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Agriculture Committee
January 31, 2017

[LB348 LB477]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 31, 2017, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB348 and LB477. Senators present: Lydia Brasch, Chairperson; Carol Blood, Vice Chairperson; Joni Albrecht; Ernie Chambers; Steve Halloran; Burke Harr; Bob Krist; and John Lowe. Senators absent: None.

SENATOR BRASCH: Good afternoon and welcome to the Agriculture Committee. I am Chairman Lydia Brasch. Before we begin on the committee's agenda today, let me introduce the members of the committee who are here with us so far and staff who will be assisting the committee today. I want to introduce the Vice Chair, Carol Blood, of District 3. And I also...on the empty seats, people will be coming in, but perhaps not right away. But it will be Senator Chambers and Senator Lowe. And then to the left here will be Senator Krist and then Senator Burke Harr, Senator Joni Albrecht, and Senator Halloran. And then to my right is Rick Leonard, who is the research analyst for the committee. To my left is committee clerk, Courtney McClellan. And the pages who are serving us today are Kaylee Hartman from Syracuse who is a student at UNL and Joseph Gruber of Omaha who is also a student. Today the committee is meeting to conduct a public hearing and receive testimony on the bills in this order. First, will be LB348 by Senator Larson, then LB477 by Senator McCollister. For the audience and those who will testify today is that we ask that you be respectful of those testifying and each other. Please keep conversations among yourself to a minimum and, if necessary, please take your conversations out in the hallway. Please refrain from any expressions of support or objection to the testimony. No one may address the committee except as a testifier while seated at the testifying table. Please turn off your cell phones and electronic devices or put them on vibrate or silence. Any phone conversations should be taken into the hallway. If you do not plan to testify today but would like to record your position on a bill, there is a yellow sheet that will be circulated outside the door where you can do so. These will be a part of the hearing record, however, only persons who testify will be included on the committee statement. Testimony on each bill will proceed in the following manner. There will an introduction by the senator sponsoring the bill or the committee staff if the bill is introduced by the committee. First, we'll have proponent testimony, opposition testimony, and last the neutral testimony. The introducer will provide closing remarks unless the introducer waives the opportunity. If you do plan on testifying, fill out the green sheet before you come up to testify. And they're usually on the corner here. Where are the green sheets? They're outside the door? Okay. They're outside the door. Please indicate your name and your contact information, whether you're testifying in support, opposition, or neutral on the bill, and indicate whether you're testifying as an individual or if you're representing a position of an organization. When you come forward to testify, place your testifier sheet in the box on the witness table and hand it to your...the testifying sheet to the clerk. When you begin, please first state your name and spell it for the benefit of the transcribers

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and tell us if you are presenting testimony on behalf of yourself or an organization. If you have any handouts, please gesture to one of the pages who will make any copies and distribute it to the committee. We request ten copies of any handout. We will not...today I would like to know how many are here to testify and we may...on the first bill, will you raise your hand if you're going to be coming forward? Very good. And then on the second bill? All right. We will be using the electronic...the timer here and your testimony is being limited to five minutes. You'll start with the green light on. It will be on for four minutes. When you see the yellow light, it means you have a minute remaining. And when you see the red light, please bring your testimony to an end. And at that point the committee will be asked if there's any questions of the testifier. And joining us after we already started is Senator Krist and Senator Lowe. Will the first senator please come forward? Senator Larson will open on LB348. Welcome, Senator Larson. [LB348]

SENATOR LARSON: Thank you, Madam Chairwoman. Members of the Agriculture Committee, my name is Tyson, T-y-s-o-n, Larson, L-a-r-s-o-n, and I am here to present LB348 at the request of the Governor. LB348, a part of the Governor's occupational licensing reform package, would repeal the potato shipper license and eliminate an underutilized checkoff and terminate the Nebraska Potato Development Fund. While the potato shipper's license isn't quite the same as some of the other occupational reforms under consideration by other committees, it has created a burden on the industry that far outweighs the benefit of the current regulations. There are currently 12 potato shippers in Nebraska paying this excise tax with a cash fund that has grown to over \$200,000. It is my understanding that these funds are not currently being used nor have they been used in the past four-plus years, rendering this tax another layer of government that has taken away from the business operations with no additional benefits. I would also like to mention that there will be an amendment presented by the assistant director of the Department of Agriculture that makes changes to the bill as it pertains to the operative date. The amendment would provide for a June 30, 2017, operative date, thereby terminating the fund prior to the July 1, 2017, collection. I will allow the assistant director to elaborate further on that amendment. And I appreciate the committee's time and would encourage your support of LB348. Thank you. [LB348]

SENATOR BRASCH: Thank you, Senator Larson. Are there any questions from the committee? Senator Harr. [LB348]

SENATOR HARR: I guess my question is, why was this act first developed and were there more potato developers in the past? [LB348]

SENATOR LARSON: I can't speak to whether there were more potato shipping licenses. I'm sure the Department of Agriculture would be...have a more historical record of how many there are. In terms of there's only 12 now, potato shipping licenses, and as I've said that they do have a

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checkoff. But it is my understanding the only thing that they've really approved for use of that checkoff in the last three years is a membership to the National Potato Board (sic: National Potato Council) or something of that nature. And so the fund has grown to over \$200,000 and it isn't doing what most checkoffs, whether that be a corn checkoff or a dry bean checkoff that we have at the state in terms of promoting an industry. And I know there's a bill in Government Committee that would get rid of the board. So they're moving together kind of this and another bill in the Government Committee. [LB348]

SENATOR HARR: So how much is the checkoff now per...how does it work today? [LB348]

SENATOR LARSON: What do you mean? [LB348]

SENATOR HARR: The checkoff program that's in place under the Potato Development Act today. [LB348]

SENATOR LARSON: It's my understanding that they have to...if you ship so many potatoes by weight, then you have to pay an excise tax. I can't remember exactly what that excise tax is. Following me will be a member of the Department of Agriculture that could tell you exactly what that is. [LB348]

SENATOR HARR: Okay. Do you know if any potato developers are coming to testify today? [LB348]

SENATOR LARSON: I don't know if they're potato developers or potato shippers. There was a awful lot of people behind me, so. [LB348]

SENATOR HARR: All right. I will look forward to that testimony. Thank you very much. [LB348]

SENATOR LARSON: Thank you, Senator Harr. [LB348]

SENATOR BRASCH: Any other questions from the committee? I see there are none. Thank you. [LB348]

SENATOR LARSON: Thank you. [LB348]

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SENATOR BRASCH: Will the first proponent please come forward? Welcome. Please state and spell your name. [LB348]

MAT HABROCK: (Exhibit 1) Senator Brasch and members of the Agriculture Committee, my name is Mat Habrock, that's M-a-t H-a-b-r-o-c-k. I'm the assistant director of the Nebraska Department of Agriculture and I'm here today to testify in favor of LB348. I have additional written testimony that I've asked to be placed into the record. Included with that is the amendment that Senator Larson referenced. The Department of Agriculture is in support of LB348 with Senator Larson's proposed amendment. The amendment addresses an error in the original bill. Our intent with the amendment is to eliminate the license this year, and as originally drafted the bill would still require potato shippers to pay the excise tax in 2017. The amendment clarifies that no collection would take place in 2017 and the remaining cash balance will then be transferred to the State General Fund. According to a 2015 study released by the White House, nearly 25 percent of Nebraska's work force holds an occupational license. The Potato Development Act is the oldest existing commodity checkoff program, originating in 1945. And it is important to note that Nebraska's potato industry has dramatically changed over the last 70 years, making the review of the act appropriate. Under the act, statutorily, any person engaged in the business of shipping in excess of 180,000 pounds of potatoes is required to file with the department an application for a potato shipper's license. There is no fee associated with the license. This license establishes the entity responsible for payment of a checkoff based on potatoes shipped to promote and conduct research for the benefit of the potato industry. The department currently has 12 shipping licenses in place and based on acres and production and the current rate of 1 cent per hundredweight, the checkoff generates approximately \$70,000 to \$80,000 of revenue annually. There is a Nebraska Potato Development Committee created under current law. The committee consists of three shippers and four growers from the industry and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources who is an ex officio member. And the director (the Department) of Agriculture is the chairperson. Due to lack of funding commitments by the Nebraska Potato Development Committee, the cash fund balance has grown from approximately \$8,000 as of July 1, 2012, to over \$2,000 (sic: \$200,000). The committee has had discussion on finding industry needs, but has not come to a consensus on directing the funds. Most recently the committee's only commitments have been providing for the dues for Nebraska to be represented on the National Potato Council and for minimal administrative costs. The committee has had dialog with the university and others on best management practices of psyllid and aphid control and developing models on finding water resource efficiencies related to timely application of irrigation water. The department supports the Governor's initiative to reduce burdensome licenses. And I'd be happy to answer any questions. [LB348]

SENATOR BRASCH: Thank you. And Senator Blood. [LB348]

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SENATOR BLOOD: Thank you, Senator Brasch. I noted in the research that there's been substantial drop in potato production and some of that, they pointed to maybe people that were self-growing, farmers markets. What's your take on that? [LB348]

MAT HABROCK: I can't speak specifically to the drop in potato production. There's several members of the potato growing industry here that I'm sure could speak to that. But I do have some figures in front of me that do show kind of the peak in potato production was in the early '90s. Then they kind of around that 1945 started to tail off to our current production of around, oh, 20,000 harvested potato acres. [LB348]

SENATOR BRASCH: Thank you. Any other questions? Senator Krist. [LB348]

SENATOR KRIST: They don't want to belong to the club and we want to do away with it, that's fine. I get the reason for the bill, but my problem with it is that I believe you said there are 12 licenses in place right now? And that historically has been the place, 12 plus or minus a couple in the past five or ten years? [LB348]

MAT HABROCK: I don't have that number in front of me to know what the number is. We could follow up on that. I'd have to look. I have the acre numbers, but I'm not certain on the number of licenses. [LB348]

SENATOR KRIST: They pay into the fund. Why aren't we paying them back? [LB348]

MAT HABROCK: That's a question I'm sure that can be addressed by some of them. We do have a representative here of the...that is a representative of the potato industry for a long time. I'm not sure if we would be interested in...he may have some of the historical information for the number of licenses that have been issued over time, but Gary Leever should be able to... [LB348]

SENATOR KRIST: If anybody else wants to come up and talk to...my specific question is, why are we taking their money that they didn't use and putting into the General Fund? Shouldn't it be returned to the people that paid into the licensing fee in some way? [LB348]

MAT HABROCK: I can't speak to the intentions of the growers as far as how they would prefer those dollars to be spent. Currently, looking at the bill as it is drafted it would be used as some of the readjustments to the current budget to addressing the shortfall. [LB348]

SENATOR KRIST: So it's going back in the General Fund? That's the question. [LB348]

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MAT HABROCK: Yes. Yep. [LB348]

SENATOR KRIST: All right. Thank you. [LB348]

SENATOR BRASCH: Senator Albrecht. [LB348]

SENATOR ALBRECHT: My question, because of the checkoff dollars really do help some of the different commodities that are out there and with the question that Senator Krist had about the money is going to go back to the Agricultural Department for promotional programs, but what is going to happen to the potato growers if they want to try to promote? Will they still be able to go back to the Ag Department and ask for some help in taking care of that in the future? [LB348]

MAT HABROCK: Yes. The bill as currently introduced, the dollars would actually be transferred over to the state's General Fund, not to the Department of Agriculture. [LB348]

SENATOR ALBRECHT: Okay. Because in...okay. [LB348]

MAT HABROCK: So for clarification on that, there would certainly still be opportunities for the Department of Agriculture. When you review what would still be left in within the Potato Development Act, the Department of Agriculture still does have the authority to do promotion and market development efforts on behalf of the potato industry. And so we would look at some of the opportunities that we may have. And as we discussed last week with LB135, within the ag publicity statutes there's some opportunities as well for us to work on behalf of an industry and do market development work for them. [LB348]

SENATOR ALBRECHT: I'll be anxious to hear those that follow you to find out where they're coming from on the monies. Thanks. [LB348]

SENATOR BRASCH: Senator Harr. [LB348]

SENATOR HARR: Thank you. And I'm going to follow up on Senator Albrecht's question which is, if we have an industry that peaked in the '90s and is going down now I guess the first question is, why is there less potato production today than there was in the '90s? [LB348]

MAT HABROCK: Our peak actually happened around 1945. We've kind of been at this stagnant level since kind of the 1960s. We actually have kind of been around that 10,000 to 20,000 acres

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for some time now. So not being a potato grower myself, I'll defer to them as to (inaudible)...
[LB348]

SENATOR HARR: Well, you're the one bringing the legislation, though. And my...here's my concern is, we're cutting the legs out from these people. Their industry is already struggling and instead of saying, hey, let's appropriate, let's take this money that we have and promote this industry. What I see is, you're not spending the money. You have \$200,000 you're collecting of their hard-earned money to promote their industry and you're doing nothing. [LB348]

MAT HABROCK: Well, it's the committee which is... [LB348]

SENATOR HARR: And they're dying and you're doing nothing. [LB348]

MAT HABROCK: It's the committee that is...the Potato Development Committee, which on that committee is the three shippers and four growers from the industry. They're the ones that make the decision on how those dollars are spent. It's not... [LB348]

SENATOR HARR: I guess my question is, shouldn't you be promoting instead of saving the money? [LB348]

MAT HABROCK: And that's why we brought this legislation, is because this has been in place...
[LB348]

SENATOR HARR: Because you aren't promoting. [LB348]

MAT HABROCK: Because the industry has not...with the collection of these dollars for the last four years has not been utilizing the funds that they have assessed on themselves and brought into this fund. So the committee that represents representatives of the industry have not utilized those funds. [LB348]

SENATOR HARR: But you are collecting money to promote an industry. Correct? [LB348]

MAT HABROCK: Uh-huh. [LB348]

SENATOR HARR: And they aren't promoting that industry, they're saving it. Is that correct?
[LB348]

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MAT HABROCK: They have not come up with...over the last four years they have not come up with...the committee has not identified funding opportunities for those dollars, no. [LB348]

SENATOR HARR: And during that time the amount of growers continues to decline, correct? [LB348]

MAT HABROCK: I'm not sure on the number of growers. The number of acres has remained relatively constant over that time. [LB348]

SENATOR HARR: I'm dumbfounded is what I will say. I get that we want to get rid of burdensome regulation. I'm not sure if this is burdensome or if it's people aren't doing their jobs that they were hired to do and, therefore, we're just going to take away their money and put it in the General...money that's meant to develop potatoes, we're going to switch over...they had a statutory obligation to promote the industry. They don't do it and how do we reward them? We take away their funding and we give it to the General Fund. If I were a potato grower or shipper, I'd be a little angry about this, because I've invested money to promote my industry. And you can't answer why you're not doing it. Maybe someone else who is on this board after you will come up and I'll look forward to hearing why they aren't doing what they are statutorily obligated to do under the current law. So I guess I'll leave it at that. [LB348]

SENATOR BRASCH: Are there any other questions of the committee? I would like to ask a question, Mr. Habrock. Has the department been in communication with any of the growers and shippers about the termination of this program? [LB348]

MAT HABROCK: The Potato Development Committee did meet last Friday and had discussions of the bill and the elimination of the funds and everything, so I'm sure there are several folks, individual growers that are part of that committee that will be here...that are here today to testify as well. [LB348]

SENATOR BRASCH: And were they in agreement or are they in disagreement as of your meeting? [LB348]

MAT HABROCK: I would have to defer to them to... [LB348]

SENATOR BRASCH: To them, too? [LB348]

MAT HABROCK: Yes. [LB348]

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SENATOR BRASCH: And then is there an explanation of why there was a sharp increase in the cash fund in the balance? Is there a reason for that? [LB348]

MAT HABROCK: I would...again, the members of the committee that have been on that committee for several years could answer this better than I can, but as I've referenced they've looked at some opportunities with research in psyllid and aphid control and my understanding is that there hasn't been proposals or projects brought forward that warranted the dollars. So there hasn't been programs worthy of the funding, I guess maybe is one way that they looked at it. They're continuing to look at opportunities and haven't seen opportunities that the initiative would like to fund. [LB348]

SENATOR BRASCH: And then I'm also curious if there's any duplication. Has this study of the industry, is it being explored through Innovation Campus or other entities? Will this completely end research on this crop or will that be covered through other institutions? [LB348]

MAT HABROCK: I can't speak to if the university has intentions to keep going forward with research. Again, you know, there would be some opportunities within the authorities of the Department of Ag. We would still be able to have those opportunities to promote with what is left within the Potato Development Act after this bill. [LB348]

SENATOR BRASCH: Are there any other questions from the committee? Seeing there are none, thank you, Mr. Habrock. Would the next proponent please come forward? Welcome. [LB348]

NICOLE FOX: (Exhibit 2) Good afternoon, Chairwoman Brasch and members of the Agriculture Committee. My name is Nicole Fox, N-i-c-o-l-e F-o-x, and I am director of government relations for the Platte Institute for Economic Research. Thank you, Senator Larson, for introducing LB348. I am here today to testify in support of this bill. Nebraska faces a work force shortage and occupational licensing creates a significant labor force issue. Nearly 200 different occupations in Nebraska require a government license, affecting nearly one in four workers. This is negatively impacting small businesses trying to hire employees, potential entrepreneurs wanting to start a business, and individuals seeking a means to earn an honest living. Reform of occupational licensing laws to lessen burdensome regulation is an economic issue that needs to be addressed. Occupational licensing laws were initially created as a means of protecting the public from negligent and unqualified workers. But more and more, instead of protecting the public from harm, we now understand that occupational licensing is making it difficult for new workers to enter the work force, entrepreneurs from starting a business, or for business owners to grow an existing business. Currently, Nebraska law requires persons involved in the shipping or selling of potatoes grown in Nebraska to seek a potato shipper occupational license. Requirements for potato shippers are unjustifiably more onerous in Nebraska than in

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nearly all other states. In fact, when researching the licensing of potato shippers across the country, the Platte Institute learned that only one other state licenses potato shippers and that state is Michigan. Licensing poses a financial barrier to small businesses and often the cost is passed on to consumers by raising the price of goods and services. Currently, the Nebraska Potato Development Act requires that each potato shipper track the number of pounds of potatoes grown in Nebraska that are sold or shipped annually. Each potato shipper then must pay and remit to the Department of Agriculture an excise tax per 100 pounds of potatoes sold. These taxes are then directed to the Nebraska Potato Development Fund, a fund where money currently just sits, as previously discussed. A study by the Heritage Foundation showed that occupational licensing reform could save Nebraska households over \$900 annually. And in this case it's evident that Nebraska's current licensing requirement for potato shippers imposes a financial burden to Nebraska families. LB348 will eliminate potato shipper licensing and terminates the Nebraska Potato Development Fund. This will make Nebraska more competitive with our neighboring states and lessen the red tape currently imposed on our state's potato shippers. The Platte Institute for Economic Research strongly supports occupational licensing reform as a means of lessening burdens to those trying to start or grow a business and earn an honest living. I ask that you advance LB348 out of committee. Thank you for the opportunity to testify today, and I'm happy to answer any questions that you may have. [LB348]

SENATOR BRASCH: Thank you, Senator Fox. Questions from the committee? Senator Blood. [LB348]

SENATOR BLOOD: Thank you, Senator Brasch. So did potato shippers come to your organization and say, we don't want this money set aside for potato growers anymore, potato shippers? Did they come and ask that this be removed, to your organization? [LB348]

NICOLE FOX: It's my understanding what happened was we were looking at occupational licensing just kind of across the board in general, looking at all the different licenses in the state. And we were looking at the ones where Nebraska essentially was either out of sync with its neighbors, we weren't competitive, or we were completely out of sync on a national standpoint. In looking at this one, we're one of two states. We felt that this was something that needed to be looked at. Why were we only one of two states that wanted to license potato shippers when it's really not...I mean, when you think about Nebraska, potatoes really don't come to mind. So we figured this is one that is outdated. [LB348]

SENATOR BLOOD: But is it licensing or is it setting aside money to promote potatoes? [LB348]

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NICOLE FOX: Well, I think as previously discussed, the money is being set aside. I mean, it's not traditional what we would consider occupational licensing, no. [LB348]

SENATOR BLOOD: Right. [LB348]

NICOLE FOX: It's essentially a tax. And in some cases, that's what occupational licensing is, it's a tax to work. And so these growers and these sellers and shippers are having to pay a tax on the product that they produce. And our concern is that that tax is being passed on to consumers. I mean it's not...it was just established this is going into a fund. And that fund, unfortunately, has not been utilized. Money is just sitting there. [LB348]

SENATOR BLOOD: Is there evidence that it was utilized prior to those four years? Were there like pro...buy Nebraska potato ads or... [LB348]

NICOLE FOX: That I do not know. I can't answer that question. [LB348]

SENATOR BLOOD: I think that's the thing that concerns me the most is that all the history that has been sent to my office has been within the last few years and there doesn't seem to be anything historical that shows me what the initial intent of these monies are. And I think that because we are so rapidly looking and frantically looking for money to try and balance our budget, are we just conveniently ignoring why this money was initially set aside because it's low-hanging fruit? And that's my concern. And putting the word tax on it so everybody fears it and wants to automatically put it back into the General Fund. So I'm hoping that amongst somewhere in this room someone can give me some historical information about it. And the fact that the money wasn't used doesn't mean that it's not going to be used and doesn't mean it wasn't used in the past. So that's my biggest concern. [LB348]

SENATOR BRASCH: Thank you, Senator Blood. Any other questions? Senator Krist. [LB348]

SENATOR KRIST: A question and a comment to add on to Senator Blood. There's a host of these occupational taxes and encumbrances, as they've been called by the administration, that are being attacked this year, reduction of hours for barbers and for people who are out there. In the industry, I'm hearing loud and clear that in some cases the requirements to barber or to be a cosmetologist are public safety issues. On the record, I will say that I do agree with them. And I'll also say that in this particular case, I don't know how this fits into an occupational licensing fee. This is a tax on a group. And the way it was used in the past historically, I mean, you watch TV, I'm sure. Idaho advertises all the time nationwide. That's what this money, by the act, was designed to do. So are we looking at poor management at the committee level and on the

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department head? I mean the head is chair of this organization. Are we attacking the fund, as Senator Blood said, because we're scraping and looking for money or is there really a reason to attack this fund? And I'm posing the question to you. But I'm also posing it to those of you that come up and testify in both cases. This doesn't fall neatly into what I think Platte is trying to do. [LB348]

NICOLE FOX: Traditional occupational licensing. Yeah. [LB348]

SENATOR KRIST: Yeah. It doesn't seem to me that what I read from Platte that this necessarily applies. [LB348]

NICOLE FOX: Senator Krist, thank you for your question. And I do agree with you. This does not fall in line with traditional occupational licensing. These excise taxes that these individuals are paying are not going towards protecting the public per se like you alluded to with, say, a barber. But I guess from our standpoint, from an economic standpoint...I can't speak to why for several years the money has not been utilized in this fund. But I guess we see it as how this impacts the business owners that we're forcing them to pay a tax. And maybe instead of paying this tax that's going into a fund that's not being utilized, why can't they just keep that money in their own pocket to reinvest in their own business? [LB348]

SENATOR KRIST: So you heard my comment before. Why aren't we giving the money back to the people who paid into the fund? Why are we proposing to put into the General Fund? [LB348]

NICOLE FOX: That...I'm going to be quite honest with you. I mean, some of the input for this bill came from the department, so I guess that...I don't feel like I can adequately answer that question because I didn't have input as to where the money would go. [LB348]

SENATOR KRIST: Okay. We'll see if anybody comes up after you can answer it. Thank you very much. [LB348]

SENATOR BRASCH: Senator Blood. [LB348]

SENATOR BLOOD: Thank you, Senator Brasch. So you've said this twice and I'm just looking for clarification. You said that business owners...what was the exact quote you said in reference to business owners have this unnecessary hurdle, unnecessary tax. What business owners have come to the Platte Institute in reference to the (Nebraska) Potato (Development) Act? [LB348]

NICOLE FOX: None at this point. [LB348]

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SENATOR BLOOD: Thank you. [LB348]

SENATOR BRASCH: Thank you. Any other questions of the committee? I have just one question here. And I do understand the need that we don't apply a tax unless there's a purpose in that specific tax. And the growers or the shippers are basically paying or investing in "themselves" would that...would you agree with that statement? [LB348]

NICOLE FOX: So you're saying that in paying the excise tax they're investing in themselves? [LB348]

SENATOR BRASCH: They're investing in "themselves." [LB348]

NICOLE FOX: The way that the initial licensing bill, if you would call it that, the act apparently it seems to be set up that that would be the case, but again that has not been the case. They're paying this and the money is not being utilized. [LB348]

SENATOR BRASCH: And I do understand that part as well. And the reason I even bring this up is in agriculture, I've heard in speaking with other commodities and other checkoff programs, that they feel like it's taxing...another tax that they're paying. And that the seed industry, for example, perhaps--and maybe someone will testify--that it's very competitive, that seed companies are constantly doing research, they're constantly doing promotion, they're trying to sell to the farmer, trying to sell. So if there's any chance that this is just a layer upon a layer that what you're proposing to do is just streamline and take another... [LB348]

NICOLE FOX: Layer off. [LB348]

SENATOR BRASCH: Yeah, layer off. Correct? [LB348]

NICOLE FOX: Correct. [LB348]

SENATOR BRASCH: I have no other questions. Any other questions from the committee? Seeing there are none, thank you. [LB348]

NICOLE FOX: All right. Thank you. [LB348]

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SENATOR BRASCH: (Exhibit 3) Next proponent. No other proponents? Would any opponents please come forward. And before you start, we have one letter to turn to record as a proponent from Americans for Prosperity, and it's signed by Matt Litt, director. Welcome. [LB348]

GARY LEEVER: Thank you. [LB348]

SENATOR BRASCH: Please state and spell your name. [LB348]

GARY LEEVER: My name is Gary, last name is Leever, L-e-e-v-e-r. I'm from Alliance, Nebraska. I am representing no one, I guess, because I am now retired. But from 1971 to 2011 I served as division chief for the Potato Development Division of the Nebraska Department of Agriculture. I am now writing a history of the potato industry. I'm going to give you some brief parts of that history, but I am here to tell you that the whole potato industry, primarily...not the whole potato industry, but most of the people that are on the Governor's Development Board are right behind me to testify against this bill. But I'll try to quickly answer some of your questions. The Nebraska Potato Improvement Association held its first meeting in Alliance, Nebraska, in 1918. The Legislature of 1919 legalized it as a state institution and appropriated \$1,500 to its beginning. And pretty much it was given a mandate: from then on they were to take care of their own expenses and their own promotion and research. So for 98 years they've been doing that without any legislative funds. After that, from 1919 to 1945, those collections of money to help the industry were done on a volunteer basis. And from 1945 they made it mandatory and those funds were put in the state checkoff tax. And, primarily, in the potato industry very few people in the state of Nebraska know very much about an industry. And you're going to hear from the rest of our group of how much money it generates and what it does. We are number 8 in the production of certified seed potatoes in the country, we are number 10 to 12 in the country every year. And your question about the peak acreage was in the World War II years and somewhere around 60,000 acres with more than 200 growers, but it was mostly dryer line production. Right now production on the acreage we have are at all-time records, because we have increased from 280 sacks per acre back in the '80s to 300 in the '90s to almost 400 to 450 acres these days. So we have about the same amount of acreage, but our production has remained very stable and very high. Anyway, from the checkoff tax in 1945, ever since that point the Potato Development Committee has met every year to determine how those funds should be spent. And with a question that keeps coming up, the reason it built to the \$200,000 in the last two to three years, we have had a major occurrence where we have an insect, a migratory insect that migrates from Central America through Mexico through Texas through Oklahoma through Kansas to Nebraska that is significant in potato production. And we simply did a project to try to help monitoring the income of that insect. We did that with specialty crop funds, so we let the Potato Development Fund sit. And the other reason for that, the potato industry has always been approached and has had the approach that there are people and funding within the University of Nebraska to do a research data, to do a disease project as long as you come with money in hand, because they

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have people for corn and they have people for wheat and they have people that will work on soybeans and they certainly have people who will work with any of the livestock industry. But if potato people needed something done, they had to come with cash in hand. And I have...that's the reason that's sitting there. Production is pretty much the same as it's been or a little better. And I will not talk much more than that because there are people that represent the industry that are here and actual production people that are Governor-appointed people on that board and I'll let them talk. But I'll answer any other questions you might have. [LB348]

SENATOR BRASCH: Thank you, Mr. Leever. I see Senator Blood has another question here. [LB348]

SENATOR BLOOD: Thank you, Senator Brasch. So for clarification, the money was allowed to accumulate because you envisioned that there were going to be additional things that you were going to need. In order to get those things that you need, it's always been policy that you have to have your cash in hand to accomplish those tasks. [LB348]

GARY LEEVER: Yeah, and I don't want to steal some of the thunder from some of the stuff that our people have put together but, you know, specifically, in this day and age we were talking about a fund that only generates \$70,000 a year. And \$15,000 of that's going for fixed payments that we need to make to represent our industry. So you're talking about \$55,000 roughly available. You don't get much of a project these days from any research that the university, any university is going to do for \$50,000, especially where they also take 10 percent off the top for administrative costs. Anyway, that's a whole different subject. But the point being, in order for us to really accomplish much we kind of wanted to let it build. Each year during the Governor's Conference on Agriculture, the Potato Development Board meets, and there are members from this board, and we allocate those funds. That will be done in March. So a lot of that...some of those funds will be picked up in March. It just kind of...it seems to appear like it was just sitting there and people are noticing that it's sitting there and it's not moving. Well, there's a...the industry has a reason for that and I'll let them talk about that. Any other questions? [LB348]

SENATOR BLOOD: Well, I have more clarification. I'm sorry, I need to finish asking mine. So you talked a little bit about why there's been a balance. The one thing that I haven't heard that I'm hoping you can answer, I keep hearing that allegedly there's been concerns, complaints from the businesses that are being imposed with the taxes. But all I'm hearing is that the tax is not an imposition and that you benefit from having that money, because it creates that fund that helps protect the industry. Would that be a correct... [LB348]

GARY LEEVER: I will let the industry say that. Yes, but that's certainly...as far as I can understand from the people I've worked with, there has been... [LB348]

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SENATOR BLOOD: So your interpretation is different than the previous interpretation that we heard? [LB348]

GARY LEEVER: Yeah, apparently I'm different. And I think a statement was made, we are one of the few states that has a shippers license. That just became as part of the legislation. But we are certainly not the only state that has a checkoff tax. Wisconsin has a checkoff tax, North Dakota has, Idaho has, Washington has, Oregon has, Colorado has, we have. It's basically the one difference is Idaho's is multimillion dollars, \$20 million, \$25 million a year. So they spend it on advertising, so everybody knows Idaho has a potato industry because they use it on television advertising. We have never had that fund or that kind of fund. So we have done promotional things. We have had booths at the State Fair. We do represent ourselves on a national level. And we have developed circulars to make people understand there is a potato industry. But it's difficult for us when you really have some disease and production problems that really need to be met. That's where you're going to channel the money more than you are to the promotion. So we have done no more with the Potato Development Fund in research and development and production problems than we have in promotion. [LB348]

SENATOR BLOOD: Right. And do you see it more as a tax or a fee? [LB348]

GARY LEEVER: Pardon? [LB348]

SENATOR BLOOD: Do you see it more...since you're a business professional and have dealt with potatoes...what do you call someone that deals with potatoes, a "potatopreneur" or what do you call yourself? [LB348]

GARY LEEVER: Say what now? [LB348]

SENATOR BLOOD: What do you call somebody who deals in potatoes? Do you have like a special name? [LB348]

GARY LEEVER: Potato producer. [LB348]

SENATOR BLOOD: Potato producer? [LB348]

GARY LEEVER: Yeah, potato farmer. [LB348]

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SENATOR BLOOD: Potato farmer? Do you officially, as a potato farmer, consider it more of a fee or a tax? [LB348]

GARY LEEVER: Well, I will let them answer that, because I'm not really a farmer. I basically...well, I guess I mess around in potato genetics and I grow a little bit of potatoes, but not like they do. So I will let them answer that. [LB348]

SENATOR BLOOD: Then I will ask those questions of them. Thank you. [LB348]

GARY LEEVER: Okay, thank you. [LB348]

SENATOR BRASCH: Thank you, Senator Blood. Senator Halloran, did you have a question? [LB348]

SENATOR HALLORAN: Just a quick question and it's just for clarification. Is there a national checkoff? [LB348]

GARY LEEVER: Yes. Every grower here also pays to the national checkoff. [LB348]

SENATOR HALLORAN: What is it that we would be doing in the state of Nebraska that wouldn't be covered by where the money goes for national checkoff? [LB348]

GARY LEEVER: The national checkoff is pretty much all situated on promoting consumption of potatoes in the food chain. The National Potato Council came out with the first vegetable ever to get a label, a nutritional label was potatoes and that went on the thing. The National Potato Council was very instrumental in the potatoes in space program. Potatoes are the one...I see a smile over there. But it is the one commodity on earth that you can totally subsist on all by itself. It has enough protein, it has enough carbohydrates, it has enough sugars that you can wholly subsist on potatoes. There were a group of students at Oklahoma State--so I won't say too much about Oklahoma State--but for three months they went on a diet that ate nothing but potatoes to prove that they would maintain their health. Okay. But, anyway, that product has already been grown in the space station to prove that it can grow in that atmosphere and it would supposedly provide nutrition if we ever decide to colonize the rest of the universe. Yes. [LB348]

SENATOR BRASCH: I believe we have another question, Mr. Leever. Senator Harr. [LB348]

SENATOR HARR: Thank you. Were those students Irish? (Laughter) [LB348]

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GARY LEEVER: Good question. [LB348]

SENATOR BRASCH: No other questions from the committee? Will the next opponent please come forward? Welcome. [LB348]

JIM ALLEN: I only made four or five copies. Sorry. [LB348]

SENATOR BRASCH: We'll get more made. Please say and spell your name. [LB348]

JIM ALLEN: (Exhibit 4) My name is Jim Allen, A-l-l-e-n. I'm testifying in opposition of LB348. I'm a potato grower from Alliance, Nebraska. I'm the general manager of Western Potatoes and we've been raising potatoes since 1963. I want to speak just on some of the questions you've probably asked. One is about how big are potatoes in Nebraska? Our Development Board, which doesn't spend any money, paid the Department of Agricultural Economics at the University of Nebraska to do this economic study, just from 2012 to 2015. And I'm just going to hit some bullet points just to kind of inform you that potatoes are a big deal in Nebraska. If you eat potato chips, Frito-Lay potato chips, you live in Omaha, you live in Denver, a lot of places in between and outside of that, they probably came from Nebraska, were grown in Nebraska. From 2012 to 2015 we sold 6.4 million to 9.5 million hundredweight, that's the range. A hundredweight is 100 pounds. Acres ranged from 16,000 to 25,000. The cost of production in potatoes is about \$4,000 per acre. To put that in perspective, that's about five times the cost of an acre of corn or ten times the cost of an acre of wheat, so it's a high input crop. Total output, direct and indirect, economic dollars generated, \$136 million to \$203 million a year, \$695 million over four years. Employment, 802 to 1,200 people a year. Labor income impact is \$51 million to \$75 million a year. State and local taxes, \$7.5 million to \$11.1 million a year. And I submitted the study that the University of Nebraska did, which has a lot more information than that. And that's all I have. [LB348]

SENATOR BRASCH: Thank you. Are there questions from the committee? Senator Krist. [LB348]

SENATOR KRIST: Mr. Allen, that...what you submitted for the study that was done by the University of Nebraska, do you know how much that cost? [LB348]

JIM ALLEN: \$16,000. [LB348]

SENATOR KRIST: Sixteen thousand dollars. And it seems to me what they actually were doing was accumulating data that you just gave to us. So if I had \$200,000 in a fund and I was looking

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forward to doing something with that money and it's costing me \$20,000...\$16,000 to \$20,000 every time I ask for something to be done, I'd want to save my money to make sure that I could afford to do those kinds of things. I'm not trying to put words in your mouth, but what I'm hearing is they do things for your benefit. And when they have to pay out at that rate, you should have some operating cash to do that. Is that fair to say? [LB348]

JIM ALLEN: I think you did a good job of putting words in my mouth. Two hundred thousand doesn't get you much research done. And if you've really got a big problem, you'll spend that in a year with not a lot of projects. I think the Development Board probably deserves credit for not wanting to spend money on things that don't really impact us very much, so we're tight with our dollars more than anything. One cent tax is probably the lowest in the country, I don't know. [LB348]

SENATOR KRIST: So you...one follow-up question, if I could? You heard me say, if we're going to do this, the money should go back to the growers to do what they need to do. How do you feel about that? [LB348]

JIM ALLEN: Well, absolutely. There's not...I don't know of a grower that's against it, against the Development Board. And that...we haven't cost the state of Nebraska anything, the Development Board hasn't, so yeah, it's our money, it should go back to us. [LB348]

SENATOR KRIST: Well, I think it's better served where it is, as long as you're happy with what the board does for you. But I make the point just because we...in 2009 when we went through a special session, I was here and we robbed from every cash fund everyplace we could to try to balance the budget. We're not in that situation right now, so we need to keep our hands off the things that are working, so to speak. Thanks for coming. [LB348]

JIM ALLEN: Thank you. [LB348]

SENATOR BRASCH: Senator Albrecht. [LB348]

SENATOR ALBRECHT: Thank you. If you don't mind, just for a quick question. So we talked about...or I'm concerned if you have enough money or have the funds to promote what you do, but more importantly you talked about the aphids. If there's an insect that's bothering your business, how would you take care of that? Would you all just have to come together if this wasn't around, if these funds weren't available to ask the Department of Ag to help you out or what would you do in a situation like that? [LB348]

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JIM ALLEN: I think we'd have to recreate this organization, just recreate it to get together. The thing we'd have to do is all get together and discuss and contribute money to do a research project and come to a consensus, which is what this organization does. [LB348]

SENATOR ALBRECHT: And again, you met with the Ag Department, your group, I take it, the other day. Did you voice those concerns with the Department of Ag to let them know that this is working for you and you appreciate having it? Is it something that we don't need to be doing away with? Do you think it protects you? [LB348]

JIM ALLEN: Yeah. Another concern is, I guess amongst us, is how do we avoid...we learned about this ten days ago. Maybe you could be having this meeting and none of us are represented, we just happened to hear about it. How does this happen? It's kind of scary. [LB348]

SENATOR BRASCH: That's a good question. I don't have the answer for that, specifically, but it is a good question. And I do think we have one more question from Senator Blood here. Is that chair comfortable? Everyone keeps wanting to jump out of it as fast as they can. We could get a different chair if you like. Thank you for staying. [LB348]

SENATOR BLOOD: Actually, I had a question in reference to aphids as well and that question was already answered, so. [LB348]

SENATOR BRASCH: Senator Krist. [LB348]

SENATOR KRIST: One follow-up to your point, you have this committee watch legislation for you and make sure that it watches what's coming on your radar, because it surprises even us sometimes when a bill is dropped. There's been, I don't know, 180 or more bills dropped this year. And you have to keep your eye on the ball, because this kind of stuff goes on all the time. [LB348]

SENATOR BRASCH: And we do have one more question from Senator Blood. [LB348]

SENATOR BLOOD: I'm going to ask you the question I asked the person previously who said that perhaps you guys can answer the question better. Previous proponents kept saying that it created a hurdle for the potato farmers, whatever your official title is, but I'm not hearing you guys say that. So I'm kind of curious. These potato producers that are complaining about the high fees or high taxes or these additional hurdles, I haven't heard any in the room yet. Is it the consensus amongst at least the ones that you've come in contact with that there's a big concern about paying this fee, since you get something for the fee? [LB348]

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JIM ALLEN: I think so. I think it's consensus. We have debates about raising and lowering it all the time, but nobody wants to do away with the Development Board. Nobody feels burdened by it that I'm aware of. [LB348]

SENATOR BLOOD: That's interesting. All right. Thank you. [LB348]

SENATOR BRASCH: Any other questions? Seeing there are none, thank you. The next opponent please come forward. Welcome. Please state and spell your name. [LB348]

JOSEPH THOMPSON: (Exhibit 5) Joseph Thompson, J-o-s-e-p-h, Thompson, T-h-o-m-p-s-o-n. I'm here today to oppose LB348. Good afternoon, Ag Committee members. Thank you for the opportunity to be here to testify today. I'm a potato producer from Alliance, Nebraska. I grow seed potatoes. I currently own and operate Thompson Seed Potato near Alliance in the Panhandle area. The Potato Development Committee is essential to me as a grower. When faced with new challenges such as emerging pests, this is the tool we use to educate or do research. It is also our mechanism used when we need an emergency exemption registration of a chemistry to combat a new disease. This also gives me a voice at the federal level with the National Potato Council. We have a very healthy and vibrant potato industry in this state, and we should be proud of it. The seed industry is a lifeline to many other states' supply of dependable, disease-free seed. Removal of this committee and the potato tax and the Nebraska Potato Development Committee could potentially create major adversity to this vibrant industry. Where will we turn in time of tragedy or need for research to get solutions? Certainly our Governor would not have requested the introduction of this bill had he known the ramifications to the potato industry in the state. I also believe that Senator Larson, who is from a legislative district that grows potatoes, would not have done this had he known the position of the growers. We were never asked when...prior to the introduction of this legislation. I ask for your support when it's time to vote on this...I ask for your support to oppose this bill. By doing so, you will be saving a great industry in our state that creates many jobs. Is there any questions? [LB348]

SENATOR BRASCH: Are there any questions of the committee? [LB348]

JOSEPH THOMPSON: Can I make one other comment? [LB348]

SENATOR BRASCH: Yes. [LB348]

JOSEPH THOMPSON: I think it was presented that there was lots of cumbersome hurdles with licensing. I think that is a very false statement. I don't think anybody is inundated with licenses

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for new or additional licensees. I think this is strictly a grab for funds. That's what I think this is all about. [LB348]

SENATOR BRASCH: Thank you, Mr. Thompson. Any other questions? I see there are none. Thank you for coming forward today. Any other opponents? [LB348]

TRACIL POWER: Good afternoon. My name is Tracil Power, I'm here to oppose this bill, LB348. [LB348]

SENATOR BRASCH: Please say and spell your name. Thank you. [LB348]

TRACIL POWER: Sorry. My name is Tracil Power, last name is P-o-w-e-r, first name is Tracil, T-r-a-c-i-l. I'm a member of the Nebraska Potato Development Board. I work for CSS Farms, a potato grower in the state of Nebraska. CSS Farms grows approximately 3,700 acres of chipping and seed potatoes in seven counties in Nebraska. Those counties are Platte, Polk, Merrick, Kearney, Phelps, Lincoln, and Cherry County. As part of the Governor's occupational licensing reform, there's been a bill introduced that would eliminate the Nebraska Potato Development Fund. First of all, I'd like to say that CSS Farms does not consider the checkoff dollars collected from the licensed shippers in the state as outdated, burdensome, or a hindrance to the potato industry of Nebraska. Currently, the checkoff dollars are paying for Nebraska representation in Washington, D.C. Some of the dollars are used to pay Nebraska dues to the National Potato Council or NPC. If the checkoff were eliminated, the potato growers of Nebraska would have to re-create in some way to fund Nebraska's support of the National Potato Council. The funds have been used to support research in the past when needed. The cost of research is high. The checkoff does not collect enough dollars to fund research on an ongoing basis. The Potato Development Committee has tried to identify industry needs as they occur, such as zebra chip and psyllid and aphid research. The Development Committee has not been one to spend money unless there is a clear need. That's why the cash balance has increased over the past few years, which hopefully will allow the Potato Board to fund some meaningful research in the future. At times it has been difficult to find researchers within the state with potato research expertise. And there are currently rules and regulations which make it difficult for the funds that we do have to go outside of the state to find that research. Also of concern is the current cash balance not being used for its original intent, which would be a hindrance to the Nebraska potato industry. So in my opinion, the bill as proposed will have a negative impact on the Nebraska potato industry. I would strongly encourage this committee to keep the Nebraska Potato Development Board and the checkoff intact. That's all I have. Thank you very much. [LB348]

SENATOR BRASCH: Thank you, Mr. Power. Questions from the committee? Yes, Senator Blood. [LB348]

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SENATOR BLOOD: I didn't think I'd have so many questions about potatoes. How many people--for clarification--actually sit on that board? I don't think I've heard that number. [LB348]

TRACIL POWER: I believe there are seven total. Is that right, Gary? Seven. [LB348]

SENATOR BLOOD: And how often do you meet? [LB348]

TRACIL POWER: Twice a year. [LB348]

SENATOR BLOOD: And so what dictates what you bring forward on your agenda each time? Is it discussing it with the other farmers, things that have come forward nationally? [LB348]

TRACIL POWER: To be totally honest, we're farmers. We're not politicians. We're not out there. But when a need arises, such as the zebra chip that's transmitted by the migratory insects, psyllids, it's very devastating, has been in the past to the potato industry in multiple states. So I brought that up a little bit on our regional on research and trying to get any of our dollars. Yes, there are dollars for Nebraska and we want to promote the Nebraska industry...potato industry, but there's a lot of expertise that we could fund outside of the state that would help alleviate some of the problems we have in-state that we do not have adequate or the expertise in research in potatoes to handle that. And the dollars that we do collect are not that great. I mean, some of those research on an annual budget, they'll have half a million dollars in research dollars to spend. We can help provide, we can supplement that, but we can't totally fund that within the state. [LB348]

SENATOR BLOOD: Would you say you're a pretty tight-knit group that communicates pretty well with each other? [LB348]

TRACIL POWER: Yeah. I mean, we could do better, I'm sure. And we...like I said, we're farmers. We don't like to be in these rooms in front of microphones and talking to people. We'd rather be out growing potatoes. [LB348]

SENATOR BLOOD: I think you're doing a fine job. Thank you. [LB348]

SENATOR BRASCH: Thank you, Senator Blood. And thank you. Any other questions? Yes, Senator Harr. [LB348]

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SENATOR HARR: Thank you, Madam Chair. Thank you for coming down here today. I just want to say, we all want less regulation. We all want a lot less red tape. And so on first blush, this seemed like a really good idea. But this is why we have public hearings and the public process. You came down and gave a very nice, lucid, logic and argument as to why we should retain this. And it's made me rethink maybe in other bills where we're raiding cash funds to put into our General Fund, because I think you're being fiscally conservative. And I'm afraid we may be incentivizing some of these cash funds to spend money because if you don't spend it you're going to lose it, instead of being smart and saving your money for a rainy day instead of us just raiding on a rainy day. So thank you very much. [LB348]

TRACIL POWER: And there's that mentality. To be totally honest, we were warned probably more than two or three years ago that, well, you don't want this fund to collect and get too large because somebody is going to latch onto it and it's going to disappear. And that's exactly what's happened. [LB348]

SENATOR HARR: Yeah. Well, thank you. I appreciate your commitment and your time that you spent on this issue. [LB348]

SENATOR BRASCH: I believe we have another question yet. Senator Krist. [LB348]

SENATOR KRIST: I have a technical question for you and the board. You alluded to it as though your act restricts you from potentially spending the money where you'd like to spend it, meaning the expertise that you could probably get by going to Idaho or wherever. Does the act need to be amended to give you more flexibility to do the things you need to do? [LB348]

TRACIL POWER: I'm not sure it's the act. Like I say, I don't know the ins and outs. I think it's, from what I've been told, it's more on the...coming from the university system and the Department of Ag on where that money is spent. I don't know if it's specific wording in the original act or if it's administrative, but there's a lot of hurdles to try and fund a researcher from NDSU or somewhere else with our dollars. [LB348]

SENATOR KRIST: Sure. Well, that offer should be open to you by all 49 of us. Should you need to have some change in legislation or enabling legislation within the act, should this stick around--I think it's a pretty good chance it will--then come back and talk to us and we can do what needs to be done to help you do what you need to do. [LB348]

TRACIL POWER: I appreciate that. Thank you. [LB348]

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SENATOR BRASCH: Thank you. I have also a question for you, Mr. Power. When you have your meetings twice a year, are minutes kept of the meeting and are they published or do you send them back? What is the procedure when you do have a meeting? [LB348]

TRACIL POWER: Yes. It's a formal meeting with minutes and notes taken and those are all sent back out, yes. [LB348]

SENATOR BRASCH: And so, to date, there haven't been any requests or projects of the funds? It was... [LB348]

TRACIL POWER: I actually missed the last meeting on Friday. Yes, there is...I mean, we have a request for funding out there annually. We started that in the last few years, so there is...talk to Jack Whittaker (phonetic) out in west extension. So there is some out there, yeah. And we meet in March at the Governor's Conference in Kearney to decide on funding on...if there's any of those that we can fund. [LB348]

SENATOR BRASCH: And as far as promotion, do you have a Web page or do you rely on Department of Ag or the university? What do you do for promotion? [LB348]

TRACIL POWER: Yeah. We don't do very much promotion. We've done...we've looked at that over the years that I've been on the Development Committee. And again, TV time and ads cost a lot of money. This \$200,000 that's in this cash balance right now, \$200,000-plus, that's by far the largest it's ever been. Typically, it's under \$10,000, so you can't hardly buy a minute of TV time for that. [LB348]

SENATOR BRASCH: Do you feel like you need TV time? I mean, is the industry falling behind? Is there a purpose for it? Wouldn't it fall under, like, public service announcement or something like that that...? [LB348]

TRACIL POWER: I don't know. There are probably better people that could answer that question. I don't mean to dodge the question, but the Nebraska potato industry, I feel, it's a little different than Idaho. Idaho, you've got tens of thousands of acres produced, as an example, a lot of retail sales. Nebraska is not necessarily that way. A lot of seed production in Nebraska...seed potato production and a lot of chip potato production, which is generally contracted ahead of time so there's really not that need for public awareness. [LB348]

SENATOR BRASCH: I am just curious. [LB348]

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TRACIL POWER: Sure. [LB348]

SENATOR BRASCH: Thank you for your work that you do in growing potatoes and I have no other questions. Any other questions of the committee? I see none. Any other opponents here today in opposition that you'd like to come forward and testify? [LB348]

TIM MAY: Thank you. My name is Tim May, T-i-m M-a-y. I am a third-generation potato grower. I raise... my family as well as myself raises approximately 2,000 acres. We raise potatoes for the fresh industry, the same thing that you're buying at Hy-Vees, restaurants, as well as the fresh process market. A lot of what you guys are hearing is "repetitory," so I kind of jotted some notes down. I didn't come near as well as prepared as they did, so. Our checkoff tax is 1 cent per hundredweight. In potatoes, everything is based off of hundredweight. It's not bushels anymore, it's hundredweight. So again, it's 1 cent per hundredweight. And is it a burden? It costs us \$6.50, \$7 to raise--just in input cost--to raise that bag of potatoes. So our percentage of our checkoff is very low. I know the question was asked at our meeting whether we were in favor of LB348. It was unanimously decided at our Nebraska Potato Development meeting last week that we were all opposed to it. I know that there's a large grower in Senator Larson's district, Ron Offutt Company (sic: R.D. Offutt Company). I actually contacted them to see if they were opposed or agreed with this and they were opposed. They knew nothing about it. So as another person testified, I really felt that this was a means that because we haven't spent our money, let's sweep it into the General Fund. I've been on the Nebraska Potato Development Board for right at ten years. I've seen the downside of it, where we had no money. We had...actually, Mr. Leever retired and we had to fund his retirement. We had no money...not enough money to fund his retirement. So I do believe that as a board member and the rest of the board members, we were...we've been conservative as far as spending our money. We wanted it used for a good purpose versus, oh, we got to spend our money. So, yes, we have let it build. We have...yearly in October we send out...actually we're looking for projects. University of Nebraska, we have not been pleased with what they've come back with. We do have, as you guys have heard, the potato psyllid. It's a big deal in our industry. In my area alone, there is over \$3 million spent a year in controlling potato psyllids. It can be quite devastating if you do not control it. So we're...we need the money to be able to have multiple-year research to understand how to control them. As far as the promotional side, it's very hard to promote our industry with even \$200,000. I can tell you that I do sit on the Potato Board; it actually used to be called the United States Potato Board. I'm on my second term, which will be six years I've been involved in that. I sit on the Executive Potato Board this year. There is \$14 million in that fund or that's what they bring in a year...so...to help promote potatoes. Are they promoting strictly Nebraska? No. It's statewide and it's international, it's all sectors of the potato business. [LB348]

SENATOR BRASCH: Any other questions from the committee? I see none. Thank you for your testimony. [LB348]

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TIM MAY: Thank you. [LB348]

SENATOR BRASCH: Any other opponents in opposition? Please come forward. Welcome. Please state and spell your name. [LB348]

TAYLOR MAY: My name is Taylor May, T-a-y-l-o-r M-a-y. I am representing myself as a future potato grower here in Nebraska. Obviously, the hammer has been hit, I guess, on many points. So short and sweet, I believe what we're doing for the future of the Nebraska potatoes is very necessary. The obstacles we face on a yearly basis is different from the national level. And this group is one way to bring us all together, number one, to identify the problems, but likewise be able to do something about them in regards to research and any future fundings. [LB348]

SENATOR BRASCH: Any questions of the committee? Senator Krist. [LB348]

SENATOR KRIST: Just a comment. Thanks for staying on the farm. [LB348]

TAYLOR MAY: Yeah, thank you. [LB348]

SENATOR BRASCH: Any other questions from the committee? Thank you for coming to testify. [LB348]

TAYLOR MAY: Thank you. [LB348]

SENATOR BRASCH: Any other opponents that want to come forward? [LB348]

JEFF COLLINS: I think I might be your last one. [LB348]

SENATOR BRASCH: Welcome. I think the chair might be getting more comfortable. [LB348]

JEFF COLLINS: It's probably warmer, too. My name is Jeff Collins, J-e-f-f C-o-l-l-i-n-s. I've been in this industry 23 years, started out at the bottom and I've worked my way through it. I, like most of these guys, sit on the Potato Improvement Committee (sic: Potato Development Committee). I appreciate the ability to have our own voice. I mean, nobody controls it. We have our own funds. We speak for ourselves. I mean, it is neat. So I'm an opponent. I don't think this is a wise decision for our industry to let this go. I represent Walther Farms, which is a fourth-generation family farm. This year they're actually doubling our acres in Nebraska. I just...I see...I don't see any common sense to this legislation. It's not going to benefit us. It'll do hindrance.

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Like these guys said, we'll have to set up a different fund. We'll have to set up a cooperative. This is very beneficial to our industry. [LB348]

SENATOR BRASCH: Any other questions of the committee? Yes, Senator Albrecht. [LB348]

SENATOR ALBRECHT: I'd just like to thank all of you for coming in. And I'm sorry that you didn't hear about it before it ever came to this point. I know how important it is to be on the farm and not in Lincoln to defend this. Thank you. [LB348]

JEFF COLLINS: I like you. And I appreciate your guys's time. [LB348]

SENATOR BRASCH: Thank you. And I also want to thank you and the others here. Any other opponents, someone who is in opposition? Is there anyone here who would like to testify in the neutral? Seeing there are none, Senator Larson waives closing. And that will close the hearing on LB348. We'll take a minute to clear the room. We have one more bill, unless you want to stay for the next bill. The next bill that we are about to hear is LB447 (sic: LB477) and welcome, Senator McCollister, who will be the introducer. Welcome, please start. [LB348]

SENATOR MCCOLLISTER: (Exhibit 1) Good afternoon, Chairwoman Brasch and members of the committee. I'm John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. I am here today to introduce LB477. This proposal would prohibit the advertising of the price of motor fuel that is only available at a limited number of fueling positions. The restriction would apply when the intent is to advertise the price of such a fuel as if it's a bargain with the intended goal of encouraging consumers to substitute a more expensive fuel because of the limited availability of the product at the less costly advertised price. This practice is commonly known as bait and switch. Please look at the fueling position exhibit. I think you all have that. The pages are disturbing. This photo depicts clearly the problem addressed by LB477. The retailer at this location posted a price of \$1.97.9 on his advertising sign. This price is about 20 cents less than a competitor's advertised price in town. The price being sold at is \$1.97.9 is only available at two fueling stations. The problem is the customer sees the advertised price of \$1.97.9 on the sign that says the price is only available at two fueling positions. When they pull into the station, they often find other customers waiting in the line at these two positions. They move to another fueling position and don't pay attention to the difference in price of the product at this new position. As you can see in the photo, the prices at these positions are 50, 60, even 70 cents higher than the advertising price. This bait and switch situation actually happened to me. As I was driving to Denver enjoying the beautiful scenery of Nebraska, my fuel gauge indicated a need to stop so I stopped at a station with a very competitive price. When I saw the line of cars just behind two pumps and the other fuel stations had much higher prices, my good mood turned into anger. Thus irritated, I left the station

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unhappy with this shady sales tactic and the city where the station was located, guilt by association. The proponents of LB477 feel this practice I just described as deceptive and creates an unfair competitive advantage for the retailers who engage in this practice. Supporters of this bill are here today to provide more information about the changes proposed in LB477 that would benefit Nebraska as well as visitors to our state. I would be happy to answer questions if I can. [LB477]

SENATOR BRASCH: Thank you. Are there any questions? Yes, Senator Harr. [LB477]

SENATOR HARR: Thank you, Madam Chair. And thank you for bringing this bill, Senator McCollister. I understand the problem. I just have a question. So I have a diesel and diesel is at most gas stations only available in one location. How do I address the issue? How does this address that issue? [LB477]

SENATOR McCOLLISTER: Well, you identify a problem that we haven't quite resolved in this bill. E15 ethanol are some other issues that we need to resolve as well so we may need to submit an amendment to address your concerns about diesel fuel and the ethanol E15 issue. [LB477]

SENATOR HARR: Okay. And I appreciate that because I do commend you on the purpose of the bill because I think I know exactly where... [LB477]

SENATOR McCOLLISTER: Where the station is. [LB477]

SENATOR HARR: Yeah, it's a little north of here so I know exactly where it is so I appreciate that. It might be along the Platte River, too, so thank you very much. [LB477]

SENATOR McCOLLISTER: Well said. [LB477]

SENATOR BRASCH: Senator Krist. [LB477]

SENATOR KRIST: The definition that you choose to use...do you have a copy of the bill? [LB477]

SENATOR McCOLLISTER: Yeah. [LB477]

SENATOR KRIST: Page 3 starting at the bottom, line 29, "Advertise an automotive spark ignition engine fuel on a price sign" and then you use the same definition again on page 4 if

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the...and you actually define "automotive spark ignition engine fuel means gasoline and its blends with oxygenates such as alcohol and ethers; or" and I haven't read this next paragraph but does that include diesel fuel? [LB477]

SENATOR McCOLLISTER: Normally not. That's a compression fuel... [LB477]

SENATOR KRIST: Right. [LB477]

SENATOR McCOLLISTER: ...so-called so perhaps we need to tune up the definitions as well, and I will make sure those are right before we move this bill. [LB477]

SENATOR KRIST: To Senator Harr's point, I think if you defined the gasoline and you defined the diesel product, you might be able to limit it to or make it available at more than one or, you know, the wording is there. But I think it's in the definition myself because that was what confused me. [LB477]

SENATOR McCOLLISTER: Thank you, Senator Krist. We'll deal with that issue. [LB477]

SENATOR KRIST: Thank you. Thank you, Chair. [LB477]

SENATOR BRASCH: Any other questions of the committee? Seeing there are none, will you be staying to close? [LB477]

SENATOR McCOLLISTER: I hope to. But if I'm not back, I waive. Thanks. [LB477]

SENATOR BRASCH: Very good. Thank you. The first proponent, will you please come forward. Welcome. [LB477]

DON QUINN: (Exhibits 2-11) Thank you, Madam Chair. My name is Don Quinn, D-o-n Q-u-i-n-n, Irish by the way. Madam Chairman and senators of the Agriculture Committee, I'm the president of Sapp Brothers Travel Centers, which is also a member of the Nebraska Petroleum Marketers and Convenience Association. Sapp Brothers is incorporated in the great state of Nebraska and has been for just over 45 years. Sapp Brothers operates travel plazas along with wholesale petroleum, lubricants, propane, transportation. We employ approximately 1,200 employees in eight different states, but most of them are right here in the state of Nebraska. I'm here to provide testimony today in support of LB477. LB477, as Senator McCollister shared with you, is to address what I believe to be deceptive advertising practices of retail gas. There's a

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petroleum marketer in Nebraska who operates under the name Fat Dogs, also known as Wilkinson Development. This business operates five or six locations that I know of which are interstate locations primarily and operate in Sidney, Ogallala, North Platte, Doniphan, and Lincoln. This operator posts a large sign with his price. And, you know, it's a very unique industry because we're one of the few that puts our price right out there for everybody to see. And according to the NACS, National Association of Convenience Stores, approximately 70 percent of the people make their decision on where they're going to stop to purchase gas based on price. So his bait and switch tactics are very, very effective. Once as a consumer you see that price and so you decide to pull in to purchase the gas based on that and obviously you may or may not be aware and fall victim to the bait and switch tactics. That tactic has been so effective that it has caused other operators adjacent to him to also adopt that same tactic or lose all of their volume. It's really kind of a shame. In 2007, Nebraska state's attorney, Jon Bruning, tried to address this after a multitude of complaints to enter into an assurance of voluntary compliance to prohibit this practice by trying to adopt an agreement that brings the deceptive practice to the consumers' attention. Stipulating adherence to certain advertising practices, in my opinion, it's a failed attempt. And today I don't believe that it's even any longer adhered to. I believe that this deceptive practice, if it's not stopped, will be further adopted by not only other retail petroleum marketers but potentially by other industries as well. Nowhere but here in Nebraska does this take place. We happen to be members of other associations, national associations, and trying to research this situation to see if there's other states that had, you know, rules, regulations, if you will, to preclude this, we found nowhere was this happening other than here in our state. I believe that, you know, by creating a level playing field--and that's' all we're asking for here--this is going to have nothing but a positive impact, in my opinion, on a consumer. And by allowing companies to operate in a fair trade environment, it allows us to provide good-paying jobs with benefits to our employees, profit sharing, etcetera. So I understand that there may be some other people that may oppose our legislative bill, but I think that their opposition may be more technical related to specific language within the bill. But I think you'll find that they absolutely support this bill. And we look forward to working with them to offer up any amendments, etcetera, so that it would satisfy the entire Nebraska petroleum marketers. With that, I'd be happy to answer any questions. I also have some information that further better depicts what he's doing and then also copies of the voluntary assurance of compliance. Thank you for your time today. [LB477]

SENATOR BRASCH: Thank you for your testimony. Any questions from the committee? Seeing there are none, thank you, very thorough. [LB477]

DON QUINN: Thank you. [LB477]

SENATOR BRASCH: Any other proponents, please come forward. Welcome. [LB477]

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ROSE WHITE: (Exhibit 12) Good afternoon. My name is Rose White, R-o-s-e W-h-i-t-e, and I'm here today representing AAA and the Auto Club Group. First, I'd like to say thank you, Senators, for your service today. Our organization strongly supports the advancement of LB477 to protect consumers by preventing deceptive advertising practices that impact car owners residing in our state, families visiting Nebraska, and motorists traveling through our great state. We firmly believe that most fuel retailers across Nebraska operate their facilities with the highest level of integrity and strong business ethics, providing quality products at the posted price to the consumers they serve. Nebraska law defines their responsibilities in this area. Our law states "It shall be unlawful for any person to: Misrepresent the price of any commodity kept for sale or sold by weight, measure, or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person." Unfortunately, it has been brought to our attention that not all are following the original intent of this law. Practices that involve posting a low price on large billboards to attract customers and then offering that price on a limited number of pumps, while charging a much higher rate at other pumps for the same grade of fuel, should never be allowed. Such deceptive practices confuse motorists, resulting in wasteful consumer spending and ill feelings towards the retailer, the local community, and our state. Although AAA has not received any complaints on this issue yet this year, we have received them in the past and have always instructed the consumer to contact the State Attorney General's Office to report deceptive practices. Without LB477, this type of unscrupulous marketing that confuses customers, making them victims of monetary loss, may continue. LB477 specifically addresses this type of marketing and with its passage this practice will be prevented. Advancement of LB477 will help to ensure that the positive reputation built by the petroleum marketers across Nebraska will not be compromised by a few who have chosen to increase their revenues through deceptive marketing practices. AAA calls on our state government officials to ensure that all retail motor fuel outlets conspicuously and uniformly display the prices of all grades of gasoline, their octane levels and their specific percentage of alcohol additives, biodiesel in the case of diesel fuel, and the price difference, if any, between paying with a credit card or other promotions versus paying with cash, to avoid confusion and misunderstandings by motorists. We greatly appreciate your consideration to support LB477 by advancing this consumer protection bill. And I would like to add, too, is if this bill advances to the floor, which we certainly hope it will, we would like to also maybe consider adding an amendment for consideration that would address the social media advertising efforts. Of course, there are downloadable applications that allow people to find the lowest prices in those communities; and so we would like to add some language that might address this issue as well. But thank you, Senators. I'd be happy to answer your questions at this time. [LB477]

SENATOR BRASCH: Thank you, Ms. White. Are there any questions of the committee? Yes, Senator Lowe. [LB477]

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SENATOR LOWE: Thank you, Senator. Rose, thank you for coming today. And does this company that we're kind of speaking about now, do they do social media to entice people in? Do you know? [LB477]

ROSE WHITE: Yeah. The downloadable applications, they really don't have to advertise; but the information is picked up and posted and shared through these channels. So we'd likely have to develop language that would address this and so hopefully preventing that because many people, of course, they travel with their smart phones. They'll key in, where can I find the lowest prices in different communities, that price might be posted. The specific language of the bill states advertising on billboards, but we'll have to draft language that will protect those consumers who use their smart phones as well. [LB477]

SENATOR LOWE: Thank you. [LB477]

SENATOR BRASCH: I have a question. Any other questions from the committee? I'm also wondering that there's a new subsection (20) that provides that it's unlawful for a station to offer the same grade of engine fuel at different prices at different fuel dispensers if the dispensers are drawing from a common storage tank or they're connected storage tanks. And do you believe that there are some terms that should be clarified, for example, the grade of engine fuel or the base price? Your thoughts on that, is there... [LB477]

ROSE WHITE: Senator, I would certainly like to work with the Nebraska Petroleum Marketers; and I want to specify, too, we thank them for taking a leadership role in this, to be able to identify the proper terms that should be used. As we know, many type of fuel blends right now are available at many pumps. And so we want to make sure, like I said, that we're addressing the current issues as well as some future issues as this is an evolving industry. And so many different additives are being used, detergents. We want to make sure that the language is very clear. [LB477]

SENATOR BRASCH: Very good. Any other questions? I see none. Thank you. [LB477]

ROSE WHITE: Thank you again. [LB477]

SENATOR BRASCH: Will the next proponent please come forward, state and spell your name. [LB477]

DAN O'NEILL: (Exhibits 13 and 14) Dan O'Neill, D-a-n O-'-N-e-i-l-l. I'm from North Platte, Nebraska. I am currently president and CEO of Kwik Stop convenience store chain. We have 22

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locations with our corporate offices located in North Platte. Our company is also a member of the Nebraska Petroleum Marketers and Convenience Store Association. And I'm also here today representing a newly formed coalition, the Coalition for Ethical Petroleum Marketing. This coalition was created to identify and prevent unethical pricing practices in the petroleum convenience industry and to protect the reputation of our state and our vital tourism industry. I'm going to speak for myself today as an individual operator in North Platte. I am kind of unique to the coalition because currently these pricing practices being implemented really are not affecting my retail price or margins. I have a travel location in North Platte, Exit 177, but I'm on the north side of the interstate. So I think it's important to note that it's not a price issue; it's a pricing tactic issue. And where it will affect me long term is I depend on tourism dollars. In North Platte it's very important to our community. It's very important to the state. And this practice has been going on for some time. We've gone to the city council. We've gone to our own local tourism bureau and everybody has kind of shrugged their shoulders, you know, and everybody agrees it's wrong. You know, it's just wrong. We can look at all the technical terms we can and we're still trying to fight through that. But everybody agrees that it's not ethical. And so that's the reason we thought it was important to establish some type of a coalition to proceed not only with the support of drafting and supporting legislation but also even going to the point of litigation if necessary to stop this, to stop this practice. There's really...you know, I don't know what to compare it to. There really...we've discussed this in our meetings. There really isn't a very good analogy of what is going on other than to say it's just, you know, it's just not right. And anybody who has experienced this understands that. I passed around a couple flyers. One is a letter to the editor from two months ago in the North Platte...both The North Platte Telegraph and the North Platte Bulletin is very well written of a customer who was scammed on his way through. The second one maybe is even more disturbing because it's out of a national trade magazine brought in by one of my vendors. I would never have seen that, but that is the same type of thing and it happened to them in Sidney, Nebraska. So Nebraska made the national news, but it wasn't very good for our industry or for our state; and we just think it's a black eye on our industry. You know, we have an industry already that's not always trusted the most. Let's be up-front, you know, the petroleum industry. I remember when my mom was still driving when gas hit \$4 a gallon and I thought she was going to write me out of the Christmas letter. You know, we're that type of industry. And we also do not normally want more government regulation, but we have to do something to diminish this opportunity that this person is using to deceive the public and to stop this practice. So I guess that's all I have. [LB477]

SENATOR BRASCH: Very good, Mr. O'Neill. Are there any questions from the committee? Seeing there are none, thank you for your testimony. [LB477]

DAN O'NEILL: Thank you. Thank you for your time. [LB477]

SENATOR BRASCH: Any other proponents? Please come forward. Welcome. [LB477]

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JIM HEGARTY: Madam Chairperson, Senators, my name is Jim Hegarty. It's H-e-g-a-r-t-y. I'm the president and CEO of the regional Better Business Bureau serving Nebraska, Kansas, South Dakota, and western Iowa. And after reviewing BBB complaint activity regarding this issue, I can testify to the fact that the BBB has been receiving complaints dating back to 2009 that are directly related to the confusion produced when an advertised price for fuel on highway signage does not clearly and conspicuously convey that the advertised price is only available at limited pumps. The fact that these limitations may be posted at the point of sale has not proven to be sufficient in the elimination of these types of complaints. The BBB is supportive of legislation that would require retailers in circumstances where an advertised price is only available at certain pumps to clearly and conspicuously disclose this limitation on all signs containing such advertised price. [LB477]

SENATOR BRASCH: Thank you. Senator Krist. [LB477]

SENATOR KRIST: Thanks for coming. So you have dealings with regional, multistate area. Is anybody doing this any better than we are in terms of the legislation in the other states that you deal with? [LB477]

JIM HEGARTY: All of the complaints that are generated related to this issue are generated in Nebraska. [LB477]

SENATOR KRIST: That's wonderful. So do you have any knowledge of the statutes that are written or a way to keep this from happening that another state has actually drafted? [LB477]

JIM HEGARTY: I'm not. I actually only became aware of the legislation late last week so I had my team do as much digging as quickly as they could into the issue. There's certainly a lot more that we could do in terms of identifying, you know, whether there are indeed trends elsewhere which we'd be happy to provide going forward. But certainly in the region that we serve, the only complaints that emerge related to this issue were related to Nebraska companies. And I can further state that the Better Business Bureau has been in the ad review business, the truth in advertising business since 1912. I'm not sure there's an organization that's more experienced with monitoring advertising in the marketplace than we are. So I mean, this is so blatantly clear that this could be resolved so...I mean, I realize there are some technical issues that you'll have to resolve that you mentioned. But in terms of the spirit of the advertising, that is undeniably a problem here. And I think further when we...and we haven't completed our investigation, but as we dug into overall complaints related to petroleum retail sales, these are the only complaints that we receive. And I believe that most of these complaints have come from people that do not reside in the state of Nebraska. So these are people that are traveling through our state that have experienced this difficulty. And I think also it's important to emphasize that I don't think that the

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majority of these complaints have anything to do with people being aware that there was limited availability and that there were just simply long lines at those pumps. I think that the takeaway from these complaints is that they saw a price on a sign; they believed that that was the price of gas available at that stop. And when they realized at some point that they were pumping gas that wasn't correlating with that price, you know, that's when the issues emerge. [LB477]

SENATOR KRIST: Thank you, sir. [LB477]

SENATOR BRASCH: Very good. Yes, Senator Albrecht. [LB477]

SENATOR ALBRECHT: The question I guess I would have, especially with the BBB because you resolve the issues, what is it that you do for the consumer that calls to tell you how upset they were? How do they...how does that gas station or the vendor help make that not a bad mark against them with the Better Business Bureau? [LB477]

JIM HEGARTY: Well, there's nothing they can do. And once the complaint has been filed, assuming that we've determined that it's a legitimate complaint, meets our complaint acceptance criteria, we present it to the company for a response. So just because a consumer tells us they had this experience doesn't mean that we're assuming that that's the case. We forward that then to the retailer or the company that is the subject of the complaint for a response. We then share that response with the consumer. They then have an opportunity to rebut. We have conciliation/mediation experts. And depending upon our determination in terms of the overall responsiveness of the company, the rebuttals that we receive from consumers, then we make a determination as to how we're going to close that complaint. And the closure of those complaints, as well as the volume of those complaints, are one of the variables that we use to determine a company's rating with the Better Business Bureau. [LB477]

SENATOR ALBRECHT: Okay. Very good. And that's what I guess I'd like to see in this bill. If they comply with everything we ask them to do, that's great. But if they don't, what happens? That's what I'd like to see in the bill, which is probably not (inaudible). [LB477]

JIM HEGARTY: Yeah. So when we engage a company, the purpose of engaging them is to be helpful. [LB477]

SENATOR ALBRECHT: Correct. [LB477]

JIM HEGARTY: We bring these matters to their attention because it's certainly our hope that they do not want to be the subject of complaints. [LB477]

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SENATOR ALBRECHT: Correct. [LB477]

JIM HEGARTY: And sometimes there's just something going on within the organization that once they identify that issue is happening they eliminate the source of it. That has not happened in this case. So there just hasn't been any modification to the business behavior sufficient to eliminate the number of complaints that we're receiving. [LB477]

SENATOR BRASCH: Very good. Thank you, Mr. Hegarty. Any other questions of the committee? Seeing there are none, thank you. [LB477]

JIM HEGARTY: My pleasure. [LB477]

SENATOR BRASCH: Will the next proponent please come forward, anyone in favor of this bill? Will the next proponent. [LB477]

KATHY SIEFKEN: Chairman Brasch, members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I'm the executive director and the lobbyist for the Nebraska Grocery Industry Association. We have a couple hundred convenience stores that are also members of our organization along with the folks that supply product to the convenience stores. And when our legislative committee looked at this bill, they were actually...it was the most excited I've seen them about any legislation. And it's because there is a problem out there, and I would like to applaud the petroleum marketers that came forward with a solution to the problem. What's going on is bait and switch. It is a blatant use of a loophole that needs to be closed. And while most of the time we are not in favor of more government regulation, but there are some areas where the government should step in and there are many instances within the regulation of food in the state where we applaud the government stepping in and doing what they need to do. And in this instance, there's a...it's just unfair what's going on out there. They have tried to work with the people that are abusing the system. That hasn't worked. So it is time for legislation to be introduced and passed to get things back under control because this is a bad reflection on not only the people in those communities but the entire state of Nebraska. So if you have any questions, I'd be happy to try to answer them. [LB477]

SENATOR BRASCH: Thank you, Ms. Siefken. Any questions of the committee? [LB477]

KATHY SIEFKEN: Thank you. [LB477]

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SENATOR BRASCH: Thank you. Any more proponents of this bill, those in favor? Any opponents? If there's any opponents, please come forward. Welcome. Please state and spell your name. [LB477]

ED WOEPPEL: (Exhibit 15) Thank you, Senator Brasch and members of the Agriculture Committee. My name is Ed Woeppel, E-d W-o-e-p-p-e-l, and I'm the education and program director with the Nebraska Cooperative Council. I am appearing today on behalf of the council which is a statewide trade association representing approximately 96 percent of the Nebraska farmer-owned grain and farm supply marketing cooperatives in the state. LB477 as introduced would place limitations on how automotive engine fuel is advertised and sold in the state of Nebraska. The bill would make it illegal to advertise an engine fuel on a price sign that is not available at all fueling positions unless a second engine fuel is available at all fueling positions and is advertised on the same sign, in the same font size and illumination. The bill further addresses the advertising of automotive engine fuels that are distributed through a blending retail dispenser. Many of Nebraska's farmer-owned cooperatives operate older and smaller retail facilities throughout rural Nebraska. It is normal for these sites to have one price sign for one product. Typically that product is available at only one pump that is connected to a separate segregated tank. Such sites may have one or two more products available, also from separate and distinct pumps and tanks. The plain reading of LB477 and particularly the proposed new Section 19 to Neb. Rev. Stat. Section 89-197 would be to prohibit many of these older rural sites operated by the farmer-owned cooperatives to continue business as usual. In order to comply, these sites would either require new signage advertising the price of all available brands or require substantial reconfiguration of tanks, piping, and pumps in order to make all advertised products available at all fueling positions. In either event, LB477 subjects these sites to unwarranted and unnecessary expenses at a time when margins on the sale of fuel are not enough to justify such additional expense. The ultimate effect will be the closure of many older rural retail fuel sites which will burden the public and curtail the services offered by farmer-owned cooperatives. We have communicated with both the Nebraska Petroleum and Convenience Store Retailers Association as well as Senator McCollister about our concerns with LB477 as currently drafted. It is our understanding that LB477 is being proposed to rectify the actions of one or two retailers that others believe are unfair in the marketplace. The problem is that LB477 as a cure of one problem will indeed have material unintended negative consequences to other automotive engine fuel retailers. We did propose an amendment to LB477 which is as follows and I won't read that portion. It's in what you have there and I think that would be a lot simpler than to have me do that. I would just conclude with the Nebraska Cooperative Council's affected members believe that this amendment would preserve the current status quo at the older rural retail automotive fuel sites operated by many of the cooperatives while allowing LB477 to still address the problem identified by those supporting the bill. So consequently, the Council opposes LB477 in its introduced form and urges the committee to not advance the measure unless it is amended

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in a manner consistent with the above proposed amendment. So with that, I'll stop and answer any questions. [LB477]

SENATOR BRASCH: Thank you, Mr. Woepfel. I see Senator Krist has a question. [LB477]

SENATOR KRIST: You bring up an interesting point and it's valid because with everything we do there are consequences and there are sometimes unintended consequences. I would offer to you that I don't think that wording is where you want to go because I think what we're talking about here is a multichoice distribution point. And most of those are or have been purchased after a certain date. Would you agree? [LB477]

ED WOEPPEL: I believe that's correct, yes. [LB477]

SENATOR KRIST: Okay. And I'm not sure that anybody sells a brand new system that is one gas, one pump; one gas, one pump. So I would like for us to explore an option to say anything produced after this point that is a multidistribution center must da, da, da, da, da. I get where you're going and I think we should take a really good look at it. So thank you for coming. And sometimes it's tough to be the opposition when everybody in the room is going rah, rah, rah so thank you. [LB477]

ED WOEPPEL: And again, I want to make it very clear we're not supporting people that aren't playing nice. I mean that certainly is not our intention. It's just that in many rural...and if you think of rural settings across the state, you pull into a small town where the signage is limited, there's one or two pumps, and, again, those retail facilities don't pump a lot of fuel in a day's time. So in order to invest money into them is difficult. [LB477]

SENATOR KRIST: Good. Thanks for coming and thanks for putting this on the record. [LB477]

SENATOR BRASCH: Very good. Any other questions from the committee? See there are none, thank you, Mr. Woepfel, for your testimony today. [LB477]

ED WOEPPEL: Thank you. [LB477]

SENATOR BRASCH: (Exhibit 17) Any other opponents? Anyone here to testify in the neutral? And I do have one letter in the neutral from Greg Ibach, director for the Department of Agriculture, for the record. Welcome. [LB477]

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MICHELLE WEBER: (Exhibit 16) Good afternoon. My name is Michelle Weber, M-i-c-h-e-l-l-e W-e-b-e-r. I'm here today testifying on behalf of Kum&Go. Kum&Go is a gas and convenience store chain with more than 430 stores in 11 states. Kum&Go has 21 stores in Nebraska, mostly concentrated in the Omaha area, and they've been very progressive at deploying higher blends of renewable fuels. We'd like to raise the same point that Senator Harr did at the beginning of the hearing on this bill. The bill as drafted does create a little bit of ambiguity on whether it would be legal to display the gasoline price at a station that has diesel only fueling positions. We would suggest the following language to help bring some clarity. Copies of this suggested amendment are being distributed. It shall be unlawful to "Advertise an automotive spark (ignition) engine fuel on a price sign that is not available at all fueling positions" and we propose adding "at which spark (ignition) engine fuels are sold 'unless a second automotive spark (ignition) engine fuel which is available at all fueling positions'" again, adding "at which spark (ignition) engine fuels are sold 'is advertised.'" Our clients would also like to make clear the legislative intent with respect to advertising ethanol blended fuel. We'd like a record of legislative intent that this bill is not intended to preclude different pricing for different products. For instance, if a retailer offered 87 octane clear as well as 87 octane with ethanol, those two products may still be offered at different prices. We thank you for your consideration. [LB477]

SENATOR BRASCH: Thank you. Any questions of the committee? Seeing there are none, thank you. Any other testifiers in the neutral? Would you like to close, Senator McCollister? [LB477]

SENATOR MCCOLLISTER: Yes. Thank you very much, Chairwoman Brasch. All of the testifiers we've heard today, both proponents and opponents, indicate that we have a problem to deal with. When information, unfavorable information, about Nebraska travels in travel magazines, we need to deal with this issue. I readily acknowledge that we need to sharpen up the terms, deal with the situations for some of the rural gas stations, and make also some provision for ethanol and diesel fuel. So that's our challenge. We'll work on that amendment language and bring it to the committee. And thank you for your time. [LB477]

SENATOR BRASCH: Thank you. Any questions from the committee? Seeing there are none, that closes the hearing on LB477 and the hearings for... [LB477]