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Agriculture Committee
February 05, 2008

[LB751 LB860 LB862 CONFIRMATION]

The Committee on Agriculture met at 1:30 on Tuesday, February 5, 2008, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB751, LB862 and LB860 and gubernatorial appointments. Senators present: Philip Erdman, Chairperson; Annette Dubas, Vice Chairperson; Merton "Cap" Dierks; Russ Karpisek; Vickie McDonald; and Norman Wallman. Senators absent: Ernie Chambers and Don Preister. []

SENATOR ERDMAN: Good afternoon. Thanks for your patience. Thank you, Senator Dierks and Senator Wallman, appreciate your joining in on our congregation today. Before we begin with the hearings this afternoon, I will go through a little housekeeping and try to address some of those issues so you're prepared when you come to testify. Those of you that are here with those electronic devices such as cell phones and other wonderful tools that we now seem to have all over, make sure that the ringers are not turned on. That will help everyone. And if you do receive a phone call, we'd greatly appreciate it if you don't take it in the room, so feel free to step out and take care of that. I'll introduce the members of the committee, regardless of whether they're here so that you know whose on the committee and then I'll go through the process that we'll ask you to follow when you testify. To my far left nearest the door, Senator Norm Wallman, Norm's from Cortland; next to him will be Senator Vickie McDonald, Vickie's from St. Paul; next to Vickie is Senator Russ Karpisek and Russ is from Wilber, Nebraska; next to Russ would be the Vice Chair, Senator Annette Dubas, who's from Fullerton; to my immediate left is Melissa Lunsford, she's a committee clerk, she's responsible for making sure that when you go down in history as a testifier in front of the Legislature that we have your name spelled right, so make sure that you fill out the sheet before you testify. I've been honored to be elected as Chair of the Ag Committee, I'm Phil Erdman from Bayard; to my right Rick Leonard, the research analyst for the committee; next to Rick is Senator Cap Dierks, Cap's from Ewing; next to Senator Dierks will be Senator Don Preister from Omaha; and next to Senator Preister will be Senator Ernie Chambers from Omaha. And as you can see by looking outside, there may be reasons why people are not here and there's obviously other bills being introduced in front of other committees today as well so as you see Senators coming and going, it's probably because of those reasons, and we will make sure that those who aren't here get a copy of any information that you would distribute. Before you come forward, if you can fill out a testifiers sheet we would appreciate that. They're stationed near the sign-in box at the testifiers stand and if you can fill it out, that would be great and before you begin your testimony if you'll state and spell your name that will ensure that again we have your correct information. We have three bills today as well as an appointment. We recognize that all of these are important. We want to hear what you have to say. We would prefer if you not be redundant but to share your perspective as to why we need to do what it is that's being proposed or maybe why we shouldn't do what's being proposed. We definitely would like to hear both sides of that and we also recognize that some of you

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may be here in an official capacity to provide information as opposed to taking a position and you'll have that opportunity to testify in a neutral position on any of the bills that are before us. And so to start our hearing this morning, or this afternoon, we'll begin with the confirmation of Dr. Mike Hayes to the Climate Assessment to Response Committee. If you'll come forward, we'll ask you to state and spell your name for us so we have that and then when your done with that, we'll ask you to tell us a little bit about your background, your interest in serving, and some of the ideas or issues you hope to work on as a member of the committee. [CONFIRMATION]

MICHAEL HAYES: My name is Michael Hayes, M-i-c-h-a-e-l H-a-y-e-s. I am currently the director of the National Drought Mitigation Center which is located at the University of Nebraska on east campus here in Lincoln. I've been the director since August 1. The previous director, Don Wilhite, was the longtime director of the National Drought Mitigation Center for many years. The Mitigation Center was established in 1995 and Don Wilhite served as the director from 1995 through 2007 and I took the director position when he moved up at the university in August, 2007. I am from Michigan originally, and I grew up, loved snow, and as a result, became a meteorologist. So I'm a meteorologist by training. I went to the University of Wisconsin, Madison, to get my bachelors degree in meteorology and then I went to the University of Missouri in Columbia to get a masters and Ph.D degree. I arrived in Lincoln at the National Drought Mitigation Center in '95 so I've been here for 12 years. As a part of my work at the National Drought Mitigation Center, I took part in the Water Availability and Outlook Committee, which is part of the Climate Assessment and Response Committee, and provided updates on climate conditions, water conditions in the state on a regular basis. I also took part in many of the Climate Assessment and Response Committee meetings that have taken place over the years. As you know, Nebraska experienced quite a drought from about 1999 through 2007 or 2006 so the committee, Climate Assessment and Response Committee, met fairly frequently to help assist the state in dealing with some of those drought positions. I'm replacing Don Wilhite on the committee as Don moved up in the university. The feeling was, the director of the National Drought Mitigation Center should serve on the committee, so any questions or comments? [CONFIRMATION]

SENATOR ERDMAN: Great. Thank you, Dr. Hayes. Any questions for Mike? Senator Dierks. [CONFIRMATION]

SENATOR DIERKS: Ah, Mike, how frequently are you meeting with your committee? [CONFIRMATION]

MICHAEL HAYES: The Climate Assessment and Response Committee meets as needed. Usually there is a meeting in the late winter, early spring months, sometimes there's one in the midsummer months and then oftentimes there's one at the end of the summer to wrap up the season, and that can change as conditions warrant. If issues

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come up, sometimes the committee meets more frequently than that. The committee also has some subcommittees that meet also on a different basis. [CONFIRMATION]

SENATOR DIERKS: Okay. What are some of those subcommittees?
[CONFIRMATION]

MICHAEL HAYES: There are...there's the Water Availability and Outlook Committee which kind of oversees the monitoring aspect. What they do, they don't necessarily meet together but they'll do e-mail exchanges and then they provide a report to the Climate Assessment and Response Committee at each of those meetings. Then there's another subcommittee that deals with agricultural natural resources and wildlife, and then there's a subcommittee that deals with municipal water supply, health and energy and those two subcommittees meet and then provide information to the Climate Assessment and Response Committee as well. [CONFIRMATION]

SENATOR DIERKS: So, when you have a meeting of the second one you talk about, wildlife, what issues are you looking at there? [CONFIRMATION]

MICHAEL HAYES: A lot of times what the, that subcommittee will do will try to identify what some of the impacts are to these different sectors and identify maybe some actions that the state or local folks can take to potentially reduce some of those actions or some of impacts from drought and so, the Nebraska state drought plan has a list of mitigation actions that the state can take and occasionally these subcommittees meet to see how these actions are being fulfilled. [CONFIRMATION]

SENATOR DIERKS: They're the committee set up by the LB701 bill last year that they would call the riparian river study and I'm participating in that. I wondered, do you have any comments about the riparian river difficulties we have? Do you get in that at all?
[CONFIRMATION]

MICHAEL HAYES: I don't really know too much about that so, but that would be interesting for maybe that subcommittee to meet with folks and talk about the different issues of how drought might play a role in that whole issue. [CONFIRMATION]

SENATOR DIERKS: Thank you. [CONFIRMATION]

SENATOR ERDMAN: Thanks Senator Dierks. Senator Wallman. [CONFIRMATION]

SENATOR WALLMAN: Thank you, Senator Erdman. Mike, appreciate your being here. I'd like to see the maps. You're the people who put the maps in the paper?
[CONFIRMATION]

MICHAEL HAYES: Yes. [CONFIRMATION]

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SENATOR WALLMAN: Okay. [CONFIRMATION]

MICHAEL HAYES: We do that with USDA and Noah. It's kind of a joint effort.
[CONFIRMATION]

SENATOR WALLMAN: In the Midwestern states. Do you see trends as far as rainfall amounts? Do you keep track for as far, hundred years ago, two hundred years ago?
[CONFIRMATION]

MICHAEL HAYES: Good question. I've just been looking at this. I teach a class at the university and I've just been analyzing or looking at the record of Nebraska precipitation and when you look statewide, there does not look to be any trend that's occurring with precipitation. But when you aggregate on a statewide basis, that's not necessarily the most telling information. It'd be better to look more...and I haven't done that, on a more local level. What we say though, at the mitigation center, is droughts have always been part of the past of Nebraska. They are now and they will be a part of our future so that's kind of how we look at it at the moment. We haven't seen any trends in the change of droughts in Nebraska. [CONFIRMATION]

SENATOR WALLMAN: Thank you. [CONFIRMATION]

SENATOR ERDMAN: Thanks Senator Wallman. Other questions? Mike, the, this, the modeling or the projection still show parts of western Nebraska in a drought, do they not? [CONFIRMATION]

MICHAEL HAYES: Yes. [CONFIRMATION]

SENATOR ERDMAN: Okay. Just making sure because I think we're still experiencing it even though our friends in eastern Nebraska are receiving a lot more precipitation, as they usually do, but I just wanted to make sure that it was clear that we still have parts of the state that are in a drought. Of course... [CONFIRMATION]

MICHAEL HAYES: We keep hearing things from western Nebraska that they're still struggling with... [CONFIRMATION]

SENATOR ERDMAN: Of course my friends from Minden joke, that we're always in a drought because we don't get any rain anyways but they'll remain nameless. We appreciate your being here. The committee has a listing of some of your background and experience and as well as the description of what the Climate Assessment and Response Committee is required to do under statute, and so we will have that information but we appreciate your willingness and interest. Thank you for coming today. [CONFIRMATION]

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MICHAEL HAYES: Well, I appreciate the committee inviting me here. Thank you.
[CONFIRMATION]

SENATOR ERDMAN: Pleasure. Thanks, sir. Is there anyone wishing to testify in support of the appointment of Dr. Mike Hayes to the Climate Assessment and Response Committee? Anyone in opposition? Anyone neutral? That will close the hearing on the appointment. We will now proceed to LB751. Senator Christensen is here. Before we begin with his comments, can I see a show of hands of those who wish to testify in support of LB751. I see one. Can I see a show of hands of those in opposition? None. Can I see in neutral? Two. Okay. Whenever you're ready Mark.
[LB751]

SENATOR CHRISTENSEN: (Exhibit 1) Thank you, Chairman Erdman, and fellow Senators. I'm Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n, I represent 44th Legislative District and I'm here to introduce LB751. Last session, LB701 created a repairing vegetation management task force develop a plan to manage the overgrowth and evasive species in the streambeds in the fully and overappropriated basins. A grant program was created in Section 2-958 to disburse state funds to clear the streams between the banks and within a 100 feet from the banks of any natural stream in a qualified basin. LB751 increased the 100 foot strip, the distance from the bank, to 1320 feet. This would allow the state funds to be used to reach infestations of invasive species beyond the current 100 foot boundary and manage them more thoroughly. It would give an increased flexibility to the vegetation management process and create a larger buffer against regrowth near the stream. [LB751]

SENATOR ERDMAN: You can keep going, I'm not done reading yet but...(Laughter)
[LB751]

SENATOR CHRISTENSEN: Short and sweet. [LB751]

SENATOR ERDMAN: Just kidding. Thanks, Senator Christensen. Any questions for Mark? You handed out a letter from the Southwest Nebraska RC&D in Cambridge from Ted Tietjen. [LB751]

SENATOR CHRISTENSEN: Yes. He's actually the one that asked me to widen this strip. I'd been thinking about it also. He likes that terminology, flood plain, you'll notice in there. I like the flood plain language. It's just whether we can qualify the language of saying it's a 50-year flood, 100-year flood, and what that would look like. [LB751]

SENATOR ERDMAN: So, he's in support of the bill. He prefers a different way of determining the boundary or the limitations but he's generally in support of LB751?
[LB751]

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SENATOR CHRISTENSEN: Correct. [LB751]

SENATOR ERDMAN: All right. We will make that part of the record. Other questions?
Senator Karpisek. [LB751]

SENATOR KARPISEK: Thank you, Senator Erdman. Senator Christensen, is erosion a concern in this to go that wide? [LB751]

SENATOR CHRISTENSEN: See we're not taking all trees out or vegetation. That way it's just selectively taking like salt cedar, Russian olive, things that have been identified by, to be a noxious weed or large consumer that are not native. Also if you go back to the language in the original bill in Section 2-968 it says they shall develop and prioritize vegetation management goals and objectives, analyze the cost-effectiveness of the available vegetation treatment, develop plans and policies to achieve such goals and objectives. And the objectives are never going to be to allow erosion. And it is a voluntary program so farmers have agreed and signed off on this and so that allows for a lot of flexibility to make sure that we don't kill too much vegetation so that we have erosion. At the same time, generally they're doing it by spraying and killing the trees and then coming back in with crews and managing it that way and removing what's in the streambed as part of the process now so. [LB751]

SENATOR KARPISEK: Well, I know when we went to Alma this summer they talked about that they only were spraying the streambed because they were concerned about erosion so I didn't realize there was the 100 foot but then, do you plan on spraying it the same way? Helicopter again, and then if you do, how do you pick out what you're going to kill? Because it seem like anything that stuff touched out there, it was dead. [LB751]

SENATOR CHRISTENSEN: Correct. Well, the further out you're going to get some more...you're going to have to use ground crews or ATV's and sprayers, things this way, or the mechanical method, and that's why the language is still there for them to set up their management plans and goals and objectives. The idea was, you know, if you got a 100 foot line right now and there's a few more trees at four or five feet out, they can't legally go get them. Where, by widening the boundary, they can spray them because otherwise they're going to drop seeds and the roots are going to cross over and going to have reinfestation and kind of defeat the purpose of spending the money to begin with. [LB751]

SENATOR KARPISEK: Okay. Thank you, Senator Christensen. Thank you, Senator Erdman. [LB751]

SENATOR ERDMAN: Thank you, Senator Karpisek. Senator Wallman. [LB751]

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SENATOR WALLMAN: Thank you, Senator Erdman. Thank you, Mark, for being here. I know this is a big thing, management. Is there some money left in that original...isn't there, how much, was there two million left? [LB751]

SENATOR CHRISTENSEN: Yeah, it's either two or three million. I can't think what was appropriated each year but there's one more year of it authorized and then it'd have to come back to get more money from the state or have another funding project another year. [LB751]

SENATOR WALLMAN: And has that worked pretty well, you figure? [LB751]

SENATOR CHRISTENSEN: Yes, I went out and seen results of what was sprayed in '06 and '07 and it's very effective. You could see that what was done in '06 you just see to a line where they quit spraying. And you could even start to see the, in late August there when we had an interim study, you could see the benefits already starting on what was done in '07. [LB751]

SENATOR WALLMAN: Yeah. I appreciate that. I agree. I just...the NRDs wouldn't have enough money, you'd have to come back here? [LB751]

SENATOR CHRISTENSEN: Well, right now we, with LB701 tied up in court, we have no money period other than what's coming from the state so, but this is coming from the state in the budget so this program will go on this next year. [LB751]

SENATOR WALLMAN: Thank you. Thank you, Chairman Erdman. [LB751]

SENATOR ERDMAN: Thanks Senator Wallman. Senator Christensen, the intent of LB751 is to broaden the area, if you will, that areas could be used, there could be treated for vegetation management but it still would require that the funds that are used pay only for the activities that improve the streamflow. [LB751]

SENATOR CHRISTENSEN: Correct. [LB751]

SENATOR ERDMAN: So even though we're broadening it, whether we use the term flood plain or 1320 feet, they still have the restrictions in subsection 4 of that section that they only be used for instream flow and they have to be consistent with the policy established and the recommendation of the task force and so, as I understand what you're saying, you're more, you're trying to broaden it to get more flexibility but at the same point we still have to fall under it, you're not changing who is eligible to receive the funds. It's still the same process, it's just a little more flexibility but it's the same guidance. [LB751]

SENATOR CHRISTENSEN: That's correct and, you know, if you see foot that 500 foot

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should be there or whatever, that's not an issue with me. I just hate to see you go out 100 foot and have to leave a few seedlings that are going to cause you problems in the future. That was the objective. [LB751]

SENATOR ERDMAN: Fair enough. Any further questions for Senator Christensen? I don't see any. Thanks, sir. Will you be around to close? [LB751]

SENATOR CHRISTENSEN: No. [LB751]

SENATOR ERDMAN: Really? I'm not going to talk you into it, so go ahead. (Laughter) [LB751]

SENATOR CHRISTENSEN: Okay. [LB751]

SENATOR ERDMAN: We'll now take proponents on LB751. [LB751]

DUANE GANGWISH: Good afternoon, Senator Erdman, members of the committee. My name is Duane Gangwish, G-a-n-g-w-i-s-h, and I'm here today representing Nebraska Cattlemen. Our board met last week and voted to support this bill because of it's underlying issues with invasive vegetation which we have very strong policy on. The board did have quite, kind of an extended conversation about a concern that there be, we broadened the scope of the use of it without a corresponding increase in funding. Although at the same time, the concern being of trying to impact linear feet of streamflow so as to deal with the whole issue of LB701 and delivering water downstream. Might there not be a greater impact if the scope is confined rather than broadened. With respect to Senator Christensen's comment about there being things just outside of that 100 foot boundary, we recognize that if you have a crew there, if you have the equipment there, and if you have the materials there, and the law prevents you from going that little extra step that gets more benefit, again we would support that but we have some concerns. And I think the bill is crafted in such a way that the money, they may or may not go the full 1320 feet, and so we support the issue of giving some flexibility to those people that are on the ground. With that, I'd be happy to answer any questions. [LB751]

SENATOR ERDMAN: Thank you, Mr. Gangwish. Any questions for Duane? I don't see any. Thanks, sir. [LB751]

DUANE GANGWISH: Thank you. [LB751]

SENATOR ERDMAN: Next testifier in support. We had one more or not? I don't want to talk you into it if you don't want to do it. [LB751]

RUSSELL SHULTZ: I'm Russ Shultz, S-h-u-l-t-z. I'm Lancaster County Weed Control

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Authority superintendent and I'm representing Nebraska Weed Control Association. And we're certainly for the total aspects of this bill to trying to address the quality of the riparian areas and actually this extension would get at managing some of those areas outside of the streambed. And we think that this should be a part of the long-term needs there but we just had a couple of questions from the standpoint of priorities at this stage of the game. And the benefit to the water issue thing, we feel would be best addressed in the streambed itself and so, some of our concerns, I think, most of our concerns can be addressed in the administration of the bill. First money ought to be spent, a higher priority given, to the streambed and we need to be addressing the entire riparian area in the long run and so we, you know, we're not really necessarily opposed but we just want to emphasize the fact there needs to be priority first given to the streambed. [LB751]

SENATOR ERDMAN: Fair enough. Thank you. Any questions for Mr. Shultz? Senator Wallman. [LB751]

SENATOR WALLMAN: Thank you, Chairman Erdman. I agree, keep the stream. What would that cost, you think, roughly in a, per year? [LB751]

RUSSELL SHULTZ: Well, I guess, I'm glad you asked that question because I really think that the state ought to be looking at the long-range and hopefully the task force will be providing you recommendations in regarding to that but we're...it would increase several, several times. In other words, that's where most of the noxious or invasions are is out on the bank and so we're probably talking, you know, five, six times what we're already talking about. So I, hopefully, after this two-year period we're looking at a long-range program or this grant program to address that total needs for that riparian area and so we're talking about bigger money. [LB751]

SENATOR WALLMAN: Thank you. [LB751]

SENATOR ERDMAN: Thank you, Senator Wallman. Further questions for Russ? Don't see any. Thanks, sir. [LB751]

RUSSELL SHULTZ: Okay. [LB751]

SENATOR ERDMAN: Anyone else wishing to testify in support? I see none. Anyone in opposition? I see none. Anyone neutral? [LB751]

TRACI WITTHUHN: Chairman, committee, my name is Traci Witthuhn, T-r-a-c-i W-i-t-t-h-u-h-n. I am the Republican River Basin Coalition coordinator and that is a coalition comprised of three Republican River NRDs and while we agree with the premise of LB751, we feel that the state's funding for riparian vegetation management could be better served by altering the 1320 number, which is a quarter mile, and going with a more hydrological boundary such as a flood plain, just because that does vary

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from river to river, and so that's just what we'd like to see on the bill for a more effective use of funds. [LB751]

SENATOR ERDMAN: Thank you, Traci. Any questions? Senator Wallman. [LB751]

SENATOR WALLMAN: Thank you, Chairman. Quite a job you have, huh? (Laughter) I appreciate what you're trying to do. Thank you. [LB751]

SENATOR ERDMAN: Other questions? I don't see any. Thank you. Appreciate your coming. Anyone else in the neutral capacity? I see none. Senator Christensen waived closing. That will close the hearing on LB751 and we will now proceed to LB862, a bill by the Agriculture Committee regarding the funding of noxious weed provisions and Rick Leonard, research analyst for the committee, will open on the legislation. [LB862]

RICK LEONARD: (Exhibits 2, 3 and 4) Thank you, Chairman Erdman and members of the committee. My name is Rick Leonard, research analyst for the Agricultural Committee, R-i-c-k L-e-o-n-a-r-d. LB862, as Senator mentioned, is introduced by the Agriculture Committee. LB862 arises from interim study resolution and I have a number of items to please hand out. LB862 arises from an interim study resolution LR138 and represents a continuation of work to strengthen the state's noxious weed and invasive weed control effort that we began with the enactment of LB869. That was the Ag Committee's priority bill in 2004. The primary purpose of LB862 is to direct additional cash revenue streams to fully or more completely, at least cash-fund the Department of Agriculture's responsibilities under the Noxious Weed Control Act. The duties and responsibilities of the department are summarized in briefing materials that I've provided in your books. Let me quickly, it might help to review the funding history of this program, and as you see, one of the handouts that I'm handing out is a chart that outlines some actions, the budget actions that have affected this program funding since 2000. Program...our modern noxious weed program was sort of modernized by LB49 in 1989 and I believe Senator Dierks carried that legislation. The program was initially directed that programs would be funded 50 percent general, 50 percent cash. The cash funds were...current cash funds are derived from an earmark of \$30 of the pesticide product registration fee. In 2001, the Legislature removed the 50-50 general fund matching language from the statute. Starting in 2001, the general fund contribution has been reduced and or temporarily eliminated on a number of occasions which are described in this handout. Including last budget session, when budget actions taken by the Legislature cut the general fund of the existing program, which at that time was about 25 percent of the cost, cut that in half again and now the program, the current program is being funded for the biennium at about a 15 percent general fund match. The department...the administration has offered reduction or elimination of general fund contribution to the noxious weed program three times in the last five budget cycles, including the modifications offered for this year's budget. This history has led to interest of more fully cash-fund the program to allow for a more consistent program. And LB869

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provide, going back to LB869 we did provide two additional cash fund sources, \$25,000 a year annual transfers from surplus balance in a weed book cash fund and then 25 percent of the sales price of the weed book is now currently being deposited in the Noxious Weed Cash Fund. LB869 also provided new tools and with LB869 we've been able to fund the program at a 25 percent match as opposed to a historic 50 percent match. LB869 also provided two new tools and authorities in addressing noxious and invasive weeds. The most important initiative was the establishment of the Noxious weed and Invasive Species Assistance Fund that's found at Section 2-958.01 and competitive grants awarded from this fund. This actually is a section in the statute that's also amended by LB751. Motives for creating this grant fund. There was a recognition at the time that the invasives, the new generation of weed problems we had, required different addresses, means of addressing, particularly those in riparian areas. There was a need for noncoercive means to address invasives. The part of LB869, with the tool we had to address, was limited to the coercive one of, primarily the coercive one of compelling landowners to carry out their duty under the law to control noxious weeds on their property. There was a need to, we felt a need to encourage innovation research. We've also, there's recognition that vegetation management is increasingly an element of water management. That the riparian issues that we're facing require probably an unprecedented level of coordination and cooperation than we've seen in addressing other weed management problems. At the time there was also pending federal legislation that would have provided a competitive pass through grant programs for purposes similar to the state program. This bill was put in place in part to prepare our state to be competitive in competing for those funds. That bill was passed by Congress but as yet to be funded. However, the fund also provide, there are a number of other federal programs of which we do get federal matching dollars for. This bill, of course, is distinguished from LB701, this program that we're looking at today and wishing to fully cash fund, to fund, pre-exists LB701. LB701 utilized the infrastructure we created by LB861 but created a separate category of funding which was funded by a separate appropriation that was accomplished through LB701A last year. The program we're talking about was initially funded by a three-year environmental trust grant of \$250,000. I can...some of the handouts I've provided for you include a Noxious Weed and Invasive Plant Species Assistance Fund. There is some listing of the grants that have been awarded in the first two years and then also an attachment to that is a table showing matching funds and other funds we've leveraged with, that the recipients of this award have been able to leverage from other federal sources. It probably doesn't list the local sources. There is in the first handout, there is a showing of the NDA grants, of corresponding in-kind and other matching money contributions. You can see the combination too. We've been accomplishing about a four-to-one leveraging of funds of this program. The grant program initially was funded by a three-year environmental trust grant, \$250,000. We've completed two full cycles, we're in the middle of the third and the initial environmental trust fund grant should be exhausted this year. One of the outcomes that we believe that this noxious...the grant program has accomplished is, it's encouraged the development of the weed management areas. We now have the entire

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state, pretty much the entire state represented by...within a weed management area. This is not a governmental entity. It's more of a local stakeholder cooperative creation to create a format under which local stakeholders can cooperate on weed management issues. Briefly, then the provisions of LB862 enact a series of reallocations of fee and other cash revenues with the goal of, with the goal of fully cash funding the state noxious weed program and replenishing funds available for the grant program that I've discussed within that program. LB862 makes the following reallocations. It amends 54-857, the Commercial Feed Act. Under Section 3 of the bill to provide that the revenue from 2 cents of the current 10 cents per ton inspection fee imposed be remitted to the Noxious Weed Cash Fund. There is also added to that section text directing the onetime transfer of \$200,000 from the Commercial Feed Act Administrative Fund to the Noxious Weed and Invasive Plant Species Assistance Fund on or before October 1, 2008. And also Section 81-201.05 is amended to provide that certain schedule of annual transfers of \$25,000 from the Weed Book Cash Fund and 25 percent of the sales price of the weed publication that currently go to the noxious weed program be placed instead into the grant program, the Noxious Weed and Invasive Plant Species Assistance Fund. I've handed you a number of handouts. I've provided some projective cash flow projections for the Noxious Weed Act. No intervention under current scenario. This is a projected cash flow analysis with LB862 and attached to that also is analysis of the Commercial Feed Act. The top one again is no intervention and you'll see that we have a considerable surplus building in the Commercial Feed Act. This would be the result, both programs we believe can cash flow over seven years with the changes made by this bill. That would conclude my introduction. If you have any questions. [LB862]

SENATOR ERDMAN: Thank you, Rick. Any questions for Mr. Leonard? Senator Wallman. [LB862]

SENATOR WALLMAN: Thank you, Senator Erdman. I'm in the questioning mood today, Rick. I can see why our cash flow thing, you know, it's funded by, the way it's funded. Do you think it ought to be funded more with chemical? You know, if I get my chemical permits or, you know, applicator? [LB862]

RICK LEONARD: Applicator things. We've discussed that. I guess my instructions in drafting the bill was to avoid any increase in fees. If there were a surplus fee revenue that that would work. That's been discussed in the past. We've looked since 2001 trying to find different ways of funding this program. [LB862]

SENATOR WALLMAN: Myself, I always have to renew it if I want to keep it but I wouldn't have any trouble with adding on to that but do the extension agents have trouble with that, chemical companies? [LB862]

RICK LEONARD: We've, I think it's possible. I've not had those discussions with the

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representatives of those people. It's my understanding the pesticide registration fee, I think, as you know, we enacted a very considerable increase in those registration fees to fund the Water Quality Enhancement Fund and so those fees raise dramatically from like ninety, doubled and tripled in some cases. I think there's been a feeling that that maybe that sector's contributing to the program. There has been some discussions, informal discussions of the applicator fees potentially contributing as well. [LB862]

SENATOR WALLMAN: Thank you. Thank you, Chairman Erdman. [LB862]

SENATOR ERDMAN: Thanks, Senator Wallman. Other questions for Rick? I don't see any. Thanks, sir. Can I see a show of hands of those who wish to testify in support of LB862? I got two. Those in opposition. I got three, two. Neutral? One. Fantastic, three, two, one. Proponents, you're up. [LB862]

CHARLES BROOKS: (Exhibit 5) My name is Charles Brooks, C-h-a-r-l-e-s B-r-o-o-k-s. Senator Erdman and members of the Agriculture Committee, I am currently president of the Nebraska Weed Control Association. I'm also currently the chairman of the Riparian Vegetation Management Task Force which was created with the passage of LB701 during last year's legislative session. The Nebraska Weed Control Association was formed in 1947 for the primary purpose of establishing a uniform program to prevent the spread of noxious weeds across the state. Currently all 93 counties are due paying members of this association. I am here today on behalf of the Nebraska Weed Control Association to testify in support of LB862. The members of the Nebraska Weed Control Association, along with the Nebraska Department of Agriculture, share equal responsibility in the implementation of the Noxious Weed Control Act. The partnership that has developed between the two entities has resulted in an effective noxious weed control program being administered in Nebraska. The program in Nebraska is truly the envy of some of our neighboring states. The Nebraska Weed Control Association has testified in front of the Agriculture Committee several times over the past years. The most common reason for the testimony was in regards to proposed funding cuts that were being considered or had taken place. The Noxious Weed Program, which at one time received 100 percent general funds as its funding source, receives approximately 15 percent of its total dollars from the general funds today. Through efforts from Senators, such as Senator Dierks, a good foundation for funding was established by LB49 was passed in the late 1980's. While some associations may argue that they feel a portion of the noxious weed program implemented by the Department of Agriculture should continue to be funded by general funds, we applaud the Agriculture Committee for taking the necessary steps to ensure that this program does not further erode because of future general fund reductions. The passage of LB862 will eliminate the need for any general funds and will allow the Department of Agriculture to develop programs necessary for the continuation of strong county noxious weed control efforts. We understand that some people may question whether the collection of 2 cents per ton from commercial feeds sold in the state for the administration of the noxious weed

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program is appropriate. The Nebraska Weed Control Association's position is that it is fair and that it is not unreasonable for producers involved with the livestock industry to pay 2 cents tax on each ton of commercial feed, just as corn and soybean farmers inherently pay the pesticide fees already used to support the cash portion of the noxious weed department. The Nebraska Weed Control Association and the Nebraska Department of Agriculture have enjoyed a good working relationship over the years. We have seen the development of weed management areas where by noxious weeds and other invasive plants are controlled on a regional basis by weed superintendents, NRDs, RC&Ds, Nebraska Game and Parks, and others working together for one common purpose. These same individuals are working together to implement the provisions of LB701 which was passed by this Legislature during the 2000 legislative session. The Department of Agriculture plays a vital role in LB701 implementation, administering the grants, coordinating activities and meetings, and helping evaluate the final results. In summary, the Nebraska Weed Control Association would like to thank the Agriculture Committee for introducing LB862 and ask that you advance the bill out of committee. The bill eliminates the need to have any general funds appropriated, it does not create any type of new fees on anyone and most importantly, it assures the Department of Agriculture that they will have adequate funding for implementing the Noxious Weed Control Act. Thank you, and I'd answer any questions. [LB862]

SENATOR ERDMAN: Thank you, Charles. Any questions for Mr. Brooks? Senator Wallman. [LB862]

SENATOR WALLMAN: Thank you, Chairman Erdman. You know, right now, phragmites are they a noxious weed? [LB862]

CHARLES BROOKS: Phragmites is not a noxious weed listed right... [LB862]

SENATOR WALLMAN: Do you think it should be declared a noxious weed? [LB862]

CHARLES BROOKS: Well, I take that back a little bit. It is listed as a noxious weed in the counties of the Republican basin where the LB701 funds were appropriated. It is not listed as a noxious weed throughout the state of Nebraska. [LB862]

SENATOR WALLMAN: Okay. Appreciate that. Thank you. [LB862]

SENATOR ERDMAN: Thanks, Senator Wallman. Charles, appreciate your coming. [LB862]

CHARLES BROOKS: Thank you. [LB862]

SENATOR ERDMAN: Next testifier in support, please. And before we get too far along, I failed to introduce one of the most important members of our team today. Tim Freburg

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is the page for the committee today. Tim is from Holdrege. He's a political science major at the University of Nebraska-Lincoln. Thanks, Tim, for assisting us today. [LB862]

RUSSELL SHULTZ: (Exhibit 6) Russ Shultz, S-h-u-l-t-z, superintendent of Lancaster County Weed Control Authority. I'm here representing Lancaster County in support of this bill and we thank the committee for introducing this bill. Just to make a couple, three key points here I feel. At this point in time, we're talking about riparian vegetation and it's a major issue and it'll benefit the entire state and the water issues if we address those issues but we still have noxious weeds in the upland areas and that program needs to be maintained and strengthened. So it's certainly appropriate at this time we look at fully cash funding the state noxious weed program so that they can actually maybe do some new things. We need to be mapping the noxious weed extent statewide and we need to be alert to any new invading weeds. The quicker we jump on the weeds as they come into the state, the cheaper it is and more effective it is. I want to say to you, Senators, that the changes were made in the recent law in 2003 that created the Noxious Weed and Invasive Plant Assistance Fund has really gave a big boost to the efforts in the state and if that hadn't been done, we wouldn't be in a position of implementing the funds from LB701. We would not have got accomplished this year what was accomplished in the field if we didn't have that grant program in existence so that we could have tagged onto that with use of LB701 grant funds. And it also was an incentive for the state almost to become fully covered by local weed management areas and here again, if those weed management areas weren't existing out there, we would not have been able to accomplish what was done this past year. The grant, replenishing the grant funds is really key. Even though those, the provision was provided for in 2003, no state funds have gone into that grant program to date. And emphasis I'd like to make is, we need to strengthen our weed control authorities. They've been fully funded by counties in the past and we need to have more uniformity in carrying out the responsibilities at the county level and I think this state needs to look at how they can help do that. If this \$200,000 replenishment goes to the grant program, it will be the first money that the state has directly put into the county weed programs. You know, it is a state mandated program and really has not been funded. It's been funded by the counties and so, I think, it's...if we're going to continue to strengthen our programs, we need to look at how to strengthening the local authorities. But I could make a point to a fact that a little bit of money in this grant program is going to trigger a lot more money. And our Lower Platte weed plant management area which covers the 10 counties in the Lower Platte area have been involved and a grant program for last three, or two years for the state program, and also some federal funds. But as a result of that activity, the natural resource districts are stepping up and we're developing with the NRDs, Papio, the Lower Platte north and hopefully, the Lower Platte south, and central Platte, individually, streambed vegetation management programs in each of those counties. So we, just in this last year, we got a commitments of \$220,000 for that 10 county area with the NRDs stepping up. And so the leverage of impact of putting some money, and this is just a one-time deal, and I think the Legislature needs to be thinking about making

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annual funding to this grant program so we can leverage more money and get more accomplished. Thank you. [LB862]

SENATOR ERDMAN: Thank you, Russell. Any questions for Mr. Shultz? I don't see any. Thanks, sir. Next testifier in support, please. [LB862]

JOHN THORBURN: (Exhibit 7) Good afternoon, Mr. Chairman, Senators, my name is John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I'm the manager of Tri-Basin Natural Resources District in Holdrege. I would like to testify on behalf of the Nebraska Association of Resources Districts in support of LB862. Natural resources districts have developed a close working relationship with the Nebraska Department of Agriculture and county weed control superintendents over the last year, as we have worked to implement riparian invasive vegetation management programs, using funds made available through LB701. We've come to recognize the value of the liaison role that the Department of Ag's regional noxious weed inspectors can play, encouraging consistent noxious weed management efforts from county to county. As we deal with invasive riparian plants, which are capable of rapidly spreading from county to county, we believe that the need for coordination between counties and other political subdivisions on these control efforts will become increasingly important. We also believe that these inspectors can play a useful role in fostering development of weed management areas that develop comprehensive, interdisciplinary regional strategies for noxious weed control. We believe that LB862 provides an equitable mechanism for sustained funding of regional inspectors without imposing additional taxes. We urge you to advance this bill to the floor of the Unicameral. Thank you. [LB862]

SENATOR ERDMAN: Thank you, John. Any questions for Mr. Thorburn? Thanks, sir. Appreciate your coming down today. [LB862]

JOHN THORBURN: Thank you. [LB862]

SENATOR ERDMAN: Is there anyone else wishing to testify in support? I see none. We will now proceed to opponents. I believe there were two. [LB862]

PAT PTACEK: (Exhibit 8) Chairman Erdman, members of the Ag Committee, my name is Pat Ptacek, P-t-a-c-e-k, pronounced "Bacheck" in the old country, but for purposes of "Amerification" it's Ptacek here. So, appreciate the opportunity to testify in opposition to LB862 today. First of all, I want to commend the committee and in particular, Rick Leonard's hard work on developing several alternatives, and also I think framing the problem that does exist in the shortcoming of the noxious weed program. However, as the Nebraska Grain and Feed Association, which I am representing today, is the collector and the remitter of the current 10 cent per ton tax into the feed inspection program, philosophically, we're opposed to any shift of a program or of a fee that, even though it's administered by the same Department of Ag, in this sense, the Agriculture

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Department, it is going to now a totally unrelated program. We fought, and I remember when I worked at the State Department of Agriculture and when we did adopt the FIFRA program, we fought very hard as an agency to make sure that the pesticide program was administered by the Department of Agriculture for the benefit of agricultural producers as well as the horticultural interests in the state of Nebraska. Fortunately, we, as I understand, still have some of the lowest pesticide labeling fees in country since we were the last state in the nation to adopt the FIFRA program, back in the mid 1990's. We also oppose the elimination of any general fund spending for the program because all Nebraskans benefit from a vibrant noxious weed program. And I can assure you that some of the largest areas of problems can exist in vacant lots in large cities in the state of Nebraska. So we also have to take that into consideration. We're not here to support any alternative funding mechanisms but if we're going to make the stretch of transferring money from the per ton fee tax to the noxious weed program, I can give you an example today where I'm working with the national bird food institute in Sioux Falls, South Dakota, that are citing problems with noxious weeds in bird food originating from western Nebraska. Now, is that a farm gate issue? Is that an issue that maybe a producer ought to be checked off on to make sure that we eliminate or restrict or do a better job in eliminating noxious weed problems in bird seed? Is it another checkoff program that we want to look at since we've kind of taken a real dramatic course in LB701 in transferring some of the marketing and research checkoff funds to go into the water fund starting in 2012. With that, I will conclude my testimony on LB862. Again, we are opposed to it. We do stand ready to work with the committee to try to find some workable alternatives to this problem. With that, thank you very much, Senator. [LB862]

SENATOR ERDMAN: Pat, questions for Mr. Ptacek? Senator Dierks. [LB862]

SENATOR DIERKS: Pat, tell us some more about the bird seed problem. [LB862]

PAT PTACEK: Well, it's primarily a millet in sunflower seed that's originating from the Panhandle but it's a problem all across the country. [LB862]

SENATOR DIERKS: But what is the actual seed that's... [LB862]

PAT PTACEK: I cannot tell you the actual seed but it is so small, it is very difficult not only to restrict it at the farm gate but also when you're like a Pennington mill or something like that, they're very, very difficult to catch in the cleaning process. [LB862]

SENATOR DIERKS: But somehow or other they know that it's coming in, in that product. [LB862]

PAT PTACEK: Uh-huh. [LB862]

SENATOR DIERKS: I guess I was surprised that the product could move if they know

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that it's in there [LB862]

PAT PTACEK: It's minute enough but it is causing them some consternation and some concern with their national association anyway and they're looking to us to see if there are any ways or strategies that we could, you know, maybe work with, to develop a program and as a matter of fact, I've even talked to Mike Sullivan about this, the past president of the Wheat Growers Association. [LB862]

SENATOR DIERKS: You know, I think about what's happened to us and the way of some of these introduced weeds, it's costing us thousands of dollars to try to control some of those things that are introduced probably the same way. [LB862]

PAT PTACEK: Absolutely. [LB862]

SENATOR DIERKS: And for that to happen and nobody does anything about it, and maybe they're doing something but it doesn't sound like they are. [LB862]

PAT PTACEK: Right. I can certainly get, I will...well, I'll tell you this, Senator Dierks, I will find out what the seeds that they are particularly interested with and I'll get back to you on that. [LB862]

SENATOR DIERKS: Thanks, Pat. [LB862]

PAT PTACEK: You bet. [LB862]

SENATOR ERDMAN: Thanks, Senator Dierks. Any questions for Pat? Not this, something else. Is that pretty much your testimony? [LB862]

PAT PTACEK: Yes, it is, and as a matter of fact, as a...put it to you this way. We are the first, the primary first purchasers of most of the agricultural commodities in the state of Nebraska. We collect and we remit that checkoff for most of the commodity associations and the boards here in the state of Nebraska and we do that without any reimbursement. It's nice sometimes that we do have programs developed within the Department of Agriculture that's on a variable scale, where if there is a surplus in that fund, we might actually receive a discount in that per ton tax that we can then pass on to our customers. [LB862]

SENATOR ERDMAN: Given the history of the Legislature's budgetary process, and the ability for the Appropriations Committee to have a very good idea of where there are excess cash funds, is it realistic to assume that if we don't determine an opportunity to address the growing balance in the feed fund, that somebody else will use it for some other unrelated purpose just as much as you would oppose this one. [LB862]

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PAT PTACEK: Well, I kind of think that's sort of what's happening now at least on a legislative intent and certainly, on that variable scale. But it's my understanding, and I still believe this is true, and maybe the Department of Ag can correct me if I'm wrong, but the director does have the discretion to lower that per ton, to keep it in line, so that we don't have a need to come back on it or increase it. And I know that DDGs have probably contributed a great amount to that surplus. [LB862]

SENATOR ERDMAN: Fair enough. One has to be quicker than the other and I think the Appropriations Committee is always quicker than the Department of Ag's ability to manage a cash fund because of projections and other things but your opposition is so noted. [LB862]

PAT PTACEK: Thank you, very much. [LB862]

SENATOR ERDMAN: Thank you, Pat. Next testifier in opposition, please. [LB862]

ED WOEPPEL: (Exhibit 9) Senator Erdman and members of the Agricultural Committee. My name is Ed Woepfel, W-o-e-p-p-e-l, and I'm here today representing Nebraska Cooperative Council. The Nebraska Cooperative Council is the trade organization for the farmer owned cooperatives across the state and we represent about 90 percent of those farmer owned cooperatives in Nebraska. I'm here today to speak in opposition to LB862. As I say that, I want to be very clear that we are not opposed to the efforts to control noxious weeds and we certainly understand the need to do this in our state. These programs are vital for protecting our grazing lands and the other areas where noxious and invasive weeds become a problem. Our opposition is in the way that this would be funded. Our understanding of LB862 is that in addition to the other current sources of funding, 2 cents of the 10 cent commercial feed inspection fee would be transferred to the Noxious Weed Cash Fund. We understand that the Commercial Feed Administrative Cash Fund is currently operating, or generating excess funds and that's mostly due to the DDG issue and this perhaps is a very painless funding source. However, we have that philosophical concern when fees are transferred from one program to another. We believe that those who are paying the fee and using the program of the Commercial Feed Administrative Cash Fund should not be paying for another program. If Noxious Weed Cash Fund needs more funding, the source of that funding out to be the fees from the registration of pesticides and the profits from the sale of the weed book, and not the Commercial Feed Administrative Cash Fund. If the Commercial Feed Administrative Cash Fund is creating too large of a balance, perhaps the 10 cent per ton inspection fee should be lowered to 8 cents but in the end, we believe that those who use the program should pay for it, not another group who happens to be generating more funding than what they currently need. So we're in opposition to that and I'd certainly respond to any questions that the committee may have. [LB862]

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SENATOR ERDMAN: Thank you, Ed. Any questions for Mr. Woeppel? Ed, what if we required your members and Pat's members to buy enough weed books to fund this, would that be a...(Laughter) [LB862]

ED WOEPPEL: That would certainly be something we would consider. [LB862]

SENATOR ERDMAN: Good to know. Thank you. Anyone else in opposition? I'm sure their members are going to look forward to that. I believe the Department is going to testify in neutral. Please come forward and enlighten us. And there is an amendment on the floor to make them buy weed books, Mr. Director, if you want to comment on that. Just in case. You have a few extra copies laying around that you need to get off the shelf. [LB862]

GREG IBACH: (Exhibit 10) Senator Erdman and members of the Agricultural Committee. I am Greg Ibach, G-r-e-g I-b-a-c-h. I am the director for the Nebraska Department of Agriculture and I'm here to testify in a neutral position, to provide information about the Department's process in administering funds and the regulatory programs, and answer any questions you might have about this bill. The department, I'd like to, you know, start off by expressing though that the department does support and believe in the importance of the noxious weed program that this bill aims to support. The noxious weed program has represented a challenge to the Legislature and the department to match funding with the goals and expectations for the program for a number of years. And I appreciate the spirit of the bill in its attempt to address this challenge. The cash funds administered by the department support our regulatory responsibilities and each have their own unique purpose, many tied to a funding mix which includes general and federal funds. Among the things we've discussed with regulated industries are the level of fees and the balance maintained in such cash funds. In the regulatory arena, the department strives to communicate with the regulated industries so they have opportunity to have input into the activities which directly affect their livelihoods. In some cases, we have established industry review boards, advisory committees or identified the representative associations for this purpose. This interface provides the department with the regulated industry's perspectives so we can prevent our regulatory programs from becoming unnecessary obstacles to conducting business in our state. Many funds have a fee structure that at the beginning over assesses the costs but over several years of normal rising administrative costs, those excesses are absorbed. This is so fees assessed can be somewhat uniform and not change each year. The feed cash fund has grown as a result of increased tonnage traded in Nebraska largely due to the growth in the distillers by-products market. Through the years of interface with regulated industry, the department has developed a philosophical and historical position regarding fee levels and cash fund balances. Generally, if we determine the level of a cash fund is in excess of what is needed to support the operation of a regulatory program, we have chosen to reduce the fee level of the regulated industry. Relevant to today's discussion, when the

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significant carryover balance in the feed program cash fund became apparent to the department last year, the department began the process of developing rules and regulations to reduce the feed program tonnage fees. We currently have a regulation change submitted to the Governor that would reduce the feed tonnage fee to a level that we believe supports the feed program cash fund but eliminates a large carryover balance. In deference to the Ag Committee, we have asked to have this proposed regulation change placed on hold until the deliberations here are concluded. With that I will conclude my testimony and would be happy to answer any questions you may have. I also have Rich Reiman here, that is the division administrator for Plant Industry, and he would be able to answer any technical questions that I may not be able to answer. [LB862]

SENATOR ERDMAN: Thank you, Greg. Any questions for director Ibach? Greg, help me understand the, not the philosophical but the practical aspects of this. We have gone through a process within the last 7 years of seeing this program targeted by the administration in their budget. Your efforts last year restored half of the funding so instead of zeroing it out, it went from \$120,000 to \$60,000 so there was some funding appropriated. Notwithstanding what you're telling us, I mean, we're trying to find a solution to fund the program. We recognize that either this choice or raising a fee or charging a fee or something is just going to be as palatable as any other one and we're interested in working with folks to find this out. But if the argument is that we continue to operate on the plan that we're on, there will be no money. Because notwithstanding the arguments that some of the biggest issues are in urban areas, the folks in urban Nebraska aren't voting to fund this program with the red and green lights on the floor of the Legislature. Walk me through what you think, as the director of Ag, might be some options that we should consider or some guidance that you may give us that we may not have because we're not trying to do this because we think this is the only way. We're trying to make sure that whatever we do provides for the stability cash funding it, in my opinion, while it removes the obligation of Nebraskans in general to pay for it may not be ideal but practically speaking, it's more consistent and delivers us a better opportunity for the success of the program than what we're currently doing now and fighting year-to-year as to whether there will be funding at all. [LB862]

GREG IBACH: Yeah, and what you're referring to is, you know, part of the process we go through as a state agency and the budgetary processes to identify 5 percent that we offer as the, as a variance, if you will, from what we request. And what Senator Erdman is referring to is, that this program has quite regularly comes up on that list of proposed cuts and those aren't cuts that necessarily we, as a department, want to make. But they're part of the process that we go through in identifying what programs we think that if we had to, you know, withstand a cut, which would be the ones that we would identify, and to go to choose which ones to put on that list is never easy and they sometimes, those are based on what is statutorily required of the department to do, and if we aren't necessarily statutorily required to take certain actions, then those are more likely to

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show up on that list than actions that we're required to do on a day-to-day basis. And so, you know, I understand what you're trying to address and why, you know, why the department, what your question there. As far as if we were going to stick with our historical and philosophical departmental policy, we would probably identify or try to identify a cash fund source that, like some of the testifiers before, that would be more in line with a pesticide program. And so we would keep the Peter and Paul, keep Peter paying for Peter's program, and Paul paying for Paul's programs maybe more so. It was also referenced that we have some of the lowest registration fees as far as chemical and pesticides in neighboring states. Part of that is because the department has resisted and held a real hard line with the federal government as far as when the FIFRA program was, when we took over that program, there was a funding mix between the federal government and states. And we've kept a real hard line with EPA and others as to, you're going to fund this much of our program. Other states have allowed EPA to erode more of their contribution into that fund and we, and have maintained, you know, this level of inspection or regulation as EPA has ratchet it down their funding mix. And we continue to say, if you're, want to bring this down, then we're going to bring this side down. How long we are successful in that fight, may be coming to an end as well. So those registration fees may be called upon at that time as well. I think Rich Reiman was showing me some figures a while back, or just prior to coming over here and testifying, that a \$10 registration fee increase would put about what, \$110,000 to not quite exactly what you're getting with the 2 cent tonnage fee. So, I don't know if that answers your question but you asked me to maybe suggest other areas and then now we'll have those interest groups, you know, showing up at my door. (Laughter) [LB862]

SENATOR ERDMAN: We just wanted to move the bulls-eye from us to you. (laugh)
Other questions for director Ibach? Don't see any. Thanks, sir. Appreciate you coming.
[LB862]

GREG IBACH: Thank you. [LB862]

SENATOR ERDMAN: Anyone else wishing to testify neutral on LB862? Don't see any. That will close the hearing on LB862. We thank you for coming and I'm sure we'll be visiting with you soon, especially those that have volunteered to buy weed books. We'll get you that application. We will now open the hearing on LB860. Senator Burling has been patiently waiting and he is here to introduce the bill for our consideration. Whenever you're ready, Carroll. [LB862]

SENATOR BURLING: Good afternoon, Senator Erdman and members of the Ag Committee. I'm Carroll Burling, B-u-r-l-i-n-g, and I represent District 33 in the Legislature and I'm here today to introduce LB860 which would remove the requirement that applicants for grain warehouse or grain dealers licenses in Nebraska would be subject to fingerprinting. This would remove that requirement. In order to get a license in Nebraska for a grain dealer or warehouse, grain warehouse, the applicant must be

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subjected to a criminal history background check and fingerprinting. I decided to introduce this bill when economic development people across the state came to me and said, we need some help here because we're the only state in the area that has this requirement. Other grain producing states around us, I understand, do not have this requirement. The Department of Economic Development feels that we're sending the wrong message to people who look at Nebraska to open up grain warehousing or grain dealerships and that requirement makes some of them unhappy. I was on this committee in '04 and '05 when we passed this law to require that. That was at a time, as some of you remember, when we were having some fraud in this state, producers not getting their money. It seemed the right thing to do at the time but I'm just asking the committee to take another look at it in the light of what we've learned. This bill would strike the fingerprinting portion and leave the criminal history portion and I appreciate all the work that you're, I mean the analyst has done on this, his information has been very helpful and so I just encourage the committee to discuss it, take a look at it. If you think there's a better solution to this situation than LB860, I would be glad to work with the committee in the days and weeks ahead to arrive at something that might work for us. So with that, I'll try to answer any questions. [LB860]

SENATOR ERDMAN: Thank you, Senator Burling. Any questions for Carroll? Don't see any. Thanks, sir. Appreciate it. [LB860]

SENATOR BURLING: Thank you very much. [LB860]

SENATOR ERDMAN: Can I see a show of hands of those that wish to testify in support of LB860? Those in opposition? Those neutral? I got one in opposition, two in neutral. Mr. Vap, please come forward. There will be no proponents at this time. [LB860]

JERRY VAP: (Exhibit 11) Good afternoon, Chairman Erdman, and members of the Agriculture Committee. My name is Commissioner Jerry Vap, V-a-p. I represent the 5th District of the Nebraska Public Service Commission. I'm here today to testify in opposition to LB860. As you know, LB860 eliminates the fingerprinting requirement from the application process for both grain dealer license and a grain warehouse license. Although both the Grain Dealer Act and the Grain Warehouse Act would continue to require a criminal history check as part of the licensing process, it is our understanding that without the fingerprints of the applicant, the State Patrol is unable to complete a national background check. The information available without fingerprints would be limited to convictions in Nebraska only. Not all applicants for dealer and warehouse licenses are Nebraska natives. Increasingly many applicants are located in other states or have moved to Nebraska. Grain dealers and grain warehouse managers handle significant financial transactions typically affecting entire communities. The fingerprinting and criminal background check requirements were added in LB735 in 2003 as a part of a comprehensive legislative response to the failure of the Atlanta Elevator, Inc., in which the frauds perpetrated by its operator resulted in losses exceeding \$4.5 million. That

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response also included stronger financial reporting, security, auditing requirements and increased penalties in addition to the national background checks. LB735 resulted from a commission investigation involving many participants from the grain industry. The committee need only to reexamine the failure of the Atlanta warehouse and the devastating impact an unscrupulous operator can have on an entire community in order to understand the need for this requirement. Although claims filed with the commission as a result of the failure exceeded \$4.5 million, only \$1.6 million was eventually covered by the warehouse bond and the proceeds from any sale of grain. Bonds capped at \$300,000 for grain dealers and \$500,000 for warehouses are insufficient to cover potential losses resulting from a dishonest warehouseman or dealer. Those significant financial risks must be offset by reasonable checks at the application stage to ensure that dealers and operators have not been convicted of a felony financial crime, reducing some of the potential financial risks for individuals conducting transactions with licensees. The potential financial impacts today of a failure similar to Atlanta for the same number of bushels could potentially be in excess of \$12 million due to the significantly higher grain prices today. In light of these significant risks, the fingerprinting and background check requirements currently in place are limited in scope applying only to primary parties. It is not overly burdensome or costly. The national background check currently required is a one-time expense of \$38.00. Without the fingerprinting requirement and conducting a Nebraska only background check, the cost is \$15.00. Again, the background check is a one-time event. The commission began implementing the background checks on January 1, 2004. The commission strongly believes that any minor inconvenience is outweighed by the protection the requirement provides for patrons of grain warehouses and dealers. We would ask that you not advance LB860. I'd be happy to answer any questions you may have. [LB860]

SENATOR ERDMAN: Thank you, Mr. Vap. Any questions for Jerry? Jerry, as I understand the question that appears to be before the committee is not whether or not we can...well, maybe there's two caveats to this. It's whether we have the background check or not, because my understanding is that in order to do the national background check, you have to have the fingerprints. [LB860]

JERRY VAP: Correct. [LB860]

SENATOR ERDMAN: Of the people that have applied under this act since its been in effect from January 1, '04, how many people have failed to pass the background check? [LB860]

JERRY VAP: None. [LB860]

SENATOR ERDMAN: How many of the people that have applied have not been Nebraskans? [LB860]

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JERRY VAP: That I don't know but we do have several grain dealers that are licensed in Nebraska but do not reside here. Other states do not have a stringent of licensing laws as Nebraska does and some of these people that we have had, that we've discovered operating illegal in Nebraska are people that seem to move from state to state and consequently, it's difficult to run them down. [LB860]

SENATOR ERDMAN: Was the individual responsible in the failure of Atlanta elevator a criminal before? [LB860]

JERRY VAP: It is our understanding that he had had a financial, or had a felony on his record from another state and no one was aware of that fact. There was no requirement to check for it and this individual had been in business in Atlanta for a grand total of 5 years when he created a \$4.5 million loss for the people of that area. [LB860]

SENATOR ERDMAN: Okay. Other questions? I see none. Thanks, sir. [LB860]

JERRY VAP: Thank you. [LB860]

SENATOR ERDMAN: Appreciate your testimony. Is there anyone else in opposition? I see none. Neutral? If you guys want to switch it off so that way you're...you guys must have met beforehand today to coordinate your stories, huh? [LB860]

PAT PTACEK: (Exhibit 12) Whispering behind the scenes, absolutely. I have some handouts here. Chairman Erdman, members of the Ag Committee, again my name is Pat Ptacek, P-t-a-c-e-k, representing the Nebraska Grain and Feed Association today. Curiously, we are neutral on this issue. We were bloodied up pretty bad in the wake of the Atlanta elevator situation. And at that time, we, as a working group, the Nebraska Cooperative Council, the Nebraska Grain and Feed Association and the Public Service Commission hashed out over a number of, sometimes contentious meetings, what we currently have today for the tightened up Nebraska grain laws. In light of that fact, and in light of the fact that the former owner and president of the Atlanta elevator, who really did kind of cause all the walls to tumble down over what we thought was a fairly decent administrative assistant to make producers whole in light of an elevator failure, he was doing things that no one really imagined could be done. And not only on the warehouse side but on the grain dealing side, which also subject our warehouse members to do a licensing now if you're doing direct deliver grain, you're not...that warehouse license just isn't going to do it anymore. You have to be also licensed grain dealer if you're going to do transactions like that. Obviously, one of the things that came with that was the fingerprint requirement and it did rub our members up quite abrasively when it came to light that they had to...they were basically guilty until proven innocent by their fingerprint conduct. But in light of any other regulatory, without a, in light of any other or recommendation of any other regulatory substitute for the fingerprinting, regardless...I mean, perhaps complete 100 percent financial transparency, that's about the best thing

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that we have to avoid a situation that developed like in Atlanta. But I'd be more than willing to work with the committee and Senator up here, to come up with an alternative to this problem. Since its passed, I think I've gotten maybe about three, four complaints from folks that have actually gotten a new license in the state of Nebraska. Other than that, we've haven't heard anything for two or three years since this bill has passed. [LB860]

SENATOR ERDMAN: Okay. Thank you, Mr. Ptacek. Any questions for Pat? Don't see any. Thanks, sir. [LB860]

PAT PTACEK: Thank you. [LB860]

SENATOR ERDMAN: Mr. Woeppel, I believe you were the last testifier today. Is anyone else wishing to testify? Okay. [LB860]

ED WOEPPEL: (Exhibit 13) Senator Erdman and members of the Ag Committee. I'm Ed Woeppel, W-o-e-p-p-e-l, here today representing the Nebraska Cooperative Council, the trade organization for the farmer owned cooperatives. We're testifying in a neutral position on LB860 but I want to give you some background on that issue from our perspective. The Nebraska Cooperative Council has always maintained that licensing grain dealers and warehouses is of utmost importance to our entire industry. We believe that standards should be set high in order to maintain confidence and protection of those producers that are marketing grain in our state. When fingerprinting was proposed in 2003 under LB735, the council supported that legislation because we felt it contributed to the integrity of the entire licensing process. Shortly thereafter during testimony or implementation, excuse me, of LB735, we learned that some of our members were being faced with the requirement to submit fingerprints twice if they had the grain license as well as the C-Store that was, had alcohol and tobacco licenses. So we worked with Senator Fischer to introduce LB222 in 2005, and at that time we were able to require the agencies to share the fingerprints so that people weren't having to do it twice. Since that's occurred, we have not had any complaints from any of our members in terms of the fingerprinting. Just no negatives at all. That brings us back to this bill and as I said earlier, I think the standards for licensing should be as high as possible to protect those Nebraska grain producers. These standards can contain a lot of components such as inspections by the granting agency or requirement of full scope audits for grain warehouse licensees. Throughout this discussion, we want to encourage you to keep in mind that the most protection for those producers is what we need to see when we have people that have hundreds of thousands of dollars at risk when they deliver to an elevator or to a warehouse. So we believe the standards need to be high. With that I'd respond to any questions. [LB860]

SENATOR ERDMAN: Thank you, Mr. Woeppel. Any questions for Ed? I don't see any. Thanks, sir. Anyone else neutral? Senator Burling, you're recognized to close. [LB860]

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SENATOR BURLING: Thank you, committee, for your time today. I think you can see that Nebraska being the first and only state in the region to implement this policy, what kind of a reaction you can you get. You can get a surprise, unanticipated, never heard of such a thing type of response. I just know that the lack of proponents today was connected to the weather so we can chalk that up. And another solution might be if our esteemed Chairman of the Ag Committee could convince his counterparts around us to adopt the same policy, then, I think, that might solve the problem too. So, thank you very much, and I encourage you to address it, and I'll be willing to work with you. [LB860]

SENATOR ERDMAN: Senator Burling, the esteemed (laugh) Chair of the Ag Committee tried to convince the Chair of the Ag Committee in Kansas to leave us alone on water but he didn't really want to do that, so I'm not sure if I'll have any luck there either but it's worth a try. Any questions for Senator Burling? I did remind him that we settled with Wyoming and we were downstream of them, (laughter) so we'll see if it carries any weight. Thanks, sir. Appreciate your being here. [LB860]

SENATOR BURLING: Thank you. [LB860]

SENATOR ERDMAN: That will close the hearing on LB860 and that will close the hearings for the Ag Committee this afternoon. Thank you all for coming. I would entertain a motion to go into Executive Session. Moved by Senator Dierks, seconded by Senator Dubas. All those in favor say aye. Aye. We are in Executive Session. []

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Disposition of Bills:

LB751 - Held in committee.

LB860 - Indefinitely postponed.

LB862 - Advanced to General File, as amended.

Chairperson

Committee Clerk