board member that we were simply a recommending body. In our comprehensive plan there are permitted uses and there are conditional uses. If it doesn't fall under those two categories, it's simply not allowed. But again, we make the recommendations, but it's up to the county board to make that final decision. So I guess I'm not clear as to what direction this is going. [LB515]

SENATOR ERDMAN: Thank you, Senator Dubas. Senator Chambers. [LB515]

SENATOR CHAMBERS: To show how Senator Erdman's example doesn't apply, the rules of the Legislature are laid out in advance and govern how every bill is to be handled. That does not guarantee that because a bill follows all those procedures that the Legislature is going to pass it into law. There can be a hearing, there can be full debate on the three stages of debate and it can wind up on Final Reading and the Legislature can say no. This is saying that since the county board had laid out these requirements, which I would analogize to the rules of the Legislature, the committee, which would be the planning board, recommends that this comes before the Legislature. That's where the change comes. Your amendment says the county board shall approve the application. In the Legislature, we can vote no on Final Reading even if every other requirement of the rules had been met. The final decision is up to us. This amendment converts the county board into a rubber stamp because it says the commissioners or supervisors shall approve the application. It's saying that the rules they lay down in advance of any applications being filed, this is to give notice of what the applicant must do. If the applicant does those things and the planning board looks over their application and says, yeah, we like this, then there's no need for the county board to do anything because by operation of law the decision by the planning board is what's going to be done. The county board has no discretion to reject that application. So I'm saying this is letting the tail, which was created by the county board, wag the dog, which is the county board. And I'm not in favor of taking that discretion from an elected board so I don't even know if this would stand legal challenge. But I don't even get that far. I'm going to listen very carefully and see if somebody can persuade me that the created...the creature ought to control the creator. Now there was one instance, it was called Frankenstein. It was written by Mary Wollstonecraft Shelley. And the most memorable

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words that the creature who became a monster, his name was Adam, stated was you are my creator, but I am your master. Obey. What they area converting this into is Frankenstein's monster. That planning commission is saying to the county board, you are my creator but I am your master. Obey. And I'm not sure that that is the appropriate course to take, in fact, I know it's not. But I'm going to listen with an open mind, but not an empty head. That's all I would have. [LB515]

SENATOR ERDMAN: Thank you, Senator Chambers. And I concur with your analysis so we'll agree on that, at least on the rules of the Legislature. Other questions for Duane? I see none. Thank you, sir. [LB515]

DUANE GANGWISH: Thank you. [LB515]

SENATOR ERDMAN: Next testifier in support, please, of LB515. Anyone else wishing to testify in support? Come on forward. [LB515]

ANDREW KABES: Thank you, Chairman Erdman, fellow members of the Ag Committee, my name is Andrew Kabes, Andrew, A-n-d-r-e-w, Kabes, K-a-b-e-s. I want to thank you for allowing me to come in and testify in support of this bill today. The main reason I want to come and testify today is as we pointed out, there may be some issues with this bill but it's brought up a very good point of some of the zoning regulations that this state has become a little overzealous with in regards to livestock operations in the past few years. I'm a young and beginning farmer. I'll actually be starting my first year of production this upcoming crop year. I see myself within the next few years coming back to a family farm, maybe not necessarily working it but managing as well as maybe potentially putting up some hog units later on in my farming career. I'm a senior at the University of Nebraska majoring in ag business. And I feel that my career path will continue to lead me on to be the leader of agriculture in the state of Nebraska. My simple concern today is with this bill is that me, looking to the future, I get more and more concerned that the zoning that I've seen in many counties in this state have become so overzealous that it will possibly prevent me from putting up maybe very small units or possibly even a small feedlot down the road. I guess personally since zoning has been enacted, the zoning has become a tool for a few vocal minority to control what are deemed as unfit operations in many counties. This overzealousness in zoning has caused the state to miss out on economic impacts involved with the financial investment from these operations, both from family farms and some corporate farm...corporately owned farms. I would estimate that some of this impact is probably in the tens of millions of dollars initially, not including long-term investment from feed sales, veterinary, etcetera. I believe there is a place for the zoning regulations in this state. I don't feel...I feel no support to say we need to put 75,000 animals in one, you know, half-mile area. That's just environmentally unsound. But if we have sites that meet the EPA and the DEQ regs, I feel that..and it meets the zoning requirements of the county as written by the county and approved by the county, as we talk both the

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commission and the county board of commissioners, there should be no reason why a producer should not be able to get approval for their operation unless they're just is no reason. I believe again we hear the common cause that the tax base in this state is shrinking. I believe if we allow zoning to be relaxed just a tad I believe that we'll see our tax bases increase. And all of the constituents, I'm sure many of yours, that complain yearly about the property tax increases will probably see a decrease or at least a leveling off of those property taxes. I guess in closing I just want to say that from the beginning farmer and producer outlook I believe it's important that there is some overhaul in the zoning of this state. It's become to the point where it's nearly impossible to put up even a small hog barn or a small feedlot of anything, even though it is properly permitted and environmentally sound operation. So I guess I just hope that we begin to look at this. And maybe this bill isn't quite the right one, but we begin to look at maybe figuring out how in the long run we can sustain our livestock economy in this state that is vitally important to our agriculture industry as well as increasing our rural investment and making a future for the family farm. Thank you. [LB515]

SENATOR ERDMAN: Thank you, Andrew. Any questions for Mr. Kabes? I don't see any. Thank you, sir. [LB515]

ANDREW KABES: Thank you. [LB515]

SENATOR ERDMAN: And I'd like to announce that Senator Russ Karpisek has joined us. He's from Wilber, but he was doing the Legislature a favor and staying at the Retirement Committee to make sure that we had a quorum. So I told him that he was doing a service to all mankind and he would be recognized accordingly. [LB515]

SENATOR KARPISEK: Wow. [LB515]

SENATOR ERDMAN: So now he is here and we're glad you're here, Russ. [LB515]

SENATOR KARPISEK: Thank you. [LB515]

SENATOR ERDMAN: Next testifier in support of LB515. [LB515]

LARRY SITZMAN: Good afternoon, Senator Erdman, members of the Agriculture Committee. My name is Larry Sitzman, L-a-r-r-y S-i-t-z-m-a-n, the executive director of the Nebraska Pork Producers Association. It's going to be a long afternoon for you so I will speak very shortly. The Nebraska Pork Producers support this bill and the amendment. But upon listening to Senator Chambers' and Senator Erdman's concerns, I believe that there maybe is some tweaking that needs done. But then upon listening to the young man that preceded me, that's exactly why I'm sitting here and came up anyway. You can't believe how many young producers in this state are just giving up and saying, I'm not even going to try anymore. I'm not going to go forward with an

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application process because it passes one part of the agenda and when I go to the next one it's reversed or vice versa. And it's getting to the point that agriculture in this state is just saying, we don't even...aren't concerned or even willing to think about locating in the state of Nebraska anymore. We're going to go somewhere else. And maybe there are individuals around this table and in this state that that's their exact motive. And maybe there are individuals that are very supportive of agriculture. But I think as the young man just said, we need to begin to look at opportunities and changing a few of the rules that doesn't just slam the door on every young producer out there willing to move forward and get himself involved in agriculture. Thank you. I'm willing to answer any questions for you. [LB515]

SENATOR ERDMAN: Thank you, Larry. Questions for Mr. Sitzman? Senator Chambers. [LB515]

SENATOR CHAMBERS: In the area that you live in, is the county board or the board of supervisors an elected body? [LB515]

LARRY SITZMAN: Currently I'm living in Lincoln, Senator. So I was... [LB515]

SENATOR CHAMBERS: Well, the county board here is elected, isn't it? [LB515]

LARRY SITZMAN: Yes, it is. [LB515]

SENATOR CHAMBERS: Well, if these board members get elected, who is electing them? [LB515]

LARRY SITZMAN: The citizens, the voters. [LB515]

SENATOR CHAMBERS: Okay, now, I'm not...you mentioned people around this table. I don't vote for anybody out there so it would be the people out there who elect their board members and they're the ones who make these decisions that you all don't like. Isn't that true? [LB515]

LARRY SITZMAN: That some people don't like, that I don't like, yes, sir. [LB515]

SENATOR CHAMBERS: So if the door is being closed, it's not closed by anybody around this table, is it? [LB515]

LARRY SITZMAN: I believe, Senator, that a lot of the rules and regulations come through this Legislature that actually make the decisions that these zoning boards and etcetera can uphold. [LB515]

SENATOR CHAMBERS: I'm going to quote Scrooge, "Bah! Humbug!" That's all I have.

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Thank you. [LB515]

SENATOR ERDMAN: Thank you, Senator Chambers. Any further questions for Mr. Sitzman? Thank you, sir. [LB515]

LARRY SITZMAN: Thank you. [LB515]

SENATOR ERDMAN: Anyone else wishing to testify in support of LB515? I see none. Anyone wishing to testify in opposition to LB515? Okay, come on forward. [LB515]

JOHN JOHNSON: My name is John, J-o-h-n, Johnson, J-o-h-n-s-o-n, and I'm here today as the planning director of Madison and Pierce Counties and I'm also the president of the Nebraska Association of County Officials planning and zoning affiliate. And I'm here basically to show my opposition to both the bill as introduced and the amendment. Right now I think my county was one of the reasons this bill was brought forth. I can't be certain of that, but we had a hog unit that was denied a year and a half ago. And as part of that denial, a lot of people felt that that hog unit met all the requirements of Madison County and should have been approved. I'm not going to read all of these, but basically these are the standards for an animal feeding operation to be granted a conditional use permit. First, it must pass the Madison County livestock feeding siting matrix, which is a...we give it points based on what they plan to do. It also...the other standards they have to be present in order to deny; will not comply with the applicable requirements of the regulations; the presence of any endangered species; the presence of any grave sites or Native American sacred sites; the presence of archaeological, cultural, religious, historic landmarks and artifacts. The owner/operator does not meet or has not signed acquired signed easements from 100 percent of property owners. It does not exceed EPA's ambient air pollution standards at the property line. And then is not detrimental to the public health, safety, welfare, or materially injurious to the properties or improvements in the vicinity. That last part was established by the Supreme Court in Euclid v. Ambler Realty in November of 1926, the health, safety and welfare the zoning protects. That was by the United States Supreme Court and so that is the key. In Madison County's case, the planning commission felt that all those standards, including the health, safety and welfare, were met. A hearing was held in front of the county board and after the county board heard that, they felt that particularly the health, safety, and welfare standards were not met. And they issued a resolution of denial that contained 37 statements of fact as part of their findings of fact. They based their denial on basically the fact that a neighbor just a way, just outside of the setbacks of this operation, had asthma. And she presented evidence that this hog unit could trigger her asthma and possibly, according to her doctor, these triggers could prove fatal. Also they also cited number, fact number 36 which showed high nitrates in the area and we're talking 28 and above with 10 as a safe level. That decision was in opposition to what the planning commission recommended. In the five years that I have been in Madison County, it is the only time the county board has overruled the planning

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commission. Also in Pierce County we've had a couple times where the county board has overruled the planning commission initially then changed their mind and went back to agree with the planning commission. As a former planning commissioner, planning commissions don't like to be overridden. And I had half of my board resign once when I was chairman of a planning commission years ago because the city council in this case kept overriding our decisions. So it doesn't happen very often. And getting people to accept the big dollars paid for being a planning commissioner, up to \$15 per meeting by statute, and whatever the mileage reimbursement is to and from the meetings, does not necessarily...you have to admire these people for putting up with some of the stuff they have to put up with for 15 bucks and travel expenses. The other thing I'll let you know just as information, Chapter 23 part 164 of the state statutes does require two hearings--one to be held in front of the planning commission, one to be held in front of the county board. And the county board should not be tied to a planning commission decision. The provision already exists to allow the planning commission to make the final decision. It was one of the areas stricken so if the amendment would be adopted, it would be back in place. And if the planning commission is given that option to approve conditional use permits, it is given so by the county board. And that would not take a conditional use permit in front of the county board. Presently as far as I know, none of the 80-plus counties with zoning in Nebraska have done this. I do know of some cities; namely, Norfolk that does do this. But no counties that I'm aware of have given the authority to the planning commission to make those decisions. And just one other thing. Zoning isn't actually antiag. Zoning is to protect the health, safety, and welfare and also to provide compatible land uses. Like wherever you live, if you woke up the next day to find a vacant lot next to you is having a convenience store erected that would have lights that would shine into your living room, customers 24 hours a day, you probably wouldn't want that, especially if it was right in the middle of an upper echelon subdivision or out in the middle of nowhere. That's what zoning is there for. And I would like to let the committee know that there's been a few times that I'm aware of, and I'm sure there's more around the state, where zoning has protected livestock. For instance, in Otoe County there was recently a court decision this summer from the Otoe County District Court that said a subdivision that was being proposed across the road from a hog producer could not be built. Their setbacks were constitutional and reasonable. It also...the decision also said that someone lying within a required setback of in this case the subdivision or of an ag unit, livestock unit could not sign a waiver to allow them to go in. But primarily it protected that hog unit from having a subdivision across the street. In Pierce County, I personally turned down two building permits because they were too close to livestock operations. One was for a house; one was for a church. And they...in both cases they were going to be located in the case of the church about an eighth of a mile from a cattle feedlot. In the case of the house, less than a quarter of a mile from a cattle feedlot. On Pierce County, they have to be a half a mile from even the smallest... [LB515]

SENATOR ERDMAN: John, are you finished? [LB515]

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JOHN JOHNSON: Yeah. [LB515]

SENATOR ERDMAN: Okay. Thank you. Senator Chambers. [LB515]

SENATOR CHAMBERS: Oh, I was just going to say they must come awfully tall where you come from because you said your testimony would be short. (Laughter) [LB515]

JOHN JOHNSON: I don't think I said that so. [LB515]

SENATOR CHAMBERS: Oh, you didn't. Maybe somebody before you said it. Okay. [LB515]

SENATOR ERDMAN: Thank you, Senator Chambers. John, do you have any further comments? [LB515]

JOHN JOHNSON: Just one other. That in Pierce County since the Omer (phonetic) decision, they have approved 4,900 heads of hog. And Madison County has approved 2,400 head and currently have 3,200 in the pipeline. So it's not like anything that comes in front of us is turned down. And at that same time between both counties, there's been over 25,000 head of cattle approved. [LB515]

SENATOR ERDMAN: Okay. Thank you, John. Any questions for Mr. Johnson? Just real quickly then going back to the example or maybe the circumstance that might have brought this bill before us, the concerns that were stated as fact by the commission, the 37 different items, were those same concerns presented to the planning commission or were they...I guess I'm trying to understand the timing. Was it the planning commission ignored those concerns that were presented to them or was it the fact that those issues weren't brought up until the actual hearing before the county board? [LB515]

JOHN JOHNSON: No. The way we operate in both counties, particularly Madison County, is we don't just determine those finding of facts until the public hearing is held because the statute says that the finding of fact shall be derived from the proceedings. So we have a hearing in front of the planning commission and then we have a month to put together the finding of facts. I do that as staff. I take it to the planning commission and they approve those. Now if new facts come out during the county board meeting, which I think one or two might have, and I don't know particularly which ones, we can go back and add those because they are also established facts. But we do not...so in that case I guess the simple answer to your question is both the planning commission and the county board have input on what they feel are facts. And in this case, those facts about the asthma particularly were established at the planning commission level. [LB515]

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SENATOR ERDMAN: Then the planning commission ignored those concerns and forwarded the recommendation to the county board and then the county board denied the application. Is that consistent with what you've told us? [LB515]

JOHN JOHNSON: Basically. The planning commission felt that with this woman living in the country she was subject to other triggers such as dust from her roads, grain dust and so on. The county board felt that, yes, those other triggers are present but there was not research and information saying that the hog dander and that that could be present there would not also be a trigger that could cause death. And also her doctor sent a second statement saying that this woman was to stay away from any potential triggers and that she felt was a trigger and that's why they made their decision. [LB515]

SENATOR ERDMAN: Okay. One last question. The example you gave about the C-Store going in next to a residential area, if the zoning allowed that and it was approved by the city or by the county or whoever had the ultimate authority and that was approved as part of their standards and they believed that that store had met those requirements, what would be the basis for denial of that application? [LB515]

JOHN JOHNSON: If they felt the store had met their requirements and in the case of my zoning regulations that would require a buffer, either vegetative or otherwise, between the convenience store and a residentially zoned district, if the owner refused to put up a fence or tall trees or whatever to provide that buffer that could be a reason for denial. Also maybe one of the conditions is they don't apply for a liquor permit for whatever reason and they said, no, we want to be able to sell liquor, courts in Nebraska have held that that decision, even in the case of a liquor permit, if the state says it's okay, if they don't get approval by local zoning standards, then it's not okay. [LB515]

SENATOR ERDMAN: So again going back to that example, if they've met the buffer and all the other conditions which would be generally outlined in the zoning and it would be a part of what you would consider to be good planning for development of that area, if they had met that, I guess what I'm trying to understand is, as I understand Senator Stuthman's amendment, it would say that if you've met all of those things then you'd get the permit. I guess I'm trying to understand is it under the health and safety area that allows for that flexibility that even if you've met those standards that you're not assured of that opportunity or... [LB515]

JOHN JOHNSON: Yeah. In this case, there was a disagreement about it. To be honest with you, I make a recommendation to my planning commissions. A lot of the zoning administrators across the state do not. My recommendation both to the planning commission and to the county board in the case of Omer (phonetic) was to approve it. But the planning commission went with my recommendation; the county board didn't. So that as planning director, I had different feelings. I make recommendations if I feel that all the requirements of our regulations and under state statute are met, I make a

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recommendation that it should be approved. That's the same thing the planning commission did. The county board disagreed with both of us in this particular case. But in most cases, if everything is there, it should be approved. In this case, whether or not it was actually a threat to health, safety, and welfare, that was the call of the two different boards. And the county board went one way and the planning commission went the other. [LB515]

SENATOR ERDMAN: Okay, very good. Senator Wallman. [LB515]

SENATOR WALLMAN: Yeah. I looked at all your...you know, you got a lot of regs there. If I want to put up a 25,000 head feedlot, how long will it take me to get the permit? [LB515]

JOHN JOHNSON: How long will it take you to get the permit? Best case scenario, about two and a half months, maybe two months. [LB515]

SENATOR WALLMAN: That quick? [LB515]

SENATOR ERDMAN: Thank you, Senator Wallman. Further questions for Mr. Johnson? I don't see any. Thank you, sir, appreciate your testimony today. [LB515]

JOHN JOHNSON: Thank you. [LB515]

SENATOR ERDMAN: Next testifier in opposition to LB515. [LB515]

LAURA KREBSBACH: (Exhibit 2) Good afternoon. My name is Laura Krebsbach, L-a-u-r-a K-r-e-b-s-b-a-c-h, and I'm here as a member of NEAC, the Nebraska Environmental Action Coalition. And I know that most senators, I hope all senators, were sent an e-mail of the opposition of our coalition to a number of bills. LB515 is among them. And it's signed by a good, oh, maybe 150 individuals, 6 citizen organizations across the state. And I wanted to get it entered into the record. I didn't bring a copy for everyone because I know you did get an electronic copy. If you'd like a paper copy, I can get those for you. But this is for the record in opposition. And one of the things I want to state, and I believe Senator Preister may have alluded to this, is that I feel very frustrated and blindsided about coming to testify on bills that are introduced when there are amendments that are introduced at the same time and I haven't had the opportunity to look at them. I don't believe that the amendment to this bill was available to the public. It wasn't to myself and I do check the Internet pretty frequently. It makes it very difficult to submit written comments because on a number of previous occasions they've been obsolete before I've gotten to the table because of amendments. And I do take a lot of time to write those so that's another reason I don't really have much to hand out. I gave up the practice for Lent so to speak of doing written comments. Basically what I see in the amendment that has been introduced in the short time I've had to look

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at it is that what this is, is an attempt to make all counties livestock friendly. The wording that says "shall" issue the permit if all of the conditions are met is virtually a very sneaky way of slipping in language from livestock friendly. If counties want to be livestock friendly, they have that opportunity and can go through that process. I don't think that we need to tie local control's hands by telling them what they can and cannot do. John did a wonderful example of why and that is a lot of zoning regs have different things that require subjectivity, health, you know, the health and safety of the community. The other thing is that this is a limit on public participation. And Nebraska has a longstanding commitment to openness and public participation. And to limit to one hearing the public's ability to speak really hinders their ability to have input into local control and local government. And that is the government that affects us the most is the most local decisions. So at that I'd like to stop and if there's any questions. [LB515]

SENATOR ERDMAN: Thank you, Laura. Are there any questions of Ms. Krebsbach? We're making copies of your letter to make sure that every member has that. We'll add that to the exhibit as well. Any questions for Laura? I guess I would have one and it kind of follows up. I guess what I heard John say, Mr. Johnson, was that there's other sections of law that require the two hearings if this bill doesn't amend. Are you aware of that? Is that...and so... [LB515]

LAURA KREBSBACH: I believe he is correct. [LB515]

SENATOR ERDMAN: Okay. So that process is still in place. Your concern is that this goes down that path of... [LB515]

LAURA KREBSBACH: It goes down the path of allowing the county to say, we're only going to have the one hearing. And I think that they already, as John indicated and I don't know this for sure, but that they can do that. I like the reference Senator Chambers made to that's the tail wagging the dog and tying the hands of elected officials to make those decisions when that's their job. That's why we elect them and they make those decisions. And if the people in the county don't like them, they have the opportunity to elect someone else the next time around. [LB515]

SENATOR ERDMAN: I guess the last question that I would have is it has been an interesting discussion statewide I think for about the last four years about the role of livestock and I think good or bad the livestock friendly program has been a part of that. I don't know of any county in the state, let alone any of those counties that are designated livestock friendly, that have this provision in their law that says that they have to approve every permit that's been applied for if it meets their standards. Can you share with me contrary information because I come from one of those counties and I know for a fact that those county commissioners would have never applied if that would have been a part of the regulations. [LB515]

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LAURA KREBSBACH: I believe it is. And I can't say with certainty. I'd have to go back and look at what livestock friendly specifically states. But I believe that if all the conditions are met that they must give...grant the permit. And if they don't grant it, they have to reach that higher standard of facts supporting. [LB515]

SENATOR ERDMAN: If you can share, I would appreciate. [LB515]

LAURA KREBSBACH: But, you know, again, I haven't looked at livestock friendly... [LB515]

SENATOR ERDMAN: Sure. [LB515]

LAURA KREBSBACH: ...for quite some time. I know it does tie their hands a bit more than if they weren't livestock friendly. [LB515]

SENATOR ERDMAN: Okay, if you can share that with us that would be great. Thanks, Laura. [LB515]

LAURA KREBSBACH: I'll look it up. [LB515]

SENATOR ERDMAN: Any further questions for Ms. Krebsbach? I don't see any. Thank you, ma'am. [LB515]

LAURA KREBSBACH: Thank you. [LB515]

SENATOR ERDMAN: Next testifier in opposition of LB515. Can I see a show of hands of those that wish to testify on this bill still? I see one, two, three. Okay. [LB515]

KENNETH WINSTON: (Exhibit 3) Good afternoon, Senator Erdman, members of the committee. My name is Kenneth Winston, last name is spelled W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in opposition to LB515. And my written testimony is being handed out at this time. And I apologize for the line down the copy, but I didn't want to waste paper by...just because there's a defect in the copy. So you're getting a copy that's got a line down the middle of it. So hopefully you can read it anyway. The main things that I wanted to talk about are openness in government and the importance of openness in government. I guess the main thing that strikes me is that to the extent that people know what's going on in the public and feel like there's a public process that they can participate in, they're more likely to believe in the accountability of that process. And they're also more likely to support that process in the long run. And I know there's exceptions to that. There's situations where people just never are going to support things because they don't like the outcome. But to the extent that they have a chance to have their say, they tend to be more likely to say, okay, I had a chance to say my peace and now I'm going to live with the process. One of the other

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things that I wanted to talk about a little bit is there's a kind of mind-set, and I don't want to attempt to comment about the amendment because I actually haven't even...I just looked at it for like 30 seconds and, you know, I don't really understand what it says. So I don't want to really try to address that at this time. But one of the things that I wanted to talk about a little bit is there's been over the years a mind-set of environmental interests and production agriculture interests being in conflict. And I just think that idea is wrong. And I'd like to promote the idea that maybe production agriculture and environmental and conservation efforts in fact share a lot of common interests. That we all benefit by having clean air and clean water and that there's no benefit to anybody by having polluted aquifer or having neighbors who can't go outside their house because things smell too bad. And so I guess what I would advocate rather than eliminating stages of a process would be more of a cooperative open dialogue process where people are working together to try to resolve some of these problems. And I've been in committee hearings where people have talked about new ways of using feedlots with...where the methane is used to generate electricity, for example. They capture the methane and a lot of the odor problem and the fly problem, a lot of the discharge issues are resolved. And so I guess I'm more interested in encouraging better results than having situations where people, where environmentalists and production agriculture folks are in conflict with each other. And also situations where neighbor is pitted against neighbor. And so we'd like to see situations that are more friendly not only to livestock but also friendly to the environment and friendly to the neighbors who live there. And I guess just a couple other comments that I wanted to make that aren't on my written testimony. I guess there's been a couple of things that have come up in the last year or so where the Sierra Club has been involved in some efforts where we have supported reducing paperwork, reducing the amount of bureaucracy, if you will, in applications. And LB975 in last session is an example of that where the Sierra Club and environmental interests got together and worked with DEQ and with all of the folks who were involved in production agriculture and came up with a bill that everyone supported and was advanced and passed by the Legislature. And I guess that's one example that I wanted to point out. And I guess I wanted to talk a little bit about another one that's not quite so public. But I was personally involved with an effort by the Nebraska Cattlemen to select a cattleman or cattle producer who would be honored as their conservationist of the year. That's part of an effort by the Sand County Foundation. And I guess those are the kinds of things where to the extent that we can recognize the ways that we can work together I think we can come up with better results than if we're in situations where we're in conflict with each other. And so I guess I would like to encourage those kinds of efforts as opposed to efforts where people are mistrusting the things that government is doing. So with that, I would conclude my testimony. [LB515]

SENATOR ERDMAN: Thank you, Ken. Any questions for Mr. Winston? I don't see any. Thank you, sir. [LB515]

KENNETH WINSTON: Thank you. [LB515]

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SENATOR ERDMAN: Next testifier in opposition, please. I think we have one more after. Okay. [LB515]

VERN JANTZEN: (Exhibit 4) Good afternoon, Chairman Erdman, members of the committee. My name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I'm testifying today on behalf of Nebraska Farmers Union and in the interest of time, I will not read my testimony. I have two things that concern us about this bill as presented without the amendment and that is what it does to the authority of the planning and zoning commissions on the county level. Are they just reduced to a technical advisory committee or is it important that they have hearings and that they work at the process of bringing opposition points out and working that through before it gets to the county supervisor level? And then the whole issue of narrowing down this meeting process from two to one. That really disturbs us. We think it's really important that people have a chance to air their views. And any time you shut down the process, that tends to get people in the coffee shop talking and you got all kinds of things going on and that isn't good. Our policy that we reviewed in December at our annual convention in Grand Island stated once again that we are very firm supporters of the planning and zoning commission process and the county board of supervisors having the final say-so on how those issues are handled. And so I'll stop there and if there are some questions I can answer, I'd be game to try that. [LB515]

SENATOR ERDMAN: Thanks, Vern. Any questions for Mr. Jantzen? We're going to let you off easy. Thank you, sir. [LB515]

VERN JANTZEN: Thank you. [LB515]

SENATOR ERDMAN: Next testifier in opposition, please. [LB515]

ELAINE MENZEL: (Exhibit 5) Senator Erdman and members of the committee, my name is Elaine Menzel, spelled M-e-n-z-e-l. I'm here on behalf of Nebraska Association of County Officials, appearing in opposition to LB515. I've got what the current county zoning status is. It shows 81 counties are currently zoned and the remainder of the counties are in various levels of... [LB515]

SENATOR ERDMAN: Do you need a copy? [LB515]

ELAINE MENZEL: Please. I thought I kept one. Like they've adopted a comprehensive plan and they have no plans to pursue zoning or that various. So if you choose to question me, you can do so. My thoughts would concur with John Johnson's on why we oppose this bill. And it takes away...the amendment takes away the discretion of the county board with respect to the approval of conditional use permits or special exceptions under certain conditions. And if the Legislature opens the door on telling

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counties what type of conditional use permits or special exceptions they must authorize, it is foreseeable that planning commissions or county boards will be required in the future to approve other types of conditional use permits or special exceptions. Other types of entities that are subject to conditional use within one county's ag district include radio and television transmitters, cemeteries, airports, hospitals, landfills, lawn and garden nurseries, commercial kennels, and various other entities. This was a 2002 study so it's somewhat dated. There were 38 counties with zoning at that time and they all had conditional or special uses. There were 40 applications and 35 were approved, 4 denied, and 1 withdrawn at that time. The reason that one of those was denied is because it was too close to a village. So that will conclude my testimony. [LB515]

SENATOR ERDMAN: Thank you, Elaine. Any questions for Ms. Menzel? I don't see any. Thank you, ma'am. [LB515]

ELAINE MENZEL: Thanks. [LB515]

SENATOR ERDMAN: Anyone else wishing to testify in opposition to LB515? I see none. Anyone wishing to testify in a neutral position? [LB515]

CRAIG HEAD: Good afternoon. Senator Erdman, members of the committee, my name is Craig Head. It's C-r-a-i-g H-e-a-d, and I'm the assistant director of government relations for the Nebraska Farm Bureau Federation, here today on behalf of the organization in a neutral capacity. I would caveat that by saying given the amendment that Senator Stuthman has introduced we will be probably very likely moving into a support position on the bill given that change. I know you've got a lot of hearings coming up here so I'll try and keep this very brief. First of all, I just want to show our appreciation to Senator Stuthman for introducing this bill because I think it brings attention to a much larger issue for the state of Nebraska and that is are we creating a climate in our state that's conducive to having a livestock industry into the future? And are we creating a climate that's going to in the future invite the next generation of farmers back to the farm, like Mr. Kabes, I think the UNL student that came forth? Simply from the fact that we've become growingly concerned about what people are seeing in the countryside when it comes to getting permits through the local county permitting process. Certainly we are at a stage in agriculture and livestock production where we are further and further removed from how food is produced. We are seeing more and more people moving to the country who have no tie and a lot of that is having challenges and creating issues in rural Nebraska, particularly for livestock producers. So we think it's certainly worth a discussion point and we think it's a very serious issue. I'd just share what our members are really looking for in the process with the county zoning process is very simple. I think they're interested in taking the emotion out of the situation and going through with a process that's factual based, scientific based. And basically they have a process where when a county establishes rules and regulations that are adopted by the county board or the people in the county have given input into

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that process, that if they move forward in good faith to try and operate that they are going to receive that permit at the end of the day. That's what they're looking for. An analogy that I have them often use with me is why is this any different than a driver's license situation where I go through, I prove myself, I pass the test, and then I get my driver's license? Whereas if I'm a livestock producer in the state right now, that's iffy. I might go through the process, do everything the county is asking, at the end of the day I might be denied for whatever the reason. And they are making substantial investments in those operations and making decisions for the future where they want to be. So we certainly are supportive of having a climate in the state where producers are still interested in being in Nebraska. And I won't share a bunch of statistics with you I was going to share earlier. I would just simply point out that I'm not sure if this is a silver bullet that addresses the issue from all the sides that are concerned, but we are very interested in working with Senator Stuthman, this committee, and some of the folks that have come in in a different position today to talk about whether or not we can try and move this industry forward because we are very concerned about what this means down the road for younger farmers who want to get into the livestock production business. With that, I'd conclude my testimony. [LB515]

SENATOR ERDMAN: Thank you, Craig. Any questions for Mr. Head? I don't see any. Thank you, sir. [LB515]

CRAIG HEAD: Yes, thank you. [LB515]

SENATOR ERDMAN: One last call for neutral testimony on LB515. I see none. Senator Stuthman, you're recognized to close. [LB515]

SENATOR STUTHMAN: Thank you, Senator Erdman and members of the committee. In closing, I just want to mention a few things in listening to the testimony here. You know, realistically I want everybody to meet all of the requirements that are needed for an application. And I'm not changing any of the zoning rules or anything like that. And this bill did not come because of one situation of a constituent of mine. It came because of what I'm trying to do for the state of Nebraska. Some of the opposition that was...the testimony was that, you know, they're very supportive of the process of the planning and zoning commission, the regulations, going through the county board, the elected board, and the process there. But I never did hear once that they're supportive of something that the testifier Kabes, the young farmer that wanted to expand or have additional income on his farm, maybe a small swine operation or a feedlot or something like that, I never did hear once of the opposition that they are supportive of trying to help a young producer be able to put in one of these establishments. They don't have a lot of money. They can't go through all of this process which does take a lot of money, takes attorney fees to go through all of these processes. The young producer like that, and I've got two sons of my own in the same situation, don't have the resources to put towards that. They get discouraged very easily, and those are the people that we need in the state of

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Nebraska in the livestock operations. With that, I would ask that you give favorable support to my bill. [LB515]

SENATOR ERDMAN: Thank you, Senator Stuthman. Any questions for Senator Stuthman? I do not see any. Thank you, sir. [LB515]

SENATOR STUTHMAN: Thank you. [LB515]

SENATOR ERDMAN: That will close the hearing on LB515 and we will now proceed to LB632. Again, for those of you that are just joining us this afternoon, there is a sign-in sheet on the corner of the testifier's table there by Senator Wallman. If you can have that filled out ahead of time, that would be preferred. Linda is here to introduce the bill on behalf of Senator Dierks who I'm sure is still busy. [LB515 LB632]

LINDA PLUMMER: They're still on proponent testimony just for your information. (Laughter) [LB632]

SENATOR ERDMAN: Wow. Very good. You're recognized to open on LB632. [LB632]

LINDA PLUMMER: (Exhibit 6) Thank you, Senator Erdman, members of the Agriculture Committee. My name is Linda Plummer, that's P-l-u-m-m-e-r and I am Senator Cap Dierks' legislative aide. I'm here today to introduce LB632 and there's an amendment I would like to introduce for this bill. Let me briefly give you some background as to the reason this bill was introduced. The USDA started a mandatory national program to establish the National Animal Identification System, which included premise registration. States received federal funds to establish and maintain an in-house database with these premise registrations. Later, the USDA changed the collection of premise registrations from a mandatory to a voluntary program. Some Nebraskans may have registered early because it was a mandatory program, but may not want to participate in a now voluntary program. LB632 clarifies that the state's premise registration program is a voluntary not mandatory program. It also establishes a requirement that the Nebraska Department of Agriculture develop a process to remove premise identifiers from local, regional, state, and federal databases when such a request is made. It also requires the department to provide an affidavit to the requester that his or her premise has indeed been removed from the system. After discussions with the Department of Agriculture, Senator Dierks agreed to the following changes found in the amendment, AM433. The department is, of course, only responsible for its own database. When it receives a request to remove this information from the state's database, it will develop and implement such a program to honor that request. The department shall send a letter of confirmation, not an affidavit, stating that the premise has been removed from the state's database. Senator Dierks believes LB632 is a simple and a fair bill. Since the USDA changed the mandatory premise registration to a voluntary program it is only logical to believe that some people may now want to withdraw from such a program, and that the department should

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accommodate such a request. Senator Dierks does not believe it is too much to ask the department to send a simple letter of confirmation, a letter they can develop on their own, stating a request to withdraw has been honored and the person's premise is now removed from Nebraska's database. Thank you very much for your time and attention to this bill. [LB632]

SENATOR ERDMAN: Thank you, Ms. Plummer. Appreciate your testimony. And we will now proceed to proponent testimony on LB632. Those in support come on up. [LB632]

JOHN O'DEA: I wanted to be early so I could get one of the comfortable chairs for awhile. [LB632]

SENATOR ERDMAN: Take your time. [LB632]

JOHN O'DEA: For the record, my name is John O'Dea, J-o-h-n O-'-D-e-a. Senator Erdman, members of the committee, I come here in strong support of LB632. Background, I come from a fourth generation cow-calf operation based in southwest Nebraska. Small family-run outfit. My wife works as a nurses aid at a nursing home. I'm also involved with the livestock auction market in McCook. And our goal as a fourth generation outfit is hoping to keep the business viable for future generations. One of my problems with the national mandatory ID system or that has now been shifted towards a state program by the USDA is they say that ID, or NAIS the National Animal Identification System, is the next step in the evolution of the cattle industry, similar to grain-finishing, commercial feeding, and large scale processing facilities. But there's one major difference between all of those other steps that the cattle business has taken in the last 100 years. Those were market and industry driven, not government mandated. Also, most proponents of NAIS use improved marketing opportunity as a selling point to producers. In the long run, the opposite is true. If producers are forced to use an ID system the small source verified premiums that now exist for the small mom and pop cattle feeders and small independent cowherds that are working towards branded beef products, those will vanish. Once something is made mandatory there is no longer a premium. At the same time, this will increase operating costs for all cattle producers and livestock auction markets. My four main points that I'd like to consider though today are the increased overhead for sale barns to accommodate NAIS; the increased paperwork management and general workload for cow-calf operations, backgrounders and finishers; the difficulty that this adds to marketing outlier, the sort-off cattle and the culled cows that every cow-calf operation or backgrounder or finisher has at some point. And also this discriminates against the midsize and small producers when a program like a mandatory ID system is put in place. First of all, the increased overhead for auction markets. To appreciate the controlled chaos that exists at an auction market on sale day you have to be there and experience it. There are people and cattle, noise, running in all directions. First off, there would be more people needed to handle the paperwork, the scanning, the tagging of unmarked cattle coming in which would exist in

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any cow-calf operation, the late calves. And especially in my area where we have the vast majority of our cattle come in in small trailer load lots where the cattle are never touched again. From the time their born they might be vaccinated and branded at that point and then are never gathered until fall, and come directly to the markets. There would have to be multiple scanning stations at many of these sale barns just to accommodate the speed of commerce where we sell 500-600 head of cattle per hour. And also, we would have to have added pens for segregating cattle both before and after sales. It would make commingling cattle almost impossible, especially before the auction, because many times such as on a cow-calf scenario when we sell culled cows we might have on an average sale 200 head of cull cows and they might come from 50 or 60 different consignors that day. Those cows are all backtagged and before they hit the ring most of them have more forms of ID than I have in my pocket right now. They have a tuberculosis tag and brand, and they also have their applied backtag that is put on at the shoots coming into the sale barns. Along with this, most of these cows already carry a ranch tag as well. So there are plenty of forms of identification already on the most suspect animals that, by the way, do not add any cost to the producers. That's just accepted practice already. Another thing that is of dire concern is that there's many small sale barns in the state of Nebraska that would be forced out if they had to put in the high overhead improvements that it would take for a mandatory program. This goes directly to producers as we lose these small barns that increases the transportation cost and the distance increases shrink costs for cattle producers. Now, producer expenses. Even the smallest producers are going to have to adjust to some new technology whether they cooperate with other producers on scanning equipment, having a database that they have to maintain. There's going to be a lot of headaches for backgrounders and finishers that buy the small odd lots of cattle and commingle them into pens. That is a major concern for the people in my area of southwest Nebraska. Now the marketing challenges that would arise from outlier cattle. There's the same amount of paperwork done to ID a group of three head of cattle as there would be for a group of 300. It makes it hard to market out the sort-outs. It also puts a tremendous burden on the people that specialize in feeding cull cows and remerchandising those cows either as bred stock or as finished cows, because most of those cows are bought one at a time and sold one at a time. It could generate 50 different premise numbers just on one semi-load of cows. That would have to be maintained and kept separately. All of this would cause a paper trail. I can tell you where my wife bought this shirt yesterday so I'd have something to wear down here, but I don't have a paper trail telling you where it came from. And that's the way most of these cattle operations are run. And lastly, it discriminates against the small producers. These outfits are in the large majority. According to USDA numbers, 90 percent of the cattle operations in the state of Nebraska have 500 head or fewer of total head count. They lack the economies of scale to defray facility and equipment costs and cannot produce load lots of calves on a regular basis to where the marketing and the premise identification is feasible for the larger feeding entities. I appreciate the opportunity to state my testimony and I welcome any questions or comments from the committee. [LB632]

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SENATOR ERDMAN: Thank you, John. Before we go to questions for Mr. O'Dea we're going to switch our (switched tape) so we can continue on. Okay, any questions for Mr. O'Dea? John, I appreciate you coming down. (Inaudible) a little closer to get to Ogallala this last fall to have this discussion and the only question that I would have is that in your operation, I don't remember from our conversation in Ogallala, if you have chosen to ID or premise at this time or not? [LB632]

JOHN O'DEA: No, I have not. [LB632]

SENATOR ERDMAN: Okay. [LB632]

JOHN O'DEA: There's a tremendous number of flaws in it as I see the program. If there comes a point when I can no longer market my cattle due to the industry without an individual animal ID I will do it at that time, but it gives up too many personal rights, in my eyes, to do this. [LB632]

SENATOR ERDMAN: Okay. Senator Wallman. [LB632]

SENATOR WALLMAN: The county agent told us to do it. You know, probably it's pressure, huh? [LB632]

JOHN O'DEA: Oh yes. I'm glad you brought up that point. In our county, there has been extreme pressure through the 4-H program. My sons cannot show at the 4-H show in my county because my premise is not registered, and that, being forced to do something like that is justification enough for me to fight this. [LB632]

SENATOR WALLMAN: Thank you. [LB632]

SENATOR ERDMAN: Okay, thanks, Senator Wallman. Further questions for Mr. O'Dea? Don't see any, thanks for coming down. [LB632]

JOHN O'DEA: Thank you. [LB632]

SENATOR ERDMAN: Next testifier in support of LB632. Can I see a show of hands of those who wish to testify in support of LB632? I've got four. Five? Anyone in opposition? I've got two. Anyone neutral? Okay. [LB632]

DAVID WRIGHT: This really is a hot seat. There's been a lot of people sitting here. [LB632]

SENATOR ERDMAN: John warmed it up for you so you're ready to go. (Laughter) [LB632]

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DAVID WRIGHT: (Exhibit 7) Well, for the record, my name is David Wright, D-a-v-i-d W-r-i-g-h-t, and I'm here today representing the Independent Cattlemen of Nebraska. Chairman Erdman and members of the committee, we come before you today to provide testimony in support of LB632. I am the fourth generation to work my family ranch. It has been in my best interest to maintain a healthy, viable cattle herd. There is no profit in selling sick or diseased animals; not now nor four generations ago. The process of registering our pastures, hay meadows, and cornfields with the Department of Agriculture for the purpose of preventing the spread of disease is in question. The program Locate in 48 is sending mixed messages. What disease manifests itself within 48 hours? BSE does not. It could be years before signs of the disease appears. A highly contagious disease like Hoof and Mouth takes as much as a week before signs appear. Locate in 48 has spent a small fortune on advertising and promoting this idea of disease trace back. Using such enticements as giving away a free pair of vice grips or a bag of popcorn. Locate in 48 is giving producers the idea that they could maximize their profit and become more connected to a global market if they will take the first step and register their premise. That's clearly stated right on the front of this bag of popcorn, and it's also in the ads that they put in the newspaper. So which is it, marketing or disease control? Or is it a way to help the Department of Agriculture to keep surveillance on the animals in the state? USDA has indicated that it is backing a voluntary system with the option to opt-out. This is what we are willing to endorse with the addition of an affidavit stating that producers' personal information has been completely deleted from any and all databases. We are asking the committee to advance LB632 and support it during floor debate. Chairman and members of the committee, I thank you for your time and I welcome some questions. [LB632]

SENATOR ERDMAN: Thank you, David. Any questions for Mr. Wright? In your testimony, David, you said that you're a fourth generation rancher. I'm assuming that means you have cattle as well or livestock. [LB632]

DAVID WRIGHT: Yes, cow-calf. [LB632]

SENATOR ERDMAN: And the same question I asked Mr. O'Dea is have you registered now and would like the opportunity to opt out or have you chosen not to register your premise? [LB632]

DAVID WRIGHT: No, I have not registered. [LB632]

SENATOR ERDMAN: Have not registered. [LB632]

DAVID WRIGHT: I guess we feel we have a brand that identifies our cattle quite well. [LB632]

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SENATOR ERDMAN: Okay. The other question I would have for you is that we have an amendment from Senator Dierks. Have you seen the amendment? [LB632]

DAVID WRIGHT: When we got here today I saw it. [LB632]

SENATOR ERDMAN: Okay. And maybe not now is the time, but if you have a chance to look at that and share your thoughts with us at an appropriate time we'd appreciate that. [LB632]

DAVID WRIGHT: Right. [LB632]

SENATOR ERDMAN: Okay. Senator McDonald. [LB632]

SENATOR McDONALD: Yes, Mr. Wright, are you going to leave that popcorn with us? (Laughter) [LB632]

DAVID WRIGHT: It's probably the state of Nebraska's to start out with. (Laughter) [LB632]

SENATOR McDONALD: Thank you. [LB632]

SENATOR ERDMAN: Thank you, Senator McDonald. Senator Preister. [LB632]

SENATOR PREISTER: Is it butter flavored? (Laughter) And do the dairymen approve? [LB632]

DAVID WRIGHT: I don't know. [LB632]

SENATOR PREISTER: Thank you. [LB632]

DAVID WRIGHT: Thank you. [LB632]

SENATOR McDONALD: You can keep this. [LB632]

SENATOR ERDMAN: Thank you, David. [LB632]

DAVID WRIGHT: It's from the hometown. It's from Neligh. It's (inaudible). [LB632]

SENATOR McDONALD: Well then I better keep it. [LB632]

SENATOR ERDMAN: Well, you could always give it to somebody and spread the marketing around. Next testifier in support of LB632, please. [LB632]

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TERRY M. ROTHWELL: (Exhibit 8) For the record, my name is Terry Rothwell, T-e-r-r-y R-o-t-h-w-e-l-l. I've come here from Arthur County and I, too, am here representing the Independent Cattlemen of Nebraska, Nebraska's newest agricultural organization and the only one that exclusively represents independent family-oriented cattle raisers and feeders. Chairman Erdman and members of the committee, we come before you today in strong support of LB632. Livestock identification and premises registration has become the hot topic within our industry at this time, and our memberships have directed us clearly to support only those programs that remain completely voluntary. This bill will simply assure Nebraska producers that any program directed by state agencies will continue to mirror the voluntary federal program proposed by the USDA. While we are cognizant of some potential for disease trace back, our concerns over a mandatory identification program, as suggested by the NAIS, far outweigh the benefits. I would like to point out some of the specific concerns we have. The proposed RFID technology this system is to be based on is problematic. No one has proven any way to make it cost effective, efficient, or implementable. Are we going to force Nebraska's cattle producers to invest thousands of dollars for the initial technology--readers, computers, and software--and thousands more each year for tags, maintenance and database subscriptions? All for equipment that has not been field proven for reliability or ease of use. For example, readers and tags fail routinely and much of the technology is not able to handle extreme conditions. Case in point, the PDAs used to transfer field data to home computers have LCD screens which cannot be used in subfreezing weather. Additionally, RFID tags and readers don't work well in environments that contain large amounts of metal, a main component of the most modern day corral systems. Cattle herds are dynamic entities as well. They move, die, wander, get mixed up, get lost, lose tags, as well as a host of other activities that we as producers may or may not have awareness of or control over. On our place, head counts are often plus or minus one or two which makes a program that requires 100 percent compliance unrealistic. Cattle themselves are also generally uninterested in participating in an ID program. Anyone who has ever tagged newborn calves knows that quickness and speed are essential for survival. Additional tagging, handling of readers and such may put mama cows past their tolerance limit and send you and your equipment to the emergency room. In other countries that rely on RFID, the problems have become insurmountable. In the much referred to Australian ID program, over 50 percent of the tagged cattle becomes lost in commerce which then become a liability for the last owner of the record, often the rancher who applied the tag. The concept of premium prices for electronically identified cattle becomes a failed theory when a mandatory program is put in place. Simply, tagged cattle become the norm and will not generate additional dollars at market time. Even now, for those who participate in a voluntary program, the premiums are virtually nonexistent. Cattle in this country sell on their various other merits, while source and age identification add no value. The additional time and labor costs involved in maintaining records and recording herd movements have been given little consideration as well. In our operation, as well as most other family ranches, our time and labor is already stretched thin as we attempt to improve our economic

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efficiency. For larger operations, ones with mobile herds or for those who use intensive rotational grazing programs, the sheer volume of recordkeeping may require them to add to their labor forces just to comply with the program. Forcing livestock producers to become involved in a premises registration database with no recourse for de-listing their property also causes us great concern. Producers have not been given any guidance on the implications of enrolling in the program beyond the concept that it is just the thing to do. Numerous questions involving the confidentiality of information and possible infringement of fundamental property rights by governmental entities have been raised. As the animal ID programs have become voluntary, Nebraska producers must be given the right to opt-in and opt-out of any premises registration program as they see fit. Further, once they choose to opt-out they must be assured legally through the use of an affidavit that their personal information has been completely deleted from any and all databases. With this legislation we are not proposing elimination of any current identification programs, only that those administered by the state of Nebraska remain voluntary. Our state ag director has stated his support for voluntary identification as have thousands of producers statewide. At such a time as the market begins to reward producers for age and source verified animals, the participation will grow and producers will be satisfied that their additional investment in technology will be in their best interest. We ask that you help Nebraska ranchers, farmers and other livestock producers by advancing LB632 from this committee and supporting it during floor debate. Chairman and members of the committee, thank you for your time and I would welcome any questions. [LB632]

SENATOR ERDMAN: Thank you, Terry. Any questions for Ms. Rothwell? A long ways down here from Arthur, isn't it? [LB632]

TERRY M. ROTHWELL: What's that? [LB632]

SENATOR ERDMAN: It's a long ways down here from Arthur, isn't it? [LB632]

TERRY M. ROTHWELL: Yeah, it's quite a trip. [LB632]

SENATOR ERDMAN: Good to see you. [LB632]

TERRY ROTHWELL: At least the weather is good this time. [LB632]

SENATOR ERDMAN: Yeah, very good. Thanks for coming down. [LB632]

TERRY ROTHWELL: Thank you. [LB632]

SENATOR ERDMAN: Next testifier in support of LB632. I have at least three more, I believe, that were ready to go and if you want to come forward you can sit in the front row. That will help our process as well. It's not church so don't worry about sitting in the

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front row. (Laughter) [LB632]

CRAIG HEAD: (Exhibit 9) Thank you. Good afternoon, Senator Erdman, members of the committee. Again, my name is Craig Head, C-r-a-i-g H-e-a-d, and I'm the assistant director of government relations for Nebraska Farm Bureau here today on behalf of the organization to offer support for LB632. What you're being passed out right now is a copy of testimony from one of our members who had planned to be here this afternoon to testify in support. He has some issues with calving season here this morning so he isn't able to make it in. But real quickly on the bill, Farm Bureau has adopted policy supporting a voluntary animal ID system, basically supportive of having a process where producers can choose to withdraw from that program. We didn't have a chance until just a minute ago to look at the amendment offered, but it does address the one concern that we had is basically in developing a process for producer withdraw we just didn't want that to be an overburdensome process to either the department or individual producers who may choose to do so and I think the amendment appears to try and get at that issue. So with that, I would simply conclude my testimony. [LB632]

SENATOR ERDMAN: Thank you, Craig. Any questions for Mr. Head? I see none, thank you, sir. [LB632]

CRAIG HEAD: Thank you. [LB632]

SENATOR ERDMAN: Next testifier in support. [LB632]

LOUIS DAY: (Exhibit 10) Hello. This is the first time I've ever done anything like this so I'm pretty nervous, okay? [LB632]

SENATOR ERDMAN: You're doing great so far. Give us your name and spell it for us. [LB632]

LOUIS DAY: My name is Louis Day and live at Valentine, Nebraska. I'm here as the Region 2 director for Independent Cattlemen of Nebraska, and that region would take in Cherry, Grant, Thomas, Hooker, Logan, McPherson, and Arthur Counties. So there's quite a few cow-calf people in that region that I'm fortunate enough to be the region director for. But even if I wasn't a director, I would be here as a rancher and a parent of two sons. I've got a 15-year-old and a 10-year-old who look up to me expecting me to fight for their future in this cattle industry. I, quite frankly, don't know where to begin when something so simple can be so important not only to my sons' future, but also what will be written in history of the path this industry, this state, and this country takes. I'm sure much will be said about how this is an issue of how to control disease, which in my opinion is only smoke and mirrors trying to take advantage of recent events that fan fires of human fears to implement one more control step over basically one of the last free competitive ag industries, the cattle industry. I'm not going to spend much time

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trying to dispel the disease fears, because you already have an expert on your committee who can explain how current programs have up-to-date and how, in the past as well as in the future, can and have been used to provide the safest, best meat and food supply in the world. I'm not going to spend much time trying to explain the problems other countries like Australia are having with their tags, tag reading equipment, recording movements, etcetera, but I can get you in contact with Linda Hewitt who is the vice chairwoman of the Australian Beef Association. She can do a far better job of that than I can. What I'm going to try to do as quick and as easy as possible is give a short history lesson on what I feel I've learned about NAIS and what they want today. Should you be unfamiliar with NAIS, which is National Animal Identification System, the shortest explanation that can be given of the proposed system is that anyone who has any type of livestock, and since our new Locate in 48 ads have chickens on them, and I presume that's to cultivate people's fear of bird flu, I'll say we have two chickens, and to comply with the requirements--mandatory or voluntary--I would have to register my property complete with global positioning, tag my chickens, and report within 24 hours if my chickens ever leave the property, hatch out more chickens, which will take more tags, if the chickens go to the vet, the fair, or dies, etcetera. If this wasn't so serious it would be funny. What makes this so serious is if you senators don't give us the protection of a law keeping this premise registration voluntary and giving any citizen that wants out with proof there has been steps taken to clear them of the system. We have no one else to turn to. I feel that the reason that the premise registration is so important as stated time and time again, and the user cooperative agreement is--now this is where I'm going to have to start winging it, because I ran out of time to write--but it's also the most important issue of this whole deal, because whether you go through the draft strategic plans, which was the mandatory part that the USDA was trying to implement and they got some good old-fashioned American resistance. This is where you folks come into play, because they couldn't push it through because there's enough people that aren't comfortable with this that are actually going through it the right way. If you folks don't stand up and give us the chance to keep this voluntary we are going to be forced into something that scares me literally to death. And where I feel the reason...and if you will go through the user guides that they have for the cooperative agreement...I went through and I read our's and I read South Dakota's and time and time and time again, the foundation of that is the premise's registration. And the best answer I got, the reason why that is so important, and this is the simplest I can put it, is if you once you sign up your premise registration are you not agreeing to anything that the NAIS wants now or in the future? It's just like if I asked each of you to sign me a blank check and I say I promise I'll do good with it. I do not trust them. And if we don't have something in the state of Nebraska's books making this voluntary who do I turn to if they force this upon me? Where do I go? There's a lot more I can go into, but that's as simple as I can put it. Please give me and my kids somewhere to where to keep this voluntary. If we keep this voluntary then they do not have that control over me. Thank you. [LB632]

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SENATOR ERDMAN: Thank you, Louis. Any questions for Mr. Day other than who you should ask for that blank check from, because if you're asking a bunch of us you won't get very far even if you try to cash it? (Laughter) [LB632]

LOUIS DAY: And I should not. That is my whole point, sir. [LB632]

SENATOR ERDMAN: Thank you. Let me ask you, Louis, just real quickly, and you're a livestock producer as well... [LB632]

LOUIS DAY: Yes, sir. [LB632]

SENATOR ERDMAN: I'm assuming in accordance with the other testimony for today that you have not registered your premise at this point either? [LB632]

LOUIS DAY: I will not. [LB632]

SENATOR ERDMAN: You have not and you will not. [LB632]

LOUIS DAY: No. [LB632]

SENATOR ERDMAN: Okay. [LB632]

LOUIS DAY: I feel there has been too many people paid the ultimate price to make this country what it is to be forced into something this serious. [LB632]

SENATOR ERDMAN: Okay. Any other questions for Mr. Day? You did a real nice job, like you had done it before. So come on back anytime, sir. [LB632]

LOUIS DAY: No, I said a prayer. I asked the good Lord to put his hand on my shoulder and over my mouth if need be. (Laughter) [LB632]

SENATOR ERDMAN: I'm going to have to borrow that from you, I think, because there's probably many a days when I should probably be making that prayer. But thanks for coming down from Valentine. [LB632]

LOUIS DAY: Thank you. [LB632]

SENATOR ERDMAN: I'll have to get a copy of that transcript so I get that right, too. [LB632]

VERN JANTZEN: (Exhibit 11) Good afternoon. My name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I'm testifying once again on behalf of the Nebraska Farmers Union. I, once again, in the interest of time management will not take the time to read my written

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testimony. You can look through that. I will briefly summarize it for you. We are in favor of LB632 if the amendment as Senator Dierks has come up with is accepted. This is an interesting issue because a lot of this is tied in with the National Animal Identification program, and you as an Ag Committee are players in that, but you don't have the final say so on that. We're, as an organization, very disappointed with Ag Secretary Mike Johanns and his efforts at working on this. There was a livestock task force on a national level that put a program together, and Senator Johanns did not go with those recommendations. He's went a different path and we've had problems ever since he's taken that turn. You'll see listed five points that gives our organization a lot of concern about a national identification program, issues that will need to be addressed at some point in some way, shape, or form before we can sign on completely. I guess in conclusion our organization has been and will continue to be strong supporters of country of origin labeling, and I guess if we want to see that fully implemented I am not sure we cannot get there without having some form of mandatory animal identification. And so the last thing I will leave you with is a question that I often have and I hope it may enter into your deliberations on this matter, is why is the beef check-off program mandatory? Thank you. Any questions? [LB632]

SENATOR ERDMAN: Thank you, Vern. Any questions for Mr. Jantzen? Vern, as I recall from your previous trips before the committee, you're in the livestock industry as well? [LB632]

VERN JANTZEN: I am a dairy farmer, sir. [LB632]

SENATOR ERDMAN: I was going to say dairy, but I didn't want to step out there. And have you registered your premise? [LB632]

VERN JANTZEN: I received several letters, friendly letters, from the Department of Agriculture requesting me to do that and I put them on my stack of things to do. My daughter came home from school. She's in the FFA program. She says hey, if you sign up to ID our farm, the FFA chapter gets some money. They're always hurting for money and so I says okay, we'll do that, and I even got a nifty vice grip out of the deal that's made just up the road from my house. So I have registered my premise. I have IDed my animals because on a dairy farm I need to know who goes where and what's happening when. And so I am registered and I guess I am willing to do that to see just so people...in the event that a situation arises that people need to do some tracking that's possible, but like my testimony says, there's problems if that information is not handled correctly and implemented correctly. [LB632]

SENATOR ERDMAN: And just for clarification, your organization is opposed to the way that the current system is being done, not in the actual concept. [LB632]

VERN JANTZEN: Yes, we are. We are very unhappy with what Senator Johanns is

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proposing and implementing. [LB632]

SENATOR ERDMAN: Okay. And so your opposition is not to the idea of a mandatory ID program... [LB632]

VERN JANTZEN: No. [LB632]

SENATOR ERDMAN: ...just the one that's being proposed as a... [LB632]

VERN JANTZEN: Well, it's not mandatory. It's voluntary. And there's a lot of problems when you go the route that he's suggesting to go voluntary. We don't think it's going to do anything. [LB632]

SENATOR ERDMAN: And so then I guess the question that comes to mind is then why wouldn't you be here to oppose the bill? Is it just simply because the plan that's being implemented you don't like or...because your testimony is that you're in favor of mandatory program. This is a voluntary... [LB632]

VERN JANTZEN: I am in support of this bill, Senator. [LB632]

SENATOR ERDMAN: I understand that. [LB632]

VERN JANTZEN: Yes. [LB632]

SENATOR ERDMAN: I'm just trying to clarify as to why. Because of the implementation of the program, not because of the concept. [LB632]

VERN JANTZEN: Right. [LB632]

SENATOR ERDMAN: Okay. [LB632]

VERN JANTZEN: Correct. If it's going to be voluntary then we also need to have a system in place that people are not trapped into being a part of it. [LB632]

SENATOR ERDMAN: Very well. Do you think if you opt-out and opt back in they'll give you another vice grip? (Laughter) [LB632]

VERN JANTZEN: I don't know. [LB632]

SENATOR ERDMAN: Oh. [LB632]

VERN JANTZEN: It's worth a try. I like them vice grips. [LB632]

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SENATOR McDONALD: Maybe popcorn next time. [LB632]

VERN JANTZEN: Maybe. [LB632]

SENATOR ERDMAN: They can get expensive. That might be what...thank you, Senator McDonald. Thank you, Vern. Any further questions for Mr. Jantzen? I don't see any, thank you, sir. [LB632]

VERN JANTZEN: Thank you. [LB632]

SENATOR ERDMAN: Next testifier in support of LB632. Just quickly, a show of hands of those remaining that wish to testify in support? I think I had one left and I see one. Okay. [LB632]

LARRY WILLIAMS: Good afternoon, Senator Erdman and members of the committee. My name is Larry Williams. I'm a veterinarian and retired. I reside at 7534 Sherman Street, Lincoln, Nebraska, and I'm currently chair of the Nebraska Veterinary Medical Association's committee on legislative affairs. And so I'm here offering testimony today on their behalf. Listening to the testifiers before me, even though I'm testifying today in support of this, I think I can come at it from a completely different direction than those that have testified before me. I spent 17 years in state government as state veterinarian and I have experience with the past disease programs that was mentioned during my time and prior to my time there. The state became tuberculosis-free in 1985, we became brucellosis-free in 1995, and pseudorabies-free, I think it was in the first part of 2000-2001. You hear a lot of people saying that this is not about disease, but when the NAIS was first developed and the committees that lead up to that, that was the foundation of a different animal ID system. And that was because these diseases that we have become free in the state and essentially free in the United States, one of the common elements was an identification system. We didn't have the technology of RFIDs and that technology still needs to develop as you heard today. It doesn't do the things that it needs to do. We used the metal ear clips. They don't stay in, but they stay in pretty good. They stay in good enough that we are able to track animals. We weren't always able to track animals. In the late eighties we had a tuberculosis bull that went through slaughter that was identified with TB lesions. They were cultured. So there's no question whether or not it had the disease. The information was not good as far as ID being traced to a herd out by Broken Bow. That particular animal did lead to a cervid herd that had been sold out which had tuberculosis. So that part of the investigation is complete. But there is other parts of the investigation that we are never able to trace animals. In the last couple of years there's been another tuberculosis animal that ended up, I think the department tested 2,000 or 3,000 head of cattle. Never did know for sure which herd that came from. So what happens in these kinds of cases is the people that don't have the disease are forced to test their herds. And you've heard some pretty upset people today, but if you ask a rancher to test his 500 head of cows when he has

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other things to do, just because we don't know for sure that his herd might have been infected or not, they get upset as well. So we need a better ID system and whether or not the NAIS is the answer, I'm not here to say that it is the answer. It's got some problems in it. And one of the problems that has been mentioned is the mandatory component. And part of the problem with that is that the government has not told folks what that really means. It could mean anything from barely minimal mandatory requirements to complete requirements that you're hearing about tracing chickens if they cross the road. Well, you know, that isn't going to happen. That's not a realistic concern for disease control. But the government needs to tell people what it is they really mean and until they do that we're going to have the same kinds of discussion where people are saying things that are based on emotion and not fact. And I'm kind of getting on my bandstand now and I apologize. This bill deals with being able to opt-in and opt-out and it's not about animal ID, and I think that's where we take this opportunity to talk about animal ID. But we had come prepared to oppose this bill because of the language that required the department to provide an affidavit and it just seemed that that was unrealistic as far as them being able to even do that. This amendment that has been proposed takes care of that concern and so because of that amendment we are in favor of the bill as it's amended. I won't carry on any longer. I appreciate your time and if you have any questions I'd be happy to try to answer those. [LB632]

SENATOR ERDMAN: Are there any questions for Dr. Williams? You ever try to ear tag a chicken? (Laughter) [LB632]

LARRY WILLIAMS: No. They have little bands that go around them. That's part of the problem. This animal ID thing is a 15-digit thing and for a chicken or a bird or whatever to put 15 digits, or even in a cow's ear if you put 15 digits, there's no way in heck that you can read those and be accurate. Do it manually. We had to read BANGS tags manually for years and it was routinely a 5 percent error rate in transposing numbers. So we need a better system. And I think, you know, it's time that the producers that are in the business stand up and say what it is that they need and not allow the vocal minority, the people that have two or three goats and a llama and a chicken or two, they're the ones that are out there making all these statements. And then those comments get into the mainstream of agriculture and gets repeated and those kinds of things. They're smoke screens somebody said. So anyway... [LB632]

SENATOR ERDMAN: Thanks, Larry. [LB632]

LARRY WILLIAMS: ...thank you very much and I appreciate the opportunity. [LB632]

SENATOR ERDMAN: Thank you. Next testifier in support. I think we have one more. [LB632]

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ROY BARTA: (Exhibit 12) Chairman Erdman and members of the Ag Committee, my name is Roy Barta, R-o-y B-a-r-t-a. I'm the executive director for the Nebraska Livestock Markets Association. On behalf of the Nebraska Livestock Markets Association we are testifying as a proponent of LB632. When the National Animal ID System was first proposed, within the structure of it was clearly outlined a mandatory implementation date. At that, producers registered premises knowing that there was a mandatory program forthcoming. Since the initial introduction of the National Animal ID System, the USDA has since announced the program is voluntary with a capital V. Based on that we feel the producers need the right to opt-out at their discretion because of the voluntary status now put on the program. With that, that would conclude my testimony with our group being a proponent of LB632 and would entertain any questions. [LB632]

SENATOR ERDMAN: Thank you, Roy. Any questions for Mr. Barta? Who tripped you when you got up, I was just wondering? (Laughter) [LB632]

ROY BARTA: I was ambushed. [LB632]

SENATOR ERDMAN: Thanks for your testimony, Roy. [LB632]

ROY BARTA: Here's copies of the testimony. [LB632]

SENATOR ERDMAN: We'll get a page to distribute that for you. Last call for proponent testimony on LB632? I see none, anyone in opposition? [LB632]

LARRY SITZMAN: (Exhibit 13) Senator Erdman, members of the Agriculture Committee, my name is Larry Sitzman, L-a-r-r-y S-i-t-z-m-a-n, executive director of the Nebraska Pork Producers Association. I would like to thank the Agriculture Committee for the opportunity to present a statement in opposition to LB632 on behalf of the Pork Producers, prepared by Joy Philippi, P-h-i-l-i-p-p-i, who could not be present today: My name is Joy Philippi. I am a farmer and pork producer from Bruning, Nebraska. I have had the opportunity to represent the Nebraska swine industry in the development process of the National Swine Identification System. Nebraska swine producers and their counterparts across the country support a mandatory system, yet we have willingly worked with USDA and state departments of agriculture to promote the premise system that is voluntary at this time. The introduction of LB632 only further complicates the confusion, which already exists within the livestock industry regarding the simple premise registration process. It is unnecessary to have a bill of this type as the existing statutes are a voluntary process. The introduction of this bill and any further discussion will only hamper the effects of the Nebraska Department of Agriculture's Locate in 48 program by fostering unnecessary dialogue. It would be more prudent for my state's Legislature, the Agriculture Committee, to recognize this voluntary system and encourage sign up, rather than discourage it through needless legislation which talks about a de-registration process. The term voluntary means offered a choice and

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choosing to not participate is just as easy as signing up at this time. Premise registration offers the opportunity for state and federal animal health officials to trace back a diseased animal to its last place of residence in 48 hours. In the event of a foreign animal disease outbreak, this trace back system will allow for immediate surveillance of livestock premises and the area surrounding. This surveillance is of utmost importance in the first step in a response and recovery plan if such an outbreak were to occur. Also, this system offers other benefits for domestic disease outbreaks such as the recent discovery of diseased feral swine and also offers a system of recovery that can be used in the case of a natural disaster such as the recent blizzards in Colorado. End quote. I'd like to add something here. The diseased feral swine recent outbreak in Nebraska. The Nebraska Agriculture Department and the Game and Parks Department were able to identify and locate and inform producers of that diseased herd that was close to them because of their registration. That included a swine producer with A-frame hog house that has his swine outside five miles away from these diseased herds, but yet had to be notified and possibly will have to be tested for pseudorabies because of the outbreak. Back to quote: We must also recognize that the Department of Homeland Security recognizes that the food production system of this country is part of our nation's critical infrastructure thus making it vulnerable to terrorist attack. For those of you that think confidentiality is an issue, I would stress that no information is listed on my premise registration that compromises my business or marketing plan. It is a comfort to know that if a foreign or domestic animal disease threatens my herd it will be located quickly. If the members of this committee truly support the livestock industry in Nebraska, they will not pass this bill out of committee. End of quote. Senator Erdman, in anticipating your question, Ms. Philippi does register her premises. That ends my testimony. Thank you. [LB632]

SENATOR ERDMAN: Thank you, Larry. Any questions for Mr. Sitzman? I see none, thank you, sir. Next testifier in opposition please. And we'll get the page to distribute that for you, Larry. [LB632]

MICHAEL KELSEY: (Exhibit 14) Senator Erdman and members of the Agriculture Committee, my name is Michael Kelsey, that's M-i-c-h-a-e-l K-e-l-s-e-y. I serve as executive vice president for the Nebraska Cattlemen and I'm here to provide testimony in opposition to LB632. I was going to say this before Senator Dierks walked in the room and I will say it even though he has, in full confidence that we really appreciate Senator Dierks and his cooperative atmosphere in sharing this bill with us, previous to its introduction even in the first 10 days of the session. So we've appreciated communicating with Senator Dierks on this issue. The nature of our opposition is more in structure of the bill not in concept, if you will. Nebraska Cattlemen policy created and adopted by our membership encourages the voluntary registration of premises. Nebraska Cattlemen supports the voluntary component of LB632. In interest of full disclosure as well concerning our policy, we would also support a mandatory program for disease surveillance only. The caveat is no such program exists. So there's not one

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to support if you will. I would like to share with you our policy concerning premises registration that was adopted by our animal health and nutrition committee and forwarded to our membership, which was adopted in full membership at our 2006 annual meeting. Whereas premises registration is being offered on a voluntary basis by the Nebraska Department of Agriculture and whereas an effective disease surveillance system is in the best interest of individual producers and the beef industry as a whole. Therefore be it resolved Nebraska Cattlemen encourages its members and all beef producers in allied industries to register their premises. We backed that up carrying out that policy by hosting over a half a dozen educational seminars across the state, offering information about the national animal identification system. Relative to this issue, at each of these seminars producers were offered information on how to register their premises and encouraged to do so. And I would like to submit to the committee this is the form to register your premises, which you can print right off the internet. You'll notice it is one page with general information such as physical address and so forth. Here is the crux of our opposition to LB632: we're concerned that it does not effectively achieve its desired intention. The data in the premises registration system is held both in federal and state databases--and this is important--as well as private databases systems if the producer has supplied that data to the private entities. We spoke with USDA this morning and understand that USDA is currently promulgating a procedure that would allow producers to unregister their premises from government held systems. They have no jurisdiction over private systems. With all this in mind, the following questions then must be asked. Is LB632 necessary? And does LB632 do what it is intended to do? And it is in our opinion, the Nebraska Cattlemen, that the answer to both of those questions is no. One fact that needs to be remembered during this discussion, in order for a producer's premises to be registered he or she must have completed the application that I offered to you. It's a voluntary procedure. Premises registration is a voluntary program. I spoke with the Nebraska Department of Agriculture this morning and I asked have any producers requested that their information be unregistered. The answer I received this morning was no. No producers have requested that. Additionally, if confidentiality is a concern, LB531 last year which last session's body passed, was addressed this important issue and provides for assurance that the data is utilized properly under penalty of law. I appreciate the opportunity to testify and would be happy to try to answer any questions. [LB632]

SENATOR ERDMAN: Thank you, Michael. Any questions for Mr. Kelsey? Have you registered your premise? [LB632]

MICHAEL KELSEY: I will answer that question in two ways, Senator. First of all, yes, I have registered my premises. And number two, under the confidentiality by LB531 the only person who has access to that information is me unless I provide it to someone else. So no one can know that I've registered my premises except me unless I provide it. [LB632]

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SENATOR ERDMAN: Now the world because you're a part of legislative history.
[LB632]

MICHAEL KELSEY: Now the world will know. [LB632]

SENATOR ERDMAN: Okay. Thanks, sir. Any other questions for Mr. Kelsey? Senator McDonald. [LB632]

SENATOR McDONALD: Is there a charge to register? [LB632]

MICHAEL KELSEY: Thank you, Senator McDonald. No, there is no charge to register your premise. It's a free process and it's our understanding that the process that USDA is promulgating to unregister premises that would be a free process as well. There would be no charge to unregister. It's a weird word, but unregister your premises as well. [LB632]

SENATOR ERDMAN: Thank you, Senator McDonald. Further questions? I don't see any, thank you, sir. Anyone else wishing to testify in opposition to LB632? I see none, anyone wishing to testify in a neutral capacity? We do have Chris Shubert here from the Department of Ag if you have questions of him we can ask him to come forward and...Chris, why don't you do that? I had a couple that came to mind just since you're here, and we shouldn't take too long. Since you weren't planning to testify we'll give you a pass on your sheet before you start, but if you'd state your name and spell it for us.
[LB632]

CHRIS SHUBERT: For the record, my name is Chris Shubert. That's spelled S-h-u-b-e-r-t, Chris is C-h-r-i-s, and I'm here from the Department of Agriculture.
[LB632]

SENATOR ERDMAN: Very good. Just a couple things to follow up on and some of it came out of Mr. Kelsey's testimony about...well, first of all, we had started off in the state with a state database and we have since abandoned that state database for a national or regional database. Is that accurate and can you give me the details of how our process works currently as far as where the data is located? [LB632]

CHRIS SHUBERT: Well, the individual who actually runs that particular program is out at Kearney so I'm filling in... [LB632]

SENATOR ERDMAN: You drew the short straw. [LB632]

CHRIS SHUBERT: ...and probably will have to give you some other information. But yes, we did start out with the NAVE program. It was on the state level and then we transferred over to the federal program mainly because of finances and support,

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etcetera. USDA pretty much went a different direction and so we were financially required to basically go their direction. Now as far as where it's stored we have hard copies of the information that's submitted, for instance, the information that was on that particular application that was passed around, but it's then also the information that USDA requires is then entered into the record and into the system and it's stored at Fort Collins. Colorado, for those of you who don't have an opportunity to go to Colorado on occasion. [LB632]

SENATOR ERDMAN: Okay. The other question I have is just to confirm if you know, since the announcement of the U.S. Department of Agriculture that animal ID system is clearly voluntary has the department been contacted about deregistering premises? [LB632]

CHRIS SHUBERT: No, not to my knowledge. We've not been asked to deregister anybody at this point in time. We've also been trying to get the information from the USDA as far as their process and their program and that's still in process. But, you know, we will cooperate and work with them as the amendment--I believe, I've not seen the official amendment--but as the official amendment probably states that we would cooperate with USDA in that regard. [LB632]

SENATOR ERDMAN: Okay. Does the committee have any questions for Mr. Shubert? I don't see any, thanks for coming forward, Chris. We appreciate it. [LB632]

CHRIS SHUBERT: Sure. Thank you. Had enough time to complete it. [LB632]

SENATOR ERDMAN: (Exhibit 15) Is there anyone else? Anyone else in a neutral position? I see none. Senator Dierks, welcome back. You're recognized to close and I understand you're going to waive closing. Fantastic. All right. Before we close the hearing on LB632 there is a letter that we have received from Dr. John Clifford, chief veterinarian of the United States Department of Agriculture. As I read the letter it's simply an informational piece. It doesn't take a position, but rather gives a background of the National Animal ID System from their perspective. And this is going to be entered in a neutral or information position. And the letter is in each of your binders. So if you're looking for that letter it's in each of the senator's binders behind the fiscal note. That will close the hearing on LB632. And we will now open the hearing. Senator Dierks, we're going to defer to you. We have scheduled LB633 to go last, but since you're here if you'd like to take that one up now we'll let you do that or otherwise we'll proceed to LB634. [LB632]

SENATOR DIERKS: Whatever is your pleasure. [LB632]

SENATOR ERDMAN: Well, you're doing the heavy lifting today so if you need... [LB632]

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SENATOR DIERKS: Well, let's do LB633. [LB632]

SENATOR ERDMAN: Okay. [LB633]

SENATOR DIERKS: Because I have it out of the folder. [LB633]

SENATOR ERDMAN: We'll do that then. We'll go ahead and change the schedule just briefly. We'll take up LB633 and you're recognized at your convenience to open on LB633. [LB633]

SENATOR DIERKS: Well, I thank you very much, Mr. Chairman and members of the committee. It's nice to be back. We just had quite an educational experience. My name is Senator Cap Dierks. That's spelled C-a-p D-i-e-r-k-s and I represent District 40 and I'm here to introduce LB633. In 1999, I introduced LB835, the bill that originally created the Competitive Livestock Markets Act. The passage of that legislation was a very hard-fought battle. There were four divisions to this original bill: a prohibition on packer ownership or feeding of livestock; swine price discrimination prohibitions; cattle forward contracting requirements; and, price reporting. In the fall of 1999, Congress enacted a federal price reporting of all that preempted any state law dealing with price reporting. An Attorney General's Opinion concluded that Nebraska's price discrimination provisions were also effectively preempted since packer compliance with price reporting was intertwined with the price reporting legislation that we had passed. LB633 was introduced for several reasons. First of all, Congress is working on the federal farm bill and I want to send them a clear message from Nebraska. We need to tell our congressional representatives exactly what states would like to have enacted. If Congress does not listen to Nebraska there are several key areas of the bill that I believe make good public policy for this state. The major provisions are as follows. LB633 repeals existing sections pertaining to swine price discrimination and cattle contract procurement restrictions. It replaces existing price discrepancy prohibitions for swine procurement, and replaces it with language prohibiting certain unfair procurement prohibitions listed under section 202 in part 7 of the U.S. Code 192 of the federal Packers & Stockyards Act. The bill applies to procurement of either swine or cattle. LB633 prohibits any unfair or unjustly discriminatory practice or giving or subjecting any person or locality to unreasonable preference and advantage, and extends this prohibition to the procurement practices of swine contractors. The bill decouples prohibitions against discriminatory procurement practices from state price reporting. This is important so that discriminatory procurement practices will not indirectly be preempted if state price reporting is preempted by federal law. LB633 consolidates price reporting provisions for cattle procurement with price reporting for swine. This is a very brief summary of the bill and I'll try to answer questions from the committee if you have some. [LB633]

SENATOR ERDMAN: Thank you, Senator Dierks. Any questions from the committee? I

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see none at this time. [LB633]

SENATOR DIERKS: Okay. Thank you. [LB633]

SENATOR ERDMAN: Thank you, sir. Can I see a show of hands of those who wish to testify in support of LB633? I see two, three. Can I see a show of hands of those who wish to testify in opposition? I see two. And can I see a show of hands in neutral? I see one. Okay, proponents come forward. [LB633]

VERN JANTZEN: (Exhibit 16) Chairman Erdman, my name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I am here testifying in support of the bill as a member of the Nebraska Farmers Union. As Senator Dierks said, back in 1999, there was several bills that were introduced to deal with market reform and those were all rolled--except one--were all rolled together to become a Competitive Livestock Market Act. South Dakota and Missouri, at that time, also passed legislation to do the same thing, and as a result of that pressure the federal level bill was introduced, and that legislation is in effect. It did lapse last year for a short time and then they reintroduced it or made it go again, I guess. In the last session there was a bill, LB916, which was amended into LB856, and that was passed and signed by the Governor last year. And so we have continued to update this process as we go along. This bill, again, as a means of updating that with some technical changes. And our organization thinks it's important that we have this legislation here in backup that runs parallel with the federal legislation in case the legislation on the federal level is for some reason not renewed or no longer applicable. That's all I have to say. Any questions? [LB633]

SENATOR ERDMAN: Thank you, Vern. Any questions for Mr. Jantzen? I see you're off the hook. [LB633]

VERN JANTZEN: Great. [LB633]

SENATOR ERDMAN: Thank you, sir. [LB633]

VERN JANTZEN: Thank you. [LB633]

SENATOR ERDMAN: Next testifier in support of LB633, please. [LB633]

JOHN O'DEA: (Exhibit 17) For the record, my name is John O'Dea, J-o-h-n O-'-D-e-a. I'm testifying for Jim Hannah who is unable to be here today because of a previous engagement that he scheduled. His name is spelled J-i-m H-a-n-n-a-h. We're representing the Independent Cattlemen of Nebraska. Chairman Erdman and members of the committee, we come before you today to provide testimony in support of LB633. One of the most basic tenets of our organization is enhancing competition and transparency in the livestock marketing arena. The current trend in agriculture is finding

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fewer and fewer large participants in the processing sector, exerting more and more influence over their suppliers. These suppliers include Nebraska's family farmers and ranchers. If our most important economic sector, livestock production, is to survive, we must provide producers relief from unfair or predatory business practices. Production under contract has become a widespread practice across all of agriculture. While we do not condone such practices do to the long-term detrimental effects, anyone choosing to utilize them should not have to give up fundamental rights in when engaging in such contracts. All contractors should be treated in a fair and nondiscriminatory manner and any provisions for nondisclosure should be prohibited. Further, livestock producers of all sizes and categories should be offered uniform pricing for animals of life quality, resulting from similar production methods and time of delivery. Contracting of agricultural production must not be used as a method to force independent family-oriented businesses into situations where they become totally at the mercy of a single entity. Allowing this kind of domination will bring about the complete demise of Nebraska's rural communities and unprecedented harm to our ag economy. We must also require that contracts are not used to eliminate transparency in the marketplace. Information on pricing levels, premiums, and discounts as well as quality characteristics must be disclosed in a timely fashion. Our ability to establish current fair market values for our products relies on this information. Even the use of future markets for price discovery and hedging is reliant on complete and timely price information. If this information is allowed to become even more thinly reported than it is today, producers will be relegated to only accepting those prices they are offered. And we have seen in currently vertically integrated sectors of agriculture, those prices offered are often below or much below the cost of production. Mr. Chairman and members of the committee, we encourage you to understand the concerns of livestock producers across the state when faced with the necessity of contract production. Should we eliminate this marketing tool? Probably not, but we must not allow large corporate entities to use contracting as a method of controlling and dominating our markets. We thank you for your time and welcome your questions and comments. [LB633]

SENATOR ERDMAN: Thank you, John. Any questions for Mr. O'Dea? I don't see any, thank you, sir. [LB633]

JOHN O'DEA: Thank you. [LB633]

SENATOR ERDMAN: Next testifier in support of LB633. [LB633]

LOUIS DAY: I'm not so nervous this time. (Laughter) My name is Louis Day, that's L-o-u-i-s D-a-y, and I guess while I'm here and have this opportunity I'd like to represent myself for my family in this testimony, and it's kind of a general testimony. Anything that you folks can do to protect the common producer out there, we need that help. I've fed my calves before and the control that just a few people in--I'll be blunt--the packing industry is enormous. I'll give you a real quick example. In 2001, I had a set of steers

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ready and I only get one shot at this a year, you know. I only have one pen of steers and that was the cream of my crop. Put them on feed and part of it was to see how the cattle were doing, and the other part was if I don't make a profit on them I lose out for that year. And they took and they didn't want to pay 62 cents. They was wanting them for 59 cents. And with forward contracted cattle and everything, they started even in the lot that my cattle were in. They was calling cattle that was three weeks from even going to the show list. But as soon as that contract was up they were pulling cattle in so that they were out of the market. And they got my cattle for 59 cents. I had to wait for another year to try to make a profit. So I guess in a general...anything that you folks can do to even the playing field. I'll give you an example of how important it is to the economy of this state. From '98 until the first case of BSE was discovered in this country, what happened to the cattle industry of this state? Stuff was tough enough. You folks know right here that if you was in the Legislature you was starting to have some tough decisions to make because there wasn't money. Your tax revenue wasn't there. The packing industry was making record profits. It's on the books. Making record profits during that period. And this state's economy, you were on the verge of having to decide what to cut and how much and when. And they lost only a fraction of the supply when they couldn't bring the Canadian cattle in in 2003 when the border was closed. And what happened to this state's economy from 2003 until they got the USDA to open it back up so that the younger Canadian cattle could come in? The cow-calf producer and the feeding sector of this state had never had as good of times. One sector--the packing sector--their margins had narrowed back up and look how much pressure was put on the USDA to get that border opened back up. So we need you folks to level the playing field, because if we don't have you...you're kind of our last hope. So whenever a bill like this comes up please consider us people out there that don't have as strong a voice as you do. Thank you. [LB633]

SENATOR ERDMAN: Thank you, Louis. Any questions for Mr. Day? Thank you for your testimony. [LB633]

LOUIS DAY: Thank you, sir. [LB633]

SENATOR ERDMAN: You did a good job. Next testifier in support of LB633. [LB633]

PETE McClymont: Senator Erdman, members of the Ag Committee, my name is Pete McClymont, vice president of legislative affairs. My name is spelled P-e-t-e M-c-C-l-y-m-o-n-t. And we'd like to thank Senator Dierks for introducing LB633 and I'm here as a proponent of the bill. Nebraska Cattlemen has policy in this regard. It is for USDA's mandatory price reporting, which is vitally important to producers and enhance their ability to make informed decisions. As long as USDA maintains mandatory price reporting from a beef perspective, it provides the safety net, as some of the other testifiers have alluded to, in price discovery. So the only question I would have for this committee that I would raise is that if a few things happen...number one, if USDA's

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mandatory price reporting sunsets and it's not re-implemented, and LB633 is passed, how would we fund this? Because under the bill, we would have the state Attorney General and the Department of Ag would have to enforce this. So I just bring that up as all of you face financial decisions as a body for our state, that would be one concern I would raise. With that, I would conclude my testimony. Thanks, Senator Dierks, for the introduction of LB633. [LB633]

SENATOR ERDMAN: Thank you, Pete. Any questions for Mr. McClymont? I don't see any, thank you, sir. Next testifier in support please. Anyone else in support of LB633? I see none. We will now move to opponent testimony. First testifier in opposition to LB633. [LB633]

JACK MOORS: Chairman Erdman, members of the committee, my name is Jack Moors, M-o-o-r-s. I'm a registered lobbyist. I'm representing Cargill Meats here today. We have no planned testimony. We just wish to go on record as in opposition. There's currently a federal law that takes care of this situation and it's working fine and we leave it at that. [LB633]

SENATOR ERDMAN: Thank you, Jack. Any questions for Mr. Moors? I don't see any, thank you, sir. Next testifier in opposition please. [LB633]

LARRY SITZMAN: (Exhibit 18) Senator Erdman, members of the Agriculture Committee, again, my name is Larry Sitzman, L-a-r-r-y S-i-t-z-m-a-n, executive director of the Nebraska Pork Producers Association. LB633 appears to us to duplicate existing federal requirements that the United States Department of Agriculture report the exact same activities across the country, including Nebraska. We all know that federal requirements preempt state law and we feel that this bill adds absolutely nothing to the competitive markets that is not already covered under USDA requirements. LB633 names the Nebraska Department of Agriculture as the host agency to enforce and regulate this bill. This appears to add additional bureaucracy as well as possibly requiring additional general or fee-based funding and possible staffing with the Nebraska Department of Agriculture. Now Senator Erdman, I know that for a fact because I used to sit in that chair to head that agency. And I've received bills from the Legislature and always there's an A bill for some type of funding activity. Things like this don't just happen without some type of activity to fund them and make them happen through people's efforts. LB633 reads in Section 1, part 1, animal unit means one head of cattle, three calves under 400 pounds, or five swine. Section 1, part four reads livestock means cattle or swine. Yet Section 1, part seven specifically reads and identifies only swine contractor. It appears the language in this section is not meant to apply to all species of livestock, instead identifying solely swine contractors and could possibly, if enacted, need to be tried in state courts. We suggest the removal of Section 1, part seven from this bill. Because of state duplication of federal requirements, additional bureaucracy, possible general fund or fee-based costs to the Nebraska

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Department of Agriculture, and discriminating language to swine contractors, we oppose LB633. Thank you, Senator Erdman. [LB633]

SENATOR ERDMAN: Thank you, Larry. Any questions for Mr. Sitzman? I don't see any, thank you, sir. Next testifier in opposition to LB633. [LB633]

WALTER RADCLIFFE: Senator Erdman, members of the Agriculture Committee, my name is Walter Radcliffe, spelled R-a-d-c-l-i-f-f-e. I'm appearing today before you as a registered lobbyist on behalf of Tyson Foods in opposition to LB633, and there's about three particular parts I'd like to address. The first, with regards to mandatory USDA price reporting that we're doing now, to have that restated, quite honestly, isn't a problem. I mean, when this bill was passed originally we worked with it and, frankly, supported it. And supported it with the language that's now being stricken on page 8, which goes to the question that the cattlemen raised, which is who's going to pay for this if--I think we've got another five years now on the mandatory USDA stuff--but if in fact, that federal mandate goes away as it was envisioned it could have with that language there from 15-24 five years ago. At least that language then said what was going to happen. So you take that out and now if the USDA stuff goes away there isn't any direction to the state as to what's going to happen. You know, very honestly that doesn't make a lot of difference to me or my client, but I think to you as policy makers it should. I think you might want to address that as you previously did. So that really is the first point conjunctive with the second which is we don't object to, in essence, duplicating the USDA reporting; however, where our objection does come and it's to the point that Mr. Sitzman raised, it's easy for the cattlemen to be in favor of it when it really affects a swine contractor. (Laughter) You know? I remember we had a deal with branding animals and we got a call from the Tyson Pork procurement officer and he wanted to know why in the world we hadn't told him about it. And Korby said to him, well, last time I looked we didn't brand pigs. You know? And that's kind of what this is. The cattlemen don't have a problem with it because they're cattlemen, they aren't swine contractors. And this language had been included in legislation, South Dakota and Missouri, which the result is a single bid price. You create a bid market. Now I don't really understand--Senator Karpisek's laughing at me--I really don't understand perhaps the livestock markets, but I do understand a bid market. You go to an auction and you say I'll bid X and nobody wants to sell it, you're pretty well done for the day, and that's what happened in South Dakota and Missouri. And then what happened was those pig people had to bring their stock down and sold it in Nebraska, because it simply wasn't selling there. This didn't work in South Dakota and Missouri, that portion of the bill which goes to the single price. So that's the basis of our objection. If you want to address the bill to keep Nebraska on track and to parallel what the federal USDA mandatory reporting requirements are, fine. And if you do or don't want to address what happens if they don't continue in a few years, that's your policy decision. But don't make the same mistake that South Dakota and Missouri did on the single point pricing, because it isn't going to work. It didn't work there and it's not going to work here. Now I hope you don't

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have any questions, but if you do I'll try to get back to you in a couple days with some answers. (Laughter) [LB633]

SENATOR ERDMAN: Thank you, Walt. Any questions for Mr. Radcliffe? Walt, you have a copy of the bill in front of you? [LB633]

WALTER RADCLIFFE: Yes, I do, Senator. I came prepared. [LB633]

SENATOR ERDMAN: Turn to page 8 for me, would you? [LB633]

WALTER RADCLIFFE: Page what? [LB633]

SENATOR ERDMAN: Eight. [LB633]

WALTER RADCLIFFE: Eight? Okay. [LB633]

SENATOR ERDMAN: That's where Section 11 is. [LB633]

WALTER RADCLIFFE: Yes. [LB633]

SENATOR ERDMAN: The language that's stricken strikes the language that would've been effective before December 1, 2006. [LB633]

WALTER RADCLIFFE: Right. [LB633]

SENATOR ERDMAN: The language in subsection (2) applies after that. [LB633]

WALTER RADCLIFFE: I'm sorry. Just a minute. [LB633]

SENATOR ERDMAN: So if I read the bill correctly in Section 11, it would allow for a process to be in place if, as I read the language, if Congress does not authorize a federal livestock mandatory reporting act for '99 then it outlines what process follows. [LB633]

WALTER RADCLIFFE: That, Senator, was...that is existing language. [LB633]

SENATOR ERDMAN: Correct. [LB633]

WALTER RADCLIFFE: And what I'm saying is the language that was struck did require a budget preparation to be made to keep the act enforced. The language here that you're citing that's existing language doesn't do that. In fact, it says just the opposite. No general fund monies can be used. [LB633]

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SENATOR ERDMAN: Can you read line 2 to me, please? [LB633]

WALTER RADCLIFFE: Yeah. Line 2, the director shall prepare such budget and appropriation request on or before the date. I understand what you're saying, but I'm not so sure that that...maybe that's something we should sit down and take a look at. I don't know that it does address that. Now again, as I said, if you think it does from a policy standpoint I'm fine with that. And perhaps your reading is correct. In fact, it probably is correct. But I always like to say perhaps just as a little hedge. [LB633]

SENATOR ERDMAN: Right. And I'm just reading the language as I read that. It says no general fund shall be appropriated for implementation of certain sections. But then further down it says it's the intent of the Legislature that any general funds appropriated for the purposes of this section shall be reimbursed to the General Fund. So there is some questions there, but I don't want the record to reflect that there's nothing in place in the event that... [LB633]

WALTER RADCLIFFE: I appreciate that. Your point is well-taken. [LB633]

SENATOR ERDMAN: Okay. Further questions for Mr. Radcliffe? I see none. Glad we didn't have to take a couple of days to get back to us. [LB633]

WALTER RADCLIFFE: Pardon me? [LB633]

SENATOR ERDMAN: I said I'm glad it didn't take you a couple days to get back to us. [LB633]

WALTER RADCLIFFE: Well, that's the advantage of having the bill. [LB633]

SENATOR ERDMAN: Thank you, sir. [LB633]

WALTER RADCLIFFE: Thank you. [LB633]

SENATOR ERDMAN: Next testifier in opposition, please. Anyone else? I see none, anyone wishing to testify in a neutral position on LB633? Come forward, please. [LB633]

ROB ROBERTSON: Good afternoon, Senator Erdman, members of the Ag Committee. My name is Rob Robertson with the Nebraska Farm Bureau, and it's R-o-b-e-r-t-s-o-n, and I come to you today in a neutral capacity on LB633. I guess a few things I'll just comment on as opposed to handing in written material. First of all, I agree with Mr. Sitzman about the concerns of duplications and the cost in terms of what the federal government currently does with price reporting and implementation of the Packers and Stockyards Act. And then just generally some philosophical concerns we have on the

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bill. There is, you know, the issue of unattended consequences when you start legislating or regulating the marketplace. While the goals are good, you know, the actual result may not be the best for involving marketplace that swine and cattle are moving into in terms of marketing agreements and production-based marketing alliances and so forth. So I guess our recommendation is to tread lightly. The reason why we're in a neutral capacity, though, is Nebraska Farm Bureau does support a ban on packer ownership, which I think this bill recodifies or reassures that that stays in our statutes. So that's why we're here in neutral, but I guess from a word of caution and concern let's make sure we don't put Nebraska on an island in terms of regulating a marketplace. Let's get together as a committee, as an industry to look what we can do to improve the means of price discovery and price transparency in livestock markets. We all need to get together and help improve a very complicated system. And I think the price reporting provisions of this bill helps with that system, because price reporting on the national level or on the state level if they don't have one on the books is very important in terms of how a lot of these marketing agreements and livestock production value alliances are based off of. So that's a very important part of the bill. That concludes my comments and I'd be happy to answer some questions if you have any. [LB633]

SENATOR ERDMAN: Thank you, Rob. Any questions for Mr. Robertson? You're off the hook. [LB633]

ROB ROBERTSON: Thank you. [LB633]

SENATOR ERDMAN: Thank you, sir. Anyone else wish to testify in a neutral capacity? I thought we had one more willing volunteer. [LB633]

RICK KEITH: Hi. My name is Rick Keith, K-e-i-t-h. I manage Producers Livestock Marketing in Omaha, Nebraska. We're a livestock marketing cooperative of cattle and hogs. We market about 600,000 cattle and about 1.3 million fat hogs per year. I don't have any problem with the bill other than the fact that we're seeing some problem with the two times per day reporting of the prices with the USDA at this time. Many of the Iowa/Southern Minnesota markets, for example, they'll say today we're going to buy your hogs at \$2 over the Iowa/Southern Minnesota. And normally they use the 11:00, and for some reason that 11:00 price is always \$1-\$1.50 under the 1:00-2:00 price that comes out. And I think if they're going to put something in there it should be an average of the twice daily. So if they do price cash livestock on a basis level from that report, then it should be the average and not a 11:00 or 1:00 or whatever price they want to use today. And that's all I have. [LB633]

SENATOR ERDMAN: Thank you, Rick. Any questions for Mr. Keith? I don't see any, thank you, sir. Anyone else in a neutral capacity? I see none, Senator Dierks, you're recognized to close on LB633. [LB633]

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SENATOR DIERKS: Well, thank you very much, committee. You've listened well, I think. I guess that whenever I come to any committee with a bill and I have as many opponents to the bill as I have proponents, I get a little concerned. But it seemed like the opponents this time were relatively easy on me. The price reporting part of this legislation came about as a result of the federal preemption. We passed price reporting in 1999. Packers didn't like it. We passed it in Minnesota, South Dakota, Nebraska, Iowa, and Missouri. And the Congress had tried to do price reporting a number of times, but they tried it and the packers said no. They didn't want price reporting. A little history before that. We didn't really need price reporting back in the days when the central markets were along the Missouri River and the Mississippi River, because those people dealt in a different fashion. All the packing houses were there. The cattle were all sold there. And they all went to commission firms and everybody knew what the price was. They just reported this every morning. My grandfather could listen to a market report. He could listen to five of them, different markets, in a period of two hours and find out what they were in Sioux Falls, Sioux City, Omaha, St. Louis, and St. Joe. It's just that's the way that it was. When the packing industry moved away from the river markets and built their packing plants out in the area where the cattle are being fed, we started to lose that price reporting. And so when we wanted to find out price reporting there was some objections from the standpoint of the packers, because they didn't want to have to report what they paid for their own cattle. I mean, they didn't have anything to report because they didn't want anybody to know what they were worth. So they could go for a week slaughtering their own cattle and the people out here in the country trying to sell in the cash market didn't know what they were worth, just didn't have any idea. So when these five states got together, kind of renegaded and put together price reporting and got it passed, then the packers decided well, these five states are all a little bit different and we're going to have an awful time living with each one's different reporting requirements, so let's go to Congress and ask them to do a price reporting legislation, which they did. And it was passed in August of '99. I had a long conversation with Senator Kerrey at the time, because he was on the Senate Ag Committee, and he wanted to make sure that what they did had the language was right. So we went over that for some time, but when they preempted everything, these other states did, then along with that preemption we lost some of the rest of our legislation. We went to the Attorney General and asked if the ban on packer ownership survived, and he said that it did. The contracting language didn't, and of course the price reporting language. So at the time that the Congress passed price reporting, I think it had a six-year sunset. It was passed in '99. It was supposed to be redone in 2005 and it wasn't. And it didn't even get done in 2006, I believe, but they're on the right track now. But anyway, I called the research analyst from the Ag Committee during that time and I said we still have price reporting in effect, if the federal price reporting is not in effect. I mean, when they preempted all of sudden there's stops, our's comes back into effect. Well, we didn't have any money out there for the Department of Agriculture to do the price reporting. So it became a kind of a sticky issue. And this is the reason we're going back to some of these things today. We want to make sure that some of the stuff that was preempted is

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now going to be available in the way of support and protection for our producers. That's the whole reason for it. I guess that's all I have to say and I want to thank you for your kind attention. [LB633]

SENATOR ERDMAN: Thank you, Senator Dierks. Any questions? I don't see any. Since you're in the hot seat... [LB633]

SENATOR DIERKS: Just going to start the next one. [LB633]

SENATOR ERDMAN: ...we'll let you continue. That was close. (Laughter) We almost got ourselves in a whole bunch of hot water. (Tape change)...have any letters there for LB633, so that will close the hearing on LB633. And we will now proceed to speaking clearly and carefully and opening on LB634. [LB633]

SENATOR DIERKS: Well, thank you very much, Senator Erdman. For the record, my name is Cap Dierks, spelled C-a-p D-i-e-r-k-s, and I represent District 40. I am here today to introduce LB634. This bill creates a Feedlot Statutory Trust Act. LB634 does not bring a new issue before the Ag Committee. The issue of Feedlot Statutory Trust Act has been introduced repeatedly over the past six years. I agreed to introduce LB634 this year because I believe it is an important issue. LB634 states that all livestock purchased by a feedlot operator from a cash seller and all receivables and proceeds from the sale of such livestock shall be held by the feedlot operator in trust for the benefit of the cash seller of such livestock until full payment has been received by the cash seller. The statutory trust is modeled after similar trust provisions contained with the Packers and Stockyards Act that benefit unpaid cash sellers of slaughter livestock to packers. Livestock markets are not included in the Packers and Stockyards Act. They have no protection from payment methods that are not honored by banks. LB634 will simply allow all proceeds and receivables from any sale of livestock be held in trust by the feedlot operator for the benefit of unpaid cash seller until the seller has been paid in full. Payment will not be deemed to have been made if the cash seller receives a payment instrument that is dishonored. The bill sets up a system where the cash seller loses the benefit of the trust that that cash seller fails to get written notice of non-receipt of payment to the feedlot operator and to the director of agriculture. There are testifiers today from the Nebraska Livestock Market Association to provide further information to the committee. Also, from the American Livestock Marketing Association and they have better answers for you than I have, but I'll try to answer any questions you might have. [LB634]

SENATOR ERDMAN: Thank you, Senator Dierks. Any questions? I see none from the committee. [LB634]

SENATOR DIERKS: Off the hook again. Thank you very much. [LB634]

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SENATOR ERDMAN: We're a lot easier than that Education Committee aren't we?
[LB634]

SENATOR DIERKS: Yeah. Yeah. (Laughter) [LB634]

SENATOR ERDMAN: We don't eat our own that's why. (Laughter) [LB634]

SENATOR DIERKS: That education committee... [LB634]

SENATOR ERDMAN: Can I see a show of hands of those who wish to testify in support of LB634? I see a bunch. Those in opposition? I see two. Anyone in a neutral? I see one. Okay. It's 4:30. We know that some of you have driven a ways to be here and have shared your opinion on other bills. If you need to say something come on up, but if something has already been said that you think encapsulates your position you can come up and share those comments briefly as well. And that way it will give us some opportunity to hear everybody this afternoon. This has been an issue that's been before the Ag Committee a number of times and we are aware of the general subject matter. And I would ask Mr. Hallstrom not to give us a lecture on the Uniform Commercial Code (laughter) and others, which he has been warned prior, but just so that everyone knows. But we will now begin with proponents. Come forward. Follow the same procedure. Go ahead and have your testifier sheet filled out. And again, the pages would be happy to distribute information. If you don't have copies, they'd be happy to make copies as well.
[LB634]

ERNEST H. VAN HOOSER: I do not have copies with me. [LB634]

SENATOR ERDMAN: Would you like them copied so that we can have them? You don't want us to see what you have to say? [LB634]

ERNEST H. VAN HOOSER: Oh, you're more than welcome to see it. (Laughter) I'm just not sure you want to read it while I try to talk. [LB634]

SENATOR ERDMAN: Go ahead. [LB634]

ERNEST H. VAN HOOSER: (Exhibit 19) Senator Erdman and members of the committee, my name is Ernest Van Hooser, E-r-n-e-s-t V-a-n H-o-o-s-e-r. I'm here today on behalf of the Nebraska Livestock Markets Association to speak in support of LB634, the Feedlot Statutory Trust Act. The Nebraska Livestock Markets Association is made up of livestock auction markets throughout the state of Nebraska. Their primary function is to provide facilities and services where Nebraska's farmers and ranchers can sell their livestock at fair, competitive prices. Typically, at an auction market, livestock sellers bring their livestock to the auction market the day of the sale. Typically, within hours the livestock are sold. Under Section 409 of the Packers and Stockyards Act, a

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livestock auction market is required to pay the seller or consignor by no later than the close of the next business day after the sale. In fact, they pay them the day of the sale. If purchasers of livestock are packers or dealers or other livestock markets, federal law requires them to pay by no later than the close of the next business day. The Packers and Stockyards Act does not cover feed yards. There is no prompt payment requirement for feed yards. There is no time within which they have to pay for what they buy. Not only is there no requirement for feed yards to pay within a certain period of time, they do not have surety bonds and they do not have letters of credit. They do not have the types of things to secure payment that livestock auctions and dealers and packers have. And at this point I want to pause and make sure I'm not misunderstood. I am not here today suggesting that feed yards are inherently poor customers. They are not. By and large, feed yards pay promptly and their checks are good. However, because of the sheer volume involved with feed yards, when they have a financial disaster, it is a disaster for all those who sold livestock to the feedyard and didn't get paid for those livestock. Most feed yards finance at least a sizable portions of business. Typically, when a feedyard borrows money its lender takes a security interest not only in the specific livestock that are being purchased at that point, but they take a blanket security interest. It covers everything that the feedyard has now or will have in the future--livestock, accounts receivable, machinery, feed, general intangibles, the whole nine yards. Under the Uniform Commercial Code--bear with me a minute, I realize you don't want me to go through this... [LB634]

SENATOR ERDMAN: We'll give you some flexibility because you haven't been here before lecturing us on what it does. So we'll give you some flexibility. [LB634]

ERNEST H. VAN HOOSER: Okay. I have unfortunately. [LB634]

SENATOR ERDMAN: Well, we'll just give you an exception anyway. [LB634]

ERNEST VAN HOOSER: Thank you. I appreciate it. Under the Uniform Commercial Code, attachment of an Article 9 security interest takes place when three things happen: there's an agreement that the interest attaches to the collateral, the secured party has given value, and the debtor has rights in the collateral sufficient to permit attachment. Almost always the security agreement that the lender has, as I said, is a blanket security interest. It attaches not just to the specific livestock being purchased, but it's there for everything. Value, under the U.C.C. definition, does not have to consist of new value. It can be preexisting debt. And finally, the U.C.C. allows a buyer who has not paid for the goods to transfer a greater title to a good faith purchaser than that person had. And a secured creditor can be considered a good faith purchaser. Why does all this make any difference? What you have is in a situation where a livestock market delivers livestock to a feedyard and does not receive payment or gets paid with a check that's dishonored, the U.C.C. allows the lender to qualify as a good faith purchaser. Thus, as such, that lender steps in and has priority under Article 9 over the unpaid

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seller--the livestock auction market. The lender, by virtue of this after acquired security interest on a preexisting debt, gets the livestock and the proceeds from the livestock while the unpaid seller gets no livestock and no proceeds. I think most of us, if we're honest about it, would find that there's something inherently unfair when a lender with a blanket security interest that covers everything but the kitchen sink, based on a preexisting debt, gets all the livestock and the proceeds from the sale of those livestock while the person who actually sold the livestock and did not get paid for them gets nothing. Likewise, I think most of us would consider it inherently unfair where a bankruptcy trustee gets the livestock and the proceeds, and the person who actually sold the livestock gets nothing. Historically, one of the arguments has been well, you know, the seller could have protected himself by getting a purchase money security interest and that would have put them to the front of the line. Some years ago, that may have been, at least theoretically, a possibility. Under the old version of Article 9, a person selling livestock could obtain a purchase money security interest in the livestock if they filed within 10 days after the date of the sale. That's no longer the case. Under revised Article 9, which went into effect in Nebraska as in most states in July 2001, it would be virtually impossible today for a livestock market to perfect a security interest in livestock so as to take a priority over the lender. Why? Because in order to get that priority the purchase money security interest would have already had to have been perfected when the feedyard takes possession of the livestock. What does that entail? It means you have to have a security agreement. You have to file a financing statement. And if you want potential buyers to know that it's out there, you've got to file with the Central Filing System. But in order to perfect, you've got to have a security agreement and you have to file a financing statement before the feedyard takes possession of the livestock. Second thing is the livestock market would have to notify the holder of any conflicting security interest before the feedyard took possession of the livestock. And finally, the notification would have to describe the livestock. So you couldn't just have a situation where you have a general thing all livestock. Doesn't work. Has to describe the livestock. Clearly, a livestock market can't do all of those things after it finds out who has made the highest bid for the livestock before the buyer takes possession of the livestock, especially not if the sale is on a Friday or a Saturday or an evening. The Secretary of State's Office is not open, okay? LB634 would provide a simple way to help ensure that a cash seller of livestock would have a legitimate opportunity to get paid for the livestock he or she has sold to the feedyard. It would not send the industry back into the days of conditional sales contracts and it would not be the death of financing for feed yards. Generally speaking, LB634, although more narrowly drawn, is very similar as Mr. Dierks said, to the Packers Statutory Trust that's set out in Section 206 of the Packers and Stockyards Act. In 1976 when Congress was considering this legislation, lenders by the droves testified that passing that legislation would spell the end of the packing industry because there would not be any credit, packers would not be able to obtain financing. Well, clearly that didn't happen. Packers are still able to obtain financing just as feed yards would be able to obtain financing. The only thing that may happen is lenders, instead of getting complacent about the lending, may actually go out

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and do inspections once a year to see what's there. They may be a little bit more conscious about policing the loans that they've made, but I can assure you it's not going to dry up credit. As drafted, LB634 provides potential help for unpaid cash sellers, if--and that's if--they act promptly once they've not been paid by the feedyard. If you look at the legislation, what it does is in order to be an unpaid cash seller to qualify for this trust you have to really come up with three things. One is you have to be a cash seller with no written credit agreement. The second thing is you have to give notice or a demand for payment within seven days. And the third thing is you have to have not received payment. Three pretty basic things, but definitely requirements that have to be met before you can be an unpaid cash seller. LB634 does not provide protection for those who sell on credit, as I said. It does not return to the days of conditional sales. It doesn't impair passage of title. What it does it provide a simple, fair, and workable means to provide some protection to those people who sell to feed yards and don't get paid. The folks that oppose this legislation will often claim that the trust is not fair because it would put unpaid cash sellers to the front of the line in front of bankers who have been financing the feedyard. We disagree. When you look at this thing, I believe that fairness dictates that the unpaid seller should be at the front of the line in front of the banker who's depending on a blanket lien or a dragnet lien to scarf up all the assets that are out there. The people that don't get paid ought to go to the front of the line. One of the other complaints or claims a lot of times is that the trust is too broad. LB634 only covers livestock that have not been paid for and the proceeds of any from those livestock. Even though tracing is not required under this legislation, any recovery would be limited to the livestock and the amount of the proceeds from those livestock. So it's not like all of a sudden that the guy that didn't get paid is going to tie up a huge amount of money. It's going to be limited to the value of what was bought. LB634 would not require a feedyard to set up a permanent trust account. I think that's one of the concerns. One of the things about this legislation is the trust only arises when a cash seller has not been paid and jumps through the necessary hoops by giving the notice that they're required to give. Why am I so confident of that? Because it's virtually the same language that's in the federal packer statutory trust. We've got 30 years of court decisions that say the trust only arises when the unpaid cash seller files a claim. It is not a trust account that sits there all the time and people have to keep money in. One of the suggestions that's often made is that auction markets could protect themselves with an agricultural lien similar to a thresher's lien or a veterinarian's lien, rather than going at it the way we have. As a matter of fact, yesterday morning I got a copy of an e-mail where there had been a suggestion that the auction markets could get protected if there was a lien similar to a thresher's lien. I'm going to try to point out a couple problems that we have with that. One of the things is under that suggestion the auction market would have to do two things within 72 hours. They would have to perfect the lien and they'd have to give notice to any other secured party. Well, if you've got a sale on a Friday and the next day is Saturday and the next day is Sunday, on Monday you're not going to be able to get a signed security agreement, file a financing statement, and do the check with the Secretary of State's Office and notify every secured creditor by that day. It's

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impossible. It just can't be done. But it was interesting when I looked at the thresherman's lien statute in the state of Nebraska. Under your statute right now, thresher's have 30 days to give notice, not 72 hours. And if you look at the veterinarian's lien, vets have 90 days to file a lien, not 72 hours. However, when you get down to the thing, the three days is not really the big problem. That's not the real problem. People can jockey with the days. You could put more days in there. The real problem gets down to a couple of things. One is if you look at a thresher's lien or a vet's lien, what that lien covers is services. I'm here to tell you that if the only thing the auction markets were in jeopardy of losing was their commission, they wouldn't be here. That is not a big deal. The reason they're here is because they've had to pay for all the livestock that they didn't get paid for. It's not just a provision of services. It's not just the commission. It's all the money because of federal law they were required to pay whether they get paid or not. That's what is unfair about the system. That is what they're not getting reimbursed for and not getting paid for. Sort of the second part of this thing is that--maybe I'm wrong--but it seems to me that lenders really believe that the crucial thing for them is that they get notified very quickly after a feedyard has not been paid. And I'll agree that would be nice to know. But I'll also tell you that the real problem is the livestock auction market or the rancher out there who didn't get paid. Those folks, to my way of thinking, have to go to the front of the line. It's only fair. One of the things that's often raised--and I'll be done quickly--one of the things that's often raised is that auction markets and sellers of livestock...hey folks, that's just the way the system works. You ought to be aware that there's a risk out there. You ought to share in the risk. That's just the way the business operates. Well, lenders factor in the risk involved in making loans when they make loans. They do that with interest rates. They do that with the amount of collateral that they take as collateral for the loan. They factor that into whether or not they're going to make the loan and on what basis. I can't speak for all sellers, but livestock auction markets can't do that. The way the federal law is they are prohibited from discriminating among sellers and buyers. Only in an instance where they've already gotten a bad check or they have absolute concrete proof that somebody has bounced a bunch of checks, can they refuse to do business with that. If they just heard a general rumor, well, geez, you know that feedlot is kind of in trouble or you know, it looks like they're not doing to well, they can't say guys, we're not going to do business with you. Federal law prohibits that. They have to do business even though they know there might be a potential risk. They don't have a choice. So they can't factor that part of the risk into doing business. I realize that you as legislators are busy. You have lots of bills. You have to establish priorities for what is important and sometimes what happens here is feedlots don't go broke everyday. And sometimes even when they do go broke, you don't have livestock markets and unpaid cash sellers that go bankrupt because of it, but I can tell you from history when it does happen it's usually a big thing. For example, if a livestock auction market--not all of them, but a number of them--if they don't get paid for three or four loads of cattle they have wiped out their net profit for an entire year. If a rancher sells his whole year's worth of feeders to a feedyard and doesn't get paid, he's in big trouble. The old days you could stand to lose a year and you could probably make

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it. These days you pretty much have to make some sort of a profit every year or you're done. But what happens when the market doesn't get paid and the rancher doesn't get paid? It's not just them. It's the people they do business with. It's the people that are employed at the auction market. These things have a ripple effect. They effect a lot more people than just the people that didn't get paid. So regardless of kind of how we have the thing and how many people it may affect or may not affect, it is a big deal. And I guess the last thing I would ask you to do is I have never sat in your seats. I have been school boards and city councils and those types of things. One of the things you don't often get a chance to do with the hubbub and everything that comes your way you don't often get a chance to vote for something that's relatively simple that's fair. That promotes fairness, gets rid of something that's unfair to people and makes it fair for the whole system. This is your opportunity to vote for something that puts fairness back into this system. Thank you. I'd be happy to answer any questions you have. [LB634]

SENATOR ERDMAN: Thank you, Ernie. Any questions for Mr. Van Hooser? Senator Wallman. [LB634]

SENATOR WALLMAN: Yes. These feed yards, you know, if I'm a local farmer I always have to pay if I buy a load of cattle, semi-load of cattle or two or three. How come feed yards don't have to pay right away? [LB634]

ERNEST H. VAN HOOSER: Are you talking about the fact that there's no law that requires them to pay? [LB634]

SENATOR WALLMAN: Yeah. I would think if I was a sale barn I would want that policy. [LB634]

ERNEST H. VAN HOOSER: Well, the feedyard can set a policy anytime they want to. [LB634]

SENATOR WALLMAN: The order buyers I meant, yeah. [LB634]

ERNEST H. VAN HOOSER: And say feedyards have to pay, but as a fact, what happens is most of the time feedyards send order buyers to the market to purchase the livestock. And if a market tried to hold onto possession of all that livestock until they got a check someplace down the road, you'd have a nightmare. For one thing you just can't take care of them. The livestock market is not set up to be a feeding ground for livestock for a period of three days, five days, or a week. So it just won't work. [LB634]

SENATOR WALLMAN: I don't know. Arkansas, I know an order buyer down there. He buys cattle down there, he's bonded. He can pay for the cattle. Of course, he's got to know the people he's buying from. [LB634]

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ERNEST H. VAN HOOSER: Right. [LB634]

SENATOR WALLMAN: So they're paid for at the auction that day. [LB634]

ERNEST H. VAN HOOSER: Well, I think one of the crucial things you just mentioned is the fact that that order buyer is bonded. [LB634]

SENATOR WALLMAN: Yeah. [LB634]

ERNEST H. VAN HOOSER: Feedyards are not bonded. Their buyers don't have to be bonded. [LB634]

SENATOR ERDMAN: Thank you, Senator Wallman. Further questions for Mr. Van Hooser? [LB634]

ERNEST H. VAN HOOSER: Thank you very much. [LB634]

SENATOR ERDMAN: Thank you, sir. Next testifier in support, please. [LB634]

EUGENE CONE: (Exhibit 20) Mr. Chairman and members of the committee, I'm Eugene Cone, E-u-g-e-n-e C-o-n-e. I'm the owner and manager of the Burwell Livestock Market. It's my privilege to come today again to testify on behalf of the livestock markets about this common problem. I come here today to support LB634. I believe this bill will help correct a problem that a livestock market or an order buyer may have in the case of an insolvency with a feedlot. As you know, most feedyards lien covers all inventory whether it's grain or livestock or machinery or whatever is on the feedyard. That feeder can purchase cattle at our market, give us a check, have them shipped to their yard, and if that instrument of payment is dishonored because of insolvency, the livestock market has no way to collect payment for those cattle. Our only option is to file as an unsecured creditor. And you know what position that puts you in. Under current law, there actually is a window of opportunity for a feeding operation to greatly enhance their financial position by doing what I have just described. One would like to think that this could not happen. But we all know what did happen in the Damrow Cattle Company case. In a matter of four or five days, several hundred thousand dollars worth of cattle were purchased at several markets only to have all checks returned for insufficient funds. Needless to say, when efforts were made to collect for those cattle they soon found out who owned them. The feed lender was well within the current law and was glad to keep those cattle for extra collateral. We believe there should be some value for these unpaid cattle to be recognized and LB634 is one way. I was thinking as a young man spoke earlier in college about getting started, I've been in the livestock market for 24 years now. I suppose if I was to suffer a loss of three or four loads of cattle I probably could pay for those today. When I started in 1983 for the first ten years, had I got one of those checks it would have pretty well done my operation in unless I had a rich uncle, which I

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don't have. I'm not a fourth generation rancher that's inherited anything ahead of me. I've earned everything I've got from the ground up. I would not be able to survive. It doesn't seem like, in today's economy, it should be possible that because of one little technicality in the law that I would be subject to have my whole business taken from me just because of a case that don't happen very often, but it has happened. And if the cattle...we've gone through three or four years of pretty profitable cattle feeding. We're entering into a period right now with real high grain prices. Our feeder cattle have been high coming down. There's been substantial losses recently in the cattle feeding industry. You know, it's possible something like this is going to happen again. And I just think LB634 is one of those steps which we can help correct that. In answer to your question a little bit ago, you ask about when you buy cattle and most farmers when they come to buy cattle they do pay for them. Most feedyards anymore send a representative. When that sale is over we go to the fax machine, we'll fax all those invoices right to that office. Their office staff that does their book works, they'll put a check in the mail. We get them--our's is a Friday sale--we'll get them on Monday, Tuesday, or Wednesday. And as long as all that works we can survive on that. And that's kind of the way the general industry has just been all the years I've been there. But you know, in the case--and it's not very often--of an insolvency like this, I'll tell you once them cattle are loaded in that truck I've lost control of them things, and the current law we have allows the lender to keep those things for his collateral. And we just don't have that much chance to recover those things. I'll gladly answer any questions. [LB634]

SENATOR McDONALD: Thanks, Eugene. Any questions of Mr. Cone? Senator McDonald. [LB634]

SENATOR McDONALD: So you're saying that if a cattle feeder would purchase animals at the livestock market and the next day the banker comes in and shuts them down at the will of the banker, then you wouldn't get paid? [LB634]

EUGENE CONE: That's correct. If the lender of that feedyard pulls his line of credit and those checks come back insufficient funds and the cattle have already got to his yard, no sir. I don't have anyway of getting paid for those cattle. And the proof I have is in the Damrow Cattle Company case. [LB634]

SENATOR McDONALD: So the banker really has the control of coming in and making everybody else vulnerable. [LB634]

EUGENE CONE: Well, you know, if he finances that feedyard, obviously he's going to protect his interest as much as he can. And you know, if he pulls the credit on that line of feedyard's credit and those cattle have already got there, he's under no obligation to pay me. I mean, you look the law over. He's under no obligation. Those cattle are his. They're in his inventory. He had the lien on the inventory. He has no obligation. And I

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passed those letters that the gals come picked up here. They're from three auction markets that wasn't able to be here and they did submit written testimony. Two of those auction markets was ones that was so affected in the Damrow Cattle Company case. They went to court. They have got yet to get one dime. All they done by challenging it was losing whatever money they put with it trying to collect money. That's what I think LB634 can help correct and I would encourage you guys--you men and women--to look favorably on LB634. [LB634]

SENATOR ERDMAN: Thank you, Senator McDonald. Any further questions for Mr. Cone? We do have three letters in support. One from Clarence Tien, owner of Norton Livestock Incorporated, Norton, Kansas; one from Ted Baum from Elgin Livestock Sales in Elgin, Nebraska; and a third letter from Pratt Livestock Incorporated and Mike Lewis from Pratt, Kansas. Those will be entered into the record. Thank you, sir. Appreciate your testimony. [LB634]

EUGENE CONE: Thank you. [LB634]

SENATOR ERDMAN: Next testifier in support of LB634. [LB634]

RICK KEITH: My name is Rick Keith with Producers Livestock Marketing in Omaha. The first two gentlemen covered what I wanted to say so I wanted to give you guys a quick example. This last fall we bought over a \$100,000 worth of cattle at an auction market. One of our marketing agents bought those. We paid the livestock auction barn, producers did. The farmer that owed us for the cattle gave us a bad check and he had blanket authority over the last five years to buy cattle. Well, lo and behold, they decided not to give him the authority on this group of cattle. They were shutting down. They had a blanket security on everything and I right away said we'll just go out and load the cattle up and take them back to an auction market and sell them or find a home for them. No, we couldn't haul the cattle away from the feedlot because they had this blanket security. And I went as far to say you guys are stealing from us because you could have shut him off before he wrote the check. And he was an honest enough man where he wouldn't have wrote the check. But they waited until we bought over \$100,000 worth of cattle, increased their asset base by not paying us for the cattle. It's a serious, serious thing and I support it. [LB634]

SENATOR ERDMAN: Thanks, Rick. Any questions for Mr. Keith? I don't see any, thank you, sir. Next testifier in support, please. [LB634]

GARY D. ROBERTS: Senator Erdman and members of the committee, I want to thank you for our time today and like to thank Senator Dierks for introducing the bill. I'm going to be pretty brief. They've pretty well covered everything... [LB634]

SENATOR ERDMAN: Before you launch into that, tell us who you are. [LB634]

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GARY D. ROBERTS: Oh, I'm sorry. My name is Gary Roberts, G-a-r-y R-o-b-e-r-t-s. I'm representing Central Nebraska Commission Company. I'm the owner of Central Nebraska Commission Company. I'm where Gene Cone was 24 years ago. We've been in business five years. This bill is a no-brainer to me. I mean, it's just...anytime somebody can come in and take property out and not pay for it is just...there needs to be something done. I'm going to give an example. Everybody in this room is honest, but there are dishonest people out there. In every business there's dishonest people. So to the producers example was okay, I'm going to tell you to go out and buy 15 loads, 10 loads, 5 loads of cattle. Take them in your possession. Now I'm not going to honor the check. Then the sale barn is liable for them. You know, by law we have to pay for the cattle. For me, I would be the next one in bankruptcy, you know. I just don't have those kind of resources today. So I just think it's something that needs to be addressed. This has been addressed a couple times, I believe, and never made it out of committee. But you know, we're just a small operation out there. One load of cattle a day is like a \$55,000, \$60,000 per load, you know. And you know, our small sale barn will have million and a half dollar sales...Burwell Livestock will have four or five million dollar sales. And you're on the line for that money. So we need your help. We need some protection. I thank you for your time and I'll sure if I can answer any questions. []

SENATOR ERDMAN: Thank you, Gary. Any questions for Mr. Roberts? [LB634]

GARY D. ROBERTS: Thank you very much. [LB634]

SENATOR ERDMAN: I don't see any, thank you, sir. Next testifier in support of LB634. [LB634]

DAVID WRIGHT: I have no popcorn this time. [LB634]

SENATOR ERDMAN: Well, if you'd have brought it back this time we'd expect it to be popped. [LB634]

DAVID WRIGHT: You'd have popped it. It's getting late, right? [LB634]

SENATOR ERDMAN: Yeah. [LB634]

DAVID WRIGHT: (Exhibit 21) Well, my name is David Wright, D-a-v-i-d W-r-i-g-h-t, and I'm here today representing the Independent Cattlemen of Nebraska. Chairman Erdman and members of the committee, we come before you today to provide testimony in support of LB634. With the shrinking profits on ranch due to higher property taxes, higher grain costs, higher fuel, in addition to the cost of raising a family, supporting the local community and school, producers are forced to find better ways to market their livestock. We don't have the ability to pass those costs on. We try to add value or look

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for different marketing possibilities. We may add value by retaining our livestock until they are finished through a custom feedyard, or we might take advantage of a market opportunity by selling directly to a feedlot. But what if the feedlot would happen to go broke? What would happen to our livestock or the payment for our livestock? As the law stands now we would lose our position as the owner of our own livestock. We are asking that you give ranchers the opportunity to remain profitably by advancing this bill and support it on the floor of the Legislature. And I would like to just divert from this testimony for a moment if you'll bear with me. I left my wife at home running our business and calving out first calf heifers. She called me at noon and said we've got another one on the ground. But in '96 when the corn prices hit \$5 and the cattle market fell, and it didn't matter if it was 400 pounds or 1,200 pounds it was worth 55 cents. I had an FHA loan at that time. A 90 percent guaranteed loan where the market was so bad that rather than leaning on producers without those FHA guaranteed loans, I got leaned on. And they went in and they devalued all the assets and put us into a poor profit asset liability position. I was told point blank that you're a burden to the family, you're a burden to the bank, and you need to sell and quit. And I didn't do that. My brother, who happens to be a loan officer...I explained this problem to him and he said did you ever think that maybe that FHA loan was to secure the banker and not you? And it dawned on me, it was. Well, I did not sell and I did not file bankruptcy. Instead, I got a job driving a truck hauling corn into the local field yard. And I hauled corn during the day and I ranched at night. And when my daughter was in third or fourth grade she wrote a story saying that her dad leaves at 4 in the morning and she does not know when he comes home. I lost five years because of the position that was taken in that banking business. I do not have an FHA loan and I will not do that ever again in my life. And when I heard about this Damrow situation and the Holdrege bank, I'm telling you it burned me to no end. How can you steal from someone who works so hard and get away with it legally? I'm sorry. I'll take any questions. [LB634]

SENATOR ERDMAN: Thank you, David. Any questions for Mr. Wright? I don't see any. Hold on a second. Senator McDonald. [LB634]

SENATOR McDONALD: And you have a nice family. [LB634]

DAVID WRIGHT: Well, thank you. [LB634]

SENATOR ERDMAN: Thank you, Senator McDonald. Next testifier in support. [LB634]

RICHARD R. SCHRUNK: Senator Erdman and members of the Ag Committee, my name is Richard Schrunk, R-i-c-h-a-r-d S-c-h-r-u-n-k, from O'Neill, Nebraska. I do represent the Nebraska Livestock Market Association and I'm here today to ask for your support for LB634, known as the Feedlot Statutory Trust Act. As a livestock market owner I do have concerns that if I was to sell a load of cattle or two to an operator that was in financial trouble and was unable to get paid for them, I would like to have some

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recourse and recovery of those cattle that were purchased when no payment was made. As livestock market operators we sell cattle every week to farmer feeders, feedlot owners and managers, or order buyers. Cattle purchased on Thursdays are loaded out Thursday night, Friday, without being paid for. What LB634 will do is protect the market and sellers of those cattle if we were able to make a sale to an operator that would become insolvent shortly after purchasing those cattle before cattle are settled for. Today a load of 800-pound steers would be \$56,000 a load. Don't take too many loads of those steers. You have a quarter of a million dollars wrapped up. This would be disastrous to my business. I would again ask for your support on LB634 as we need this bill to protect the producers of this great state of Nebraska. Thank you for your time. [LB634]

SENATOR ERDMAN: Thank you, Richard. Any questions for Mr. Schrunk? I don't see any, thank you, sir. [LB634]

RICHARD R. SCHRUNK: Thank you guys. [LB634]

SENATOR ERDMAN: Next testifier in support. [LB634]

ROBERT D. ROTHWELL: (Exhibit 22) Senator Erdman and Ag Committee, my name is Bob Rothwell. I put it on my paper that I gave out earlier. It's Robert D., but it's R-o-b-e-r-t R-o-t-h-w-e-l-l. I submitted my form, because I think this is going to get quite lengthy, but I do support LMA and this bill. So if you have any questions... [LB634]

SENATOR ERDMAN: Thank you, Robert. Any questions for Mr. Rothwell? The reason I had you do that is so you'll show up on the committee statement since you are here. Thank you, sir. Anyone else in support? I see none. We will now proceed to opposition. Anybody in opposition to LB634, please come forward. Can I see a show of hands quickly again how many wish to testify in opposition? I see one in addition to Mr. Hallstrom. Anyone in neutral? I see one. Okay. [LB634]

BOB HALLSTROM: (Exhibit 23) Chairman Erdman, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association to testify in opposition to LB634. While certainly not minimizing the adverse impact of cattle feedlot insolvencies on individual producers, lenders for both producers and feedlots and the feedlot industry in general, we would suggest that some level of caution be exercised in considering a legislative solution to a problem that is fortunately far closer to the exception than the rule. To our knowledge, there is not another state, despite the fact that there have no doubt been cattle feedlot insolvencies in other states, that have adopted any type of legislation of this nature. Senator Erdman, I'll take your admonitions not to go into the litany of history of U.C.C., but I do want the committee to know that the NBA has been consistent in its opposition to this legislation. We do represent lenders on both sides of these transactions and I

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want the committee to know that it's not about winners and losers. It's about maintaining the integrity of the Uniform Commercial Code and the rules that are set up to govern the free flow of commerce in these types of transactions involving the buying and selling of cattle. As other witnesses have indicated, clearly when you have an insolvency of the feedlot there's plenty of pain to go around and unfortunately not near enough money to go around to make everybody whole. And again, our members are going to be on both sides of that fence in terms of those that may not get compensated for the loans that they have made or repaid. With regard to the bill itself I would like to make a few comments. We will propose, as I have in my written testimony, an alternative for consideration. We're certainly open to some of the issues that Mr. Van Hooser had suggested. We're not crystal clear or perfectly documented yet in the proposal that we've set forth. But with regard to the provisions of LB634 on its face, we would suggest first that the coverage of the bill is too broad. It relates to all cash sellers. You've seen the testimony today suggest from the sale barn people that they are concerned that they may not have the capability of complying with what is the normal criteria or prongs for a purchase money security interest, those being perfection and notification to prior perfected security interest holders prior to the debtor taking possession of the livestock. However, the bill is drafted much more broadly than that. It covers all cash sellers. The issue with regard to those that are not involved in the commission buyer arena or as a sale barn are the producers that sell to the feedlots. I think the provisions of the Uniform Commercial Code regarding the purchase money security interest as it relates to a cattle producer give them ample opportunity, time, and the ability to satisfy those requirements of the purchase money security interest to, in essence, protect themselves when they sell to a cattle feedlot. So we would not, under any circumstances, want to extend the provisions to those types of cash sellers. If the sale barns and the commission buyers do truly have a unique situation in terms of their difficulty in satisfying the PMSI, we would limit the application of the bill to those entities. Second is with regard to the requirement under the bill for cash sellers to make demand within seven days. We certainly think that that requirement should be in writing and it should be much quicker than seven days. We can envision situations where livestock are delivered to the feedlot, perhaps with no intention of being a cash seller, but if the insolvency occurs within the seven day period, you can bet your bottom dollar that somebody's going to be in there making demand to satisfy the requisites of the bill by making demand within that seven day time period. We think there ought to be a written demand for payment much quicker than that. A couple of things that I'd like to talk about, I would suggest that Mr. Van Hooser is probably accurate in his assessment that this will not be the demise of lending to feedlots if a bill of this nature were to be implemented; however, I do want the record to reflect that in talking to lenders for livestock feedlots that much, as has been the case historically with packers under the federal law, there would be some restricting of the credit, if you will, as a general matter of course to take into consideration that some of the cattle that appear to be free and clear out in the feedlot may not if this trust does apply to the cattle themselves or to the proceeds there from. A couple of other issues I just want to clarify for the record, Mr.

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Van Hooser talked about the issue of preexisting debt and the fact that the Uniform Commercial Code properly, in my estimation, recognizes the fact that you can take an interest in after-acquired collateral for preexisting debt without having to advance any additional funds. The reason that provision is there is particularly applicable in the farming or the livestock type of arena. From year to year, from production cycle to production cycle, it's not uncommon that there's not enough money at the end of the year to pay off the loans when the funds have been advanced on those lending relationships by the bank or the financial institution involved. That being the case, there's carryover debt. Funds have been advanced that have not been repaid yet. That is the basis for the provision, which I think is fair under the code to allow preexisting debt to form the basis for an after-acquired property to be subject to the lien. So the fact that the bank has not, in a particular situation, advanced funding for the cattle that are on the hoof in the livestock pen at that very moment may not necessarily be all of the picture. I might otherwise add in addition that in 99 out of 100--and I bet the numbers are much higher than that--think of the fact that the funds that have been advanced by that lender to the feedlot have been in fact used to pay that same livestock market auction time and time again without that sale barn having to realistically assume much risk, because the lender's on the other ends of the funnel putting the money in to make sure that their paid. Nobody complains in the 99 out of 100, or however many cases there are, that the system works like it should and they get paid by the funds that have been advanced by that lender. It's the one time when there's an unfortunate insolvency that then these folks want to come in and say me first. Put me ahead of everybody else even though the lender may have advanced funds and maybe shorted him or herself in that particular situation. A couple of other issues that I just want to note quickly, and Mr. Van Hooser and I can probably do the research and find out who's right, who's wrong, but there was a reference to bankruptcy trustees perhaps taking priority over an unpaid cash seller. From the hornbooks that I've read it indicates that a bankruptcy trustee is treated as a judgment lien creditor, therefore is not a purchaser as a result cannot be a good faith purchaser for credit, which would not put them in the position, as I read the law, of trumping an unpaid cash seller. We also have a situation where Mr. Van Hooser referred to the fact that under the current U.C.C. the requirement for a PMSI in livestock to give notice and to perfect prior to the debtor taking possession of the cattle is different than the old law used to be. We probably differ in our interpretation of what the old law used to be. Under Nebraska law, my understanding under U.C.C. 9102 is that farm products once they're sold by a debtor to a marketing agent are no longer farm products, but instead become inventory. If, in fact, those farm products--the livestock in this case--have always been treated as inventory, the PMSI rules that have always applied since the inception of the U.C.C. are that notification and perfection prior to the time that the debtor takes possession of the cattle have, in fact, been required. If that's the case, perhaps it doesn't make it any more fair in the eyes of those that support this legislation, but if I am correct in that interpretation, the law hasn't changed just because the PMSI and livestock specific provisions have been placed on the books. Now I'll move quickly to my alternative. I certainly would extend the olive branch to those that

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are supporting the legislation to determine if some fine-tuning of the legislation or the proposed amendment would be in order. We have not drafted it. It's kind of in the inception stage if you will. But basically what we've suggested is we've looked at and listened to the concerns of the sale barn people, the commission buyers, that they are not able in a timely fashion to perfect the requirements of perfection and notification of a PMSI in livestock. What we have proposed to do is give them a limited window of opportunity if you will after the time that the debtor takes possession to both perfect and notify the prior holder of a security interest. The reason the notification becomes important is because once those cattle are in the feedlot pen, if that feedlot operator comes to the lender and says I've got some cattle that are out here free and clear. Would you loan me some money on them? If they haven't gotten the notice that there's an intervening creditor--in this case, the sale barn--that's going to jump ahead in priority they may loan money on those cattle and then problems ensue with regard to the priorities. Our only concerns are that, again, under the proposal is three days the right time frame? Is there a longer time period that the bankers would consider? Possibly. It's certainly worthy of discussion. But we think, like other statutory liens, there must be perfection. There must be notification similar to a PMSI. And once those criteria are taken care of, whether it's three days, five days, pick a number, that at that point they do become perfected and they do take priority from that time forward. And then we'd like to clear the record quickly once they're paid, require quick enforcement, because it's supposed to be a cash sale deal. They should be able to figure out within 15 or no more than 30 days that they are or are not going to be paid, move quickly to enforce, once they have recovered and been paid, promptly remove the lien from the records. I know that's a pretty generalized approach of the concept, but we think it's worthy of consideration and certainly are more than happy to visit with folks about that issue. Be happy to address any questions. [LB634]

SENATOR ERDMAN: Thank you, Bob. Any questions for Mr. Hallstrom? Pretty quiet committee. Thank you, sir. [LB634]

BOB HALLSTROM: Thank you. [LB634]

SENATOR ERDMAN: Next testifier in opposition. [LB634]

ROCKY C. WEBER: (Exhibit 24) Senator Erdman, members of the committee, my name is Rocky Weber, W-e-b-e-r. I'm a lawyer with the Crosby Guenzel Law Firm. I'm appearing today on behalf of the Nebraska Cooperative Council. Given the late hour and the fact that we've been here a long time I'm going to make this very brief. I'm handing out a position statement on behalf of the Nebraska Cooperative Council. The council does not oppose the statutory trust in and of itself. What it opposes is that there's no public notification system such as a filing with the Central Filing System that puts everybody on notice that the statutory trust exists. Our members are producers and suppliers of feed to feedlots and farmers. And certainly if a purchase has not been paid

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for, knowing that would be of interest to the supplier of the feed, they may not be so interested in supplying feed if they know that the cattle have not been paid for. Consequently, we think that it's important that the law preserve the rights of secured parties and suppliers of feed in this process. Certainly without the feed there would be no proceeds from the cattle for the trust to attach to. And so what we would do is propose just a simple amendment that in the event this does move forward and a statutory trust is created that no trust interest created as a result of this act would have priority over lien perfected under the statutory feed lien section, which is Section 54-208, which allows suppliers of feed to obtain a statutory feed lien by filing with the central filing system and notice of the lien within 60 days of supplying the feed. Again, we think it's a matter of notice, a matter of putting everybody on the same footing as to what their interests are so that people can make informed decisions about supplying feed and other goods and services for the cattle. Thank you. [LB634]

SENATOR ERDMAN: Thanks, Rocky. Any questions for Mr. Weber? I don't see any, thanks, sir. Anyone else in a neutral capacity? [LB634]

PETE McClymont: Senator Erdman, members of the committee, I'm Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm vice president of legislative affairs for Nebraska Cattlemen. I'd like to thank Senator Dierks for introducing LB634, and I'm here testifying in a neutral capacity. As you've heard by the vast number of testifiers before, livestock markets play a critical role in our industry and the way we have speed of commerce. So I think it's incumbent that we need to recognize their vulnerability in this, because they do play a vital role for what we need is price discovery and especially for the cow-calf producers, which is the vast majority of our membership. Maybe sell one time a year to a livestock market that they've developed a relationship with. So we don't want that relationship in any way, shape or form to be threatened. And so this would help. So we've worked with Mr. Barta and we've got a good relationship there, and I think out of this and other issues in the past that can only help strengthen what we're trying to do here. One of the issues that Mr. Weber brought up that I think is a fair scenario to play through is say you're a small feeder. You might be able to feed 300 small (inaudible) DEQ standards and lower. And you buy a load of cattle and you have a lot of bills due at one time, and so you're looking at your borrowing base, your lending line, and so if in the bill as it states, if a payment instrument is dishonored that small producer is in a very vulnerable state. And if, as the way I read the bill, that would in fact basically be a black star for that producer and basically who's going to sell him corn? Who's going to sell him cattle or any other things? So I think that side of the equation, like Mr. Weber alluded to, has to be given consideration. But my recommendation for the committee is we've heard some good recommendations and alternatives from Mr. Weber and Mr. Hallstrom, and so I think those are things worthy of consideration as we work through this bill and perfect it to a good end for all. So with that, I'd like to answer any questions if you have any, Mr. Chairman. [LB634]

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SENATOR ERDMAN: Thanks, Pete. Any questions for Mr. McClymont? I don't see any.
[LB634]

PETE McCLYMONT: Thank you. [LB634]

SENATOR ERDMAN: Thank you, sir. Anyone else wishing to testify in a neutral capacity? I see none, Senator Dierks, you're recognized to close. Senator Dierks waives closing. That will close the hearing on LB634 and that will close the hearings for today.
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Disposition of Bills:

LB515 - Indefinitely postponed.

LB632 - Advanced to General File, as amended.

LB633 - Held in committee.

LB634 - Held in committee.

Chairperson

Committee Clerk