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Transcriber's Office

Agriculture Committee
January 23, 2007

[LB74 LB110 LB111]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 23, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB74, LB110, and LB111. Senators present: Phil Erdman, Chairperson; Annette Dubas, Vice Chairperson; Ernie Chambers; Cap Dierks; Don Preister; Russ Karpisek; Vickie McDonald; and Norm Wallman. Senators absent: None. []

SENATOR ERDMAN: Good afternoon. Welcome to the Ag Committee. We're going to begin this afternoon with some introductions and some ground rules, and allow some of the other members who are not with us at this point to join us. And we will wait until we actually receive a quorum, which would be at least one more member, before we officially begin, but I'd like to introduce you to the members of the Ag Committee, our staff, and as well as the Pages who will be assisting you this afternoon if you have information that needs to be distributed to the committee. I'm going to start on my far left. We have Senator Wallman. Senator Wallman is from District 30, and calls Cortland home. Next to him will be Senator Vickie McDonald. Senator McDonald is from Saint Paul. Next to Senator McDonald is Senator Russ Karpisek, from Wilber. Next to Senator Karpisek is the Vice Chair of the Ag Committee, and that is Senator Dubas. Senator Dubas is from Fullerton. To my immediate left will be Rick Leonard, and Rick is the research analyst for the Ag Committee. I'm Senator Phil Erdman, from Bayard, Nebraska. I serve as the Chair of the Agriculture Committee. To my right will be Cap Dierks. Senator Dierks is from Ewing, Nebraska. To his right will be Senator Don Preister. Don is from Omaha. And to his right is Senator Ernie Chambers, from Omaha. Our committee clerk is Linda Dicken. And we will ask that as you sign in and have the testifier sheets, there are some positioned by each door, that you would give that sheet directly to Linda. We have new technology that we're implementing this year as a committee structure for the entire Legislature, and that allows us to enter that information immediately and then make sure that that information is accurate when the actual testimony goes up to transcribers. Our Pages this afternoon, we have two, which we are very fortunate to have. We have Steve Scharf. He's from Lincoln. He's a political science major. And we have Erin Frank, who's from Bassett, in Rock County, I believe? How about that. She's studying environmental studies. And they're both at the University of Nebraska-Lincoln. If you have cell phones, if you could turn those off, or at least set them to a setting so that they don't ring, and that would be appreciated for those of us who are members of the committee, as well as the transcribers. Again, if you wish to testify, please try to have your testifier sheet signed in and... []

_____: You guys are in the... []

_____: You're in the wrong room, Tom (phonetic). []

SENATOR ERDMAN: If you guys would like to join us, we'd really appreciate it. []

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_____ : No, we're going to go to the other place. []

_____ : I bet it was Ray's fault, wasn't it? []

SENATOR ERDMAN: (Laugh) The...there's also an opportunity, if you're here to testify, or at least state your position, and would choose not to testify, there is a sheet that we'll be able to distribute through the group that allows you to sign your name and address and identify whether you're in favor or against or neutral on a position, if you choose not to come forward and testify. The only people who will be listed on the committee statement, however, will be individuals who actually come forward and participate in the actual testimony before the committee. If you have that handout material, again, our Pages will be happy to distribute that. If you need something else, if you need a glass of water or something to assist you in your testimony, they'd be happy to get that for you, as well. With that, we will wait just briefly to see if we can get at least one more member of our committee to arrive so we can officially have a quorum. So you can sit at ease and read the paper, or visit quietly with your neighbors and get to know the folks who are here for the Ag Committee. And if you don't like your neighbor, you can always move and find a new neighbor and visit with them. Here we go. Welcome, Senator Chambers. And Senator Preister has now arrived. And with that, we will open the hearing. The hearing schedule has been posted outside the committee room, and should be available if you have questions. The order for this afternoon will be LB74, LB110, and then LB111. All three of these bills have been introduced at the request of the department. And in keeping with previous practice in this committee, the research analyst will introduce the bills, and then we will begin the proponent testimony, which will be the Department of Ag, on each three of those bills. We will also then go from proponent testimony, to opponent testimony, and then after that, neutral testimony. And so we will begin with LB74, and I'll recognize Rick Leonard to open on the bill. [LB74]

RICK LEONARD: (Exhibits 1 and 2) Thank you, Chairman Erdman. My name is Rick Leonard. That's L-e-o-n-a-r-d. I represent the introducer, Senator Erdman, introducer of LB74. As the senator mentioned, LB74 was brought to us at the request of the Department of Agriculture, and I'll give a quick, brief opening statement, and ask the Department of Agriculture to come forward and get into the more substantive portions of this bill. I do have two handouts, and I'll get those started around. Mr. Chairman, LB74 amends the Nebraska Pure Food Act to incorporate the 2005 recommendations of the United States Public Health Service, Food and Drug Administration, maybe shorthand referred to as the 2005 Food Code. The Food Code provides model regulatory standards pertaining to food preparation, storage, presentation, and sanitation practices of retail food establishments. The code is periodically updated to incorporate regulatory experience and advancements in the knowledge of mitigating risk factors for food-borne illness. The Nebraska Pure Food Act currently incorporates the 2000 Food Code, and again, we...this bill would be incorporating the provisions and concepts of the 2005

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Food Code. The bill would also raise the maximum fee cap paid by food establishments to allow the department's inspection program to continue at the current level, while maintaining the overall funding mix of approximately 50 percent General Funds and 50 percent cash funds. I've provided a handout which would show...it depicts budget scenarios for the funding mix of this program, with and without the LB...fee revisions that are made in LB111. I'd take some questions if you had any on that. But essentially, the top graph will show that considering...continuing the current General Fund appropriation at a continuation level, and projections for fee revenues under this program, that we would start hitting a deficit in fiscal year '08-09, assuming a 3 percent...for planning purposes, 3 percent increase in annual costs of that program. With...that deficit would need to be either made up by additional General Funds or scaling back the program. The bottom one is showing the distribution of funding assuming the fee levels in this bill. In this bill, certain fee setting and cash fund management principles that were first made a part of the Pure Food Act by enactment of LB250 in 2003 are continued in order to avoid excessive cash fund buildup while maintaining sufficient resources to carry out the Department of Agriculture's regulatory responsibilities. Overall, the new increase in fees will allow for increased...annually set fee levels in cash funds, which is needed to account for inflation that has occurred since the fees were last statutorily set, and to maintain an equitable allocation of costs between the cash and General Fund. The bill has an emergency clause and an operative date of July 1, 2007, so that the new fees may be assessed this year. That concludes my statement, if you have any questions. [LB74]

SENATOR ERDMAN: Thank you, Rick. Any questions for Mr. Leonard? Senator Chambers. [LB74]

SENATOR CHAMBERS: Mr. Leonard, this is a very good section-by-section summary you gave us, by the way, and I want to acknowledge that. It's so good, in fact, that something jumped out and hit me in the eye. It discusses Section 6, which begins at the bottom of page 10, and continues through about the middle of page 11, about hand-washing. [LB74]

RICK LEONARD: Senator, would you allow me to grab my bill? [LB74]

SENATOR CHAMBERS: Sure, whatever you need. [LB74]

RICK LEONARD: Thank you. [LB74]

SENATOR CHAMBERS: Even if you want a basin with some soap and water, to demonstrate how we do this properly. (Laughter) [LB74]

RICK LEONARD: I'm sorry, could you give me that reference again...site? [LB74]

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SENATOR CHAMBERS: Okay. Now, here, before I touch on anything in the green copy, this is what is stated in the last sentence... [LB74]

SENATOR ERDMAN: Senator Chambers, hold on one second. Rick, it's on the bottom of page 10, Section 6, I believe. [LB74]

SENATOR CHAMBERS: Yes. [LB74]

SENATOR ERDMAN: Okay. Go ahead. [LB74]

SENATOR CHAMBERS: Oh, I didn't know he asked me where it was. I'm sorry. I was so caught up in what I'm doing here. The last sentence in your handout to us says, note, this section, meaning 6, substitutes for excluded provisions of the 2005 Food Code which are more restrictive of bare-hand contact. Does that mean that this language is less restrictive than what would be in the previous Food Code? [LB74]

RICK LEONARD: I'm referring to the 2005 edition, and you'll see that, and the department should be prepared, and we've reviewed these. We substantially adopt the 2005 Food Code. In this case, this is a section of the Food Code that pertains to when an employee can touch foods with a bare hand. I believe there are certain instances on, like, peeling a...washing an orange, for instance. You may have a bare-hand contact with the food there. There is some slight modification that we may be slightly different than that. I... [LB74]

SENATOR CHAMBERS: Okay. Well, I can wait for a department person, since they're going to speak to it. [LB74]

RICK LEONARD: Right. And I could give you that answer. I'd have to refresh my memory on...I'd have to look at the 2005 Food Code and what was in here. [LB74]

SENATOR CHAMBERS: Well, by asking... [LB74]

RICK LEONARD: And I could give you...it's a...it would be a nonmajor thing. [LB74]

SENATOR CHAMBERS: Not too significant? Okay. And by me asking you, whoever comes up can prepare himself or herself to respond. [LB74]

RICK LEONARD: And I'm glad you asked that question. Yeah. [LB74]

SENATOR CHAMBERS: Thank you. [LB74]

SENATOR ERDMAN: Thank you, Senator Chambers. Any further questions for Rick? I see none. Thank you, sir. We will now begin the testimony of the Department of

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Agriculture. I believe we have...Mr. Moseman is going to be the first proponent. And we also have other individuals who will be assisting him. I believe Mr. Hanssen will be assisting him. And so we'll allow both of them to take the testifier's seat. Well, not the same one, obviously. And we will ask that as you testify...and it's my understanding that, Neil, you have testimony that you'll go through, and allow George to answer any questions that may come. We'll just make sure that as you testify, as you go back and forth, that before you state an answer to a question or make a general statement, that you identify yourself, so that we can make sure the transcriber gets that information correctly. So with that, you're recognized. [LB74]

NEIL MOSEMAN: (Exhibit 3) Thank you, Mr. Chairman. Senator Erdman and members of the Agriculture Committee, my name is Neil Moseman. I am the assistant director of the Nebraska Department of Agriculture. I am here today to testify in favor of LB74. I'd like to thank Senator Erdman for introducing this bill on behalf of the Department of Agriculture. I have additional written testimony that I ask be placed on the record for this bill, and I believe it's been distributed. Thank you. And also, Mr. Chairman, for the record, my last name, Moseman, M-o-s-e-m-a-n. With me today is George Hanssen, the administrator for the food division, who will be available to answer questions here very shortly. The Nebraska Department of Agriculture, local health departments, and the Nebraska Food Industry Review Board has spent many hours drafting this legislation in an attempt to protect the food supply in Nebraska without overburdening the state's food industry. The Department would like to thank the many local health departments and the members of the Food Industry Review Board for their time and effort on this project. LB74, as Mr. Leonard stated, adopts the 2005 version of the recommendations of the U.S. Public Health Service, Food and Drug Administration as the Food Code. The current Food Code is taken from the 2001 FDA recommendations. Updates to these recommendations are made every three to five years to incorporate the most current scientific information regarding food preparation and conditions relating to hot or cold holding of food. Certain sections of the 2005 FDA recommendations are modified to conform to current practices in Nebraska's food industry. As many sections of the recommendations as possible are being adopted in the Food Code, so Nebraska can be consistent with other states. However, some sections of the 2005 Food Code are excluded from adoption and are placed with the modified provisions in this act. These modifications are discussed in the written testimony that's been distributed. This bill increases the permit and inspection fees to maintain the overall funding mix of approximately 50 percent General Funds and 50 percent cash funds, by increasing food establishment fees. The current fee maximums were set by LB250 in...of 19...I'm sorry, of 2003. The bill has an emergency clause, and the effective date of the act is set for July 1, 2007, so the department may charge the new fees in 2007. If the fees are not increased in 2007, a greater portion of the program's operating expenses would be need to be picked up by the General Funds to maintain the current program. It was a request that I also explain the inspection fees charged by the political subdivisions under contract with the department. The bill does not amend Section 81-2,281, which

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provides that permit holders who are inspected by political subdivisions under contract with the department are exempt from inspection fees prescribed in this act. Currently, the department has contracts with Douglas County, the city of Lincoln, Lancaster County, the city of Grand Island, Hall County, and the city of Hastings health departments. These political subdivisions charge local license or inspection fees to food establishments under their respective jurisdictions, and permit holders in these jurisdictions do not pay inspection fees to the Department of Agriculture. The Food Industry Review Board supports adoption of the 2005 FDA recommendations, with the modifications and the fee increases. The written material I provided you includes a list of the board members. Finally, I thank you for your support in enacting this bill this year. If there's any questions, Mr. Hanssen and I would be happy to try to answer them. Thank you much for your time. [LB74]

SENATOR ERDMAN: Thank you, Neil. And just, before we go on, the Food Industry Review Board is a nonstatutory advisory board that assists you in the adoption of the updated Food Codes in statute. Accurate, or not? [LB74]

NEIL MOSEMAN: Is that correct? Yes, that's correct. [LB74]

SENATOR ERDMAN: Okay. All right, any questions for Mr. Moseman? Senator Chambers. [LB74]

SENATOR CHAMBERS: Mr. Moseman, and whichever of you chooses to answer is fine with me, on the hand-washing, if you are aware, what is the difference between what is being adopted in this bill, and what is...it is replacing, if you're aware? [LB74]

GEORGE HANSSEN: The... [LB74]

SENATOR ERDMAN: Hold on a second. George, do you want to identify yourself, spell your name? [LB74]

GEORGE HANSSEN: Yes. George Hanssen, H-a-n-s-s-e-n. Thank you. What we're proposing in the bill is a modification of one of the sections from the 2005 code, Section 3-301.11, which is referred to as the no bare-hand contact section. In discussing this section with the Food Review Board, which of course consists of representatives from the Restaurant Association, Grocers Association, Licensed Beverage Association, we felt that...the board felt that this was too restrictive for what industry does at this point. We believed, as we did in 2003, that proper hand-washing would meet the needs of this section. Rather than requiring glove use for contact with ready-to-eat foods, we believe that proper hand-washing would take care of that, would meet that need. [LB74]

SENATOR CHAMBERS: How do you know people are going to wash their hands? See, we don't know if the glove is clean. We don't know if somebody went to the rest room

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and had the glove on at the time they went to the rest room and didn't wash their hands or the glove. So there's really no guarantee. But if you see a glove, there's an indication that a recognition was made that some kind of sanitation or hygiene is to be observed. What is there that ensures that there will be hand-washing? And I know you're not going to have an inspector watching all the time. Is there a penalty if one of these establishments is shown not to have hand-washing properly done by its employees who will be touching food? [LB74]

GEORGE HANSSEN: Well, it's a violation of the code, obviously. But we're requiring or relying on the manager of that food establishment to properly train his or her people to wash hands at the appropriate time. Just... [LB74]

SENATOR CHAMBERS: How do they train them? It would seem like, to me, that when they were tykes they would have had that done. So is this a special kind of training that they need to get? [LB74]

GEORGE HANSSEN: I agree with you; it should have been handled in kindergarten, if not before. But the training done by the manager, done by the sanitarian,...for instance we have a food training class that we put on. But definitely, the manager, during the training of that employee when they're first hired, would tell them...would show them when hands need to be washed, when change of duty, after using the rest room, taking out the garbage. [LB74]

SENATOR CHAMBERS: Could they put a bell system, an alarm system, so if somebody came out of the rest room without washing their hands, lights would flash and bells would ring and everybody in the place would know that we got a nasty person here? [LB74]

GEORGE HANSSEN: (Laugh) Yeah, I don't know if that technology is available yet, but... [LB74]

SENATOR CHAMBERS: I wish. [LB74]

GEORGE HANSSEN: ...it's coming. [LB74]

SENATOR CHAMBERS: But here's...okay, now here's another question. It said, food employees not serving highly susceptible...a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if they have washed their hands as specified in the act prior to handling the food. What is considered a highly susceptible population? And susceptible to what? [LB74]

GEORGE HANSSEN: It would be a nursing home, day-care center. Senior citizens would be included in a highly susceptible population. [LB74]

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SENATOR CHAMBERS: But not the public at large? [LB74]

GEORGE HANSSEN: Not necessarily, because those people supposedly are in good health, would be able to fight off a bacteria that they might come... [LB74]

SENATOR CHAMBERS: Hepatitis? They could fight that off? [LB74]

GEORGE HANSSEN: No. No. [LB74]

SENATOR CHAMBERS: Can a person pass hepatitis if he or she does not exercise proper hygiene? [LB74]

GEORGE HANSSEN: Yes. [LB74]

SENATOR CHAMBERS: Now, let's assume that somebody washed his or her hands in the way taught, cleaned dirt from under the fingernails and in the knuckles and all things such as that. If there's some gravy in a container and it's not boiling hot but it's one of these places where there's a lot of grease in the food, so grease is starting to collect on the top, could that person reach in and swirl the gravy around with his or her properly washed hand, without being in violation of the code? [LB74]

GEORGE HANSSEN: No. [LB74]

SENATOR CHAMBERS: Why not? [LB74]

GEORGE HANSSEN: Gravy is not really considered a ready-to-eat food. It would... [LB74]

SENATOR CHAMBERS: What do you have to do to make it ready to eat? [LB74]

GEORGE HANSSEN: Well, a ready-to-eat food would be, like, a sandwich, something that's not going to be heat-treated prior to serving. [LB74]

SENATOR CHAMBERS: Well, could somebody spread mayo with his or her hand? Because you could do it quicker; you just scoop up a bit, put it on there, and you got it all done. Can you do that and not violate the code? Then, instead of doing it that way, what can a person not do? Because you can touch ready-to-eat food with your bare hands, and the food is exposed, not in a wrapper. They can touch a sandwich with their bare hands, right? [LB74]

GEORGE HANSSEN: Yes, in preparation of that and service of that sandwich. [LB74]

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SENATOR CHAMBERS: Who decided that that is all right? You know what, if I go to a restaurant, maybe my standards are different. In fact, I don't like to shake hands with people. So that they won't be offended, I've had a little decal made. It shows hands being shaken, a line slashed through it, and at the bottom it says, for health's sake. So they know it has nothing to do with that individual. And even in churches they're discouraging people, after services, from shaking hands. And they say they can rub elbows or nod, but, you know, the handshaking is not good. Why is it necessary to ever allow these people to touch with their bare hands ready-to-eat food? I've seen people do like this, you know, run their hand across their nose. And even if they just washed their hands, well, that nullifies it. But that person wouldn't be in violation of the code, would he or she? [LB74]

GEORGE HANSSEN: Well, yes, they would, because the...no, the time they would not be in violation of the code is after proper hand-washing. If they rub their nose with their hand, again, you're right, it nullifies that. They would have to go back and wash their hands again before handling any ready-to-eat food. [LB74]

SENATOR CHAMBERS: Is there anything in the code that says that? [LB74]

GEORGE HANSSEN: Well, you could imply that. I imply that because it says after proper hand-washing they can touch food. Okay? [LB74]

SENATOR CHAMBERS: It doesn't say how long after. [LB74]

GEORGE HANSSEN: Well, there's a section in the code, as well, that says, when do you wash your hands? Okay? After using the rest room, after using a handkerchief, after blowing your nose, after sneezing. [LB74]

SENATOR CHAMBERS: Oh, so that is specified somewhere? [LB74]

GEORGE HANSSEN: Yes. [LB74]

SENATOR CHAMBERS: Okay. But what I do, I take care of my own self. When I go in there, first of all, I scope the place, and I look at the way people are dressed. You know, if they've got the kind of clothes that will let other things fall into the food, then I just don't eat there. But there might be some people, say, who are working, and they have a relatively brief lunch hour. They could be on construction or something and they just have to run in and grab something. And they should be protected, in all seriousness, from the kinds of disease that can come from people not washing their hands. And I really don't know how you can guarantee that kind of safety, unless, if a complaint were filed, there's a severe enough sanction so that the proprietor will kind of keep an eye out to make sure people are washing their hands in the way that they should. But that's all that I had in the way of any question about the bill. [LB74]

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GEORGE HANSSEN: Okay. Thank you. [LB74]

SENATOR ERDMAN: Thank you, Senator Chambers. Any further questions? Senator Karpisek. [LB74]

SENATOR KARPISEK: Thank you, Mr. Chair. George, the shoe is on the foot today. (Laughter) This is a great day for me. (Laughter) And thank you, Senator Chambers, for the idea of the hand with the mayo. We do make deli sandwiches. I can save a bunch of time and money. (Laughter) I appreciate that, because I saw George kind of going, well, I guess you could do that. [LB74]

GEORGE HANSSEN: It can be done properly. (Laughter) [LB74]

SENATOR KARPISEK: (Laugh) All right. You hear that, Bob? Mr. Voss is here, from Super Saver, so we heard that. My question is with the vacuum packaging. On page 12 and 13, I see they're talking about potentially hazardous food and that sort of thing, how long it can be held. What I read is, seven calendar days or less if the food is held at 41 degrees, or four days if it's at 45 degrees. Now, is that from production time? Like, when I make a batch of hotdogs, I can only put seven days' date on that package, refrigerated? [LB74]

GEORGE HANSSEN: Now, you're talking vacuum-packed products? [LB74]

SENATOR KARPISEK: Yes. [LB74]

GEORGE HANSSEN: Okay, vacuum packaging...I don't have that section in front of me. Let's see...let me... [LB74]

SENATOR KARPISEK: It's on page 12 and 13 of the bill. [LB74]

GEORGE HANSSEN: This would be...okay, 12 and 13. Oh, right there. Let me get the entire one out, if I could, here. Okay. The seven calendar days refers to the ready-to-eat potentially hazardous food, right? So when you're vacuum packaging,...let me get to that section. That would allow a little more time, up to 14 days, I... [LB74]

SENATOR KARPISEK: Well, that's what I...I guess that's the question. Are we changing it from 14 to 7 or 4? [LB74]

GEORGE HANSSEN: No. No, we're not. [LB74]

SENATOR KARPISEK: Okay. Because then farther on page 13, it asks about...or, talks about fermented sausages, or ones that are dry-cured, and they're shelf-stable, which

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most sausages made in Nebraska are not. So I guess that's my question, is, that language, to me, seems very contradictory. [LB74]

GEORGE HANSSEN: The 2005 code really expanded the vacuum packaging requirements from what it was in the 2001 code, or our 2003 guidelines. So frankly, I'd have to sit down and go through it by the specific product that we're talking about. Vacuum packaging is an issue that's somewhat confusing, as you may know, so. [LB74]

SENATOR KARPISEK: And another point that I'm trying to make is, you know, you have to look at it, but then you expect the people to know this and get dinged if they're not doing it correctly. And as we know, there's always a lot of variation in what they...one inspector or another will know, or...so. [LB74]

GEORGE HANSSEN: Um-hum. And what we would hope is that once you get dinged, that the sanitarian would walk you through the process show you where or why you were dinged, and hopefully help you make those corrections. [LB74]

SENATOR KARPISEK: As long as we still have 14 days. Because I think going to 4 days is...or 7 days, is completely out of the question. I mean, I know some people that are dating them 90 days. [LB74]

GEORGE HANSSEN: Right, we see that coming from a USDA plant, for instance, and that is a processor not considered a food establishment under our law. And of course, we defer to USDA labeling on that. [LB74]

SENATOR KARPISEK: Okay. Thank you, Mr. Chair. [LB74]

SENATOR ERDMAN: Thank you, Senator Karpisek. Further questions? I guess I'll launch into some. In your testimony, Neil--and maybe you're the person to answer, maybe George is more appropriate--you mention that it's the intent to adopt as many sections of the recommendations to the Food Code as possible, to be consistent with the other states. What is the practical value, beyond simply being consistent with other states that we benefit from by doing that? I'll let George answer that. [LB74]

GEORGE HANSSEN: The benefit would be interstate commerce. As you know, we've got a lot of restaurants that are found in Iowa, Kansas, what have you. To be consistent in the codes with Iowa, with Kansas, those people that are operating in Council Bluffs can come over here and be sure that they're going to follow the same guidelines in Iowa that they do here. They're not going to be...we're not going to be more restrictive than a restaurant across the river, for instance. The manager from there can come over here and work and follow the same guidelines. I guess it's just simpler for industry to be under the same code nationwide. [LB74]

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SENATOR ERDMAN: Sure. Another question that I would have is regarding the funding schedule that we have. And Rick had distributed to the committee some graphs that outlined where we're projected to be if the fee isn't increased, and the deficit that would either have to be made up by General Funds or some other source. The practice that has been adopted by the Legislature, and appears to be continued in LB74, is that balancing of funding between the cash funds and the General Funds. Is the projections that this new fee schedule...is it projected to go to the 2012 time frame? Or how has the existing schedule lasted, compared to what we had intended with the previous bill in 2003? [LB74]

GEORGE HANSSEN: In 2003, we projected a three-year projection. Since it was a new funding mix using this system, industry wanted us to try it for three years and then with the idea of coming back. Take a look at it; if it's working out well, we can go farther. We've gone past the three years. In fact, we're up to about the fifth year, if I'm not mistaken, of this system. So now during our discussion with the Food Review Board, they said, yeah, it's working out well. We like it. Let's expand to five years. And that's where we're at now, and that would bring us out to the 2012. [LB74]

SENATOR ERDMAN: And so based on the history of the current fee schedule, you have no reason to doubt that the projections would be any different based on the administration of the act and the enforcement of it? [LB74]

GEORGE HANSSEN: Yes. [LB74]

SENATOR ERDMAN: Okay. [LB74]

GEORGE HANSSEN: We're thinking we can get through that for five years easily. [LB74]

SENATOR ERDMAN: Okay. The other question is, we're further defining in Section 3 the itinerant food vendor. As I understand the change, right now we treat...that definition is generally a convenience store type scenario. And this further defines the location, if you will, whether it's a farmer's market or something, separate from that convenience store. Is that an accurate understanding of Section 3? And if so, have the folks that would be affected by this, besides the convenience store, been briefed on what this change would be and how they may be affected? [LB74]

GEORGE HANSSEN: The...you're right in that it further defines what...or, the location of someone that's selling prepackaged product, at a farmer's market, for instance. When convenience store was...or, in 2003, let's say, we did not have the number of people providing meat or chickens or what have you at a farmer's market or craft show like we do now, so we put those people that are selling foods, potentially hazardous food, in the convenience store, because that was the best place that it fit at the time. In discussing

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what our process is with the Food Review Board, we suggested that we further split out what these people are doing, and call them itinerant food vendors. They agreed. The think it's worthy that we have a separate definition. The people that are...that would be affected, no, we haven't contacted them and asked them if they would like the definition to be changed, simply because they're not affected by any requirements; they're still under the same requirements. They're not affected by any fee changes; they're still subject to the same fees they were before. So... [LB74]

SENATOR ERDMAN: So essentially, this is more of a technical change for clarification of a definition, as opposed to maybe changing the responsibilities that they already have under existing law? [LB74]

GEORGE HANSSEN: Right, there's no change there. [LB74]

SENATOR ERDMAN: Okay. The last question that I would have, and then if there are other members, we'll take those. We go through a process in Section 5 with some new text describing the late payment of permit inspection fees, as well as some additional administrative costs when those fees are not paid in a timely manner. Can you give us the rationale of why those fees may be distinguished from an administrative fine or penalty that would otherwise go to the school fund? [LB74]

GEORGE HANSSEN: Chris, I'm going to have to have you help me on that one. [LB74]

SENATOR ERDMAN: Okay. And we can...let's do this. Are there any further questions for George or Neil? I don't see any. Thank you, gentlemen. With that, we'll ask Chris Shubert to come up and address the question. And I'll repeat the question for you, Chris, when you come up. And again, if you'd state your name for the record, and spell it, so that we can get that... [LB74]

CHRIS SHUBERT: For the record, my name is Chris Shubert, C-h-r-i-s, Shubert is S-h-u-b-e-r-t. The only rationale for that is, there have been some questions concerning whether the constitution requires those items that are related to recouping costs, that used to be called penalties, should go into the school fund, or whether they should be separated out to repay. There are some cases that talk about those for recouping costs, etcetera, really wouldn't go. So it's just really a clarification that that's what these are intended for--the extra cost that's related to collecting, to get them to...the individual entity to pay. [LB74]

SENATOR ERDMAN: Okay. Then under the current process, do you know what amount of late fees or late charges are currently collected and how those are distributed? [LB74]

CHRIS SHUBERT: Sure. I'll let George answer how...the length...or, how much is being

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collected. Currently, those are put back into the cash fund, at this time, as they will be under this new change. But as far as the numbers, George will have to answer that. [LB74]

SENATOR ERDMAN: Okay. George, if you'd like to take a shot at it? [LB74]

GEORGE HANSSEN: I'd have to look that up. There are not a lot of late fees collected, but, you know, I don't have that information now. [LB74]

SENATOR ERDMAN: Okay. That was just something I was wondering, if this was a large amount. Okay. Very good. [LB74]

GEORGE HANSSEN: It's not a lot, no. [LB74]

SENATOR ERDMAN: Other questions? I see none. Thank you both for your testimony. [LB74]

CHRIS SHUBERT: Thank you. [LB74]

SENATOR ERDMAN: Can I see a show of hands of those that wish to testify in support of LB74? I see three. Show of hands of those wishing to testify in opposition? Anyone in a neutral capacity? All right. We will begin proponent testimony with Ms. Siefken. And again, if you'd state your name, spell it for the record, and make sure we get that accurately before you launch into your testimony. [LB74]

KATHY SIEFKEN: Chairman Erdman and members of the committee, my name is Kathy Siefken, and I am the executive director of the Nebraska Grocery Industry Association, here in support of this bill today. We are part of the advisory board. We've been working on the Food Code for a minimum of ten years, and every time the federal government, the FDA, comes out with a new Food Code, we review the Food Code and adopt those portions of the code that we think are appropriate for the state of Nebraska. We do support the bill. We come before you asking you to pass this bill because it does promote food safety, and food safety is one of the most important things within our industry. If we do anything that might make our customers sick or ill or pass on some kind of a disease, we're in trouble, because we're out of business. And what the Food Code does, it does a number...it does two things. It brings our people up to speed and brings the latest that's in science-based knowledge to the state of Nebraska. And most of the time, our people are already there and the Food Code is more of a catch-up to what industry is doing. The people that are on the advisory board are the stakeholders that are affected by the inspections that are conducted by the state inspectors. But in addition to that, we also pulled in, in this go-round, the inspectors from Omaha and from Lincoln. So it wasn't just industry. The actual food inspectors that are out there every day were pulled in and had input into what we adopted and what we didn't. As far as the

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fees go, we have been working with the department for the last several years, and rather than waiting until we are in a position where we have to have huge increases in the fees, we would rather see little stair steps so that we can keep up with it. And it just works so much better for our industry and for the Department of Ag, because then we can all kind of stay in balance. And then the last thing that I wanted to add is that I come before you on several issues, and I want you to know that it is a pleasure working with the people that work with the Division of Dairies and Foods. They are commonsense, reasonable people. They listen to our concerns. They help us. They work in a consulting capacity, and they really do help us become better retailers overall. Now, we don't always agree all the time 100 percent, but there's always respect shown between our industry, our members, and the inspectors, and I just wanted to make that public statement. So if you have any questions at this point in time, I'd be happy to try to answer them. [LB74]

SENATOR ERDMAN: Thank you, Kathy. Any questions for Ms. Siefken? Senator Dierks. [LB74]

SENATOR DIERKS: Kathy, periodically you...we go through this program of increasing our inspections and our safety measures. Do you have figures as to how effective this has been? Do you have figures available as to difficulties we had 20 years ago, compared to 5 years ago, compared to last year? [LB74]

KATHY SIEFKEN: Difficulties in food safety issues, or...? [LB74]

SENATOR DIERKS: Yeah. Yeah. [LB74]

KATHY SIEFKEN: Actually, the '95 code was the first one that we went through, and to be very frank with you, our industry was way ahead of current law. And when we went through and adopted the '95 Food Code, it brought state statute up to the level of where we already were. And many times, we're already doing, as an industry, I'd say 99 percent of the time, we're already doing as an everyday practice those things that we update in the Food Code. So...and again, I...food safety is one of the most important issues that we face, and if we're not ahead of the curve, we're in trouble. And so basically, when we come through and update this Food Code, we're updating statute to catch up with what industry practices really are. [LB74]

SENATOR DIERKS: Okay. Thank you. [LB74]

SENATOR ERDMAN: Thank you, Senator Dierks. Senator Chambers. [LB74]

SENATOR CHAMBERS: Just a comment. Ms. Siefken, I'm very glad that all the stakeholders are involved. And my only issue is that I want them to wash their hands before they hold the steak, s-t-e-a-k. (Laughter) [LB74]

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KATHY SIEFKEN: I would agree. [LB74]

SENATOR CHAMBERS: Okay. [LB74]

SENATOR ERDMAN: Thank you, Senator Chambers. Any further questions for Ms. Siefken? I don't see any. Thanks, Kathy. [LB74]

KATHY SIEFKEN: Thank you. [LB74]

SENATOR ERDMAN: Next testifier in support. [LB74]

JIM PARTINGTON: Good afternoon, Senator Erdman, members of the committee. My name is Jim Partington. I'm the executive director of the Nebraska Restaurant Association. [LB74]

SENATOR ERDMAN: Jim, can we get you to spell your name for us please? [LB74]

JIM PARTINGTON: It's P-a-r-t-i-n-g-t-o-n. [LB74]

SENATOR ERDMAN: Thank you. [LB74]

JIM PARTINGTON: And I support LB74, and I concur with the testimony of Ms. Siefken, and also, I share her appreciation for the opportunity to participate on the Food Advisory Board and provide an input for this over the course of several years. I don't have anything to add to that, other than strongly supporting it. And I'm open to any questions that the committee would like to ask. [LB74]

SENATOR ERDMAN: Okay. Thank you, Jim. Any questions for Mr. Partington? I don't see any. Thank you, sir. [LB74]

JIM PARTINGTON: Thank you very much. [LB74]

SENATOR ERDMAN: Next testifier in support of LB74. [LB74]

ROBERT VOSS: Good afternoon, Senator Erdman and other members of the committee. My name is Bob Voss, and I am the sausage kitchen coordinator for B&R Stores, Inc. here in Lincoln. That's the Super Saver and the Russ's. [LB74]

SENATOR ERDMAN: Bob, can we get you to spell your name for us, please. [LB74]

ROBERT VOSS: Last name is V-o-s-s. First name, Bob, B-o-b. And the only reason I'm really testifying here is in answer to Senator Karpisek's question on vacuum packaging.

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As I understand it and as we wrote the code, the four-day shelf life is for just refrigerated product in a cooler that's between 41 and 45 degrees; and the seven-day shelf life is just for product in a cooler that's less than 41 degrees. This does not involve vacuum packaging. Vacuum packaging of fresh meat products which have noncompeting organisms is at 14 days. And the state of Nebraska has an exception for products that have been thermally processed, contain 120 parts per million of sodium nitrite, and contain a .035 brine concentration, which means it has salt, combined with the refrigeration that probably should be below 41. But we can extend our shelf lives to 30 days, as long as we keep a certain amount of records, as is designated in the code, with refrigeration logs, processing schedules, and other criteria, which is, we feel very safe. It's...I've done a lot of research with the university on shelf life and salt contents and temperatures and nitrites. And just so Russ knows, he can keep his wieners more than 14 days in his cooler. He's still got his 30-day shelf life, as long as he complies with all the other criteria in the code. [LB74]

SENATOR ERDMAN: Thank you, Bob. Any questions? [LB74]

ROBERT VOSS: If I can answer any other questions? [LB74]

SENATOR ERDMAN: Any questions for Mr. Voss? Senator Karpisek. [LB74]

SENATOR KARPISEK: I just want to say, thank you, Bob. I was hoping you'd come up, Bob. You our president this year, still, Bob? [LB74]

ROBERT VOSS: I am still president. [LB74]

SENATOR KARPISEK: Of our meat association. So I appreciate him clearing that up for me. I was starting to get a little worried if I'd have to sell all those hotdogs, especially on Czech days, in four days. [LB74]

ROBERT VOSS: Yeah. Well, just go back and package them. [LB74]

SENATOR KARPISEK: (Laugh) Yeah, do. [LB74]

ROBERT VOSS: Thank you very much for the opportunity. [LB74]

SENATOR KARPISEK: All right. Thank you, Bob. Thank you, Mr. Chair. [LB74]

SENATOR ERDMAN: Thank you, Senator Karpisek. [LB74]

ROBERT VOSS: Any more questions? [LB74]

SENATOR ERDMAN: I see none. Thank you, Bob. [LB74]

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ROBERT VOSS: Thank you. [LB74]

SENATOR ERDMAN: Is there anyone else wishing to testify in support of LB74? I see none. Anyone wishing to testify in opposition? I see none. Anyone in a neutral capacity? I see none. Before we close the hearing, I'd like to thank the research analyst for the committee, Rick Leonard. He does an exceptional job of making sure that the Food Act is updated appropriately and balancing the interests of the Legislature in previous years with the new act. And so with that, we'll close the hearing on LB74, and we will recognize Mr. Leonard to open on LB110. [LB74 LB110]

RICK LEONARD: (Exhibit 4) Thank you again, Chairman Erdman and members of the committee. Again, my name is Rick Leonard, again, spelled L-e-o-n-a-r-d. As...I am the research analyst for the committee, introducing the bill on behalf of the Chairman. Again, LB110 is brought to us at the request of the Department of Agriculture. LB110 would replace current cattle tuberculosis statutes. Those are found at Sections 54-706 through 54-722, with the provisions of this bill, which would become...be known as the Bovine Tuberculosis Act. The purpose of the bill is to provide appropriate regulatory authorities to the Department of Agriculture to carry out TB prevention and eradication activities consistent with the most recent uniform methods and rules for bovine tuberculosis eradication as published by the USDA office on January 1, 2005. The uniform methods in rule provide model regulatory guidance and standards governing testing, surveillance, and disposition of TB-affected bovine animals for achieving and maintaining our state's TB status accreditation. LB110 is typical of legislation that we've worked with, with the committee, an act updated from time to time to bring the state in conformity...to bring conformity with the state-federal industry cooperative programs, such as the pseudorabies, and scrapie, and cattle and swine brucellosis programs. The federal rules for tuberculosis eradication are found at 9 CFR part 77, are typical of other federal and state industry cooperative eradication programs coordinated through the Animal and Plant Health Inspection Service of USDA. 9 CFR 77 provides for a progressive classification of states according to prevalence of TB, time since last incidence of the disease, and stage of progress in obtaining and exercising sufficient authorities to conduct surveillance for TB and to respond appropriately to TB incident, in conformity with federal regulation and other sources of standards for states in their livestock industry to participate freely in interstate commerce. Nebraska currently is classified at the highest level, accredited-free state, as is most of the nation. I do have a couple handouts. Actually, I've attached them all together, if I can get a Page? The first of these is a letter of...basically, a communication from the area veterinarian in charge, Gary Stevens, DVM, regarding the importance...a communication about the importance of states being up to date with the TB eradication statutes. The second one is a document provided me at the request of the Department of Agriculture, but it...basically, it's an outline of those authorities in the statutes that we need to have in place, according to the Uniform Methods and the CFR 77, that provide the authorities the

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department is seeking in order that we can carry out TB response surveillance and disposition, in order to maintain our current TB status, TB-free status. That would conclude my testimony. [LB110]

SENATOR ERDMAN: Very good. Thank you, Rick. Any questions for Mr. Leonard? Senator Dierks. [LB110]

SENATOR DIERKS: Rick, there's a lot of new language in this bill, and does it deal mostly with payment methods and funds? Is that the purpose of it? [LB110]

RICK LEONARD: There are a couple provisions in here that talk about...and I've visited with the Department of Ag for more clarification and provide the Chairman with the suggestion that we ask the department for clarification on that. But mainly, they pertain to...they're not the indemnification. We don't...there's not an indemnification element in this. But the federal government has...does provide indemnification opportunities, and there was an appropriation of CCC emergency appropriation in 2000. Part of the purpose of what we're doing here is to be up to...to be in compliance, so that our producers can maintain eligibility for that indemnity if we were to have an outbreak. There is some authorization, I don't believe...I believe is being put in here for...to be available, regarding testing and some reimbursement for some testing costs. The department...the bill does not contain any request for appropriation. But in the event we were to have maybe a TB outbreak, and to encourage some surveillance, there is an authorization...there is some authorization regarding providing some testing assistance for surveillance purposes. But it's...the department...the bill establishes that authority. There's not any request associated with it at this time. In the event we did have maybe some TB incidences where we felt we need to step up enforcement, the department may approach us, the Legislature, at a future time, and say, we'd like to invoke this authority then. And I hope I'm consistent. I'll let the department expand on what they're thinking in that regard. [LB110]

SENATOR DIERKS: Someone from the department will be up, though, later? [LB110]

RICK LEONARD: Right. [LB110]

SENATOR DIERKS: Okay. Thank you. [LB110]

SENATOR ERDMAN: Thank you, Senator Dierks. Senator Chambers, do you still have a question? [LB110]

SENATOR CHAMBERS: I was just going to ask, is this bovine TB passable to human beings? [LB110]

RICK LEONARD: Yes. Yes. [LB110]

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SENATOR CHAMBERS: Okay. [LB110]

RICK LEONARD: It's one of the major reasons for the concern. It's a transmittable disease to humans. We've...in fact, we had, if I understand right, 100 years ago, the early part of the twentieth century, we...TB was more prevalent in the United States. We've had eradication program, and essentially pretty much successful in eradicating it. But I think I've seen items that talk about tracking the rate of TB in humans with the rate of TB in animals, as we've successfully...we think there's a payoff both ways. [LB110]

SENATOR CHAMBERS: Okay. Thank you. [LB110]

SENATOR ERDMAN: Thank you, Senator Chambers. Any further questions for Rick? I don't see any. Thank you, sir. It's now my understanding that the department will again present their case on LB110. I believe Mr. Moseman will be the first proponent. And also, Dr. Hughes, I believe, will be available to answer technical questions on the bill. And Dr. Hughes, we'll have you pull up a chair, as well, as Mr. Moseman gets ready to give his testimony. Neil, if you'll state your name for the record again. [LB110]

NEIL MOSEMAN: (Exhibit 5) Thank you, Mr. Chairman. My name, again, Neil Moseman, M-o-s-e-m-a-n. [LB110]

SENATOR ERDMAN: And Neil is N-e-i-l, correct? [LB110]

NEIL MOSEMAN: N-e-i-l, yes, sir. Thank you. And again, I serve as assistant director of the Nebraska Department of Agriculture. I am here today to testify in favor of LB110. I would like to thank Senator Erdman for introducing this bill on behalf of the Department of Agriculture, and I have additional written testimony that I believe has just been distributed. With me today is Dr. Dennis Hughes, the Nebraska State Veterinarian, who will be available to answer some questions here shortly, as well. LB110 adopts the Bovine Tuberculosis Act. To give you some background, I'll briefly describe tuberculosis, TB, if you will, and its impact on states not currently TB accredited-free. The United States has conducted a TB eradication program since 1917. Overall, this program has been successful, as the United States has been largely free of bovine tuberculosis since 1971. Nebraska has been TB accredited-free since 1982. However, there are some ongoing problems that exist in the states of Michigan, Minnesota, Texas, and New Mexico. Bovine tuberculosis, as described on the state of Minnesota's web site link entitled, quote, information for cattle producers, end quote, is a slowly progressing chronic disease. It can take years of time from...years, excuse me, from the time of infection to the development of clinical signs of the disease. Infected animals often show no signs of TB, but may become gradually thinner, less active, and depressed. Bovine tuberculosis is a zoonotic disease, meaning it can be transferred by and between livestock and wildlife to humans. Due to Minnesota's loss of

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accredited-free status in 2006, that state has had to spend an enormous amount of resources toward the goal of regaining their accredited-free status. For example, in 2006, the Minnesota legislature, they passed a tax credit for cattle producers who tested their cattle for bovine tuberculosis. They also appropriated \$54,000 to their department of natural resources to help livestock producers protect their storage food...stored forage, excuse me, from free-ranging deer. And they also passed a supplemental appropriation containing \$685,000 in funds to be used for testing TB...TB testing and related expenses over the next several years. They also passed a measure to increase the board's authority to test animals for TB as needed to eradicate the disease from Minnesota's cattle. There were 31 tuberculosis-positive animals in the United States in 2006. And I'll conclude with several reasons to enact the Bovine Tuberculosis Act, LB110. Among them are, number one, existing outdated Sections 54-706 through 54-722 need to be repealed and new provisions enacted to reflect, first of all, current veterinary and epidemiological practices, and, secondly, USDA guidelines effective as of January 2005. Secondly, tuberculosis being a zoonotic disease which poses a threat to the health of livestock, humans, and wildlife in Nebraska. TB is commonly defined as a chronic debilitating disease. TB occasionally assumes an acute, rapidly progressive course, however. Thirdly, the continuation of Nebraska's status as a TB accredited-free state is vital to the continued success of Nebraska's cattle and bison industry. Fourthly, TB testing and surveillance procedures need to be updated to conform to the federal rules and regulations regarding the control and eradication of bovine tuberculosis. Fifthly, the loss of the state's TB accredited-free status would be very detrimental to our economy. And sixthly and finally, the interstate marketability of Nebraska cattle and bison can continue moving unimpeded with our accredited-free status. Thank you very much, Mr. Chairman. If you have any questions, Dr. Hughes and I will attempt to answer them. Thank you. [LB110]

SENATOR ERDMAN: Thank you, Neil. Any questions for Mr. Moseman? Senator Dubas. [LB110]

SENATOR DUBAS: Thank you, Senator Erdman. Mr. Moseman, Dr. Hughes, what types of things are put in place to protect our state's livestock from incoming, like, from other countries or other states? [LB110]

DENNIS HUGHES: My name is Dr. Dennis Hughes. That's D-e-n-n-i-s H-u-g-h-e-s. We have currently in place import requirements for states that have a problem with tuberculosis, or countries that have tuberculosis. Those animals are tested prior to entry into our state. And depending on the status of that importer, they may be retested again after they've come into the state, or be quarantined on arrival, to maybe possibly go to slaughter only, but not be mixed with our own domestic herd. [LB110]

SENATOR DUBAS: So they have to have some kind of documentation showing that this has been done? [LB110]

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DENNIS HUGHES: Yes. They have to be...they're tested by an accredited veterinarian, either at the country or state of origin, and then the same thing after they get here. [LB110]

SENATOR DUBAS: Okay, thank you. And is this a large problem among wildlife? [LB110]

DENNIS HUGHES: In certain states. You may or may not know, Michigan has been a problem state. They are a state that is broken into three actual zones. Part of the state is accredited-free, like we are; part of the state has a lesser status, called modified accredited advance; and then they have another part of the state where they've had a real problem in deer and wild cervids spreading into their cattle heard. And that's a modified accredited state. So in certain areas of the country, it has been. [LB110]

SENATOR DUBAS: Is it mainly, like, deer and those types of animals that carry this? [LB110]

DENNIS HUGHES: Animals that...yes, that graze in close proximity to each other. One of the problems Michigan had was there was an old, age-old habit of people putting food out for deer. And then that causes concentration of those wildlife, and then that causes disease to spread more readily, rapidly. [LB110]

SENATOR DUBAS: How would you know if you have this problem in your wildlife? Is there things you look for? [LB110]

DENNIS HUGHES: Those animals are tested when they're hunted. The individual states' wildlife services will actually do a surveillance test and will kill so many animals, and look for the lesions of tuberculosis when they're slaughtered. [LB110]

SENATOR DUBAS: Is that something that our state does? [LB110]

DENNIS HUGHES: We have a surveillance, I believe, when they're doing the chronic wasting disease, they'll also look for tuberculosis lesions. [LB110]

SENATOR DUBAS: Okay. [LB110]

DENNIS HUGHES: It's certain lymph nodes within the body that they look for particularly. [LB110]

SENATOR DUBAS: Thank you. Thank you, Senator Erdman. [LB110]

SENATOR ERDMAN: Thank you, Senator Dubas. Senator Dierks. [LB110]

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SENATOR DIERKS: Dr. Hughes, have they...with this new legislation, is there any change in the way you diagnose tuberculosis? [LB110]

DENNIS HUGHES: There is one new test that's available out there now, called the bovine gamma interferon test. That gives us another tool in our kit that we did not have before. When we have a suspect animal, the original test we do is called a caudal fold test. It's a...as you're well aware, we actually inject .1 ml of PPD tuberculin under the tail in the loose skin. Previously, we had...if we had a reactor to it, we had to do what are called comparative cervical tests, which is a little slower, not always as reliable. We now have a new test called a bovine gamma interferon test. We can take a blood sample and send it off to NVSL, and that gives us a reading that's a little easier to diagnose and gives us a little bit more assurance. [LB110]

SENATOR DIERKS: A little more accurate. [LB110]

DENNIS HUGHES: Right. Right. It's expensive, but we're willing to do that if we want a quick result. [LB110]

SENATOR DIERKS: It was...when I first started my practice, we were doing a lot of that, because we were doing TB testing in cows all over the nation, I think, at the time. And we would do an injection for tuberculosis on the one day, and then 72 hours later, come back and feel for swelling where that injection was made. [LB110]

DENNIS HUGHES: Exactly. [LB110]

SENATOR DIERKS: And I never did feel too sure that I was doing a great job with that particular testing procedure. I never found one that I thought was a reactor. I felt some swelling, but I thought maybe it was because I got a little manure in the needle when I injected it, you know. It's at the right place for that to happen. [LB110]

DENNIS HUGHES: Yeah. [LB110]

SENATOR DIERKS: One of the problems that I found was with what was going on internationally with tuberculosis. And we knew there was a tremendous amount of tuberculosis in Mexico. If I felt that I...if I got some information from a friend of mine in Texas who was going to bring cattle in to feed from Mexico, and I knew that there was a possibility of bringing tuberculosis into our country, would I come to you and say, we got a problem, we need to put a ban on importing cattle from Texas into Nebraska? How would I handle that, Senator Hughes...Dr. Hughes? [LB110]

SENATOR ERDMAN: I don't know if you got promoted or demoted there. (Laughter) But take a shot at it. [LB110]

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DENNIS HUGHES: That's a loaded question. You've opened a huge can of worms. Quite honestly, when the regulatory veterinary world heard about NAFTA and how they were going to open the gates to Mexican cattle, we knew this was a possibility, because we knew Mexico had a problem. So we have been implementing testing of all Mexican cattle. They are tested once before they cross the border, and then they're retested again, or else we have laws that allow them to be imported without the second test and go directly to a quarantine feedlot where they are held there and kept separate from our domestic herd until they go to slaughter. The politics as it is, is going to be to continue to allow those cattle into the United States from Mexico. There are certain states of Mexico where the USDA has found that they have a higher-level incidence of TB than other states. About a year ago, I think it was the state of Chihuahua, there was another state or two there, where they actually found that there was a high percentage of those cattle were found to have tuberculosis. And so they basically cut off imports from those states as of about a year ago. The states that have proven themselves, that they're doing an adequate job, are still being allowed to send cattle into the United States. Did I answer your question? [LB110]

SENATOR DIERKS: That answers it very well, Dr. Hughes. I just wanted to bring that out, because I had had that particular problem happen. I was a member of the United States Animal Health Association brucellosis committee and tuberculosis committee for a number of years, and the last meeting that I went to, they told us about these tuberculosis steers coming into this country. Now, tuberculosis is a disease of old people, old animals. But they had over 100 head of yearling steers from Texas that had positive lesions in their lungs from tuberculosis. That's how active the disease was in those cattle. And yet, I couldn't get anybody to do anything about it up here. I tried, but nobody would even nod their head at it. [LB110]

DENNIS HUGHES: You may or may not know that we now have the ability to do DNA fingerprinting of the exact TB organism. We know exactly where it comes from. And the state of Minnesota right now, where they have a problem, they have seven quarantine infected herds, and the DNA fingerprint comes from Mexican cattle. So basically, Minnesota got it from Mexican cattle that were brought into that state. [LB110]

SENATOR DIERKS: You mentioned something, too, when you were visiting a minute ago, about politics being what they are. I think that's a deplorable situation, that politics can have anything to do with it. I mean, we're talking about the health of our citizens. And how politics can affect that negatively, that's just inexcusable, in my mind. So look for me to try to find some way to correct that, Dr. Hughes, and maybe you can help me with that. [LB110]

DENNIS HUGHES: Thank you. [LB110]

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SENATOR ERDMAN: Thank you, Senator Dierks. Senator Chambers, you still have a question? [LB110]

SENATOR CHAMBERS: Dr. Hughes, will eating meat from an infected animal infect the human who eats the meat? [LB110]

DENNIS HUGHES: If the meat is not cooked thoroughly, yes. [LB110]

SENATOR CHAMBERS: But cooking will take care of it? [LB110]

DENNIS HUGHES: Yes. Yes, cooking will take care of it. [LB110]

SENATOR CHAMBERS: Okay. [LB110]

SENATOR ERDMAN: Thank you, Senator Chambers. Any further questions? Senator Dubas. [LB110]

SENATOR DUBAS: Thank you, Senator Erdman. How virulent is this disease? How fast would it spread, should it take hold? [LB110]

DENNIS HUGHES: Well, typically what happens is, if you've got an animal that is introduced in herd that has TB, it is shed through the secretions of that animal, and typically you get nose-to-nose contact. And some animals incubate slower and take longer to show symptoms. They might be two or three years later before they'll actually show symptoms. Other animals maybe encounter a larger load of the bacterium, come down with symptoms sooner. So it doesn't necessarily mean that because an animal was infected six months before another one that that animal will initially show symptoms sooner. It's variable. But it can be as short as weeks, to as long as years, before you have animals that actually show symptoms. [LB110]

SENATOR DUBAS: So we could get this into a herd or herds in the state, and might not realize it for an extended period? [LB110]

DENNIS HUGHES: That's possible, yes. We do have ongoing surveillance at slaughter, and we have animals that go out of state. Even though we're a free state, a lot of states, like us, require TB testing before they go out. So we have herds that are tested routinely when they send animals out of the state. [LB110]

SENATOR DUBAS: Thank you. [LB110]

SENATOR ERDMAN: Thank you, Senator Dubas. Any other questions? Senator Dierks. [LB110]

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SENATOR DIERKS: Just as a matter of...for the committee to understand something about the tuberculosis testing we used to do, and still do, there were a group of, I believe, 21 cows that were quarantined out in South Dakota for tuberculosis. They tested positive. And the guy that owned them was a Nebraskan, and he refused to sell them. Well, the courts finally...or, the state veterinarian of Nebraska and the state veterinarian of South Dakota finally talked him into selling them, and they would pay indemnity for those cows after they'd been slaughtered. So they had three people go in and provide what they thought was a fair price for those cows. They...that guy that owned the cows got a guy, the state of Nebraska got a guy, and they together got a guy. They took those cows to slaughter in...I believe it was in Nebraska, and they couldn't find a lesion in one of them. And they had all tested positive to the... [LB110]

DENNIS HUGHES: Caudal fold. [LB110]

SENATOR DIERKS: ...to the caudal fold test, yeah. So TB, tuberculosis testing is not a...it wasn't a...I guess it's supposed to be an exact science, but it wasn't very exact. We just had difficulties with it. [LB110]

SENATOR ERDMAN: Thank you, Senator Dierks. I had a few questions that had come up in our review of the legislation. It talks about the language of LB110 being consulted...or, being drafted in consultation with the Livestock Advisory Committee. Can you explain what that group is and how they're organized? [LB110]

DENNIS HUGHES: The Livestock Advisory Committee is made up of the industry leagues of the different livestock groups. Right now, we have the Nebraska Cattlemen, Pork Producers. The general advisory group is leaders from each of the different species, livestock groups. [LB110]

SENATOR ERDMAN: Okay. If...in the unforeseen circumstance that LB110 wouldn't pass, what authority generally would the department have in carrying out similar oversight over this disease? And how might we respond? And I guess maybe the better question is, in addition to maybe what Neil has pointed out as the need for this bill, I mean, are there some glaring gaps that would prohibit us from actually getting to where we need to be in order to address these concerns, should they show up in Nebraska? [LB110]

DENNIS HUGHES: Exactly. You may or may not know that in 2005 we did have some slaughter positives in the state that really scared us. One tracked out to two herds that had owned an animal, and we did extensive testing, found nothing. We also had two slaughter traces that we could not track the animals to a herd of origin. But that kind of put us, basically, kind of the bad boy state. The feds have been keeping watch on us because they're convinced that somewhere out there there's possibly an infected herd with tuberculosis in the state of Nebraska. What we have to do to be able to allow our

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producers who would have tuberculosis get indemnity is to follow the federal statutes that are implemented in both the UMR and the CFR. We have basically been obeying those or following those in the last few years anyway, because our old tuberculosis act was our cake, and didn't even apply. So we put ourself at risk if we don't implement the current standards and laws and regulations for eradicating tuberculosis. [LB110]

SENATOR ERDMAN: Okay. And then the last set of questions would go back to, I think, where Senator Dierks' first questions were, about the fees and assessments that would be incurred under Section 11 of the act. It appears to be similar to what we may have in other acts, which is the pseudorabies provisions. And I guess the question would be, what types of services or expenses, or under what circumstances might you contemplate assessing those fees and the collection of payment for? [LB110]

DENNIS HUGHES: We would not anticipate any fees. But, for instance, if we had a noncompliant producer who we knew had tuberculosis, our hope would be that the expenses would be charged back to him. The fees that we currently...well, we don't charge fees. But the testing reagents, the tuberculin, the laboratory testing, is all done at federal expense now. So we wouldn't anticipate any fees unless we had a noncompliant herd. [LB110]

SENATOR ERDMAN: Okay. Very good. Any further questions? Senator Chambers. [LB110]

SENATOR CHAMBERS: Dr. Hughes, just how is the disease passed from an animal to a human? [LB110]

DENNIS HUGHES: Well, close contact with an infected animal. You know, you could...possibly, a human could get it by an open sore or wound, and contact the bacteria; actual respiratory inhalation of the organism is also a possibility. [LB110]

SENATOR CHAMBERS: So what protection is there for workers who are slaughtering infected animals? [LB110]

DENNIS HUGHES: They do wear protective gloves. They have to wear protective equipment to make sure that they don't come in...they protect their hands. That's probably the number one way they would have it. [LB110]

SENATOR CHAMBERS: But breathing would not do it? It's not airborne? [LB110]

DENNIS HUGHES: Not after the animal has expired and it's no longer exhaling air. It's probably not going to be a problem. [LB110]

SENATOR CHAMBERS: Okay. Thank you. [LB110]

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SENATOR ERDMAN: Thank you, Senator Chambers. Any further questions? I see none. Thank you, gentlemen, for your testimony. And can I see a show of hands of those who wish to testify in support of LB110? I see one. Anyone wishing to testify in opposition? I see none. Anyone in a neutral capacity? I see none. [LB110]

SENATOR CHAMBERS: Mr. Chairman, while he comes up, you never have a means of looking to see whether the bacterium or the virus would object to this bill, so when you ask, is there opposition, we really don't know whether there is or not. (Laugh) [LB110]

SENATOR ERDMAN: That is true, Senator Chambers. That's why I always like to say, is any "one" wishing to testify in opposition or in favor? [LB110]

SENATOR CHAMBERS: Oh, okay. [LB110]

SENATOR ERDMAN: But point well taken. Duane, state your name and spell it for the record, so that we can get your information correct. [LB110]

DUANE GANGWISH: Good afternoon Senator Chambers...or, (laugh) Chambers. (Laughter) Senator Erdman. [LB110]

SENATOR CHAMBERS: (Laugh) It's catching. [LB110]

DUANE GANGWISH: My name is Duane Gangwish, it's D-u-a-n-e G-a-n-g-w-i-s-h, and I appear before you as a registered lobbyist for the Nebraska Cattlemen. I'll be short and sweet. We rise in very strong support of this bill. The health of our domestic cattle herd is of extraordinary economic importance to the state. We look forward to working with the department in formulating any regulations or...and in implementing those regulations, as they might come about. That's it. We're here, and we hope that you would advance this on to the floor for further consideration. If you have any questions, I'll be happy to try and answer them. [LB110]

SENATOR ERDMAN: Thank you, Duane. Any question for Mr. Gangwish? Senator Wallman. [LB110]

SENATOR WALLMAN: Thank you, Chairman. Duane, there's a lot of cattle in our area coming up from the south. Now, you think those are infected? And would that infect area cattle herds pretty easy? Or just for slaughter, out of feedlots? [LB110]

DUANE GANGWISH: Is your question about cattle coming in for slaughter,... [LB110]

SENATOR WALLMAN: Yeah. Yeah. [LB110]

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DUANE GANGWISH: ...or for feeding? [LB110]

SENATOR WALLMAN: For feed. [LB110]

DUANE GANGWISH: For feeding. Well, I'm not...sir, I'm not a veterinarian, so I'm not qualified to answer the health status of the cattle, although cattle coming into the state do have to have proper health papers and certification from the veterinarian shipping. They have to be inspected coming into the state. And so that would be one of the hindrances to moving cattle...or, the disease in. [LB110]

SENATOR WALLMAN: Thank you. [LB110]

SENATOR ERDMAN: Thank you, Senator Wallman. Any further questions? Senator Chambers. [LB110]

SENATOR CHAMBERS: Based on my colleagues question, do they feed animals that they know are infected in Nebraska? [LB110]

DUANE GANGWISH: Well, any animal that is known to be infected needs to be cared for until properly disposed of. Was that the context of your question? [LB110]

SENATOR CHAMBERS: But I meant, they don't bring them into feedlots to be fed and fattened there if they're known to be infected? [LB110]

DUANE GANGWISH: Not to my knowledge, sir. [LB110]

SENATOR CHAMBERS: Okay. [LB110]

DUANE GANGWISH: That...I think that would be against state law,... [LB110]

SENATOR CHAMBERS: Okay. I just wanted to... [LB110]

DUANE GANGWISH: ...to my belief. [LB110]

SENATOR CHAMBERS: ...be sure I was hearing correctly. [LB110]

SENATOR ERDMAN: Thank you, Senator Chambers. Any further questions for Duane? I don't see any. Thank you, sir. [LB110]

DUANE GANGWISH: Thank you. [LB110]

SENATOR ERDMAN: Once again, is there any proponent testimony? Anyone in opposition to LB110? Anyone wishing to testify in a neutral capacity? I see none on all

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three counts. Again, we'll thank Rick for his efforts on LB110 in working with the department. We'll close the hearing on LB110, and proceed with LB111. We will follow the same procedure that we have for the first two bills, and Rick Leonard will introduce the bill to the committee, and will be followed by representatives from the Department of Ag to introduce the bill further. Rick, you're recognized. [LB110 LB111]

RICK LEONARD: (Exhibit 6) Thank you again, Chairman Erdman and members of the committee. Again, Rick Leonard. I'm the research analyst for the committee. Last name, L-e-o-n-a-r-d. LB111 is, again, brought to us on...by the Department of Agriculture. LB111 combines the Nebraska pasteurized milk law and the Nebraska Manufacturing Milk Act into one act, the Nebraska Milk Act. I'm sorry. Before I go further, I do have another handout again. [LB111]

SENATOR ERDMAN: And as Rick is handing that out, just for those who are following along here in the room, there may be times when members may leave. There's also other bills being introduced in other committees, and so there might be a necessity for those members to leave. So they're not leaving the hearing for the sake of leaving. Generally, they have other commitments. And we have very good attendance in our committee, and generally those individuals return very quickly. So I just thought I would provide that tidbit of information as you observe us moving about. Go ahead, Rick. [LB111]

RICK LEONARD: Again, similar to our first bill, this bill would, again, substantially adopt the most recent updated official publications of the Public Health Service of the United States Department of Agriculture...Department of Health and Human Services pertaining to milk standards, which incorporate recommendations in the National Conference of Interstate Milk Shipments. These publications take into account new technologies and product developments that occur in this industry, and regulatory experience. The adoption of the most recent publications--in this case, we're talking about the 2005 pasteurized milk ordinance--is necessary to keep Nebraska's laws and regulations pertaining to milk safety and sanitation in step with model regulatory recommendations, in order to apply up-to-date standards, to maintain uniformity of regulations, and to enable the Nebraska dairy industry to participate freely in interstate commerce. The bill also adopts the way permit fees are calculated, as of August 1, 2008, and the way inspection fees are calculated, as of October 1, 2007. The permit and inspection fees that we've charged under our milk programs, under the pasteurized milk ordinance and the Nebraska milk law, have not been changed since 1980. During that time, however, the industry has evolved and changed dramatically. This bill would adopt a similar fee and cash fund management principles as part of the permit and inspection fee system that we were discussing earlier in the Pure Food Act. The language incorporates certain fee setting and cash fund management principles to avoid excessive cash fund buildup, while maintaining sufficient resources to carry out the Department of Agriculture's regulatory responsibilities. Overall, the new fees will

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generate an increase in cash funds, which is needed to account for inflation that has occurred since fees were last set statutorily...were last statutorily set, and to maintain the existing allocation of costs between the cash and the General Funds. Similar to the...one of the handouts I had with the colored graphics, again shows that we're reaching the point where inflation has caught up with the fee schedule as...with the caps currently set in statute. We will...the department is projecting that those fee revenues will fall short, and we'll see a deficit in program spending. Again, we're faced with the dilemma then of either funding the program more with General Funds, or scaling back the inspection program accordingly. With that, I would entertain any questions. [LB111]

SENATOR ERDMAN: Thank you, Rick. Any questions for Mr. Leonard? And again, I think it's important for the committee to be aware that one of the main reasons why the fee structure was adopted was, shortly after the cash balances had been accumulated, at some point there was efforts made, and successful efforts made, to take some of those funds for other purposes of state government in our budget shortfalls. This makes sure that the fees are appropriate, as well as maintaining those low cash balances and being more efficient in the fund to avoid those circumstances. So we are adopting a similar philosophy here as we did in LB74. With that, we will ask the department to come forward. It's my understanding that Neil Moseman will be the main proponent from the department, and will also be joined by Dan Borer. And even though you've been up there twice already, we'll need you to follow the same procedures, as each bill is transcribed separately. State your name for us. And again, if you have information that needs to be distributed, the Pages will be happy to do that. [LB111]

NEIL MOSEMAN: (Exhibit 7) Thank you, Mr. Chairman, Senator Erdman, and members of the Agriculture Committee. My name is Neil Moseman, N-e-i-l M-o-s-e-m-a-n. I'm assistant director of the Nebraska Department of Agriculture, and here today to testify in favor of LB111. I'd like to again thank Senator Erdman for introducing this bill on behalf of the Department of Agriculture. Written testimony has been provided to you, as well, and I ask that that be placed in the record for this bill. With me today is Dan Borer, the administrator for the dairy division, who will be available to answer questions here shortly. The Nebraska Department of Agriculture is responsible for the enforcement of the Nebraska pasteurized milk law and the Nebraska Manufacturing Milk Act. These two laws were enacted for the regulation of milk and milk products, such as fluid milk, cheese, and butter, from the dairy farms through the milk plants. This provides the industry with a consistent, uniform criteria for sanitation and milk quality, which provides the consumers with safe and wholesome dairy products, while at the same time assuring industry's ability to market dairy products both in and out of the state. LB111 combines the two current laws into one act, the Nebraska Milk Act. These two laws are being combined to simplify and eliminate some redundancy of the two laws. The bill also adopts the most recent official publications of the National Conference on Interstate Milk Shipments, to ensure the dairy industry in Nebraska will continue to be able to ship their products in interstate commerce. Nebraska currently has adopted the 1999 official

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publications. However, the National Milk Shippers Conference recommends that states adopt the most recent version, or at least one not more than six years old. Prior to the development of the National Conference on Interstate Milk Shipments and the pasteurized milk ordinance, states and local health authorities travel well beyond their boundaries to inspect farms and plants that might ship milk into their jurisdictions. For example, we had milk inspectors from Texas inspecting Nebraska dairy farms and plants because they may ship milk to Texas. Likewise, we had local health authorities in Nebraska inspecting milk in Kansas, Iowa, and South Dakota. Under the cooperative agreements of the National Conference on Interstate Milk Shipments, states and health authorities are required to practice reciprocity and accept milk inspected by another jurisdiction, provided they adopt and enforce the minimum requirements of the interstate milk shippers program. This bill modifies the way permit fees and inspection fees are calculated, as well. The permit and inspection fees have not changed since 1980, even though during that time the industry has evolved and changed dramatically. The changes to the fee structure would make them more equitable and spread across more equally among all licensees. The language also provides the department some flexibility to raise or lower the fees as necessary. This procedure has been adopted by the Legislature in two other acts that the Department of Agriculture administers. This procedure has been favorably accepted and supported by the industry charged under those acts. Overall, the new fees will generate the necessary funds which are needed to maintain the current program. The department has discussed these changes with the Nebraska Dairy Industry Review Board, who has voted to support all these changes proposed in this bill. The written material that you've been provided includes a list of those board members, and the material also includes a section by section analysis of the bill. We ask for your support in enacting this bill this year. And if there are any questions, we'll be happy to answer them. Thank you, Mr. Chairman. [LB111]

SENATOR ERDMAN: Okay. We'll wait one moment. Very well. Thank you, Neil. Are there any questions for Mr. Moseman? Senator Dierks. [LB111]

SENATOR DIERKS: Who else...who will be testifying, Neil, on behalf of this legislation, besides yourself? [LB111]

NEIL MOSEMAN: Dan Borer. [LB111]

SENATOR DIERKS: Will that be it? No one among the producers or...? [LB111]

DANIEL BORER: There...well, for the record, my name is Dan Borer. Dan, Daniel, D-a-n-i-e-l, and Borer, B-o-r-e-r. There are members of our Nebraska Dairy Industry Review Board here, and I think they're...they would like to testify in support of the bill. [LB111]

SENATOR DIERKS: I might have a question or two for someone from the dairy hauler,

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people that haul milk. Is there someone that could answer that? [LB111]

DANIEL BORER: There is nobody here representing milk haulers. There are some here that employ milk haulers that you might be able to ask. Or you can ask me and I'll try. [LB111]

SENATOR DIERKS: Okay. Well, I just...I was looking at this handout, and it shows the people that are on the Dairy Industry Review Board, and I see there was a milk hauler on there, Kelly Geer, from Holdrege. [LB111]

DANIEL BORER: Yes. [LB111]

SENATOR DIERKS: And Rite Way Milk, Incorporated. I just wondered how the milk was being delivered around the state, from the farms, to the plants. And I think there have been a lot of changes in it since I've really been involved, and I just wondered how that was taking place, if there's one milk hauler in the state that hauls all the milk, or if there's a group of them that are able to do that, if there are individual haulers out there in the towns that are still doing that. I just wondered how that was handled. [LB111]

DANIEL BORER: There's not one company that is hauling all the milk. There are some independent people owning their milk trucks that are hauling milk. There are some that...I believe, that are owned by the cooperative, and they're hauling their own. But it's just...it hasn't changed that much, except that...in the hauling aspect. What has changed, when we say our dairy industry has evolved, back in 1977, when I started, there was 3,600 dairy farms in this state; we're down to under 400 now. So we have much larger trucks that's hauling it, but it's the same method. They're independent. There are less plants that they're hauling it to, but that hauling part really hasn't changed much. [LB111]

SENATOR DIERKS: So then does the hauler haul for a plant, or does he haul for the producer? Who hires him? [LB111]

DANIEL BORER: Well, there's independent milk haulers owning their own trucks, and they...there is a representative here, I think, that could probably better answer that. [LB111]

SENATOR DIERKS: That would be fine, if he'd come up afterwards. [LB111]

DANIEL BORER: Okay. [LB111]

SENATOR ERDMAN: Thank you, Senator Dierks. Senator Dubas. [LB111]

SENATOR DUBAS: Could you enlighten me, please, on what the Manufacturing Milk

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Cash Fund is or was, and why it's being changed to the Pure Milk Cash Fund? And is there going to be a difference in how that money is used or distributed, or how is it used? [LB111]

DANIEL BORER: Well, previously,...and it says, we are combining two laws here. We're basically combining the manufacturing milk law and the Grade A milk law. And the manufacturing milk law, out in the country, is commonly referred to as Grade B milk. But...so with the two statutes, we collected funds under both of them. And if we combine them, we need to move whatever funds are remaining over to the one fund, so that we can expend it, or else it will just remain out there. Funds that we receive under these laws are used to carry out the enforcement actions of the law. [LB111]

SENATOR DUBAS: So there's really not going to be any changes in how the money is used. You're just... [LB111]

DANIEL BORER: No, there would not be any changes. [LB111]

SENATOR DUBAS: ...simplifying and combining. [LB111]

DANIEL BORER: Right. That is correct. [LB111]

SENATOR DUBAS: Okay. Thank you. [LB111]

SENATOR ERDMAN: Thank you, Senator Dubas. Further questions? Some of the questions that we had in reviewing the legislation--and I'm going to read this, so that way I don't mess it up, as a non-milk producer here. Section 5 of the bill amends Section 2...excuse me, Chapter 2-3903, which currently requires that only Grade A pasteurized milk and milk products be sold to a final consumer, restaurants, or grocery stores. Subsection (3) provides for that exception, in the event that that sale is a direct sale of raw milk sold to the final consumer at the farm. This is substituted in our...in the PMO, which is the pasteurized milk ordinance--is that what that's called?--ordinance, and so we have that change now. LB111 changes this provision to state that milk and milk products from approved sources with an appropriate permit may be sold to the final consumer, restaurants, etcetera. It also narrows the raw milk exception under subsection (3) to only milk and cream. It's my understanding that you've explained that these are necessary as you combine the two different acts, and then you'll have the similar standard. I guess my question is, is that, can you explain what authority the department retains in the event to ensure that where pasteurized milk is required, that there's still the authority of the department to ensure that that happens, since there's been a change in the language? [LB111]

DANIEL BORER: You are correct, in that we had to change that wording there because we are combining the Grade A and the manufacturing milk law. Previously, the Grade A

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milk law said only Grade A pasteurized milk would be sold to the consumers and restaurants, soda fountains, etcetera. But when we combine them, if we don't change that wording to say milk and milk products, then we would be prohibiting cheese and butter and other dairy products from being sold in restaurants, grocery stores, etcetera. The only place that we are allowing the sale of raw milk, we are maintaining an exemption that's been in our milk law to allow somebody to seek out and find a farm that's willing to sell them raw milk, and they can buy it for their own family's consumption, not for any resale. [LB111]

SENATOR ERDMAN: So the same standard applies now where pasteurized milk is required to be sold to those end users? That is still there and the exemption is still in place that allows consumers to purchase raw milk from the farm directly? [LB111]

DANIEL BORER: That's absolutely correct. [LB111]

SENATOR ERDMAN: Okay. The only other question that we go through is dealing with the enforcement procedures. Current law excludes the incorporation of Section 15 of the 1999 PMO pertaining to enforcement procedures, and replaces it with Sections 2-3904 and 2-3905. LB111 continues that exclusion of the corresponding provision of the 2005 PMO, and is replaced by Section 6 of the bill. Section 6 recodifies current Section 3904, but outright repeals Section 3905. Section 2-3905 authorizes the department to contractually delegate certain regulatory functions to local governments. Can you give us the rationale on why Section 2-3905 was not retained? And do we currently delegate any of those regulatory functions to local governments? [LB111]

DANIEL BORER: Well, to start with, no, we do not contract for any of the regulatory functions under the milk law. And this is another way in which the dairy industry has evolved and changed drastically, because we used to have four local health authorities that were involved in milk inspections, and we had contracts with them. They all had laboratories, they all had employees. And over...we probably haven't contracted with anybody for the last almost 15 years. It just is much more efficient as the number of farms go down, as the number of people you got to have trained to do the work. Right now, we currently do all the inspection out there across our entire state with four field staff and myself and one secretarial staff. Before, we probably had more than 35 people involved. And for consistency and stuff, we would not intend to contract again. So that's why we just eliminated that section of the law. [LB111]

SENATOR ERDMAN: Okay. Thanks, Dan. Any further questions? For the committee's information, Rick has distributed a comparison of the two previous laws, the pasteurized milk law and the Manufacturing Milk Act. And he's given you a third column that cites how the two laws now work in cooperation, and outlines the fees that are projected under LB111, as compared to under previous bills. So that information should be distributed to you, and should help at least to give you a visual explanation of how these

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two bills are being...or how these two laws, excuse me, are being consolidated and codified. Senator Preister. [LB111]

SENATOR PREISTER: We are currently operating under the 1999 PMO, correct? [LB111]

DANIEL BORER: That is correct. [LB111]

SENATOR PREISTER: And I forget. We're supposed to update every five years, or was it a different derivative? [LB111]

DANIEL BORER: They require us to update at least every six years. [LB111]

SENATOR PREISTER: Six. [LB111]

DANIEL BORER: And what happens is, the FDA comes in and evaluates our state's entire program. And what also happens is, this is the 2005 version right here, but you won't see any difference if you look at the '99 on the cover, just the year and the date. But that's been revised from the 1999 to 2001 to 2003, and this is the 2005. Our industry ends up complying with the more recent requirements, because they have to, to comply for the interstate milk shippers program. But the FDA, when they do our evaluation, requires at least that we have the enabling legislation, too, to be able to support and enforce the national minimum requirements. So, I forgot where I was going with that. (Laugh) What was the question again? [LB111]

SENATOR PREISTER: I think you answered it. [LB111]

DANIEL BORER: Okay. All right. Oh, six years is...yes. [LB111]

SENATOR PREISTER: The...we're operating currently under the 1999 HMO (sic),... [LB111]

DANIEL BORER: Right, and we will... [LB111]

SENATOR PREISTER: ...and we're required to update, and I suggested five years; you said it was six. So we're behind, and we need... [LB111]

DANIEL BORER: Yes, it is six. And eventually, if the state does not comply with that, adopting that enabling legislation, they will disallow the state from participating in the Interstate Milk Shippers Conference. [LB111]

SENATOR PREISTER: Okay. That was my next question. All right. Thank you. [LB111]

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SENATOR ERDMAN: (Exhibit 8) Thank you, Senator Preister. Any further questions? I don't see any, gentlemen. Thank you for your testimony. I do also have a letter that's been sent to the committee from Bill Fralick, that's F-r-a-l-i-c-k, from Meadow Gold Dairies, in support of LB111. And that will be distributed to the members of the committee. Is there anyone wishing to testify in support of LB111? Okay, I see three hands. Anyone wishing to testify in opposition? I see none. Anyone in a neutral position? I see none. Gentlemen, come forward. And again, when you take a seat, if you'll state your name and spell it for us, so that we may be able to get that accurately into the record, and then we'll allow you to proceed with your testimony. [LB111]

BRAD SCHULZ: (Exhibit 9) Okay. My name is Brad Schulz, B-r-a-d S-c-h-u-l-z. Senator Erdman and members of the Agriculture Committee, my name is Brad Schulz. I'm the chairman of the Nebraska Dairy Industry Review Board, and I'm here to testify in favor of LB111. The Nebraska Dairy Industry Review Board is a 14-member board made up of all segments of the dairy industry, including milk producers, processors, purchasers, haulers, and academia, for the purpose of advising the Nebraska Department of Agriculture. During the last several months, we've met at least a couple times to go over the contents of LB111. And we went over the adoption of the PMO, and we also went over the new advised fee structure. So as a whole, we kind of looked at where the current fees are, where the industry is, and where the department regulation time and stuff is spent. And we agree in principle with the new adoption that's in LB111. We also agree that the current mix of General Funds and industry funds should stay at pretty much its current level. So it is the opinion of the Nebraska Dairy Industry Review Board that you adopt LB111. Thank you. [LB111]

SENATOR ERDMAN: Thank you, Brad. Any question of Mr. Schulz? Senator Dierks. [LB111]

SENATOR DIERKS: Brad, you're part of the processors? [LB111]

BRAD SCHULZ: Yes. [LB111]

SENATOR DIERKS: Yeah. Can you tell me how the milk delivery takes place? Are the haulers, the milk haulers, are they paid by the processor or by the producer? [LB111]

BRAD SCHULZ: There's probably better people to answer that question than me. But... [LB111]

SENATOR DIERKS: Okay, well, maybe someone... [LB111]

BRAD SCHULZ: ...I believe, in our situation, we contract with somebody and we pay them, based off of the producer. [LB111]

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SENATOR DIERKS: You contract with the hauler. [LB111]

BRAD SCHULZ: Yes. [LB111]

SENATOR DIERKS: Okay. Thank you. [LB111]

BRAD SCHULZ: But I think there's probably better people to answer that than myself. That's not my area of expertise. [LB111]

SENATOR DIERKS: Thank you. [LB111]

SENATOR ERDMAN: Thank you, Senator Dierks. Any further question of Mr. Schulz? I see none. I want to thank you for your efforts. I didn't do this on the other groups, but those of you that devote your time to working with the department before the bills get here, that helps our process immensely. Next testifier in support of LB111. [LB111]

DERON WELTY: My name is Deron Welty, W-e-l-t-y, D-e-r-o-n. I'm on the Nebraska Dairy Board, also I'm a plant manager at Roberts Dairy in Omaha, Nebraska, and I'm just here to give my support to this bill. I think we've looked at this and talked about it for a while, and we feel that we have a good bill. And I just wanted to give my support and answer any questions that you had, Senator Erdman. [LB111]

SENATOR ERDMAN: Fantastic. Are there any questions? Senator Chambers. [LB111]

SENATOR CHAMBERS: Does Roberts Dairy manufacture ice cream? [LB111]

DERON WELTY: We manufacture ice cream mixes, like Dairy Queen mix, a 5 percent mix. We do not make ice cream at that facility. [LB111]

SENATOR CHAMBERS: Chocolate ice cream is kind of a catchall, isn't it? That's why you might find strawberries and other things in it? [LB111]

DERON WELTY: (Laugh) They should not be in there if it's chocolate ice cream. But in the past, you use chocolate ice cream mix, you can use it for mixes rework and stuff like that, because if it has the sugar in it or something, you can add it to it. [LB111]

SENATOR CHAMBERS: And you can't see everything that's in it, as a consumer. [LB111]

DERON WELTY: I don't know about not seeing it, but it is kind of a catchall. You can use it for chocolate ice cream mix, you put stuff in there, and that way, if it's got sugar or vanilla or something like that, you will not notice it. [LB111]

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SENATOR CHAMBERS: I like it,... [LB111]

DERON WELTY: Thank you. (Laugh) [LB111]

SENATOR CHAMBERS: ...so I'm not criticizing you. Thank you. [LB111]

SENATOR ERDMAN: Thank you, Senator Chambers. Any further questions for Deron? I don't see any. Thank you, sir. [LB111]

DERON WELTY: Thank you. [LB111]

SENATOR ERDMAN: Next testifier in support of LB111. [LB111]

DOUGLAS TEMME: (Exhibit 10) Senator Erdman, my name is Doug Temme, D-o-u-g T-e-m-m-e. Senator Erdman and members of the Ag Committee, my name is Doug Temme and I serve on the Nebraska Dairy Industry Review Board. The board includes a cross section of the dairy industry, from farmers to dairy plant personnel. I happen to be a dairy farmer from up by Wayne, and a member-owner of Associated Milk Producers, which is a co-op, and I'm here to testify in favor of LB111. The Dairy Review Board has met several times to discuss the changes contained in LB111, and we support the adoption of the 2005 recommended requirements for milk production and processing. It is important that it enables our milk to be shipped in interstate commerce. Associated Milk Producers, which has about 25 percent of Nebraska producers as members, ships all of its milk out of state. This...our market, as well as other buyers of the market from out of state, provide the competition that helps keep farm prices profitable. We support the revised fee structure and the changes in the way the inspection fees would be calculated, and we believe the changes would make it more equitable and spread the cost of the program more equally among the dairy industry. And Senator Dierks, in response to your question, the dairy farmers are charged hauling fees for their milk. It's deducted out of my milk check, as far as...that goes to the hauling fee. The co-op...sometimes it's subsidized, but most...I guess part of the time...or, a lot of times, it is partially subsidized by the co-op. Most producers are charged a fee, so much per hundredweight of milk, and that's how the haulers get their pay, based on how far they haul it or where they haul it into. [LB111]

SENATOR DIERKS: So the haulers are basically independent contractors? [LB111]

DOUGLAS TEMME: Our hauler...it would be either...my hauler is an independent contractor, but the co-ops do own some trucks, as well. But all milk is probably charged a hauling fee to offset that trucking. [LB111]

SENATOR DIERKS: Okay. And the fee probably would be...the independent contractor is not at a disadvantage over that person hauling for the corporate entity? [LB111]

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DOUGLAS TEMME: No. I mean, it's...they work it out between the co-op and them, to make sure that... [LB111]

SENATOR DIERKS: Now, you said something and I didn't catch it for sure. Did you say that you're a...how many members in your co-op? [LB111]

DOUGLAS TEMME: We have just 90-some members of the less than 400 producers... [LB111]

SENATOR DIERKS: In the state, in the state of Nebraska? [LB111]

DOUGLAS TEMME: ...belong to AMPI, yes. [LB111]

SENATOR DIERKS: And you said something about importing your milk, or exporting your milk? [LB111]

DOUGLAS TEMME: All of our milk, all of AMPI's milk is shipped to their plants, which are outside of the state. [LB111]

SENATOR DIERKS: I see. [LB111]

DOUGLAS TEMME: Either in South Dakota, Iowa, and some of it might go even up into Minnesota, as well as they haul some into Wells' plant in LeMars. [LB111]

SENATOR DIERKS: Okay. Thank you. [LB111]

DOUGLAS TEMME: Thank you. Any other questions? [LB111]

SENATOR ERDMAN: Thank you, Senator Dierks. Thank you, Doug. Any questions for Mr. Temme? Sorry about that, I don't see any. Thanks again. Is there anyone else wishing to testify in support of LB111? [LB111]

JOE BOUSLAUGH: Senator Erdman, members of the committee, my name is Joe Bouslaugh, B-o-u-s-l-a-u-g-h. I am an area manager for Dairy Farmers of America. I'm located here in Nebraska. I try to manage the Nebraska area, as far as our cooperative. We are the largest cooperative in the United States marketing milk. We have somewhere around, I think, 20,000 producers that we market, and somewhere around 30 percent of the milk in the United States. We are in favor of this bill. And if you...that's all I have to say. If you have any questions as far as hauling, I guess I'll sure be glad to answer what I can. Our members are contracted through DFA, and our haulers... [LB111]

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SENATOR ERDMAN: DFA stands for Dairy Farmers of America? Okay. [LB111]

JOE BOUSLAUGH: Dairy Farmers of America. Our haulers contract with us. We have...here in this area, we are completely independent haulers. We don't have any company-owned routes. And we sign contracts with our milk haulers to haul milk. We're kind of the middle man between the dairymen...the dairymen do pay a mileage charge, depending on how far they are away from the market, and then we subsidize over that. So if you have any more questions,... [LB111]

SENATOR ERDMAN: Okay, thank you, Joe. Senator Dierks. [LB111]

SENATOR DIERKS: So, do you have milk plants in Nebraska that you haul to? [LB111]

JOE BOUSLAUGH: Yes, sir. [LB111]

SENATOR DIERKS: Okay. And some out of state, as well, then? [LB111]

JOE BOUSLAUGH: Yes, sir. [LB111]

SENATOR DIERKS: Thank you. [LB111]

JOE BOUSLAUGH: A number of plants. [LB111]

SENATOR ERDMAN: Thank you, Senator Dierks. Any further questions for Mr. Bouslaugh? I don't see any, sir. [LB111]

JOE BOUSLAUGH: Thank you. [LB111]

SENATOR ERDMAN: Thank you for your testimony. One last call for proponents of LB111. We had a few more brave souls, from our earlier count. [LB111]

SENATOR CHAMBERS: And they're milking this bill for all it's worth. (Laughter) [LB111]

SENATOR ERDMAN: Thank you, Senator Chambers. Go ahead, Ed. [LB111]

ED WOEPPEL: Senator Erdman and members of the committee, I'm Ed Woepfel, that's W-o-e-p-p-e-l, representing the Nebraska Cooperative Council. Both...and I'll be very short with my remarks. Both DFA and AMPI are members of our association. They have been good members, and indicated that they feel that this is very appropriate, as what they have stated. So we just want to go on record supporting this legislation. So if there's any questions, I'd be glad to answer those. [LB111]

SENATOR ERDMAN: Thanks, Ed. Any questions for Mr. Woepfel? I don't see any.

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Thank you, sir. One last call. Anyone else wishing to testify in support of LB111? I see none. Anyone wishing to testify in opposition to LB111? I see none. Anyone wishing to testify neutral capacity on LB111? I see none. Again, before we close the hearing, I think it's appropriate and important for us to recognize the work of our research analyst. When the department brings these bills to our committee, it is their responsibility to present the compelling reason for these changes, and on our behalf, Rick does an exceptional job of reviewing the legislation and comparing it to existing law, as well as the federal acts that are in question. And I wanted to publicly thank him for his efforts. And that will close the hearing on LB111, and I would entertain a motion to go into Exec Session. [LB111]

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Disposition of Bills:

LB74 - Advanced to General File.
LB110 - Advanced to General File, as amended.
LB111 - Advanced to General File.

Chairperson

Committee Clerk