

2015 HOUSE HUMAN SERVICES

HCR 3037

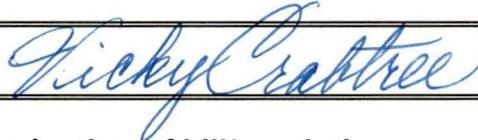
2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HCR 3037
2/17/2015
Job #23984

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Have the Legislative Management study the current laws and rules relating to the sale of homemade food and homegrown produce.

Minutes:

Testimony 1-4

Chairman Weisz opened the hearing on HCR 3037.

Rep. Josh Boschee: From District 44 in north Fargo. (See Testimony #1)

Rep. Fehr: Why did you choose a study rather than a bill?

Rep. Boschee: The study is because we are not experts in a lot of areas and this is one of the areas I wasn't able to spend a lot of time on. I figured a study hopefully with the interim Ag Committee will allow some time for some different ideas to come forward from both the public health side and the local food producers so there can be some common ground in the next session.

4:00

Sue Balcom: Executive Director of FARRMS in Medina testified in support of the bill. (See Testimony #2)

Chairman Weisz: I assume from your testimony you are comfortable with the Health Dept. rules now?

Balcom: If you take the guidance sheet that Kenan that has created, nationally we are up there with what we can sell. It is the misinformation from farmers market to the next that causes a great deal of confusion.

Chairman Weisz: The example from Rep. Boschee that you can't sell eggs in Stutsman County, but you can sell them in Burleigh County, can you explain why the eggs couldn't be sold?

Balcom: That is our question. Why would one health unit put more strict rules on this guidance document than what Kenan and his department are comfortable with?

Chairman Weisz: Was there an explanation why?

Balcom: Sometimes they say that is just the way it is. That is why we need a uniform guidance throughout the state.

Rep. Rich Becker: Are there a set of different hoops you have to go through compared to the Pride of ND people?

Balcom: We are below the manufacturing cutoff. If you were going to sell retail to a store as a Pride of Dakota vendor, you would have to go into a processing phase and then you would be subject to those set of rules and guidelines as opposed to the non-potentially hazardous items that have a high Ph where bacteria and germs won't grow in that situation. Or home baked goods that do not have cream. If you take the home out of homemade or home grown you don't have the same product. These would be things that are relatively safe and we do everything we can as an organization to convey to our producers, home bakers and home canners how critical it is that nobody get sick from our products. We are all about safety first.

12:33

Hero Barth: Representing the Farmers Market. Testified in favor of the resolution. (See Testimony #3)

NO OPPOSITION

15:41

Kenan Bullinger: From Dept. of Health. (See Handout #4) This is a copy of some legislative intent and a small chapter of law that was passed in 1989. Home prepared foods were the big topic then. This legislation was in 1989 did not want the Health Dept. to regulate this. It exempted the Health Dept. and local health units from licensing and having heavy regulations in relation to farmers markets and non-profit public spirit groups. That legislative intent was published in the Century Code when it was passed. It is no longer in there, but I kept a copy of that because through the years we have tried to follow that legislative intent. There are not a lot of laws and regulations dealing with home prepared food and farmers markets. Our office is trying to provide education and guidance. Many years ago we didn't let ND home grown produce be sold to supermarkets and restaurants. There was an old statute that said it had to come from approved and inspected sources. With all the food born outbreaks in this country from large produce suppliers we figured let's let the local produce goes to markets, retail food stores and restaurants. There is less food contamination. We now allow baked goods to be sold at farmers markets and community events as long as they don't require refrigeration. We allow home canned goods with a Ph of 4.6 or less.

Chairman Weisz: Can you address the reason for this resolution why some health units have different interpretations?

Bullinger: There is a variation because there aren't many laws and regulations. From their own interpretation they decide what is safe and what is not.

Rep. Porter: If I'm selling eggs at the farmers market or I want to sell kuchen and I package that up and have a refrigerator there can I sell those products?

Bullinger: Because eggs are allowed to be sold directly, we would allow those. Any other products that are manufactured and processed we feel they should be processed in a licensed and inspected facility. We wanted to keep small process food preparers license fees low and I believe it is \$50-\$60 a year.

Rep. Porter: What happens in a church bake sale?

Bullinger: They are exempt.

Rep. Porter: Do you see a need for expanding the uniformity of the law across the state?

Bullinger: I agree the uniformity is important. I've stress in all my years in state government for uniformity. Because there are no laws and regulations right now, the locals are doing what they want to.

Rep. Porter: Reminder us of the potato salad incident north of here.

Bullinger: This happened about 4 or 5 years ago. A non-licensed caterer had some social events she catered. She needed to be licensed. The food was prepared in her home and through her mishandling of the food it caused several people to be ill.

Rep. Fehr: How does the federal laws impact the farm and home produced foods?

Bullinger: The FDA food code is not codified language. It is a model food code that the FDA has put together that the states can adopt. It hasn't been adopted as a code of federal regulations under the federal law.

Chairman Weisz closed the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

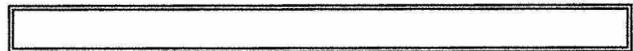
Human Services Committee
Fort Union Room, State Capitol

HB 3037
2/23/2015
Job #24269

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Minutes:



Chairman Weisz: Let's look at 3037. What are your wishes on 3037?

Rep. Oversen: I Move a Do Pass on HCR 3037.

Rep. Fehr: Second.

ROLL CALL VOTE: 13 y 0 n 0 absent

MOTION CARRIED

Bill Carrier: Rep. D. Anderson

Date: 2-23-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3037

House Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Oversen Seconded By Rep. Fehr

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad	✓		Rep. Muscha	✓	
Rep. Bert Anderson	✓		Rep. Oversen	✓	
Rep. Dick Anderson	✓				
Rep. Rich S. Becker	✓				
Rep. Damschen	✓				
Rep. Fehr	✓				
Rep. Kiefert	✓				
Rep. Porter	✓				
Rep. Seibel	✓				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Rep. D. Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3037: Human Services Committee (Rep. Weisz, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3037 was placed on the Tenth order on the calendar.

2015 SENATE HUMAN SERVICES

HCR 3037

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HCR 3037
3/23/2015
25270

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to study the current laws and rules to the sale of homemade food and homegrown produce and the policies and practices of local public health units and the State Department of Health regarding these sales and whether the steps can be taken to make these policies more uniform throughout the state.

Minutes:

Attach #1: Testimony by Rep. Joshua Boschee
Attach #2: Written Testimony by Marvin Baker
Attach #3: Chapter 23-09.2 Food Preparer Education
Attach #4: Testimony by Holly Mawby
Attach #5: Email from Sue Balcom

Holly Mawby, from Esmond, North Dakota, representing Dakota College at Bottineau's Entrepreneurial Center for Horticulture, testified IN FAVOR of HCR 3037 (attach #4). Ms. Mawby's testimony was interrupted for Representative Boschee to present.

Representative Joshua Boschee testified for HCR 3037 (attach #1)(testimony ends 4:50). Representative Boschee also provided written testimony by **Marvin Baker** (attach #2).

Holly Mawby continued her testimony (continued attach #4). (testimony ends 7:25)

Senator Warner expressed his concern about the seasonality of fresh produce. Are there operations in North Dakota who produce vegetables year round in green houses.

Ms. Mawby indicated none year round. The Entrepreneurial Center for Horticulture works closely with producers to get them to extend the season, and we have some that have extended the season into the winter months. We have some CSA's that are running up-to-30 out of 52 weeks in a year.

Chairman Judy Lee stated that in the Political Subdivision committee, they have heard discussions of building a greenhouse at the Life skills and Transition Campus.

Keith Johnson, Administrator for the Custer Health Unit, a five member county public health district, testified. Local health units favor uniformity of regulation in this arena. In 1989, the legislature removed the authority of the State Health Department to govern

farmers markets. This removed all the memorandum of understanding with the Health Department moot, and sent us adrift. We welcome getting back to the time where we can accomplish uniformity through one swoop by signing our memorandum of understanding with the Health Department. In the "whereas" there are a lot of business type proposals. But he suggests that one of the "whereas" is also in the interest of the state to prevent the transmission of food borne diseases.

Chairman Judy Lee asked if there were standards that went away in 1989.

Mr. Johnson stated yes.

Chairman Judy Lee asked if we could rebuild on those old standards for uniform standards.

Mr. Johnson indicated there is great uniformity across the state in other areas of food regulation. All of us our based on the current FDA model code. There are 10 health units that have environmental health staff, and so that would be the potential variation, which brings us to the 10 different differences that could be made uniform with the memorandum of understanding with the state.

Chairman Judy Lee asked why is Bismarck different in interpretation than other areas?

Mr. Johnson indicated that the cities tend to be more idiosyncratic in their regulation. Eggs are a real conundrum. It was not that long ago that eggs were not refrigerated at all. Then we started getting salmonella outbreaks associated with eggs, possibly related to the large farms. Most of the differences with eggs deals with refrigeration and the faith that the local unit have that the eggs can be adequately refrigerated from hen to plate.

Senator Howard Anderson, Jr. expressed his guess that in 1989, they wanted to take the Department of Health out of the equation because they were being too strict and they can get better regulation from the local units. After this much time, it sounds like it has backfired.

Mr. Johnson stated it was actually the opposite. The State Department of Health was in the collateral damage that resulted when a local health unit overregulated a farmers market.

Senator Warner asked who regulates raw milk and the sale of milk

Mr. Johnson answered raw milk is a subject of its own. The Department of Agriculture regulates milk.

Mr. Johnson stated we are getting some folks who will be selling meat but they are licensed vendors who are using a farmers market as a place.

Chairman Judy Lee asked is this going to be different for meat market sales, following federal requirements for meat safety.

Mr. Johnson there will be no difference except that the local vendor will already have their green river ordinance license in place.

Senator Howard Anderson, Jr. recollected his chicken bill in last session, this year they came and wanted to the bill again. Indiana states that local subdivisions could not create greater restrictions than what the state says. This is similar what we are talking about here.

Mr. Johnson thinks this is a good law for engagement between state and locals. We are more than willing to work with the state in keeping that uniformity in place.

Chairman Judy Lee what do legislators bring to the mix through an interim study, or is it better done by a task force who are truly engaged in the business of regulating and producing.

Mr. Johnson trusts the legislature to do the best job. It needs overall state focus.

OPPOSITION to HCR 3037
No opposing testimony.

NEUTRAL to HCR 3037

Kennan Bullinger, Department of Health, Food and Lodging division, provided handout (attach #3). There was legislative intent that was provided in statute after the 1989 food preparer's education act was passed. The document tells what we have been attempting to do since 1989. It is to educate producers both local, farmers market and so forth. There are no laws and regulations dealing with this issue, and we've tried to provide education documents. With no laws and regulations, it results in the non-uniformity.

Chairman Judy Lee asked why did they take away the regulations. Was it a budget decision?

Mr. Bullinger indicated there was a local health unit that was overzealous.

Chairman Judy Lee asked if he is okay with the resolution or is there anything that has been overlooked.

Mr. Bullinger indicated he is comfortable with the resolution. There is non-uniformity that is applied to food safety.

Chairman Judy Lee asked the rules that provide uniformity on the national level - does that give you a start.

Mr. Bullinger answered yes, the food code is a very large document, and we go through the process whenever FDA adopts new changes to the rules, we go through the process. As important as it is to be uniform at the state level, it is just as important to be uniform at the federal level.

Senator Howard Anderson, Jr. stated that it comes to mind the memorandum of understanding with Department of Health, which means he would enforce with whatever

you come up with. What about the district health unit that doesn't sign a memorandum of understanding with the Department of Health?

Mr. Bullinger indicated that the Department of Health has memorandum of understanding with nine local health units that have inspectors that deal with food issues. He is not aware that the other local health units have adopted other ordinances at the local level dealing with food, because they don't have the ability to enforce those ordinances.

V. Chairman Oley Larsen noticed that one restaurant can take vegetables from one health unit area but can't get it in another. Who determines the winner of who can provide. Do they adopt the rules of the health district that doesn't allow it anymore?

Mr. Bullinger responded that uncut, unprocessed produce, he is not aware of any health unit that is not allowing that to be sold at local markets or restaurants. If it is processed in any way, cut, shred, then it would not be allowed. That needs to occur in a licensed and inspected facility. With local produce, it can be sold statewide through any food service or retail market or farmers market.

Chairman Judy Lee indicated that the closest farmers market to her house has vegetables from Glyndon, Minnesota. What do you do about interstate?

Mr. Bullinger explained that interstate is under the regulatory jurisdiction of the Food and Drug Administration. The FDA would not prohibit produce through interstate commerce.

Ms. Mawby spoke again. Addressing V. Chairman Oley Larsen question, she provided an example where the first district health unit which encompasses several counties requires of its producers of whole uncut unprocessed vegetables that are selling to restaurants or grocery stores. The district may require a producers license, which is not required by any other health district in the state. It is not where the produce is grown but where it is sold.

Chairman Judy Lee closed the public hearing.

Electronic email was provided by **Sue Balcom** (attach #5)

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HCR 3037
3/23/2015
25281

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to study the current laws and rules to the sale of homemade food and homegrown produce and the policies and practices of local public health units and the State Department of Health regarding these sales and whether the steps can be taken to make these policies more uniform throughout the state.

Minutes:

No attachments

The Senate Human Services Committee met on March 23, 2015 on HCR 3037 for committee work.

Senator Howard Anderson, Jr. moved the Senate Human Services Committee DO PASS for HCR 3037. The motion was seconded by **Senator Dever**. No discussion.

Roll Call Vote to DO PASS

6 Yes, 0 No, 0 Absent. Motion passes.

Senator Howard Anderson, Jr. will carry HCR 3037 to the floor.

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES**
 BILL/RESOLUTION NO. HCR 3037

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Anderson Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larsen (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3037: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3037 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

HCR 3037

2-17-15

#1

Testimony in support of HCR 3037
February 17, 2015
Joshua A. Boschee, District 44 Representative

Chairman Weisz and members of the House Human Services committee, for the record, my name is Josh Boschee and I have the privilege of representing District 44 in north Fargo.

HCR 3037 was introduced to provide a study in the interim that reviews the policies enforced by the Department of Health and the 28 public health units throughout the state. As you will hear from some of the people following me, there are currently challenges for local food producers and growers to provide their product(s) throughout the state. It is the goal of the study to review the various policies throughout the state and provide recommendations during the next Legislative Assembly to make these policies consistent throughout the state.

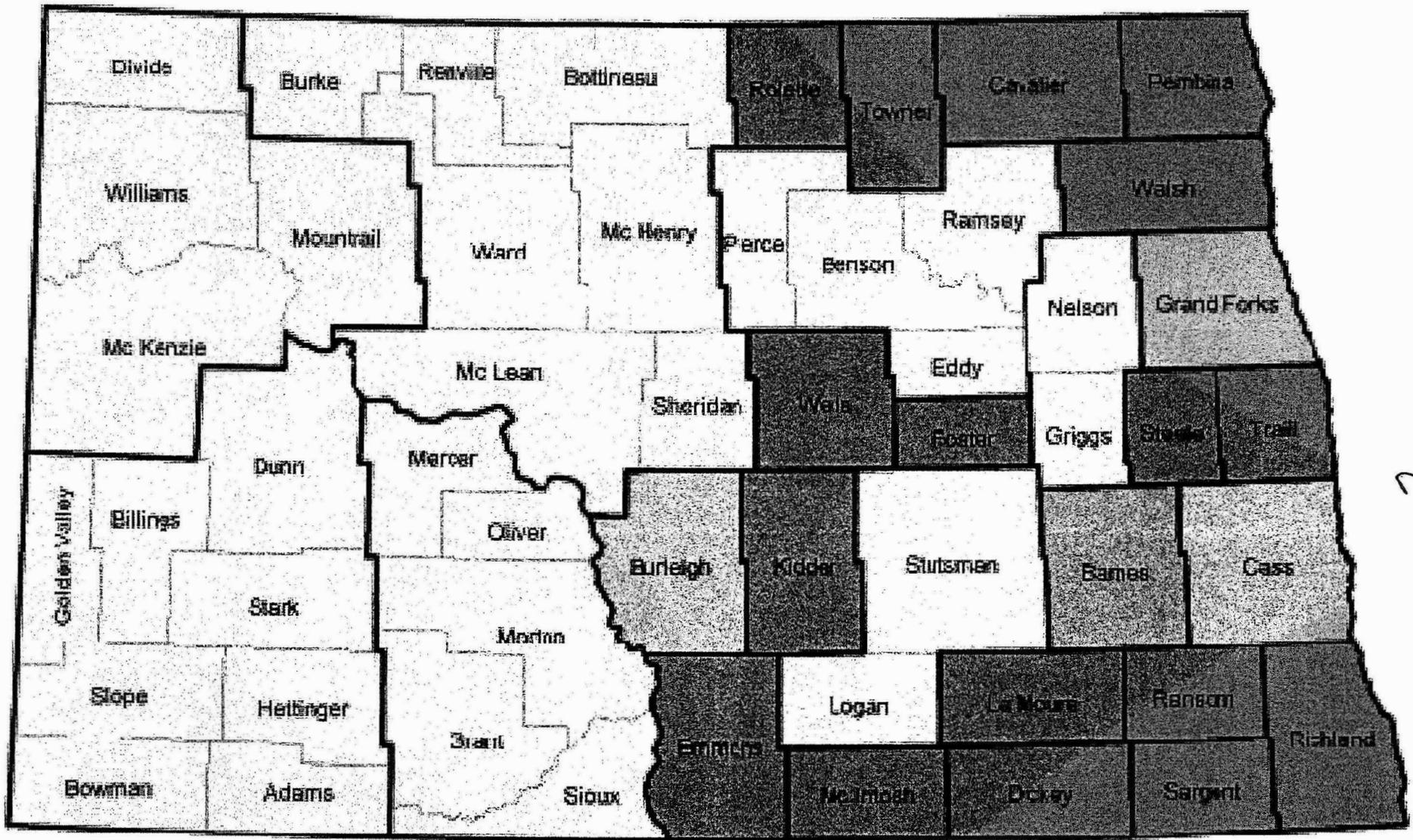
Attached to my testimony is a map of the various public health units throughout the state so that you can see the boundaries of each. They play an integral role in ensuring the safety and health of our residents and being able to make local decision is important to the work they do.

Unfortunately, the current variation in policies restricts the marketability of local growers and producers to a patchwork of opportunities throughout the state. For instance, there is a farmer in the Jamestown area who is not able to sell her chicken eggs in Stutsman county, but can sell her chicken eggs at the Farmer's Market in Bismarck due to the different policies enforced by the respective Public Health Units. I have handed out a letter from Marvin Baker an organic farmer in Ward county who shares some of the challenges he's faced selling his organic food to restaurants in his home county, but had no problem doing so to a restaurant in Bismarck.

Chairman Weisz and members of the committee, this study will allow local food growers, producers and public health officials to add to the conversation and assist in shaping good public policy that increases access to locally grown and made foods that also ensures public health is protected.

I stand for any questions.

1



2



City/County Health Department

City/County Health District



Multi County Health District

Single County Health Department

Single County Health District



Search

Local Public Health

North Dakota's public health system is decentralized with 28 independent local public health units working in partnership with the North Dakota Department of Health. The 28 local public health units are organized into single or multi-county health districts, city/county health departments or city/county health districts. Seventy-five percent of the local health units serve single county, city or combined city/county jurisdictions, while the other 25 percent serve multi-county jurisdictions. The majority of the multi-county jurisdictions reside in the western part of the state. In this decentralized approach, the units are required to meet state standards and follow state laws and regulations, but they can exercise their own powers and have administrative authority (<http://www.legis.nd.gov/cencode/t23c35.pdf>) to make decisions to meet their local needs. North Dakota local public health units have a long history of providing personal and population based health services to residents in their city and/or county jurisdictions. The local public health infrastructure represents the capacity and expertise necessary to carry out services and programs. Therefore, the health units function differently and offer an array of services. The most common activities and services provided by local public health are child immunizations, adult immunizations, tobacco use preventions, high blood pressure screening, injury prevention screening, blood lead screening and Early and Periodic Screening Diagnosis and Treatment.

Local Public Health Units

Bismarck-Burleigh Public Health

(<http://bismarck.org/index.aspx?nid=95>)

Central Valley Health Unit

(<http://www.centralvalleyhealth.org/>)

Custer Health

(http://www.co.morton.nd.us/index.asp?Type=B_BASIC&SEC={0969BF21-3993-451A-8FD7-D72D4FA5BF3D})

Emmons County Public Health

(<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

First District Health Unit

(<http://www.fdh.u.org/>)

Grand Forks Public Health Department

(<http://www.grandforksgov.com/publichealth>)

Lake Region District Health Unit

(<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

McIntosh District Health Unit

(<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Pembina County Health Department

Cavalier County Health District

(<http://www.cavaliercountyhealth.com/>)

City-County Health Department (<http://www.citycountyhealth.org/>)

Dickey County Health District (<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Fargo Cass Public Health

(<http://www.cityoffargo.com/Residential/CityServices/Healthservices/>)

Foster County Health Department

(<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Kidder County District Health Unit

(<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

LaMoure County Public Health Department

(<http://www.lamoureph.org>)

Nelson/Griggs District Health Unit

(<http://www.nelsongriggshealth.com/>)

Ransom County Public Health Department

<http://www.ndhealth.gov/localhd/lphu-directory.pdf>

Richland County Health Department
(<http://www.richlandcountyhealth.org/>)

Sargent County District Health Unit
(<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Steele County Public Health Department
(<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Traill District Health Unit
(<http://www.co.traill.nd.us/template.cfm?d=7>)

Walsh County Health Department
(<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

(<http://www.facebook.com/pages/Ransom-County-Public-Health/214792691612>)

Rolette County Public Health District (<http://www.rcphd.com/>)

Southwestern District Health Unit (<http://www.swdhu.org/>)

Towner County Public Health District
(<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Upper Missouri District Health Unit (<http://www.umdhu.org/>)

Wells County District Health Unit (<http://www.wellsph.org/>)

Tribal Health (<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Spirit Lake Sioux Nation
(<http://www.spiritlakenation.com/>)

Standing Rock
(<http://www.standingrock.org/>)

Three Affiliated Tribes (<http://www.mhanation.com/>)

Turtle Mountain Chippewa
(<http://www.facebook.com/pages/Turtle-Mountain-Band-of-Chippewa-Indians/112908415425129?rf=102648379788206>)

Trenton Indian Services Area
(<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Sisseton Indian Health
(<http://www.earthskyweb.com/sota.html>)

*Part of
Testimony #1*

16 February 2015
Kenmare, N.D.

Dear Rep. Boschee,

It has come to my attention that the House and Human Services Committee is meeting Tuesday on HCR 3037, which is to study the current laws regarding the sale of homemade food and home grown produce.

I am a producer of home grown vegetables in Ward County and have had difficulty marketing my products to restaurants and grocers because of health district restrictions.

My wife and I grow certified organic produce under the name North Star Farms. We are not allowed to sell our produce, which is USDA inspected at least once a year, to restaurants in Minot or Kenmare because it doesn't meet the criteria of the First District Health Unit.

However, from 2009 through 2011, a downtown Bismarck restaurant, Pirogue Grille, was one of our biggest customers and we had absolutely no difficulty delivering produce to this restaurant in which I'm sure many of you have dined.

I've often wondered how a local health district could have the power and knowledge to circumvent the United States Department of Agriculture's rules and regulations. My farm is organic for a reason. We pay the fees and allow inspectors to analyze our property for a reason. It is for quality and safety assurance for our customers.

To make this even more interesting; a restaurateur may come to the farmers' market and "purchase" produce from my vendor booth, take it back to his restaurant and serve it without restriction, yet I can't "sell" that same produce to that same restaurateur.

I can also sell produce anywhere in Canada because our farm has been recognized by the Canadian Food Inspection Agency since 2011, yet I can't sell it to restaurants or grocery stores in Minot or Kenmare because I don't meet First District Health guidelines.

In my opinion, this is detrimental to good customer service and detrimental to vegetable production at large. Those of us who have been involved with the North Dakota Farmers' Market and Growers Association have been working hard the past 10 years to build up our organization and motivate new producers to enter this arm of North Dakota agriculture.

We would like to see these rules streamlined so that we are able to pursue multiple streams of income rather than being restricted as we are. Do the right thing, pass this legislation and help North Dakota vegetable producers earn a living.

Marvin Baker
North Star Farms
Carpio, N.D.

5

Chairman Weisz

Members of the House Human Services committee

My name is Sue Balcom and I am the executive director of FARRMS in Medina. We are a small nonprofit that works with farmers producing food for direct market sales; farmers markets and CSAs.

As the popularity of farmers markets and direct sales has grown, so has the need for information about what can and cannot be sold directly off the farm or from your home kitchen. My work in local food systems the past six or seven years has been one of collaboration with the ND Department of Health's the Director Of Food And Lodging Division Kenan Bullinger.

We began with a direct farm marketing handbook created during my short time at the ND Dept. of Agriculture as the first local foods marketing specialist. It was a collaborative effort with Kenan and all the individual health districts. Kenan continued working with his staff and created a simple fact sheet for our producers that we currently distribute in our farm food safety training classes. From that document, the North Dakota Farmers Market and Growers Association (NDFMGA) and FARRMS with the blessing of the department of health created an instructional video to assist with the education of producers on testing the ph of home-canned products that the guidance document lists as non-potentially hazardous food products that can be sold.

While we do not have a cottage food law in this state, we do have a fairly good set of guidelines for products that fall under the non-potentially hazardous category. The problem lies in lack of information or understanding by the employees of individual health units as to what is potentially hazardous to consumers causing them to modify the guidance document to their liking often times as we can tell without using any kind of research based evidence to be more strict than the ND Department of Health requires them to be...

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Not only does this increase barriers for the farmers, but consumers are often times confused when they can purchase a product at one farmers market but not the next.

Both consumers and farmers fear “regulators” so a lack of communication between health units and farmers have in some instances caused the local foods movement to move underground...

I have myself felt at times like a criminal purchasing eggs and such in a parking lot or selling homemade bread in different areas of town as if eating food from farmers is illegal – in a state that has always honored farming as one of its main industries.

I would urge you do take the time to look into this matter to assist our organization and its partners in growing a new generation of farmers in this state that can provide the increasing demand for food from farmers.

We are not seeking more or new regulations – we are especially not looking for rules that limit sales, require fees and/or cap the amount of sales our farmers can make annually.

What we are seeking is uniform guidance regarding the sale of non-potentially hazardous food items across state reducing the barriers to start up and niche businesses selling food. Food that consumers want to buy, food that we are feeding our own families

Thank you for your consideration...

A handwritten signature in blue ink, appearing to be the number '2' or a similar stylized character.

HCR 3037
2-17-15

#3

Mr. Chairman and members of the committee, my name is Hero Barth from Bismarck and I am here representing the North Dakota Farmers Market and Growers Association of North Dakota. I'm in favor of this resolution.

Our Association represents over 30 farmers markets and over 300 farmers and vendors within the state that sell via farmers markets, CSA's, U-pick operations, farm stands, and sales to grocery stores, restaurants, and schools. Many of our vendors sell at more than one market. Those markets are often under the jurisdiction of different health units. This makes following the rules and regulations within all markets confusing, difficult, and a barrier to trade. In some instances, the regulations of differing health units are contradictory, leaving the business person in a bind as to what can be sold or how to be licensed at one market versus another market. The Association has worked closely with the health units across the state to attempt to clarify these varying regulations, and although we know that each health unit has the safety and health of the people within their jurisdiction at heart, they have not yet been able to administer common regulations statewide or agree on the best regulations based on federal, state, or local guidelines. Several food hubs, aggregation centers and food cooperatives are being studied and started in our state. Without a consistent set of regulations for these organizations to follow, trade throughout a region or across the state will be difficult at best and impossible for some. Farmers markets, food hubs, aggregation centers, and cooperatives have been studied in other states and have been found to have profound economic and social impact on their communities. The same will be true for North Dakota producers and markets if given a level playing field, statewide, that will allow for a consistent code of regulation that protects the consumer, maintains food safety standards, and is easily understood by those in the production and distribution of our food.

Thank you for allowing me to give testimony on this resolution on behalf of the board and members of the North Dakota Farmers Market and Growers Association.

CSA - Community Supported Agriculture

CHAPTER 23-09.2
FOOD PREPARER EDUCATION

23-09.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of health.
2. "Food preparer" means any person who manufactures, processes, sells, handles, or stores food and who is not required to obtain a license from the department under chapter 19-02.1, 23-09 or 23-09.1.
3. Any term used in this chapter has the same meaning as when used in a comparable context in chapters 19-02.1, 23-09 and 23-09.1.

"LEGISLATIVE INTENT. Because facilities are not always available for the preparation of food onsite by nonprofit public-spirited organizations not regularly engaged in the business of selling food or to persons not regularly engaged in the business of preparing or selling food and who prepare food for sale directly to the ultimate consumer at a farmers' market, bake sale, or similar enterprise, it is the intent of the legislative assembly to exempt organizations and persons in those situations from preparing food in licensed or approved kitchens. Because the unintentional mishandling of food may jeopardize the public health and welfare, whether the mishandling is done by an establishment open to public patronage or by a nonprofit public-spirited organization or a person providing a limited type of food service, it is the intent of the legislative assembly to authorize the department of health to offer educational support to food preparers."

23-09.2-02. Rules. The department may adopt rules regarding education of food preparers.

23-09.2-03. Minor violations. The department, local boards of health, and district health units shall attempt to resolve minor violations of this chapter through education. The department, local boards of health, and district health units are not required to report for prosecution minor violations of this chapter.

23-09.2-04. Exclusions. This chapter does not apply to private homes where food is prepared or stored for individual family consumption and to the use of home-canned foods, nongrade A dairy products and food prepared using nongrade A dairy products, and to meat not inspected under the Federal Meat Inspection Act [34 Stat. 1260-1265; 21 U.S.C. 603 et seq.].

Testimony in support of HCR 3037
March 23, 2015
Joshua A. Boschee, District 44 Representative

Attach #1
HCR 3037
03/23/15
25270

Chairwoman Lee and members of the Senate Human Services committee, for the record, my name is Josh Boschee and I have the privilege of representing District 44 in north Fargo.

HCR 3037 was introduced to provide a study in the interim that reviews the policies enforced by the Department of Health and the 28 public health units throughout the state. As you will hear from some of the people following me, there are currently challenges for local food producers and growers to provide their product(s) throughout the state. It is the goal of the study to review the various policies throughout the state and provide recommendations during the next Legislative Assembly to make these policies consistent throughout the state.

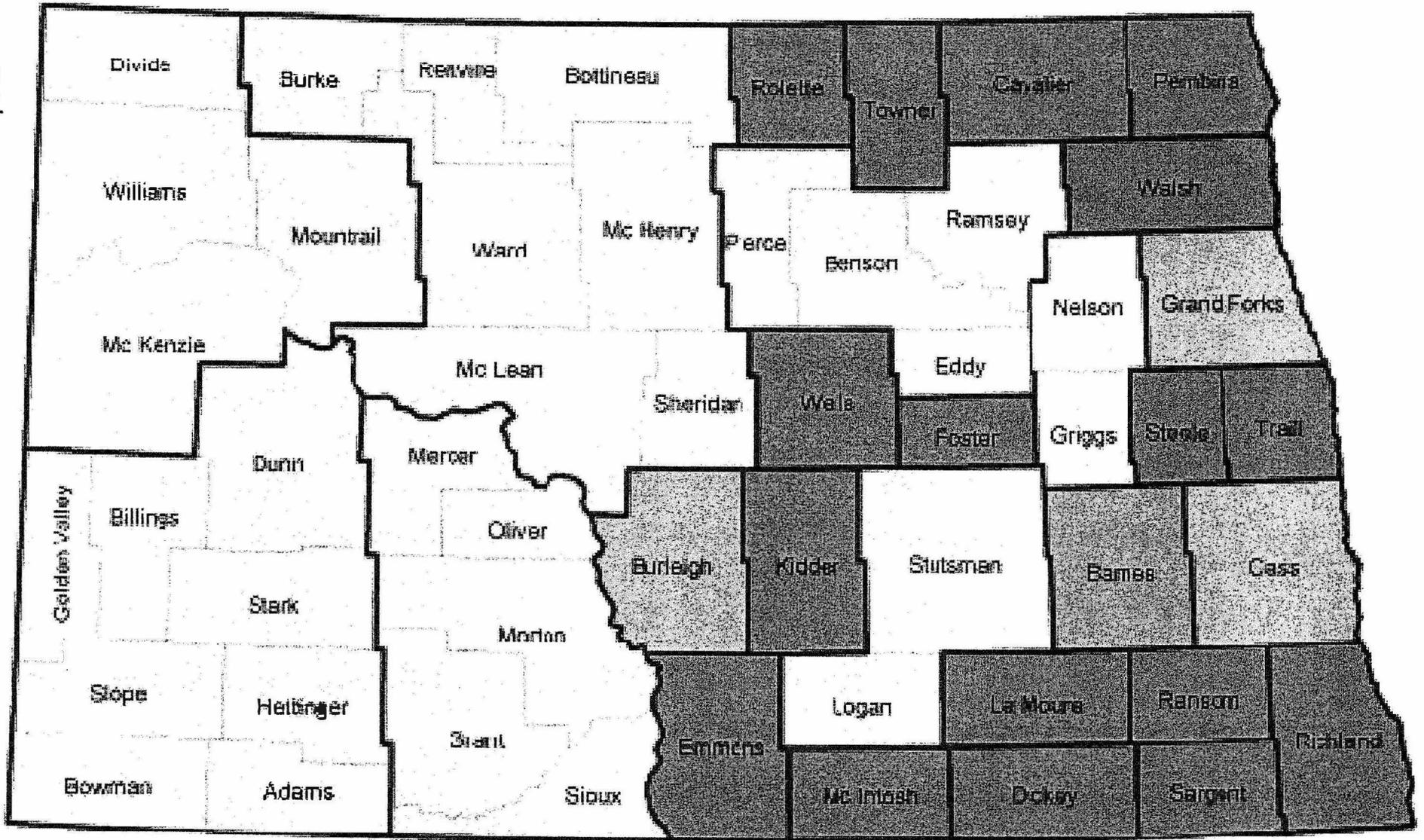
Attached to my testimony is a map of the various public health units throughout the state so that you can see the boundaries of each. They play an integral role in ensuring the safety and health of our residents and being able to make local decisions is important to the work they do.

Unfortunately, the current variation in policies restricts the marketability of local growers and producers to a patchwork of opportunities throughout the state. For instance, there is a farmer in the Jamestown area who is not able to sell her chicken eggs in Stutsman county, but can sell her chicken eggs at the Farmer's Market in Bismarck due to the different interpretations of state law enforced by the respective Public Health Units. I have handed out a letter from Marvin Baker an organic farmer in Ward county who shares some of the challenges he's faced selling his organic food to restaurants in his home county, but had no problem doing so to a restaurant in Bismarck.

Chairwoman Lee and members of the committee, this study will allow local food growers, producers and public health officials to add to the conversation and assist in shaping good public policy that increases access to locally grown and made foods that also ensures public health is protected.

I stand for any questions.

1.2





Search

Local Public Health

North Dakota's public health system is decentralized with 28 independent local public health units working in partnership with the North Dakota Department of Health. The 28 local public health units are organized into single or multi-county health districts, city/county health departments or city/county health districts. Seventy-five percent of the local health units serve single county, city or combined city/county jurisdictions, while the other 25 percent serve multi-county jurisdictions. The majority of the multi-county jurisdictions reside in the western part of the state. In this decentralized approach, the units are required to meet state standards and follow state laws and regulations, but they can exercise their own powers and have administrative authority (<http://www.legis.nd.gov/cencode/t23c35.pdf>) to make decisions to meet their local needs. North Dakota local public health units have a long history of providing personal and population based health services to residents in their city and/or county jurisdictions. The local public health infrastructure represents the capacity and expertise necessary to carry out services and programs. Therefore, the health units function differently and offer an array of services. The most common activities and services provided by local public health are child immunizations, adult immunizations, tobacco use preventions, high blood pressure screening, injury prevention screening, blood lead screening and Early and Periodic Screening Diagnosis and Treatment.

Local Public Health Units

Bismarck-Burleigh Public Health
<http://bismarck.org/index.aspx?nid=95>)

Central Valley Health Unit
<http://www.centralvalleyhealth.org/>)

Custer Health
http://www.co.morton.nd.us/index.asp?Type=B_BASIC&SEC={0969BF21-3993-451A-8FD7-D72D4FA5BF3D})

Emmons County Public Health
<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

First District Health Unit
<http://www.fduh.org/>)

Grand Forks Public Health Department
<http://www.grandforksgov.com/publichealth>)

Lake Region District Health Unit
<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

McIntosh District Health Unit
<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Pembina County Health Department

Cavalier County Health District
<http://www.cavaliercountyhealth.com/>)

City-County Health Department (<http://www.citycountyhealth.org/>)

Dickey County Health District (<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Fargo Cass Public Health
<http://www.cityoffargo.com/Residential/CityServices/Healthservices/>)

Foster County Health Department
<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

Kidder County District Health Unit
<http://www.ndhealth.gov/localhd/lphu-directory.pdf>)

LaMoure County Public Health Department
<http://www.lamoureph.org>)

Nelson/Griggs District Health Unit
<http://www.nelsongriggshealth.com/>)

Ransom County Public Health Department

1.4

<http://www.ndhealth.gov/localhd/lphu-directory.pdf>

[Richland County Health Department \(http://www.richlandcountyhealth.org/\)](http://www.richlandcountyhealth.org/)

[Sargent County District Health Unit \(http://www.ndhealth.gov/localhd/lphu-directory.pdf\)](http://www.ndhealth.gov/localhd/lphu-directory.pdf)

[Steele County Public Health Department \(http://www.ndhealth.gov/localhd/lphu-directory.pdf\)](http://www.ndhealth.gov/localhd/lphu-directory.pdf)

[Traill District Health Unit \(http://www.co.trail.nd.us/template.cfm?d=7\)](http://www.co.trail.nd.us/template.cfm?d=7)

[Walsh County Health Department \(http://www.ndhealth.gov/localhd/lphu-directory.pdf\)](http://www.ndhealth.gov/localhd/lphu-directory.pdf)

<http://www.facebook.com/pages/Ransom-County-Public-Health/214792691612>

[Rolette County Public Health District \(http://www.rcphd.com/\)](http://www.rcphd.com/)

[Southwestern District Health Unit \(http://www.swdhu.org/\)](http://www.swdhu.org/)

[Towner County Public Health District \(http://www.ndhealth.gov/localhd/lphu-directory.pdf\)](http://www.ndhealth.gov/localhd/lphu-directory.pdf)

[Upper Missouri District Health Unit \(http://www.umdhu.org/\)](http://www.umdhu.org/)

[Wells County District Health Unit \(http://www.wellsph.org/\)](http://www.wellsph.org/)

[Tribal Health \(http://www.ndhealth.gov/localhd/lphu-directory.pdf\)](http://www.ndhealth.gov/localhd/lphu-directory.pdf)

[Spirit Lake Sioux Nation \(http://www.spiritlakenation.com/\)](http://www.spiritlakenation.com/)

[Standing Rock \(http://www.standingrock.org/\)](http://www.standingrock.org/)

[Three Affiliated Tribes \(http://www.mhanation.com/\)](http://www.mhanation.com/)

[Turtle Mountain Chippewa \(http://www.facebook.com/pages/Turtle-Mountain-Band-of-Chippewa-Indians/112908415425129?rf=102648379788206\)](http://www.facebook.com/pages/Turtle-Mountain-Band-of-Chippewa-Indians/112908415425129?rf=102648379788206)

[Trenton Indian Services Area \(http://www.ndhealth.gov/localhd/lphu-directory.pdf\)](http://www.ndhealth.gov/localhd/lphu-directory.pdf)

[Sisseton Indian Health \(http://www.earthskyweb.com/sota.html\)](http://www.earthskyweb.com/sota.html)

16 February 2015
Kenmare, N.D.

Attach #2
HCR 3037
03/23/2015
25270

Dear Rep. Boschee,

It has come to my attention that the House and Human Services Committee is meeting Tuesday on HCR 3037, which is to study the current laws regarding the sale of homemade food and home grown produce.

I am a producer of home grown vegetables in Ward County and have had difficulty marketing my products to restaurants and grocers because of health district restrictions.

My wife and I grow certified organic produce under the name North Star Farms. We are not allowed to sell our produce, which is USDA inspected at least once a year, to restaurants in Minot or Kenmare because it doesn't meet the criteria of the First District Health Unit.

However, from 2009 through 2011, a downtown Bismarck restaurant, Pirogue Grille, was one of our biggest customers and we had absolutely no difficulty delivering produce to this restaurant in which I'm sure many of you have dined.

I've often wondered how a local health district could have the power and knowledge to circumvent the United States Department of Agriculture's rules and regulations. My farm is organic for a reason. We pay the fees and allow inspectors to analyze our property for a reason. It is for quality and safety assurance for our customers.

To make this even more interesting; a restaurateur may come to the farmers' market and "purchase" produce from my vendor booth, take it back to his restaurant and serve it without restriction, yet I can't "sell" that same produce to that same restaurateur.

I can also sell produce anywhere in Canada because our farm has been recognized by the Canadian Food Inspection Agency since 2011, yet I can't sell it to restaurants or grocery stores in Minot or Kenmare because I don't meet First District Health guidelines.

In my opinion, this is detrimental to good customer service and detrimental to vegetable production at large. Those of us who have been involved with the North Dakota Farmers' Market and Growers Association have been working hard the past 10 years to build up our organization and motivate new producers to enter this arm of North Dakota agriculture.

We would like to see these rules streamlined so that we are able to pursue multiple streams of income rather than being restricted as we are. Do the right thing, pass this legislation and help North Dakota vegetable producers earn a living.

Marvin Baker
North Star Farms
Carpio, N.D.

CHAPTER 23-09.2
FOOD PREPARER EDUCATION

Attach #3
HCR 3037
03/23/2015
25290

23-09.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

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"LEGISLATIVE INTENT. Because facilities are not always available for the preparation of food onsite by nonprofit public-spirited organizations not regularly engaged in the business of selling food or to persons not regularly engaged in the business of preparing or selling food and who prepare food for sale directly to the ultimate consumer at a farmers' market, bake sale, or similar enterprise, it is the intent of the legislative assembly to exempt organizations and persons in those situations from preparing food in licensed or approved kitchens. Because the unintentional mishandling of food may jeopardize the public health and welfare, whether the mishandling is done by an establishment open to public patronage or by a nonprofit public-spirited organization or a person providing a limited type of food service, it is the intent of the legislative assembly to authorize the department of health to offer educational support to food preparers."

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23-09.2-04. Exclusions. This chapter does not apply to private homes where food is prepared or stored for individual family consumption and to the use of home-canned foods, nongrade A dairy products and food prepared using nongrade A dairy products, and to meat not inspected under the Federal Meat Inspection Act [34 Stat. 1260-1265; 21 U.S.C. 603 et seq.].

Attach #4
HCR 3037
03/23/2015
25270

"Madame Chairman and members of the committee, my name is Holly Mawby and I am from Esmond, ND. I am here representing Dakota College at Bottineau's Entrepreneurial Center for Horticulture. We are in favor of HCR3037.

The Entrepreneurial Center for Horticulture is a state of North Dakota Center of Excellence whose mission is to assist small to mid-size vegetable producers in growing and marketing their products and businesses. We work with over 100 producers state wide that grow and sell their vegetables, fruits and other specialty crops in a variety of markets, from sales to farmers markets, CSA's, farm stands and U-Pick operations to grocery stores and restaurant sales. One of the topics we work on most often with our producers is food safety and good agricultural practices. We work very hard to ensure our producers are following all applicable health regulations for their product in the areas where they sell them.

This is a particularly difficult task as the regulations for the sale of locally grown produce varies greatly across the different health units. Many of our producers, who are very rural, grow their product and then travel distances to reach their market areas. With 28 different health units regulating the sale of produce and homemade foods in North Dakota, this means that they may be growing products in one health district and selling in another district – or they may even be selling their produce in several different communities, all of which are under the jurisdiction of different health units. What we have found is that the regulations for the sale of fresh produce and homemade foods is not unified statewide causing confusion for the producer, the buyer, and us as educators.

We also consult with groups of producers and consumers as they begin to form food hubs and cooperatives. The goal of the food hubs and cooperatives is to have a single location for storage and distribution of produce that would service a large area or region. These groups have expressed to us their concerns that the current system of 28 different health units, each with its own set of regulations may be a barrier to distributing products to more than one health unit's jurisdiction at a time and would greatly confuse the setting of standards for quality and safety in a hub or cooperative.

In summary, we feel that although we know the Health Units are doing their very best to ensure that produce sold within their areas of jurisdiction is safe for the consumer, the regulations and necessary licenses and certifications vary so greatly from one health unit to the next, or are so open to interpretation that regulation can vary even from person to person within a single health unit, that it hampers the growth of small farms producing vegetables and fruits and the creation of food hubs, aggregation centers and distribution cooperatives. Through the interim study process we are not hoping for deregulation, only that the matter be studied to see if the current system is the best or if there can be a more clarified and consistent set of rules statewide for producers to follow to ensure the safety of produce and homemade foods.

Thank you for allowing me to give testimony on this resolution on behalf of Dakota College at Bottineau's Entrepreneurial Center for Horticulture.

From: Sue Balcom [mailto:sbalcom@farrms.org]
Sent: Monday, March 23, 2015 8:19 AM
To: Lee, Judy E.
Subject: Do Pass HCR 3037

HCR 3037

03/23/15

Attach # 5

25270

Dear Chairperson Lee

I am unable to testify in person today at the hearing for HCR 3037, but I recommend a do pass and would be happy to assist the interim study committee in any way possible. I have been working with farmers on a small scale for seven years and have worked quite closely with Kenan Bullinger on this matter - I appreciate your time today and look forward to future work on local foods and farming in North Dakota.

Sue Balcom

District 33

2145 34th Street, Mandan, ND