

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

Agriculture Committee
January 19, 2010

[LB731 LB748]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 19, 2010, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB748 and LB731. Senators present: Tom Carlson, Chairperson; Annette Dubas, Vice Chairperson; Brenda Council; Merton "Cap" Dierks; Russ Karpisek; Scott Price; Ken Schilz; and Norman Wallman. Senators absent: None. [LB748]

SENATOR CARLSON: Okay, if I can have your attention. Welcome to the January 19, 2010, hearing of the Agriculture Committee. I'm Tom Carlson, Chair of the committee. Our committee clerk to my left is Barb DeRiese, and our research analyst to my right is Rick Leonard. Our page today is J. T. Trauernicht from Pickrell. If you need something, you can signal to him. Our Vice Chair is Senator Dubas, and she will be coming. To my right is Senator Cap Dierks from Ewing, Senator Norm Wallman from Cortland, Senator Brenda Council from Omaha, Senator Ken Schilz from Ogallala, and Senator Scott Price from Bellevue. And I think that Senator Russ Karpisek will be along here any minute. If you have cell phones, please put those on silence or turn them off. And those of you wishing to testify should come to the chair in the front of the room here to be heard. And if you do not wish to testify but want your name entered into the official record as being present, there's a form by the door that you can sign. This will be made part of the official record of the hearing. And with our transcription program it's very important for testifiers to complete the green sign-in sheets before testifying. So please take those off the corner of the table, fill them out before you testify. And if you're testifying on more than one bill, you need to fill one out for each bill. When you do come to testify, please give your name and spell it for the transcript. We appreciate that. If you have handout for the material, give it to J.T., and he'll hand it out to the committee. If you don't want to testify, you can submit comments in writing and have them read into the official record. However, you will not be listed on the committee statement unless you come to the mike and actually testify--even if you just state your name and position. And I don't think we're going to have a problem, but we don't want any displays of support or opposition, vocal or otherwise, to a bill. Any questions on how we proceed today? Okay, we'll open with LB748 and Senator Louden, you are recognized. [LB748]

SENATOR LOUDEN: Thank you, Senator Carlson. Good afternoon, Senator Carlson and members of the Agriculture Committee. My name is LeRoy Louden, and I represent District 49. Today I bring before you LB748. LB748 is a bill which defines a food establishment and those establishments which are exempted. This bill adds language that states a private home where nonhazardous food is prepared for sale directly to the consumer. The food must be clearly marked that it was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority. This bill began when a person in my district contacted the Department of Agriculture to get information regarding starting a home baking business this last summer. And they were given regulations that contained statutes that were repealed in 1997. I decided to look into it

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

Agriculture Committee
January 19, 2010

further--into this, as I believe home baking and other home businesses are a growing trend. I can't speak for eastern area of the state, but out in the western area we've lost many local bakeries. Some large grocery stores have installed bakeries within their businesses. Therefore, people who want specialty cakes, cupcakes, or other baked goods, their only option is to use their grocery store bakery, which may not cater to their needs. From Alliance to Broken Bow it's nearly 200 miles, and there isn't a bakery in between anymore. They've all disappeared. We used to have nice little bakeries in Hyannis, some in Mullen, that sort of thing. They're all gone now, so we got over 200 miles there without a bakery out there. I believe this would also be a good idea with the economy taking a downturn and shortage of extra money. Many are turning toward their own talents and resources at hand to make a little extra money. Many folks sell their homegrown and baked goods at farmers market, but there aren't farmers markets 12 months of the year and many people don't have the option or there are no farmers markets close to them. And that goes again in some of the Sandhill areas. We have a farmers market in Alliance once a week, but other than that, I don't know of a farmers market probably until you get to Broken Bow or farther east. It is very expensive to keep a commercial kitchen and have it inspected and kept up to code. With the amount of baking these people would do, it would not even out in costs for them to have to do the modifications to bring their kitchens up to code. And some of the codes for commercial kitchen that this person looked into, you've got to have four sinks in there. You got to have one area where you clean your dishes and the other area where you do your baking. You can't bake any...serve any home meals in your commercial kitchen, and you got to have a bathroom door that automatically swings shut. So when someone goes to set up a commercial kitchen, it's quite an undertaking. So anyone that's wanting to start out with small-scale baking cakes, cupcakes, serving...or doing catering to some of these weddings or something like that, why, it's probably isn't within their cost. These items that would be baked--and it's in the bill, that they would be prepared for sale directly to the consumer; there would be no retail involved. And all the items would be marked that they weren't prepared in an inspected kitchen, so people would know that it isn't a commercial-run item. Now, when we looked this bill over, we kind of tried to pattern after the way farmers markets are at the present time, using the same line of reasoning and more or less expanding it so that the people could sell stuff 12 months out of the year and also in some of these more rural areas. I would, you know, ask that you advance this bill to General File, because I think it's a good idea for the state and for our local people who are trying to get ahead or entrepreneurs that are trying to start a business to be able to have as much advantage as possible without infringing on some of our big retailers. And I can't see where this would be that much of a problem to infringe on any of the large bakeries that do business around the area--and your bread-making companies like we have. And with that, I would answer any questions. [LB748]

SENATOR CARLSON: Okay. Thank you, Senator Louden. And since he started his introduction, Senator Dubas, Vice Chair of the committee, has joined us. Are there

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

Agriculture Committee
January 19, 2010

questions for...Senator Price. [LB748]

SENATOR PRICE: Thank you, Mr. Chairman. Senator, a quick question is, when would there be a size thing that kicks in? If you're doing a commercial out of your kitchen, I mean, this doesn't really...is there a delineation--let me ask that first--that you know of, is there a delineation between a home and the one that now has gotten large enough to where you need to follow commercial kitchen practices? I mean, is that identified anywhere that you know of with a threshold? [LB748]

SENATOR LOUDEN: Not in the bill, it's not identified in there. Mostly, I think if matter of logistics it's...I think that would probably could be defined matter of logistics. I mean, if you got your home cooking range after your business got so big or you were doing so much, somewhere along the line you would have to go into something larger and probably go into your commercial kitchen-type deal. [LB748]

SENATOR PRICE: The reason I say that, just this year on the CNN awards they had a family that was feeding homeless people out of New York, and they had a couple of stoves and big pots. I mean, it was commercial kitchen for all practical purposes. Okay. So just one...would you consider maybe something that said a threshold of \$100,000 net sales would no longer make you a mom-and-pop home bakery? Something like that. I mean, I don't know what the number is. [LB748]

SENATOR LOUDEN: Well, yeah, I wouldn't have any problem with it, because right now I don't know any of them that would probably...you could probably have it less than \$100,000 for quite a ways. [LB748]

SENATOR PRICE: Well, yeah, that's an arbitrary number. [LB748]

SENATOR LOUDEN: But I suppose that could be put in there if they were...I guess I was involved with having a, oh, bed and breakfast or type of deals, dude ranch-type deals several years ago, and we tried to set it up to put a cap on the amount of money, and it was hard to figure out how you were going to do that. And I don't know if that would work on this or not. But first of all you'd have to find out...the only way I'd know is you'd have to check their income tax to see if, see where their sales were. [LB748]

SENATOR PRICE: All right, great. And the other thing was on "clearly marked," when you have "clearly marked"--we saw it in the notes here from staff comments, and I agreed. First thing I read was, how do we arbitrarily know what "clearly marked" is? I call it statute. I mean, I don't want to get too far in the weeds but just so that people know. I know that the farmers market and the placard would be covered, but is there a way that you envision "clearly marked" can be defined? [LB748]

SENATOR LOUDEN: Right now in statutes they have it you got to have a placard up

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

Agriculture Committee
January 19, 2010

there so big and clearly marked. Now, that work or myself, I think, you...what do you have on the bottom of a bottle whether or not it's dangerous or recycle the bottle or...I would, you know, any kind of a marking that an average person could read would be sufficient to me, I guess. Depends on what kind of...how strict of laws you want to put into effect, but that could be...if that was a problem there, I'm sure that could be resolved on the size of the marking. If you were making a cupcake, you wouldn't want something too big to mark it on there, and you don't want to put it on the bottom, because then you turn your cupcake over to read to see if it's clearly marked, you might lose your frosting off. So. [LB748]

SENATOR PRICE: Devil's in the details... [LB748]

SENATOR LOUDEN: Yeah. [LB748]

SENATOR PRICE: ...you're right. All right, thank you, Senator. [LB748]

SENATOR CARLSON: Okay. And Senator Karpisek from Wilber has joined us, so we have a full committee. Senator Dubas, a question? [LB748]

SENATOR DUBAS: Thank you, Senator Carlson. And I apologize for coming in late, Senator Louden, and you may have already stated this in your opening, but are you trying....do you have someone that's having a particular issue as to why you brought this bill forward? Is this causing some problems with in-home bakers doing their business? [LB748]

SENATOR LOUDEN: Yes, for most of your answers. What it is, is...well, it was my daughter-in-law that started it first, and so she wanted to do this. She's good at it. And so, anyway, she got ahold of the inspector in Scottsbluff, and so I...she told me, she says, well, I had a devil of a time getting any answers out of him, you know, that made sense. Because he told her, he said, well, first of all, it says right in your regulations you can't make any money, so why would you want to do it if you can't make any money? And so, fine. So I said, well, I'll look at it when I'm down here. So then I went over here to the Department of Agriculture, and I asked them for their regulations. And I called the guy in Scottsbluff myself, and he told me the same thing. He said, well, it's supposed to...you can't bake over 3 days a week, which I guess that's reasonable because that was what the bakeries wanted back in the early days when they passed that bill--I think when Governor Thone was in office is when it was put it. And so then that part I didn't. So then I talked to the lady over here at the Department of Agriculture, and I said, well, what are your regulations for a home bakery? And she started to tell me some of the stuff. And I said, well, wait a minute, I said, can you send me those regulations? She said, well, no. I said, well, then how are you telling me these regulations? She says, well, I have a card here. So I said, all right then, send me your card. Well, it took them awhile, so finally they did send me their regulations. Well, I was looking these

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

Agriculture Committee
January 19, 2010

regulations up, and they were quoting certain statutes back in the book. And I'm not very good...I'm not a lawyer like Senator Council here, so I couldn't figure out why I couldn't find those numbers they were quoting in the statutes books. So finally I looked around, finally...lot of them were repealed in 1997. So I said--I think it was Mr. Hansen over there or somebody--I said, well, these have been repealed, hell, 20 years ago, nearly--over 10 years ago. How come you're still using them in your regulations? And he...oh, well, I don't know, I guess we haven't got around to clearing them up. Well, I said, you have inspectors that are directing people on what they can or can't do, and these are people that are wanting to make a few extra bucks or something. They're not going to run the big grocery chains out of business, that's for sure. But they are trying to make a little bit of extra money. Why are you quoting these regulations like this? Why hasn't this been taken care of? And that's where it went from there. So this is what I've done, and there are other people around that are doing these kind of issues. But that's mostly what started it off the bat, was...as usual. Somebody gets ahold of you and wondering what the problem is. [LB748]

SENATOR DUBAS: Thank you. [LB748]

SENATOR CARLSON: Okay. Senator Dierks. [LB748]

SENATOR DIERKS: I've had some of your daughter-in-law's cooking. And it's real good. The only thing that was wrong with it is I bumped my head on the top of your door when I walked out of the basement that day. (Laughter) [LB748]

SENATOR LOUDEN: Well, yeah, they made you grow a little faster than what we figured. (Laughter) [LB748]

SENATOR DIERKS: Well, anyway, I was just going to ask you, do you actually repeal some of that language that they're still using then, or has it already been done? [LB748]

SENATOR LOUDEN: I don't think it's...no, the bill that I drew up didn't repeal any of that language. I thought it would be up to them to go over their regulations and do away with what's been repealed. This is something they're supposed to do in the summertime instead of play cards. (Laughter) [LB748]

SENATOR DIERKS: That's all. Thank you. [LB748]

SENATOR CARLSON: Okay, Senator Council. [LB748]

SENATOR COUNCIL: Yes, thank you, Mr. Chairman. Thank you, Senator Louden. My question is kind of a follow-up to Senator Price's question. Would you give any thought to some kind of threshold? You made reference to the issue of bed and breakfast. And when I read the bill before coming to the committee meeting, I did notice that under

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

Agriculture Committee
January 19, 2010

existing law there is a ten-paying-guest maximum if you're serving meals in, like, a bed or breakfast. [LB748]

SENATOR LOUDEN: Yeah. [LB748]

SENATOR COUNCIL: So--and I appreciate the issue that you are seeking to address. But in my area, I don't want to run the risk. We have a number of bakeries, and those folks invest a lot of money into developing those bakeries--and then to have someone be allowed to do it out of their home without having to satisfy those regulations. I'm trying to figure out a way to strike the appropriate balance so that it addresses the issue you've identified but doesn't create a bigger problem in areas where that situation may not exist. So have you given any thought to some kind of threshold? I mean, it may not be a monetary threshold but, you know, something that...and I guess I need to preface it. I'm a big supporter of home-based business and microenterprise operations. But when you start getting the push-back from individuals who take their business to the next level and have to deal with the regulations, we have to know what that next...where the break is for that next level. It's kind of a follow-up to Senator Price's question. Is there any, like, monetary amount or buy you amount that we may be able to give some thought to? [LB748]

SENATOR LOUDEN: Well, yes, Senator Council. And there's a perfect example of when you're drafting legislation to fit the entire state of Nebraska--what's good for out there...like you say, you've got lot of people right around your area that could probably bake, and we go 200 miles and don't have a baker, and they're all gone anyway, so it doesn't make any difference. Yes, I've tried to come up with some ideas, and I think we went ahead and drafted the bill to see if there was any testimony that could come up with what we thought would be a good idea. I don't know--they had that you could only bake three days; that's what's in regulations now. I don't know whether that needs to stay in there, but you could bake a whole lot of stuff in three days if you wanted to run day and night. So I don't feel that that was probably...now whether you have a monetary value or it's put down to mostly--I always call it nonperishable, but I think in the bills they said you can't use nonperishable. You've got to use, what is it... [LB748]

SENATOR COUNCIL: Not particularly hazardous. [LB748]

SENATOR LOUDEN: Yeah, not particularly hazardous. And so that would--mostly is baked goods. Now, whether you sum it up as just particular baked goods--because when your bakeries get into some of the other stuff with some fruits in there, I don't know...you know, if you make a roll with... [LB748]

SENATOR COUNCIL: Cream fillings. [LB748]

SENATOR LOUDEN: ...with filling and stuff in there, that's more of a perishable item. So

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

Agriculture Committee
January 19, 2010

I don't know if that would cover it, but if there...yeah, I'm open to any good ideas there is and probably some bad ones. (Laughter) [LB748]

SENATOR COUNCIL: Thank you. [LB748]

SENATOR CARLSON: Okay. Any other questions? Sitting here listening, Senator Louden, I just did a little figuring, and if you had a bed and breakfast and you served 10 people a day 200 days of the year, and it was worth \$10 a meal, that's \$20,000. If it was a dinner and you figured it's \$20, that's \$40,000. Well, it would take a lot of preparation, a lot of food to exceed that level. So probably to further think about something like that as a level would be appropriate. Any other questions? Okay. Thank you, Senator Louden. Are you going to be here for closing? [LB748]

SENATOR LOUDEN: Yeah, I'll stick around to see how we get shot at. (Laughter) Thank you, Senator Carlson. [LB748]

SENATOR CARLSON: Okay. We'll proceed. Those of you that wish to testify--and we'll go for those that are proponents of the bill first and then opponents and then anyone in neutral. Do we have anybody as a proponent? Okay. Do we have anybody as an opponent? Okay, welcome. Go ahead. [LB748]

KATHY SIEFKEN: (Exhibit 1) Good afternoon, Chairman Carlson and members of the committee. My name is Kathy Siefken, S-i-e-f-k-e-n. I am the executive director of the Nebraska Grocery Industry Association, and I'm here today to oppose this bill. I serve on a committee that is an appointment through the Department of Ag, and it is a food advisory board, and we go through the FDA food code. We started back when FDA came out with their 1995 food code. And the very first food code that came from FDA was probably three inches thick, and we went through that line by line to make sure that whatever we adopted to promote food safety in the state of Nebraska was something that would fit our state, that it wasn't something that they do out in New York or California. We...the people that serve on that board included at the time when we first started--there were bakeries, there were grocery stores, there were smokehouses, there were institutions. And since 1995 we have included regulatory people from local health departments and from other agencies that deal with food safety, institutional food. And this is a group of people that are...that take food safety very, very seriously, while at the same time we want to make sure that we don't put people out of business or we cause hardships. And we go through that food code, and we bring a bill to the Legislature. You'll have another one. Apparently, there's another update, and you'll have that next year that will bring it via the Department of Ag. And we put together that bill as a unified entity. We work out all of the discussions during the meetings so that when we bring it to you--it is everyone that deals with food safety--we come forward in lockstep. And we do that because food safety is so important. The last thing we want is the people in our state to get sick because someone was not taking care of business the way they should

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

Agriculture Committee
January 19, 2010

have. I can tell you that when the operations are so small that it's only...and every town, like Senator Louden said, when you're out in rural Nebraska and there's not a bakery that's close, it seems like every town has a local person that bakes cakes for graduations and weddings. And those people are small enough where they fly under the radar and they don't go through inspections, and no one is really out to get those people. What happens is when they're that small, they can pretty much run a pretty good operation, we think, and keep things under control. But when they start getting big enough where the Department of Ag finds out that they're there and they're...and by the way, this has nothing to do with money or putting large grocery stores or large bakeries out of business, because they don't do that much business where they're going to financially affect any of the people that I represent. It is all about food safety. But--so when you get a small operator or a small baker, a local cake lady, they fly under the radar and the Department of Ag really doesn't come in and they're not looking for them. But when they get big enough where the Department of Ag and the inspectors hear about them, then they'll come in and probably do an inspection and make them adhere to certain guidelines. And again, it's all about making sure they know about the proper holding temperatures, cleanliness, sanitary, cross-contamination. Food safety is not like it used to be when I was growing up. What we passed out were a definition of potentially hazardous foods. And if you look at that, you kind of have to read into it and sit down and study it to know, okay, these are the foods that are potentially hazardous and these are the foods that are not. The nonpotentially hazardous foods are not just cakes. They...and I, just off the top of my head, I just kind of wrote down a few of them. And brownies and cakes are nonpotentially hazardous--beef jerky, frozen corn. What happens when the frozen corn thaws? And it could be an issue. Popcorn, cotton candy, pickled eggs--anything that's pickled, because the pH is high enough. Soda pop, any kind of candy or lollipops. It has to do with the sugar content; it has to do with salt; and it has to do with the moisture content and the pH. And if you go through the definition that I handed out to you--and that is what is in the Pure Food Act. People, if they're going to be selling to the general public, they need to understand food safety issues and how to keep the food safe. And really that's what it's all about. One of the things that you're probably going to run into in a home bakery, that you need to think about, is they are not inspected. And I know I have animals in my house; I've got a cat and two dogs. So then you have to worry about contamination. And you have to worry about when they're preparing their cakes and the cross-contamination--you've got eggs. Those are the things that we're really concerned about. I can tell you that in the last, maybe, four or five years, this is the third time people have come before you to ask for waivers or a change to the regulations that we as a group brought forward, because there are little niches out there. One of them had to do with the farmers market. And the farmers market--those people can sell at a farmers market as long as there's signage that says that this was not made in an inspected kitchen. Another one had to do with a lady up in your district, Senator Dierks, who cooks turkeys at Thanksgiving time and invites everybody over. She doesn't charge anything for it and...or maybe she takes a goodwill donation. And these are people that didn't have anyplace else to go at Thanksgiving

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

Agriculture Committee
January 19, 2010

time. And we sort of sat back and remained neutral on those issues. But our point is that we are gradually eroding the very rules that we came forward as an industry, that we thought were important enough to have made into--turned into statute that would keep the people in this state safe and the food that they consume safe, when you're getting into those number of people. And as I said before, the folks that are just doing cakes and cookies here and there, they fly under the radar. Nobody is after those folks. But when you get large enough where the Department of Ag knows that you're out there, that means that you're large enough where you have new issues to deal with, because the business gets too big for one person to control all of it. And at that point you need training. So...and then one of the last things that I thought I would say--Otto is going to follow me here. And if any of you have attended his little get-together in July at his house, he cooks up stuff in his garage. Think about that. (Laughter) With that, I would be happy to answer any questions. [LB748]

SENATOR CARLSON: Okay. Thank you for your testimony. Senator Wallman. [LB748]

SENATOR WALLMAN: Yeah, thank you, Chairman Carlson. Thank you, Kathy, for being here. And how...does this relate to church groups? You know, they use that to raise money. And we used to have a lady in our church that baked pies for a restaurant... [LB748]

KATHY SIEFKEN: They're exempt. [LB748]

SENATOR WALLMAN: ...and she sold a lot of pies. [LB748]

KATHY SIEFKEN: Um-hum. [LB748]

SENATOR WALLMAN: Hopefully, nobody got sick. They were cream filled and all this good stuff. So is a tavern at risk, then, if somebody gets sick? A restaurant? Who is at risk here in the food and that? If you got sick... [LB748]

KATHY SIEFKEN: The people that consume the food are at risk, but... [LB748]

SENATOR WALLMAN: I know. [LB748]

SENATOR PRICE: Who's liable, you mean? [LB748]

SENATOR WALLMAN: Yeah. [LB748]

KATHY SIEFKEN: Who's liable? Oh, the tavern owner. Absolutely. Um-hum. And frankly, the inspectors come in and they take a real close look at what's going on out there. And I have to tell you that the food inspectors in this state are very easy to work with. My members appreciate the job that those food inspectors do, because, Senator,

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

Agriculture Committee
January 19, 2010

(laugh) they do come in. It used to be--you know, ten to fifteen years ago--it used to be they came in and they were pretty hard on the retailers. Now they come in and they say, okay, you need to do this, you need to do that. And as a result, we believe the food in this state is safer, because we've got inspectors in the stores showing our retailers what they need to do better. They don't come in with a baseball bat like they used to. They come in more as consultants and tell us how to do a better job. [LB748]

SENATOR CARLSON: Okay. Thank you. Senator Karpisek. [LB748]

SENATOR KARPISEK: Thank you, Senator Carlson. You are right, Kathy, but they still do have a ball bat with them. (Laughter) [LB748]

KATHY SIEFKEN: But they're gentler nowadays. And they do a good job. [LB748]

SENATOR KARPISEK: Well, maybe. Depends which ones you get. I just have to be a little bit of a wise guy. What do you think about people processing meat on the farm without a license? Kind of following the same thing? [LB748]

KATHY SIEFKEN: If they are selling to the general public, they should be licensed. [LB748]

SENATOR KARPISEK: Thank you. (Laughter) [LB748]

SENATOR CARLSON: Okay. Senator Dierks. Senator Price. [LB748]

SENATOR PRICE: Senator Carlson, thank you. Ms. Siefken, my question goes to kind of what Senator Wallman was saying on liability. If you're a home-based business, hopefully you've formed some type of sole proprietorship, S corp, something like that. Wouldn't that necessarily trigger how I've formed a business? We're supposed to form businesses and they're supposed to have a legal structure when you go out there and doing commerce. Wouldn't that already trip the department that there's going to need to be an inspection of sorts? [LB748]

KATHY SIEFKEN: I don't know that there's a way to cross-reference people that incorporate with food establishment licenses. [LB748]

SENATOR PRICE: Okay. [LB748]

KATHY SIEFKEN: I don't know that there's a cross-... [LB748]

SENATOR PRICE: Okay. Probably not. And, of course, I'm concerned about peanut allergy and allergy identification when if you've got a home-based business and you talk about liability to market, you would have to cover something along those lines but...you

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

Agriculture Committee
January 19, 2010

work with the group, you work with the inspectors on a fairly regular basis, you say?
[LB748]

KATHY SIEFKEN: Yes. Yes. [LB748]

SENATOR PRICE: I'm troubled--I don't know to what level I'm troubled--to have Senator Louden come up before us and tell us that we have inspectors out there who are possibly writing citations against the establishments that have problems. And out the other side of their mouth they're quoting off regulations that are no longer in statute. I'm somewhat troubled if someone does that. If they're supposed to be the purveyors of goodness and truth and a state of play and they give out old information...I mean, I had a small restaurant and ice cream shop. I had the good inspectors. I had all of that, you know. And I think the burden was on me to make sure I knew what the laws were, but to say both, I'm a little concerned about that. So what's your... [LB748]

KATHY SIEFKEN: Can I address that? [LB748]

SENATOR PRICE: Yeah, please do. [LB748]

KATHY SIEFKEN: I can tell you that as we've gone through the food code, there have been sections of law that have been repealed and rewritten into the new statute, because it's very difficult to follow the back-and-forth and the back and the forth.
[LB748]

SENATOR PRICE: Sure. [LB748]

KATHY SIEFKEN: And so what we've been trying to do is clarify as we go through. But the food code is huge. The Nebraska Pure Food Act is a fairly complicated and large document, and as we go through trying to...it's not an easy process. And so what we try to do is pull out those sections that we deal with that are changed and put them into the statute so that you can follow along. Sometimes it's not that easy to do. [LB748]

SENATOR PRICE: Oh, no, I understand that. [LB748]

KATHY SIEFKEN: But sections that have been repealed--and I wasn't part of the conversation that Senator Louden is talking about--but there are sections that have been repealed and then rewritten as new sections so that they kind of fall in line. And there is... [LB748]

SENATOR PRICE: But then the inspector is still referring back to that old, repealed piece, that's...but we can belabor that another time. I just wondered... [LB748]

KATHY SIEFKEN: And I don't know how that could happen. I can tell you that whenever

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

Agriculture Committee
January 19, 2010

I have an issue with the Pure Food Act, I can find those sections in here, and it's a pretty good road map. And why they were not able to send him the Nebraska Pure Food Act--this is it--I have no idea. [LB748]

SENATOR PRICE: All right. Thank you. [LB748]

SENATOR CARLSON: Okay. Any other questions? Senator Council. [LB748]

SENATOR COUNCIL: Yes, and thank you, Ms. Siefken, because that's one of the issues I have, is what is or is not potentially hazardous food? Now, I'm not a chemist and I'm looking at this chart, so it becomes potentially hazardous, that's what...means product assessment required, that means that it's potentially hazardous? [LB748]

KATHY SIEFKEN: Those are guidelines. The things that determine whether it is potentially hazardous or not deals with the pH, it deals with the salt content, it deals with the moisture level. If something is very dry like beef jerky, that's not potentially hazardous--and sugar. So between those items, the Department of Ag can tell you what is potentially hazardous and what is not. I'm not a chemist either, and that's why I thought it was important to have you take a look at what the definition is. And your constituents, would they understand that? [LB748]

SENATOR COUNCIL: No. [LB748]

KATHY SIEFKEN: And that's why you have it in front of you, because I think that people should know what they're getting into before they get into it. [LB748]

SENATOR COUNCIL: Now, this is extremely complicated. [LB748]

KATHY SIEFKEN: Yes, it is. [LB748]

SENATOR COUNCIL: I mean some people have general, you know, understanding, so that if you turn it over, you know, page 12...I mean most people know that poultry is a potentially hazardous product. [LB748]

KATHY SIEFKEN: Yes. Um-hum. [LB748]

SENATOR COUNCIL: If it's not handled correctly and if Otto's grilling it and serving it to people, we need to be really concerned about that. But when I was looking at the current statute, it does speak to Senator Wallman's question about a private home or other area where food is prepared for distribution at a fund-raising event for a charitable purpose. So that's exempt. [LB748]

KATHY SIEFKEN: Yes. [LB748]

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

Agriculture Committee
January 19, 2010

SENATOR COUNCIL: But it has to be...in order to meet that exemption it has to be something that's not potentially hazardous, and you still have this notification requirement. [LB748]

KATHY SIEFKEN: Yes. Um-hum. [LB748]

SENATOR COUNCIL: Okay. But here it makes it clear that it's by a placard. So you just put a sign up on the wall that says everything being served here is not prepared in a...and it's a little different than the question that Senator Price asked Senator Louden, because I think packaging is what maybe Senator Price was, you know, referring to. And the problem comes up, as Senator Louden identified, if somebody's just selling one cupcake at a time: Where do you put that notification, as opposed to somebody giving you a box of--and then the box says, these items weren't prepared in a...? [LB748]

KATHY SIEFKEN: And if you're selling one cupcake at a time, I would hope that it would be packaged somehow. [LB748]

SENATOR COUNCIL: Okay. [LB748]

KATHY SIEFKEN: I mean, you're not going to set... [LB748]

SENATOR PRICE: You haven't been to a church bake sale, have you? (Laughter) [LB748]

SENATOR COUNCIL: Well, see, they're exempt. The church bake sale is exempt. [LB748]

KATHY SIEFKEN: Yeah, the churches are exempt. But at farmers market, for example, you're outside in the street, birds are flying over, dogs are walking down the street. And the idea behind this is that with that notice on there, it's sort of like buyer beware. But again, when you're in a home that is uninspected, they don't usually have the same sanitary guidelines that we have in a bakery. [LB748]

SENATOR PRICE: You don't have the checks, is what you don't have. [LB748]

KATHY SIEFKEN: You what? [LB748]

SENATOR PRICE: What you don't have are the checks on that. They may have, they can be just as...pardon me, Chairman Carlson, for interacting there. I apologize. [LB748]

SENATOR CARLSON: Any other questions? Okay. Kathy, I'm going to tell you that I had prejudged this a little bit, so one of the first things that you said that put me a little

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

Agriculture Committee
January 19, 2010

more at ease was that this was no threat to the grocery industry. And what I struggle with is, if a charity, a church, might have an outing and serve 200 people and they're exempt, isn't the food safety important to the 200 people that eat at the church versus the dozen people that Senator Loudon's daughter, or daughter-in-law, makes cupcakes for? Another thing that bothers me is we're losing freedoms day by day. And I looked at this first, and I thought what I was going to remind you--but you took me off that--was that somebody that gets into some kind of cooking or baking, they have to buy the supplies. So they're going to buy them from you, and so you're still in the market. [LB748]

KATHY SIEFKEN: Uh-huh. [LB748]

SENATOR CARLSON: But for somebody to develop a product that might eventually be widespread and accepted, has to start someplace. And then--but by your response about how the inspectors act, or supposed to act, it sounds to me like they're more in terms of a consulting. And so if somebody starts baking or cooking or whatever and is selling it and somehow the department finds out about this and sends out the inspector, they're in violation. There's no question, they're in violation. But, so what? Is the inspector going to say, now, it looks to us like you're getting big enough, you're no longer under the radar; you better do this. [LB748]

KATHY SIEFKEN: That's what will happen. [LB748]

SENATOR CARLSON: Then if they don't, if they don't, there could be a citation. [LB748]

KATHY SIEFKEN: Yes. [LB748]

SENATOR CARLSON: But that's not the intent of the inspector to begin with? [LB748]

KATHY SIEFKEN: That's not the way I've seen it work in the last five, six years. [LB748]

SENATOR CARLSON: If that's not the intent of the inspector to begin with, then I don't see any reason for a person to hesitate from going into something and giving it a try as long as the sign up there says, buy at your own risk. And aren't you kind of saying the same thing? [LB748]

KATHY SIEFKEN: When they're that small, they fly under the radar. And they can control their environment when they're small much easier than all of a sudden things get out of control and they can't...and so they start cutting corners. And that's where food safety really becomes compromised. [LB748]

SENATOR CARLSON: I agree with you. So when they're small, it doesn't matter? [LB748]

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

Agriculture Committee
January 19, 2010

KATHY SIEFKEN: When they're small, it matters whether their food is safe. But what I'm...the message, I guess, I'm trying to give you is that when they're small they are usually pretty clean and pretty safe, because they're small enough. They eat it themselves. It's when they get big enough, where they're not big enough for a commercial kitchen and they're still small, that things get out of control, and they start cutting corners; and then you compromise food safety. And that's the concern. [LB748]

SENATOR CARLSON: So when they're small and when they're clean and when they're doing things right, they're okay. [LB748]

KATHY SIEFKEN: They have been so far. [LB748]

SENATOR CARLSON: Well, aren't you kind of saying, yeah, they're okay? It's when they get bigger that we may have a problem, and we're concerned about food safety at that point. So aren't we talking about some kind of a threshold? [LB748]

KATHY SIEFKEN: Actually, you don't need this bill if that's what we're talking about, because they fly under the radar. They are not cited. They are not in violation. It's only when they want to set up a business that they find out that they have to adhere to all of these guidelines. And if they don't want to...frankly, I'm not sure that I want to eat a cake that's been baked in a room with a toilet. I'm not sure I want to eat cupcakes that have been baked when there's a dog and a cat running around. [LB748]

SENATOR CARLSON: Except that we do it all the time. Senator Dubas. [LB748]

SENATOR DUBAS: Thank you, Senator Carlson. I think I'll just kind of pick up where you left off. I think what I'm hearing here--and I'm involved in farmers markets, so I know what those people who sell at the farmers markets have to go through in order to be able to do what they do. But I think every one of us in this room know people who do the baking and the graduation cakes and the cookies and the cupcakes. We've got people who want to do it and make sure that they're following the law, so they came forward and say, what do I have to do in order to do this? Well, our law doesn't really address those types of people who are flying under the radar. So as long as they continue to fly under the radar, well, I guess... [LB748]

KATHY SIEFKEN: Then they're okay. [LB748]

SENATOR DUBAS: ...then they're okay. It's figuring out when is it that they no longer fly under the radar. Is that what we need to address? And how do we address it once they're no longer underneath the radar? [LB748]

KATHY SIEFKEN: When they're no longer under the radar, that means they're big

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

Agriculture Committee
January 19, 2010

enough to be in a commercial kitchen. [LB748]

SENATOR DUBAS: And we already have those regulations in place. [LB748]

KATHY SIEFKEN: And we've already got that. Um-hum. [LB748]

SENATOR DUBAS: So as long as...I mean, these people aren't necessarily breaking the law that are flying underneath the radar, we're just kind of saying as long as you're not putting yourself or anybody else in... [LB748]

KATHY SIEFKEN: Actually they are. (Laugh) [LB748]

SENATOR DUBAS: So I guess that maybe that's where the rub is then. I mean, these people are actually doing something that's against the law, but we're just basically turning our head, saying, well, you're not big enough, so we're not going to...so it's best that you just don't ask any questions and keep going until you...someone...you get on somebody's radar. So I guess that's where the rub seems to be--is these people are all over the state of Nebraska doing this type of work. But you've got people who want to make sure that they're in compliance, and then once they are in compliance, well, they can't quite meet those standards, so then where are they at? [LB748]

KATHY SIEFKEN: And I think maybe it's more of a monetary thing, where they hit a level where they think they can turn this into a great business because it's something they love to do, and they can--and everybody loves their products--and they can sell it, and they can make a living doing this. And what I'm saying is if you're going to make a living baking cakes or making beef jerky, you should be licensed like everyone else. If you're at that level where your business has grown that much and that's the direction you want to go, then licensing is the appropriate thing to do. [LB748]

SENATOR CARLSON: Okay. Thank you. Senator Karpisek. [LB748]

SENATOR KARPISEK: Thank you, Senator Carlson. I'd just like to ask, is there anyone here from the Bureau of Foods and Dairies to testify? Because I think what we're doing is asking Miss Siefken a lot of the questions that we'd be asking the Foods and Dairies about being under the radar and when you do that. And she's here as the grocers. The people that are doing it absolutely are breaking the law. Just because I speed home every night and don't get caught doesn't mean I'm not breaking the law. So they absolutely are breaking the law. It's just that they're not getting caught. I've seen people who shelled walnuts get caught that were just doing a few walnuts. So I don't think that there's any blinders really on so much as they're busy doing the licensed businesses and not so much out looking for someone who's not licensed unless there's a problem. [LB748]

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

Agriculture Committee
January 19, 2010

KATHY SIEFKEN: Great summary. I think that...you just hit the nail on the head. And I did talk to the Department of Ag and several people...I've been on the phone asking for someone from Ag to be here to answer these questions, and I was told they would not be here. [LB748]

SENATOR CARLSON: Okay. Any further questions? Well, this is a lengthy discussion. Thank you for your testimony today. Okay. Next testifier in opposition? [LB748]

JIM OTTO: Senator Carlson and members of the committee, my name is Jim Otto, O-t-t-o, and I am the registered lobbyist for the Nebraska Restaurant Association and the Nebraska Retail Federation. I'm here to testify in opposition to LB748 on behalf of both organizations. I really don't need to take very much of your time. It's pretty much been summarized by Kathy Siefken in the previous testimony. I want to emphasize that restaurants and retailers are not concerned--it is not a threat to their business...are very concerned about food safety, as Kathy said, and that is the primary issue. And as you said, Senator Carlson--and Kathy also mentioned it, everybody has been talking about it--is there a threshold? Well, one of the big concerns or maybe the primary concern is that this exemption seems very large. I mean, it seems like it opens it up to anyone to get as big as they want to get and never be able to be reviewed by the food safety people. And so I would say in reality we are talking about some kind of a threshold, if you want to get this done. Because I don't think anyone--or we don't disagree with the concerns that Senator Loudon brings, but there is...this is written simply too large, in our opinion. One of the things that you brought up, Senator Carlson, is, you know, how do you--or maybe it was Senator Dubas--but how do you get bigger? In a previous life I helped people get started in small business, and one of the ways that people that really have an idea and they want to take it to a higher level beyond their kitchen, their home kitchen, is they have to do that in an approved kitchen. And the University of Nebraska offers those kinds of services so that you can actually bake something in an approved kitchen. Many people that--several that I know--actually made a deal with a restaurant with approved kitchen that when the restaurant was closed they could go in, like, from midnight to 5:00 a.m. and use the approved kitchen to make their product at that time so that they would be...so there are ways to do it--not quite as convenient. But if you actually want to start it as a business, maybe there should be some guidelines in there rather than just allowing it to get too big. But with that, I will be glad to answer any questions, if I can. [LB748]

SENATOR CARLSON: Okay. Thank you, Jim. Senator Price. [LB748]

SENATOR PRICE: Mr. Chairman, thank you. Mr. Otto, you brought up your former life, and one of the notes I have here is we have the microenterprise thresholds, small business thresholds. Those are the types of things I'm thinking that we may be looking at here to see what we consider a microenterprise and other venues other than just sales. So that can be addressed. So. Do you know, you might recall what a

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

Agriculture Committee
January 19, 2010

microenterprise or anything of that is roughly? [LB748]

JIM OTTO: It's kind of like small business. What's the definition of a small business? And I think Small Business Administration of \$50 million or \$60 million a year, for Small Business Administration. So microenterprise, in my opinion it's somebody that kind of operates, you know, maybe \$5,000 a month or less. But I notice microenterprise loans being made for lots and lots of money. So I think everybody has a different definition of microenterprise, depends on...I don't know if there's a good one out there. [LB748]

SENATOR PRICE: Okay. [LB748]

JIM OTTO: But in response to a...you reminded me about your question about sole-proprietorship or...I don't think there's any...in other words, if I were to open a business as a sole proprietor and used my Social Security number as the business, I don't think that raises any...unless I get a sales tax permit, I don't think that raises anything. I don't think anybody even knows it. So I don't know that there's any--I don't think there's any requirement to get a business license. I don't think there's...so I don't think that that is a way to find out who's actually going into business. [LB748]

SENATOR CARLSON: Okay. Other questions? Senator Schilz. [LB748]

SENATOR SCHILZ: Thank you, Senator Carlson. Mr. Otto, you were saying that possibly a threshold would help. If there would be a threshold that we could come up with, would we be able to address your concerns? And then would you be able to come back and support it if there was a threshold that made sense? [LB748]

JIM OTTO: I think the real challenge is, what is the threshold? And they always say the devil's in the details, and how do you figure that out? I'll probably...I guess the most I could probably hope for is that I'd come back neutral, probably that I'd not come back in support. [LB748]

SENATOR SCHILZ: Okay. I understand that. And then my next question is, do you...and I just wonder if you think, and your associations believe, that as long as they're small, under the radar, then everything is okay? [LB748]

JIM OTTO: Well, I can't speak for my members, but the truth is if you sell five cakes a month and they're all terrible, not very many people are going to get sick. But if you sell 500 cakes a month and they're all terrible, a lot of people are going to get sick. So the real point is, you know, I mean, if five people end up with having...being sick for 24 hours, that probably doesn't trigger a whole bunch of stuff. But if we...if all of a sudden you've got hundreds of people or thousands of people getting sick and you have no mechanism to go in and change it, I think we have a problem. [LB748]

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

Agriculture Committee
January 19, 2010

SENATOR SCHILZ: Right. So then...okay. Let me sit here for a second, because now I'm starting to have trouble. Because if those five people still get sick and that company was licensed... [LB748]

JIM OTTO: I think we're talking about a level under which nobody has to get a license. If you're talking about a threshold...they're still concerned. [LB748]

SENATOR SCHILZ: But they're still breaking the law. [LB748]

JIM OTTO: Well, I don't know what the threshold is. I don't know what the law says. [LB748]

SENATOR SCHILZ: Well, right now, there is no threshold. [LB748]

JIM OTTO: But presently, presently they are breaking the law. [LB748]

SENATOR SCHILZ: Right, and I guess that's my question then. So now what you're saying is that if there's only...if the number of people that are subject to getting sick is small enough, then we're okay? [LB748]

JIM OTTO: No, I'm not saying it's okay. I'm saying reality is you aren't going to do a lot about it. [LB748]

SENATOR SCHILZ: Okay. [LB748]

JIM OTTO: I'm not saying it's okay, but... [LB748]

SENATOR SCHILZ: Well, I'm trying to find out where this is, because I'm... [LB748]

JIM OTTO: Yeah. No, I'm not saying it's okay. They are breaking the law. Perhaps there should be a threshold. It's a concern whenever someone is actually selling it as a business beyond the present exemptions that exist and there's fairly good... [LB748]

SENATOR SCHILZ: Not only for the people that get sick but for liability on those people that have the business as well too. Thank you. [LB748]

JIM OTTO: Yeah. I agree. [LB748]

SENATOR CARLSON: Okay. Any other questions? Senator Dierks. [LB748]

SENATOR DIERKS: I probably should save this question for Senator Louden when he closes, but in case he doesn't close I want to give it to Jim. So. What would it cost somebody to have a license to cook and bake and sell their product? What would be the

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

Agriculture Committee
January 19, 2010

cost of that? [LB748]

JIM OTTO: I apologize, Senator, because I do not know. Most of the cost, though, I believe, would be in actually getting access to the approved kitchen. I think that's a larger cost than the license itself. [LB748]

SENATOR DIERKS: The inspection and the annual... [LB748]

JIM OTTO: No. Well, if...I'm not absolutely positive how that works. In other words, if you go to the University of Nebraska and you bake it in their approved kitchen, I'm not sure that you have to get...I don't know what kind of a license you have to get beyond that, because that is an approved, licensed kitchen. So once again, I'm thinking that's got to be a question for the actual inspectors, because I don't know exactly how that works. [LB748]

SENATOR DIERKS: Well, I was wondering, with the presentation of this legislation it seemed like there was an effort to let some people do some things that they aren't licensed to do, and I wondered what it would cost them to get that license, if it's that big a deal. [LB748]

JIM OTTO: I think personally that the cost is mostly in doing it in an approved facility more than it is getting the license itself. [LB748]

SENATOR DIERKS: Thank you. [LB748]

SENATOR CARLSON: Senator Wallman. [LB748]

SENATOR WALLMAN: Thank you, Chairman Carson. Good afternoon, Jim. Now, the caterer has to have the license, right? [LB748]

JIM OTTO: Correct. [LB748]

SENATOR LAWMAN: And do those kitchens also get inspected? [LB748]

JIM OTTO: I'm pretty sure they do, yeah. I'm pretty sure they do. [LB748]

SENATOR LAWMAN: I know some caterers I guess I wouldn't pass that inspection if I was an inspector, (laughter) but I ate the food anyway. But a lot of wedding cakes and that, they aren't inspected, are they? [LB748]

JIM OTTO: Well, it's kind of like...depends on, I mean, most probably aren't, I think. [LB748]

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

Agriculture Committee
January 19, 2010

SENATOR WALLMAN: Thanks, Jim. [LB748]

SENATOR CARLSON: Okay, any further questions? Okay, thank you for your testimony, Jim. [LB748]

JIM OTTO: Thank you. [LB748]

SENATOR CARLSON: Anyone else in--testifying in opposition? Anyone in a neutral position? Seeing none, Senator Louden, you're recognized to close. [LB748]

SENATOR LOUDEN: Thank you, Senator Carlson and members of the committee. As you heard the testimony--and these are all sharp people, and, of course, good lawyers always try to divert your attention to something else, and we talked about people getting sick on turkey and something else. What you have to pay attention to, in my estimation, is in the law that we...for the new language, and that is "for sale directly to the consumer." So if you think they're cooking their cakes with the dog and cat sitting on the table, then don't buy it. Simple as that. That's what it's all about, and that's the reason that's in there--"directly to the consumer." That's the reason farmers markets are allowed to do it. If it doesn't look good, you don't buy it. So there's one of the problems. And it is a nonhazardous food is what we're talking about. We're not talking about cooked turkey or anything like that. And then when they talk about making beef jerky--I think that was mentioned. I tell you what, you got to buy a lot of cattle in order to make beef jerky, so I don't know as that's been a big issue. But I don't know as anybody...perhaps they could. Perhaps the law is written broad enough that you could make beef jerky. I've never made it, but I'd question whether anybody would want to do it, because that is quite a process. And they talk about the sanitary--the food inspectors we have now. Well, I'm sure any of you here, but I know myself, I can attest to--just because it's a commercial kitchen doesn't mean it's sanitary. Last summer my wife and I--of course, we make a lot of trips from Lincoln to the ranch, and we stopped in Thedford to buy supper there at Stub's. It's supposed to be a nice restaurant and the whole thing. And she ordered a french dip sandwich. Well, she ate half of it; she got ready to eat the other half and turned it over, and there was a patch of mold on the bottom of the bread about that size, you know. (Laughter) And this is your commercial kitchen, so whether it's a commercial kitchen or not doesn't guarantee how sanitary it is. And it's the same way as if I'd been doing business with someone that didn't have a commercial kitchen, because I'm not eating at Stub's anymore. That's that, you know. (Laughter) And I'm sure they know it, because we usually buy a hamburger off the guy down the road now when we go through Thedford. (Laughter) And so there's some things in this bill that would automatically adjust themselves from common sense just with people working at it. And you talked about the size of the cupcakes and this...some of the ladies could probably help me more with it. Who's this outfit you buy when you want to buy all this cooking material? Walden's or somebody. Walton. Walton...every Walmart and Hobby Lobby, they all have this Walton section, because I know I have to

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

Agriculture Committee
January 19, 2010

go there and buy stuff. But you can buy your little packages that you put two cupcakes in; they're all sealed up, and they're ready to go. So they make stuff that is sealed, and besides they can be shipped in the mail. So I think these are some of the things that we have to really look at, and I, you know, I didn't...I wanted to at least bring your attention back to what the bill says, and that's selling directly to the consumer. So that would take care of a lot of them; and as far as the license, I don't think the license is that expensive. But it's setting up. If you want a commercial kitchen, you got to have four sinks. You got to have separate rooms. You got to have, as I said before, you got to have a bathroom door that self-closes. And where you wash the dishes, it's got to be in a separate room nearly or separate sinks. It isn't that hard to do, because there's times that it can be done. But when they mentioned that...and that's exactly what the agriculture people told me when I was talking to them about these regulations. They said most people go and rent a commercial kitchen someplace. And I said, well, when they're 90 miles away, are you going to go to a commercial kitchen and bake a dozen or so, or something or other? Besides the fact that a lot of those restaurants don't want you in there monkeying around in their equipment, you know, after hours--so. That...when the ag people over there recommended that, I thought that was really a no-brainer. I mean, I didn't think they fully thought that through, because that isn't something that really can work. Now, if you have a church someplace that's got a commercial kitchen, that's another issue, because a lot of times you can rent those. They're glad to rent them and that sort of thing. So there are problems. But what we're trying to do is set something up so that these entrepreneurs out in these rural areas can probably get a little something started. Baking nonperishable goods can be baked, if they do well, and they can be shipped through the mail. It isn't that hard to do. So there is ways that some of these folks can progress with this thing. And usually what will set it up where they have a commercial kitchen is probably if it gets to be a one-person operation, then it gets big enough they'll hire somebody, and then they'll go on with better equipment and easier to work with and that sort of thing. With that, I thank you for your attention. If you have any other questions, I'd be glad to answer them, but... [LB748]

SENATOR CARLSON: Okay. Thank you, Senator Louden. Senator Price. [LB748]

SENATOR PRICE: Senator Carlson, thank you. Just one quick question then, Senator Louden, and you alluded to it there in closing. "Directly to the consumer" means mail, Internet? Well, how do you define "directly"? [LB748]

SENATOR LOUDEN: I would suppose it, yes. [LB748]

SENATOR PRICE: Okay. Thank you. [LB748]

SENATOR CARLSON: Okay. Any other questions? Seeing none, thank you. And that closes our hearing on LB748. Thank you. And now we'll move to our hearing on LB731. Senator Utter, you're recognized to open. [LB748]

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

Agriculture Committee
January 19, 2010

SENATOR UTTER: (Exhibit 1) Thank you, Senator Carlson and members of the Ag Committee. For the record, my name is Dennis Utter, spelled U-t-t-e-r, and I come before you today to introduce LB731, which would change the accounting provisions relating to noxious weed control funds in counties. I want to make it clear, right at the beginning, that this is not intended to change the amount of funds collected or anything like that. It is a simple measure that in some counties would simplify their accounting processes. In Adams County the noxious weed fund has been for a number of years ran as a general fund--has been run through the general fund. And this problem has been brought to me by Chris Lewis, who's the county clerk of Adams County. And so it represents a simplifying of the process. The county board in most counties can function as the county weed district board, or a separate weed district board exists in other counties. Either entity can be designated as the control authority for the noxious weed program. As the weed control authority, county boards or county weed district boards are responsible for enforcing and administering the noxious weed laws at the county level. When necessary, weed control authorities may purchase equipment and machinery needed to control weeds and can make such machinery and equipment available for rent. And herein kind of lies the problem that relates at least to the Adams County situation. They own a seed cleaner which they rent out to residents of the county to clean seeds, primarily wheat seed to remove weed seeds from that wheat seed. The cost of the rent must be enough to cover the actual cost of operations, including depreciation. And under Nebraska statute 2-959, all funds received for such rental must be deposited in the noxious weed control fund. In some counties, and, of course, this is why I come before you today, the noxious weed control fund has been consolidated into the county's general fund. And in an effort...and this is done in an effort to reduce the number of individual funds within the county budget. If those counties rent out the equipment and they do not have a noxious weed control fund, they're technically out of compliance. Adams County is one of those counties. LB731 would simply allow counties who have moved their noxious weed control monies into the general fund to place receipts from equipment rentals into the general fund. And for counties with a noxious weed control fund, they would continue handling them as they have in the past. I have brought today testimony from Chris Lewis, who is the Adams County Clerk. She was coming to actually testify herself today, and then the weather this morning spooked her a little, and so she e-mailed her testimony to me. I would like to introduce it and have it made as a part of the record. I would like to read just one paragraph of her testimony to you. She says: "When Adams County became aware of this statutory requirement, the county board passed a resolution re-establishing the noxious weed control revenue fund for receipt of money from Adams County residents for seed cleaning. However, we have no recourse to budget for expenditures from this fund unless we also re-create the noxious weed budget as a part of that fund. This would seem we are stepping backwards in our attempts to simplify the county budgeting process. Currently, all of our revenues and expenditures are a part of our general fund, as is our road fund, medical relief fund, intensive supervision fund, institutions funds,

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

Agriculture Committee
January 19, 2010

and several other funds that are not required by state statute to be separate funds aside from the general fund. I was told by the auditor in charge of our fiscal audit that Adams County is not alone in this predicament and perhaps we could ask for legislation that would allow the revenues from the rental of equipment for noxious weed purposes to be placed in the county general fund." And I won't read you the rest of this. I'd like to read you the next paragraph, because she says some nice things about me, but I'll forgo that and just let that enter into the record. (Laughter) Behind me, Beth Ferrell will testify on behalf of NACO. They have looked at this, at this proposition, and helped draft it. And so I would...she probably knows a lot more about it than I do and about the county budgeting process, but if you want to try to stump the introducer, why, go ahead. [LB731]

SENATOR CARLSON: Okay. Thank you, Senator Utter. Do we have questions? [LB731]

SENATOR UTTER: Oh, here we go. [LB731]

SENATOR CARLSON: Senator Dubas. [LB731]

SENATOR DUBAS: Thank you, Senator Carlson. I'm going to be real easy on you. I just want to kind of re-emphasize a point for the record. The language says, money received shall be deposited in the noxious weed control fund, or if no noxious weed control fund exists, it would go into the general fund. So as long as there's a noxious weed fund are in existence, that's where the money would go. But if it doesn't, then it would go into the general fund. So they couldn't have a noxious weed fund but decide, hey, you know, we really need that money in the general fund so we're going to go there. [LB731]

SENATOR UTTER: I think that's right, and I think that the law also stipulates that these funds are designated for noxious weed control purposes regardless of which fund they flow into. And I would also point out to you that the seed cleaning business is probably not a slam-bang booming business in any county, and I'm guessing that the funds generated from the seed cleaning business are probably very small in nature in terms of the big picture. [LB731]

SENATOR DUBAS: Thank you. [LB731]

SENATOR CARLSON: Okay. Any other? Senator Price. [LB731]

SENATOR PRICE: Senator Carlson, thank you. Senator Utter, just to make sure I understand, it seems to me that what we're trying to fix is, right now the monies aren't going to a proper place? I mean, the money that's raised is just going somewhere, so we don't really have great accountability on it? Or is it just that other people are getting their grubby hands on it, you know? It almost seems like there's some protection going

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

Agriculture Committee
January 19, 2010

on here that we want to make sure that these funds generated go back to that and no one else comes in and takes those monies for another pet project. [LB731]

SENATOR UTTER: Actually, I think it's neither. I think it...I think that these funds have went into the general fund and there's a division in the general fund that pertains to noxious weeds and that's where the money has been going instead of setting up an entirely separate fund. And in my view what we're doing here is trying to simplify the accounting process and let's make it less burdensome for the counties. I don't think this is a matter of anybody trying to manipulate or take funds for some other purpose. [LB731]

SENATOR PRICE: Okay. Great. [LB731]

SENATOR UTTER: I don't think it's sinister at all. [LB731]

SENATOR CARLSON: Senator Karpisek. [LB731]

SENATOR KARPISEK: Thank you, Senator Carlson. Senator Utter, I'm glad you didn't go on to the next paragraph, because then your credibility would have probably come out. (Laughter) My question--I don't know if you can answer this or not--but would the counties with the weed boards possibly get rid of them and just take this over? And if so, do we even...would we care about that? Say, just let the county board do it. [LB731]

SENATOR UTTER: Well, that's what we're doing in Adams County. The county board is the weed control authority, and they saw no need...I think at one time in their history, if I remember back, they did have a separate noxious weed control board, and, frankly, the need of that has minimized, and so they, just to simplify procedures, why, the board of supervisors...and evidently that has...takes a vote of the people to do that, and they voted sometime or another and it's now what. It's just simplifying state government. [LB731]

SENATOR KARPISEK: Great. Thank you, Senator. Thank you, Senator Carlson. [LB731]

SENATOR CARLSON: Any other? Senator Dierks. [LB731]

SENATOR DIERKS: It was 1987 that we got the weed control bill passed and established the weed control authority in every county. There was an effort on the part of the Department of Agriculture to do away with weed control, and there were a group of weed control people who felt really strongly that they shouldn't. So they came and asked me to do that, and we got that established in 1987. So that's how long it's been since we've had that. But now over the years, why, they've abandoned some of that weed control authority in the counties and laid it on the county boards. So, that's how

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

Agriculture Committee
January 19, 2010

long it's been there. [LB731]

SENATOR UTTER: That was before I was born, I guess. (Laughter) [LB731]

SENATOR DIERKS: I was just a pup myself. (Laughter) You know, I'm still trying to get around that sentence, that paragraph you didn't read, because I think we ought to hear it. (Laughter) [LB731]

SENATOR CARLSON: Okay. Any other questions? Okay. Senator Utter, this...it just seems to me like on pages 12 and 13, without that language in there, "deposited to the noxious weed control fund"--and without the extra language in there, they have no place to put that money. So they're doing it, which you would expect them to do, putting it into the general fund, and this just makes it entirely lawful. [LB731]

SENATOR UTTER: That's right. [LB731]

SENATOR CARLSON: Okay. Thank you. Thank you for your testimony. Will you close on the bill? [LB731]

SENATOR UTTER: If it's all right with you, I think I need to get to another hearing, and so I'll waive closing. [LB731]

SENATOR CARLSON: Okay. Thank you. All right, do we have those that would testify as proponents of the bill? [LB731]

BETH BAZYN FERRELL: Good afternoon, Senator Carlson and members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm an assistant legal counsel with the Nebraska Association of County Officials. I'm here to testify in support of the bill. We'd like to thank Senator Utter for introducing the bill on behalf of counties, and you've really touched on what we are trying to do with this bill. We want counties to be able to be in compliance with the law with the weed funds that they receive. Sort of some background about the budgeting part of it--probably about eight or ten years ago, there was a Budget Act Advisory Board that was appointed by the Governor in conjunction with the Auditor's Office, and recommendations were made that counties try and consolidate or streamline budgets by getting rid of funds. And by funds, I mean the fund, sort of a line-item fund within the budget for things that weren't required specifically in statute to have their own fund name. This was one of those areas that wasn't required to have a specific, individual fund name as a page of the budget. So counties rolled this in as sort of a line item under the general fund. So that's where this issue has come from. The counties that have that, have consolidated it or streamlined their budgets--they're dealing with the issue of what do we do with the money because we don't have a place to put it and we can't spend it even if we do put it somewhere. So that's what we're looking at, is trying to address that. [LB731]

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

Agriculture Committee
January 19, 2010

SENATOR CARLSON: Okay. All right. Thank you. Do we have questions? All these other questions and you're going to get off kind of easy. Okay, thank you for your testimony. [LB731]

BETH BAZYN FERRELL: Thank you. [LB731]

SENATOR CARLSON: Any others in--as proponents? Anyone in opposition to the bill? Anyone testifying in a neutral position? We just have some interested spectators today, so that's fine. If not, and Senator Utter has waived closing, that concludes our hearing on LB731. (See also Exhibit 2.) And I would ask that we go into Executive Session just for a few minutes. Moved and seconded--moved by Price, and Schilz was first with the second--go into Exec. [LB731]