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Agriculture Committee
January 29, 2013

[LB15 LB68 LB69]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 29, 2013, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB15, LB68, and LB69. Senators present: Ken Schilz, Chairperson; Norm Wallman, Vice Chairperson; Dave Bloomfield; Ernie Chambers; Tom Hansen; Burke Harr; Jerry Johnson; and Steve Lathrop. Senators absent: None.

SENATOR SCHILZ: All right. Good afternoon, everyone. Welcome to the Agriculture Committee hearing today. My name is Ken Schilz. I'm the Chair of the committee. I appreciate all of you coming here today. I'll go ahead and make some introductions and some comments first. Of course, as you know, while we're having the hearing, we would appreciate it if you would put your phones to silent and make sure that they don't interrupt any of the testifiers. In the hearing room we don't make any out-loud expressions of whether we are for a bill or against a bill, so I would ask that everybody show respect by not making any outbursts, or any statements, or gestures of support, or opposition. Let's see, we have senators here today. I'll just go around the room to the ones that are here. Senator Bloomfield here, District 17, from Hoskins; Senator Jerry Johnson from Wahoo, District 23; Senator Wallman here from Cortland, District 30. And to my left is Jamaica Erwin, she's our committee clerk; and to my right is Rick Leonard and he is the Ag Committee research analyst. And then our page today is Cicely Batie from Lexington. And Tom Hansen, from District 42, he's from North Platte. So at this point, we'll get started. The first bill on the list is LB15. Senator Krist, you're welcome to open.

SENATOR KRIST: Good afternoon, Senator Schilz and members of the Government...yeah, Government, yeah. (Laughter) Which committee am I in today?
[LB15]

SENATOR SCHILZ: (Laugh) Strike one. [LB15]

SENATOR KRIST: Yeah, well, strike one. In the Agriculture Committee, thanks. For the record, my name is Bob Krist, B-o-b K-r-i-s-t and I represent District 10, Legislative District in northwest Omaha, along with north central portion of Douglas County, which includes the city of Bennington. I appear before you today in introduction and support of LB15. LB15 updates portions of the Nebraska Pesticide Act by adding statutory definitions for both aerial pesticide applicators and businesses, and the bill allows alleged violations against aerial pesticide applicators to be referred to the Department of Aeronautics. Fines for the violations involving the applicators will be levied uniformly against the aerial pesticide businesses, not the pilots or the applicators. This subject matter was brought to my attention by fellow pilots and ag sprayers who have been unjustly affected by the pesticide act. As a professional pilot, I have many concerns. The length of time to resolve a complaint, the graduation of potential fines administered

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by the Department of Agriculture; the dual fines levied against the business and the pilot, which appear to be double jeopardy, and the potential damage and misinterpretation of the law of governing the actions of the business separate from the pilot, just to mention a few. The current law, as an example, allows for the state to levy fines at different levels to various businesses, even if the alleged violation is the same. This is akin to charging one of our Fortune 1000 companies, Werner trucking, its drivers more for their speeding tickets because of the size of the business, and then charging the company the same amount for the speeding ticket. LB15 would amend the pesticide act statute to state and I quote: Fines for violations of the act shall be leveled uniformly regardless of the size of the business and its income, end quote. I want to thank you for allowing me to come in and speak to you today. I have a couple of handouts here, Cicely. One of them is the United States Environmental Protection Agency, was provided to me and I think it's an interesting read because it shows uniformity, or lack thereof, in the application process to reduce a fine. The other one is, and I'll make this point, not in my statement but in a dialog. There are...this is an industry where they are governed by so many different things, but principally by the Pesticide Control Act, as well as Part 137 of the Federal Aviation Regulation, whose title is Agricultural Aircraft Operations. And, Cicely, when you get a chance, I've also provided you a copy of these. So, let me give you one example of why I think this is an injustice. If a pilot is drunk and disorderly, he would be charged under 137, and that is...that would be governing a pilot's actual performance, doing something he's not supposed to be doing. He needs to wear a seat belt. That's in here. It also covers the ag spraying area and that's essentially what this Agricultural Aircraft Operations, Subpart A, describes within the subsection. They're also governed by the pesticide act in the state of Nebraska and by numerous EPA regulations. They've got to be smart. That's the bottom line. They have to know the rules and regulations they're operating under, and it's a difficult environment to operate to say the least. So, when there is an infraction, as a professional pilot, my suggestion is the Department of Aeronautics weighs in. And if there's an infraction that would cause a pilot to be...to have misconduct and to have further sanctions, the flight...FAA should be involved. Because what will happen today is a pilot may have an infraction and he'll be fined, or he will be investigated, and the investigations lately have taken an inordinate amount of time. In some cases, up to nine months. Well, that bad actor then is allowed to continue for the spraying season, and, oh, by the way, it's just Nebraska that's affected under the current because they're not going to be referred to the FAA in all cases. So he can go out and fly in Arizona or Kansas or Oklahoma of potentially and continuing his trade and potentially a bad actor. Now, I'm not saying these guys are bad actors. I don't believe there's one of them out there that does that, but that was an example of what could happen. On the other side of it, if he's not laying down the proper, corrective, or containment area while loading the airplane, or he is doing something improper in terms of the EPA regulations or the pesticide act, he's held accountable on a different side and the business is also accountable on different side. I'll also say just this in closing. To treat businesses differently, to treat pilots and businesses the same in this area, is an injustice. If a pilot has an infraction, the pilot

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needs to be treated as the pilot infraction. If the pesticide company or the applying company has an issue or a problem, they need to be sanctioned and potentially fined by the Department of Agriculture. This is a different area. I would invite you to look at the subject matter. Again, as I always say, it may not be a perfect bill, but it certainly starts the discussion and we will go forward from there. Anything I can do to help you in correcting any part of this bill that may be incorrect or inconsistent, I'd be happy to assist and go forward. I have had folks come to me and tell me that they either agree or disagree, and I think I have accounted for, or at least been accounted to their opinions, but at this point it stands the way it is. And I thank you gentleman, lady, for hearing my testimony. []

SENATOR SCHILZ: Thank you, Senator Krist. Are there any questions for Senator Krist? Seeing none, thank you very much. [LB15]

SENATOR KRIST: Thank you. [LB15]

SENATOR SCHILZ: At this point, we will take proponents for LB15. Proponents? Come on up. Did you get a sheet to fill out? There you go. Could you just...yeah, just put it that box right there, please. Thank you, sir. Welcome. [LB15]

TIM HAUDER: Thanks. My name is Tim Hauder. I'm the owner of Har-Mor Ag Air of Tekamah, Nebraska. [LB15]

SENATOR SCHILZ: Can you spell your name, please? [LB15]

TIM HAUDER: Yes, H-a-u-d-e-r. [LB15]

SENATOR SCHILZ: Thank you. Go ahead. [LB15]

TIM HAUDER: While I may not follow everything that is written in the bill and the changes that Bob has proposed, he did investigate this by a question that my wife and I raised that occurred in our business, and that was the misapplication that was caused by one of our pilots and investigated by the state Department of Ag. And at the end of the day, there was two fines levied, one against him, and one against our business for the act that he had committed. And it was a drift point. He drifted on a neighboring field. There was a complaint. They found evidence of the drift and that's where that ended. As a business owner, we find this is a hindrance to grow our business and employ additional pilots if, in sense...you know, Bob referred to Werner trucking. If my pilot goes out and gets a speeding ticket, why do I get a fine also? And that's the difference that we asked Bob to look into and investigate and this is the resulting changes that he has made. As part of that, also the discussion came up about the graduated fines and the investigation and looking into a person's financial situation to determine the amount of the fine that goes. So we, in this case, we disagreed with the fact that the fine came to

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the business to begin with, and then as a result of that, there was further investigation into our financial situation to see what our fine should be, which turned out to be about ten times more than the pilot's fine for the act that he committed. And by the way, this was a local pilot, who is not hard to find, lives in the state of Nebraska, actually in Lincoln. Everybody in the Department of Ag knows him. So, in this case, we had an issue with the double fining. There was also some language in the investigative process that referred to multiple infractions potentially causing the loss of your license, which in our case is the business license to operate in the state of Nebraska. That's my livelihood, and we took that very serious and that's part of the reason that we employed an attorney to look into this and see if we were actually liable and to fight back, push back a little bit from the business point of view on this subject. I guess in a nutshell, that's why we had asked Bob to look into this and the resulting legislative changes that have come out of it, proposed legislative changes. Any questions? [LB15]

SENATOR SCHILZ: Thank you. Any questions for Mr. Hauder? Senator Johnson. [LB15]

SENATOR JOHNSON: Thank you, Senator Schilz. A couple, three questions that will lead up to my point. You owned the business, but in the case you were referring to, the pilot was hired by you so he was an independent contractor to you or was he part of your...is he part of your corporate structure? [LB15]

TIM HAUDER: No, he was an independent pilot. [LB15]

SENATOR JOHNSON: Okay. Are there also businesses that have their own pilot within their company? [LB15]

TIM HAUDER: Yeah, there are many businesses that are the business owner and also the pilot; and I do fly. [LB15]

SENATOR JOHNSON: Okay. So in that case then would...they're part of the same company. Under the old scheme, would both of them be fined again? [LB15]

TIM HAUDER: I believe from what I have been told that there are many instances where the owner/pilot who was found to have a drift claim, received one fine where it was the same person. [LB15]

SENATOR JOHNSON: Okay. So if you hire outside, that's the disadvantage because then they go after two. [LB15]

TIM HAUDER: Yeah, if we grow our business and have been fortunate enough to grow to the point of employing additional pilots, it's a hindrance when you're...I mean, you're responsible for what the actions are of this pilot beyond the Department of Ag. If that

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guy goes out and creates a hardship for someone through a drift and through his actions, as soon as the Department of Ag is done with us, we're going to get sued. And that suit is going to be brought against my company whether this guy got a speeding ticket, so to speak, or not, because I'm the one with the insurance policy. So we're still financially responsible for the actions of this pilot. That's not what we're trying to differentiate. I think we're trying to make an adjustment strictly to the speeding tickets, the act of piloting the airplane and having a bad day and happen to drift where it shouldn't have went. Like Bob said, I don't think any of us are out there trying to cause any problems. We try very hard to do what we do professionally. Occasionally, we have a bad day. You know, the wind changes, or somebody happens to be in the field that we didn't see going 140 miles an hour across the top of that field, bad luck, bad day, whatever you want to call it. Same as a speeding ticket. You get caught in the wrong spot at the wrong time, you're going to get a speeding ticket. That's what we're trying to address. [LB15]

SENATOR JOHNSON: In a real world, is there a way contractually if this would not...we could not correct this through a bill, is there a way contractually through the legal process for you to be immune from that second claim? Or are you aware of that? [LB15]

TIM HAUDER: If there is, I'm not aware of it. The only thing that's been suggested to me by the Department of Ag is to put these additional pilots, or these additional contractors that we bring in seasonally, to have them have their own business license. Well, in my opinion, that defeats the purpose of encouraging this guy to go out and get his own business license so he can eventually go into competition against me. So I do not encourage that. We report everyone under our umbrella when we bring them in to work for us or contract to work under us. [LB15]

SENATOR JOHNSON: That's all I have. Thank you. [LB15]

SENATOR SCHILZ: Thank you, Senator Johnson. Senator Lathrop. [LB15]

SENATOR LATHROP: Can I ask just a few questions just because I don't understand your business and the consequences of drift. If you're spraying something from the air, what are you typically spraying for? Is it plant matter or bugs? [LB15]

TIM HAUDER: Well, we are... [LB15]

SENATOR LATHROP: Or both? [LB15]

TIM HAUDER: ...often we are spraying bugs. Lately, there's been because of the commodity prices and the new chemistry that's come out, we've been asked to apply fungicides to corn because of the yield bump that comes from the increased plant health. That has caused, along with the increased commodity prices, a huge increase

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in, I think, all of our businesses in the state of Nebraska. And you've seen a huge influx of pilots coming in from out of state to help us or to even do their own contractual arrangements with retailers and such. [LB15]

SENATOR LATHROP: Is there...I understand if you're spraying corn and you spray somebody's beans and it affects their beans, that's the concern isn't it? [LB15]

TIM HAUDER: That's where it starts. [LB15]

SENATOR LATHROP: That whatever you're dropping from the sky in one field may not play well in the neighbor's. [LB15]

TIM HAUDER: Yeah. This all starts through a complaint, normally, by a neighbor that has been drifted on and either caused damage to his crop or to him personally because he was close to the field and got sprayed, or he smelled something or... [LB15]

SENATOR LATHROP: What happens to him if you spray the neighbor? [LB15]

TIM HAUDER: If we spray him? [LB15]

SENATOR LATHROP: Yeah, if the neighbor is in the field and you drop this stuff on him. [LB15]

TIM HAUDER: With the safety of the current chemistry that we're using, usually nothing. But it's still...it's not something we want to do by any means. [LB15]

SENATOR LATHROP: What's the...I get the idea that if you spray my field and you weren't invited to do that and you damage my property, I can come get the difference from you in what I would have got had you not sprayed my field. Those would be the damages and you talked about that. That's an insurance claim against your insurance, right? [LB15]

TIM HAUDER: Yes. [LB15]

SENATOR LATHROP: What's the stake the Department of Ag has in whether you're spraying the right field or the wrong field in the first place? [LB15]

TIM HAUDER: Well, the Department of Ag is charged with...they're our police department, I guess. They oversee that we're doing our job properly and not drifting on the neighbor, so. [LB15]

SENATOR LATHROP: If you have an insurance...is any of this involved...the lakes and streams? Are we worried about...is the Department of Ag involved because you could

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be spraying streams, or is it just the risk that you're going to spray the neighbor's?
[LB15]

TIM HAUDER: Well, and others, there's rules in the pesticide law that address the application to aquatic areas or wildlife areas that, you know, protect those areas. We...our bible is the label that comes on that product that we're spraying and that's what we're charged with following. When we have an issue, usually there's a violation to what that label spells out and that's where the Department of Ag gets involved in their investigation. [LB15]

SENATOR LATHROP: Okay. Currently, if you...one of your pilots sprays the neighbor's and damages their crop, the Department of Ag gets involved, and you're saying, they will figure out how much you make and then make the penalty commensurate with your income? [LB15]

TIM HAUDER: If the Department of Ag gets called, they'll come out and they'll take tissue samples and they'll usually make a determination on whether there's drift of the product we were spraying on to the neighbor. If they find that drift, that's when the action happens in the way of a fine or an action against your license. The monetary damage is outside of what the Department of Ag rules on. They don't tell us what we have to pay the farmer. [LB15]

SENATOR LATHROP: Okay. The reason you're here and the purpose of the bill is to make those fines uniform and not dependent upon your income. [LB15]

TIM HAUDER: Yes. That's one thing we would like to see. The main thing I would like to see is that there isn't...that one person gets a fine, either the pilot or the business, but not both. First and foremost, that was the issue that we had when we spoke to Senator Krist. [LB15]

SENATOR LATHROP: Okay. I think I get it. Thank you. [LB15]

SENATOR SCHILZ: Thank you, Senator Lathrop. Any other questions for Mr. Hauder? So, thank you. Senator Johnson. [LB15]

SENATOR JOHNSON: I have another question. You as the owner and you give him the map and give him the location to fly and he misses the fly because he's over the wrong field. In this hypothetical case, would both of you still get fined? [LB15]

TIM HAUDER: Well, in my mind, that should come back on me if I made the mistake. [LB15]

SENATOR JOHNSON: Yeah, well that's...I was in the ag business for 40 years and had

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aerial applications so mostly ground, but I know, I mean, if I sent the floater out there to the wrong field, it was the company not the applicator. In this case, it's the same thing, but potentially under the old bill, if they can do it the other way I suppose they can...you're the primary violator, but because he was in the wrong field he could be fined under the same. [LB15]

TIM HAUDER: Yeah. In this day and age with GPS that's very unlikely that it happens anymore. [LB15]

SENATOR JOHNSON: It shouldn't happen. Yeah. Thank you. That's all. [LB15]

SENATOR SCHILZ: Thank you, Senator Johnson. Any other questions for Mr. Hauder? Seeing none, thank you very much for your testimony. Appreciate it. [LB15]

TIM HAUDER: Thank you. [LB15]

SENATOR SCHILZ: Other proponents, LB15? Proponents? Okay, at this point, we will move into opposition testimony, opposition to LB15. Welcome. [LB15]

BRIAN WILCOX: Thank you. Good afternoon, Senator Schilz and members of the Agriculture Committee. My name is Brian Wilcox, spelled B-r-i-a-n W-i-l-c-o-x. I am president of the Nebraska Aviation Trades Association, the ag pilot association in Nebraska. I am an owner, operator, and pilot of Wilcox Flying Service in Tilden, Nebraska. It is a small one pilot, one aircraft, aerial application business. I am representing the Nebraska Aviation Trades Association and appear before you today in opposition to LB15. I raise two points concerning LB15. First, on page 14, lines 3 through 7, LB15 attempts to incorporate the Department of Aeronautics to handle alleged violations against an aerial applicator relating to the aircraft or aircraft operation and other federal aeronautics requirements. The Department of Aeronautics does not have the jurisdiction, expertise, personnel, or funding to conduct pesticide use investigations. The Lincoln Flight Standard District Office, otherwise known as the FSDO, of the United States Federal Aviation Administration, is already performing some of these functions in Nebraska. The Lincoln FSDO of the FAA monitors and confirms that aerial applicators have annual inspections of the airworthiness of their aircraft, have pilot licenses, have annual medical physical examinations of the pilots. The Lincoln FSDO is also available to receive complaints about aerial applicators each year. Typical complaints are about: First, low-flying aircraft, which is necessary to perform aerial seeding, fertilizing, and pesticide applications. Secondly, noise from low-flying aircraft. The Lincoln FSDO investigates these aviation-related incidents and takes action as necessary. However, if the Lincoln FSDO receives a complaint about an aerial pesticide application, it, the likely...secondly, it likely the Department of Aeronautics does not have the jurisdiction, expertise, personnel or funding to conduct pesticide investigations. So Lincoln FSDO contacts the Department of Agriculture and relies upon them for the

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conduct of pesticide use investigations. The Department of Agriculture has the jurisdiction, expertise, personnel, and funding to conduct pesticide use investigations. On page 16, lines 11 through 12 of LB15, we believe it's discriminatory. LB15 proposes a flat fee or fine to be assessed upon a pesticide violator regardless of business size or income. The same violation for a small business would be unjustly penalized more than a large business. A state agency would need to heavily rely upon the flexibility to administer fines of varying magnitude, not a flat fee, on the size...based on the size of the business or the ability of the business to pay. A flat fee reduces the department's negotiation strategy. A flat fee removes an important enforcement tool that must remain available for use of the Department of Agriculture. With that, if you have any specific questions regarding the details of the roles of the Department of Agriculture, the FAA, Lincoln Flight Standards District Office, or the Department of Aeronautics in regard to the above points, I invite you to speak to them directly. Thank you. [LB15]

SENATOR SCHILZ: Thank you, Mr. Wilcox. Any questions for Mr. Wilcox? Senator Lathrop. [LB15]

SENATOR LATHROP: Who did you say you're with? [LB15]

BRIAN WILCOX: Nebraska Aviation Trade Association. We're the organization for the professional aerial applicators in Nebraska. I represent mostly the pilots and also the people that hold the I37 operating certificates to conduct spraying. [LB15]

SENATOR LATHROP: So your organization represents guys with businesses like this fellow's... [LB15]

BRIAN WILCOX: Yes. [LB15]

SENATOR LATHROP: ...and the guys who do the piloting. [LB15]

BRIAN WILCOX: Correct. [LB15]

SENATOR LATHROP: Your point is that the aeronautic group, Department of Aeronautics is the wrong place to have the enforcement. [LB15]

BRIAN WILCOX: They're not an enforcement agency in Nebraska, FSDO is. [LB15]

SENATOR LATHROP: And you would strike from this bill the uniform...in other words, having a standardized fine for whatever the offense is. [LB15]

BRIAN WILCOX: Correct. [LB15]

SENATOR LATHROP: What's the advantage in having the fine be a function of the kind

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of money you're making? Doesn't somebody learn a lesson? Here's the deal with speeding tickets. If the two of us are speeding, and I make way less than Senator Johnson, and we both get stopped for doing the same thing, it's a \$100 fine. What's the problem with that or why would it...? [LB15]

BRIAN WILCOX: That's a close analogy, but it doesn't apply to this pesticide industry. [LB15]

SENATOR LATHROP: Tell me why. [LB15]

BRIAN WILCOX: Okay. Just recently, this last year, the company Miracle Grow, which I'm sure you're familiar with, got levied the largest fine ever by the EPA. I believe it was \$6 million. If they would have had a flat fee, if it was a low fee...if you were... [LB15]

SENATOR LATHROP: Were they spraying, Miracle Grow? [LB15]

BRIAN WILCOX: No, they were selling it. [LB15]

SENATOR LATHROP: Okay. [LB15]

BRIAN WILCOX: But their fine, their fine was levied based on their income and how much they made while breaking the law, and they're breaking the law by selling pesticides illegally, so. [LB15]

SENATOR LATHROP: I get the idea of punitive damages, but we're talking about guys that are flying and nobody does this on purpose, right? [LB15]

BRIAN WILCOX: No. [LB15]

SENATOR LATHROP: So somebody...let's take a Miracle Grow. Miracle Grow puts some compound in their fertilizer, maybe they don't put it on the bag like they're supposed to and it's now in the streams and causing problems and they're making money at it. Maybe they should be whacked according to what they make, so that it's punitive. But some guy flying a plane, how is that different than who accidentally drops this stuff into the neighbor's or into a neighboring field? How is that different than me speeding? In other words, isn't a flat fine enough by the time he gets done paying for the neighbor's crop and...? [LB15]

BRIAN WILCOX: It's a complicated answer and question and it also...I don't think...I believe the state will have a hard time with that because this is all handed down by the EPA and FIFRA and Clean Water. [LB15]

SENATOR LATHROP: Say that again, I couldn't hear over the sirens. [LB15]

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BRIAN WILCOX: A lot of these regulations that, like Nebraska works under, are handed down by the EPA, FIFRA, and the Clean Water Act, so I don't know how it will work out, but these laws that we have had been adopted from the federal government. [LB15]

SENATOR LATHROP: Do you think we're required according to some federal statute or according to some funding we get from the feds to keep things the way they are and not pass this bill? [LB15]

BRIAN WILCOX: I couldn't answer that. [LB15]

SENATOR SCHILZ: Thank you, Senator Lathrop. Any other questions for Mr. Wilcox? Senator Johnson. [LB15]

SENATOR JOHNSON: I would see...thank you. I would see the damages being or maybe looked at and saying, I'll give two examples. We sprayed a corn fungicide on beans, affected the crop for one year. You're flying next to a person that natural crop and sprayed that, his ground is contaminated, he might not be able to be certified as a naturalist for an X number of years. His damage on the surface looks like it's the same thing, but his is affected maybe for seven years to be able to sell off of there. Is that a standard that could be or should be looked at for a fine? [LB15]

BRIAN WILCOX: I don't think so. I wouldn't think so. It's...insurance will take care of that if you're properly insured, his loss. But I would sure hate to see that be the case. [LB15]

SENATOR JOHNSON: Yeah, I'm just curious if a fine was determined based on that. [LB15]

BRIAN WILCOX: I don't know, you'd have to... [LB15]

SENATOR JOHNSON: You believe it's simply on the deep pockets. [LB15]

BRIAN WILCOX: You'd have to ask...a lot of this stuff, I brought you the facts, I know, but a lot of these if you would just directly address Aeronautics FSDO and the Department of Ag, they'd be more than happy to answer these questions. [LB15]

SENATOR JOHNSON: Okay. Thank you. [LB15]

SENATOR SCHILZ: Senator Lathrop. [LB15]

SENATOR LATHROP: Okay. This Ag Committee isn't my full-time job. (Laughter) I do three days a week over in Judiciary Committee where we spend a good deal of our time working on crime and punishment. And a lot of what we do over there, we recognize

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that people have to generally, generally you have crimes of intent. So, I sprayed the neighbor's and I intended to, that person ought to be whacked pretty good. [LB15]

BRIAN WILCOX: Yeah. [LB15]

SENATOR LATHROP: There are some crimes that involve willful recklessness or recklessness, which is sort of an indifference towards the neighbors, then you have things that are mere negligence which is carelessness. And these things seem to be acts of carelessness and not deliberate, reckless, willful reckless, but just ordinary negligence. And I get that there's a consequence and they're going to end up paying the neighbor for their mistake, but it doesn't seem to me like we need to levy fines that are, I'm going to get your attention and take half of last year's profit in order to get somebody's attention over a negligent act. That's just...I don't know what you're doing in the plane when you spray the neighbor's if you open the...push a button too soon, or if that's all GPS, but it seems to me that if it's negligence, if it's negligence, we don't need to go into a situation where we're trying to find out what somebody earns and then punish them to the point where they are, they are at...you know, we're taking, I don't know, half of their profit for the year, something like that. [LB15]

BRIAN WILCOX: There is a matrix that the EPA has based on these fines and you kind of answered your question there, I believe. You know, you don't want to take the whole guy's income. If you were to levy...if you were to say the fine for this violation that we may have committed or did commit, if you said it was \$100,000 for this crime, for this violation of the label, if you got a small operator, a very small operator, that would effectively put him out of business. But if you have a very large operator, \$100,000 or \$10,000 fine is really nothing to him and he can start to decide what the risk and reward is. If the risk of getting caught isn't that much, if he's not going to have that big of a financial loss from this, he can weigh in risk and reward. [LB15]

SENATOR LATHROP: No question about it. No question about it, and that's why punitive damages are in almost every state but Nebraska for manufacturers and people that do things in business that harm other people. I get that principle but is there any advantage, is someone weighing the risk and reward of spraying part of the chemical in the field that they're not being paid to spray? [LB15]

BRIAN WILCOX: Oh, yeah, you don't want...as an applicator myself, you don't want to do that because you don't want to be in violation with the Department of Ag, because every time you'll get investigated, you can be fined and then you start...eventually, you possibly, will lose your pesticide applicator license and you lose your livelihood because you were too reckless to be responsible. [LB15]

SENATOR LATHROP: Are there just plain, ordinary, other reasons that keep you from spraying the neighbor's like, why would I spend money on the pesticides to put on the

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neighbor's when they haven't asked me to? [LB15]

BRIAN WILCOX: Okay. [LB15]

SENATOR LATHROP: Do you follow me? [LB15]

BRIAN WILCOX: Yeah, I agree. [LB15]

SENATOR LATHROP: I mean, most of this is just being careless isn't it? [LB15]

BRIAN WILCOX: None of us...that is a good point. Why would it happen? And if you're not an applicator, you wouldn't understand that. Inadvertent... [LB15]

SENATOR LATHROP: That's why I'm asking the questions though because I'm not... [LB15]

BRIAN WILCOX: There you go. It's a good question though, it really is. None of us want to...you're right about the product. The product is expensive. They're extremely expensive products. We don't want them off target, but through weather conditions or misapplication or flying too close to that property line, some can get across. We don't want it across. But like you said, sometimes good people, bad things will happen to them and for whatever weather conditions, you might have some migrate across to the other property owner. We don't want that. We don't do it on purpose. No one does it on purpose, but you've got to use... [LB15]

SENATOR LATHROP: So we're dealing with carelessness. [LB15]

BRIAN WILCOX: You got to use best practice while you're doing it. If the wind is blowing towards that property, if the weather conditions are conducive for drift like humidity... [LB15]

SENATOR LATHROP: What if we put culpability in here? [LB15]

BRIAN WILCOX: You have to tell me what culpability is. [LB15]

SENATOR LATHROP: Well, which is, which is, to what extent do you go from just being careless to being reckless or indifferent towards the neighbor's...to the neighbor's crop and the way you spray? [LB15]

BRIAN WILCOX: How would you determine if that was the case? [LB15]

SENATOR LATHROP: I don't know, but it seems...I suppose if there are best practices, if there are best practices, a violation of some best practice. But if a guy is doing

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everything he can and a gust of wind comes up and blows it over to the neighbor's, you can fine him to death but he hasn't learned a lesson because there's no lesson to learn. It's just sort of part of the deal, isn't it? [LB15]

BRIAN WILCOX: It's part of the risk and reward. You took that risk to get the reward and one time you lost, I guess. [LB15]

SENATOR LATHROP: Okay. Well, I think I better understand it and thank you for answering my questions. [LB15]

BRIAN WILCOX: Okay. [LB15]

SENATOR SCHILZ: Thank you, Senator Lathrop. Any other questions? Senator Bloomfield. [LB15]

SENATOR BLOOMFIELD: Thank you, Senator Schilz. We've talked about drift down to a neighbor or something like that. Does this also cover if the guy is putting on a less-effective blend on the proper field and he gets caught putting on something he shouldn't have? [LB15]

BRIAN WILCOX: No, shortchanging the customer? That really has...no, that's nothing. That would be...in fact, that would, I guess that would be a crime all of its own of not selling the product you said you did. And it's not...I could be corrected by the Department of Ag, but I don't think they're even off label at that point. They're not breaking any pesticide laws by putting a reduced amount on unless they're just being criminal by not selling what they're charging for. [LB15]

SENATOR BLOOMFIELD: Okay. Thank you. [LB15]

SENATOR SCHILZ: Thank you, Senator Bloomfield. Anyone else? Mr. Wilcox, I guess the only question that I would have after everyone else here, you talked about the escalating fines or the difference in fines. Can you address for us the act of fining both the individual or the pilot as well as possibly the business, and how your association looks at that, and if you guys have thought about that at all? [LB15]

BRIAN WILCOX: Well, fining both of them, I'm not well-versed because I've never been fined. So it's hard to be well-educated when you haven't been fined yourself. That's probably the best education you can get. (Laughter) But if both of them have some skin in the game, if the applicator is going to have some monetary loss, and the operator, I believe they'll both be more careful. [LB15]

SENATOR SCHILZ: Yeah, I suppose that you could have a situation where...well, I suppose you could have a situation where both could be at fault, but you could also

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have a situation where just one would be at fault. Is that allowed for within the...? [LB15]

BRIAN WILCOX: I don't know. You would think... [LB15]

SENATOR SCHILZ: Okay. I'll ask. [LB15]

BRIAN WILCOX: You would think it would be that if the operator went out...it would be nice if...if me as the owner and I sent a pilot out and he was negligent, on his own decision he decided to do this, I didn't make him do it, he should be responsible for himself. But there again, I don't know where the state has held with the EPA on this because I believe they have to take a lot of guidance from the EPA. So that would be another question, you know, afterwards to refer to the Department of Ag. [LB15]

SENATOR SCHILZ: Sure, and I appreciate that. Thank you, Mr. Wilcox. One last time, anybody else have any questions? Seeing none, thank you for your testimony. [LB15]

BRIAN WILCOX: Okay. Thank you. [LB15]

SENATOR SCHILZ: Other opponents to LB15? Opponents? How about neutral testimony? Any neutral testimony? Okay. With that, we'll close the hearing. Senator Krist, do you want to close? [LB15]

SENATOR KRIST: If I could, Chair, thank you. [LB15]

SENATOR SCHILZ: Absolutely. [LB15]

SENATOR KRIST: I would point you to page 14 to answer part of what I think Senator Lathrop was referring to, beginning with halfway through line 3, "Alleged violations, not deemed frivolous or minor, against an aerial pesticide applicator relating to the aircraft or aircraft operation or other federal aeronautic requirements shall be referred to and are under the jurisdiction of the Department of Aeronautics." It was that way before we changed the law in 2008. The Department of Aeronautics jointly looked at these issues and went forward. And if there was a violation that was deemed frivolous, or against Part 137, or against the pilot's license, it was referred to the FSDO Office. That's the flight standardization office. They will take appropriate action, pull the pilot's license. That's part of my point in terms of the length of the investigation. If we've got a bad actor out there, he needs to be removed from the air. That's why this part was put in there. I'd also remind you that I handed to you...you see, I think we're talking about things in reverse. I'd like to see a common fine across the board that gets everybody's attention. And this, from the Environmental Protection Agency, your handout, United States Protection Agency of Washington, D.C., Guidance on Determining a Violator's Ability to Pay a Civil Penalty, this gives you guidance whereby the single operator, the pilot who is by himself who is going to get a \$100,000 fine, goes in and presents his case and

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he's not. It's based upon the ability to pay. So right there, in accordance with the Uniform Civil Penalty Policy gives the individual independent operator the opportunity to reduce the fine. I still contend that making the fine dependent upon the size of the business is unjust and that is the principle. I do thank you for your time and I'd be happy to work with anybody who wants to amend or change in a positive direction. Thank you, Chair. [LB15]

SENATOR SCHILZ: Thank you. Are there any departing questions? Senator Hansen. [LB15]

SENATOR HANSEN: Thank you, Mr. Chairman. Senator Krist, on the FSDO, Flight Standard District Office, and works under FAA. Can FAA fine a pilot? [LB15]

SENATOR KRIST: It can sanction, pull a certificate, fine a pilot, it has all the authority to take his license away, to suspend it. There will be an investigation if there's a criminal activity, he could be criminally charged and sent to jail. [LB15]

SENATOR HANSEN: And according to your bill, you want the Department of Aeronautics pretty much to do the same thing? [LB15]

SENATOR KRIST: No, sir, I want the Department of Aeronautics to participate in the investigation of the incident, and if appropriate they would refer to the FSDO for proper action. There's the differentiation between ag... [LB15]

SENATOR HANSEN: There's not a duplication there of two different agencies doing the same thing, the investigation? [LB15]

SENATOR KRIST: They don't have the... Brian Wilcox was absolutely correct. They don't have the jurisdiction to do the fining or the sanction. However, they know who does and if the referral of the investigation has to do with some criminal charge or some violation, they would refer it to the FSDO. The FSDO Office, interestingly enough, does not operate on a lengthy period of time. They take definitive action almost immediately. I had a pilot who had a problem. He was grounded immediately upon investigation. Two weeks in the investigation, thirty days, everything was done. He had another thirty days to regain his license. They act expediently when there's an issue. And that, I think, is probably one of the more appropriate parts of this piece of legislation. Got a bad actor, get them out of the air, get them on the ground, and take the proper action. The other side of it, we are. We are at the will of, at the whim of the EPA. Welcome to the EPA. And our Department of Agriculture should weigh in on those appropriately. [LB15]

SENATOR HANSEN: Okay. Thank you. [LB15]

SENATOR SCHILZ: Thank you, Senator Hansen. Anyone else? Okay, with that, we end

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the hearing. Thank you, Senator Krist. Appreciate it. [LB15]

SENATOR KRIST: Thank you. [LB15]

SENATOR SCHILZ: Okay. at this point we will move on to the next bill. What number is this one? LB68. Mr. Leonard, you are welcome to start whenever you are ready. [LB68]

RICK LEONARD: I have one handout if the page gets a chance. Thank you, Chairman Schilz and members of the committee. My name is Rick Leonard, R-i-c-k L-e-o-n-a-r-d, research analyst for the Agriculture Committee, introducing this bill on behalf of the Chairman. This bill is actually...LB68 is brought to us at the request of the Department of Agriculture. The bill would make a series of revisions to the Plant Pest, Plant Protection Act to assist administration of the act, revise the fee schedules collected under the act, and revise the administrative and enforcement authorities exercised by the department. For your reference, the handout I'm handing out is a summary of the entomology program which implements the Plant Protection and Pest Act. I provided a more detailed summary of substantive elements of the bill. In briefing items provided, but I would quickly go through significant features of this bill. Significant portion of the bill would consolidate the current license categories for growers, dealers, and brokers into one category, nursery stock distributors. A definition of a nursery stock distributor is that it is a defined term to encompass...and encompasses the activities that are currently allocated to one of the three licensed categories. It is my understanding the bill would not expand the universe of person subject to licensure currently. The bill would require licensure as a nursing stock distributor, although existing licenses would remain valid through December 31. Harmonizing revisions are made throughout the act to accommodate the utilization of the single nursery stock distributor license. Section 11 of the bill inserts statutory schedule for licenses and other fees collected under the act with the authority to adjust within the statutory maximum. License fees and renewal time lines for dealers, growers, and brokers are currently set out in distinct statutes. Section 11 would impose a uniform license fee and uniform renewal terms. Section 11 further establishes a statutory schedule of fees for a list of certification services provided to the industry where the department acts as a third-party verifier. Current law requires these activities be completely cash funded and provided at actual cost and rule and regulation. Section 11 would define actual cost as the fee...define actual cost with the corresponding fee schedule. It is my understanding the fee schedule for these services is identical to current charges. The bill would result in an increase of license fees for some categories of licensing under current law. And an increase of cash revenue supporting the entomology program, these are explained, and I'd urge you to refer to the fiscal note. Finally, the bill makes a series of revisions to enforcement authorities and relocates various provisions of existing statutes that are otherwise obsolete by changes elsewhere in their act. And where that is...relocates still essential text from statutes that are outright repealed. These include the imposition of administrative charge, surcharge of 25 (percent) monthly for each month fees are delinquent and clarifying the disposition

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of late fees. The express authorization is added to the department to issue quarantine certificates and licensure and authority to enter into harmonizing agreements. Increases the maximum administrative fine for a violation of the act and extends enforcement and jurisdiction to any person violating the act. And it also allows the department to cover costs incurred (inaudible) of violations. I've...that's the next bill that I had a handout, or a letter, but that's the next bill. So that will conclude my statement. [LB68]

SENATOR SCHILZ: Thank you, Rick. Appreciate it. Any questions for Rick? I know there's folks coming behind that will be able to answer better than he. Seeing none, thank you. Okay, at this point we'll take proponents for LB68. Director Ibach, you can have your team come up and sit. Makes it easier. That way you don't have to be craning your neck to...welcome. [LB68]

GREG IBACH: (Exhibit 1) Thank you. Senator Schilz and members of the Ag Committee, my name is Greg Ibach, G-r-e-g I-b-a-c-h. I am the director for the Nebraska Department of Agriculture and I am here today to testify in favor of LB68. I'd like to thank Senator Schilz for introducing this bill on behalf of the Department of Agriculture and I have additional written testimony that I ask be placed on the record for this bill in addition to my more brief oral testimony. Today with me is Julie Van Meter that will be available to help me clarify any technical questions you might have that I am unable to answer. LB68 amends the Nebraska Plant Protection and Plant Pest Act. I will first give you an overview of the activities performed by the department under the act. The department inspects, issues, export certificates, and enters into compliance agreements with, that allow producers to export plants and other agricultural commodities, including grain and seed. The department regulates nursery stock growers and dealers and performs plant surveys for numerous exotic and injurious plant insects and diseases. The department has worked with the Nebraska Nursery and Landscape Association board of directors to develop this legislation change. They, as a group, support the proposed legislation and have expressed that the department's inspections must continue in order to protect the state from the introduction and spread of these injurious plant pests. A list of the board of directors is included in the written material. Specifically, LB68 provides that all persons currently regulated as a dealer, grower, or broker would be placed in a single category of nursery stock distributor. This simplifies the licensing process and eliminates the need for licenses to switch between license types as their business grow or change. This bill is lengthy primarily due to this change. The fee structure would be the same for all distributors of nursery stock. It would create a more equitable fee structure with the fee based on the size of the business. The nursery license fees would be increased because the funding used to support the department's entomology program, which regulates plant protection and plant pest matters in the state, is nearing the point that the cost of the program's activities will no longer be covered. These fees were last increased in 1996. The bill includes a table in Section 11 to clearly set out the fees required by the act. This bill clarifies and improves the department's ability to assist producers in exporting plants

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and other agricultural commodities including grain and seed. Without this legislation, the department would need to reduce services to the nursery and export industries. This would increase the potential of an injurious plant pest being introduced or becoming established in the state. I ask for your support in enacting this bill this year and we would be happy to answer any questions you would have. [LB68]

SENATOR SCHILZ: Thank you, Director Ibach. Any questions for the director? Seeing none...Senator Wallman. [LB68]

SENATOR WALLMAN: Thank you, Chairman. Yeah, Greg, thanks for coming here and I appreciate the protection of our own plant breeders and...do they have protection from so-called foreign entities coming in here with their plants and...? [LB68]

GREG IBACH: That's the reason why we conduct the inspections throughout the year to be able to...and do surveys. We're looking for different plant species that may become an invasive species that could come through nursery channels, and we're also looking for pests that aren't in Nebraska that could become injurious to our...you know, plants. You know, one of the...you know, we cooperate with USDA on a lot of these surveys as well. You know, one of the major pests that we don't have right now is emerald ash borer that is in states to the east of us, and so we're always on the lookout for those type of pests as well. [LB68]

SENATOR WALLMAN: And we get all of these catalogs, you know. How is that...how can you watch over all of this stuff? [LB68]

GREG IBACH: I think I'll ask Julie to go ahead (laughter) and maybe describe what they have in place to look at seeds that are coming in to make sure that they don't contain those hazardous materials. Julie. [LB68]

SENATOR WALLMAN: Okay. [LB68]

JULIE VAN METER: All right. Our inspection program looks at nursery stock and plant material that's coming in from other states. And when we do that, we're ensuring that it's been inspected and certified at origin prior to getting here, making sure that it's complying with any state or federal quarantines that may apply. And then also doing a visual inspection of the nursery stock itself to make sure we're not finding anything that might have gotten missed at origin. [LB68]

SENATOR WALLMAN: Thanks. [LB68]

JULIE VAN METER: All right. [LB68]

GREG IBACH: I think maybe your question was asking like if we order from one of the

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seed catalogs, it comes in the mail for our garden seeds. [LB68]

SENATOR WALLMAN: Yep. [LB68]

JULIE VAN METER: We generally don't get involved with homeowners very often. [LB68]

SENATOR WALLMAN: Okay. [LB68]

JULIE VAN METER: We deal directly with the commercial distribution of nursery stock primarily. However, those companies would have to be licensed and inspected and certified at their origin in order to be able to ship into Nebraska. And we do monitor, on commercial side, the sources of nursery stock that are being utilized by the state. So a company when they get a license with us has to list all the suppliers that they're getting stock from. We cross compare that information to make sure that those are licensed firms at origin. If they're not, we contact both the company in Nebraska using them and the regulatory agency of origin to get that firm compliant so they can ship into Nebraska. [LB68]

SENATOR WALLMAN: Thank you. [LB68]

SENATOR SCHILZ: Thank you, Senator Wallman. Any other question? Senator Hansen. [LB68]

SENATOR HANSEN: Thank you. So when we talk about invasive species, was there ever any ornamental grasses that maybe came into the state and caused any problems? [LB68]

GREG IBACH: Well, I think that initially when phragmites and purple loosestrife were...came into Nebraska, they came as ornamentals that were planted in people's yards and landscaping, and that was prior to determining the invasiveness of those species. And now that's something that we are continually challenged to be watchful of as new plants and grasses are emerging to be incorporated into some of those decorative ornamentals that, you know, they don't turn into something that is a major problem for us as a state. And, Julie, I don't know if you'd like to add anything on to that? [LB68]

JULIE VAN METER: My staff of entomology inspectors do monitor nursery stock distribution locations to make sure that no weeds that are on the state noxious weed list or any of the federal noxious weeds are being distributed through nursery stock. [LB68]

SENATOR HANSEN: Would phragmites have come in then as a plant rather than seed? It would have had to start from seed somewhere. [LB68]

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JULIE VAN METER: I'm honestly not sure on how phragmites originally got distributed through the state. [LB68]

SENATOR HANSEN: I'd sure like to back up the clock on that one. (Laughter) Thank you. [LB68]

SENATOR SCHILZ: Thank you, Senator Hansen. Any other questions? I guess I would have one for sure. I look here and I see the fiscal note has revenue coming in. Director Ibach, can you explain a little bit how that fits, why we see an increase in revenues coming in and how that all works? [LB68]

GREG IBACH: Well, we're raising the fee structure. [LB68]

SENATOR SCHILZ: Right. [LB68]

GREG IBACH: And we're unifying that and then raising the fee structure so then, you know, we'll have a bump in the initial year of the amount indicated and then in subsequent years, I think we're projecting, you know, an expansion of the industry to show smaller increases after that. [LB68]

SENATOR SCHILZ: And is that necessary for the performance of this program to work the way it needs to? [LB68]

GREG IBACH: Right. We're coming to a...as in my testimony, we're coming to a point in time where the fees that we're currently collecting do not support the program itself as is defined in the statutory mix that we've been applying to the program. So, in order to continue to provide the same services that we have to the industry, both the distributor's and the customer's side and protect the state, we would need to have this fee increased. [LB68]

SENATOR SCHILZ: And just one other small question here as we look at how you work with violators and stuff like that, if it happens that you find a violator and you fine them, how does that work? How much can you fine them? Can you fine them to recoup costs or how does that work? [LB68]

GREG IBACH: I'll have Julie address that question as well. [LB68]

SENATOR SCHILZ: Sure. [LB68]

JULIE VAN METER: The fees and the...we have a couple different mechanisms in the law. First off, we much prefer to get compliance with the law through education and working with the industry versus starting out with fines. So when we run into somebody

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who has not been licensed before, the first thing that usually happens is either I call them or an inspector goes out and does a site visit to determine if they're actually in need of a license or not. Not everybody that distributes plant materials is required to be licensed. So our first step is to make sure that they need to be licensed. We'll have some basic communication with them, get them an application, and I think 9.8 times out of 10, the application comes back, we get them compliant, and we keep moving on. The late fees that are referred to in the legislation generally have to do with current licensees not getting renewals back on time. And those fees are simply to recoup administrative costs of continuing to send out notices and do follow-up work with them to get them compliant. We do have some language in the law related to the increase of administrative...or of fines for violations. What we're asking for there is simply an increase in the maximum amount, but we haven't actually made any changes to the fee structure...the fine structure as it exists. That's all in the regulations. [LB68]

SENATOR SCHILZ: Sure. Okay. Thank you. Any other questions for Director Ibach? [LB68]

JULIE VAN METER: I'm so sorry, Julie Van Meter, J-u-l-i-e V-a-n M-e-t-e-r. [LB68]

SENATOR SCHILZ: Thank you very much. Yeah, if you could fill out a form. She's got it right there. Excellent. Very good. If there's no other questions, thank you, Director and Julie. We appreciate it very much. Any other proponents for LB68? Welcome. [LB68]

CHUCK HAMERNIK: Good afternoon, Chairman Schilz, Agriculture Committee, my name is Chuck Hamernik, H-a-m-e-r-n-i-k. I work at Bluebird Nursery in Clarkson, Nebraska. We are mostly wholesale grower of perennial plants. We maintain over ten acres of greenhouses and employ 45 people. Last year we shipped Nebraska-grown plants to 45 states and 4 Canadian provinces. I'm a member of the Nebraska Nursery and Landscape Association and also has been...I mean, past president of the association. I'm here in support of LB68, the latest attempt to modernize the language pertaining to the Plant Protection and Pest Act. I hope we can get it done this time. It doesn't seem that long ago I was here testifying with Rich Reiman and Vicki Wohlers, but it's probably been more than ten years since we've been trying to get this accomplished. The Plant Protection and Pest Act affects all Nebraskans, not just those in the nursery industry. Our forefathers transformed the prairie with their tree planting, and it only seems right to protect that investment with prudent stewardship. As the state cuts back on General Fund expenditures, it is only right to give the folks at the department the means to continue their very important work. We, at Bluebird Nursery, rely on nursery inspections, phytosanitary and export certificates to ship our products out of Nebraska and out of the country to bring those dollars back here to Nebraska. At the same time, I personally rely on them to keep a lot of the nasty, illegal immigrants, I mean, invasive species out, the Japanese beetle, the Asian long-horned beetle, the emerald ash borer, etcetera, or at least slow down their attack on our plant material

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investment. As a member of the Nebraska Nursery...or excuse me, as a member of the Nursery Industry in Nebraska, we are willing to ante up in order to help police our own to make it a better Nebraska for all of us. [LB68]

SENATOR SCHILZ: Thank you, Mr. Hamernik. Any questions for testifier? Seeing none, thank you very much. Appreciate your testimony. [LB68]

CHUCK HAMERNIK: You bet. [LB68]

SENATOR SCHILZ: Other proponents for LB68? Good afternoon. [LB68]

JAKE SITTNER: (Exhibit 2) Good afternoon, Senators. I'm Jake Sittner. Before I get into my oral testimony, I've got a written testimony by Tom Hamernik that was unable to attend today. [LB68]

SENATOR SCHILZ: Could you spell your name, please? [LB68]

JAKE SITTNER: Jake, J-a-k-e, Sittner, S-i-t-t-n-e-r. [LB68]

SENATOR SCHILZ: Thank you. Proceed. [LB68]

JAKE SITTNER: I guess I'm testifying to support this on behalf of the...I'm on the board for the NNLA, the Nebraska Nursery Landscape Association, and I have a local design/build landscape company, so I see the importance of protecting what we're distributing and what's coming into the state as we get nursery product shipped to us. I basically...this is kind of a new process to me, so I looked it over and found it to be simplified into three areas: We're clarifying the text of the bill, we're protecting the plants from what's shipped out of Nebraska, what's shipped to us or grown locally, I guess, and also supporting the entomology department, and all the other departments that are involved in this Legislature. It seems to me like, you know, as I was reading it, it's just a way to simplify it. I guess when I'm running a small business the last thing you need is more policies to follow, and putting three classifications into one seems better to me. And at the same time when they're raising the fee structure, it's going towards the department that needs help, I guess, sustaining to do the inspections that they need to do. So I guess having somebody, myself who is a small start-up company also supporting it, I'm not complaining about the increase in the fee structure. So as far as protecting, it's mainly early protection is the only way to protect against a lot of this stuff. In talking with some of the people that are also supporting this, you know, once the emerald ash borer is out there, it's out there. There's nothing that can be done to eradicate it, but if we contain it, don't let it outbreak, then this is kind of what we're going for. I don't know, I guess we, as a nursery, want to be accountable for what we're putting in people's yards and into parks, and I guess the actions that we take now are going to affect us for the next hundred years. So I guess that's what I'll close with.

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[LB68]

SENATOR SCHILZ: Thank you for your testimony. Any questions for Mr. Sittner? Seeing none, thank you for your testimony. Appreciate it. Other proponents for LB68? Good afternoon. [LB68]

DAN MULHALL: Good afternoon, Senators. My name is Dan Mulhall, M-u-l-h-a-l-l, and I need glasses. With my brother, we operate a garden center landscape nursery in Omaha. Our firm was started by our parents in the mid-1950s. We employ over 200 people during the growing season, produce plants on about 200 acres. I've been active in the nursery business for the past 30 years. And like others in agriculture, those of us in horticulture work together for the betterment of the industry. I've tried to do my part as a former president of the Nebraska Nursery and Landscape Association and nationally as a current board member of the American Nursery and Landscape Association. As an industry, our livelihoods depend on the free flow of healthy, affordable nursery stock across the country from producer to consumer. We need proper third-party nursery inspections to assure the public and each other that the products we are selling are safe and healthy. Because of that, I am here in support of LB68. Those of us in the plant business understand what an infestation of insects or disease could do to us. Pests have the potential to ruin a crop, ruin a business, and in the case of some of the pests as has been mentioned, you know, emerald ash borer, we all remember Dutch elm disease, what pine wilt is doing now, they have the potential to ruin landscapes and cost the community millions. Since pests attack...since the pests which attack do not care what country they came from, what state they originated in, we depend on our fellow nursery growers to keep pests in check and to keep their fields clean. Regardless of how diligent growers are, though, pests continue to evolve and remain a constant battle. Fortunately for us in Nebraska, the Nebraska Department of Ag is a tremendous ally to industry using their connections throughout the country and other departments of ag and universities, and especially their own talents. The Nebraska Department of Ag is the authority of ornamental pests in Nebraska because they look at pests as the enemy and not the businesses where the pests are found. The Nebraska Department of Ag has fostered a culture of cooperation with Nebraska's growers and distributors. With their plant pest surveys and inspections, the department is able to warn us of what to watch for and help us keep small problems from becoming big issues. When a pest is discovered at a nursery or a retail lot, it is imperative that the proper steps are taken to control the pest before it can spread. This is not only important for the health of the plants statewide but for plants nationwide. Each state depends on other states to be vigilant in keeping plant material clean. For Nebraska to remain a trusted partner with other states that we ship to and receive nursery stock from, we need to have a viable inspection program. This is also important for the buying public. It is the government the public looks to when there are questions about the safety and health of people, food, animals, and plants. And when a pest is discovered, we need the Department of Ag to be able to confidentially tell the public, here's what we found and here's what we're

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going to do about it. And that is only possible if they've been in our fields and our sales lots. The fees that the department charges for inspections have not changed in over 15 years and they no longer cover the expenses associated with the inspections. Without more funding, the department would have to cut back on inspections. And for the reasons I've discussed, we should not allow that to happen. Some may find it odd for the industry...for industry to be lobbying for increased fees. And I can assure you that I would not be here for those state agencies that seem to be more interested in finding what we're doing wrong instead of finding what we're doing right and helping us do what is right. The Department of Ag is an important partner to the nursery industry in Nebraska. So to keep us growers, distributors, and general public confident in the health of our state's ornamental nursery stock, and again, Nebraska's landscapes, a guard against pests, LB68 deserves our support. Finally, I'd like to put in a general plug for horticulture in Nebraska. Our firm alone sends over a quarter million dollars a year in state...in sales tax to the state of Nebraska on the plant material we sell. It may be worth this committee's time to study the overall financial impact that ornamental horticulture has in the state and use that information as it sets priorities for funding programs. The data that you could generate, if there was data out there on what ornamental horticulture did, we probably wouldn't be here talking about how important it is to raise rates \$5 to allow the state to keep inspecting us. The data that...or the bill that you have in front of you is going to talk about the size of nurseries being based on acres. And that's one way to measure them, but as the marketplace changes and so many plants are now sold in so many different ways, particularly in the large box stores, the size of a nursery really should be based on what they're selling as opposed to how big it is. And we just don't have the data to be able to do that now. I have no problem with the way this bill is written to do it based on acres, but in the future it would be nice to be able to talk about sales. Thank you. [LB68]

SENATOR SCHILZ: Thank you, Mr. Mulhall. Is...any questions? Seeing none, thank you for your testimony. [LB68]

DAN MULHALL: Thank you. [LB68]

SENATOR SCHILZ: Other proponents of LB68? Seeing no more, any opponents for LB68? Opponents? Seeing none, any neutral testimony for LB68? Neutral testimony? Seeing none, we waive closing, so that will end the hearing on LB68 and we'll move to LB69. [LB68]

RICK LEONARD: (Exhibit 3) Thank you again, Mr. Chairman. Members of the committee, again my name is Rick Leonard, research analyst for the Agriculture Committee introducing LB69. LB69 again is a bill brought to...at the request of the Department of Agriculture. The bill makes the number of revisions to the pesticide act as detailed in the briefing items that I provided. Much of the bill is statutory maintenance to update reference to federal statutory and code...federal statutes and code of federal

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regulation citations utilized throughout the act so that they're referred to current sections as existing on January 1, 2013. These include reference to FIFRA, the Food and Drug Act, and the Safe Drinking Water Act, and individual sections of these acts that are referenced for various purposes throughout the act. LB69 would eliminate the specialty category for pesticide product registrations. The act currently applies a separate fee schedules depending on whether the product is a specialty pesticide and not and directs the allocation of the registration fee accordingly. The bill is intended to simplify registration for both the department and the public to the elimination of the specialty distinction. The only function of the designation of specialty pesticide currently is to identify distribution of fees to the Natural Resources Water Fund or the Pesticide Program Cash Fund. LB69 would specify allocation of the single license category to continue the existing revenue streams to these programs. The fee schedule under the bill would impose a uniform \$160 fee within...with authority to revise within a statutory maximum. The statutory maximum also would remain the same at \$210. The bill would actually result in a reduction of fees for products not currently registered as a specialty pesticide and a reduction in revenues to the Pesticide Administrative Fund. I will defer to the fiscal note to explain the revenue implications of the bill. The bill further eliminates the requirements for applicants to provide the Social Security number when applying for licensure as an applicator or aerial pesticide business. The deadline for application for an aerial business license has changed to require prior to commencement of operations rather than on January 1, to enable the licensee to have accurate information on which to base application information. The bill amends language regarding the shared responsibility of a business for the acts or omissions of applicators employed by the business to specifically name enforcement sanctions available under the act. Mr. Speaker...or Chairman, I do have a letter. There's a copy under the...in each of the member's books and I'll hand the original to the clerk if that could be entered into the record. It's from Bob Andersen representing Nebraska Cooperative Council in support of the bill. [LB69]

SENATOR SCHILZ: Thank you. Any questions for Rick? Seeing none, thank you, sir. Okay, with that, we would take proponents for LB69. Once again, you can bring whoever you...whoever you need forward, Director Ibach. [LB69]

GREG IBACH: (Exhibit 4) Senator Schilz and members of the Agriculture Committee, my name is Greg Ibach, G-r-e-g I-b-a-c-h. I am the Director of the Nebraska Department of Agriculture. I'm here today to testify in favor of LB69 and would like to thank Senator Schilz for introducing this bill on behalf of the department. I have additional written testimony that we have handed out that I would like to be...asked be placed in the record for this bill. Today, I have with me, Tim Creger, who is a member of our Department of Ag staff to answer any technical questions you may have about the bill. LB69, as Rick has indicated, amends the Nebraska Pesticide Act by changing the way pesticide registration fees are determined. A separate category for specialty pesticides would be eliminated, and all pesticides would be subject to the same registration fee of

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\$160 per product. This would reduce the amount of fees collected and simplify the collection process, reducing the registration fee for pesticides currently defined as nonspecialty pesticides, and retains the same fee for pesticides currently defined as specialty pesticides. This will not decrease the amount which goes into the Natural Resources Water Quality Fund as Mr. Leonard had referred to. It also provides the department with the authority to decrease fees through rules and regulations, and provides that an application for an aerial pesticide business license is to be submitted before the commencement of application rather than by January 1 of each year to reflect industry practices. It also updates references to federal acts and the CFR, and I would ask your support enacting this bill this year. We would be happy to answer any of your questions. [LB69]

SENATOR SCHILZ: Thank you, Director Ibach. Any questions for the director? Anyone? Anyone? Okay. Director, I guess as I look here and this kind of gets into a couple of things that we've talked about today. Sections 10 and 12 of the bill makes a clarification to shared liability of the employer, to the acts or omissions of employees or persons that apply the pesticide on behalf of the business. And this section amended provides that the business can be subject to the same penalties or disciplinary actions the applicator may be subject to. Can you or somebody explain the purpose of the revisions to these sections? [LB69]

GREG IBACH: I think we'll allow Mr. Creger to address those questions. [LB69]

SENATOR SCHILZ: Okay. [LB69]

TIM CREGER: Senator Schilz, my name is Tim Creger. That's T-i-m C-r-e-g-e-r. I'm the pesticide program manager for the department. The language that you referred to is proposed in order to further clarify the understanding by the public on how we administer the act. We do have a penalty matrix that might have been brought up in testimony under LB15. That specifies how we administer penalties but it doesn't exactly spell out in statute because it's in regulation, and we felt that we needed the additional clarification in statute that we didn't have already. [LB69]

SENATOR SCHILZ: Okay. What...and then can you provide some explanation how the department determines those allocations, the responsibility between those employing the business and the person that's applying the product? [LB69]

TIM CREGER: I might have to defer to Chris because I didn't draft that language, but... [LB69]

GREG IBACH: Our department counsel is here as well, so if it's okay... [LB69]

SENATOR SCHILZ: Sure. No, that would be fine, yeah. [LB69]

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GREG IBACH: ...I'll invite Chris Shubert to come up and answer those specific legal interpretations. He may not have his form filled out yet, so. [LB69]

SENATOR SCHILZ: That's fine. We can figure that out. He thought he was going to get out of here scot-free, didn't he? [LB69]

CHRIS SHUBERT: My name is Chris Shubert, for the record, and I'll spell that, Chris, C-h-r-i-s, Shubert, S-h-u-b-e-r-t. And your question again is...? [LB69]

SENATOR SCHILZ: I was just wondering how you can provide some explanation of how the department determines allocation of responsibility between the employing business and the person applying such product. [LB69]

CHRIS SHUBERT: Well, I think really that gets into what Tim does as far as the enforcement. In other words, when they look at each situation they look at it from what they can prove, what each individual has done. The matrix...and Tim could go through the matrix, which is set out in the regulations, far better than I. He applies it regularly. But they go through a process of determining based on the statute that there are factors that the statute says, and that's what LB15 was changing, factors...or considerations that the department is required to look at. And that includes everything from this situation concerning size of business, you know, the...probably better if I just look at that particular section to refer you to it. [LB69]

TIM CREGER: What was the reference on the section again, Senator Schilz? [LB69]

SENATOR SCHILZ: Section 12...10 and 12 is where those questions come from. [LB69]

CHRIS SHUBERT: I will use the excuse that someone else did, I really should use my reading glasses. (Laugh) You might want me to be on the right section. (Laughter) [LB69]

GREG IBACH: He really didn't expect to have to testify. [LB69]

TIM CREGER: Chris, if you want me to, I can answer a Section 10 if you'd like me to go ahead and do that. [LB69]

CHRIS SHUBERT: You want to go ahead? [LB69]

TIM CREGER: Yeah, I can answer Section 10. Section 10 indicates that...it refers mostly to an uncertified applicator. In our statute we currently have a once-in-a-lifetime 60-day exemption from certification where someone can work without a license as long as they're supervised by a properly certified applicator. That supervision aspect requires

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a certain amount of on-site training for the uncertified person, and that particular language has been in the Nebraska Pesticide Act since 1993 when it was originally promulgated. What we felt needs some clarification was there were questions coming out especially from out-of-state applicators when they would come to Nebraska specifically to work without a license. They were asking exactly who has responsibility for my actions, is it myself, or is it my employer? We needed clarification about the fact that both the certified supervisor, employer, and the uncertified applicator have dual responsibility. They share responsibility for the actions of the applicator, because otherwise our statute only addressed violations by licensed applicators. And we were not able to take an enforcement action against an unlicensed applicator without that clarification. [LB69]

SENATOR SCHILZ: Thank you. Appreciate that. [LB69]

TIM CREGER: And the other section, you said 12? [LB69]

SENATOR SCHILZ: Twelve, yes. [LB69]

CHRIS SHUBERT: Okay. What you're looking at is on page 44...43 and 44 of the bill itself and it sets forth...the language says, "person shall be subject to," to get the context, "the same fines, license actions, and other enforcement actions prescribed by the"...that really is just simply clarifying that both could be responsible for the same penalties. What we run into is a situation where we may have a trend where an applicator continually makes an application that is not...is outside the label requirements of the FIFRA Act, the label that each pesticide would have to have. And so if that's the case, then we're starting to run into a situation where the business itself tends to be having a problem in regard to controlling their individual under them. So in those situations they could be...should be subject to fines, etcetera, that...or other enforcement action. It's not just fines. It's...you have to remember that we have other enforcement actions also, license application situation. You know, we could put them on probation, for instance, with the business. We may have a problem where an individual goes in and misapplies, well, that individual may be put on probation, but if this has been a trend over a period of time, the business is not taking it seriously in that regard, and so they may have the fine itself. So it's not everyone that has the same exact application of the enforcement tool. The probation relates to the license. They would be put on probation, be watched, may have certain conditions that they have to meet. You know, even going back to, in essence, answer some of LB15, going back to the situation where we have a couple different individuals involved, that smaller business, Senator Lathrop you were talking about, that the individual in our matrix only has two-tenths of a factor involved if they're under \$200,000. So most likely the individual pesticide applicator is going to be in that category. So it's a...making certain that we're able to apply in the right situation, the right facts, whatever Tim and his people are able to prove and determine. And then we go through this process...this is a long story

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because it's involved situation this far, we will set out, based on the matrix, a letter saying this is the fine that we propose. They can then come in and have a hearing on that or we encourage them to talk to us and to provide us additional information. So then we start working through the negotiation, which is similar to what Senator Krist was mentioning on the EPA. It's not, we come up with this amount and stuck at that amount. So I'm answering several different questions in that regard, but that might give you a little better idea of the way we go through this matrix and you'd have to look in our regulations. And I can send those to Rick or the reference to them. You work through all these different factors that are required by statute, the things that are changed by Senator Krist's bill, take out a couple of those factors, that being the size of the business and the personal gain in that regard. That probably doesn't answer your first question but it answers several others, maybe. (Laugh) [LB69]

SENATOR SCHILZ: Maybe on balance, it's okay. Yeah, no, you're fine. That information would be valuable to us, I think, so we'd appreciate that. [LB69]

CHRIS SHUBERT: Yeah, we'll send that. [LB69]

SENATOR SCHILZ: Sure, any other questions for folks in the department? [LB69]

GREG IBACH: If I might could add... [LB69]

SENATOR SCHILZ: Sure. [LB69]

GREG IBACH: I think the industry as well as the state has determined that it's important that we be able to administer the FIFRA here on a statewide basis and we maintain that authority, and we work with the EPA to be able to have that authority to do that. And so I think that the ultimate goal is that, you know, we provide assurance to the federal level that we use pesticides appropriately and correctly and within label requirements to assure that we'll be able to allow our producers and our industry to do that into the future. And so having...you know, we use our cooperation with EPA, we adopt some of their matrixes as we move ahead to assure that they understand our mechanisms as well as part of that assurance to them that we're effectively protecting our environment and individuals while appropriately using pesticides. [LB69]

SENATOR SCHILZ: Great. Thank you. Appreciate it. Any questions? Seeing none, thank you very much for your testimony. Other proponents for LB69? Proponents? Seeing none, any opposition to LB69? Opponents? Seeing none, neutral testimony? LB69, neutral testimony? Seeing none, I guess that will close the hearing on LB69. Thank you, and that will close our hearings for today. Thank you very much. [LB69]