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Agriculture Committee  
January 17, 2012

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[LB770 LB771]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 17, 2012, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB771 and LB770. Senators present: Tom Carlson, Chairperson; Norm Wallman, Vice Chairperson; Dave Bloomfield; Lydia Brasch; Burke Harr; Russ Karpisek; Tyson Larson; and Steve Lathrop. Senators absent: None.

SENATOR CARLSON: Welcome to the January 17 Agriculture Committee interim hearing. I'm Senator Tom Carlson, Chairman of the Ag Committee, from Holdrege. Normally to my right over here is Senator Norm Wallman from Cortland, who is the Vice Chair of the Ag Committee; and next to him is Senator Lydia Brasch from Bancroft; Senator Harr will be coming, who is going to be in the empty seat between the two of them; Senator Dave Bloomfield from Hoskins; and then coming around, Senator Tyson Larson from O'Neill; Senator Steve Lathrop from Omaha; and Senator Russ Karpisek from Wilber. Our research analyst is Rick Leonard. He's going to be introducing the bills today. Our committee clerk is Barb DeRiese. And on page 1, our page's name is Paige, and it's Paige Schreiber from Columbus, so she'll be helping us as a page today. Those of you that are planning on testifying, please have the green sheet filled out when you come up and before you testify. Print so we can read the form in its entirety and this makes sure that we have a good public record. If you have handouts, hand those to Paige and she will get those to us, and a reminder of how we move forward here when you step up to testify. Please give and spell your name and then continue with the testimony. I hope today we don't have to use the light system. If we do, we'll implement that as we go along. I ask the committee not to be using their cell phones during the session and that applies to me as well. And those of you in the audience please have them on vibrate if you have them on. Are there any questions before we proceed? All right, we'll proceed then and open the hearing on LB771, which is an update of the Nebraska Pure Food Act and, Mr. Leonard, you can introduce the bill.

RICK LEONARD: (Exhibits 1 and 2) Thank you, Chairman Carlson and members of the committee. My name is Rick Leonard, that's R-i-c-k L-e-o-n-a-r-d. I'm the research analyst for the Agriculture Committee and introduce this bill on behalf of the chairman, the introducer of the bill. This bill, LB771, is brought to us at the request of the Department of Agriculture. It's a bill we have periodically in this committee. Nebraska is among the overwhelming majority of the states that incorporate the Food Code, which is a publication of the Food and Drug Administration Department of Health. The Food Code is not federal law or regulation. However, the Food Code provides a uniform system of regulation to ensure that food at retail is safe and properly protected and presented. The Food Code is actually updated every four years to keep pace with advances in our understanding the scientific advances in mitigating food safety risks, incorporating regulatory experience over time, and so every four years the Food Code is updated. We currently, in Nebraska, incorporate the 2005 recommendations of the Food

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

Agriculture Committee  
January 17, 2012

---

Code. That, if you look at Section 1 of your bill, you'll see that we are...I'm sorry. We are incorporating...striking 2000...I'm sorry, Section 2 of the bill we're updating...we're incorporating 2009 Food Code and then you'll see there is a listing of...we adopt the Food Code, which is that document I have at my desk there, most of the sections. However, there's certain sections that we don't adopt. We adopt in a modified form for one reason or other and you'll see in that section a section-by-section listing of those sections of the Food Code that we're not adopting by reference. In most cases we will adopt essentially a replacement form almost identical or very similar in the Nebraska Pure Food Act. In this case, we're actually as...continuing in the trend of where Nebraska Pure Food Act will actually adopt by reference more and more the greater percentage of the Food Code. I intended, and unfortunately I had a computer malfunction, and I was going to have a section-by-section explanation of those particular sections of Food Code why we're adopting and not adopting. However, I'm going to have to defer to the Department of Agriculture's section-by-section summary and they will go through and list those sections you see there with a quick explanation of why that's being included now or not being included. So that's...and that's there. We are also in this bill updating fees. The industry was...the fees were last updated in 2007. If my understanding was right, when we updated those fees we anticipated a fee schedule that would last two to three years. It's now lasted four, going on five years. We continue a fee setting mechanism that we...kind of an innovation that we came up with here in the Agriculture Committee years ago whereby we set a statutory maximum and we provide discretion to the director to adjust that fee from year to year within that statutory maximum. However, there are certain statutory parameters that he has to follow that the fee cannot be set at a level that's anticipated to raise more than 107 percent of the cash fund appropriation and the fees...against your estimated expenditures should not be set at a provision that's expected to end with more than the two-month reserve at the end of the year. The idea was to prevent having large cash fund buildups that...when you set a prescribed fee in the statute and the fee cycle...the early part of the fee cycle you build a lot of cash reserves. At the end of the fee cycle, you start drawing on those cash reserves as inflation begins to erode the purchasing power of that fee. The major...we're also updating in this bill a couple of references to the good manufacturing...updating a couple of references of federal regulations that we follow in the good manufacturing end. We're updating the reference to the more recent date. However, the only changes in the CFR's that we're referencing are addresses of a relevant federal agency. The bill contains an emergency clause so that the fee schedule could go into effect. I should point out in the fee schedule, if you'll look on pages, starting on...beginning on page 5, you'll see stricken the old statutory maximum and the new statutory maximum. Essentially, we're at the statutory maximum now. We've been there for a couple of years, two to three years. You'll see the new statutory maximum. We don't go up to that right away. That's just the statutory maximum that we allowed the department to go up to. If they wanted to go beyond that, they would have to come back to us. I'm anticipating...my understanding is this fee schedule is set to have a five-year life span, assuming a 3 percent inflation. With that, I'd take any questions. [LB771]

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

Agriculture Committee  
January 17, 2012

---

SENATOR CARLSON: Okay. Thank you. Any questions from the committee of Mr. Leonard? And since he started his opening, Senator Norm Wallman has joined us and Senator Burke Harr from Omaha. So that's our entire committee here. Any questions of Rick? Okay, thank you. [LB771]

RICK LEONARD: Senator, if I may, we did receive two letters that were requested to be put in the record, one from the Yum! corporation and another from the Lincoln-Lancaster County Health Department. There's copies of those in your books and I'll hand the original to the clerk and ask her to enter it into the record. [LB771]

SENATOR CARLSON: Good. Okay. Senator Wallman. [LB771]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yeah, Rick, if I want to buy, you know, stuff, product that's outdated at the farm, do I need a permit myself? [LB771]

RICK LEONARD: Say that again. [LB771]

SENATOR WALLMAN: Do I need a permit if I buy from a convenience store where they give the food to me, do I need a permit to use those products that are outdated? [LB771]

RICK LEONARD: For your personal use? No, no. There's...I'm not sure I understand the reason for your question, but no. You as the consumer don't have to have a permit. Now, if you're a commercial food going to purchase food that you later turn around and sell it retail, there are certain food procurement standards to meet. [LB771]

SENATOR WALLMAN: Thanks. [LB771]

SENATOR CARLSON: Okay. Any other questions? Okay, thank you. We'll proceed now with proponents for the bill and then opponents. And, Kathy, I think you want to be first because you need to go see the doctor. Hopefully, get a good report on your foot. [LB771]

KATHY SIEFKEN: (Exhibit 3) Thank you. Senator Carlson and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, and I am the executive director of the Nebraska Grocery Industry Association here in support of LB771. The reason we support this bill is because it is about food safety, and food safety is one of the most important issues that we face in grocery stores. I know that my members believe that we need to keep the number of inspectors that are on the road and in our stores at the level it is now. The Department of Ag has done a great job in coming into the stores. They are another set of eyes that look at the cleanliness and the setup in the store making sure that some products that shouldn't be next to each other are there.

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

Agriculture Committee  
January 17, 2012

---

They do serve as a resource and we do value those inspections, and as a result we believe that food in Nebraska is kept safe, and we don't want to go backwards. We only want to go forwards when it comes to food safety. The...probably the most controversial item in this bill are the fee increases. And if you look at those over the last four years, this increase that we're seeing that will take it to the maximum, that would be a maximum of under \$3 per year per facility for your initial license. So it's not a huge cost, but the increase is enough to make sure that we don't decrease the number of inspectors that are in the stores. The other thing that I wanted to make sure that the committee understood is that this is an advisory committee that is made up of people from the industry and the inspectors from Douglas County, Lancaster County, and people from Grand Island, along with the grocery industry, the restaurant industry. We have food...or meat processors, and if an issue comes up that we don't have someone in the room that can speak to that issue and how it affects their industry, that discussion stops. We go out, we find those experts, we get input, and we make sure that before the bill is written, the changes and the upgrades in the code do not cause harm to our members. But again at the same time, sometimes you have to weigh those things. Food safety is the most important issue that we're talking about here and food safety wins out. And the food safety issues are scientifically based. With that, if you have any questions, I'd be happy to try to answer them. [LB771]

SENATOR CARLSON: Okay. Thank you. Any questions of the committee? I...let's go back to the figure you gave that on this fee increase it was going to...you used a comparison. Would you give that again? [LB771]

KATHY SIEFKEN: It's in the letter so that you got it in writing. It's the third paragraph down and if you would average it out over the four years since the last fee increase, it comes to \$2.95 for the initial permit. And I believe that's all that the restaurants would need. The grocery stores license their grocery store so it would be a total of \$2.95 for that, and then for each additional area they're licensed. So if you have a bakery it would cost an additional \$1.48 per year. If you have a deli, it would be another \$1.48. So even when you get all of your departments added in there, the increase per year is minimal. One of the other things that we have discussed with the Department of Ag is that while they set a maximum, they don't go to the maximum right away. They increase it enough to cover their expenses from year to year. And they do do a great job for us. [LB771]

SENATOR CARLSON: Okay. You've been complimentary on how the department handles the inspection. And I've gotten a phone call, and I didn't pay much attention to it, talking about inspectors going in and seeing something that's not quite right and then not really doing anything about it. But I think it had...the example I was given was instead of 16 ounces of cereal there was 15.5 or something. But overall, you're pleased with the inspection program and you want to see that it doesn't...deteriorate isn't a good word, but you want it properly funded. [LB771]

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

Agriculture Committee  
January 17, 2012

---

KATHY SIEFKEN: Yes, and we always want the inspections to...we don't want to go backwards. We want to maintain and move forward as necessary, yes. [LB771]

SENATOR CARLSON: Okay. [LB771]

KATHY SIEFKEN: And those instances where you see the 16 ounces and the tag on the shelf says 15.5, that comes from the weights and measures division and this is dairies and foods so it's kind of a different division. But I can tell you that I have received calls from the stores, and they are required...they're given time to update those shelf tags because you can't do it overnight. And I know that entire stores have had to retag, especially if they change wholesalers because they've got different tagging systems. [LB771]

SENATOR CARLSON: On a typical box of cereal, is there more expense in the cereal or in the box? [LB771]

KATHY SIEFKEN: In the box. (Laughter) That's very true, yes. [LB771]

SENATOR CARLSON: Yeah. Senator Karpisek. [LB771]

SENATOR KARPISEK: Thank you, Chairman Carlson. Thank you, Ms. Siefken. I did see one part in here that says if it's late, if your payment is late it goes from 50 percent to 100 percent. [LB771]

KATHY SIEFKEN: Yes. And we approved that, the reason is because we have the same people late every year. And if you are a responsible retailer or restaurateur, you are given adequate notice, you should pay your bill, and when you don't, it drives up the cost for everyone. So those people that are paying their bills on time and doing it the way they're supposed to shouldn't be penalized by having higher inspection fees when you can take care of those few that are not following the rules just by... [LB771]

SENATOR KARPISEK: But it already is at 50 percent, right? [LB771]

KATHY SIEFKEN: That's true, but I would think 100 percent would give them a very strong message because 50 percent didn't change their behavior. [LB771]

SENATOR KARPISEK: Okay, but just for the record I have a problem with that part of the bill. Thank you. [LB771]

SENATOR CARLSON: Okay. Any other? Senator Wallman. [LB771]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yeah, thank you for coming here, Kathy. This also pertains to like small-time vendors at fairs, you know? [LB771]

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

Agriculture Committee  
January 17, 2012

---

KATHY SIEFKEN: Yes. [LB771]

SENATOR WALLMAN: And ice cream makers, and everything, they have a permit? [LB771]

KATHY SIEFKEN: Yes. Frankly, in the state of Nebraska shouldn't everyone serve safe food and be subject to inspections? [LB771]

SENATOR CARLSON: Okay. Senator Larson. [LB771]

SENATOR LARSON: I'll follow up on Senator Wallman's question. Do they have to get a permit for each fair that they do or each...is it a new permit or is it just one a year with the Department of Ag? [LB771]

KATHY SIEFKEN: George is going to follow me and he knows more about the State Fairs and the number of permits. I don't know that he's coming right after me, but he has those kind of details. [LB771]

SENATOR LARSON: All right. That's...George does. [LB771]

KATHY SIEFKEN: Yeah. I do grocery stores. [LB771]

SENATOR CARLSON: Senator Karpisek. [LB771]

SENATOR KARPISEK: I'm going to hold and wait for George. Thank you. (Laughter) [LB771]

SENATOR CARLSON: Okay. All right. Okay. Any other questions? Okay, well, thank you for your testimony and hopefully you'll get a good report. [LB771]

KATHY SIEFKEN: Thank you. Thanks for letting me sit first. [LB771]

SENATOR CARLSON: Next proponent. [LB771]

GREG IBACH: Just glad, Senator Karpisek, you're going to wait for George. (Laughter) [LB771]

SENATOR KARPISEK: I thought he was next. (Laughter) [LB771]

GREG IBACH: (Exhibit 4) Indirectly. Senator Carlson, members of the Ag Committee, my name is Greg Ibach, G-r-e-g I-b-a-c-h, and I am the director for the Nebraska Department of Agriculture. I'm here today to testify in favor of LB771. And I would like to

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

Agriculture Committee  
January 17, 2012

---

thank Senator Carlson for introducing this bill on behalf of the Department of Agriculture. I have additional written testimony that is being handed out. I'm going to keep my comments brief because Rick did a great job of outlining the legislation for you at the beginning of the hearing. I think this is a great example of how we work in the department to try to work with the industry ahead of introducing legislation to make sure that, if we can, that it's acceptable to the industry and that they're partners with us as we go through the process of changing the statutes. I have with me today George Hanssen with the Food Safety and Consumer Protection Division of the department. He will be available to answer any technical questions you may have about this bill, or the process we go through to inspect food establishments. The Nebraska Department of Agriculture, local health departments, and the Nebraska Food Industry Review Board, as you have heard, spent many hours drafting this legislation with a goal towards protecting...continuing to protect the food supply in Nebraska without overburdening the state's food industry. We'd like to thank local health departments and the members of the Food Industry Review Board for their time and effort on this project. And the written material that I've provided you includes the list of the board members that were involved through this process. As Rick outlined for you, LB771 amends the Nebraska Pure Food Act by adopting provisions from the 2009 version of the U.S. Food and Drug Administration's recommendations of the Food Code, and by increasing the fees for entities regulated under the act. And some provisions that were not adopted by reference reflect special circumstances in Nebraska and were arrived at based on discussions with the industry to do that. The bill also increases, as you have heard, the initial permit and inspection fees to attain the overall funding mix of approximately 50 percent General Funds and 50 percent cash funds continuing our partnership with the industry. Our goal of a partnership with the industry is to have the public/private cost share in the funding for the inspections. And Rick also described the intent of adjusting them yearly so that, you know, in past years, or when I first started with the department, we would set the fees at one level and so we at the beginning of the fee structure we would have excess in the cash fund, and then we would as the cost of inspections or cost of doing business rose, we would cross that line and operate at a deficit towards the end of the fee assessment period. And so now by adjusting every year, we avoid that time when we look like we have an excess in the cash fund in anticipation of that time period where we would dip below the line and try to operate at the line the entire period. So just to highlight again, briefly, the adoption of the Food Code will update the current requirements using the latest scientific findings and technology, gains in the area of food safety. It will bring the Nebraska code, which reflects the 2005 code, up to the 2009 federal standards and keep us closer to that national standard. Most of the surrounding states are in the process of...a lot of them are adopting the 2011 code, so we think it's appropriate that we address this at this time to at least get us to the 2009 code. And the Food Review Board has been reviewing this for the past three years and have discussed the 2009 code requirements and requested the modification that are reflected in the bill. I thank you for your support in enacting this bill. And I would be available for questions and if I can't answer them, I will be happy to invite George to join

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

Agriculture Committee  
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---

me to try to address any questions or concerns you might have. [LB771]

SENATOR CARLSON: Okay. Thank you. Questions of Director Ibach? Senator Harr. [LB771]

SENATOR HARR: Thank you, Senator Carlson. And it's just a quick question. Why aren't we adopting the 2011? [LB771]

GREG IBACH: I think that, you know, maybe George could go into more detail, but I think it's just by agreement with the industry that we would take this incremental step and go to the 2009 because they had had time to review those and had been working on those for several years. George, if that's not the...is that correct? [LB771]

GEORGE HANSEN: It's actually a timing issue. I can answer in more detail when I get up there. [LB771]

SENATOR HARR: I appreciate it. [LB771]

SENATOR CARLSON: Yeah, we're not able to listen to you until you're up at the chair. So if director... [LB771]

GREG IBACH: Why don't you pull your chair forward and bring your green sheet and then we'll be set. (Laugh) Is that okay to have him join me here? [LB771]

SENATOR CARLSON: All right, we need to bring you into the system so, give the name and spell it and we'll continue from there. [LB771]

GEORGE HANSEN: All right. George Hansen, G-e-o-r-g-e H-a-n-s-s-e-n. [LB771]

GREG IBACH: You want to go ahead and answer his questions. [LB771]

GEORGE HANSEN: Yes, the reason we did not go with the 2011 code is basically the timing issue. It was released in January...in the spring of 2011. And since the board had gone over the 2009 code for at least two years, they were comfortable with that. The changes between the '09 and the '11 were basically insignificant. And if we thought those changes were necessary, we could have modified that particular section and brought it up to current. [LB771]

SENATOR HARR: Thank you. I appreciate that answer. [LB771]

SENATOR CARLSON: Any further questions? Senator Larson. [LB771]

SENATOR LARSON: The question I asked earlier in terms of whoever it is that's gone

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

Agriculture Committee  
January 17, 2012

---

from fair to fair, whatnot, do they have to have a permit for each one, or is there one standard process in which they receive a permit and then move forward? [LB771]

GEORGE HANSSEN: Right. For those stands that are traveling from fair to fair we have one permit. They pay one fee...annual fee per year. They may be subject to fees at the location, but as far as this department... [LB771]

SENATOR LARSON: By the county or city or whoever else that they're in. [LB771]

GEORGE HANSSEN: ...by the county, right. Correct. Correct. Right. [LB771]

SENATOR LARSON: But there's only one state, where do you expect...or where do you inspect them or do you inspect them ever or how does that work? [LB771]

GEORGE HANSSEN: We try to get to most temporary events like county fairs. But, you know, for instance we have one sanitary and it covers 16 counties. So he's not going to get to every county fair at each time. If these people travel quite a little bit, they can be seen three, four, or five times a year. Most aren't, but... [LB771]

SENATOR LARSON: But they only pay once. [LB771]

GEORGE HANSSEN: Correct. They pay the annual fee due August 1. [LB771]

SENATOR LARSON: Due August 1. [LB771]

GEORGE HANSSEN: Um-hum. [LB771]

SENATOR CARLSON: Any further questions? Senator Karpisek. [LB771]

SENATOR KARPISEK: Thank you, Senator Carlson. George, we talked about, you know, Kathy said, well, we want everybody to be under the same guidelines. What about the people doing butchering, deer processing, all these things on the farms? [LB771]

GEORGE HANSSEN: We do not get involved with those. We decided that as the department years ago, decided not to get into that because we all know of some farmer, rancher that processes for his neighbor or for, you know, whomever knows that he's doing this. [LB771]

SENATOR KARPISEK: Or a hundred of his neighbors? [LB771]

GEORGE HANSSEN: Yeah. And, you know, for us to go through that and track down this whole...that number, I don't know if it would be worth it. We'd also have to charge

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

Agriculture Committee  
January 17, 2012

---

those folks a fee which, you know, we just didn't want to get into it at that time. Every once in a while it comes up, why don't we inspect these people? And we just say, do we have the staff to go out from October to January to do it? [LB771]

SENATOR KARPISEK: Okay, so then, but if you're going to do that then why would a business need to do it? They're making money, they're doing it for a business. How can you even... [LB771]

GEORGE HANSSEN: Exclude one and not the other. [LB771]

SENATOR KARPISEK: Yes. [LB771]

GEORGE HANSSEN: Well... [LB771]

GREG IBACH: Can I try? [LB771]

GEORGE HANSSEN: Yes, please. (Laughter) [LB771]

GREG IBACH: And I think part of that goes into the custom exempt slaughter facilities in towns are not inspected by us. Those are inspected by the federal government because we have federal state and meat inspection. So are those little butchers that are doing custom exempt, are they violating state regulation and state law or are they in violation of a federal law? And I think there's a little bit of a hole there, a gray area there too. [LB771]

SENATOR KARPISEK: There could be, but if we get back to everybody needs to be inspected, but you're telling me that a guy that would be doing a deer processing a mile out of town doesn't have to go into the same regs that I do just because I have a store front, I think is sending a very poor message to people who are trying to do it the right way. [LB771]

GEORGE HANSSEN: I think one of the issues also is that the person that is having his or her deer processed knows what sanitation facilities this guy is operating out of. It will be the same as if someone wanted to go to a farm and buy raw milk. Hate to say it, but raw milk is the issue, they can look at that farm and see that by the looks of that farm, yeah, it's a pretty nice place so that milk is probably okay. If they pull onto that farm and there's dead animals and junk all over, maybe he could make that decision there not to either use that deer processor or buy that particular product. [LB771]

SENATOR KARPISEK: But they're able to do it much cheaper because they don't have all these regulations. They don't have an inspector coming in telling them you need to fix this, this, this, this, this, or we're going to shut you down in a week. So now you either get this done or we'll be back next week and we'll lock your doors. [LB771]

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

Agriculture Committee  
January 17, 2012

---

GEORGE HANSSEN: That is true. [LB771]

SENATOR KARPISEK: So back to, if they can pick, then why can't a business say, okay, I don't want to be inspected? We'll let the customer decide. [LB771]

GEORGE HANSSEN: Well, it does get back to the consumer needing to know where that product was from, where it was processed. That individual with the deer knows where that deer came from, how it was slaughtered, and how it's being processed, whereas, the person that walks into the grocery store and orders a T-bone steak, he does not know where that animal was processed. [LB771]

SENATOR KARPISEK: They know where the pork and the beef and everything that's added to deer came from. [LB771]

GEORGE HANSSEN: That's true. [LB771]

SENATOR KARPISEK: Obviously, this is an argument that we're probably going to disagree on, and I think I'm right. I don't always think I'm right or not. (Laughter) But I think it is a huge, huge problem that we've got these places popping up all over the countryside, and I don't think it's fair that the inspection is only on the person who is trying to do it right. It adds a lot more cost and it adds a lot more stress. It adds a lot...another layer of bureaucracy that not every inspector respects the people they're inspecting. Some are very good, some think that they are the Governor and go out there. So I'll leave it at that, but we will talk about it more. Thank you. [LB771]

GREG IBACH: And I don't know that we would disagree with you. I think it's maybe a practice that has been adopted or an unwritten set of, you know, how we go about doing our job that has evolved over time. And if we're at a point in time where we need to reassess that or we need to readdress that or reevaluate that decision, I think we're definitely open to that. [LB771]

SENATOR KARPISEK: Well, thank you, because it's far past time in my opinion. Thank you. [LB771]

SENATOR CARLSON: Now, I'll add two cents' worth to this conversation because I think it's a good conversation. We're talking about food safety, and so maybe it deserves some further planning and thought on the part of Senator Karpisek for a piece of legislation. But you have to be concerned about how do we staff and how do we fund an expansion of inspection. And that would need to be addressed in whatever plan came forth. But we are talking about food safety. [LB771]

GREG IBACH: Well, if they're being inspected, they would pay inspection fees so that

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

Agriculture Committee  
January 17, 2012

---

should enhance our pool. [LB771]

SENATOR CARLSON: Okay. Senator Brasch. [LB771]

SENATOR BRASCH: The only question that I have at this point is changing code equals an increase in fees. An increase in fees ultimately ends up as an increase to consumers. Yesterday I went to the local grocery store to stock up my shelves for my husband right as we speak and I see a young mother with a couple of young children and she's got her coupons. They put that back, put that back. My concern is when we have the middle income, the growing population, those fees do come back. Have we seen an increase in vendors, in retailers, and the...is that business growing that the personnel grows? Is it because we're changing the codes that it will require...the increase in cost does ultimately come back to the family. Would you agree? [LB771]

GREG IBACH: Well, as our population grows and we have more food establishments being established and more grocery stores doing business, yes, there is more work to be done. You know, I think that, you know, Ms. Siefken talked a little bit about the extended period of time since we have considered a fee increase and that we're trying to keep these fee increases nominal. We're also trying to balance the ability to have consumers confident that when they go to a food establishment or a grocery store that they are going to have a safe food product, which is of value to not only those food establishments but also to the farmers and ranchers like us that are producing that food product to have that assurance out there. So, you know, there is a balance between the two and we're hoping that the nominal increases that these fees do represent, you know, when you look at the wide range of business that they're spread out over, really don't impact any individual consumer very significantly in exchange for the assurances they're getting that their food is safe. [LB771]

SENATOR BRASCH: Thank you. [LB771]

SENATOR CARLSON: Any further questions? I'll ask one more here. We're in a political climate where we don't like more and more regulations. And yet, we're talking about food safety. So there's a balance in there someplace. Do you feel like the changes that have been made from the federal level as far as requirements are concerned, and you have to line up with that at least as good as what comes down from the federal level. Are any of these regulations overboard? [LB771]

GEORGE HANSSEN: We don't think so. We've talked to the Food Industry Review Board, you know, extensively over the last two summers and gone through this chapter by chapter, and I think we've worked out any issues that might have been considered a burden. Especially in 2007 when we adopted the 2005, there were several sections that we either modified or took out totally. Now in this version, we've, in some cases, put that section back into the Food Code because the board believed that either technology had

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Transcriber's Office

Agriculture Committee  
January 17, 2012

---

caught up with the circumstances or it was no longer considered a burden to them. So I don't believe from what I'm hearing from the board that any of this is going to be a burden. [LB771]

SENATOR CARLSON: Okay. All right, thank you. Seeing no further questions, thank you for your testimony. I assume...George, has that completed what you had to say? [LB771]

GEORGE HANSSSEN: Yeah, here to answer any questions that you might have. [LB771]

SENATOR CARLSON: Okay. Any further questions? Okay, thank you for your testimony. Next testifier. Welcome. [LB771]

JIM PARTINGTON: Thank you, sir. Senator Carlson and members of the committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I'm the executive director of the Nebraska Restaurant Association and I thank you for the opportunity to testify in support of LB771. Kathy Siefken covered in great detail, I think, the review process that we went through that involved representatives from industry under the leadership of the Agriculture Department and Mr. Hanssen. We all had a chance to weigh in, express our concerns and our views, and adjustments were made and we are here in support of the bill as it now exists. The restaurants and the grocers are at the last link in the food chain before it gets to the consumer and we're very much interested in food safety and we believe this bill is supportive of that. And with that, I'd be happy to answer any questions. [LB771]

SENATOR CARLSON: Okay, thank you. Any questions of Mr. Partington? I should have asked a question of Director Ibach and I forgot. You're a member of the Nebraska Food Industry Review Board? [LB771]

JIM PARTINGTON: Yes. [LB771]

SENATOR CARLSON: How are you chosen? [LB771]

JIM PARTINGTON: Well, the restaurant association executive director was a member when I came into the job and I just moved into his position, and as members of the (inaudible) industry. [LB771]

SENATOR CARLSON: Okay. Any further questions? Okay, thank you for your testimony. Further testimony as proponent to LB771. [LB771]

BOB VOSS: Good afternoon, Senators. My name is Bob Voss, B-o-b V-o-s-s. I represent Super Saver, Russ's, Apple Markets, and B&R Stores, Inc. I'm currently their

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

Agriculture Committee  
January 17, 2012

---

smokehouse coordinator, and I'm also a member of the Food Industry Review Board. I'm here to support the bill. We worked long and hard. Any issues that we had with somewhat overbearing federal regulations, we came up with a viable solution to make our food safe and make it easy for the...easier for the establishments to complete their mission and provide safe food. [LB771]

SENATOR CARLSON: Okay, thank you. Any questions? Senator Karpisek. [LB771]

SENATOR KARPISEK: Thank you, Senator Carlson. Hi, Bob. [LB771]

BOB VOSS: Hi, Russ. [LB771]

SENATOR KARPISEK: Bob and I are smokehouse guys. Was there a lot of things that got taken out, in or out, negotiated? [LB771]

BOB VOSS: Not particularly. We reviewed the vac and packaging regs and made it so our processors in the state or delis or meat departments would be able to accomplish their goals safely without the extended paperwork of HACCP. We initiated a modified HACCP plan that we have to submit to the Department of Ag to be approved before we can operate that machine. And we think that we've come up with a good solution that's safe and it seems to be working for all the plants in the state and grocery stores and anybody that uses that operation. [LB771]

SENATOR KARPISEK: Good. Thank you. I feel much better when I know that someone in the industry that I know has been working on...I appreciate both sides bringing you in and working on that for some common-sense solutions at times. [LB771]

BOB VOSS: It was my pleasure. [LB771]

SENATOR KARPISEK: Thank you. Thank you, Senator Carlson. [LB771]

SENATOR CARLSON: Okay. Thank you. Any other questions? [LB771]

BOB VOSS: Thank you. [LB771]

SENATOR CARLSON: Seeing none, thanks for your testimony. Any other proponents? Last chance. Okay, are there any opponents to LB771? Anyone testifying in a neutral position? Seeing none, did you want to close? Okay. We'll waive closing and thank you for your testimony. That closes our hearing on LB771 and we will go to LB770, and Mr. Leonard will introduce that. [LB771]

RICK LEONARD: (Exhibit 1) Thank you, Senator Carlson and members of the committee. Again, I'm Rick Leonard, research analyst for the committee--L-e-o-n-a-r-d.

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

Agriculture Committee  
January 17, 2012

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Again LB770 is a bill brought...requested by the Department of Agriculture to clarify a definition of noxious weeds, primary noxious weeds and to incorporate an update standard governing seed analysis protocols. The Nebraska seed law governs the sale, packaging, and labeling information provided on or with commercial seeds. Under the law, the department licenses sellers and packagers of these products. The department also performs certain testing or requires a certain testing, auditing, and other monitoring functions primary for the purpose of assuring that seed products are labeled accurately with certain required statements and that package labels do not misrepresent contents including such things as relative purity, quantity, performance, genetic traits and other qualities of the seed contained within. The seed law from the beginning has granted the authority to the department to regulate the occurrence of weed seed impurities in commercial seed. The department has authority to declare adulterated or mislabeled commercial seeds that exceed certain tolerances for presence of wheat seed. In 1997 the Legislature amended the wheat...the Nebraska seed law to provide for cost compliance with the Nebraska Noxious Weed Act. Basically we declared a category of primary noxious weed...or primary weed seeds as a contaminant in commercial seeds. Those are the ones that are declared noxious weeds under the Nebraska Noxious Weed Act, and the seed law has zero tolerance for primary noxious weeds. There are other noxious weed seed categories of which there may be tolerances established. The seed law, of course, requires packagers and sellers...packagers and labelers of seed products to declare certain seed qualities on the product label. These qualities are verified according to analytical procedures but published by the Association of Official Seed Analysts. And if I could get a page, I'm handing out a handout that describes the Association of Official Seed Analysts and also the document that rules on the seed testing that are basically utilized as an industry standard and standard of commerce in seeds. These rules are, as you see, the association is an organization consisting of laboratories, seed industry, and regulators that establish uniform protocols and procedures for the analysis that's required to verify label statements at least in the terms as we use it in the regulatory context. The rules are often utilized in private industry. And as I say, the utilization of standards is somewhat of a recognized commercial standard in addressing of seeds. Currently, we adopt the 1997 version of the rules. This bill will adopt that publication of that association as has existed on January 1, 2012, and we do have an official from the Department of Agriculture if there are any questions regarding those changes. Most of those items will have been...those protocols and testing systems are updated periodically in the rules and are utilized...probably already very much utilized within the industry. The bill has one other provision whereby we modify the definition of primary noxious weed, just to make greater agreement between the...this seed act and the Noxious Weed Act. When we first adopted the definition of primary noxious weeds, basically listed those seeds that were at the time declared noxious weeds. We have since added some seeds and, basically that greater agreement that primary noxious weeds enter the seed law. Primary noxious weed seed will match the definition of primary...of noxious weeds under the Noxious Weed Act. And if there are any questions, I'll take them. [LB770]

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

Agriculture Committee  
January 17, 2012

---

SENATOR CARLSON: Okay. Thank you, Rick. Any questions of Mr. Leonard? Okay, thank you. And we're ready now for proponents for LB770. [LB770]

GREG IBACH: (Exhibit 2) Hello, Senator Carlson and members of the Agriculture Committee. I'm Greg Ibach, G-r-e-g I-b-a-c-h, and I am director for the Nebraska Department of Agriculture, here today to testify and answer any questions you might have regarding LB770. I want to thank Senator Carlson for introducing this bill on behalf of the Department of Agriculture. We have the written testimony being handed out and ask that it be placed of record. I have with me today Rich Reiman with Animal and Plant Health Protection and Dave Svick with our seed laboratory that will be able to answer your questions specific to seed testing and those technical procedures that go along with that if you should have any of those. As again, Rick did such a great job of outlining the bill. It amends the seed law in two general areas, the definition of primary noxious weed seeds is amended, and so the term means the seeds of noxious weeds as designated pursuant to the Noxious Weed Control Act. Rather than listing the names of the specific noxious weeds, this will make the terms consistent in both laws and eliminate confusion over the issue, simplifying the process. Updates...and it updates the Nebraska seed law to require the use of the most current version of the rules for testing seeds adopted by the Association of Official Seed Analysts. The version now in law is from 1997 and thus, obviously, needs updating. These rules establish the procedures for testing of seeds, for labeling provisions of the Nebraska seed law, of dates which incorporate the latest scientific findings, are approved by the Association of Official Seed Analysts. Thanks for your support in enacting this bill and I'd be happy to answer any questions you might have. [LB770]

SENATOR CARLSON: Before I open it up for questions I'm going to make a comment. It is a question, but if I'm...he asked me to bring this and I'm reading it correctly. This is almost as simple as my bill to extend term limits except it's one word. But I don't think the word is in here. You crossed out naming specific weeds so that it goes back to the primary noxious weed definition that's in...well, it's not in statute, but I think...do you have the bill in front of you? [LB770]

GREG IBACH: Well, summarizing once we would go through the process of adding a noxious weed to the Nebraska noxious weed list, it would automatically become part of the seed code that it couldn't be in certified seed. [LB770]

SENATOR CARLSON: Well, I'll go through this with Rick... [LB770]

GREG IBACH: Without commenting on your term limit bill. (Laugh). [LB770]

SENATOR CARLSON: ...but I think where it says "plant," it needs to be "plants" now. That would be one more word change in there. Questions of the committee? Senator

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Transcriber's Office

Agriculture Committee  
January 17, 2012

---

Wallman. [LB770]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yes, if I'm...you know, if I can buy a sack of alfalfa seed it always has inert seeds and maybe...it never has noxious weed seeds, how do we know? [LB770]

GREG IBACH: Well, that's the purpose of the seed lab is to analyze those samples of seeds submitted by the vendors or people selling the seed to search for and try to identify that those statements, that it does not have noxious weeds, are true and accurate. [LB770]

SENATOR WALLMAN: Because alfalfa and everything usually has some of that in there, you know, seed. [LB770]

GREG IBACH: We hope not. We hope it has no noxious weed seed in it. [LB770]

SENATOR WALLMAN: Thank you. (Laugh) [LB770]

SENATOR CARLSON: Other questions? What's zero tolerance? [LB770]

GREG IBACH: Zero tolerance is that we...if it says it's not supposed to have a noxious weed seed in it, if we find one we don't tolerate that. It cannot have them in it, correct? None. [LB770]

SENATOR CARLSON: If you're analyzing it...if we have other testimony, I'll wait for that. Okay. Any other questions? Okay, thank you. [LB770]

GREG IBACH: Okay, thank you. [LB770]

SENATOR CARLSON: Next testifier. [LB770]

DAVID SVIK: My name is David Svik with the Nebraska Department of Agriculture, that's S-v-i-k. I'm in charge of the seed program and someone had a question about tolerance. Zero tolerance, none. None allowed. [LB770]

SENATOR CARLSON: So in your testing you find one musk thistle seed in there, what do you do? [LB770]

DAVID SVIK: We off-sale the product. [LB770]

SENATOR CARLSON: Pardon? [LB770]

DAVID SVIK: We off-sale the product. The company is required to reclean to get rid of

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

Agriculture Committee  
January 17, 2012

---

the noxious weeds and then we would retest to verify, or in some cases they may just actually discard the seed. [LB770]

SENATOR CARLSON: Explain the process a little bit. When you sample, what's a sample? And so we got a bag of seed and you're going to sample out of that bag. [LB770]

DAVID SVIK: Right. Right. Let's just talk about alfalfa. The minimum size sample that we work with is roughly a pound to two pounds and we have a methodology where we go in and sample X number of bags based on the number of bags that are available. From there we take the sample, we break it down, and we examine the seed itself to determine the purity which is on the label. In that case for alfalfa, it's 5 grams. We also examine a larger quantity of seed, in the case of alfalfa 50 grams. If we find a primary noxious weed in there, the product is "off-saled" and the company has the option of recleaning the entire lot of seed that we sampled, or they can discard the seed. In the case of alfalfa, they would attempt to probably reclean that seed. But there are also noxious weeds that are not primary, which there are tolerances allowed. For example, if you find one dock, then that would be acceptable. If it exceeds the number of dock, then that's again they would have to go in and clean the seed. Is that clear? [LB770]

SENATOR CARLSON: Do you have any further testimony or are you here to answer questions, Dave? Do you have anything you want... [LB770]

DAVID SVIK: I'm just here to answer questions, right. [LB770]

SENATOR CARLSON: Okay. Okay. That's fine. Do we have questions of the committee? Yes, Senator Karpisek. [LB770]

SENATOR KARPISEK: Thank you, Senator Carlson. When you say that you get the sample, do they send the sample? [LB770]

DAVID SVIK: No. [LB770]

SENATOR KARPISEK: You go... [LB770]

DAVID SVIK: We have inspectors that sample. [LB770]

SENATOR KARPISEK: Go pick up off the shelf or... [LB770]

DAVID SVIK: Right. Right. For a sample, probe the bags. In the case of lawn seed, it's already in a bag, so that is considered entire sample. [LB770]

SENATOR KARPISEK: So, okay, but do you go pick it up from their warehouse, you

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

Agriculture Committee  
January 17, 2012

---

buy it? [LB770]

DAVID SVIK: In some cases we have to buy it...from the retail outlets we have to buy it like with the lawn seed. In some of the larger warehouses, you know where your 50-pound bags or the minibulks, those can be sampled, so. [LB770]

SENATOR KARPISEK: Okay. I just always find it curious when someone gives you a sample that they select, so. [LB770]

DAVID SVIK: Well, that is a service sample which the laboratory, that we're a part of, also does. But again, it's...the sample has been taken by the person which would not be considered a regulatory sample in our case. [LB770]

SENATOR KARPISEK: Very good. Thank you. [LB770]

SENATOR CARLSON: Senator Bloomfield. [LB770]

SENATOR BLOOMFIELD: Thank you, Senator Carlson. I'm going to use Bomgaar's as an example, that is who is up in our area. Do you go into their retail outlet and probe a bag or would you go to their wholesaler or to their warehouse? [LB770]

DAVID SVIK: We would try to, if possible, go to the warehouse if there's one available. If there isn't one available, we could go to the retail outlet, and again if the bags are available, we would sample from those bags. We can also sample...I'm thinking of sometimes you'll see the bins, garbage cans full of seed, we will sample from those. Those sometimes can be an issue because sometimes they are a little bit, what I would say, not real good about cleaning out the bin, and so all of a sudden we'll come up with a sample that is labeled Tall Fescue and we find Bluegrass in it, and we find out later when we go back that the gentleman forgot to clean the container out and he dumped it right in there, and so it got to be a mixture. But that falls on the retailer, not on the wholesaler. [LB770]

SENATOR BLOOMFIELD: Or the John Q. Public came through with a little scoop... [LB770]

DAVID SVIK: Well, yeah, I hear...I've heard stories from people from hardware stores where they have lids and they say that, you know, John will come in and he'll be sitting there with the scoop and he will be... [LB770]

SENATOR BLOOMFIELD: I've seen it happen. [LB770]

DAVID SVIK: ...yeah, so the most preferred thing, of course, is the bag. I mean, you can't mess with the bag. [LB770]

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

Agriculture Committee  
January 17, 2012

---

SENATOR BLOOMFIELD: You go in and probe that 50-pound bag of alfalfa seed, you pull 2 pounds out of there. [LB770]

DAVID SVIK: We wouldn't pull two pounds out of that bag. We would take several. [LB770]

SENATOR BLOOMFIELD: Okay. How does the retailer adjust to (inaudible) when he goes to sell that bag? [LB770]

DAVID SVIK: In most cases...they adjust just fine. You know, they know it's part of business. Also there's a tag on there saying it's been inspected. Some consumers like to see that. So it's a very small quantity, you know, when you're talking 50 pounds. Again with alfalfa, we're not going to take two pounds from that one bag, we're going to take two pounds from maybe 30 bags. [LB770]

SENATOR BLOOMFIELD: Thank you. [LB770]

SENATOR CARLSON: Senator Brasch. [LB770]

SENATOR BRASCH: Now I'm curious of all these gathered samples that you take for testing. Then what? What happens to those samples? Is there a field that they're growing somewhere (laugh) or what happens to...do we return them to the...? [LB770]

DAVID SVIK: We take them to the laboratory. Our laboratory is collocated with the Nebraska Crop Improvement Association out at the University, East Campus. That's where I'm located and the analysts there do the testing. And, of course, then we handle all the regulatory work as far as contacting the companies and whatever. [LB770]

SENATOR BRASCH: And then the samples are thrown away or used or...? [LB770]

DAVID SVIK: Under state law we are required to store them for, I believe, one year. After that we are required to discard them. We cannot just give them away, unfortunately, because the state law doesn't allow us to do that, so. We could have a legal issue possibly. [LB770]

SENATOR CARLSON: Senator Harr. [LB770]

SENATOR HARR: Thank you, Senator Carlson. What's the rejection rate? [LB770]

DAVID SVIK: About 7 to 10 percent for all seed. [LB770]

SENATOR HARR: Seven to ten. All right. Thank you. That's it. [LB770]

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

Agriculture Committee  
January 17, 2012

---

SENATOR CARLSON: What was your...excuse me, what was your question? [LB770]

SENATOR HARR: The rejection rate. [LB770]

SENATOR CARLSON: Oh, yeah. [LB770]

DAVID SVIK: And it's not necessarily...I shouldn't say rejection rate. The rejection rate, for example, noxious weeds is very small. Our 7 to 10 percent is all violations whether it be a minor violation where the purity is off slightly or maybe there's some inert matter in there or the germination is a little low...is low below tolerance which they will relabel and continue to sell. The rejection rate of seed where it actually gets destroyed because of primary noxious weeds is very, very small. The seed industry is very good at the quality of products that they sell. [LB770]

SENATOR HARR: Thank you. [LB770]

SENATOR CARLSON: Okay. Any other questions? All right, thank you. Next testifier. Then, no more proponents? Any opponents to LB770? Any testifying in a neutral position? All right, seeing none, thank you for your attendance today and we will close the hearing on LB770, and I would like the committee to go into Executive Session for a couple of items. [LB770]