

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1034

2001 HOUSE AGRICULTURE

HB 1034

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1034

House Agriculture Committee

☐ Conference Committee

Hearing Date 1-18-2001

Tape Number	Side A	Side B	Meter #
1	A		840 TO 2140
Committee Clerk Signature <i>Edward A. Elson</i>			

Minutes:

1A:840 VICE CHAIRMAN JOHNSON: We will now open the hearing on HB 1034.

Representative John Warner: Again, it is wonderful to be back here. I am not going to spend very much time with you. Mr Chairman and members of the committee. The testimony that follows is a prepared text which is attached to the Bill. Following the reading of the text, John Warner stated. I would respectfully ask the committee for a favorable recommendation, which will allow it to go forward to appropriations.

1A:1214: Tim Dawson: Chairman Johnson and committee members. HB 1034 creates a revolving fund for the investigation of antitrust violations.

1A:1442 Mark Sitz: Chairman Johnson and committee members. I represent members of the N.D. Farmers Union. I would strongly support HB 1034. We urge you to give it a do pass recommendation.

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House Agriculture Committee
Bill/Resolution Number HB 1034
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1A:1550: Jeff Weispening: I am here to present written testimony from Commissioner of Agriculture Roger Johnson. This pool of money would put us in harmony with other states.

1A:1871 John Crabtree: Rep. Johnson and committee members. I just wanted to quickly comment. Just as I think it is important to give the Attorney General the ability to send a letter to the court first and to give the resources to do this. We will have legal resources available and will make it easier for us to address out of state situations, corporations.

1A:2140 VICE CHAIRMAN JOHNSON: Is there any more testimony?

If not we will close the hearing on HB 1034.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1033 AND HB 1034

House Agriculture Committee

☐ Conference Committee

Hearing Date 1-25-2001

Tape Number	Side A	Side B	Meter #
ONE	A		3830 TO 5148
TWO	A		00 TO 1503
Committee Clerk Signature <i>Edward Ellyson</i>			

Minutes:

1A:3830 REPRESENTATIVE NICHOLAS: We will open the hearing on HB 1033 AND HB1034.

1A:3840: ATTORNEY FOR THE ATTORNEY GENERALS OFFICE: DARREL GROSSMAN.

1A:3901: REPRESENTATIVE BERG: If HB1033 passes, were saying the Attorney General could go ahead and go directly if they see an anti trust violation to a business organization and request records etc. The current statue without 1033 says, the attorney general must go to a district court and get authorization to proceed. Is that right so far? So the question I have is the comparison was kind of made of made with a search warrant. We do not allow someone to go out and search someone's house without first getting some judge to sign off and say you have reasonable cause to go search. More specifically has the Attorney Generals office in recent year seen a antitrust issue gone to a District Court and not been given the authorization to

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House Agriculture Committee

Bill/Resolution Number HB 1033 AND 1034

Hearing Date 1-25-2001

proceed with its investigation.

1A:4084 MR. GROSSMAN: Mr Chairman and members of the committee. No we have not.

While I certainly don't have any concerns about the proposed amendment, I want to make it clear to the committee that if there were no change in the law, I do not believe it would impede any of the investigations or legal responsibilities or enforcement abilities that the antitrust would have. We are confident that if a situation would arise that we could intact go to a District Court and that Judge if we are doing our job properly would infact give us the permission that is requested under the current statue.

1A:4195 REPRESENTATIVE BERG: HBO 1034 provides an appropriation to do this so the questions really relate to HB 1033. Is there anything that you can not do now under current statues that you could do with this change.

1A:4240 MR. GROSSMAN: I can give one simple example of when it might arise and that might be in the case rather high profile visible militate national antitrust issue and that particular case that other states with sufficient bases could proceed with their investigation immediately where in that instance we would have to try and get in to see a District Court Judge to get approval. Again I am not suggesting Mr. Chairman that would impede us. There might be a minor delay of a day or two and that is the most prominent example I can give you. I believe that if we had an urgency and we went to the District Court we could get the approval.

I believe that would be quite promptly. I think it would be granted at the time we were there unless it was some extremely complicate if the court needed to further consider.

We would go to a judge and say here is the probable cause and that is why we need to do follow upon this. This is why we need to do an investigation. Most of the circumstances the courts

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House Agriculture Committee

Bill/Resolution Number HIB 1033 AND (1034)

Hearing Date 1-25-2001

are it would be our area of expertise and if you are satisfied that you have a sufficient case that you need to proceed and if the only way you can proceed is with Courts approval we could get it. Again, it is going to have to be an antitrust issue and again it is only an authority to investigate. It is not an authority to take and sort of immediate action nor to issue any sort of injunctive relief. It is merely getting that first step of approval process. If you want to pass this legislation the money would be there. If we don't need the sums we won't use them but if they are there then we would get involved if it is significant to N.D. It won't hurt to have the resources available if we need them. For expert witness etc. costs.

We have a fund like this in consumer protection funds like this one. The antitrust fund could build up because multi state cases do involve large sums. There are significant amounts in antitrust situations. In our current situation we would let other states take the lead roll.

1A:1190:CHAIRMAN NICHOLAS: Any other questions. Thank you for coming down.

We will close on HB 1033 AND HB1034

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1034 A

House Agriculture Committee

☐ Conference Committee

Hearing Date 2--01--01

Tape Number	Side A	Side B	Meter #
TWO	A		5000 TO 5400
Committee Clerk Signature <i>Edward D. Ellipton</i>			

Minutes:

CHAIRMAN NICHOLAS Committee Members I'd like to get HB 1034 out of the committee and it get it down to appropriations and they can put in the hopper with all of the rest of the Bill they have.

Representative Berg: Mr Chairman, I would move a DO PASS and re-referral to appropriations on HB 1034.

Representative Johnson: I second the motion for a DO PASS.

CHAIRMAN JOHNSON: The motion has been made by Rep. Berg and seconded by Rep. Johnson.

Any discussion Committee Members? O.K. The clerk will take the roll on HB 1034.

THERE WERE''''''''14 YES''''''''0 NO''''''''1 ABSENT''''''''

CHAIRMAN NICHOLAS CARRIED THE BILL

CLOSED ON HB 1034

FISCAL NOTE
Requested by Legislative Council
12/14/2000

Bill/Resolution No.: HB 1034

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$150,000		\$150,000
Expenditures			\$500,000		\$366,750	\$150,000
Appropriations			\$500,000		\$366,750	\$150,000

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The investigation and enforcement of antitrust violations would require three additional full-time positions: an attorney, legal assistant and investigator. In addition, the measure would require expert witness fees, travel expenses, investigation costs, equipment costs and some outside counsel costs. All of these costs are speculative because many of the expenses will be directly related to the actual number of investigations and/or legal actions. Actual investigation costs and expert witness fees will proportionately increase with the number of investigations and actions. These projections are based on five or less investigations each biennium.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Other funds revenues of \$150,000 are projected for both the 2001-03 and 2003-05 bienniums. For projection purposes, the midpoint of the estimated range of \$0 - 300,000 is used for each biennium. These projected revenues represent civil penalties and reimbursement of investigation costs and attorney's fees in the event of successful legal action, when appropriate. The amount of revenue may vary substantially based upon the number of and the success with such cases. Any revenues will likely be realized near the end of the biennium (and could even be received in the next biennium as a result of enforcement efforts in the previous biennium). The 2001-03 biennium revenues are anticipated to be available for the 2003-2005 biennium, which would reduce General Fund expenditures and appropriations and increase other funds expenditures and appropriations by the same amounts.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

1. Salaries and Wages-General Fund- three fte positions (attorney, legal assistant and investigator):

- \$286,000 for the 2001-03 biennium
- \$297,000 in the 2003-05 biennium

2. Operating Expenses -

- Professional Services- \$170,000 from the General Fund for the 2001-03 biennium; \$183,750 for the 2003-05 biennium - Expert witness fees and expenses reimbursement are critical in these types of investigations and enforcement actions.
- Travel - \$15,000 General Fund for the 2001-03 biennium; \$15,750 for the 2003-05 biennium - these cases and investigations would involve a substantial amount of travel for the positions.
- Professional Supplies - \$15,000 from the General Fund for the 2001-03 biennium; \$15,750 for the 2003-05 biennium - This includes office supplies, specialized software to manipulate a very high volume of documents, postage, telephone, copying, and resource materials expenses.
- Dues and Professional Development - \$4,000 from the General Fund for the 2001-03 biennium; \$2,000 for the 2003-05 biennium. Antitrust is a highly technical and complex area and initially would require substantial training for all three fte positions.

3. Equipment - \$10,000- from the General Fund for the 2001-03 biennium; \$2,500 for the 2003-05 biennium - Computer and printer equipment, as well as office furniture, would be needed for these positions. Computer storage and processing would be needed to store, retrieve, and manipulate hundreds of thousands of documents.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

This bill contains a \$500,000 General Fund appropriation to the Office of Attorney General. This appropriation was **excluded** from the executive budget. For the 2003-05 biennium appropriation, the General Fund amount could be reduced by the other funds revenues. Again, the midpoint of the projected range of \$0 - \$300,000 in estimated revenues is used for this purpose. The amounts shown below are for the 2001-03 and 2003-05 bienniums respectively.

Salaries - \$286,000/\$297,000 Salaries - see the detail provided in the expenditures section of this fiscal note.

Operating Expenses - \$204,000/\$219,750 - see the detail provided in the expenditures section of this fiscal note.

Equipment - \$10,000/\$2,500 - see the detail provided in the expenditures section of this fiscal note.

Name:	Parrell D. Grossman/Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-2811	Date Prepared:	01/05/2001

2-1-01

Date: _____
Roll Call Vote #: _____

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HR 136

House AGRICULTURE Committee _____

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number Referred to

Action Taken DO PASS

Motion Made By Reed Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	✓		Rod Froelich	✓	
Dennis E. Johnson - Vice Chairman	✓		Doug Lemieux	✓	
Rick Berg	✓		Philip Mueller	✓	
Michael Brandenburg	✓		Kenton Onstad	✓	
Joyce Kingsbury	✓		Sally M. Slandvig	✓	
Myron Koppang	✓		Dennis J. Renner	✓	
Edward H. Lloyd	✓		Dwight Wrangham	✓	
Bill Pietsch	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE (410)
February 1, 2001 3:13 p.m.

Module No: HR-18-2152
Carrier: Nicholas
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1034: Agriculture Committee (Rep. Nicholas, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1034 was rereferred to the Appropriations Committee.

2001 HOUSE APPROPRIATIONS

HB 1034

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1034

House Appropriations Committee
Government Operations Division

☐ Conference Committee

Hearing Date February 12, 2001

Tape Number	Side A	Side B	Meter #
02-12-01 tape #2	0 - 2817		
Committee Clerk Signature <i>[Signature]</i>			

Minutes:

The committee was called to order, and opened the hearing on HB 1034. The title of the bill was read.

Rep. Warner: Appearing as the chairman of the Interim Committee on Agriculture. They met during the interim to discuss issues of importance to do with the agriculture community. HB 1034 would create a revolving fund to empower the Attorney General to use the power they have under federal law to prosecute antitrust violations. They realize that the amount of \$500,000 or whatever amount appropriated would not be adequate for an entire lawsuit, it could be North Dakota's contribution to the lawsuit in general. This bill came out of concerns in the ranching community, and meat packers and meat processing industry. There are really only four companies who dominate the entire meat packing industry. They are allowed to manipulate the market prices, and force the product to come to market at prices as they chose. This causes a serious financial problem with America's ranchers.

When they heard this bill in the Agriculture Committee there were concerns raised about the chemical industry, that this was related to chemical harmonization. Wants to make it clear that this is not what this is. The chemical harmonization needs for change are more legislative, and the chemical companies work through marketing, which is not against the law. HB 1034 addresses the problem that has existed since at least the beginning of the 20th century, once addressed by the packers and stockyard law. We believe this law is adequate to address market concentration, but has not been enforced in the recent years by the national Attorney General. This bill would allow the states to act in concert to circumvent the national Attorney General, and to bring suit on their own.

Rep. Skarphol: I see nothing that confines this to agriculture related antitrust laws. What would prevent us from suing anyone over antitrust with this appropriation.

Response: There is nothing that would limit this to agriculture. That is just where the concern came from.

Rep. Koppelman: It says in line 10 the moneys in the antitrust fund must be appropriated to enforce antitrust laws. If I read that correctly it says we have a perpetual antitrust appropriation, and in a way attempting to bind future legislatures and their action in the appropriation of dollars. Who is to say there will always be a need for this appropriation.

Response, Tim Dawson, Legislative Counsel: That sentence is to say that it does go through the appropriation process, and there is no continuing appropriation in this bill.

Rep. Koppelman: Would the word may not accomplish the same thing.

Response, Tim Dawson: Yes, the word must could be changed to may.

Rep. Skarphol: To Tim Dawson, lets say there is money left over in this fund after the end of the biennium, doesn't this language say that it must be appropriated to the Attorney General for enforcement?

Response, Tim Dawson: Yes, that is correct.

Rep. Warner: The key word is must be appropriated, it is not automatically retained in the Attorney General's office without going through the appropriations process.

Rep. Koppelman: Understands that is the intent, but still believes the word may needs to be inserted to repalce the word must.

Tim Dawson, Legislative Counsel: Is here to explain the bill, not to be for or against the bill. The bill creates a revolving fund in the first section and has an appropriation in the second section. The fund appropriation is different than a special fund and different than a continuing appropriation and a normal appropriation, therefore it is a revolving fund. The appropriation is \$500,000 to enforce antitrust violations.

Rep. Byerly: Right now in the Attorney General Refund Fund, all the moneys left over on June 30th of each year, aren't they deposited in the general fund.

Response: If my memory serves me, that is correct. But this bill creates a new fund, one that doesn't exist already, without the same rules. I am somewhat confused that if there were a settlement where that money would end up.

Response, John Warner: If there were a settlement the money would end up in the antitrust fund created here, that's why the notwithstanding language is in there at the beginning.

Rep. Byerly: So traditionally, in most of these funds we say at the end of a calendar year or fiscal year or biennium, the money left over get transferred into the general fund. In the way

this bill this is written, that money would be sitting in this fund, and then we would physically have to do something with that money.

Response: Correct.

Rep. Skarphol: To Tim, in the event there was an antitrust suit filed in the interest of agriculture, are there provisions in place so that the interested parties can participate, and can moneys be deposited in this fund?

Response, Tim Dawson: He is unable to answer that question. He does not understand the antitrust process.

Rep. Glassheim: The refund fund still exists and everything else but these antitrust settlements if there are any would go into that fund.

Response: Correct.

Dana Brandenburg: Urges the committee to pass the bill. He had a personal experience in dealing with businesses, and believes this bill would have helped him. He is originally from Edgely.

Rep. Koppelman: Can you give us an example of where you believe antitrust abuse appears.

Response: Believes antitrust abuses appear all over. The corporations make money and the producers go broke.

Mark Treechock, Staff Director for ND Resource Council: Had handed out prepared written testimony from the hearing before the Ag committee with the name Link Reinhiller on it. The organization appears representing livestock producers and for many years have sought to have the packers and stockyards act of 1921 enforced. They believe that the antitrust laws have

not been enforced at the national level, and hope that this bill will allow them to be enforced at the state level. They support the passing of this bill.

Rep. Huether: Question for Rep. Warner, Did you have a lot of interest in this during the interim. Can you relate examples?

Rep. Warner: One of the examples was from Pro Gold, and how it looked like they manipulated the market at the time of opening the plant. The prices were driven down, and the plant was collapsed at the time of opening. Once the effective control of the plant was transferred to the big business, the prices went up. If we had a quick response team within the Attorney General's office, they could have done something to investigate the market manipulation, and saved the plant control of the producers.

Richard Schlosser, North Dakota Farmers Union: We urge a do pass consideration on HB 1034. We think some of the issues that were discussed today we mentioned in our testimony before the House Agriculture committee, along with its companion bill HB 1033. I think Rep. Warner mentioned the other issue of Pro Gold.

Chairman Byerly: What is HB 1033 that you referenced?

Response: That bill is still in committee, and grants authority to the Attorney General's office for subpoena power. They could subpoena those who would have information as to antitrust violations. These bills came together out of the interim Ag committee.

Rep. Skarphol: Can you give us an idea of what has happened to the equity holders in the Pro Gold case?

Response: The issue was a cash flow problem, because of the drop in prices. His understanding is that there is no return on equity right now.

Rep. Huether: Questions Rep. Warner, early in the testimony it was mentioned that there was more than just the Attorney General of North Dakota working on this. Is there an organization where they would do this investigation?

Response, Rep. John Warner: There is an organization of Attorney Generals. Typically one of the larger states will begin an investigation, and then notify the other states asking for participation. The managing state will divvy up the project.

Chairman Byerly: To Sandi Tabor of the Attorney General's office: Is there anything right now that would stop the Attorney General's office from participating in an antitrust case? Was there any enabling legislation that was required when the Attorney General joined the lawsuit in the tobacco suit?

Sandi Tabor, Attorney General's office: There is enabling legislation already, but the tobacco case was different from antitrust legislation. The office could begin antitrust actions now, but the cost would be prohibitive.

Rep. Skarphol: Is there any antitrust class action suites that we could join in?

Response, Sandi Tabor: Explains the difference between class actions, and antitrust actions. They are not the same, and cannot combine them. You do not see the same type of settlement in an antitrust action.

Rep. Glassheim: With this bill, you could either begin something on your own, or join in with other Attorneys General.

Response, Sandi Tabor: The answer is yeas and no. We could do something, but are not planning to do it on our own. The costs would be too huge.

Rep. Skarphol: Do you think that \$500,000 in a biennium is sufficient to do something like this?

Response, Sandi Tabor: We have discussed this. This amount would help us be a player. We would not take this amount and initiate an antitrust suit, that would anywhere near cover it.

Rep. Byerly: Is the Attorney General aware of any effort from any other states to actually proceed with an antitrust action?

Response, Sandi Tabor: Is not aware of anything going on. They just might not be aware of anything.

Chairman Byerly: If you remember last session we had the effort involving the Reap people. If I remember correctly the court has thrown that out. It was an effort to deal with some of these issues.

Mark Treechock: He can address this issue. That was not an antitrust case, but was a anti dumping action. There is a series of steps that has to be taken prior to a final win in a case like that, and they have won 4 of the 5 steps. When they got before the international trade commission, they ruled against the Reap promoters. They ruled the market penetration had not been high enough.

The chairman closed the hearing on this bill.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1034

House Appropriations Committee
Government Operations Division

☐ Conference Committee

Hearing Date February 13, 2001

Tape Number	Side A	Side B	Meter #
02-13-01 tape #1	35 - 220		
Committee Clerk Signature <i>[Signature]</i>			

Minutes:

The committee was called to order, and opened committee work on HB 1034.

Chairman Byerly: This was a bill that appropriated \$500,000 to do antitrust actions. It was very general and didn't relate to anything special. It is a \$500,000 appropriation.

Rep. Skarphol: Moves DO NOT PASS. Rep. Carlisle seconded.

Rep. Skarphol: For discussion, I am thinking that \$500,000 would be nice if we were flush with funds, and we need to watch the end results. If something arises I would hope the Attorney General's office could in conjunction with other states do whatever they can do and find a way to fund it. I don't think that there is anything that prevents them from doing this now. They don't need the special authority.

Sandi Tabor, from the Attorney General's office: There is a chapter right now in the Century Code, that enables them to do this already. It is the issue of the funding, if they do it on their own.

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Government Operations Division

Bill/Resolution Number HB 1034

Hearing Date February 13, 2001

Vote on Do Not Pass: 6 yes, 1 no (Rep. Glassheim). Motion passes.

Rep. Skarphol will carry the bill to the full committee.

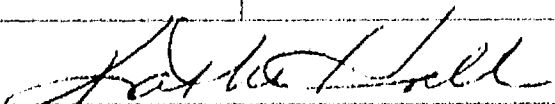
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1034

House Appropriations Committee

☐ Conference Committee

Hearing Date February 20, 2001

Tape Number	Side A	Side B	Meter #
02-20-01 tape #1	2405 - 4825		
Committee Clerk Signature 			

Minutes:

The committee was called to order, and opened committee work on HB 1034.

Chairman Timm: House Bill 1034 has to do with the antitrust fund in the office of the Attorney General.

Rep. Skarphol: Moves to amend that removes section 2. The Attorney General's office already has the ability to do this, and he doesn't think it's appropriate to put in another special fund for \$500,000. Hopefully the Attorney General's office should be able to do this if this needs to happen. Seconded by Rep. Wald.

Chairman Timm: Why do we even need section 1?

Rep. Skarphol: Okay, I will withdraw my motion. Then a motion is made for DO NOT PASS. Rep. Wald seconded the withdraw of the previous motion, and Rep. Carlisle seconded the motion to Do Not Pass. The Attorney General already has the authority to do this, and he can find it in his budget if it needs to get done.

Rep. Glassheim: Isn't there some need to appropriate? Is there an antitrust fund now?

Rep. Byerly: Don't confuse this money with other money. This bill is a stand alone bill that would put an extra \$500,000 into the Attorney General's office to do antitrust work. No antitrust fund now.

Rep. Warner: This bill came out of the interim agriculture committee, and he was chairman of that committee. He wants to defend his bill. If you added up all the costs of crime in this state, we spend many dollars to defend and prosecute and keep North Dakota a safe place. Now when we talk about market manipulations that are destroying our companies, and look at restraint of trade and price fixing on rail rates, and look at corporate tricks being done in the ag community, we fail to defend the harmed persons in these actions. We really need to defend these parties from predatory behavior by established companies. This is a small appropriation when you look at the larger scope of things. If you look at the costs of antitrust lawsuits, it is clear that ND could never take on one of these by themselves. It has to be done by a consortium of states. The \$500,000 would give ND a seat at the table, and allow some perimeters of the lawsuit to be defined. Really wants to urge the committee to invest the money in protecting these businesses.

Rep. Gulleason: Question for Rep. Byerly, if we want to keep the language in section 1 to establish the antitrust revolving fund so that the Attorney General could use dollars in that special fund that would come in for attorneys fees and investigation costs, couldn't we keep that and not put the larger sum of money in it?

Rep. Byerly: They already have what is called a Refund Fund. The settlements that the office receives already goes into that revolving fund. That is the vehicle they have in place to already do these things. When we get to the Attorney General's budget, you will see that we

have already taken \$100,000 of that fund and appropriated it for another thing within that budget. The balance of the fund varies, depending on when they receive a settlement.

Rep. Gulleason: Supports Rep. Warner, and thinks this is critical to ND's economy, which is dependent on commodities, and the ability for the Attorney General to be able to investigate the antitrust violations is an important tool, and hope we keep the language alive and hope to keep some dollars in there. \$500,000 is a lot, but some lower level would be good.

Rep. Delzer: Has a problem with telling the Attorney General to go out and look for lawsuits and we'll reward you with a certain share of what you bring in to do more. That's not really the right way to do this. He cannot disagree with the farm markets being in a bad situation, but he does not like the idea of a revolving fund that benefits them from doing what they are already supposed to do.

Rep. Wald: Agrees with Rep. Delzer. However, in the past 8 years the past administration allowed major oil companies to merge, major multinational ag processing companies to merge, major beef processing companies to merge, major communications and publishing companies to merge, and so a small state like ND cannot tackle something that had the blessing of the national government in the last 8 years. Just doesn't think that \$500,000 in the Attorney General's office is going to fix the things that Rep. Warner eluded to. It is a problem, but it's going to start in Washington, and not in Bismarck.

Rep. Kerzman: Agrees with some of what Rep. Wald has said. He compares this with the tobacco settlement. The federal did nothing, and the states had to get together. That's what we have here in agriculture. One reason is monopolies, and the state would do better economically if this changed. We have to put some money in here for the Attorney General to work with.

Rep. Byerly: Reminds the committee that in the tobacco settlement case the state of ND did not put any seed money into that. The Attorney General has employees that we are paying to do work, they have the ability to already do this, and this bill has no limits to agriculture suits. I agree that most of these cases are federal, not state. Also, remember in the public service commission budget we put in \$33,000 plus \$27,000 in other funds to start looking at the rail rate costs.

Rep. Kempenich: This is an area of concern, and it does have to start in Washington. There is also a resolution in the works dealing with this in general.

Rep. Warner: There has been some reference to the tobacco lawsuit. It is different; the tobacco suit was not an antitrust suit, it was a civil litigation in which the state had a direct financial interest. The state had an opportunity for an enormous recovery. It was not putting the state at risk by going into it. Agrees with Rep. Wald as to the last 8 years' administration. The resolution also came out of the interim committee and it just refers to the subpoena power of the Attorney General, and allows him to ask questions, without going to court.

Rep. Glassheim: The fiscal note anticipates income collections of \$150,000. The appropriation is like seed money to get started, and then replaced by recovery. Couldn't we at least get in \$150,000 to get started.

Rep. Skarphol: In our discussions with the Attorney General in regard to this, this kind of is like the multistate tax commission in the tax commissioner's office. It takes a group of Attorney General's to get anything accomplished, and we have confidence in the Attorney General to find this within their budget if the need arises, and doesn't believe they need the appropriation.

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House Appropriations Committee
Bill/Resolution Number HB 1034
Hearing Date February 20, 2001

Rep. Glassheim: Makes a substitute motion to amend to appropriate \$150,000.

Seconded by Rep. Kerzman.

Voice vote on the motion fails.

Vote on DO NOT PASS: 14 yes, 7 no. Motion passes.

Rep. Skarphol is assigned to carry the bill to the floor.

Date: 2-13-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1034

House Appropriations - Government Operations Division Committee

☒ Subcommittee on Government Operations
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Rep Skarphol Seconded By Rep. Carlisle

Representatives	Yes	No	Representatives	Yes	No
Rep. Rex R. Byerly - Chairman	✓		Rep. Eliot Glassheim		✓
Rep. Ron Carlisle - Vice Chairman	✓		Rep. Robert Huether	✓	
Rep. Kim Koppelman	✓				
Rep. Bob Skarphol	✓				
Rep. Blair Thoreson	✓				

Total (Yes) 6 No 1

Absent _____

Floor Assignment Rep Skarphol

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

Date: 2-20-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1034

House APPROPRIATIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken to amend.

Motion Made By Rep. Skarphol Seconded By Rep. Wald.

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman					
Wald - Vice Chairman					
Rep - Aarsvold			Rep - Koppelman		
Rep - Boehm			Rep - Martinson		
Rep - Byerly			Rep - Monson		
Rep - Carlisle			Rep - Skarphol		
Rep - Delzer			Rep - Svedjan		
Rep - Glassheim			Rep - Thoreson		
Rep - Guleson			Rep - Warner		
Rep - Huether			Rep - Wentz		
Rep - Kempenich					
Rep - Kerzman					
Rep - Kliniske					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

to remove Section 2

Date: 2-20-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1034

House APPROPRIATIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Sub. motion to amend bill

Motion Made By Rep. Glassheim Seconded By Rep. Kerzman

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman					
Wald - Vice Chairman					
Rep - Aarsvold			Rep - Koppelman		
Rep - Boehm			Rep - Martinson		
Rep - Byerly			Rep - Monson		
Rep - Carlisle			Rep - Skarphol		
Rep - Delzer			Rep - Svedjan		
Rep - Glassheim			Rep - Thoreson		
Rep - Gulleason			Rep - Warner		
Rep - Huether			Rep - Weniz		
Rep - Kempenich					
Rep - Kerzman					
Rep - Kliniske					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

to replace approp. to \$150,000.

Date: 2-20-01
Roll Call Vote #: 3

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HRS 1034

House APPROPRIATIONS

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Rep. Skarphol Seconded By Rep. Carlisle

Representatives	Yes	No	Representatives	Yes	No
Tirnm - Chairman	✓				
Wald - Vice Chairman	✓				
Rep - Aarsvold		✓	Rep - Koppelman	✓	
Rep - Boehm	✓		Rep - Martinson	✓	
Rep - Byerly	✓		Rep - Monson	✓	
Rep - Carlisle	✓		Rep - Skarphol	✓	
Rep - Delzer	✓		Rep - Svedjan	✓	
Rep - Glassheim		✓	Rep - Thoreson	✓	
Rep - Gulleeson		✓	Rep - Warner		✓
Rep - Huether		✓	Rep - Wentz	✓	
Rep - Kempenich		✓			
Rep - Kerzman		✓			
Rep - Kliniske	✓				

Total (Yes) 14 No 7

Absent 0

Floor Assignment Rep. Skarphol

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

2001 TESTIMONY

HB 1034

Dakota Resource Council

P.O. Box 1095, Dickinson, ND 58602-1095

Telephone (701) 483-2851; FAX 483-2854

E-mail: mtrechock@pop.ctctel.com

Testimony before the House Agriculture Committee

HB 1033 and HB 1034

Link Reinhiller, Hazen, 873-5201

January 18, 2001

My name is Link Reinhiller, and I am a livestock and grain producer from Hazen, North Dakota. I am also a former statewide chair of Dakota Resource Council (DRC), and currently chair of the DRC Farm Preservation Committee. I am offering testimony in support of HB 1033 and HB 1034, which give the North Dakota Attorney General increased ability to take anti-trust action.

Although DRC is concerned with the continual mergers and increasing consolidation in all sectors of agriculture, our particular specialty has been the meatpacking industry. DRC first began urging federal anti-trust enforcement actions as a result of growing meatpacker concentration in 1988. At that time, neither the U. S. Department of Justice nor the U. S. Department of Agriculture (USDA) felt responsible for enforcing Section 202 (e) of the federal Packers and Stockyards Act of 1921, which forbade anyone dealing in livestock to "engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce...."

DRC believed and still believes that the adoption, by the nation's top three meatpackers, of so-called "formula-priced forward contracts" is clearly illegal under this act. Under these contracts, meatpackers contract for fed cattle in advance without a base purchase price, and the price is based on the cash market price for the day of delivery. This business practice increases captive supply, or the number of cattle packers can control without bidding on, and it distorts the cash market that the final selling price is based on. USDA's study of livestock procurement practices in Texas two years ago showed a strong correlation between low cattle prices and high rates of captive supply. Using USDA figures, the Western Organization of Resource Councils (WORC) estimates that increased captive supply caused by formula contracts costs U. S. ranchers more than \$1 billion per year.

Over four years ago, DRC and other members of WORC submitted a petition for rulemaking on captive supply to USDA. The petition asked the Secretary of Agriculture to draw up rules requiring a firm base price on all forward livestock contracts, and the public offering for sale of all packer-fed cattle. This petition gained the support of the 1997 North Dakota State Legislature, then Governor Ed Schafer, and the entire North Dakota Congressional delegation, plus thousands of other cattle producers and producer organizations around the country. Secretary of Agriculture Dan Glickman is about to leave office without taking meaningful action on this petition.

Dakota Resource Council
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-2-

In other words, concentration in agribusiness is growing, to the detriment of producers everywhere, including North Dakota, and it is growing in part because of the failure of federal anti-trust action.

For this reason, DRC supports these two bills. One simply removes an unnecessary step, which we believe is absent in most other states, for an Attorney General who wants to take anti-trust action. The other provides seed money to help strengthen such an action. In both cases, the goal is make it easier for our Attorney General to take the lead along with other states in filing anti-trust cases, with the goal of making it more and more difficult for the federal government to continue to fail to act. There are strong signals that North Dakota would not be alone in pursuing such a plan. For example, other states including Kansas have discussed the possibility of state-initiated anti-trust action on the proposed IBP-Tyson merger.

We do not believe that the \$500,000 called for in this bill needs to become an annual expenditure, or that any full-time employees to be added to the state payroll for this measure to have its desired effect. We anticipate that the money would be used principally to contract for the services of experts whose testimony in economics, or whose legal advice, would lend weight to the Attorney General's case. We also anticipate that any seed money set aside by the legislature has a reasonable hope of attracting other private and public funds set aside for support of anti-trust actions. In addition, any successful actions enabled by this measure would result in the recouping of court costs, which could help keep the fund replenished. Finally, as an example, North Dakota produces approximately one million feeder calves per year. If actions taken by our Attorney General should lead to the enforcement of existing anti-trust laws, and that enforcement led to an average increase of value of just \$10 per head, the resulting economic activity would offset very quickly the appropriation attached to this bill.

HOUSE AGRICULTURE COMMITTEE
HEARING, JANUARY 18, 2000

HB 1033 & HB 1034

My name is Karl Limvere. I am the pastor of the Zion United Church of Christ of Medina. I serve as the chairperson of the Rural Life Committee of the North Dakota Conference of Churches and am representing the Conference and the committee today.

The Rural Life Committee of the North Dakota Conference of Churches was established in 1986, and is the successor to other efforts by the Conference of Churches dating back to 1974. We have the responsibility of developing proactive, ecumenical responses to rural life issues in the state. This past year we have given particular emphasis to economic justice issues facing rural America.

The Rural Life Committee envisions and supports the development of a rural society that promotes the greatest potential number of diversified family farming/ranching opportunities possible. We support a widely-dispersed structure of agricultural production with broad-based ownership that is dominated by resident, owner-operated, family farms and ranches.

We believe that the test of any agricultural or economic policy is a moral one. Public policy must put human needs ahead of economic profits. It must foster community accountability and responsibility and self-governance to give the rural community greater control over its destiny. It must create broad-based ownership and opportunity for all.

Today, every primary commodity that is produced by farmers in this nation is sold into a marketplace in which the top four firms have sufficient market concentration (a 40% of share of the market) to be able to affect the pricing of the commodities that they buy. In economic terminology, our producers face oligopsonies. What that means is a shared monopoly condition of buyers.

The problem of a concentration in the marketplace is that such concentration fosters and encourages concentration in production. We cannot maintain a system of mid-sized independent family farms and ranches when the marketplace to which they sell is concentrated.

Just for a quick understanding, let me make one comparison. Consider the market power of one agribusiness firm in comparison to North Dakota's farm and ranch operators. One firm has a sales volume that is 17 times larger than all the production of all 30,500 farm and ranch operators in our state.

In fact, any one of the top four grain merchandisers in this country has enough warehouse space to hold the state's entire wheat crop. The top grain warehousing firm could house the entire output of North Dakota's grain production and still have space left over for grain from farmers from other states.

My point is that there is a tremendous disparity in the economic power and market position between a North Dakota farmer and the major agribusiness firms in this country.

The two bills that you have before this morning are rather modest beginning steps by which the North Dakota Attorney General's office could investigate and take appropriate action to investigate and enforce antitrust laws.

I am deeply concerned about the continuing failure of the U.S. Justice Department to actively pursue antitrust issues when there is significant concentration in market power among agricultural commodity buyers. For example, there is greater concentration today in meat processing than there was at the time that the Packers and Stockyards Act was passed in the 1920's.

It is our hope that not only would these two bills give needed authority and capability to the North Dakota Attorney General's office, but that the increased involvement of state governments in such investigation and activity would spur the U.S. Department of Justice to take a more active interest and role in these issues.

These bills won't break the stranglehold that the current oligopsonies have upon agricultural markets, but they are an important beginning step and a signal that their days are numbered.

I thank the Legislative Council for its work, and encourage you to continue to move forward with these bills by giving them a "do pass" recommendation.

Thank you.

House Bill 1034
Testimony of Rep. John Warner
Before the House Agriculture Committee
18 January 2001

Mr. Chairman, Members of the Committee,

House Bill 1034 creates a pool of money within the Attorney General's office to take part in multi-state efforts to enforce anti-trust laws. Obviously, the amount of money asked for in the appropriations line is not enough to launch a lawsuit against a national company but it would allow North Dakota to be present at the table when critical decisions on the range and scope of an investigation are being made.

In the normal course of these lawsuits, any settlement not only returns money for North Dakota's producers but restores the money to the revolving fund which the state invested initially.

I would respectfully ask the committee to give this bill a favorable recommendation for the Floor and to allow it to go forward through the appropriations process.

Salary:
\$26,639.03

Operating: \$4,156.89

Total
\$30,795.92

Fiscal year 99-00

Salary:
\$40,156.00

Operating: \$5,852.58

Total:
\$46,008.58

Fiscal year 00-01 (to-date)

Salary:
\$27,840.00

Operating: \$2,257.79

Total: \$30,097.79

Another question-I have only prepared a report on the results of projects funded during fy 98-99 for the legislature. I haven't done anything for projects funded during 99-00. Is that something you feel you'll need?

Let me know if you need anything else.

Lori

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COMMISSIONER OF AGRICULTURE
ROGER JOHNSON



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DEPARTMENT OF AGRICULTURE
State of North Dakota
600 E. Boulevard Ave. Dept. 602
Bismarck, ND 58505-0020

**Testimony of Roger Johnson
Agriculture Commissioner
House Bill 1034
House Agriculture Committee
Peace Garden Room
January 18, 2001**

Chairman Nicholas and members of the House Agriculture Committee, I am Commissioner of Agriculture Roger Johnson. I am here today in support of HB 1034, which will create a revolving fund for use by the Attorney General to investigate anti-trust violations.

I commend the 56th Legislative Assembly Interim Agriculture Committee, which drafted and approved this bill for introduction to this Legislature.

As you know, economic concentration and loss of market power are of increasing concern to farmers and ranchers in North Dakota and around the country. According to a study conducted and released by Purdue University, more than 700 mergers, alliances, and acquisitions occurred in agricultural industries during the 1990's.

Consolidation and concentration are occurring not only in the input, processing and marketing sectors of agriculture, but in the retail sector as well. A study released last week by National

Farmers Union sites that the top five food retailers account for 42% of retail food sales in the United States, compared to 24% three years ago.

Farmers and ranchers are also facing new challenges as they deal directly with these multi-national entities with respect to the production of their crops. Contract production of crops and livestock is increasing and is often problematic for producers. I support the enactment of safeguards for producers against unfair contracts and other anti-competitive practices.

The effects of economic concentration are adversely affecting farmers, ranchers, and consumers in North Dakota through market limitations, a lack of competition, and lower prices. The North Dakota Attorney General should have sufficient resources available to initiate and/or join multi-state actions that deal with anti-trust investigations. The revolving fund created by HB 1034 would provide those resources.

Chairman Nicholas and committee members, I urge a do pass on HB 1034. I would be happy to answer any questions you may have.