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Agriculture Committee
January 17, 2017

[LB134]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 17, 2017, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB134. Senators present: Lydia Brasch, Chairperson; Carol Blood, Vice Chairperson; Joni Albrecht; Steve Halloran; Burke Harr; Bob Krist; and John Lowe. Senators absent: Ernie Chambers.

SENATOR BRASCH: Good afternoon. I'd like to welcome you to the Agriculture Committee and I am Chairman Lydia Brasch. Before we begin on the committee's agenda today, please let me introduce members of the committee who are here with us thus far and who will be assisting the committee today. First, I'd like to thank my Vice Chair Carol Blood from District 3. And then I want to also welcome others around the table and I'll ask them to introduce themselves and their district. [LB134]

SENATOR LOWE: John Lowe, District 37. [LB134]

SENATOR ALBRECHT: Joni Albrecht, District 17. [LB134]

SENATOR HALLORAN: Steve Halloran, District 33. [LB134]

SENATOR KRIST: Bob Krist, District 10. [LB134]

SENATOR BRASCH: And we will be having Senator Burke Harr joining us and Senator Ernie Chambers. I also want to introduce, to my right is Rick Leonard, the research analyst for the committee. And to my left is our committee clerk, Courtney McClellan. Our page today is Kaylee Hartman. She's from Syracuse and a student at UNL. Today we will be introducing LB134 that will change the provisions of the Nebraska Pure Food Act as prescribed and repeal the Nebraska Graded Egg Act and terminate the Graded Egg Fund. I have asked Rick Leonard to introduce the bill on my behalf. It has been asked of us by the Department of Agriculture to introduce this bill. Because I'm the presiding officer, this is new for me and also new for our Vice Chair, we will proceed with his introduction and testimony will follow. For the audience, I do ask that you please be respectful to everyone in the room while they're testifying. Please keep your conversations to a minimum if necessary. Please take conversations to the hallway. Please refrain from using any expressions of support or objection to any of the testimony. And no one may address the committee except as a witness while seated at the witness table. Please turn off your cell phones and any electronic devices or put your mobile devices on vibrate. Any phone conversations should be taken into the hallway. If you don't plan to testify but would like to be on record with your position on a bill, you can get a sheet of yellow paper that's located out in the

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other room. And please take one of those and they will be entered into record. Witnesses, as you come forward following Mr. Leonard, please say and spell your name. Are you ready to begin? Thank you again. [LB134]

RICK LEONARD: Thank you, Chairman Brasch and members of the committee. As Senator Brasch mentioned, my name is Rick Leonard; that's R-i-c-k L-e-o-n-a-r-d, and I'm research analyst for the Agriculture Committee. It's been past practice of the Chairman when the bill is approached...introduced on behalf...as an agency request, that they've asked that I introduce the bill. And so I have honored the Chairman's request for that today. LB134 is brought at the request of the Department of Agriculture. The bill makes a series of revisions to the Nebraska Pure Food Act. I've completed a fairly thorough briefing, technical explanation of the bill which is in the briefing items in front of you. But let me quickly walk through some of the major substantive portions of the bill. Through LB134, the Department of Agriculture is asking for the repeal of the Graded Egg Act but to expand authorities under the Pure Food Act to promulgate and enforce regulations as necessary, applicable to persons who sell eggs for human consumption--Is the mike on?--for human consumption. I anticipate the department will go into more detail, but the current activity of the department under the Graded Egg Act is minimal with only two entities currently licensed. Due to the changing nature of the egg industry, larger egg producers and processors in the state are licensed and inspected under the federal Egg Products Inspection Act. Most of the remaining producers are of the cottage-scale variety and most of them are currently exempt from licensure under the Graded Egg Act as it is. We've asked the department to go into further detail regarding provisions of the food code that govern the quality and safety of eggs acquired and utilized by food establishments in the state. Secondly, LB134 inserts a definition of food delivery service. The definition would distinguish the food delivery services as a category of food establishments primarily for the purpose of clarifying the license and inspection fees applicable to such businesses. The bill also clarifies the manner in which two other requirements of the food establishment under the Pure Food Act apply to food delivery services. The third substantive portion of the bill provides explicit authorities available to the department with respect to entry for purposes of inspection. These include express authorization to enter for purposes of inspection under standard of reasonable care...operating under standards of reasonable care, regulated food operations, and to make explicit...and make explicit authority to inspect associated property records; number two, to hold food for inspection and take samples of food suspected of violation of the Pure Food Act, express authority to inspect food and...additionally express authorities to inspect food in transport through the state and express authority to seek an inspection warrant in the event the department needs access to a property and a person is not cooperative. I'll be happy to answer any questions you might have. That will conclude my statement. [LB134]

SENATOR BRASCH: Thank you, Mr. Leonard. We have Burke Harr who has joined us. Are there any questions? Yes, Senator. [LB134]

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SENATOR HARR: Thank you, Senator Brasch. I still...I read this bill and I'm still...I listened to what you said and I still can't figure out why we're doing this. [LB134]

RICK LEONARD: Which portion? [LB134]

SENATOR HARR: Why...what is the purpose of the repeal of the Nebraska Graded Egg Act? [LB134]

RICK LEONARD: And again, I'll ask the department to go into more detail about that. My understanding is the Graded Egg Act right now is we currently have only two licensees under the Graded Egg Act. The department...the department's activity is not justified by the inspection fee revenues we have, as well as most of the entities that...most of the cottage-scale entities have not come under either licensure, although they may be subject to certain provisions of the Graded Egg Act including portions relating to identity and... [LB134]

SENATOR HARR: And I will...since you're going to defer to them, I will just give them a precursor of what I'm looking for. And that is food safety is my number one concern. And I don't care if it's one person is using this, two people, 100 people. If this is providing adequate safety in our food supply right now, I'm not sure I want to go...you're going to have to give me a compelling reason as to why I should change it. [LB134]

RICK LEONARD: Sure. And I understand that. And you'll notice that I would invite you to read my staff comments that I've offered the committee some possible avenues of inquiry on this topic. [LB134]

SENATOR HARR: Okay. [LB134]

SENATOR BRASCH: Are there any other questions from the committee? Seeing there are none, thank you, Mr. Leonard. And I will ask the first proponent please come forward. And we are not using the lights today. Please say and spell... [LB134]

GREG IBACH: (Laugh) Okay. I think I'll be okay either way. [LB134]

SENATOR BRASCH: Welcome, and please say and spell your name. [LB134]

GREG IBACH: (Exhibit 1) Okay. Hello. My name is Greg Ibach, G-r-e-g I-b-a-c-h, and I'm the director for the Nebraska Department of Agriculture. And first of all, I'd like to congratulate you,

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Senator Brasch and Senator Blood, both for being elected to lead this, the Agriculture Committee. Looking forward to getting to know the new faces on the committee better, welcoming back (laugh) the few that are still here. So thank you. I would like to thank Senator Brasch for introducing this bill on behalf of the Department of Agriculture. And I have some additional written testimony that will be distributed that we asked that be placed on record for this bill. And hopefully that will help with some of your questions as well, Senator Harr. With me today is Melva Ball, the program manager for the food program and she and I will answer any questions you might have at the conclusion of my testimony. LB134 repeals the Nebraska Graded Egg Act and amends the Nebraska Pure Food Act. The Nebraska Graded Egg Act, which was enacted in 1977, is outdated. Currently only two operations are licensed under the Nebraska Graded Egg Act. There are numerous specific provisions related to packing, labeling for size and quality, having invoices, grading, advertising, and sanitary containers which if not complied with are unlawful violations under this act. A list of these provisions may be found in the written testimony I provided to you. Such regulation of eggs is unnecessary in the state, given the nature of the industry now. It is also inefficient to have an entire act for so few regulated entities. It makes sense to regulate eggs under the Nebraska Pure Food Act because eggs are food and there are already provisions which relate to eggs in the food code. The bill also provides...improves the Nebraska Pure Food Act by providing for a lower license fee for persons who only deliver food, adding express language regarding the department's inspection authority, and clarifying the exemption from licensing under the Nebraska Food Act for persons licensed under the Nebraska Milk Act. This legislation is not controversial and has relatively minimal impact including no fiscal impact. The department has sought the input of the egg industry of the state as represented by the Nebraska Poultry Industry Board of Directors and the Food Industry Review Board. Both groups have reviewed these changes and were in agreement with the changes. The written material I have provided you includes lists of the members of both these boards. I would ask your support in enacting LB134 this year and would be happy to answer your questions. [LB134]

SENATOR BRASCH: Thank you, Director Ibach. Are there questions from the committee? Yes, Senator Harr. [LB134]

SENATOR HARR: Thank you, Senator Brasch. So you stated there are two operators that currently fall under the Graded Egg Act. Who are they and where are they located? [LB134]

GREG IBACH: There is one that's in Pender, Nebraska, and one in Columbus. And they both receive eggs either from their own flocks where they retail them in their small business or receive eggs from smaller local flocks. [LB134]

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SENATOR HARR: So how large are those operations? I mean tell...I don't even know how to measure it. I mean what...how do you fall underneath this, what other farms fall underneath it if you only have two? [LB134]

GREG IBACH: I think...maybe...I don't know the specific...I don't know how many dozen they sell each week or day or that. I would guess it's not very large quantity. Maybe after we're finished here I'll see if Melva would know the answer to that. I think your question about food safety is probably the one that I can answer better... [LB134]

SENATOR HARR: Okay. [LB134]

GREG IBACH: ...in that we believe that we will have more authority and have a greater chance of actually maintaining or enhancing food safety by putting the Graded...eliminating the Graded Egg Act and then just enforcing it under the Pure Food Act. [LB134]

SENATOR HARR: Okay, you state you'll be better able to. How will you be better able to? [LB134]

GREG IBACH: Because the authorities within the Graded Egg Act aren't as extensive as which would be under the Pure Food Act. And then by also... [LB134]

SENATOR HARR: So give me an example of one of the differences. [LB134]

GREG IBACH: Melva would probably be better at giving you specific examples, but I'll summarize and then if you want additional. I think that we will...and when you're enhancing these as well, we're going to have greater ability to go in just like we had problems under the Dog and Cat Act of not being...people hiding inside and not giving us access. When we strengthened those powers to go in and do inspections and made that express authority, we had greater opportunity there. A lot of that is already built into the Pure Food Act, but we will strengthen that a little bit here on these type of operations so that...and then give us clear authority to be able to sample and take samples for testing if we need to. [LB134]

SENATOR HARR: And excuse my ignorance because I don't know, those operations that fall under the Nebraska Graded Egg Act, there are two. What are the qualifications to fall underneath that? And all the other operators, I assume, already come underneath the Food Act, is that right? Or where do they fall under now, the Pure Food Act? [LB134]

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GREG IBACH: So most of our industry in Nebraska doesn't sell shell eggs, we're mostly an egg-breaking state. So the... [LB134]

SENATOR HARR: Can you explain to me what the difference is because I don't know. [LB134]

GREG IBACH: So shell eggs is what you go to the grocery store and buy. You crack the shell and you open them up and fry your egg or bake a cake or whatever. [LB134]

SENATOR HARR: And the majority of...that's the majority of it? [LB134]

GREG IBACH: No, that's not the majority of our larger industry. In Nebraska our larger industry is they take the eggs to a factory, they break them and make them into some kind of egg product. And it's either used domestically, but a lot of our products are shipped internationally as well. [LB134]

SENATOR HARR: Okay, so... [LB134]

GREG IBACH: So egg whites, egg yolks, pasteurized, it's more than I can even imagine you can do with an egg. [LB134]

SENATOR HARR: So the eggs I buy in a grocery store...again, I'm always intrigued by this committee because there's so much I just don't know. The eggs I buy in the grocery store today, are those fall underneath the Nebraska Graded Egg Act or those fall underneath a different act as far as for protection to make sure that the eggs I eat are safe? [LB134]

GREG IBACH: Okay, now here's you're getting technical enough I would ask if it would be okay to bring Melva forward to answer those questions. I think... [LB134]

SENATOR HARR: And I can wait too. [LB134]

GREG IBACH: They probably come from another state as well. [LB134]

SENATOR HARR: Oh. See, I'm learning every day. Okay, I'll wait. And that's all I have. [LB134]

GREG IBACH: Would that be okay to bring Melva to answer those two questions? [LB134]

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SENATOR BRASCH: Are there any other questions from the committee? [LB134]

SENATOR LOWE: Would changing this, since there are only two entities, would it pose a problem with those two entities? [LB134]

GREG IBACH: No, we have reached out to them and they both...right now they pay a license fee to be under the Graded Egg Act. And they'll be exempt under the Pure Food Act. And so that it's actually a lessening of government intervention. [LB134]

SENATOR BRASCH: Thank you, Senator Lowe. And the committee should address me before speaking to the others. [LB134]

SENATOR LOWE: Oh, I'm sorry. [LB134]

SENATOR BRASCH: You're just fine. But this is day number one of many more to come. Yes, Senator, thank you. [LB134]

SENATOR HALLORAN: Just for a little levity, which did come first, the chicken or the egg? (Laughter) [LB134]

GREG IBACH: I think the chicken came first. [LB134]

SENATOR BRASCH: Are there any other questions from the committee? [LB134]

GREG IBACH: And I have theological reasons for believing that. (Laugh) [LB134]

SENATOR BRASCH: Very good. Thank you, Senator Halloran. And any other questions? I see there are none. Would the next proponent please come forward? [LB134]

GREG IBACH: Melva, do you want to just join me and I'll stay up here. [LB134]

MELVA BALL: My name is Melva Ball, M-e-l-v-a B-a-l-l. I'm the program manager for dairies and foods and the food safety and consumer protection focus area in the Department of Agriculture. Would it be okay if I address the first question about the grocery stores? [LB134]

SENATOR BRASCH: Yes. [LB134]

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MELVA BALL: In the retail, all the grocery stores are under the Nebraska Pure Food Act, so all of those products are inspected by us routinely with the Nebraska Pure Food Act. And when they come in from other states, other states also have shell egg acts or egg acts. There's the National Egg regulatory authorities, those officials that they follow and they have suggested regulations that they are all very similar. Our graded shell act applied a lot to the large shell egg producers as Mr. Ibach was explaining. And our industry has changed where we don't have the large shell egg producers. We have the breakers where they all go. And once it turns into a breaker, it goes under the USDA, their authority rather than the FDA authority. So USDA authority is in those plants that are in Nebraska that are the breakers, so they're also being regulated. And because the small producers that we have, excuse the term, but backyard flocks that way, way under 3,000 hens, those small producers, they really were excluded from the Graded Shell Act as they will be if we combine them into the Pure Food Act. We don't want to regulate the small farmer who has just several chickens that are selling the farm egg at a farmer market. We always talk to them. We make sure they're handling their eggs correctly. We make sure that they're keeping their eggs cold. We make sure that they have a tracking number. That's that N number that they would get from our department. So if someone did call with an issue, we would be able to track back. We make sure that their cartons are all labeled. So I feel that we would be regulating them sufficiently without the Graded Shell Egg Act, which is really designed for the large shell egg producers. [LB134]

SENATOR BRASCH: Very good. Thank you. Yes, Senator Harr. [LB134]

SENATOR HARR: Thank you, Chair Brasch. So where do the eggs under the Nebraska Graded Egg Act go? [LB134]

MELVA BALL: The producers that are...those two license, they're individual feed stores. The one in Pender has one refrigerator and they have their own chickens and they bring in their own eggs. And because they were retailing those eggs, they needed to fall somewhere. And so they fell under the Graded Shell Egg Act because at one point I think their operation was a little bit larger. And now they've reduced down to where they're just selling their own eggs. The other one is a feed store in Columbus that when they get low on eggs they have three or four producers that they'll call and they'll say I don't have any eggs and that farmer will bring in their eggs and they sell those eggs retail. [LB134]

SENATOR HARR: So what are the current requirements to fall under the Nebraska Graded Egg Act? [LB134]

MELVA BALL: The main...if...I think you were handed out a testimony, written testimony. And in there it talks about issues that were uncovered in the Graded Egg Act. And it's the large

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producers and it went through all the issues of outcome, delivering them and placing them and shipping them and making sure that they were all labeled correctly and making sure that they're graded and sized. [LB134]

SENATOR HARR: So I guess my...that doesn't really answer my question. [LB134]

MELVA BALL: I'm sorry. [LB134]

SENATOR HARR: What is it these two operations fall under no one else does? Why do...what are the requirements to fall underneath this current act that these two qualify and no one else does? [LB134]

MELVA BALL: I think probably they used to do more in the sense they used to have more eggs and they used to do more grading of eggs, and then their operation went smaller. And when they went smaller, we never changed them over because it's a lesser fee to be in the Graded Shell Egg Act. If we were to charge on the retail store cost, there's a permit fee of currently it would be \$730 and some odd cents and a yearly inspection fee of \$102. So they currently would be paying to get started around \$175 in a year, nearly \$102. Under the Graded Shell Egg Act, they're paying I think \$750 a year. So we never switched those two over. And so at this point when we make a change, they will be totally exempt from any fees. They will be exempt by putting in there that they're selling only their own flocks and they're having less than five I think is the term that we use. They would be totally exempt so they wouldn't have to pay anything when we make the switch over to the Pure Food Act. [LB134]

GREG IBACH: So I think maybe the key is they were retailing whereas a farmers market that's a different category. So they're small enough that they're under the 3,000 layers so they don't really fall under the other provisions. And so rather than just having them unregulated, we fit them under here so they had some type of regulation since they were retailing versus farmers market. [LB134]

SENATOR HARR: Okay. And what brought about this proposed change in legislation? Was it at their request? Was it you reviewing your rules and regs and saying, holy cow, this is an area we can improve? [LB134]

GREG IBACH: So each year we try to look at the statutes that we're responsible for and try to look for ways to improve the statutes and eliminate programs that are... [LB134]

SENATOR HARR: Antiquated. [LB134]

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GREG IBACH: ...the industry has moved away from and this would be an example of one of those that we identified as probably not something we needed to have in statute. [LB134]

SENATOR HARR: Okay. So you do that in statutes. Do you also look at all your own rules and regs and review those annually, semiannually? [LB134]

GREG IBACH: So actually in the last year we've taken a look at every one of our rules and regs and taken...and we have amended some of them. And we traditionally had done that kind of on a rotating basis, but this year we went ahead and asked all the program managers to take a look at every one of them. [LB134]

SENATOR HARR: Okay, and I realize we're a little off track. But I have another piece of legislation that asks that each department review their rules and regs every five years. You were saying on a rolling basis. Was it more or less than five years before, previously? [LB134]

GREG IBACH: It probably would have been...five years would have probably counted us. [LB134]

SENATOR HARR: Okay. Great. Thank you very much. I have no further questions. [LB134]

SENATOR BRASCH: Thank you, Senator Harr. Any other questions from the committee? I see there are none. Do you have anyone else that you'd like to come forward from the department? [LB134]

GREG IBACH: No thank you. Thank you very much. [LB134]

SENATOR BRASCH: Are there any other proponents? Thank you. Welcome. [LB134]

KATHY SIEFKEN: Good afternoon, Chairman Brasch and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today representing the Nebraska Grocery Industry Association as both their lobbyist and their executive director. Without being redundant, and I think that the department was pretty concise on the things that they said, but what I'd like to add is the fact that I have been serving on the Food Advisory Board for over 20 years. And we truly appreciate what the Department of Ag does when it comes to the Nebraska Pure Food Act. When FDA comes out with any changes or if there is something that we see...that the department sees within the current statutes, they bring that to the advisory board. And I don't know if it was in the handout that Melva gave you, but there is a list of the people that serve on that advisory board. And the thing about this advisory board is that if we are talking about an issue and the

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people that that issue impacts, if they're not in the room we go out and find them and we talk to them and make sure that before anything turns into legislation that it is something that does not harm the industry. At the same time, the most important aspect of the Pure Food Act is food safety. That is one of the most important things to the grocery industry when it comes to these statutes. So the message I'd like to leave you with is the fact that we do support LB134. We did review the changes. The only thing that really impacts us, the Graded Egg Act doesn't really impact our stores. The changes that were made don't impact grocery. But one of the changes we made last year when the Pure Food Act was changed was we broke out people that are delivering food. And it was always sort of inferred that they came under the act but it was more of a clarification. Once that was clarified, there was no indication as to what their license fee would be other than one of the higher fees up in the \$70 range. What this bill does is it makes that more reasonable because our intent was never to put anyone out of business because the fees would be too high. We always wanted them to be reasonable and that was simply an oversight as far as I was concerned. So that's the reason why we're here supporting this bill today. It just corrects an oversight that we missed last year. [LB134]

SENATOR BRASCH: Very good. Any questions from the committee? Seeing there are none, thank you so much. [LB134]

KATHY SIEFKEN: Thank you, Senator. [LB134]

SENATOR BRASCH: Next proponent. Welcome. [LB134]

JIM PARTINGTON: (Exhibit 2) Senator Brasch, members of the committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I'm the executive director of the Nebraska Restaurant Association and I appreciate the opportunity to represent that association and testify regarding this bill. The Nebraska Restaurant Association supports regulations that establish effective and enforceable standards for food safety that protect consumers and inspire confidence in the food chain from producer to processor to wholesale purveyor. The quality of consumer products offered by our members depends on the integrity of this system. We also support continual review of these regulations to ensure that they are in compliance with the latest scientific research and eliminate redundancy and outdated requirements without compromising food safety. LB134 is the result of such a review and the resulting transfer of authority to regulate egg handling operations and compliance with the Nebraska Pure Food Act under the supervision of the Department of Agriculture will result in more efficient and effective administration of this industry. Reasonable exceptions are defined to ensure that small operators are not subjected to excessive permit and fee requirements. I thank you for the opportunity to testify in support of LB134. I'll be happy to answer any questions you have regarding my testimony. Thank you. [LB134]

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SENATOR BRASCH: Thank you, Mr. Partington. Are there any questions from the committee? Seeing there are none, are there any other proponents today? Welcome. [LB134]

JOHN HANSEN: Good afternoon, Chairwoman Brasch and members of the committee. For the record my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union and appear before you today as my organization's lobbyist. We are in support of this effort and we have a lot of producers that are producing eggs but they're certainly under 3,000-head level. But it's also kind of indicative as you think about this. When I was growing up, we had 500 layers and a lot of folks had 500-2,000 layers. All of those kinds of flocks are pretty much gone because the market is gone. And so what you have left is either the really big folks which we don't have any in Nebraska in terms of shell eggs. That industry is pretty much gone. Well, it is gone and so you see all of the smaller ones left. And so from our standpoint, we wanted to make sure that the public food safety interests are appreciated and respected and taken care of, but we want to also make sure that while we're getting was really an unneeded any longer...needed piece of regulation on the books off the books that we're not replacing it with something that is far worse. So we think that this does that. But to...I suspect that there's an awful lot of smaller producers that are, in fact, retailing their own eggs, that there's a lot more than you would suspect and there's a lot of growth for that kind of thing, for free-range eggs. And so there's...as you kind of think about where the market has gone, we might want to think about in this committee those pieces of legislation that we think more appropriately deals with cottage foods and the ability of small folks to be able to market smaller products in a more value-added and profitable kind of way. With that, I would end my comments and wish this committee well and look forward to working with you in the future. [LB134]

SENATOR BRASCH: Thank you, Mr. Hansen. Are there any questions from the committee? Seeing there are none... [LB134]

JOHN HANSEN: I'm getting off cheap today. [LB134]

SENATOR BRASCH: Just today. [LB134]

JOHN HANSEN: Thank you. [LB134]

SENATOR BRASCH: Thank you. Any other proponents? Are there any opponents? Anyone testifying in the neutral? Seeing there are none, this will end the hearing on LB134. And I would ask the committee to stay for a short time. We'll have a brief Exec Session. And thank you for attending today. [LB134]