MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-Sixth Session
May 2, 2011

The Committee on Health and Human Services was called to order by Chair April Mastroluca at 1:47 p.m. on Monday, May 2, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman April Mastroluca, Chair
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Teresa Benitez-Thompson
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblywoman Lucy Flores
Assemblyman Jason Frierson
Assemblyman Pete Goicoechea
Assemblyman John Hambrick
Assemblyman Scott Hammond
Assemblyman Pete Livermore
Assemblywoman Debbie Smith

COMMITTEE MEMBERS ABSENT:

Assemblyman Mark Sherwood (excused)

GUEST LEGISLATORS PRESENT:

Senator Valerie Wiener, Clark County Senatorial District No. 3
Senator James A. Settelmeyer, Capital Senatorial District

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Kirsten Coulombe, Committee Policy Analyst
Risa Lang, Committee Counsel
Olivia Lloyd, Committee Assistant
Mitzi Nelson, Committee Secretary

OTHERS PRESENT:

Joseph L. Pollock, R.E.H.S., Program Manager, Environmental Health Services, Public Health and Clinical Services, Health Division, Department of Health and Human Services
Mary E. Wherry, R.N., M.S., Manager, Public Health and Clinical Services, Health Division, Department of Health and Human Services
Ray Bacon, representing Nevada Manufacturers Association
Kevin Fisk, Director, State Affairs, Grocery Manufacturers Association
Alexandra Kameda, Director of Quality, Vitamin Research Products, LLC
Rob Hooper, Executive Director, Northern Nevada Development Authority
Lynn Hettrick, Executive Director, State Dairy Commission, Department of Business and Industry

Chair Mastroluca:
[Roll was called.] Today, we have two Senate bills and a work session. We will begin with Senate Bill 210 (1st Reprint). We would like to welcome Senator Wiener to the Committee.

Senate Bill 210 (1st Reprint): Revises provisions governing the regulation of certain food processing establishments. (BDR 40-564)

Senator Valerie Wiener, Clark County Senatorial District No. 3
Senate Bill 210 (R1) is a bill that I requested during the 75th Session of 2009 as Chair of the Senate Committee on Health and Education. Many of you will recall a major challenge to the safety of a food product manufactured in southern Nevada by Basic Food Flavors, Inc., a food additive supplier. A voluntary recall was conducted based on a report provided by one of the food manufacturers that had used a food additive supplied by this company. The additive had contained salmonella. A total of 150 voluntary recalls were

recorded with products that had used this particular additive supplied by Basic Food Flavors, Inc. There may have been other recalls initiated in other countries, as well.

There are many who would call this an example of "one bad player." However, I brought this measure forward to ensure that if anything resembling this example were to happen, even on a much smaller scale, we would have already taken legislative action. If we do not do something about this problem legislatively, shame on us for not learning and moving ahead. The reprint before you is the product of working with several people who were concerned about the original version. I respect some of the concerns that were brought to the conversation. There were two substantial meetings with different voices heard at the table. Many recommendations were brought to the meeting during the first round of discussions. I have asked two people who work with this daily to explain some of that. One of the suggestions was to model language after a similar statute in Georgia that dealt with the concerns surrounding peanut contamination. Other issues that were raised were also addressed in the reprint.

This bill requires a food processing establishment that processes or otherwise prepares wholesale food intended for human consumption to comply with nationally recognized guidelines for manufacturing and processing. The first bill was drafted very broadly and I had not seen the measure before I introduced it. When I came to the table to present the measure, I wanted to make sure that the bill had no intent toward restaurants or school kitchens, but rather focused on wholesale production. The bill also authorizes the health authority to require that the food processed at those facilities be tested for the presence of contaminants in certain situations. The cost of testing would be paid for by the wholesale processor. The testing itself would be required to follow nationally recognized laboratory standards and be reported in a timely manner to allow recording and review of the results. Based on some of the manufacturers' requests, we included a provision for on-site testing if a processor's laboratory could address those needs.

Some may be concerned about this legislation being regulatory or restrictive in nature. However, a lot of the language in the bill—specifically in the reprint—was recommended to us by people who work in this arena. The language was modeled after the Georgia legislation that addressed a major contamination. There is a federal law dealing with food safety, the Food Safety Modernization Act (FSMA) that recently passed. As most of us know, federal rules can take one to three years to become effective. This legislation would allow Nevada to

protect the safety of food products that are manufactured in this state. I have been assured by many people that the federal standards may be even more stringent once they come into play.

Under current statutes, we only have two choices when these situations occur: do nothing or completely shut down the business. I do not want to see that happen to businesses in Nevada, but that is the only choice we have. This legislation would allow us, based on substantial reasonable cause, to require testing of a food product at the wholesale manufacturer level. It does not apply to school kitchens or 7-Eleven stores. It allows for testing to ensure food safety and gives us ways to remediate so that the product can be made safe. I do not want to see manufacturers go out of business, but I want us to have a tool to use if a situation arises that needs to remedied.

I would like to bring forward authorities from the Health Division who work in this area every day. I am open to questions, but following those, I would like to take my leave so that I can perform the business of the Senate.

Chair Mastroluca:
Would you like us to present you with questions now or after the presentation from the Health Division?

Senator Wiener:
Certainly, you may offer questions and if I cannot provide an answer, I will defer to the Health Division representatives.

Assemblyman Goicoechea:
As I look at the bill, I understand where it is headed, but I would like some clarification. In section 1, subsection 6, paragraph (a), the bill defines "food processing establishment" and reads "The term includes without limitation, establishments that process . . ." and then lists several items such as vitamins and coffee. Are you looking to include only those entities in the list? Certainly, there are additional wholesale food manufacturers.

Senator Wiener:
I will bring up the experts who do inspections to answer your question. They have helped me with the bill and were included in the two lengthy meetings where everyone had an opportunity to share their concerns. My thought is that we have addressed the concerns raised in those meetings. I know there was a proposed amendment from Mr. Bacon exempting food processing companies that provide a written safety plan. My concern is that a

plan itself does not ensure that anything will be done. I appreciate the intent, but it does not ensure that testing is done if something goes wrong. That, to me, is not a safeguard.

Chair Mastroluca:
Are there any questions specifically for Senator Wiener before we let her go?

Joseph L. Pollock, R.E.H.S., Program Manager, Environmental Health Services, Public Health and Clinical Services, Health Division, Department of Health and Human Services:
This list was to clearly define those establishments that process items beyond what you would normally think of as food. There have been arguments made that food supplements, such as vitamins, are not food. We wanted to be very clear that certain items, such as spices, were included and would be addressed by the bill as part of the manufacturing process.

Assemblyman Goicoechea:
I appreciate that, but should the list be more inclusive? Are we talking about potatoes, beef, milk, and cheese as well? As you look at this list, it might imply that those listed are the only items covered by the bill. That is a small piece of the food chain.

Joseph Pollock:
The list is not all-inclusive. It is a list of specific products we wanted to be sure to include. Meat and potatoes would be included under the broad definition of food. The list is an adjunct to "wholesale food for human consumption" spelled out by the bill. Those listed are the items that we felt might be considered a grey area or might be unclear.

Assemblyman Goicoechea:
At the end of the bill, in section 1, subsection 6, pargraph (c), the bill reads, "'Wholesale food' means food that is processed or otherwise prepared at a food processing establishment . . ." and then it talks about a processing establishment and/or a food establishment. Are grocery stores not included?

Joseph Pollock:
The term "food establishment" would include a grocery market. Our food establishment definition includes markets, restaurants, and bars—any establishment that serves food to the public would fall under that definition. The definition of wholesale food is one that is manufactured and then taken to a food establishment to be served or one that is taken to another food processor

to be used as an ingredient in another product. An example of the latter would be a raw product, such as hydrolyzed vegetable protein, that was used in the manufacture of another product.

Assemblyman Goicoechea:
I understand that and realize that you are trying to focus in and capture one particular group or industry, but I am concerned that we may be either exempting some that should be included or that it may be too inclusive. I know, for instance that Winnemucca Farms, Inc. undergoes a significant amount of inspection. Peri and Sons Farms in Yerington has to have their products certified by the State Department of Agriculture before they can move them. I am struggling with what is included in this legislation. As I look at the bill, I see a lot of loose ends about what is exactly being captured. I am uncomfortable with where we are at.

Assemblyman Hambrick:
I think my question should be aimed more toward Committee Counsel. I am certainly not a member of the American Bar Association, but I am concerned that a list, even though it says "without limitation," could open the legislation up to legal interpretation. I realize you do not want to have a list of 2,000 items, but could this legislation be challenged because it does not list everything that it intends to include? Perhaps we could address this issue?

Risa Lang, Committee Counsel:
Anything can be challenged, but I would suggest that this type of language is used throughout *Nevada Revised Statutes* (NRS) when it is not practical to list out every item included. It provides examples which are not intended to be an inclusive list, but rather gives you an idea of the types of items that would be included. I suppose someone could argue that, but that is how we use that term throughout NRS.

Assemblyman Goicoechea:
The section lists coffee. Does that mean that sacks of coffee that are blended in-store at Starbucks would fall under this provision? They are not wholesalers, but they do blend from different sources.

Joseph Pollock:
The Starbucks roasting plant in Gardnerville would be included as a food processor, but not local Starbucks retail locations.

Assemblyman Livermore:
Section 1 of the bill reads, "A food processing establishment shall comply with nationally recognized guidelines for the manufacturing and processing of food, including, without limitation . . ." Is it your intention to enforce or duplicate federal regulations? Why do we need this bill, if federal legislation already exists?

Joseph Pollock:
The FSMA was just passed and the first section of this bill came directly from that federal law. We understand from talking to our counterparts at the U.S. Food and Drug Administration (FDA), that it may be several years before the regulations are available for enforcement. We wanted to capture the ability to enforce these laws now. When the federal regulations become enforceable, they would supersede our regulations. We do not plan on enforcing federal regulations; however, we want the ability to follow the national guidelines.

Assemblyman Livermore:
Did you say it would be a couple of years before the national law is implemented or developed? You have taken them out of federal regulations—do they exist already? Are they in draft form?

Joseph Pollock:
The law was passed and there is some broad language in the law.

Assemblyman Livermore:
So regulations need to be developed.

Joseph Pollock:
Yes, sir.

Assemblyman Livermore:
We do not know what the regulations will be.

Joseph Pollock:
Yes, sir.

Assemblyman Livermore:
I have some questions regarding the inspectors who will be doing the inspections. How would you train them?

Joseph Pollock:
The FDA *Food Code* is already in place and is a regulation that we can follow. The retail food code deals less with manufacturing, whereas the FSMA encompasses both sectors. Currently, we incorporate the methods we use to inspect retail establishments into our food processor inspections. We look at sanitary practices, employee hygiene, and other items. Basic Food Flavors, Inc., is an FDA-permitted facility that we are contracted to inspect. We discovered the problem during an inspection modeled on the retail sector, because that is what my staff is trained to do. Once the problem was indentified, the FDA came in and took over the investigation. Ultimately, the product was recalled.

Assemblyman Livermore:
My point is exactly what you just described. You have retail inspectors performing inspections of manufacturing plants. Are the inspectors trained to do both? I do not see any fiscal note attached to this bill that would require training to give the inspectors the proper certification.

Joseph Pollock:
We are currently under contract with the FDA to inspect 52 of their processing facilities. They provide us training dollars to bring our inspectors up to speed. This contract is entering its third year. The FDA assigns us the facilities to inspect based on the certifications held by the inspectors. The FDA is fully aware of our current limitations. We are bringing those inspectors up to speed. It will take time. The FDA is promising us more involvement. Hopefully they will send us more assets to use. However, they are aware of our current capabilities. This is one tool we can use once a problem is identified.

Assemblyman Anderson:
I would like some clarification on a couple of issues. We are not regulating restaurants with this bill. We are talking about industrial food preparation facilities. Is this correct?

Joseph Pollock:
That is correct. This bill deals strictly with food processors that are processing wholesale foods. That is, food that is not directly available to the public. It either has to go to a retail facility to be sold or is sent to another processor to be used as an ingredient in their food processing.

Assemblyman Anderson:
Section 1, subsection 1, paragraph (a) deals with identifying hazards. A lot of that is common sense. There are some practices that we all know from cooking and taking care of our own kitchens. How do you test for radiological hazards?

Joseph Pollock:
That is a good question. I actually took this language directly from the FMSA. I would have to research that. I have never actually seen a radiological hazard in any facility I have inspected. However, that could be an issue. For instance, the way the Basic Food Flavors problem with hydrolyzed vegetable protein was corrected was by irradiating it. That is one way radiation can be used.

Chair Mastroluca:
Are there further questions?

Assemblyman Goicoechea:
You are currently contracted by the FDA to inspect 52 food processing facilities. Is that correct? I am struggling with the question of why we are adding this language to statute if you are already enforcing federal code.

Mary E. Wherry, R.N., M.S., Manager, Public Health and Clinical Services, Health Division, Department of Health and Human Services:
Just to clarify, the FMSA was passed by Congress earlier this year and the regulations still need to be codified. This issue came up when the problem with Basic Food Flavoring, Inc. arose and we had no authority to require them to do testing on products that had been recalled. Our goal is to create a stopgap measure until the federal regulations are codified. From our preliminary discussion with the FDA, we believe that they are going to require testing on a more severe level than what we are attempting to put into our statute at this point in time. We are simply trying to come up with a stopgap measure that will allow us to require testing if there are reasonable grounds to constitute a substantial health hazard should something occur between now and when the federal codes are in place.

Assemblyman Goicoechea:
You do agree that you are already inspecting garlic, potatoes, and lettuce under the federal requirements. Is that correct? This language is being added to catch a niche market, the additive market, correct? I would assume you are already inspecting those processors as part of the 52 you are inspecting for the FDA. I do not know if you are currently inspecting Peri and Sons Farms or Winnemucca Farms, but they are clearly marketing wholesale foods.

Mary Wherry:
The Department of Agriculture may be inspecting product that is being grown. Some food products do not go directly to human consumption, they go to livestock consumption or some other purpose. These regulations would take

effect when the product enters the food chain to be used to produce a wholesale product. That is the point where we become involved in how that product is handled.

Assemblyman Goicoechea:
Do you agree that at the point it is packaged, it has already been inspected? Are you saying the product will be reinspected?

Joseph Pollock:
Raw vegetable products are not included in this bill. If the product is not processed—if it is just grown, packaged, and shipped—it would not be covered under this bill. However, the powdered potatoes from Winnemucca Farms would be included. To clarify, we have an FDA permit on Winnemucca Farms. They are in our jurisdiction. Many of the 52 contracted facilities hold an FDA permit as well as a permit with us or Washoe County, Clark County, or Carson City. All of these facilities have dual permits. We are in a limited number of them for our own inspections in addition to the FDA inspections. Others are inspected by Southern Nevada Health District and by us under contract from the FDA. They are looked at by two different agencies. I hope that clarifies who inspects and when. For instance, we might perform an annual, mandated inspection of Winnemucca farms and then we would later also inspect them as contracted and directed under FDA guidelines.

Assemblyman Goicoechea:
As I understand the bill, the bottom line is if you were inspecting one of these processing facilities and developed a reasonable doubt that they were complying with the law, this statute would kick in even though you have federal requirements above that?

Joseph Pollock:
That is correct. If we were in a facility doing an inspection and we found a deficiency that we thought constituted a significant health hazard, we would want to take action. We would like the ability to require testing on such a product. Current regulations and statutes do not provide that ability.

Assemblyman Goicoechea:
Even though you are contracted with the FDA?

Joseph Pollock:
The FDA does not have the ability to require testing. That was the problem with Basic Food Flavors, Inc. We quarantined the product, but the facility refused to test it. This dragged the investigation out for weeks, because we could not prove the product was contaminated. They wanted to sell the

product; they did not want to dispose of it. If there is suspicion that a product is contaminated and the processor chooses not to test it, they can dispose of it. That has always been an option. We can quarantine the product indefinitely, but that will basically put the company out of business. That is not our goal.

Chair Mastroluca:
If you would like to know more about the FSMA, I have emailed you a link to the FDA website where you may find information regarding the law.

Assemblyman Livermore:
Are the 52 facilities that you inspect as contracted by the FDA all located in Nevada? For years, I owned a restaurant franchise and during that time I bought my product from California. How are purchases from other states inspected? Is someone inspecting that product before I receive it in my retail establishment?

Joseph Pollock:
When we do a retail food inspection we look at the source of the food. That is one of our inspection items. All food that comes in must be from an approved source. A manufacturer shipping product across state lines is required to have an FDA permit. They would be inspected by the FDA and local authorities as well. I do not know how the FDA is operating in California. They may be contracting local inspections as they are here, or they may have a larger presence of FDA inspectors there. It would make sense that they would have more inspectors stationed there.

Assemblyman Livermore:
As a franchisee, my franchisor required certain products to be shipped from a centralized distribution center. There were many such products that might be supplied frozen or refrigerated. You had to trust the system that proper storage protocols had been followed. I trusted the national franchise company to make sure their specifications were as pure as possibly could be.

Chair Mastroluca:
I would like to make sure I understand. Are the inspections called for in this legislation new or are they currently being done?

Joseph Pollock:
We are currently conducting these inspections. This legislation provides an additional tool that we could use on occasion. I do not anticipate having to use it very often, if ever. Most of the manufacturers in the state are excellent. They have safety measures already in place. They do their own testing on-site or through a third party. This legislation would only be used in the occasional

instance of a bad player who does not want to cooperate. We ran into that with the previously discussed issue in Las Vegas. It was very frustrating not to be able to move forward with the investigation simply because the operator refused to test.

Chair Mastroluca:
There is nothing in this legislation that changes what you are currently doing?

Joseph Pollock:
We already conduct the inspections and we will continue to do so without this legislation. However, we would not be able to require testing when we find suspect product. We would simply act as we have in the past. We would quarantine the product until a determination is made what to do with the product. The easiest way to determine if a product is safe is to test it for the suspected contaminant. That would be the most black and white thing to do, but we do not currently have the ability to require it.

Chair Mastroluca:
That is why there is no fiscal note on this bill. It does not change the number of inspections you are currently doing. Are there any other questions? I do not see any. Is there anyone here who would like to testify in support of Senate Bill 210 (R1)? We will now hear opposition.

Ray Bacon, representing Nevada Manufacturers Association:
I think you can see by the types of questions that have already been asked, how much confusion exists regarding this issue. We believe there needs to be more clarity in the language of this bill. [Mr. Bacon also submitted written testimony (Exhibit C).] The individual processes that are called out in the legislation will tend to make people think these are specific areas of risk. However, we think the companies who process these food items are some of the cleanest plants in the state. In addition, there is confusion between the federal statute and proposed state statute. In the case of Basic Food Flavors, they were clearly a bad player. As I testified in the Senate hearing, I was in that facility years ago. It was the only food processing plant that I have ever been in that left me uncomfortable. They were a member of Nevada Manufacturers Association (NMA) for a year or two. When their dues came up, we did not pursue them to continue as a member. I discussed my concerns with the owners, but obviously they did not improve. In my estimation, their neglect of their process was so egregious that they should have been shut down. In fact, I may have seen a recent news clip that indicates they are now shut down.

This bill, as written, clearly needs clarification so we do not duplicate what is in federal statute. The statute was signed into law on January 4, 2011, and I think it could be enforced even without the regulations in place. The regulations will merely clarify the specifics of the law. At this stage in the game, we think the law is more than adequate to take a processor to court or to shut them down. In our estimation, there is conflict between the wording in paragraphs (a) and (c) in section 1, subsection 6 of the bill. I do not think that the retail establishment that sells food to you on the grocery shelf would be included under the definition listed there. If we are going to protect the manufacturers who make food and the restaurants, we certainly should be protecting the consumer. Those clarifications are clearly needed.

As a general rule, the food manufacturing business has to maintain high levels of sanitation. Doing so involves the process of consistently testing and performing cleanups between runs. I am convinced that if the Las Vegas processor had been doing their job right, the salmonella contamination would have been found in their records. The problem was with their record-keeping process. I do not know the specifics of that case. However, in other plants you would have found that problem in their record keeping. That is the only way you can run a manufacturing operation. The sanitation process that you typically go through in a retail operation is substantially different from a manufacturing operation.

Chair Mastroluca:
Are there any questions? I do not see any.

Kevin Fisk, Director, State Affairs, Grocery Manufacturers Association:
The Grocery Manufacturers Association (GMA) is an association of food, beverage, and consumer products companies. We represent almost 300 food, beverage, and consumer products throughout the United States. Ten of our member companies have facilities in Nevada. Our members manufacture over 250,000 food and beverage products. The average grocery store carries about 47,000 items and 90 percent of them are manufactured by GMA member companies. We place a high priority on product safety and consumer confidence. We have been very supportive of and pushed very hard for federal legislation, such as the FMSA, to prevent recurrences of the types of outbreaks we have seen in past years with Peanut Corporation of America (PCA), the salmonella outbreak in peanut butter which caused consumer and industry concern. But for the leadership of Senator Harry Reid, the FMSA may have not made it through the Senate and into the hands of the President.

We have been very supportive in working with Congress, the current administration, and the FDA to help bolster our food safety system and restore confidence in the industry.

From our perspective, the emphasis should be on the prevention of food contamination. Testing after the fact is too late. There are many steps and preventive controls that must be taken at every step of the process when manufacturing food and beverage products. Preventive controls are a foundation of our nation's food safety strategy. The FMSA is an enhancement of the current food safety system that enhances the FDA by giving them new tools. We have not seen such an enhancement since the inception of federal food legislation. This new legislation requires that every company maintain a written food safety plan. You would be staggered by the size of these plans. In some instances, boxes would be required to hold a company's written food safety plan. Companies often have plan summaries that are in excess of 20 pages. Every company in the United States that wants to sell a food or beverage product, foreign or domestic, is required to have a food safety plan that outlines preventive measures used throughout their system.

This also ensures the safety of fruit and vegetables and adopts a risk-based approach to inspections. In other words, it identifies foods that are at a high risk for contamination versus those with lower risk. It helps the industry know what food-borne illnesses they need to test for. Certain foods will not be contaminated with salmonella. They may be more prone to contamination with bacteria such as Listeria. We need to be specific with what we are testing for, rather than simply running a batch of tests. The FMSA puts this into perspective for the inspection process.

It also authorizes mandatory recalls for the FDA. Our industry has always only had voluntary recalls. If we found something bad, we recalled it on our own. We have seen bad actors that are not so concerned if their contaminated product gets into the marketplace. We do like the voluntary recall process, but we have some players that are not responsible. That is when the FDA needs to step in and make recall actions.

The FMSA also calls for increased inspection frequency. There will be over 1000 new FDA inspectors who will also work in tandem with local health authorities at the state level. There will be programs to help train the state health authorities in what to look for and how to apply the new legislation.

The FMSA will improve the food safety defense capacity at the state, local, and tribal level. The new regulations will be very comprehensive. As an industry, we need everyone working together; not separately. The GMA and its member companies are currently working with the FDA to establish these new regulations, so that when they go into effect we do not ask for additional implementation time. We will know what they are, because we are working with the FDA on them. The first set of regulations will be done six months from the signing of the bill, which is July. Those regulations cover the written food safety plan and some of the enhanced inspections. There are other regulations that will take longer, such as traceability issues or tracing back where certain foods and ingredients came from. These are the types of regulations that will take in excess of a year to put into place. The highest concerns that need to be addressed, such as the ability to go into a plant, make inspections, and determine if there is a problem, will be in place very soon.

Our concern with this bill is the in duplication of legislation or in creating differences that might be difficult for GMA members. Does this bill mean that the FDA will inspect us this week, the state will inspect us next week, and the local health authority will inspect us the week after? How many inspections can we expect? It will be burdensome. When I informed the ten manufacturers currently doing business in Nevada of this legislation, I could hear them squint over the phone. They will comply. It will be burdensome. It will potentially be costly.

The legislation is also a concern to companies that do not currently have facilities here. I have already heard such concerns from four major companies that do not presently have facilities in Nevada. There are some that make acquisitions or are also looking for new places to locate. I cannot speculate that is what they are thinking of or if it is part of a bigger picture. We would appreciate it if you would step back and let these regulations kick in at the federal level. Let the FDA work with your local health authorities so that there is a seamless transition into the new laws and the regulations may be tested from the federal level.

Chair Mastroluca:
Are you saying that there is not one piece of this bill that you find of value?

Kevin Fisk:
I am not saying we would not find it of value.

Chair Mastroluca:
That you could work with?

Kevin Fisk:
We work with everything. We did not like what happened with the legislation in Georgia. Their state government never believed that the FMSA would pass. They decided to pass their own legislation. We worked with them. Our member companies worked with them. We have worked through the resulting regulatory process with them as well. We comply with federal, state, and local laws; that is what we do. We have concerns about how this statute might affect our members who do business in Nevada or the future plans of companies who do not yet do business in Nevada.

Assemblyman Brooks:
Georgia experienced a salmonella outbreak, did it not?

Kevin Fisk:
Absolutely.

Assemblyman Brooks:
Your members did not want to adhere to rules like this, but you worked with them and they had a salmonella outbreak?

Kevin Fisk:
When that outbreak occurred, the federal legislation was not in force. The legislation was in the works, but it can take forever to get something like the FMSA passed at the federal level. The Georgia Department of Agriculture did not even know that the Peanut Corporation of America facility was doing business in their state. Their Senate Agriculture Chair did not know the facility, which was in his district, was there. It was a company operating under the radar. If someone is going to thumb his nose at the law, as this company and its executive did, I am not sure what can be done.

Assemblywoman Pierce:
It would seem that the more eyes that are focused on a problem like this, the better. That would suggest that this is a good bill. You said something about out-of-state companies that have weighed in on this bill. What exactly are you trying to say?

Kevin Fisk:
Companies are continually developing new products and lines. They have to take into consideration future expansion. They consider where they might go. They consider many different issues such as corporate tax rates, regulations, energy resources, and water resources when looking at new places to develop. I can only suppose why they are concerned. Our member companies are very forward-thinking. They think long-term. I represent many companies that are

over 100 years old. There are a few that are even older. I have companies that acquire smaller, regional brands that might fit within their portfolio to expand into a national brand. These companies take a broad look at the entire picture. When legislation is proposed, I alert them whether they have a facility in the state or not. If they are interested, we talk. If they want me to express an industry position, I do.

Chair Mastroluca:
Could you talk a little about the amendment proposed by the GMA to the Senate (Exhibit D) regarding the written food safety plan? Please keep your remarks brief.

Kevin Fisk:
Written food safety plans are recognized as necessary by industry leaders. All our member companies have them. It is surprising that smaller companies do not. They are not at a size to think at that level, I guess. We have employees who have degrees in food safety. We have scientists who focus only on safety. A lot of smaller companies do not; they do not have written food safety plans. Given that we already have individuals and plans in place, the amendment would reduce some of the burden.

Chair Mastroluca:
In regard to Senator Wiener's concern that a plan is not the same as action, how can you reassure us?

Kevin Fisk:
Our folks inside those facilities live and breathe those written food safety plans every day. That essentially is their contract with the facility. The food safety plan lays out what is being done to make the product safe. Our members have third-party auditors come in to make sure that the written food safety plan is being followed. They do self-auditing inspections to make sure the plan is being followed. They look to make sure their plan is effective. If it is not effective, they make recommendations about course corrections. A written food safety plan can be, and often is, amended many times. It changes every time there is a new product introduced. Every year about 10,000 to 12,000 new or reformulated products are brought online. Each time, a company has to go through their food safety plan all over again, because the safety process might change.

Chair Mastroluca:
I do not see any further questions from the Committee.

Alexandra Kameda, Director of Quality, Vitamin Research Products, LLC:
Vitamin Research Products (VRP) has been in Carson City for 20 years now. We attended the hearing today to gain some clarity and insight into this bill and how it might affect us in the future. In listening to all the speakers, it sounds like the health inspectors would simply like to be able to collect a sample. They are doing similar inspections in retail and wholesale facilities. Mr. Anderson commented on radiation contamination. If a manufacturer uses radiation, it must be declared by a symbol printed on the item packaging. You have to make sure that product is allowed to be irradiated; otherwise, you are breaking the law. It seems that this bill is a bit redundant to current FDA regulations. [Ms. Kameda continued to read from prepared testimony (Exhibit E).]

With respect to the company that manufactured hydrolyzed vegetable protein in Las Vegas, if the health department had gone in and seen egregious issues and were not able to collect a sample, could they not act on behalf of the FDA as a contractor? Could they not collect a sample, complain to the FDA, and ask for an investigation? The FDA would then come out, collect samples, and test them. There is a food reporting database that requires a report within 24 hours to identify whether a collected sample was found to be negative or positive for salmonella or E. coli. The company then has 24 hours to respond to that report. The FDA acts on these instances aggressively. If the company does not respond appropriately, the FDA comes out within five days to perform an inspection. They will stay as long as they need to.

[Ms. Kameda continued to read from her prepared testimony.]

Chair Mastroluca:
Are there questions?

Assemblyman Brooks:
I am concerned that there is so much testimony against a bill like this. What is the issue? If you are already abiding by all the FDA guidelines and you are prepared for the additional regulations and inspections to come, what is the difference if we implement this to find the manufacturers that are falling through the cracks? This should not be that big of a deal to you.

Alexandra Kameda:
It is more that it is redundant and vague; it is not clear. If an auditor comes in and feels the need to collect a sample and then asks us to test the sample and pay for the cost of the test, he needs to be very clear about what he is looking for. This bill does not make it clear, unless inspectors will be using the federal regulations. However, if they are using federal regulations, then this bill is not

needed. If this is all about collecting a sample, I would rather see something that says a health inspector has the ability to collect a sample if he sees something of concern. I have no problem with that.

Assemblyman Brooks:
What is the difference between legislation that allows the inspector to collect a sample and this legislation?

Alexandra Kameda:
They are asking us to pay for the test and it is not clear what the concern is.

Assemblyman Brooks:
If they were to come in and collect a sample, would you not have to do that?

Alexandra Kameda:
No, the FDA collects their own samples and performs their own testing.

Chair Mastroluca:
Thank you for your testimony. We will continue to hear from those opposed to the bill.

Rob Hooper, Executive Director, Northern Nevada Development Authority:
We represent the Sierra region in bringing companies to this area and helping them to remain here and become successful. In another lifetime, I ran processing plants as a chief operating officer. I have quite a bit of experience in this industry, so this bill really got my attention. I sit here with mixed emotions. I applaud the Committee and Senator Wiener in trying to protect the health of Nevadans. I think that is a really good thing. I was part of Senator Wiener's work group. However, when I read the bill, it is like crossing a ford in a river and not knowing how deep the water is. You can only guess at which step you will fall into the river. It is unclear to me how this bill would have prevented the Basic Food Flavors problem. When do you look to test what, and how, and why, and when, and how often? You would have to have someone test every batch. Are you testing finished goods? Are you testing incoming raw materials? Are you testing the machinery? What are you looking at? Then, if you are looking at it, how are you looking at it? What are the exact standards by which you hold these people responsible? It is the uncertainty and lack of clarity of this bill that is the real problem, not the intent. I think the intent is right on.

Right now we are working on a new, 180-acre industrial park in Carson City on the east side of town called the Plateau Industrial Park, which is aimed at attracting food processors. We have 20 companies interested; 10 look

promising. This project should bring in over 1 million square feet of new construction and add approximately 2,000 new jobs to the area. When I told them about this bill, they took a wait-and-see attitude. They wanted to see what happened with the bill before they went any further in negotiations. They were concerned with the uncertainty of knowing what regulations might be coming. This legislation adds another layer that puts Nevada in a less favorable light when competing with other states to attract these businesses.

Over the past 30 years, Anne Marie Dixon, owner and president of Cleanroom Management Associates, Inc. located in Carson City, has been actively engaged in the field of contamination control. She was the past president of the Institute of Environmental Sciences. Last year she was named scientist of the year, which was a real honor. Her company has trained over 750,000 cleanroom technicians and managers, as well as FDA inspectors. She could not be here today, but she asked me to read this statement. [Mr. Hooper continued to read from prepared testimony, which included the statement from Ms. Dixon (Exhibit F).] I think we are going down a slippery slope that is going to kill jobs and we cannot afford that right now. Thank you.

Chair Mastroluca:
Are there any questions?

Assemblywoman Pierce:
Did you say there was not the expertise?

Rob Hooper:
No, I do not think there is the expertise to go into a factory and know when, how, why, where, and what to look for. It is not like measuring radiation. How do you walk in and visually look around a plant and know that something is wrong?

Assemblywoman Pierce:
Oh, I see. I believe the testimony was that inspectors get trained by the FDA. The bigger point is the suggestion has been made that there is a race to the bottom. Companies move to the state that has the least regulations. Is that what you want to say about the industry?

Rob Hooper:
Absolutely not. The industry is already highly regulated. There is already so much code that has been written. In addition, the suppliers throughout the entire system regulate each other. We simply do not want to add another layer to discourage businesses from coming here. If I have a factory and I can go to Utah and only deal with federal regulations, or I can come here and deal with

federal as well as state regulations—another layer of regulations that I am not even sure how to interpret—I would choose Utah. Why would I come to Nevada where it is uncertain? My major premise is that the legislation is based on good intent, but it is not well thought out at this level. It is just not.

Assemblywoman Pierce:
I think there may be some way to work on this bill. I think you said earlier that we want to protect Nevadans. I think what we do not want is to be known as the place where there are no regulations, so that food that is processed here is not safe and people will not have confidence. That gives me some concern. I do not want Nevada to win the race to the bottom.

Rob Hooper:
That is certainly not what is going on and that is not how it is viewed within the industry. That is not what being against this bill means. The bill unnecessarily adds another layer of regulations that are not specific. They are not tied to any national standard. It says we will follow them, but which ones? There are over 40,000 standards out there. Which ones are we going to rely on, when, and how? If we are going to put this in place, we need to be more specific. Then again, because the FDA already has this in place, why do we need to do it at all? I think it is better to take on working with the new food modernization act and go in that direction, as opposed to adding another layer. If we really do believe something is wrong in a facility, what is wrong with taking a sample? They are happy to give you a sample that you can test.

Assemblywoman Pierce:
I did want to address that. This bill does not have a fiscal note. Nevada has the biggest deficit in the country. We have the smallest government in the country. Are you in favor of a corporate income tax?

Rob Hooper:
I do not understand what that has to do with this bill.

Assemblywoman Pierce:
If the state is responsible for testing, it will cost the state money. We already have very low taxes. That is part of the reason why we do things the way we do.

Rob Hooper:
We do have a state lab and testing will very seldom, if ever, be required. It cannot be that big of an expense to run a test for microbiological contaminants. You can actually get a little wand with a swab that you can put into a carrier. This allows you to find out if a machine has been adulterated.

It costs about $3 per test. It is simply a matter of knowing what you are looking for and how to test for it. If it is done the way it was described earlier, it is not a big expense item.

Assemblyman Brooks:
It sounds to me like your problem with the bill is that it shadows the FDA requirements. You like the FDA requirements because they will allow the federal government to pay for the sample, as opposed to the company. Is that the only issue? I am trying to get down to the crux of the problem. We are talking about the food we eat. If the only issue is who will pay for the sample to be tested, which you have just admitted is not that expensive, why would you not work with the bill's sponsor to bring more clarity to the provisions and help them fall in line with the FDA? To just come up and randomly object to the bill gives me some heartburn.

Rob Hooper:
Let me see if I can give you an antidote for your heartburn. I was on the work group and would like to continue to work with them. I think there is a way to get there, but I do not think we are there yet. I am worried about the uncertainty. I am not randomly testifying against the bill because of the cost of testing. I am testifying because we already have a very complex system. It is huge. For instance, the current good manufacturing practices (cGMP) in the vitamin industry took three years to implement. Everything is tested from left to right. This bill adds another, more uncertain layer because of the way it is currently written. I am in favor of protection, but I do not think we have gotten there yet. That is my problem with the bill. Hopefully, that answers your questions, but I can tell you still have heartburn.

Assemblywoman Flores:
I have to say that the tone of the testimony has sounded like "woe is me." Calling the bill a job-killer is a little bit of an exaggeration. I would be interested to see what happened in Georgia and other states that have safety regulations such as these. I would like to point out that section 1, subsection 2, states there must be reasonable grounds to suspect a substantial health hazard and that the statute would not apply if a facility is already being investigated by the FDA for the same reason. It seems like the state cannot go just in and say, "Hey, give me a sample of everything you have in the building." According to the language of the bill, there has to be reasonable grounds and if there is already an issue that is being addressed by the federal government, then we would not step in. I wanted that to be on the record. I think I have to agree with my colleagues regarding the tone of the testimony.

Chair Mastroluca:
Ms. Wherry would you like to clear a few things up?

Mary Wherry:
I cannot act for Senator Wiener, but I know that she had the same response during the Senate Committee hearing. The Senator had issues and she established a work group with the approval of the Senate Committee and we worked together. In fact, we used the language that was provided to us by Mr. Bacon. We also incorporated Mr. Hooper's comments. It is my understanding that Senator Wiener made it very clear that consensus was established during the work group. Every head in the room nodded to affirm they were in agreement with the amendment that was produced as a result of that work group. I felt it was important to go on record, because I know Senator Wiener went on record with that same statement to the Senate.

Chair Mastroluca:
Thank you, Ms. Wherry. I have to say that I am quite disappointed to see this amount of opposition to a bill that has already been worked out on the Senate side. Now, I will be stuck doing the exact the same thing, and you will all be put into a position to rehash this again. I hate to do that, but I do not see any other choice. I understand your position, Mr. Hooper, and what you are expected to do, just like Mr. Bacon and Mr. Fisk. However, I do not understand why you were not willing to come to the table and say, "This is how we can work this out." All you did was spend the last 45 minutes of our time telling us how bad the bill is. It would have been a lot more productive if you had come forward with a way to fix it. I must say I am disappointed and I will assign a work group on this issue within the next 24 hours.

Are there any other items from the Committee on this bill? Is there anyone else who would like to testify on S.B. 210 (R1)? Seeing none, I will close the hearing on S.B. 210 (R1). I will now open the hearing on Senate Bill 301. I will call Senator Settelmeyer to the table to introduce his bill.

Senate Bill 301: Makes various changes to provisions governing dairy products and dairy substitutes. (BDR 51-702)

Senator James A. Settelmeyer, Capital Senatorial District:
This bill came about from discussions with the head of the State Dairy Commission. Assemblywoman Marilyn Kirkpatrick said a while back that it is time to go through a lot of the chapters of *Nevada Revised Statutes* (NRS) and bring them into the current decade. With that, we are trying to address some of the outdated issues within the law. In the interest of time, I will let Mr. Hettrick run through the bill.

Lynn Hettrick, Executive Director, State Dairy Commission, Department of Business and Industry:
I will provide a section-by-section summary (Exhibit G), beginning with section 2 of the bill. This section was added to address illegal raw milk sales. The state allows raw milk to be sold, but a certain set of regulations and laws must be followed. However, we are seeing people import raw milk labeled "not for human consumption" from other states and then sell it to humans to avoid these regulations. We are making it clear that this practice violates federal law and is not acceptable. We are asking that milk that is labeled "not for human consumption" be denatured. That means a color or contaminant would be added to it to make it clear that it is not for human consumption. Section 2, subsection 2 allows any misbranded or adulterated milk product to be impounded and disposed of. Section 2, subsection 3, paragraph (c), defines "sold or dispensed" to include barter or shares of cows. The other way people are getting around the raw milk rules is to sell shares of cows. Clearly the person does not own the cow, but when the cow is milked, raw milk is being dispensed. [Mr. Hettrick continued to read from the summary document regarding duplicate or outdated dairy laws.] I would be happy to answer any questions.

Chair Mastroluca:
Are there any questions?

Assemblyman Anderson:
My question is about section 31 of the bill, regarding the surety bond issue. I understand the direct-to-producer stipulation. I do not understand why it was changed from $1,000 to "an amount specified by the Commission." I realize that many of these types of costs are probably outdated. My research revealed it was last changed in 1955. I am assuming that, like the rest of the statute, it is not up to date. However, why would we take it to the Commission rather than setting a price for the bond?

Lynn Hettrick:
We anticipate that if sales like this occur, they would probably be a portion of someone's total milk supply rather than all of it. The bond would need to be set according to the amount of milk being sold. It may not be all of the milk that a producer has. Much of the pricing is now set by the California market. Our producers sell their milk to a co-op that in turn sells almost all of that milk in California. There is one processor in northern Nevada, Model Dairy, LLC, that still processes Nevada milk and sells it in Nevada. The reason for having the bond set by the Commission is simply to make it flexible and not just set a flat amount that might be a very expensive bond to make sure it provided adequate

coverage. We would not inherently know what percentage of the milk they might be marketing directly to a processor.

Chair Mastroluca:
Are there further questions? I do not see any. Is there anyone else you would like to testify on S.B. 301? [There were none.] Is there anyone in support, opposition, or neutral to S.B. 301? [There was no response.] We will close the hearing on S.B. 301. Due to the lateness in the day, we will not continue with the work session. Is there anything else to come before the Committee? Is anyone here for public comment? [There was no response.] This meeting is adjourned [at 3:23 p.m.].

RESPECTFULLY SUBMITTED:

_____
Mitzi Nelson
Committee Secretary

APPROVED BY:

_____
Assemblywoman April Mastroluca, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: May 2, 2011 **Time of Meeting: 1:47 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 210 (R1)	C	Ray Bacon	Prepared Testimony
S.B. 210 (R1)	D	Kevin Fisk	Proposed Amendment
S.B. 210 (R1)	E	Alexandra Kameda	Prepared Testimony
S.B. 210 (R1)	F	Rob Hooper	Prepared Testimony and Prepared Testimony from Anne Marie Dixon
S.B. 301	G	Lynn Hettrick	Prepared Testimony