

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

General Affairs Committee  
February 05, 2007

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[LB301 LB546 LB637 LB638]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 5, 2007, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB546, LB637, LB638, LB301 and gubernatorial appointments. Senators present: Vickie McDonald, Chairperson; Russ Karpisek, Vice Chairperson; Merton "Cap" Dierks; Annette Dubas; Philip Erdman; Mike Friend; Ray Janssen; and Don Preister. Senators absent: None. []

SENATOR McDONALD I'm the chairman of the General Affairs Committee. We have a few members absent, but we're going to get started anyway. To my left is Senator Dubas from Fullerton, Senator Janssen from Nickerson, we have Senator Dierks from Ewing, Senator Karpisek from...is that Wilber? Sounds good. []

SENATOR KARPISEK: With an E. []

SENATOR McDONALD: With an E? []

SENATOR KARPISEK: With an E, not a U. []

SENATOR McDONALD: Okay. From Wilber. []

SENATOR KARPISEK: I'm going to teach everybody by the time I get out of here. (Laughter) []

SENATOR McDONALD: Our committee staff is here and that's Laurie Lage, and our legal counsel. And Nicole Trexel is our committee clerk. Our page is Marcus. Marcus has been with us before so Marcus is here today. Today we're going to hear three bills, I think. []

SENATOR DIERKS: Who are you? []

SENATOR McDONALD: Four bills. I'm sorry, what? I'm Senator Vickie McDonald. I thought I said that. Anyway, we're going to have a gubernatorial appointment this morning. So we'll have David Gardels. Is he with us today? Okay, if you would come forward. Welcome. []

DAVID GARDELS: Thank you. I'm David Gardels and a nominee for the Nebraska Arts Council. [CONFIRMATION]

SENATOR McDONALD: Okay. Would you spell that? [CONFIRMATION]

DAVID GARDELS: Sure. It's Gardels, G-a-r-d-e-l-s. [CONFIRMATION]

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SENATOR McDONALD: And can you tell us why you would like this position?  
[CONFIRMATION]

DAVID GARDELS: Well, good thanks. Well, I was approached actually by the Nebraska Arts Council to take this position and I'm originally from Battle Creek, Nebraska. Up your way, Senator. And grew up in rural Nebraska and had a real appreciation for the things that brought the arts out around the state which had a great deal of influence on my life. And since I've been in Omaha now my whole legal career, since 1979, and been extremely involved in the arts community and the chairman of a number of arts boards, and so that's how I came to know the folks at the Arts Council and I just have a real enthusiasm for the work that they do and for seeing that we have support for the arts across the state. [CONFIRMATION]

SENATOR McDONALD: Is this a reappointment or initial appointment?  
[CONFIRMATION]

DAVID GARDELS: No, this would be new. [CONFIRMATION]

SENATOR McDONALD: So this would be new. Any questions for David? Yes, Senator Dierks. [CONFIRMATION]

SENATOR DIERKS: David, are you an artist? [CONFIRMATION]

DAVID GARDELS: Well, I'm a singer. [CONFIRMATION]

SENATOR DIERKS: Oh, I see. So quartets, that sort of thing? [CONFIRMATION]

DAVID GARDELS: Well, currently mostly church choir, but for many years my wife and I were the chairs of the Nebraska Choral Arts Society which is one of our volunteer choruses in Omaha, which now is a very large organization with five or six children's choirs that travel internationally. That's been a passion of ours. And then we've been very involved in Opera Omaha the whole time we've been in Omaha. I completed two years of chairman of that board last year. [CONFIRMATION]

SENATOR DIERKS: Good. [CONFIRMATION]

DAVID GARDELS: So we have a real good sense of the work that you do and how important the grants of the Nebraska Arts Council are to these organizations.  
[CONFIRMATION]

SENATOR DIERKS: Thank you. [CONFIRMATION]

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SENATOR McDONALD: Senator Janssen. [CONFIRMATION]

SENATOR JANSSEN: By the way, who are you replacing? [CONFIRMATION]

DAVID GARDELS: I don't know. [CONFIRMATION]

SENATOR JANSSEN: Okay. [CONFIRMATION]

DAVID GARDELS: I just think there were three vacancies on the... [CONFIRMATION]

SENATOR JANSSEN: All right. Okay. Good enough. Yeah, well, so you're a singer?  
[CONFIRMATION]

DAVID GARDELS: Yes. [CONFIRMATION]

SENATOR JANSSEN: That's great. Have you ever thought about singing with any  
barbershops, the Society for the Prevention and Encouragement of Barbershop  
Quartets singing in America? [CONFIRMATION]

DAVID GARDELS: Yeah, I can't sing in that close of harmony. You get past Bach and  
I'm lost. [CONFIRMATION]

SENATOR JANSSEN: Oh, I bet you can. You can always sing lead. [CONFIRMATION]

DAVID GARDELS: I also spent a lot of money on the arts, too. I have a son who is an  
art student at the Kansas City Art Institute and where they're doing every kind of art  
known to man. It's a lot of fun actually. [CONFIRMATION]

SENATOR JANSSEN: Well, I think you'll enjoy your tenure on the Arts Council.  
[CONFIRMATION]

DAVID GARDELS: Thank you. [CONFIRMATION]

SENATOR JANSSEN: It's very interesting, covers a lot of different grounds.  
[CONFIRMATION]

DAVID GARDELS: Absolutely. Many disciplines. [CONFIRMATION]

SENATOR JANSSEN: You bet. Thank you for being here today. [CONFIRMATION]

DAVID GARDELS: You're welcome. [CONFIRMATION]

SENATOR McDONALD: Any other questions? Thank you, David, for coming.

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[CONFIRMATION]

DAVID GARDELS: Thanks very much for having me. [CONFIRMATION]

SENATOR McDONALD: Well, today we're going to be hearing four bills--LB546, LB637, LB638, and LB301. After the bill openings, we will first hear testimony in support of the bill, then testimony in opposition, and then finally neutral testimony. If you're planning to testify in any capacity, please pick up a sign-up sheet that's on the table at the back of the room at both entrances. Please fill them out before you come forward and then hand them to the page as you come to the front. As you come to the front and testify, please say and spell your name slowly so we can get it into the record. If you have handouts make sure that you have at least 10 of those so that we can give those to the page so they can hand those out to all of us. And last housekeeping note is to please shut off any pagers or cell phones. And with that, we'll have LB546, Senator Synowiecki. Welcome. [LB546]

SENATOR SYNOWIECKI: Thank you, Senator McDonald, members of the General Affairs Committee. I am John Synowiecki. I represent District 7 in the Legislature, it's from south Omaha. Today, I do bring LB546 for your consideration. It's a bill to authorize the State Racing Commission to license and regulate wagering on historic races. Nebraska and the sport of thoroughbred racing and quarter horse racing have realized a long rich tradition of mutual benefit. Thoroughbred racing, in particular, is a good fit for Nebraska. Since 1934, thoroughbred racing has complemented our state's agriculturally-based economy. In recent years, however, thoroughbred racing, Nebraska's racetracks, and thoroughbred breeders have struggled against various forms of expanded gambling both within Nebraska and in surrounding states. LB546 merely gives the thoroughbred racing industry a tool to be competitive. There will be other individuals testifying after me that are better qualified to address the technical aspects of this system. Like current simulcast thoroughbred racing, this bill will authorize racing that originates from an outside location and is transferred through the racetrack's current simulcast system. The outside system stores tens of thousands of digitized official races that have been run at regulated racetracks. Prior to placing a wager, the patron is provided past performance information; however, the names of the thoroughbred, the jockey, the race or racetrack are all concealed until the patron places his or her wager. The maximum bet to be placed on the race is \$10 and enough of the race must be replayed before wagering may take place on another race. This bill was introduced in 2005 as LB745 during the 99th Legislature and was advanced to General File by the committee with amendments. I do not believe this initiative represents expanded game--gambling. This is an advanced type of pari-mutuel wagering of regulated races, simulcast to license racetracks. Thoroughbred and quarter horse racing is a part of Nebraska history, both economically and culturally. Therefore, I believe it is imperative to give the State Racing Commission the authority to enhance Nebraska's thoroughbred racing's competitiveness in the gaming market. I want to

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thank you, Senator McDonald and members of the General Affairs Committee for your consideration. [LB546]

SENATOR McDONALD: Thank you, Senator Synowiecki. Any questions? Senator Dierks. [LB546]

SENATOR DIERKS: Senator Synowiecki, how many pari-mutuel tracks are there in Nebraska today? [LB546]

SENATOR SYNOWIECKI: Well, Senator Dierks, we have one in Omaha, South Sioux, Grand Island, Lincoln, and Columbus. Did I nail them all, Ray? [LB546]

SENATOR JANSSEN: I think so. [LB546]

SENATOR SYNOWIECKI: Five of them. [LB546]

SENATOR DIERKS: What's the total length of days we have racing in Nebraska? [LB546]

SENATOR SYNOWIECKI: You know, there will be others up here to let you know. I know it's much more diminished than it was during its heyday back in the 1980s and early nineties. Right offhand, I don't know. [LB546]

SENATOR DIERKS: Thank you. [LB546]

SENATOR SYNOWIECKI: Thank you. [LB546]

SENATOR McDONALD: Senator Janssen. [LB546]

SENATOR JANSSEN: Senator Synowiecki, these machines that you're talking about, how many different races have they...fifty some thousand different races, something like that isn't it? That they have to choose from? [LB546]

SENATOR SYNOWIECKI: Yes, there's thousands upon thousands as I understand it. [LB546]

SENATOR JANSSEN: Yeah. So it would be virtually impossible for someone to distinguish, the horses aren't named or anything like that. It would be almost impossible for someone to recognize which race that was and then have a sheet with a list of races. If I recall right it was fifty some thousand different races that they choose from. The act of fraud...it would be almost impossible to predetermine what the outcome would be. [LB546]

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SENATOR SYNOWIECKI: Yes, you're right, and there's a lot of races in the...I don't like to call them machines, I like to call them enhanced simulcast machines. Basically what they are is enhancing simulcast which is already legal. They're in operation--I believe and perhaps people behind me will correct me--they're in operation in Arkansas and it's been abundantly productive for the thoroughbred breeders in that state in terms of what it's done to the purse structure. And that's what I'm trying to do here is trying to look at methods and ways and tools in which we can enhance the purse structure for the state thoroughbreds, because Senator Janssen, as you know, you know full well that very few foals are dropped in the state of Nebraska anymore. They're taken to Iowa, they're taken to Illinois, and we're losing all that agricultural-based economic benefits of that in the agricultural economy. And I just want our purse structures to be significantly enhanced so that our thoroughbred breeders in this state will start dropping their foals again in our state. [LB546]

SENATOR JANSSEN: And there is a limit on the wager in the bill. Isn't that correct? [LB546]

SENATOR SYNOWIECKI: Yes, I believe it's \$10. [LB546]

SENATOR JANSSEN: Ten dollar wager? [LB546]

SENATOR SYNOWIECKI: Yeah. The committee voted this bill out last session and they put an amendment in there, and I believe that's part of that amendment is what the committee did was \$10, I believe. [LB546]

SENATOR JANSSEN: Okay. Thank you. [LB546]

SENATOR McDONALD: Any other questions? How do you get around the constitutionality of allowing this type of machine or enhanced simulcasting, as far as the expanded gambling issue in the state of Nebraska? [LB546]

SENATOR SYNOWIECKI: Senator McDonald, that's an excellent question. There will be individuals behind me that are trained in the law that might be better apt, but let me give it a shot. I think it's exactly what we do now. I can go out to Horsemen's Park and bet any number of horse races from various tracks outside the state on a Saturday afternoon. It's not unusual for them to have 10, 15 tracks going at one time. What this does...so that's all legal now and that's simulcasting. And what this does is say we'll broaden the number of races you can bet that come to us from an outside source, and they're historic races, and it's a method by which it can compete a little bit more. It's a little bit more...you don't have to sit around and wait for 15 minutes, 20 minutes for every post. It speeds it up a bit. Makes it a little bit more competitive to some of the gaming that is available in other states, and particularly in the surrounding states, and even more particularly for the Omaha market the various casino operations that are in

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Council Bluffs. [LB546]

SENATOR McDONALD: Do you watch the whole race? Can you fast forward it? Or do you watch just a little bit at the end? How does the machine work? [LB546]

SENATOR SYNOWIECKI: From what I understand, and again there will be people behind me, but the most successful state with these has been in Arkansas, I believe. And I don't know exactly how they do it in terms of the specifics, but it's been quite encouraging relative to the breeding aspect of the thoroughbred racing in that state. [LB546]

SENATOR McDONALD: Okay. Senator Janssen. [LB546]

SENATOR JANSSEN: Senator Synowiecki, on regular simulcasting I don't believe there's a limit on what you can wager on those, is there? [LB546]

SENATOR SYNOWIECKI: No, I have a self-imposed limit, but no there is no...(laughter). [LB546]

SENATOR JANSSEN: Well, I mean there's no limit. In the bill, there is a \$10 limit on what you can wager. [LB546]

SENATOR SYNOWIECKI: Yes, yes, and you're right. You can go to Horsemen's Park today or Grand Island race track, and bet \$100 on one race if you would wish to. [LB546]

SENATOR JANSSEN: Okay. Thank you. [LB546]

SENATOR McDONALD: Thank you. Would you care to close? [LB546]

SENATOR SYNOWIECKI: You know, I will reserve my right to close, I guess. [LB546]

SENATOR McDONALD: Okay. All right. [LB546]

SENATOR SYNOWIECKI: We'll see. Thank you. [LB546]

SENATOR McDONALD: How many testifiers do we have as a total today? Five, okay. Those would come forward that support the bill. Those that are in support of LB546 would you come forward? Have a seat, please. [LB546]

DENNIS LEE: Thank you. Senator McDonald, members of the committee, my name is Dennis Lee, L-e-e. I come to you in two capacities today. First, I'm the chairman of the Nebraska State Racing Commission, and I represent...I'm the commissioner from the

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Second Congressional District. Statutorily, there are three commissioners on the racing commission--one commissioner from each of the three congressional districts. I represent district two. Commissioner Bob Volk from Arlington represents district one, and Commissioner Janell Beveridge from Paxton is the third district representative on the commission. I'm also coming to you today in my individual capacity with the unique situation of being an attorney, and so Senator, I will address your question concerning the constitutionality. I don't really have any prepared remarks today, but before I summarize what I feel are the proponents and the advantages of this bill, Senator Dierks, I want to address your question that you had of Senator Synowiecki. The Racing Commission in Nebraska has licensed five thoroughbred racetracks. And of course, statutorily all of those tracks have to be nonprofit corporations that are approved by the commission. Those racetracks are Fonner Park in Grand Island, State Fair Park here in Lincoln, Horsemen's Park in Omaha, Horsemen's Atokad Downs in South Sioux City, and Agricultural Park in Columbus. In addition, the commission has licensed for the last several years as a quarter horse facility a track in Hastings, Nebraska, and they run a weekend of quarter horse racing which is also pari-mutuel racing. With regards to this particular bill that is before the General Affairs Committee, I'd like to take some of you back about 20 years, to about 1986 or 1987, and at that time there was a similar bill that was before the Legislature--I believe I was in this same room at the time--to approve simulcasting, inter- and intrastate simulcasting. Prior to that time, the only wagering that could be done pari-mutuelly was if races were actually being conducted at that particular racetrack. And back at that time, all of the racetracks that I just mentioned were in existence. Horsemen's Park was not, Ak-Sar-Ben was in Omaha. And so during the days of racing, the racing calendar at that time would go from about the second week of February...I believe there was the longest season that I can remember, the racing ended at Atokad the last weekend before Christmas in December, and it was generally a four- to five- day live racing week. Several states, early in the eighties, began offering their races on a simulcast signal to other racetracks across the country, and Nebraska was a little late getting into that. We did, and I believe the statute was approved in either 1986 or 1987. At that time, the racing industry in Nebraska was in a similar crossroads that I think the people that will be speaking after me can identify, that we're kind of in the same kind of situation now economically. At that time, handle was dropping, people were going to experiment with other forms of entertainment, other forms of wagering. At that point I think we were just getting into the Powerball and the lottery at some point thereafter. And so simulcasting was seen as the proverbial shot in the arm to the racing industry, not only interstate, but also intrastate. Let me deal with the latter first. The intrastate simulcasting has, by its very definition, allowed fans in Omaha, for example, in February, March, and April, and sometimes the weather conditions aren't the best, rather than having to drive to Grand Island to address heavy opportunity to watch and wager on the horse races at Grand Island, they could go to Ak-Sar-Ben. And frequently many people did after the simulcasting bill was ultimately approved by the Legislature and signed by the Governor. The interstate also opened up a new avenue of opportunities for pari-mutuel wagering of horse racing fans in

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Nebraska similar to what was offered in, at that point, many other states. Now as we sit here 20-plus years later, there isn't a state in the country that offers pari-mutuel wagering that does not also offer simulcasting. And Senator Synowiecki mentioned earlier concerning...Senator Janssen, in response to your question about simulcasting being able to go not just to Horsemen's Park today--well, they're not racing at Fonner Park yet until Friday--but not only after Friday to wager at the races at Fonner Park, but also on races at 28, 30 different racetracks across the country everyday. Same is true for the other thoroughbred simulcasting facilities that we have in Nebraska. With regard to simulcasting, the bill that's before you today is very similar to what the bill was before this body 20 years ago. The simulcasting by its very nature was pari-mutuel. It was adopted by the Legislature and with the direction that the Racing Commission adopt the rules necessary to address the changes in technology as they occurred. I could be wrong because I don't have my finger on that statute very often, but I don't believe that statute has been amended if at all since it was adopted 20 years ago. The reason is the writers of that LB had the foresight enough to consider the fact that there will be changes in technology, back in 1986, and there have been changes in technology. And so since that time, the Racing Commission has taken opportunities and advantage of the discretion and direction that this Legislature gave the commission to adopt rules with regards to simulcasting, to amend issues with regards to the wagering, to develop wagering integrity issues that ensured the integrity of not only the wagering being placed in Nebraska, but also the accepting of the signal when we're getting interstate signals are coming into our tracks in Nebraska from outside of Nebraska, and also the transmission of the signal of the Nebraska races to the facilities that accept our signal outside of the state of Nebraska. That simulcasting was what it was hoped to be, and that was a shot in the arm to the Nebraska racing industry. And it still remains that way today. All of our tracks, essentially, are opened 364 days a year for purposes of simulcasting. There was a question earlier. I don't remember which one of you had it, but the Racing Commission pursuant to the simulcasting statute, one of the protections of that statute was in order to protect live racing there has to be a minimum number of days. Initially, it was 90 percent. A racetrack, in order to simulcast, had to run 90 percent of the days that it raced live racing in 1988. Subsequently, that was amended to reduce that figure down to 80 percent. That calculation means that in order for any of the racetracks in Nebraska to be able to simulcast in 2007, the Racing Commission has to approve and the tracks have to run a minimum of 103 live racing days. In November, the commission met at our annual meeting to accept the applications of our racetracks for the 2007 racing season, and we are going to run this year, barring any complications with weather, a total of 107 days of live thoroughbred racing. So we always make sure that we meet that 103 day test, because simulcasting has been such a critical component of the industry. So here we are now, 20 years later and we're looking at a similar situation that the Nebraska racing industry was looking at back in 1985 and 1986, and we have a bill before you today that's called historic racing. There will be those that may come before you today and challenge the historic racing as a constitutional question, as a fact that it is not wagering, or the fact that it is a slot

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machine. I can tell you as an attorney all of those allegations are simply not true. From a constitutional standpoint it's well-settled law that the constitution of Nebraska provides for pari-mutuel wagering to be approved by the Legislature and to be regulated by the racing commission. The historic wagering bill that's before you today is, in fact, pari-mutuel wagering. Senator Synowiecki referred to Arkansas and he's absolutely correct. Arkansas was the first state to get involved in historic wagering. It is now taking place, I believe, in Oregon. There's a bill in the Virginia Legislature now to also approve and adopt historic racing. It's not coincidence that this is now coming before various Legislatures around the country. The racing industry, not just in Nebraska, but across the country all have very difficult times if they are competing in states that do not offer other forms of wagering. Across the river in Iowa, the racing industry does not have that problem for obvious reasons. When historic racing began in Arkansas...I've, over the course of the last several years, when I knew this was coming up as it did last year, I've had several conversations with Cecil Alexander who is the chairman of the Arkansas Racing Commission. And similar situation in Arkansas is what is proposed before you today in that a bill was adopted and approved in Arkansas creating the statutory authorization for historic wagering, and also giving the racing commissioner of Arkansas the opportunity to regulate and adopt all necessary rules and regulations to accomplish the legislative intent. I talked with Mr. Alexander and one of their concerns, obviously, to address Senator McDonald, your question, revolved around constitutionality. Is it pari-mutuel? And they sought the counsel and advice of the Arkansas Attorney General, and the Arkansas Attorney General researched it and determined--and their statute, coincidentally, is not identical, but very similar to our current statute and constitutional authorization--and the Attorney General in Arkansas opined that in fact it is pari-mutuel. After talking several times with Mr. Alexander, I did have several conversations with an assistant Attorney General in Arkansas concerning that determination of pari-mutuel wagering, and based on what he shared with me and some of the other issues that I've read, there's no doubt in my mind that this is, in fact, pari-mutuel. So this bill does not kick open another form of wagering. We already have constitutionally-approved and statutorily-approved pari-mutuel wagering on horse racing. This bill simply does now, in 2007, in my mind, what the simulcasting bill did in 2006 in that it created another opportunity for the racing industry...it won't level the playing field by any means, and I'd be silly to represent that it would, but in my mind not only as the chairman of the Racing Commission, but having the opportunity to talk with several other commissioners in various parts around the country that do have horse racing and have had the experience of historic racing, while it won't level the playing field, it will bring us a little closer. The most important thing of this whole aspect of what we're doing here today and your consideration as to whether this bill should be advanced to the floor of the Legislature is what effect will this have on the Nebraska agricultural industry? If you look at the statute, the whole purpose of the Nebraska State Racing Commission is to license racetracks that meet the pari-mutuel nonprofit test. We've endeavored to do that during my tenure on the Racing Commission and I think we've done a good job. I think the racing tracks have done an outstanding job of playing the cards that they're dealt.

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The industry, though, universally, in the agricultural industry as a beneficiary of the horse racing industry, has suffered over the last many years since the...you can look at the closing of Ak-Sar-Ben to be maybe the watershed moment with regard to that. A comment was made earlier concerning, might have been Senator Synowiecki, about the reduction in the number of foals that are being dropped in Nebraska in comparison to what they were even 10 years ago. And that's a dramatic statement as to what effect the reduction in pari-mutuel handle is having on the industry in terms of the breeding industry. The comment was absolutely on track that those mares that were dropping foals in Nebraska, many of those, I've talked to many breeders who have taken their operations over to Iowa because they take advantage of the breeder legislation in Iowa, the better purse structure that Prairie Meadows offers for their tracks and their races that we are unable to offer here at our tracks in Nebraska. Primary reason that the tracks in Nebraska are unable to offer that type of a quality purse structure, as much as they want to, it's simple economics. They're not able to do that. So I'm coming here also today to advise you that the Racing Commission does endorse and support this bill with regard to historic wagering. We feel that it is as critical now as simulcasting was 20 years ago to this industry. The constitutionality of it is solid constitutional issues with regard to the fact that it is pari-mutuel. It is being operated in other states. Senators, the industry needs your help. And the industry needs the help that this bill can ultimately provide. Certainly there's going to be the same concerns that you may have had 20 years ago with simulcasting, and I would recommend that as this bill does, that you endorse the concept, support the concept, and give the Racing Commission the opportunity to adopt necessary rules and regulations. And also take into consideration as a simulcasting statute did 20 years ago, that yes, even though we think we've got a great technology now, 20 years from now technology is going to change. And the commission needs to have that authority to modify our rules and modify our regulations to keep up with technology. Those are really all the remarks that I wanted to share with you today, most important of which is not only do I support this bill individually, but the Racing Commission does as well unanimously. I'd be happy to answer any questions. [LB546]

SENATOR McDONALD: Thank you, Dennis. Senator Dierks. [LB546]

SENATOR DIERKS: Dennis, how long have you been on the Racing Commission? [LB546]

DENNIS LEE: I was initially appointed to complete the unexpired portion of, at that time, Harry Farnham's term in 1988, and I've been on the commission since then. I've been chairman of the commission since 1989. [LB546]

SENATOR DIERKS: At the peak of racing in Nebraska, how many racing days did we have? [LB546]

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DENNIS LEE: You know, Senator, that's a very good question and I'm going to give you an estimate, because I don't have that number readily available. I kind of have an interesting background from that standpoint. Prior to my being appointed to the commission by Governor Orr, I was the attorney for the commission from 1983-1987 when I resigned to go back into private practice, because I started I had children and I missed being around my kids. But I believe at one point in time in our heyday, so to speak, when Ak-Sar-Ben was running 85 days, I believe the total number of racing days we had in Nebraska was about 185. I could be plus or minus eight or ten, but that's my best guess as to what we had. [LB546]

SENATOR DIERKS: So how has the handle changed between those heydays and today as far as dollars available for the... [LB546]

DENNIS LEE: Well, you know, there's going to be several people that will speak after me that will address the dollars and cents concerning their tracks. What I can share with you is that I don't know what the percentages are going back to the heyday, as it were, of Nebraska racing, but the handle isn't near what it used to be. There were strings. I worked my way through high school, college, and law school at Ak-Sar-Ben in various capacities, and there were strings of days that would go from one year to the next when Ak-Sar-Ben's handle would be at least a million dollars a day. One of those days during the week when Ak-Sar-Ben would run, because I didn't have to report to work until later that day, was a Wednesday when races would start at 2:00 p.m. Wednesday at 2:00 p.m. I never understood why Ak-Sar-Ben would want to run in the middle of the week at 2:00 p.m. in the afternoon. Crowds were down. Still handled a million dollars that day. And one of the reasons is that, I remember one of Ak-Sar-Ben's slogans way back when at that point is Ak-Sar-Ben was the largest racetrack between Chicago and Denver. And actually at one point Centennial Track in Denver closed and so it was the largest racetrack from Chicago to some point west of Denver, because after Centennial closed there wasn't any other racing. But there was a string of days at Ak-Sar-Ben...and Ak-Sar-Ben, everybody kind of looked at Ak-Sar-Ben at that time as the big apple and in reality it was. It was located in the biggest community in the state and had the largest crowds, the largest dollar amount of purses. Had more races run at Ak-Sar-Ben than any other track. But I know Hugh Miner will be addressing you from Fonner Park and Hugh has his finger on the pulse, Senator, of the difference in handle much better than I would, but I can share with you, honestly, that it's been a dramatic drop from what it was. [LB546]

SENATOR DIERKS: Thank you. [LB546]

DENNIS LEE: Thank you. [LB546]

SENATOR McDONALD: Senator Janssen [LB546]

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SENATOR JANSSEN: Thank you for being here today, Commissioner Lee. There was another track in Nebraska. I don't know if you recall this or not, but Madison... [LB546]

DENNIS LEE: Madison. [LB546]

SENATOR JANSSEN: ...Madison had...it wasn't a very long season for them, but they did quite well. [LB546]

DENNIS LEE: Well, it's interesting, Senator, that you mention Madison because back in about 1983-85 we had three other racetracks that ran quarter horses. We had Custer County Fairgrounds in Broken Bow... [LB546]

SENATOR JANSSEN: Were those quarter horses? [LB546]

DENNIS LEE: Quarter horses. Yes, sir. [LB546]

SENATOR JANSSEN: Quarter horses, yes. [LB546]

DENNIS LEE: Madison was a thoroughbred track. We had Custer County Downs in Broken Bow, Queens City Downs in Hastings, and I can't remember the track now in Deshler. Thayer County Downs, I believe it was. And of course, this was before simulcasting came into the picture and thoroughbred racing in Nebraska, the pari-mutuel end of it and the breeding end of it as well as always been the big daddy, so to speak. And quarter horse racing has been trying to steady its ground and move forward. But essentially Nebraska at that point in time, I believe by 1988 or thereabouts, Broken Bow had closed, Deshler had closed, and the only quarter horse track remaining running in Nebraska at that time was Queens City Downs in Hastings. And I believe Queens City shut its doors finally in about 1989 or '90. The reason there again was economics. They were unable to compete with what the purse structure of similar quarter horse tracks that were offering their races in Kansas and Oklahoma. And you're a quarter horse trainer, you're going to make the economic decision that makes most sense. You can either come to Deshler and race for two or three days a week at purses that may be 50 percent less than what you can run for in Oklahoma. And that was really the decision. This bill that we have here today that you're considering, I wouldn't be a bit surprised if you hear later that there might be a track in Nebraska that without this help is going to shut its doors. And there might be more than one track as a matter of fact, because all of our race tracks are having extremely difficult times even with simulcasting both inter and intrastate. But interesting you mention Madison, Senator. It took me down memory lane there a little bit. [LB546]

SENATOR JANSSEN: Another question. Now the quarter horse track, the only one we have left, is the one in Hastings. Now is that under your authority also? [LB546]

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DENNIS LEE: Yes, sir. Yes, sir. Hastings has come to us several years for a license for pari-mutuel wagering, run pretty much a weekend meet in September. It's almost like a, for those of you who are familiar with the New York track Saratoga, they try and almost make it a little Saratoga atmosphere with racing on Saturday and Sunday as well. They come to us and they submit their application. Since it is pari-mutuel wagering it does come before the commission and we have approved it. [LB546]

SENATOR JANSSEN: Okay. Thank you. [LB546]

SENATOR McDONALD: Commissioner Lee, what have other states done in regards to horse racing? Have they been able to hold their own? Have they closed their tracks altogether? What has happened in other states that are in a similar situation that we are in the state of Nebraska? [LB546]

DENNIS LEE: Looking just to the north, to South Dakota, there were several tracks there that were very viable, similar to our tracks here in Nebraska. And I believe all but one of them has since closed. There was a track that was just north of Sioux City called Park Jefferson, ran pretty much the same type of schedule that we ran at Columbus. And so there were a lot of horses that would go to Columbus. And when a race wasn't ridden that they would meet the qualifications for, the trainer would get the condition book out for Park Jefferson and may ship up to Park Jefferson. Colorado is another state that has had some problems with regards to maintaining its opportunity to run horse races. I'm not familiar enough to want to share with you what Arapahoe's situation was. Centennial closed down. That was primarily a real estate, economic situation where that real estate where Centennial was located was much more valuable for economic development of real estate in commercial and residential property. But Arapahoe was built way out east of Denver, at least a 40-minute drive east of Denver. And they ran into some very difficult problems with regards to being able to maintain their structure. And Colorado is a little different than Nebraska, too, because Colorado has casino wagering in several locations around the state. There are several states that have had the tracks have either ceased operating or have reduced their number of days simply because of economics. I'm familiar with a track in Massachusetts that ended up shutting down just because it couldn't compete even with simulcasting. And it's not coincidental that--I can't think of the name of that casino now--but there was a major Indian casino within about a 45-minute drive of that racetrack. Senator, what I have seen over the years as gambling has morphed in different states is that the states that have approved other forms of expanded wagering, most specifically things like slot machines, table games, things along those lines that you'd find in a casino similar to Iowa, those facilities, those racetracks there have done very well. Case in point, when Iowa approved casino gambling and Prairie Meadows opened a casino--Prairie Meadows is a racetrack in Des Moines--Prairie Meadows when it first opened it offered thoroughbred, quarter horse, and harness. They did the whole thing. And they found very quickly that I think they were overextending themselves and they cut back a little bit

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on the harness, a little bit on quarter horse, and maintained their thoroughbred. Well, over the passage of time they began to really feel the economic crunch of being able to stay open for that long. They were within 90 days of defaulting on their bonds. Citizens of Polk County had guaranteed the bonds to build a racetrack at Prairie Meadows. Within 90 days of defaulting on their bonds, coincidentally on that date the bill authorizing expanded gambling in casino operations in Iowa went into effect. Prairie Meadows opened its casino. Sixty days later the bonds were no longer in default. Sixty days after that the bonds were paid off. That's the impact that expanded gambling had in Iowa with regards to being able to maintain the integrity of the financial status of a track like Prairie Meadows. That's not what is before this committee. That's not what this bill does. That's not what the Legislature may ultimately consider if you approve it. That's expanded gambling with regard to slot machines, table games, and casino operations. This is not that. Historic racing is not a slot machine. Historic racing is pari-mutuel. It's been so determined to be by the Arkansas Attorney General. It's so determined to be in Oregon. And it's in the process of meeting that same determination within the Virginia Legislature. I believe it's pari-mutuel wagering and I think if anybody who's going to talk with you today, I'm as familiar with it as anybody with regards to what is going on in other jurisdictions around the country, and I've had the benefit of speaking with the folks in Arkansas, the racing commission there, members of the Attorney General's Office that made that determination of pari-mutuel. This bill clearly is pari-mutuel wagering. [LB546]

SENATOR McDONALD: Thank you. Senator Dubas. [LB546]

SENATOR DUBAS: Thank you, Senator McDonald. Mr. Lee, based on the \$10 limit that's in this bill, do you have any projections of what you think this will raise as far as revenues for your tracks? [LB546]

DENNIS LEE: You know it's hard to say. It is very successful now in Arkansas, but like anything else it took time to build up to that point. I know that there will be some people speaking after me that will be able to address your question more directly. I can share this with you from my perspective. Like simulcasting was in the eighties and early nineties, it's going to take time for the market of the racetracks in Nebraska to be able to get accustomed to it. It's going to be a new thing. And like anything else it's going to take time for the fans that come to the racetrack to develop a comfort level with it. It's like anything else. It's a new thing. It's going to take time for them to get comfortable with it. That was the experience in Arkansas. It was a positive automatically, but it's become much more positive with regard to the handle. I do believe, and I'm speculating but I believe this is correct, I think that the handle now in Arkansas on historic wagering is more than it is on live racing and more than it is on simulcasting because that's what the people want. I hate to get back to the same thing, but as technology has changed it so changed our lives pretty much every day. Before we'd have to wait until the newspaper came to read it in the afternoon. Now you can go to your office and click on

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it on your screen. That's what people want. People want a more advanced, quicker form to be able to have an answer to their question whether it's what is in the newspaper today, what times are the movies playing tonight, or can we bet on a race that's historic wagering. [LB546]

SENATOR DUBAS: Thank you. [LB546]

SENATOR McDONALD: Thank you. [LB546]

DENNIS LEE: Thank you, Senator. [LB546]

SENATOR McDONALD: Any other testimony in support? Support of LB546? [LB546]

EDWARD ZIEMBA: Yes. My name is Ed Ziemba. I am past president of the Nebraska Quarter Horse Racing Association and I am also a member of the board of Hastings Exposition and Racing, the entity that conducts quarter horse racing in Hastings. [LB546]

SENATOR McDONALD: Would you spell your name, please? [LB546]

EDWARD ZIEMBA: My last name is spelled Z-i-e-m-b-a. [LB546]

SENATOR McDONALD: Thank you. [LB546]

EDWARD ZIEMBA: Okay. My comments will be brief. As I mentioned, I'm a past president of the Nebraska Quarter Horse Racing Association and also sit on the board of Hastings Exposition and Racing. Obviously, my area of interest is in quarter horse racing. Nebraska is centered in one of the most concentrated quarter horse regions of the world. We have, in Nebraska, approximately 20,000 owners of registered quarter horses. Those owners own approximately 90,000 registered quarter horses. Obviously a significant number and those owners and those horses are spread statewide. Hastings Exposition and Racing has developed a strategic business plan to take advantage of--for Nebraska, for central Nebraska, and specifically Hastings--that locale and what it is that we are trying to do there. A very significant and shall I say maybe most important step in that plan is the passage of LB546 and the ability to wager pari-mutually on quarter horse racing. Horse racing overall is entertainment. There isn't any question about that, but I think more importantly and more importantly to those 20,000 people in Nebraska who are involved, that it's an agricultural-based business. And oftentimes those owners, farmers, ranchers that might choose to avail themselves of this opportunity to get involved in quarter horse racing, those folks are small operators. I'm here really voicing their support for passage of this. The race meet that has been conducted in Hastings for the past few years is limited in scale and we don't want to bite off more than we can chew. We want it to be successful and it has been,

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but we need this. It is primarily a meet that has been conducted by volunteers. Those of us who are on the board are volunteers. We have a local church group, a Catholic organization, that sells refreshments. Some of us who are on the board work the grounds. The business communities very much came and been in support of what it is that we're trying to do there. We all would appreciate that and I guess speaking for specifically myself, this might generate enough funds where we could get a qualified tractor driver out there instead of me. That is all I have to say. If you have any questions I might attempt to answer them. If not... [LB546]

SENATOR McDONALD: Thank you. Any questions? [LB546]

EDWARD ZIEMBA: Thank you very much. [LB546]

SENATOR McDONALD: I see none. Thank you. Next proponent. [LB546]

DICK MOORE: Good afternoon. I'm Dick Moore. I'm here on behalf of... [LB546]

SENATOR McDONALD: Would you spell your last name, please? [LB546]

DICK MOORE: (Exhibit 1) M-o-o-r-e...on behalf of the Thoroughbred Racing Association of Nebraska which is the association of the racetracks that Mr. Lee referred to earlier as well as the general manager at Horsemen's Park in Omaha. I think there's been some very good comments made today on the state of the industry and what has happened over the years, very much so when you're talking about the handle. I think there was a question earlier about that. We've seen the handle decrease over the years with the competitive forms of gaming that have taken place in the state. It started out actually in Iowa with the dog track, which was an early problem for Ak-Sar-Ben. It's gone on with things such as the Keno, the Powerball, and the casino gaming that surrounds the state of Nebraska. It's made difficult for the horse racing tracks as it has across the country. Even in Horsemen's Park, for an example, we've been opened this is our tenth year. We hit a high of \$65 million in handle and that's decreased by about \$10 million over the last five years. What has caused that? One of the big things that we've seen is Chris Scherf who is the executive director of the Thoroughbred Racing Association of the United States has said there's a 10 percent decrease in handle every year across the United States because of internet betting. That's going on daily. It's a major, major thing that's affecting the horse racing industry as well as, in our case, the remodeling of the Horseshoe Casino for about \$90 million made a decrease in our handle. But across the state that suffered. We haven't had the tools to compete, but we think with the historic racing that we're talking about here today, it's a pari-mutuel racing tool that we could use to try to help ourselves, and I think that's extremely important if we look at the fact that the agricultural impact in this state with the breeding from the food to the shoeing, the care of the horses, is a major, major item in Nebraska. We have an industry here that needs to be able to help itself in order to stay alive. And we've

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been fortunate in being able to do that to this date, but I think this tool would give us...it's not the total answer that, you know, we're not going to be able to offer the purses that they're offering in a lot of the states that have casinos at the racetrack, but certainly we can increase the purse level so that the people that are involved in the industry can make a living that makes a little bit of sense. It's a tough industry right now and this would sure be a help for what we're trying to do. Any questions? [LB546]

SENATOR McDONALD: Senator Dierks. [LB546]

SENATOR DIERKS: Dick, I think a pretty common perception across the country is that horse racing started declining, the track as at the time that the casinos started opening across the river in Iowa. And as a result why Ak-Sar-Ben was closed and your track is open. How does your track do today compared to when you opened it? Are you holding your own with your handle? [LB546]

DICK MOORE: No. As a matter of fact, we opened and reached a high of \$65 million in handle and now we're back into the mid-fifties. And I think there's a number of reasons why that's handled, but as I said the internet gaming that's going on. You know, it's supposed to be illegal but there's no way to police it, I guess, at this point. The casinos in Iowa, the major dollar expenditure that they did over at the Horseshoe, that's had an impact. [LB546]

SENATOR DIERKS: Thank you. [LB546]

SENATOR McDONALD: Any other questions? I see none. Thanks, Dick. [LB546]

DICK MOORE: Thank you. [LB546]

SENATOR McDONALD: Any other testifiers in support out there? Anyone else wishing to testify in support after our testifier here? Okay. Good afternoon. [LB546]

LYNNE SCHULLER: (Exhibit 2) Good afternoon, Chairman McDonald. My name is Lynne Schuller, S-c-h-u-l-l-e-r, and I'm the executive director of the Nebraska Horsemen's Benevolent and Protective Association. I'm here today to testify in support of LB546. The Nebraska HBPA is, in fact, the owner of two of the five thoroughbred tracks in the state so we're well aware of the financial situation. At our March board meeting, on the agenda is a discussion of whether or not we should, in fact, close Horsemen's Atokad Downs in South Sioux City. The handle or sales, if you will, are down far enough that we are using some funds from Horsemen's Park in Omaha to keep that facility open. And if you talk to our general membership they say that that's money that could be going toward purses which is where we spend every penny we can. So at that point you have to make some hard decisions about where your money should be going. I brought along the racing form to illustrate to you, if you open the form

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and see the statistics and the past performances of the horses that you used to bet, all of that information is available on the machines that we're talking about. But it's in the form of--I don't know if you've ever heard of this or not--but I'm part of that USA Today generation that loves colorful graphs and pie charts and things like that. And all of that information is available on a pie chart and it's according to the color of the horses. And so it's still the same information, it's just in a different format that I think is more attractive and more user-friendly to be honest with you. I am a person who goes to the track and I usually spend the equivalent of what it takes for me to go to the movies and get a babysitter now that I have a child. And it seems to be very intimidating for me sometimes to go up and place my bet because there are people that have been there for years and years and can box bets and do things like that and you have to be really with it to read the program. I have seen these machines before and I think they're a lot more user-friendly. And I think that they would allow us to compete in the current gaming society. I firsthand have seen people that have decided to get other professions because the prize money in Nebraska is just no longer at the level where you can afford to make a living any longer and when you start losing those people you start seeing the situation in South Sioux City where you're talking about possibly having to close that track and laying off over a hundred employees that it takes to put on a live meet. It's much more track friendly to run simulcasting because you simply don't need as many employees. When you run a live meet, you've got a gate crew, you have to have, racing officials, track veterinarian, the list goes on and on of the employees that they have to have to conduct a live meet. If we had these machines, it would enable us to at least hold our own on the live days we currently have. To answer your question, Senator Dierks, at one point we had 200 live days when Ak-Sar-Ben was running. We're now down to 107 and that's with the direct subsidy from HBPA for six of those live days. So without this step, I think that you're going to see in the very near future the demise of horse racing in general, which in turn, puts out of work the feed people that feed the horses, the people that get premium prices for their hay on the racetrack. You get about double on the racetrack what you get out in the open market for hay. Things like that that maybe the general public doesn't see everyday, but is very much a reality in those communities. Just as a theoretical, if Fonner Park, for example, ever closed I don't know what that community would do with that facility. State Fair Park, maybe, could absorb the loss, because they could use that track one day a year for their state fair activities and their monster truck show, but for Fonner Park it would be a very difficult situation for those people. Columbus, as well, has had a problem. They came to us in the last couple of years and asked HBPA for a direct financial subsidy, because without our subsidy they could not afford to stay open, and as a result of that we're looking at also having to not conduct their county fair, because the money they receive from simulcasting and horse racing in general is the money that they use to subsidize their county fair every year. So without that money coming in, they would look at the possibility of just not having a county fair any longer. So more and more we've been very willing to subsidize what the racetracks need, but as a result less and less money has been coming back to our membership and that's the problem. If you have any questions I will answer them.

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[LB546]

SENATOR McDONALD: Senator Janssen. [LB546]

SENATOR JANSSEN: Lynne, how long do you think it would...if we would approve this, how long, do you think, would it take to turn the industry around? [LB546]

LYNNE SCHULLER: I think it would take probably about three years. I would anticipate that the first couple of years you'd see a very small increase, but not a significant amount. I think it takes a couple of years for neophytes like me to hear that there's an alternative way that you can play pari-mutuel that's a little more user-friendly. I think it takes a couple of years for word of mouth to get out there, but you know, if the machines were out there I think that the tracks could make the adjustments to survive those couple of years until a little more income came in from those machines. [LB546]

SENATOR JANSSEN: Thank you. [LB546]

SENATOR McDONALD: Senator Dierks. [LB546]

SENATOR DIERKS: Lynne, is there a return to the state in the way of taxes? [LB546]

LYNNE SCHULLER: Currently, there is not. We are entirely a cash-funded agency meaning that horse racing subsidizes the Racing Commission. Unfortunately, that's been another problem because they get a straight percentage of what the handle is per year. So every year the handle goes down is every that their budget goes down as well. And I've been speaking with the state veterinarian, Dr. Drotar, and her hours have been cut significantly. The supplies that she needs have been cut significantly because there's simply no money to pay for them. We've discussed increasing the tax rate to get more money back to them. However, we did that two years ago and I've called around to some other jurisdictions and, basically, we've hit critical mass on what the tax rate is, and for people to say I'm no longer going to wager on horse racing because the taxes are simply too high. So I think that we've reached the end of the road as far as the tax increases that we can do. So the only other thing we can do to get the regulatory agency the money they need is to increase the handle. [LB546]

SENATOR DIERKS: Thank you. [LB546]

SENATOR McDONALD: Any other questions? If not, thank you, Lynne. [LB546]

LYNNE SCHULLER: Thank you. [LB546]

SENATOR McDONALD: Any other proponents? Any proponents on the bill? If not, we'll take opponents. Anyone opposing LB546? Welcome. [LB546]

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PAT LOONTJER: Thank you for having me. I am Pat Loontjer, it's spelled L-o-o-n-t-j-e-r, and I'm the executive director of Gambling with the Good Life which is the largest coalition in the state for to be opposed to expanded gambling since 1995 and we've been around this track before. You know, our history is that we've been opposed primarily to slot machines and casinos, and this is a slot machine. Slot machine is a word that is not easy managed around in the Legislature or to the voters. It's kind of a red flag. It's been called everything from video Keno player stations. That's what we just defeated in 2006. One year they called them mechanical dispensing devices and this year they're going to call them enhanced simulcast. Senator Janssen, if it walks like a duck, talks like a duck, quacks... [LB546]

SENATOR JANSSEN: Where are your ducks today? [LB546]

PAT LOONTJER: I couldn't find a parking place today and I left my duck in the car, but I knew you would miss it. Because that's exactly what this is. It's a slot machine. There's just no doubt about it. I've got information here to reenforce that. The voters of Nebraska have spoken twice regarding slot machines and casinos. They've spoken loudly. They care about the quality of our life here and gambling and slot machines do nothing to enhance the quality of life in Nebraska. One of the things that I wanted to point out is that Arkansas is one of two states that does allow these machines, and the other state is Oregon. They've allowed them at the tracks and now I'll leave an article with you that they are now expanding. It's just the camel's nose under the tent theory. They brought in the machines that will play the historic horse racing extremely fast and now they want to bring in more slots that play different kinds of games. So that request is on their agenda now. And then the other thing is that North Dakota tried in 2005 to bring them in and it was defeated. And the quote from North Dakota that I'm going to leave with you, it says once the bets are placed, the computer runs video footage from the actual race revealing the winner. Players can repeat the process which takes as little as a few seconds, as many times as they want. So you can watch these races in seconds. Now if that's not a slot machine, I don't know what is. How can you call that a sport when they're playing this game every few seconds? And I heard someone say that they have a \$10 limit. Now is that \$10 per game and you play a game every few seconds? You can lose an awful lot of money doing that. How in the world would this contribute to agriculture and we've heard about the breeding and the loss of jobs and the horses in Nebraska, when we're talking about a slot machine? You know, we're not watching races. We're not seeing the horses run around the track. You're talking about putting your money into a machine. If anything this would decrease jobs, because it requires a lot less maintenance and a lot less employees to do something like this. In Wyoming, the attorney general found that these machines were illegal. It was appealed to a district court. They were found to be illegal and the Wyoming Supreme Court in May of '06 upheld the ban on the form of electronic gaming that allows gamblers to place bets on horse races that have already taken place. They have found them to be

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illegal gambling devices. I believe that's exactly what would happen in Nebraska. We do not allow slot machines in Nebraska now, and I believe our Attorney General would challenge them. Senator Synowiecki mentioned that these were abundantly successful. I would tend to agree with him. They are successful for the gambling interest, very successful, but they are a detriment to the local economy. They're a detriment to our families. We also heard just mentioned that the state would receive no tax benefit for this. Senator McDonald, I know you care about the compulsive gambling addiction programs. How in the world are we going to deal with this? These are slot machines. They're going to increase our addiction. They're going to increase the cost of the state at no benefit to the state. And I would just ask you please, to not even let this thing see the light of day and to vote it down. And I'd entertain any questions. [LB546]

SENATOR McDONALD: Any questions for Pat? Do you know has there been an Attorney General's Opinion here in the state of Nebraska concerning this? [LB546]

PAT LOONTJER: It's not been requested because it's not....it will be if it ever was passed, but we've never requested an opinion because it's never been allowed. [LB546]

SENATOR McDONALD: Thank you. No other questions? Any other opponents? Welcome. [LB546]

JOHN DITTMAN: Hello, my name is John Dittman, last name is spelled D-i-t-t-m-a-n. I would like to voice my opposition to LB546. In my opinion, pari-mutuel wagering on historic horse races is the same as slot machines. This represents an illegal form of gambling and I certainly think that's reason enough to vote no. But why would we want to expand gambling? Gambling hurts people. The only people that make money in the long run are the owners of the slot machines, in this case, the horse tracks. And the state bears the social cost and the people lose their savings. Gambling is based on the unsound principle of get rich quick. The problem is it doesn't work and certainly state revenues from such sources are unpredictable at best. The people of Nebraska have voted time and again and they don't want slot machines. In Lincoln, if the horse track at State Fair Park had slot machines we'd have the dubious honor of being the only state to have a slot parlor immediately adjacent to our largest university. What type of example is that to our next generation of leaders? I would respectfully ask you to vote no on LB546. I wish I was more eloquent, but in listening to the previous testimony and I hate to see cuts in any area, too, and it's unfortunate because we all want our state to grow, but maybe there are other alternatives. Maybe the state would fund the horse tracks, but I would certainly hope we wouldn't do it with gambling. I also have seen this and I see it very similar to the video Keno situation, because I know the Keno operators said that the video Keno would bypass the constitutional concerns as well, but the people voted against it. And I would encourage the people who are in favor of this historic horse racing to bring it to the people for a vote to see if the people want it. And I believe they would resoundingly vote no. But living here in Lincoln with State Fair Park,

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Lincoln, I think, has a very bright future. It's very exciting what's going on in Lincoln. Many of you have read about the Vision 2015 and the exciting plans Lincoln has, but I definitely think expanding gambling at State Fair Park would really take Lincoln in the wrong direction. Thank you very much. [LB546]

SENATOR McDONALD: Thank you, John. Any questions for John? I see none, thank you. [LB546]

JOHN DITTMAN: Thank you. [LB546]

DAVE BYDALEK: Chairperson McDonald, members of the committee, my name is Dave Bydalek. That's spelled B-y-d-a-l-e-k, and I'm the executive director and legal counsel for Family First, a research and education organization with a mission of trying to strengthen Nebraska families. And I'm here today to signify our opposition to LB546. And really the bottom line for us is that LB546 would essentially provide an additional avenue for Nebraska citizens to lose their hard-earned money and clearly this is a new form of gambling that's not now available in the state of Nebraska. While I'm not going to sit here and claim that these are slot machines or Keno machines--I don't really want to get into the semantics--I do think it's clear that this is another form of electronic gambling, a form of gambling which is highly addictive to many, many people. And from what I've read about these machines players wagering on these historic races have the capability of making wagers several times per minute. So what this bill will ensure is that more Nebraskans will lose more money on gambling activity. And listening to the proponents, I understand that horse racing has a long established history in Nebraska. I'm from Grand Island. My dad took me out to Fonner Park when I was a little boy. And it's tough to hear about the human cost of an industry that's having difficulty making it. There's a very human element there and if you're a person with compassion I understand that it's tough to hear about those things, but something we do hear about as part of a group that's part of a coalition that tries to stop expanded gambling in the state of Nebraska is we hear about the human element of those people who have a problem gambling, are problem gamblers, and that is a very human element as well. People that are gambling their savings away, hurting their families. And so from a public policy standpoint, we at Family First simply don't believe it is sound policy for the state to legalize an additional form of gambling which by and large will really take money out of the hands of many Nebraska families. And so for that reason we would urge the committee to indefinitely postpone LB546. Thank you. [LB546]

SENATOR McDONALD: Thank you, Dave. Any questions for Dave? I see none, thank you. Any other testifiers in opposition? Anyone opposed? This time we'll take neutral testimony. Is there any neutral testimony? If not, I see Senator Synowiecki has left. I assume he's not closing. Well, that will close the hearing for LB546. Our next bill is LB637 and that is done through the General Affairs and Laurie will present that bill. Welcome, Laurie. [LB546]

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LAURIE LAGE: Thank you. [LB637]

SENATOR McDONALD: Go ahead. [LB637]

LAURIE LAGE: Senator McDonald and members of the committee, my name is Laurie Lage, L-a-g-e. I'm legal counsel to the committee here to introduce LB637 which the committee introduced on behalf of the Department of Revenue. LB637 proposes that only lottery purchases for amounts greater than \$25,000 be placed in the competitive bidding process. Right now the threshold is \$15,000. This bill was introduced on behalf of the Department of Revenue. The department believes that the \$15,000 procurement amount is inefficiently low and raising it to \$25,000 would put the lottery in line with the procurement requirements of most other state agencies. The Lottery Act exempts lottery purchases from any other state law concerning the purchase of any goods or services and the State Tax Commissioner makes the final decision on purchases and contracts for the lottery. The Tax Commissioner or his representative, I think, is here to give you more details on that bill. So be happy to try to answer any questions. [LB637]

SENATOR McDONALD: Thank you, Laurie. Any questions for legal counsel? If not, anyone supporting this bill? Anyone supporting LB637 please come forward. Welcome. [LB637]

JIM HAYNES: (Exhibits 5 and 6) Good afternoon. Thank you, Senator McDonald and members of the committee. My name is Jim Haynes, H-a-y-n-e-s. I'm the director of the Nebraska lottery and I'm testifying in favor of LB637. LB637 would amend the State Lottery Act to increase the major procurement threshold for Lottery purchases of goods or services from \$15,000 to \$25,000. Under the current law, any contract for the purchase or lease of goods or services by the lottery exceeding \$15,000 must be approved by the State Tax Commissioner. By definition, under the State Lottery Act a major procurement is any procurement unique to the operation of the state lottery in excess of \$15,000. Major procurements require the lottery to go through the request for proposals process which increases operating costs in the nature of time, personnel, and other resources. Simply put, LB637 would raise the floor triggering a lottery RFP process by \$10,000. It is important to note that this change would not impact the lottery's long-term major procurement contract with its largest contractors who provide scratch ticket, online gaming, and advertising services. The bill would impact short-term service contracts with third party providers such as auditor, computer security, consulting services which are not contracted through the RFP process when such contracts are of a value below the major procurement amount. For example, the lottery is required by statute to use an independent certified public accountant to witness and inspect drawings for winning number games like Pick 3 and Pick 5. To ensure that the support services provided by the outside auditors are performed at a level needed and are required to protect the security and integrity of the games, the lottery needs

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flexibility to make the change on such contracts on short notice. If circumstances dictate that an existing auditor is not performing or is in breach of their duties, an immediate change of service provider cannot be achieved by going through the long drawn-out RFP process. The lottery needs greater flexibility in negotiating compensation rates and rates for increases for these types of smaller service contracts which LB637 would provide by increasing the current threshold level before which an RFP is required. The lottery division of the Department of Revenue began in 1993 and in the 13 years since the lottery began selling tickets, the major procurement threshold of \$15,000 has never changed. LB637 would take some account into for inflation and over that time bring the lottery's major procurement threshold more in line with modern day costs of goods and services. In conclusion, passage of LB637 would provide greater flexibility, efficiency, and savings for the Nebraska Lottery in purchasing goods and services and ultimately serve some beneficiaries for which the lottery provides funding. I would encourage you to advance this bill and thank you for the opportunity to testify. And be happy to answer any questions that you have. [LB637]

SENATOR McDONALD: Thank you, Jim. Any questions? Senator Preister. [LB637]

SENATOR PREISTER: Yes, Mr. Haynes, I don't see anything in the bill--maybe I missed it--that would set up a similar structure to the way other DAS contracts for services are done when they're between the dollar amounts of \$10,000-\$25,000, where you have an informal process rather than the formalized RFP process. You're not looking at making it consistent then with other contracts for services. [LB637]

JIM HAYNES: I think what we're looking for, Senator, is we're just trying to make it more businesslike, nimble, flexible, and we are in some ways bringing it up to that \$25,000 procurement level. [LB637]

SENATOR PREISTER: Right. [LB637]

JIM HAYNES: Right. But as far as building in an informal process, no, we have not. [LB637]

SENATOR PREISTER: And can you give me an example of what these contracts for services that would be in that dollar amount? Say, between \$15,000 and \$25,000 would be... [LB637]

JIM HAYNES: Yes, sir. [LB637]

SENATOR PREISTER: ...because we're not talking about products. We're not talking about buying the actual tickets. We're talking about a service. [LB637]

JIM HAYNES: Yes. [LB637]

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SENATOR PREISTER: Advertising, I would assume, would be a service. [LB637]

JIM HAYNES: The best examples that I can give you, Senator, would be computer consultants that we have to sometimes bring in, and our audit staff. We have contracts as I was discussing with...we are by state law required to have auditors on board for each drawing that we have nightly. And if, for example, we ran into a situation with one of our audit providers that maybe we just didn't agree with or maybe they were not performing in a manner that they should, and we needed to terminate that particular contract, we'd need to be able to get into a contract the next day if we felt that maybe there were something wrong with how they were performing. And so a good example would be maybe the computer consultants, the auditors, and also acceptance testing. For example, back in 2004 when we went through the conversion process and we went from GTECH is our major provider on online for powerball services, we moved to Intralot and we had a very small window in order to get our acceptance testing done of all the systems. And we actually had to bring in a consultant on short notice to work with our IT staff to do the acceptance testing. And those are probably more representative of the service contracts that we would have. [LB637]

SENATOR PREISTER: Thank you. [LB637]

JIM HAYNES: Thank you. [LB637]

SENATOR McDONALD: Any other questions for Jim? Are you being more reactive or proactive on this? Is this something that has happened in the past that you're wanting to correct or are you looking to the future thinking that this is something that needs to be corrected before something happens? [LB637]

JIM HAYNES: That's a very good question, Senator. I think we're being both. I think we're being reactive just because of what we see that we run into day to day, for example with the auditors and acceptance testing when we go through process. But it's also being proactive for the future so that we can continue to operate as a business and remain that businesslike flexibility that we need to operate everyday. [LB637]

SENATOR McDONALD: So this has been a problem in the past? [LB637]

JIM HAYNES: It hasn't been a problem, but there's been some situations that could've been problematic had we not been able to get somebody on board right away in certain circumstances. [LB637]

SENATOR McDONALD: Okay. Any other questions? Senator Janssen. [LB637]

SENATOR JANSSEN: Jim, when was this threshold put into place? [LB637]

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JIM HAYNES: I believe this threshold was put into place back at the beginning of the lottery back in '93. [LB637]

SENATOR JANSSEN: Okay, '93? [LB637]

JIM HAYNES: '92, '93. I think the lottery bill was enacted in '92 and it went into play September of '93. [LB637]

SENATOR JANSSEN: Thank you. [LB637]

JIM HAYNES: Thank you. [LB637]

SENATOR McDONALD: It's been about 13, 14 years... [LB637]

JIM HAYNES: Yes, ma'am. [LB637]

SENATOR McDONALD: ...and it's not been changed? [LB637]

JIM HAYNES: Yes. [LB637]

SENATOR McDONALD: Okay. Any other questions? I see not, thank you, Jim. Are there any other proponents? Proponents for LB637? Any opponents? Anyone opposing the bill? Any neutral testimony? Anyone in a neutral position? I guess not. That will close the hearing on LB637. Our next bill is LB638, also a General Affairs bill. Laurie Lage, present this on behalf of the General Affairs Committee. [LB637]

LAURIE LAGE: Thank you, Senator McDonald, members of the committee. My name is Laurie Lage. I'm legal counsel to the committee. Last name is L-a-g-e, here to introduce LB638 which the committee has introduced, again, on behalf of the Department of Revenue. This bill would do three basic things. First, it would allow investigators with the Department of Revenue to have law enforcement authority when they encounter illegal gaming devices. This means that they will be able to enforce the gambling offense statutes found in Chapter 28 which are part of the Nebraska Criminal Code. Currently, investigators, while they are in an establishment for other authorized purposes and they see an illegal gambling device, they're not authorized to do anything about it except call the State Patrol and file a report. And I found out a little bit more about that process and I think when the Department of Revenue representative comes up they'll be able to tell you a little bit more about exactly how they're going to do that. Second, the bill would allow the Department of Revenue to authorize bingo more than twice in one week at a certain location, a restriction that is currently in the statutes. This provision would make it more cost efficient for the different organizations that sponsor bingo and want to use the same location. And third, the bill would make technical revisions to the charitable

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gaming statutes and clean up several obsolete statutes on charitable gaming licensing. This is necessary due to a legislative change that has been fully implemented. LB1086, enacted in 2000, authorized biennial licensing for charitable gaming activities. Implementation was staggered over several years and it's complete now. Since all charitable gaming licenses are now issued on a biennial basis, the annual licensing references in the bingo, pickle card, and lottery/raffle statutes should be repealed to minimize confusion. And again, there's a Department of Revenue representative here to answer more questions. I'll close. [LB638]

SENATOR McDONALD: Thank you, Laurie. Any questions for our legal counsel, Laurie Lage? If not, thank you. We are looking for support of LB638. Welcome, Jim. [LB638]

JIM HAYNES: (Exhibit 7) Senators. We have to put our charitable gaming hat on now. And once again, good afternoon, Senator McDonald and members of the General Affairs Committee. My name is Jim Haynes, H-a-y-n-e-s, director of Lottery and Charitable Gaming for the Department of Revenue. I appreciate the opportunity to appear once again before you this afternoon and offer testimony on LB638. I would like to thank you, the committee members, for introducing LB638 on behalf of the department. LB638 addresses several issues relating to the regulation of charitable gaming in Nebraska. First, LB638 repeals several obsolete provisions of the various acts relating to annual licensing requirements. In 2000, LB1086 was enacted by the Nebraska Legislature which provided for the biennial licensing of bingo, pickle card, and lottery/raffle activities. The staggered implementation of biennial licensing was completed in 2002; however, the various statutes relating to the licensing still include references to annual increases and corresponding annual license fees. These are obsolete provisions which should be repealed to minimize confusion. In 2005, LB209 was introduced and advanced by the General Affairs Committee to repeal these provisions; however, no further action was taken on the bill. Second, LB638 repeals the annual local bingo permit required by Section 9-236 of the Bingo Act. As previously mentioned, in 2000 the biennial state licensing of nonprofit organizations to conduct charitable gaming activities was implemented. Although a state bingo license is now only required on a biennial basis, a nonprofit organization is still required to apply for and obtain a \$10 annual bingo permit from the county clerk or the city clerk. In many instances, the local clerk is not aware of the local permit requirement causing much confusion for the nonprofit organizations. Prior to the repeal of the local bingo tax in 1999, the local bingo permit requirement was a means whereby the county or city could administer and monitor the collection of the local bingo tax. However, today the local bingo permit does not serve any meaningful regulator purpose and, in our opinion, it should be eliminated. Third, LB638 Section 9-241.03 of the Nebraska Bingo Act which currently limits the use of premises to two times per week for regular bingo occasions, and provides means whereby a licensed organization or commercial lessor may request authorization from the department to exceed the limitations on the use of the premises for bingo when it is cost advantageous for multiple nonprofit organizations to use the

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same premise. The use of the premises would still be restricted to not more than one bingo occasion per calendar day regardless of the number of licensed organizations using the premise for bingo. The licensed organization's limit of 10 regular bingo occasions per month would also be retained. This particular proposal was previously offered by former Senator John Hilgert in 1997 in LB627. The General Affairs Committee advanced the bill without opposition, however, it was not enacted. This relative insignificant change may benefit an already struggling bingo industry by possibly reducing the rental charges which nonprofit organizations experience in the use of commercial facilities for bingo. Finally, LB638 amends Sections 9-1,104(4) and 77-366 to authorize the Department of Revenue Investigative Services Division to perform investigative and enforcement activities relating to illegal gambling devices in Nebraska concurrently with the Nebraska State Patrol's Alcohol and Tobacco Enforcement Division. Department investigators routinely encounter illegal gambling devices while conducting field inspection of businesses for charitable gaming and tax compliance purposes; however they can currently only refer matters of the illegal gaming devices to the State Patrol for follow-up and further investigations. This proposal would enable our investigators to refer reports of illegal gaming devices directly to county attorneys and, in our estimation, it provides operational efficiency in addressing the continued presence of illegal gambling devices in Nebraska. Again, we appreciate the opportunity to appear before you this afternoon and respectfully request your favorable consideration of this particular bill. [LB638]

SENATOR McDONALD: Thank you, Jim. Senator Erdman. [LB638]

SENATOR ERDMAN: Jim, take me back to Section 6 of the bill about the bingo permits using the same facility. You're telling us that they'd be able to use the same facility, that they would be limited to the same number that they're limited to now which is the 10 per month. This would just simply allow them the opportunity to use the same facility as another bingo operator? [LB638]

JIM HAYNES: Yes, sir. Yes, Senator, now you have a commercial lessor that is licensed with the department and they can have one nonprofit bingo in their location. This would allow an efficiency because the space could not be utilized every day of the week and what we would hope is that, because we would have to approve this, it would bring down the cost and that means more money would go back to the nonprofits. [LB638]

SENATOR ERDMAN: And when you say that it could be used every day of the week, that's only assuming that there were enough bingo operators. [LB638]

JIM HAYNES: Exactly. [LB638]

SENATOR ERDMAN: For example, if the two went together they'd still be limited to 20

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total days as opposed to the...so they couldn't be in operation every day. [LB638]

JIM HAYNES: Yes, sir. [LB638]

SENATOR ERDMAN: I guess the other question I have is the way that this is worded, why not write it in such a way that just allows them that opportunity, because it sounds like you're saying unequivocally that they're going to have inefficiency by doing that and you require them to state that they're going to have inefficiency by doing that. And it just seems to me that there's probably a better way. I mean, from your testimony and also from reading this it sounds like this is a foregone conclusion. And so why write it that way if there's no barrier there for them to attain? Why make it such a way and simply just let them apply to the department for using the same facility under the nonprofit act? [LB638]

JIM HAYNES: That's a good point, Senator. And we are, I guess if you want to term the barrier, they're going to have to bring this to us and we're going to have to see that there's actually a savings so that it would make a difference. And that there would be a change or a reduction in the rental cost to that particular nonprofit. Maybe I'm missing your point, Senator. [LB638]

SENATOR ERDMAN: Conceivably you could have a situation where maybe a nonprofit has a facility that they use now and the rent to use the other facility would be more just for the rent, but they would have a savings on storage or something else. And you're making the argument that for them to attain this threshold that they have to prove to you that it's a cost savings to them, but so far your testimony has led me to believe that you think this will happen most of the time, if not all of the time, where more than one group would use the same facility. And so I'm just trying to understand the... [LB638]

JIM HAYNES: And you're probably right, Senator. It will probably occur most of the time, the majority, but there are going to be instances where it may not and we don't want to open it up to a situation where we're not going to have all these additional bingo occasions and it doesn't provide for anything for the nonprofits, for the charities. [LB638]

SENATOR ERDMAN: Well, candidly, we should probably just keep all this extra language in there, because when you read Section 6 it's so crystal clear. It has all the restrictions and limitations that it probably just flows right with the rest of it so... [LB638]

JIM HAYNES: Absolutely. [LB638]

SENATOR ERDMAN: ...whatever. Thanks. [LB638]

JIM HAYNES: Thank you, Senator. [LB638]

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SENATOR McDONALD: Any other question? Jim, as far as the licensing where we're upping the licensing fee, is that correct? In Section 2, relating to bingo licensing by adjusting the licensing fee, each utilization-of-funds member from \$20 to \$40? [LB638]

JIM HAYNES: Oh yes. That's provided and that's bringing everything in line with our biennial licensing. So now instead of \$20 per year, \$40 for two years. [LB638]

SENATOR McDONALD: Okay. All right. So it's really not changing the dollar value. [LB638]

JIM HAYNES: No. [LB638]

SENATOR McDONALD: It's the same dollars, it's just stating it differently. [LB638]

JIM HAYNES: And that's, you know, that's the consolidation of all of these old... [LB638]

SENATOR McDONALD: Also if an officer should find an illegal gaming device, say, in a location what can they do now without this change in statute? [LB638]

JIM HAYNES: That's a very good question, Senator. Our investigators vested with the limited law enforcement authority that they have are able to view the machine, but they don't have jurisdiction over the slots that they might see, the illegal machines. So what they have to do is we more or less out of courtesy we write a letter to the county attorney and we write a letter to the State Patrol and notify them that our investigator was in a liquor establishment or whatever and happened to see what we believed or is allegedly an illegal slot. And that's as far as we can go at this point. And what this would contemplate is our people could actually make note of the machine, identify it as an illegal machine, and that we could then write a report and file a report with the local county attorney as we do on our charitable gaming or our lottery violations. [LB638]

SENATOR McDONALD: So this gives them more authority. [LB638]

JIM HAYNES: It gives them more authority just, yeah, specifically to illegal gambling devices. [LB638]

SENATOR McDONALD: They couldn't take it, but they could take a picture of it? [LB638]

JIM HAYNES: Exactly, Senator. They could take a picture of it and submit it with a report. One of the things that these machines are very transient. You know, our inspectors, investigators see them out there and they're here today and gone tomorrow, but yeah, we could actually make note of it. We could contact the owner of the establishment that they were in violation, submit the report and just go on from there.

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We really don't have the facilities to seize illegal slots. But and the other thing is we fully agree with the State Patrol and are willing to work hand in hand with the State Patrol. We just see it as an efficiency in state government, because we're able to actually work with them as an equal law enforcement partner when we see something. [LB638]

SENATOR McDONALD: Okay. Any other questions for Jim? I see none, thank you. [LB638]

JIM HAYNES: Thank you, Senator. [LB638]

SENATOR McDONALD: Any wishing to support LB638? Any of those in support? Any in opposition? Anyone opposing LB638? Welcome, Pat. [LB638]

PAT LOONTJER: Senators. Pat Loontjer, L-o-o-n-t-j-e-r, executive director of Gambling With the Good Life. I have such mixed feelings about the bill. We've not studied it extensively like you have, but I'm very much in favor of what I'm hearing as far as being able to go after the illegal machines. We know they're out there, too, and we'd love to see them removed. Our concern is our statement of purpose is that we are opposed to any expanded gambling in the state. And by adding more bingo games whether it's, you know, 10 a month, 20 a month, 30 a month that is expansion in a form. It is allowing more and we would be opposed to anything that would allow more gambling in the state. [LB638]

SENATOR McDONALD: Any questions? Senator Erdman. [LB638]

SENATOR ERDMAN: Pat, I guess that was the line of questioning I had with the department and the explanation that was given to me is not expanding the number of licensed opportunities, it's making sure that they have the opportunity to use the same facility to exercise the 10 that they have. So as I read the bill, it doesn't expand their number beyond the 10 that they're limited to now. It just would let bingo A and bingo B have their bingo at the same place as opposed to having them at two separate locations. So I don't read the bill that way and that was the line of my questioning. I think the department answered that to my satisfaction that it doesn't expand it. It just allows for flexibility for their location. [LB638]

PAT LOONTJER: The other concern that we had regarding--since it was bingo--is that we're dealing with the Attorney General now on the bingo slots that are now being allowed on the Indian reservations. IGRA has declared the bingo slot machines as a Class II gaming device, whereas our interpretation is that they are a Class III and they are illegal in the state of Nebraska. And the thought that if they would ever try to move those off the reservation as bingo machines, they definitely wouldn't want to move them off on a two day a week casino type of an operation. They would definitely want a facility that would be up and running, you know, probably 24/7. So we're just cautiously, you

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know, looking at this and hoping that it would never turn into something that would lend itself to that. [LB638]

SENATOR McDONALD: Okay. No other questioning, thank you, Pat. [LB638]

PAT LOONTJER: Thank you. [LB638]

SENATOR McDONALD: Any other opposition for LB638? Seeing none, any neutral testimony? Anyone in a neutral position? If not, that will close our hearing for LB638. Our next bill, Senator Janssen, one of our own, LB301. Welcome. [LB638]

SENATOR JANSSEN: (Exhibit 8) Good afternoon, Senator McDonald and members of the committee. For the record, my name is Ray Janssen representing the 15th Legislative District here to offer you LB301. In 2003, the Legislature amended state statutes 9-812 to guarantee that the total fund transferred from the State Lottery Operation Trust Fund to the various receiving funds would not be less than the amount transferred to the fund in that fiscal year of 2002-03 through January 1, 2008. Prior to 2003, the lottery had experienced a steady decrease in sales. The change made in 2003 was part of an attempt to increase sales by increasing the payouts without decreasing the funds that receive a portion of the lottery proceeds. It was thought that if you would increase the payouts, there would be an increase in sales. Since 2003, there has been both an increase in sales and an increase in the total amounts transferred to the various funds. This bill would extend this end date for this change from January 1, 2008 to January 1, 2013. At the request of the Nebraska Lottery, an amendment has been drafted to extend that to July 1, 2013, and I believe the committee counsel has that amendment so that it corresponds with their fiscal year instead of their calendar year. I believe that there are people here to testify after me who can probably explain the needs for this change. The Department of Revenue has someone here who will testify in a neutral capacity, answer any questions of a technical nature that you may have. And it has worked. That is the reason we did put a sunset on the bill in 2002, but to see if we could bolster the sale of our own form of gaming if you might call it that. And it has worked. And the beneficiaries, I passed the chart out to show you what has happened since we did increase the payouts in that year. Any questions? [LB301]

SENATOR McDONALD: Any questions for Senator Janssen? If not, will you be around to close? [LB301]

SENATOR JANSSEN: I'm not going anywhere else, Senator. I'll be here. [LB301]

SENATOR McDONALD: Okay. All right. Thank you, Senator Janssen. We're looking for testimony that supports LB301. Welcome, Kathy. [LB301]

KATHY SIEFKEN: (Exhibits 9 and 10) Senator McDonald and members of the

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committee, my name is Kathy Siefken, S-i-e-f-k-e-n, here representing the members of the Nebraska Grocery Industry Association. And I've got two handouts here that you'll get in just a moment. We are here in support of this bill for the reason that Senator Janssen stated. Sales have increased. Three years ago the bill was passed allowing the Nebraska Lottery to distribute funds in a little bit different way. And there's a hold harmless clause in there so that the trusts get the same amount of money that they had before. So it was guaranteed for them. And what happened was exactly what we thought was going to happen and that is sales increased and the funds that were distributed to the trust...if you take a look at the single page that they're handing out it says annual financial summary. Basically what that shows--and the very first line is the scratch sales--and I did get these figures from the Nebraska Lottery this fall when we were taking a look at how the program was working. And basically what happened was in 2003, midyear, the law went into effect. So there isn't a huge jump. It only went from \$36 million to \$40 million and then from \$40 million to \$46 million. And the reasons for that was because it was a midyear shift and then you also had old tickets that were out there that the games had to be finished. And so that kind of carried forward into the new year. The real results, take a look at the figures between '04 and '05, and that's \$10 million. And our concern is that if we don't extend this sunset that we'll go back to those pre-2003 dollars, because players are smart and when the payouts are high they're going to play the game, and when the payouts aren't high they don't play the game. The second handout that I gave to you is a listing of the payout impact sales. And you can go through there, but the very first one, for example, is Texas where they decreased their price payout from 57 percent to 52.5 percent and they had a decline in the instant games sales of 24 percent. And you go down through there...Georgia, basically the same story all the way through. And there's quite a list of different states that have gone through those changes and it also shows that when they come back and they increase those payouts, the number of sales also increase. So this is just a way to make sure that the trusts continue to be funded and that sales stay up there where they are. So if you have any questions I'd be happy to try and answer them. [LB301]

SENATOR McDONALD: Any questions for Kathy? I have a question. On your sheet here, in 2005, there was a \$5 million General Fund transfer. Can you explain that? [LB301]

KATHY SIEFKEN: The state was short of money and they took money from the trust. The Legislature okayed that. And so that \$5 million was taken out of there and put into the General Operating Fund, the General Fund, to offset some of the deficit. [LB301]

SENATOR McDONALD: It was a rock they were looking for, right? [LB301]

KATHY SIEFKEN: Yes, and they found it. [LB301]

SENATOR McDONALD: Okay. Senator Erdman. [LB301]

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SENATOR ERDMAN: Kathy, I've got to ask, you're not here for benevolence reasons for these trust funds. How does the grocer benefit from this change? [LB301]

KATHY SIEFKEN: We sell more tickets. [LB301]

SENATOR ERDMAN: And then you receive a commission or a percentage of the... [LB301]

KATHY SIEFKEN: We receive a 5 percent commission, which is a low commission and it's something that we've been here time and time again asking for an increase. We haven't gotten that. But what happens when you've got people coming in and purchasing tickets our sales automatically go up. And when our sales go up, the money to the trusts increase. [LB301]

SENATOR ERDMAN: And the fact that we had multimillionaires win in the Nebraska Lottery was not a factor in your sales at all? It was just because we tinkered with the payouts? [LB301]

KATHY SIEFKEN: I believe those were lottery, not scratch, and we're talking about scratch sales. [LB301]

SENATOR ERDMAN: But aren't those sold at the same location? [LB301]

KATHY SIEFKEN: Yes, they are. [LB301]

SENATOR ERDMAN: And so wouldn't you logically see some of that overlap as well? [LB301]

KATHY SIEFKEN: Yeah, it probably could, yes. But again, we get a 5 percent commission on everything we sell. So to us it really doesn't make any difference, but we like to see those sales occur without the additional work. [LB301]

SENATOR ERDMAN: So you have a vested interest in seeing the state lottery succeed? [LB301]

KATHY SIEFKEN: Absolutely. [LB301]

SENATOR McDONALD: Any other questions? If this bill fails to pass, do you think that the sales will go down? [LB301]

KATHY SIEFKEN: Yes. Just given the case histories that I handed out to you, it appears that in other states when they decrease payouts, players don't play near as

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often. And you'll probably see, according to the trends that you see on the handout, anywhere from 20-40 percent decrease in scratch sales. [LB301]

SENATOR McDONALD: Strictly because the pot of money isn't as great? [LB301]

KATHY SIEFKEN: Correct. [LB301]

SENATOR McDONALD: Any other questions? If not, thank you, Kathy. [LB301]

KATHY SIEFKEN: Thank you. [LB301]

SENATOR McDONALD: We are taking support for LB301. [LB301]

MARSHALL HILL: (Exhibit 11) Senator McDonald and members, my name is Marshall Hill, M-a-r-s-h-a-l-l H-i-l-l. I'm executive director of Nebraska's Coordinating Commission for Postsecondary Education and I'm here to testify in favor of the bill. Coordinating Commission is a constitutional agency established in the constitution of Nebraska and we do a lot of things dealing with higher education. And among those is the administration of the state's financial aid programs to support needy students. So I'm here to give you some information about what these funds that flow from the lottery actually do to benefit Nebraska students. Nebraska currently provides about \$10.3 million per year to support needy college students and \$4.75 million of those funds come through the lottery--about 46 percent. The average student grant is about \$700, so therefore the lottery funds currently support about 6,700 Nebraska students who are enrolled in our postsecondary education institutions. Those students are enrolled in all sectors. They're enrolled on all the university campuses at the three state colleges, at the six community colleges, at the independent colleges and universities in the state, and at the private career schools. All of the students who receive these funds are Nebraska resident students. They are eligible for the federal Pell Grant which is the nation's principal way to support college attendance for needy students. Nebraska provides, generally, less financial aid to support its needy college students than do most of our neighboring states. The first table you have in the materials indicates that we are relatively near the bottom in comparison to our Midwestern state neighbors and we are 37th nationally. That's an improvement. Two years ago we were 38th. So we're moving in the right direction. We are here to encourage the continuation of funding for the Nebraska scholarship and grant programs through the lottery funds. We believe it provides some stability. It allows the state to continue to support financial aid even during times of financial downturn for the state. There is one chart, the second page of the handout that I have provided you, which shows the significant increase that we were able to put into place in 2003 and '04 when the state determined to start providing some support through the lottery proceeds. And you'll see the indications have increased since that time. So the Coordinating Commission encourages your favorable continuation of financial aid support. We believe that all sectors of higher education do

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as well. I appreciate the opportunity to visit with you this afternoon and be pleased to respond to any questions you might have. [LB301]

SENATOR McDONALD: Any questions? If not, thank you. [LB301]

MARSHALL HILL: Thank you. [LB301]

SENATOR McDONALD: Looking for further support. Welcome, Mark. [LB301]

MARK BROHMAN: Madam Chair, members of the committee, my name is Mark Brohman, that's spelled B-r-o-h-m-a-n, and I'm here today representing the Nebraska Environmental Trust. I'm the executive director and we're in support of LB301 for many of the same reasons that have just been outlined. Our program has received over \$100 million since its inception. We funded 870 projects across the state in all 93 counties. And so we hope to continue to get the amount we're getting or increased amounts in the future. So with that, I'd be glad to answer any questions. [LB301]

SENATOR McDONALD: Any questions? If there was another entity that put its name on the beneficiary list how would you feel about that? [LB301]

MARK BROHMAN: I'm sure my board would ask that I come and oppose amendments of any additional beneficiaries. We have had some takings as discussed, the \$5 million. The State Fair has been added. So there have been changes since the inception of the trust. So I would guess that my board would oppose any additional beneficiaries. [LB301]

SENATOR McDONALD: Senator Preister. [LB301]

SENATOR PREISTER: Thank you, Senator McDonald. Mark, congratulations on the job. [LB301]

MARK BROHMAN: Thank you. [LB301]

SENATOR PREISTER: I think you'll do a very good job. And my question to you relates to what we were just talking about. The \$5 million was taken out of the fund and put into the General Fund when we had some difficulty financially for the state. What did that do to the programs and the grant requests that came into the Environmental Trust? [LB301]

MARK BROHMAN: Well, we just had to cut back on the number of recipients that we, in turn...we fund about one out of every four projects that applies for a grant. Sometimes it's about one out of every five. So we just reduced the number of grants and also the amounts, we reduced the amounts of dollars we were able to provide to the recipients.

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As you know, the recipients range from small towns and small recycling trailers to large projects, multimillion dollar projects, cleanups of various types, land acquisition protections, easements, things like that. All kinds of partners, Pheasants Forever, I was just at their state conference this weekend and they were raving about the no-till drills they were able to buy with Environmental Trust money. They've got 60-some chapters out there and 55 have been able to get what they call a no-till drill, which takes a lot less fuel, and then they can go in and drill these food plots and provide a lot of habitat and food for the wildlife. And so we've done a lot of good across the state, but we just had to curtail some of our granting authority. [LB301]

SENATOR PREISTER: I would imagine so. The other question, could you briefly tell us what the original mechanism was that set up the Environmental Trust and how that operates? [LB301]

MARK BROHMAN: Well, it was Governor Nelson at the time, decided that this was a concept that he thought was worthy of bringing forth and putting on the ballot, and the people decided they would allow that type of gambling because they knew the money was going to educational purposes and environmental purposes. At the time, it was one of the more unique programs in the country. And the Environmental Trust has been modeled in several states since its inception in Nebraska. So evidently other states have, you know, believed in the concept, but it is one of the few programs in the country that takes money directly and puts it into environmental projects such as we have done. [LB301]

SENATOR PREISTER: So could those projects include, say, a cleanup like Asarco in Omaha or are there specific restrictions? [LB301]

MARK BROHMAN: There are restrictions. It can't be a regulatory process, you know, that a mitigation or requirement by court order. You know, they can't come in afterwards and then that fact, the courts had found that Asarco was negligent and they were found liable for cleanup, and of course, the city of Omaha put a lot money into that project. The Environmental Trust could be used for side projects, additional things in addition to the actual clean up, but anything that's regulated or mandated trust monies cannot go towards that type of activity. [LB301]

SENATOR PREISTER: So essentially the things that are regulatory would need to go to a responsible party or someone else to pay for any remediation or cleanup. The projects that the trust funds are ones that, perhaps, wouldn't get funding in any other way. They're a lot of small town, rural kind of programs, recycling programs. There's matching monies for those. They are habitat kinds of programs. They're things that we would not appropriate General Funds for. And so anytime we raid that fund, we take monies away from those communities and those programs that would struggle or wouldn't be funded period. Is that accurate? [LB301]

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MARK BROHMAN: Yes, that's accurate. Many of the projects that we fund wouldn't find a way to get general funding through the Legislature. So you are correct. They probably wouldn't be accomplished without the Environmental Trust. [LB301]

SENATOR PREISTER: Okay, thank you. [LB301]

SENATOR McDONALD: Senator Dierks. [LB301]

SENATOR DIERKS: Mark, would you give us a rundown on the percentages of where the lottery dollars go and how they're spent in your group? [LB301]

MARK BROHMAN: Well, we get 44.5 percent of the proceeds and then we put those into our funding mechanism. Right now that's about \$10 million to \$12 million a year. It was 9.7 and it's raised a little bit the last couple of years as was indicated earlier that that's been increasing slightly. So now we're between \$10 million and \$12 million. And we grant out about \$10 million a year. We've got a little bit of a buffer, because some of the projects that apply for three years of funding and we may give them a priority for year two or three, but we can't guarantee the money because we don't know the lottery could be shut down the next year. So we say, you know, you've got a high priority for next year, but if the money is there. If the money is not there, of course, you won't get it. And so we try to give out most of that money each year with a little bit of a buffer. And so that goes out every September. Right now, it's set up so the granting cycle starts in September. We accept applications and then we have subcommittee meetings, go over all the different types of grants, and then rate them all and then our board does a final rating. And, in fact, this Thursday we'll be putting the rating out from last September of all the projects we're looking at funding and the amounts of money. And a lot of them don't get 100 percent, but we always encourage people to have partners so when they come to us they've already got money allocated for this project. And then so we'll put out our recommendations. The public can make comment and then we'll make the final distributions in April. So that's the way the process goes. [LB301]

SENATOR DIERKS: There's a world of hurt right now in some of the river valleys in Nebraska with the shortage of water. And some of the methods that they come up with for easing the pain is to destroy a lot of the plants along the riverbed. Are you involved with any of that at all? [LB301]

MARK BROHMAN: There are actually grant proposals in front of our board right now that would eliminate invasive nonnative species. So we're talking about salt cedar trees, Russian-olive, Phragmites, and some of the grasses that come in and things like that. So we do have grant applications in front of us now applying for, and we have funded tree removal--cedar trees--in central and western Nebraska that are an invasive species in a prairie setting. And so we do have some applications in front of us. And probably as

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all of you know, the Governor has proposed to take \$300,000--not take, I should say apply for--have the Department of Natural Resources apply for \$300,000 each year from the Environmental Trust for the next several years to put into the Water Resources Fund. And that's his proposal they would apply for. And so that application would be scored against all the rest and then depending on how it's scored, would be or would not be funded. But his hope is, of course, that they would be funded for \$300,000 each year into that massive Water Fund that they're creating to look at a number of solutions in the Platte and Republican Rivers. [LB301]

SENATOR DIERKS: Along the same line, your experience with Game and Parks. Are they involved with any of this like brush removal and prescribed burns and that sort of thing? [LB301]

MARK BROHMAN: Yes, they've received Environmental Trust monies in the past that they've partnered with their monies and federal monies for both burning projects and for tree removal, especially salt cedar out in the North Platte River Basin. And so they've done burning and tree removal both. [LB301]

SENATOR DIERKS: Thank you. [LB301]

SENATOR McDONALD: Any other questions for Mark? Do you have knowledge that the Nebraska Lottery has put in appropriations for that \$5 million so you could have your percentage of it to take care of that water issue? [LB301]

MARK BROHMAN: No. [LB301]

SENATOR McDONALD: Not going to happen? (Laughter) [LB301]

MARK BROHMAN: It's hard to say where this will all end up, but some people say that there's more money coming. People wanting to get more than the \$300,000, but right now, you know, the Governor has indicated that \$300,000 is what he'd ask the DNR to apply for each year. But, of course, there's \$2.7 million in General Funds that he's also asking for; and if those \$2.7 million don't come forth, then I'm sure they'll be looking other places including back to the trust. [LB301]

SENATOR McDONALD: But I was just hoping that you could request it back from General Funds since they borrowed it. Or did they borrow it? [LB301]

MARK BROHMAN: You mean the past \$5 million? Yeah. And I believe, if I'm not incorrect, I think that was used for some landfill closure. Some of that money was originally...in 1997, there was \$5 million used for landfill closure which then after that occurred then the money came back to the other beneficiaries. [LB301]

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SENATOR McDONALD: Thank you, Mark. Any other questions? If not, thank you. [LB301]

MARK BROHMAN: Thank you. [LB301]

SENATOR McDONALD: Do we have other testifiers in support of LB301? Any in opposition, those that are opposed? No opposition? Neutral testimony for LB301? Is there anyone in a neutral capacity? We do have one. Thank you. [LB301]

DENNIS NELSON: (Exhibit 12) Good afternoon, Senator McDonald and the rest of the committee. My name is Dennis Nelson, that's D-e-n-n-i-s N-e-l-s-o-n, and I'm the finance director for the Nebraska Lottery, and I'm here to provide sales information for what we've had for the last few years and to answer any questions you might have regarding the operations of the Nebraska Lottery in regards to LB301. Prior to the enactment of LB367, the lottery transferred 25 percent of our net sales to our trust fund beneficiaries. LB367, which provided a hold harmless provision, became effective on October 1, 2003. Instead of transferring 25 percent of our sales, this provision states that the lottery will transfer at least the amount that was transferred in fiscal year 2002-2003. With this flexibility, lottery sales have risen dramatically as have the related transfers to our trust fund beneficiaries. Sales breakdown. Sales for fiscal year 2002-2003 were \$80,918,807 while our transfers were \$20,229,702 which now has become our hold harmless floor amount that we operate with currently. Sales for fiscal year 2003-2004 were \$92,608,643 while transfers were \$20,509,486. Sales for fiscal year '04-05 were \$100,658,171 while transfers were \$26,372,723. And sales for fiscal year '05-06 were \$113,108,341 with transfers of \$27,601,895. For our current fiscal year though December 31, 2006, sales have been \$55,424,202 and transfers with those have been \$14,190,772. Are there any questions that I can answer for you at this time? [LB301]

SENATOR McDONALD: Any questions for Dennis? Senator Erdman. [LB301]

SENATOR ERDMAN: Dennis, not that this is probably the right way to do this, but since December 31 is the midway point in your fiscal year it would appear that the sales are a little bit--assuming they maintain that rate--would be a little bit less than last year. But the transfers appear to be, if you would double that, more than the figure. How do you determine, because in statute you just have to transfer the \$20 million... [LB301]

DENNIS NELSON: Right. [LB301]

SENATOR ERDMAN: ...how do you determine how much more of that to give to the recipients and what can you tell me about your projections for this year as far as where you think the sales might actually end up? [LB301]

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DENNIS NELSON: Okay. As finance director, I basically analyze our sales and I also analyze all of our expenses and our profits. And as each week goes along, when I get the sales numbers, whether scratch or lotto, I'm analyzing the expenses and the income that we have from that. And so then basically when I get to the end of the quarter to make that transfer, I look at the profit that we have generated and then that's what we go ahead and transfer to the trust funds. As for this year, it's going to be a little bit less than last year and a lot of that is because of the historic powerball run that was won here in Lincoln. Our powerball sales were just, they were dramatic, and I doubt that we'll be able to do that again this year. So halfway through the year, we're looking if we could double that up it would be \$110 million, but we would still need a little bit of a powerball run before June 30 to make those levels. [LB301]

SENATOR ERDMAN: Sure. [LB301]

SENATOR McDONALD: Any other questions? No other questions for Dennis? Thank you for coming forward. [LB301]

DENNIS NELSON: Thank you. [LB301]

SENATOR McDONALD: Any other neutral testimony? If not, Senator Janssen waives closing so that closes our hearing on LB301 and also closes the hearing for the day. Thank you. [LB301]

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Disposition of Bills:

LB301 - Advanced to General File, as amended.  
LB546 - Held in committee.  
LB637 - Advanced to General File.  
LB638 - Advanced to General File.

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Chairperson

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Committee Clerk