

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2323

2007 SENATE AGRICULTURE

SB 2323

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2323

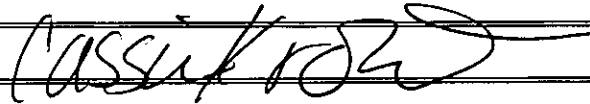
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: 1893

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the hearing on SB 2323, a bill relating to pesticide registration fees and to provide an appropriation. All members (7) were present.

Sen. Wanzek from district 29 testified in favor of the bill.

Sen. Wanzek- It is my understanding that the EPA has had a number of lawsuits that challenge them on their endangered species act. They are looking on doing additional work on their endangered species act, and the concern is that they will come down to state levels and will eventually create some regulations that could have a negative impact on our states economy and agriculture. We can let EPA have total control and take total responsibility or we as a state can take total control over it by following the federal rules and EPA and administer our own program. What this bill is attempting to do is to provide some funding so we can come to a hybrid situation or maybe in the middle where we allow the EPA the responsibility of the program but where we can provide some state input. I think it is very valuable that we have ND input into the administration of the endangered species act. This would take money from the general funds and put it into the EARP fund.

Jim Gray, pesticide registration coordinator with the ND Department of Senate Agriculture testified in favor of the bill. See attached testimony.

Sen. Klein- would the appropriation have to be a ongoing thing or just for the biennium?

Jim Gray- the money would be used for a variety of things. It is going to be a fluid ongoing process, EPA is going to constantly doing risk assessments, whenever they signal a red flag they will look at updating bulletins and adding restrictions above and beyond what they had in the past. So the department would need to continuously look different things, so this is intended to be a long ongoing process, permanent positions. We would need to add 2 people to the department of Ag one would have background and technical knowledge of GIS the other would have knowledge of chemistry, environmental fate, toxicology and use the data to perform risk assessments. We would also take part of the money and use it to monitor different areas that could be contaminated by pesticides.

Sen. Klein- so if we didn't pass this bill it wouldn't cost us anything but we would be under the heavy hand of the federal government?

Jim Gray- that is correct.

Sen. Taylor- have other states taken this third option?

Jim Gray- yes.

Merlin Leithold, south central director for the ND weed Control Association and lobbyist, testified in favor of the bill. See attached testimony.

Sen. Klein- so the money that is going into the general fund will cover the cost of this concern?

Merlin Leithold- yes.

Woody Barth, ND farmers union and lobbyist 286, testified in favor of the bill.

Woody Barth- We have been watching this endangered species act. We support the bill.

Gary Knutson, from the ND Senate Agriculture Association and lobbyist 371, testified in favor of the bill.

Gary Knutson- The majority of our 400 members are either dealers, distributors, or advisors in the crop pesticide industry. We think this initiative has a really sound basis. The pesticide industry pays these fees so they should be used for something towards our industry. I think it makes sense for us to have a seat at the table.

Brian Rau, farmer and commercial applicator, testified in favor of the bill. See attached testimony.

Myron Beeterly, Sheridan county wheat board, testified in favor of the bill. Brought in a aerial photo for the committee to look at as an example.

Testimony was submitted by **Ivan Williams**, representing Ag retailers, Ag manufacturers and other Ag professionals across ND in favor of the bill. See attached testimony.

Testimony was submitted by **Dan Wogsland**, executive director for the ND Grain Growers Association in favor of the bill. See attached testimony.

Brian Kramer, from the NDFB and lobbyist 40, was present and in favor of the bill.

Ken Junkert, program industries for ND planned industries of agriculture, testified in favor of the bill.

Ken Junkert- As you may be aware in the governors budget and in SB 2009 the EARP fund is also addressed there. We have developed a chart that shows the expenditures from the beginning of EARP all the way through the recommendations through the governors budget. (showed committee a chart)

Sen. Taylor- does the fund run into a deficit? Does it have a small carry over or right now is it right down to the wire?

Ken Junkert- it is pretty close to the wire. And as far as the department is concerned the \$50 that would be moved from the general fund to the EARP fund, I believe the legislator has taken a very proactive stance and has funded many important programs from the EARP fund and

make flexibility for the legislator to look at some of those dollars and use those for appropriate programming.

Sen. Flakoll closed the hearing.

Sen. Taylor motioned for a do pass and to be rerefered to appropriations and was seconded by **Sen. Behm**. Vote was 7 yeas, 0 nays, 0 absent. **Sen. Wanzek** was designated to carry the bill to the floor.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2323

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: 1894

Committee Clerk Signature



Minutes:

Sen. Flakoll opened discussion on SB 2323.

Sen. Klein- my only question was that \$170,000. I think this is a great idea and we need to move it forward.

Sen. Flakoll- and the motion was to rerefer to apps?

Sen. Taylor- yes.

Sen. Wanzek- if it enhances the odds of the bill passing I would certainly wouldn't oppose that we amend it to do that, I don't know if we should let the appropriations committee do that or if we should do that here.

Sen. Klein- I often rely on the appropriations to do that but it up to us if we think that's important that we get it in a good shape to allow for easier passage over there. I think in this case its \$ 170,000 its really not like it is billions.

Sen. Taylor- the principal of these funds being dedicated and not necessarily going to general fund and you could take down to taking \$38 of it to cover this appropriation and have \$12 go back to the general fund, odds are that there have been a lot of good programs funded out of EARP that pertain to the goals and maybe by the end of the session one of the programs that

is targeted for general fund might go to EARP to take up that \$175,000. The money is going to come from somewhere. I think it will work itself out.

Sen. Heckaman- if the \$50 is going into the EARP fund and we are only asking for \$325,000 out of there that the rest of that money should be able to be used for some good program. I think it is fine the way it's written.

Sen. Wanzek- I think I can support leaving it this way, but if we get to a point where there is a concern that the money is going to sit in there and not be used in the appropriate way or we need to do something we will work with the appropriations committee, I do believe there will be some other opportunities and good programs where we cant get general fund dollars that this might be something to look at. I am ready to vote on it.

Sen. Klein- the discussion has been the last few days is that we currently are over a billion dollars over the governors budget in spending proposals and bills, so I have concern as it's gong through the process and people are starting to look at that.

Sen. Flakoll closed the discussion.

Sen. Taylor motioned for a do pass and to be rerefered to appropriations and was seconded by **Sen. Behm**. **Sen. Wanzek** was designated to carry the bill to the floor. Vote was 7 yeas, 0 nays, 0 absent.

FISCAL NOTE
Requested by Legislative Council
03/28/2007

Amendment to: SB 2323

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$505,000	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill eliminates the sunset on \$50 of the current \$350 per product pesticide registration fee.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Based on an estimate of 10,100 pesticide registrations for the 2007-09 biennium, the bill will increase revenues to the Environment and Rangeland Protection by \$505,000.

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.*

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.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Jeff Weispfenning	Agency:	Agriculture
Phone Number:	328-4758	Date Prepared:	03/28/2007

FISCAL NOTE
Requested by Legislative Council
03/13/2007

Amendment to: SB 2323

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	(\$505,000)	\$1,010,000	\$0	\$0
Expenditures	\$0	\$0		\$50,000	\$0	\$0
Appropriations	\$0	\$0		\$50,000	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill transfers all pesticide registration fees into the EARP Fund and eliminates the sunset on \$50 of the current \$350 per product fee. Currently, \$50 of the \$350 registration fee goes into the general fund. The bill also provides an appropriation to develop an endangered species program.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Based on an estimate of 10,100 pesticide registrations for the 07-09 biennium and the impact of the proposed registration law change, the general fund impact will be (\$505,000) and the EARP Fund impact will be \$1,010,000 in additional revenue.

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.*

The statutory changes will provide an additional \$100 per pesticide registered for the EARP Fund. The impact to the general fund will be (\$505,000). The EARP Fund will increase by \$1,010,000.

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.*

The bill provides an appropriation of \$50,000 for two positions and operating for the endangered species program.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill provides the agriculture commissioner an appropriation of \$50,000 to fund the endangered species program. The appropriation was not included in the executive budget.

Name:	Jeff K. Weispfenning	Agency:	Agriculture
Phone Number:	328-4758	Date Prepared:	03/14/2007

FISCAL NOTE
Requested by Legislative Council
01/17/2007

Bill/Resolution No.: SB 2323

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	(\$505,000)	\$505,000	\$0	\$0
Expenditures	\$0	\$0		\$325,000	\$0	\$0
Appropriations	\$0	\$0		\$325,000	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill transfers all pesticide registration fees into the EARP Fund. Currently, \$50 of the \$350 per product registration fee goes into the general fund. The bill also provides an appropriation to the agriculture commissioner to develop an endangered species program.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Based on an estimate of 10,100 pesticide registrations for the 07-09 biennium and the impact of the proposed registration law change, the general fund impact will be \$505,000.

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.*

The registration law change moves \$50 of the registration fee into the EARP Fund. The impact to the general fund will be \$505,000. The EARP Fund will increase by \$505,000.

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.*

The bill provides an appropriation of \$325,000 for two positions and operating for the endangered species program.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill provides the agriculture commissioner an appropriation of \$325,000 to fund the endangered species program. The appropriation was not included in the executive budget.

Name:	Jeff Weispfenning	Agency:	Agriculture
Phone Number:	328-4758	Date Prepared:	01/22/2007

Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2323

Senate Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass refer to Appropriations
Taylor

Motion Made By

Taylor

Seconded By

Beinn

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment

Sen. Wanzek

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

REPORT OF STANDING COMMITTEE

SB 2323: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2323 was rereferred to the Appropriations Committee.

2007 SENATE APPROPRIATIONS

SB 2323

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2323

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02/01/07

Recorder Job Number: 2507

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on

Senator Terry Wanzek, District 29, Jamestown, introduced SB 2323 dealing with pesticide registration fees and pesticide regulations when it comes to implementation of the endangered species protection program. He indicated the EPA published a final notice on implementation of the endangered species program. This bill enables counties and states to take on a role in developing what happens in the state. He then talked about the fiscal note.

Jim Gray, Pesticide Registration Coordinator with ND Dept of Ag, presented a written testimony (1) and discussed how the funding would be used. He indicated if the bill is to pass, the Dept of Ag would add two staff members, would set up a monitor system of gather data, the department would play a part in the process, provide information to the federal agency and have a seat at the table as bulletins are being developed in ND.

Senator Bowman asked if really takes two people and will it be full time for ever. The response was the program at the federal level is on-going. This is a long-standing need.

Senator Christman asked if these bills were watched closely, what else is out there.

Senator Wardner asked what the funds had been used for before. The response was the monies went to a variety of different projects.

Senator Tallackson with the ERP monies do you have to go after people to collect funds or do they just pay it. The response was it has been a smooth process.

Senator Krauter asked that an analysis of the ERP fund be provided.

Several questions were raised regarding the pesticides, notice of implementation.

Merle Meyer, South Area Director for ND Wheat Control Association, Lobbyist, NDWCA, Wheat Officer for Grant County, presented written testimony, testifying in support of SB 2323 indicating they abdicated local control stressing the importance of keeping decisions within the county or state level, not federal level.

Brian Rau, farmer, aerial applicator, representing the ND Ag Aviation Association, testified in support of SB 2323.

Dan Wogsland, Executive Director, ND Grain Growers Association, testified in support of SB 2323 indicating ND has to have credibility with the EPA. It will take dollars to have that credibility.

Kelly Dormacker, representing ND Farmers Union, testified in support of SB 2323.

Myron Dietterly, Sheridan County, representing the Sheridan County Wheat Board, testified in support of SB 2323 identifying their concern of the surface water.

Gary Knudson, ND Agricultural Association, testified in support of SB 2323.

Senator Bowman, requested a breakdown of the ERP fund, the new pesticides coming into the state and how many are dropped each year.

Chairman Holmberg closed the hearing on SB 2323.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2323

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-12-07

Recorder Job Number: 3416

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on SB 2323 on February 12, 2007 regarding pesticide registration fees and regulations.

Senator Bowman explained the bill and the funding regarding this bill.

Senator Christmann had questions regarding the funding.

There was no further discussion.

Senator Bowman moved a DO PASS, **Senator Grindberg** seconded. A roll call vote was taken resulting in 13 yeas, 0 nays and 1 absent. The motion carried. **Senator Wanzek** will carry the bill.

The hearing on SB 2323 closed.

Date:
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2323.

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

do pass

Motion Made By

Bowman

Seconded By

Grundberg

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grundberg, V Chrm	✓		Senator Tim Mathern	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer			Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson	✓	
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 13 No 0

Absent _____

Floor Assignment

Wanzik Ag Committee

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

REPORT OF STANDING COMMITTEE (410)
February 13, 2007 7:53 a.m.

Module No: SR-30-2981
Carrier: Wanzek
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2323: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2323 was placed on the
Eleventh order on the calendar.

2007 HOUSE AGRICULTURE

SB 2323

2007 HOUSE STANDING COMMITTEE MINUTES

-Bill/Resolution No. SB 2323

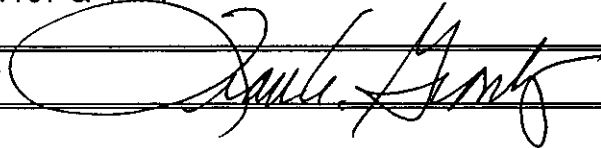
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: 3-1-07

Recorder Job Number: 4167 & 4171

Committee Clerk Signature



Minutes:

Chairman Johnson opened the hearing on SB 2323.

Merlin Leithold, South Central Director and Lobbyist for the ND Weed Control

Association: (testimony attached)

Rep Mueller: Your testimony talked about part of Option 3 being here on pages 2-3. Are you suggesting then that the FTE's that we are talking about would be at the table for the environmental protection people to mitigate to control a bit what rules will come down?

Leithold: Yes, everything that the EPA would be doing, but doing it on a local level and then giving that information to the EPA. We need to keep it local - in this case local control would be our state.

Rep Mueller: What's been the track record on that kind of thing with the EPA?

Leithold: It's like dealing with any federal issue. There will be times without cooperation, but we're hoping that it will work. From everything we have heard and read they are looking to the states for input. If we don't give them input, they'll do it themselves.

Rep Belter: Has your organization been working with all the congressional delegation to see if they can get some of these issues resolved?

Leithold: No, basically this ruling came from a lawsuit in Washington state. But we haven't directly talked to our congressional delegation.

Eric Aasmundstad, President of the ND Farm Bureau: We support this bill. We have worked with the EPA and the EPA does not want to do this. They are being forced to do it by the courts. EPA is begging for input from the states.

Testimony was passed out from **Dan Wogsland, ND Grain Growers**, and from **Eric Bartsch, Northern Pulse Growers Association**. Neither could be present for the hearing.

Jim Gray, Pesticide Registration Coordinator, ND Dept of Agriculture: (testimony attached)

Rep Onstad: If a bulletin is sent out, how is that notification process done? Is it just stapled to a bulletin board at the FSA office or an actual notification to producers in that defined area or what?

Gray: It is not published on hard copy. It is on line on the home page. They will have a month and year designation. They intend it to be a fluid process and will be constantly updated.

Rep Onstad: How will the individual ag producers know if they are in violation?

Gray: A major part of this will be public outreach. The Dept of Ag will play an active role in letting people know about bulletins and when they are updating.

Kent Albers, Farmer and Rancher from Center, ND, and Chair of the ND Ag Coalition: (testimony attached)

Rep Mueller: The case for the FTE's has been made fairly well. There are certainly lots of other issues that they are involved with. Would these folks have impact or could they have impact on other issues, EPA kinds of issues, other than **endangeMred** species?

Albers: My understanding is that this is specific to this issue and whether it can be expanded, I don't know.

Jim Gray: To answer Rep Mueller's question - yes, but two of EPA's highest priorities are endangered species and water issues. They are assessing how well North Dakotans are protecting surface and ground water. We would certainly use the results from the surface water monitoring to cover both programs. We would choose sites that would cover both drinking water issues and endangered species. We could use that pesticide information for a variety of programs.

Myron Dieterle, Sheridan County Weed Board: (testimony attached)

No Opposition

Chairman Johnson closed the hearing.

Chairman Johnson asked for a vote on SB 2323.

Rep Boe made a Do Pass Motion

Rep Brandenburg seconded the motion

(Yes) 13 (Nos) 0 (Absent) 0

Carrier: Rep Uglem

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2323

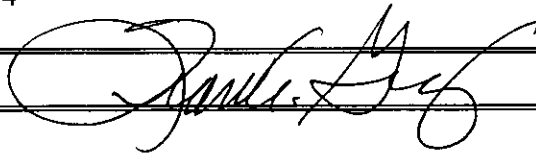
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: 3-9-07

Recorder Job Number: 4824

Committee Clerk Signature



Minutes:

Chairman Johnson brought the committee to order to vote on SB2323

Rep Belter Moved the Amendment

Rep Brandenburg Seconded the Motion

A voice vote was taken

Rep Belter moved a Do Pass as Amended on SB2323

Rep Brandenburg seconded the motion

(Yes) 8 (No) 0 (Absent) 5

Date: 3/1/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 2323

Action Taken Do Pass

Motion Made By Rep Boe Seconded By Rep Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	✓		Tracy Boe	✓	
Vice Chair Joyce Kingsbury	✓		Rodney Froelich	✓	
Wesley Belter	✓		Phillip Mueller	✓	
Mike Brandenburg	✓		Kenton Onstad	✓	
Craig Headland	✓		Benjamin Vig	✓	
Brenda Heller	✓				
John D Wall	✓				
Gerry Uglem	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep Uglem

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

Date: 3/9/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Agriculture

Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2323

Action Taken Moved the Amer

Motion Made By Belter Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Tracy Boe		
Vice Chair Joyce Kingsbury			Rodney Froelich		
Wesley Belter			Phillip Mueller		
Mike Brandenburg			Kenton Onstad		
Craig Headland			Benjamin Vig		
Brenda Heller					
John D Wall					
Gerry Uglem					

Total (Yes) X No _____

Absent _____

Floor Assignment Wesley Belter

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

Date: 3/9/07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Agriculture

Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number 2323

Action Taken Do Pass as Amend re referred to Approp

Motion Made By Belter Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	✓		Tracy Boe		
Vice Chair Joyce Kingsbury			Rodney Froelich		
Wesley Belter	✓		Phillip Mueller	✓	
Mike Brandenburg	✓		Kenton Onstad	✓	
Craig Headland			Benjamin Vig	✓	
Brenda Heller					
John D Wall	✓				
Gerry Uglem	✓				

Total (Yes) 8 No 0

Absent 5

Floor Assignment Rep Uglem

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

REPORT OF STANDING COMMITTEE

SB 2323: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (8 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). SB 2323 was placed on the Sixth order on the calendar.

Page 1, line 6, overstrike "(Effective through June 30, 2007)"

Page 1, line 16, overstrike "fifty dollars for each registered"

Page 1, line 17, overstrike "product to the general fund in the state treasury and the remainder of"

Page 2, overstrike line 15

Page 2, line 16, remove "1." and overstrike "Any person before selling or offering for sale any pesticide for use within this state"

Page 2, overstrike lines 17 and 18

Page 2, line 19, remove "a." and overstrike "Give the name and address of each manufacturer or distributor."

Page 2, line 20, remove "b." and overstrike "Give the name and brand of each product to be registered."

Page 2, line 21, remove "c." and overstrike "Be accompanied by a current label of each product to be registered."

Page 2, line 22, remove "d." and overstrike "Be accompanied by a registration fee of three hundred dollars for each"

Page 2, line 23, overstrike "product to be registered."

Page 2, line 29, remove "e." and overstrike "Be accompanied by a material safety data sheet for each product to be"

Page 2, line 30, overstrike "registered."

Page 3, line 1, remove "2." and overstrike "The commissioner may require an applicant or registrant to provide efficacy,"

Page 3, overstrike lines 2 through 4

Page 3, line 5, remove "3." and overstrike "If the commissioner finds that the application conforms to law, the commissioner"

Page 3, overstrike line 6

Page 3, line 7, remove "4." and overstrike "Each registration covers a designated two-year period beginning January first of"

Page 3, overstrike lines 8 through 15

Page 3, remove lines 16 through 18

Page 3, line 19, remove "6." and overstrike "This section does not apply to a pesticide sold by a retail dealer if the registration"

Page 3, overstrike lines 20 and 21

Page 3, line 24, replace "\$325,000" with "\$50,000"

Page 3, line 25, after "of" insert "funding two full-time equivalent employees and operating expenses for"

Renumber accordingly

2007 HOUSE APPROPRIATIONS

SB 2323

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2323

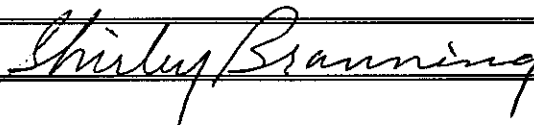
House Appropriations Committee
Education and Environment Division

☐ Check here for Conference Committee

Hearing Date: March 15, 2007

Recorder Job Number: 5113

Committee Clerk Signature



Minutes:

Chairman Wald: Called the hearing on SB 2323, a bill related to pesticide registration fees, to order by introducing **Senator Terry Wanzek**, District 29 who introduced the bill.

Senator Wanzek: (See handout #1, SB 2323) provided testimony in support of SB 2323.

EPA will allow input, data, research and local concerns. Legislation is important as a farmer to develop county by county bulletins regarding use restrictions that may dramatically affect farm land use and urban areas.

Representative Hawken: The fiscal note talks about \$225,000 for 2 FTE. Would it need 2 people?

Senator Wanzek: I don't fully agree that it needs 2 people; it will be as bare bones as it will go.

Representative Hawken: It will be a new program?

Senator Wanzek: It would be under the Department of Agriculture.

Vice Chairman Monson: It will not be possible to hire 2 FTE for \$50,000.

Senator Wanzek: The house Agriculture Committee reduced the \$325,000 down to \$50,000. I want to make sure we adequately fund this program.

Vice Chairman Monson: There is a hit of \$500,500 and \$50,000 will come out of the general fund.

Senator Wanzek: There is a sunset on the pesticide registration fee; it is currently \$350.00 for each product. The sunset would take it down to \$300.00. We look to the Environmental and Rangeland Protection (EARP) funds for this bill.

Representative Aarsvold: The fiscal note indicates there is an impact the general fund of \$550,000.

Representative Dennis Johnson, District 15: (See Handout #2 SB 2323, Endangered Species) Reviewed the House changes and stated that \$325,000 is needed for the program.

Vice Chairman Monson: What would the \$325,000 be used for?

Representative Johnson: Salaries, \$210,000; \$40,000 for operating; \$75,000 for doing the testing of water and soils.

Vice Chairman Monson: There is nothing being done now, right?

Representative Johnson: That is right.

Representative Klein: Do you have a time line for starting the program?

Representative Johnson: The industry would have an answer to that.

Representative Aarsvold: The Health Department should also be involved for water testing and so forth.

Representative Michael Brandenburg, District 28: Provided testimony in favor of SB 2323, especially keeping EPA involved.

Chairman Wald: Will this program satisfy EPA and what assurances do we have of that?

Representative Brandenburg: It is best to handle it within the state.

Vice Chairman Monson: If land is taken out of production, what is the recourse for the farmer? Would they be able to sign it up for CRP, PLOTS, or.....

Representative Brandenburg: We don't want to get to that point. We want to keep this cropland as it is.

Representative Aarsvold: Is there any provision for modifying cropping practices that would meet the EPA regulations?

Representative Brandenburg: I think that agencies within the state know best how to control the land. Our own control is the best protection.

Representative Klein: There are three options: One is to turn everything over to EPA; two, is the state takes over; three, we have a seat at the table. This is probably the cheapest way. We want our input or we could lose up to 200,000 acres of cropland.

Representative Brandenburg: It is best to work with EPA, EPA signs off on it, communication back and forth.

Representative Klein: To start this program, we could start with 1 person to get it going because it isn't going to get going over night.

Representative Brandenburg: If we can do it cheaper, it might be with the industry.

Representative Johnson: SB 2323 takes the \$50 from the general fund to the EARP fund.

Merlin Leithold, Registered lobbyist and South Central Area Director with the ND Weed Control Association: (See handout #3, SB 2323) provided testimony in favor of SB 2323, restoring the funding of the bill to \$325,000 and give it a do pass.

Representative Klein: Do the 5 FTE come from the Ag Department?

Leithold: Yes, Continuing his testimony, referring to attachment to handout # 3, given by Mr. Jim Gray.

Representative Klein: Do you have any kind of schedule on when the dockets will be opened and what will be involved in each one?

Ken Junket, Plant industries Program Manager and oversees the Pesticide program:

Anticipating about 12 open comment programs in 2007 with about 40 a year following. They won't give us a schedule but will review the registration process; at that point they will take the chemicals, put them on a list and start the review.

Representative Klein: When they open these dockets, they are open for certain chemicals.

Junket: It is open for all pesticides, herbicides, rodenticides, and fungicides.

Representative Klein: Will the pamphlets be specific to the county?

Junket: EPA indicated it will be a county by county basis. If there isn't data that they can look at they will put a blanket restriction on it.

Vice Chairman Monson: Do you think EPA being a federal agency will give us a lot of "say" if we do the blended one?

Junket: It will be a voluntary compliance program. EPA does not want to act alone, they need us to partner. It is a cooperative effort.

Vice Chairman Monson: If farmers lose production, is it possible farmers would file suit, saying you are unreasonable here?

Junket: It is better cost saving to have the state have its share at the table, even if that lawsuit goes forward at least they would have a defensible position to show that they have some data. EPA has asked us to be at the table with our resources.

Chairman Wald: This program shows good effort and don't the courts consider this?

Junket: The key to the whole program is scientific data. There is an impact to agriculture and also to nonag uses. These are not just ag use pesticides. They are tools that cities,

counties, industry will use, such as mosquito and grasshopper control. Controlling weeds in all of our grasslands...

Representative Aarsvold: It seems we are opening a data gathering nightmare, transporting chemicals from one area to another, farmers would have to keep detailed records.

Junkert: One of the FTEs that is proposed would be a data compiler into one data set. The information would help to our defense. North Dakota has over 10,000 pesticide registrations.

Vice Chairman Monson: How are we going to pay for it, about \$5,000 from the general fund over the governor's budget? Who else has a stake in this, who else is a player? Is it Game and Fish, is it farm checkoff any group that could lower the hit to the general fund.

Junkert: Bring together the commodity groups, ag commission, users of the EARP fund.

Representative Hawken: What would happen if you had the authority to do this without the money?

Junkert: The spending authority, I don't know where I would get the funding source. There is a regulatory implication.

Myron Dieterle, A County Weed Board member in Sheridan County and President of the Weed Control Association: Offered testimony in favor of SB 2323 with an aerial photo of the public lands that shows weed control needs.

Ivan Williams, Representative of the North Dakota Agriculture Association: Spoke in support of SB 2323 from the pesticide industry. The legal fees to get land back in Washington and Oregon were about \$12m. EPA is passing on some expenses that they would have to do as well as expertise.

Vice Chairman Monson: Who are members of your organization?

Williams: All of the retail dealers, elevators, and professional farmers, there are about 1,900 members. It is the people who are handling and/or applying the pesticides.

Chairman Wald: Who else might have a position, do you have any recommendations?

Jeff Weisphenning, Deputy Agriculture Commissioner: The bill as it was has adequate funding but there are some concerns about the \$50.00 be diverted from the general fund to EARP. The commodity groups have an interest.

Vice Chairman Monson: Is this going to have any type of impact on how much money goes into the EARP fund?

Junkert: There will be no impact on the EARP fund; all products need to be registered.

Representative Klein: How many products are out there?

Junkert: We estimated about 10,100 products at \$50.00 each or \$500,500.

Representative Gulleson: Requests a sub committee to discuss the complexity of this bill.

Chairman Wald: On the subcommittee will be Representatives Klein, Monson and Gulleson.
The hearing on 2323 is closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2323

House Appropriations Committee
Education and Environment Division

☐ Check here for Conference Committee

Hearing Date: March 21, 2007

Recorder Job Number: 5384

Committee Clerk Signature

Shirley Branning

Minutes:

Chairman Wald: Called the meeting to order to consider amendment .0205 of SB 2323, Endangered Species. **Representative Klein**, carrier of the bill, was asked to review the amendment with the committee.

Representative Klein: After explaining each section on pages 1 and 2 made a motion to **Do Pass** the amendment.

Vice Chairman Monson: Second.

Representative Klein: Option C, the hybrid version, where the state has a seat at the table is recommended, for \$200,000. Originally it was \$500,000.

Representative Aarsvold: The expiration date for the registration fees was removed.

Chairman Wald: Motion to pass the amendments, all in favor say "I", motion carries.

Representative Klein: Move a **Do Pass** as amended.

Vice Chairman Monson: Second.

Chairman Wald: Call the Roll.

Vote: 7 Yes, 0 No, 0 Absent, **Motion Carries**

Carrier: Representative Klein

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2323

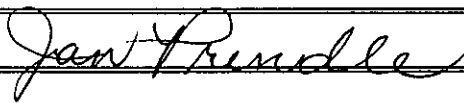
House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 21 March 2007

Recorder Job Number: 5400

Committee Clerk Signature



Minutes:

Chairman Svedjan opened discussion of SB 2323. We have amendment .0205 being distributed.

Representative Klein: I would move amendment .0205.

Representative Wald: I second.

Representative Klein: This bill is what is referred to as the endangered species program. It ties in closely to the budget we just passed. The money is in that budget. This is a program that was forced on us within the last 6 months. We had heard on it in the interim committee that Representative Pollert chaired. The feds lost the court case and now they are pushing on endangered species and every state, every county has to have brochures for every pesticide and every herbicide as to how it might affect endangered species. We had 3 options. We could run the whole program ourselves for about \$8-10.0 million, we could let the feds run the program and dictate, or we could have a hybrid where we have a seat at the table. This is the hybrid. It started out at \$500.0, got reduced to \$325.0 and two FTE. We are now down to \$200.0 and one FTE as this program gets started. Basically, the Ag Dept will have a seat at the table with the feds to determine setbacks, herbicides and the brochures that will go to the farmers in each county. There was some concern by many of the farm groups that we could lose up to 200.0 acres of farmland if this thing went completely one direction. These

endangered species are getting to be much more of a problem and we need to address this thing to at least have a seat at the table.

Representative Nelson: What gave the department the ability to lower the appropriation that was needed to have the seat at the table?

Representative Klein: As we sat down and decided how to run this, they had come in originally with \$500.0 and 3 employees. As we looked at the federal government operation in getting this started in each of 53 counties, it has to be separate because each one is different. As we looked at it and as it gets started, and this is a skimpy, bare-bones operation, we sat down with the department and they willingly gave up some money just to get this thing off the ground.

Representative Nelson: Was there any discussion as to what types of endangered species we would be targeting initially?

Representative Klein: It's not only endangered, but threatened—like the Piping Plover. If you are seeding or using herbicide and it happens to run in to a slough where the Piping Plover may have a habitat, you have to stay back. It could be several thousand yards—we don't know.

A voice vote was taken. The amendment was adopted.

Representative Klein: I move Do Pass as amended.

Representative Wald: I second.

A voice vote was taken: Yes: 24, No: 0, Absent: 0.

Representative Klein will carry the bill.

Date: March 21, 2007
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *SB 2323*

House Appropriations Education and Environment Division

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 10205

Action Taken Do pass as amended

Motion Made By Rep Klein Seconded By Rep. monson

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Representative Klein

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

Date: 3/21/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2323

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 70761.0205

Action Taken Adopt Amendment 0205

Motion Made By Klein Seconded By Wald

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Representative Wald			Representative Aarsvold		
Representative Monson			Representative Gulleeson		
Representative Hawken					
Representative Klein					
Representative Martinson					
Representative Carlson			Representative Glassheim		
Representative Carlisle			Representative Kroeber		
Representative Skarphol			Representative Williams		
Representative Thoreson					
Representative Pollert			Representative Ekstrom		
Representative Bellew			Representative Kerzman		
Representative Kreidt			Representative Metcalf		
Representative Nelson					
Representative Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Vote - carries

Date: 3/2/07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2323

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 70761.0205

Action Taken No Pass as amended

Motion Made By Klein Seconded By Ward

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald	✓		Representative Aarsvold	✓	
Representative Monson	✓		Representative Gulleeson	✓	
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams	✓	
Representative Thoreson	✓				
Representative Pollert	✓		Representative Ekstrom	✓	
Representative Bellew	✓		Representative Kerzman	✓	
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 24 No 0

Absent 0

Floor Assignment Klein

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

REPORT OF STANDING COMMITTEE

SB 2323, as amended, Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (24 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2323, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on pages 955 and 956 of the House Journal, Senate Bill No. 2323 is amended as follows:

Page 1, line 2, remove "; and to provide an appropriation"

Page 1, line 6, overstrike "(Effective through June 30, 2007)"

Page 2, overstrike line 15

Page 2, line 16, remove "1." and overstrike "Any person before selling or offering for sale any pesticide for use within this state"

Page 2, overstrike lines 17 and 18

Page 2, line 19, remove "a." and overstrike "Give the name and address of each manufacturer or distributor."

Page 2, line 20, remove "b." and overstrike "Give the name and brand of each product to be registered."

Page 2, line 21, remove "c." and overstrike "Be accompanied by a current label of each product to be registered."

Page 2, line 22, remove "d." and overstrike "Be accompanied by a registration fee of three hundred dollars for each"

Page 2, line 23, overstrike "product to be registered."

Page 2, line 29, remove "e." and overstrike "Be accompanied by a material safety data sheet for each product to be"

Page 2, line 30, overstrike "registered."

Page 3, line 1, remove "2." and overstrike "The commissioner may require an applicant or registrant to provide efficacy,"

Page 3, overstrike lines 2 through 4

Page 3, line 5, remove "3." and overstrike "If the commissioner finds that the application conforms to law, the commissioner"

Page 3, overstrike line 6

Page 3, line 7, remove "4." and overstrike "Each registration covers a designated two-year period beginning January first of"

Page 3, overstrike lines 8 through 15

Page 3, remove lines 16 through 18

Page 3, line 19, remove "6." and overstrike "This section does not apply to a pesticide sold by a retail dealer if the registration"

Page 3, overstrike lines 20 and 21

Page 3, remove lines 22 through 26

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

This amendment removes the expiration date of the \$350 pesticide registration fee and removes the appropriation for the endangered species program.

2007 SENATE AGRICULTURE

CONFERENCE COMMITTEE

SB 2323

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2323

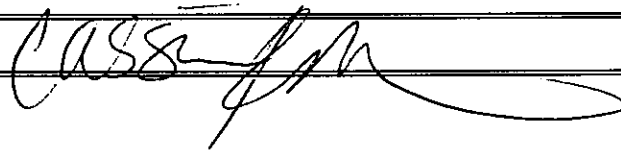
Senate Agriculture Committee

☒ Check here for Conference Committee

Hearing Date: April 5, 2007

Recorder Job Number: 5771

Committee Clerk Signature



Minutes:

Sen. Erbele opened the conference committee on SB 2323, all members **Sen. Erbele, Sen. Wanzek, Sen. Heckaman** and **Rep. Johnson, Rep. Klein, Rep. Mueller** were present.

Sen. Erbele asked **Rep. Klein** to explain what the house did with the bill, **Rep. Klein** explains 00:36-3:20.

Sen. Erbele- so in going through this there is \$200,000 allowed in the AG budget for this?

Rep. Klein- right now there is but we have not finished the AG budget it is possible that could change. We sat down with the AG department and we asked where we could put a barebones system together as this thing develops and that is kind of what we came up with and basically where we came up with some of the money we took \$25,000 out of crop harmonization which effectively came out of the EARP fund, we took \$50,000 out of the farmers market which came out of the EARP fund, we took \$25,000 out of project safe send which is also the EARP fund, we took \$50,000 from NDSU which was some money that comes from fines for some of the pesticide users and then we ended up putting \$150,000 into the EARP fund of general funds to keep that fund from being negative. So right now where we are sitting is if things go right we should have \$4,741 left in the EARP fund at the end of this operation.

Sen. Wanzek- I think that we all sense the importance of this and the impact that it could have on agriculture or political subdivisions and wheat control and things of that nature, I don't think that anyone disputes that here. I think it was more in the money, but I will come clean with you I guess the \$05 what we originally looked at, I understood that the \$350 registration fee sunseted and it went back to \$300. the question that I have is did the \$50 that went to general funds stay in there? When I was first approached with this bill I talked with some of the industry people they said they wont object to the \$50 staying in there if we address this endangered species issue. We need a little money to help fight black birds, that is why we did the 505.

Rep. Klein- it did sunset, our amendments put that back on again. So you still have the \$350 with the \$50 going to the general fund. I tried to get that moved into the EARP fund but didn't have any luck.

Rep. Johnson- my understanding of the bill from the time I heard it when you folks got done with it was the issue whether that \$50 goes to the general find or goes to the EARP fund and the amendments that were put on in the Ag journey was the issue that even the endangered species and the \$325,000 and then that is when they sent it to appropriations and that is why I wanted Rep. Klein to be at this meeting because of the actions that they did over there. So the difference between when we had the bill and you had the bill happened in appropriations. The sunset is the same it is just whether the \$50 goes in the general fund or into the EARP fund.

Rep. Klein- we are looking at 2009 which is a funding bill and it is possible that we could move some more money into this, in talking with the AG department folks this is the barebones operation to get it started.

Rep. Johnson- it also had not talked about endangered species and that is what we amended on to this bill.

Rep. Mueller- in visiting a little more with some of the department people they are kind of getting this handed to them and I don't think that they have big issues with it but they do have a concern about getting it done correctly. I am interested in what Rep. Klein has to say about adding a little more money to it, I think that with a little bit more money they could go to a 1½ FTE and that really sets the thing into motion in a fairly positive way so I don't know where it needs to come from but we are a little short if I am hearing it correctly.

Rep. Klein- we are looking at that right now in the AG budget and as some of you that have gone through the system, looking at the AG budget in comparison there is some 30% increase from previous years. And this really should have been part of a program instead of a separate bill. We are trying to fit all these programs together so that we can keep track of them somehow and that the money is in one bill, that is why we moved this because it is a on going program, where the blackbirds is a one time. We are looking at adding some money but I don't know where that is coming out we have some problems.

Sen. Erbele- what is the status of the budget right now?

Rep. Klein- it is in conference committee right now.

Rep. Mueller- on the \$50 that is going to the general fund is that how it stands now?

Rep. Klein- yes it is.

Sen. Wanzek- was the \$50 going in the general fund sunsetting as well?

Rep. Klein- the way that I understand it and I may be wrong is that it came back exactly as it was with the \$300 going there and the \$50 going to the general fund.

Sen. Wanzek- I am sensing that we are not in disagreement with the policy here, I just want to make sure that this gets done.

Sen. Erbele called Jim Gray to the podium, passed out spreadsheet see attached. Explained to the committee 19:00- 26:36.

Sen. Wanzek- so you are saying that the \$50 was going out of the EARP fund into the general fund regardless of what we did with registration fees instead. I know there is a feeling that another half of an entity could be shared.

Sen. Erbele closed the discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2323

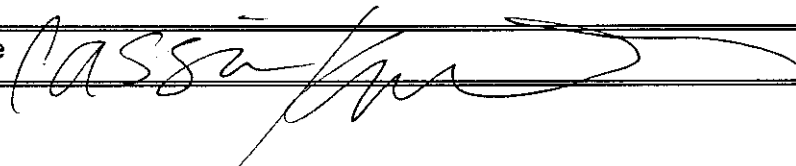
Senate Agriculture Committee

☒ Check here for Conference Committee

Hearing Date: April 11, 2007

Recorder Job Number: 5925

Committee Clerk Signature



Minutes:

Sen. Erbele opened the conference committee on SB 2323, all members were present.

Rep. Klein- last time we met we were at \$200,000 for the endangered species, it looks like we will be at \$250,000 which is adequate I believe to get the program off and started. We do not have the final results on 2009 but we have agreed that the priority on this one is important enough to add another \$50,000. The money is in 2009 and that is the Ag department budget, so the money will be accountable in the Ag department instead of a separate bill.

Rep. Mueller- stand alone vs. in the departments budget, what is the significance of that and is there some down sides here either way?

Rep. Klein- if you start having stand alone bills with money in it then when you do your budgeting for the department you don't have a complete budget for the department you have a separate bill coming in. From a appropriations area we like to have the money from each department in one bill.

Sen. Wanzek- this is awkward because we are the policy committee apparently we are not in disagreement what so ever on what this bill is trying to do it is all down to the money. So we just have to make sure and follow 2009 if we have interest in this bill?

Rep. Klein- that is correct. So I don't see any reason that you cant move this bill out and pass it and put it in place.

Sen. Erbele- move it out in what form, the one that we have here?

Rep. Klein- yes.

Sen. Wanzek- just a thought, if we get to 2009 and something that you might consider on that bill is that if the magnitude of this issue is even greater then what even anticipating can the department of agriculture seek grant money to address that?

Rep. Klein- more then likely they would come to a interim committee and ask for additional funding.

Sen. Wanzek- I am refereeing to anything above the \$250,000.

Sen. Erbele- that would go to the budget committee?

Rep. Klein- yes. As some of you might know there was \$150,000 for the predator program that was not utilized last biennium. So some of that money is where it came from.

Rep. Mueller- it may be a bit concerning to me that we might need a little more solid funding source.

Rep. Klein- actually what would happen unless I am completely mistaken the Ag department would come in with a line item and say that we need so much money here just like they do for other things, this would be one of their functions.

Sen. Heckaman- over visiting the last time we had heard from someone about putting in an item about a \$25 registration fee from the pesticide registration into this fund, is that not something that we should be thinking about then it would be there and we would not have to worry about it all the time?

Sen. Wanzek- maybe we need to be more informed about this predator fund, there was money appropriated last session for this purpose and it wasn't used and never got expended?

Rep. Klein- correct.

Sen. Wanzek- so if you took all the money from that then there wouldn't be any money for the other predator fund?

Rep. Klein- no there is additional money in the governor's budget and money coming from game and fish for predator control. This was appropriated last time and not utilized.

Sen. Wanzek- is it appropriated in the department of Ag for predator?

Rep. Klein- the department of Ag is just a flow through. The money that goes for predator control goes to the feds, we just take it from game and fish and from general fund run it through the Ag department and it goes to the feds. We are going to put some language in there on the predator control program so that it turns it into a study. That is a very wishy washy system. The other thing that you need to realize is that a lot of people dip into the

EARP fund. The thing that I am saying is that if you take that \$50 and put it into the EARP fund there are just too many people dipping into that. There is nothing in there that is why we had to put \$150,000 of the general fund money into the EARP fund to make it balance out.

Rep. Mueller- what does our bill need to look like to be whole and get this projects on line?

Sen. Wanzek- I think that all it really does is remove the sunset on the \$50 increment, the registration fee was set to go from \$350 to \$300 by overstriking the effective date. It doesn't address the endangered species act in anyway, we are getting assurances that that program is going to be taken care of in bill 2009.

Rep. Klein- the gentleman from the Ag department could probably tell you more than I could on how that is going to take place.

Sen. Erbele called **Roger Johnson**, Ag Commissioner, to the podium.

Rep. Klein- at this stage of the program how much information do you have that this thing is moving in the right direction and how are you going to implement it?

Roger Johnson- you mean the endangered species program?

Rep. Klein- that if correct.

Roger Johnson- the bill that came before you was to put 2 FDE's in the associated money, the Senate passed \$325,000 the house cut it to \$200,000. I don't know if there is a whole lot more that we can tell you except that in bill 2009 they want to cut where ever there is issues to split the difference. There are about 7-8 issues that remain in that bill. What I think might make some sense here is to do it like some of you were talking and changing that \$50 that goes to the general fund to \$25 and then maybe pull the appropriation back and put it back in this bill and do this bill as a stand alone, it would be self funding if you did that. If or conference committee cuts everything in half there is not going to be any money. There is going to have to be a funding source that comes into the picture so we don't come up short, our thought is that if you are going to start a new program you have to fund the base programs first.

Sen. Erbele- Rep. Klein what is the will of the committee to protect the \$250,000?

Rep. Klein- that is in place, but to think about coming in and changing that is not going to happen.

Rep. Mueller- I think if I am hearing you correctly we could have a endangered species program for the upcoming biennium but given some budget realities as we move forward would you or could you see this effort being subject to the same difficulties that you just referenced to other issues?

Roger Johnson- that is true that with any part of our budget as you know, most of us believe strongly that this kind of a program is a very legitimate use of the EARP fund. The EARP fund was set up to do these sort of things, I think that this would substantially simplify the process in

bill 2009, I think that if they would pull this off the table it would provide a funding source for it and get it out of our budget. This would at least get one of them off the table.

Rep. Klein- you are the one agency that has a 30.8% increase compared to your 2005 and 2007 budget. There is no other agency that comes close to it.

Roger Johnson- one of the things that has happened in bill 2009 is you have added the endangered species act, the blackbird funding program into it, you are adding about 4 new programs into that budget and of course you are going to have those kinds of percentage increases. You have to agree that there are big differences between the senate version and the house version in how we sort those out. That is my only point.

Sen. Wanzek- we haven't been working with the budget, I just want to make sure there is money for this project. If we didn't vote for this bill and we lost the sunset we would lose \$50 out of the EARP fund and that comes out to almost half a million dollars. We have no choice but to support some version of this. It sounds like the issue that is before us is something that the appropriations committee will be alert to watch for. It is difficult for us not knowing the whole picture to make a judgment. Is there the possibility of the emergency commission, if we find out that this progresses even more then we are anticipating?

Roger Johnson- you wouldn't get it from that board.

Sen. Erbele- as we look at the bill here and assuming that we would leave everything with SB 2009 is there anything that has to be changed in the wording?

Sen. Wanzek- I trust what Rep. Klein said but we need to verify.

Sen. Erbele closed the discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2323

Senate Agriculture Committee

☒ Check here for Conference Committee

Hearing Date: April 13, 2007

Recorder Job Number: 6013

Committee Clerk Signature



Minutes:

Sen. Erbele opened the conference committee on SB 2323, one member absent, Rep. Johnson.

Sen. Erbele- after talking we have be assured that money has been set aside.

Rep. Klein- there will be \$250,000 and will be monitored with this program only and wont get mixed in with any of the other funds should the program not get started the money would just stay for this particular operation.

Sen. Heckaman- that would be my only concern is that the money is in there.

Sen. Erbele- I have been assured that there are certain items in the budget that have been taken off the table and this will get money.

Sen. Wanzek- I feel very comfortable that everyone understands the importance of this issue and have been assured that the wording will even specify the importance of this issue in the budget and that the money is set aside. I think that we have to pass this bill and remove the sunset clause, we will create a world of problems if we don't.

Sen. Wanzek motioned that the senate accede to the house amendments and was seconded by **Rep. Klein**, roll call vote 5 yea, 0 nay, 1 absent.

REPORT OF CONFERENCE COMMITTEE

SB 2323: Your conference committee (Sens. Erbele, Wanzek, Heckaman and Reps. D. Johnson, Klein, Mueller) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 1070-1071 and place SB 2323 on the Seventh order.

SB 2323 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2323

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

**Testimony of Jim Gray
Pesticide Registration Coordinator
Senate Bill 2323
Senate Agriculture Committee
Roosevelt Park Room
January 25, 2007**

Chairman Flakoll and members of the Senate Agriculture Committee, I am Jim Gray, Pesticide Registration Coordinator with the North Dakota Department of Agriculture. I am here today to testify regarding SB 2323, a bill that addresses the risks of pesticides to threatened and endangered species.

On November 2, 2005, the U.S. Environmental Protection Agency (EPA) published a final notice on implementation of its Endangered Species Protection Program (ESPP). The ESPP was developed to better protect threatened and endangered species from pesticides, as well as to address recent litigation in which a U.S. District Court ruled that EPA had not fulfilled its obligations under the Endangered Species Act by failing to specifically consider effects of pesticides on threatened and endangered species as part of the pesticide registration process.

EPA's ESPP has two main components. The first component is a revised consultation process that EPA has developed with the U.S. Fish and Wildlife Service (FWS) and the National Oceanic

and Atmospheric Administration (NOAA) to assess the potential risk of every pesticide action to threatened and endangered species. These actions could include new FIFRA Section 3 pesticide registrations for either new chemicals or new uses for previously-registered chemicals, as well as pesticide uses evaluated through EPA's re-registration and registration review programs. States are also asked to provide a credible effort to assess the risks of pesticide uses under Section 18 exemptions and Section 24(c) registrations to threatened and endangered species.

The second major component of EPA's ESPP involves the use of Endangered Species Protection Bulletins ("Bulletins") to add use restrictions above and beyond those on the pesticide label whenever EPA determines that additional risk mitigation measures are needed to protect listed species. Bulletins will be published on a county-by-county basis and may contain a variety of use restrictions, such as pesticide use buffers, a reduction in the allowable pesticide use rates in sensitive areas, or similar measures to reduce pesticide exposure to listed species. Bulletins are intended to be updated whenever a risk assessment determines that additional use restrictions are needed. The Bulletins will be considered to be pesticide labeling and therefore enforceable documents under both state and federal pesticide law.

There are eight threatened and endangered species in North Dakota that would be covered under the ESPP. These include the interior least tern (*Sterna antillarum*), whooping crane (*Grus americana*), pallid sturgeon (*Scaphirhynchus albus*), black-footed ferret (*Mustela nigripes*), grey wolf (*Canis lupus*), bald eagle (*Haliaeetus leucocephalus*), piping plover (*Charadrius melodus*), and Western prairie fringed orchid (*Platanthera praeclara*). The bald eagle is scheduled to be

de-listed in the near future. However, even considering the remaining seven species, at least one listed species is found in all but six counties of North Dakota.

At the present time, we don't have any Bulletins in North Dakota under EPA's ESPP, but feedback from the Agency indicates that Bulletins will be available in the near future. The only question is how reasonable or overbearing the use restrictions in Bulletins will be.

States can play as large or small a role in developing Bulletins as they want to. On one end of the spectrum, states could step back and play a minimal role in developing Bulletins, and simply enforce whatever Bulletins that EPA develops.

On the other end of the spectrum, we could take complete ownership of the ESPP in North Dakota under a state-initiated plan, meaning that we would have to conduct our own pesticide risk assessments, develop our own risk mitigation measures, publish our own Bulletins, and update the Bulletins whenever a risk assessment determines that an update is needed. This option is extremely resource intensive, and we estimate that this could require up to five new Full Time Employees (FTEs) and up to \$1.5 million per biennium.

There is a third option in which EPA would retain ownership and ultimate responsibility to prepare and update the Bulletins, with the state offering data and recommendations as Bulletins are developed. Under this hybrid option, the state could furnish EPA with pesticide use data, local cropping data, and other information in response to draft Bulletins and proposed use

restrictions. The state would also participate in the open comment process as EPA solicits input on pesticide risk assessments related to listed species.

SB 2323 would fund two new FTEs in the North Dakota Department of Agriculture and total funding of \$325,000 per biennium to participate in the process under this third option. If this bill is enacted, it is anticipated that one of these FTEs would have expertise in geographic information systems (GIS) to gather and compile pesticide use data, crop information, soils data, and listed species distributions on a county-by-county basis. This person would also compile environmental fate and toxicity information on pesticides most commonly used in North Dakota. We anticipate that the second FTE would likely be a person with expertise in environmental toxicology and pesticide chemistry, would use available data to conduct local risk assessments, and would provide science-based input and counterarguments to EPA on draft Bulletins. In addition to the duties described above, the Department would need to solicit input from partner state and federal agencies, do outreach to growers and other members of the regulated community, and work with other members of the Department's pesticide program.

The appropriation under SB 2323 also includes \$75,000 per biennium to monitor pesticide levels in surface water and other media in highly sensitive areas in the state. These monitoring data are critical to monitor success in those areas that have an overlap of pesticide use and listed species habitat.

Adding pesticide use restrictions via Bulletins may sound scary to agriculture producers, although it does not need to be. EPA will be developing Bulletins and pesticide risk mitigation

measures based on the best available data at the Agency's disposal. In my opinion, EPA does not intend to create use restrictions that will severely impact agriculture. However, the Agency is forced to regulate pesticides conservatively when it comes to threatened and endangered species. SB 2323 will allow the state to provide EPA with refined data and science-based input, allowing North Dakota to have Bulletins that are both protective of listed species and reasonable.

Chairman Flakoll and committee members, I would be happy to answer any questions.



NORTH DAKOTA WEED CONTROL ASSOCIATION

**724 5th Street
Langdon, ND 58249**

Myron Dieterle
NDWCA President
661 2nd St NE
Keif, ND 58723
701-626-7470

Derrill Fick
NDWCA 1st Vice-President
P.O. Box 5005
Minot, ND 58702-5005
701-852-1970
wcweeds@ndak.net

Bruce Fagerholt
NDWCA 2nd Vice-President
7591 Hwy 18
Hoople, ND 58243
701-894-6292

Randy Mehlhoff
Executive Secretary
724 5 St.
Langdon, ND 58249
701-256-5491 / 701-570-3545 (cell)
rmehlhoff@ndsuxext.ndak.edu

Testimony of Merlin Leithold

Lobbyist # 284

SB 2323

Senate Agriculture Committee

January 25th, 2007

Chairman Flakoll, and members of the Senate Agriculture Committee. My name is Merlin Leithold. I am the south central area director for the ND Weed Control Association, and their lobbyist. I am also the weed control officer in Grant County.

This morning you have before you SB 2323. A bill that deals with the Endangered Species Protection Program. You may ask, why would the ND Weed Control Association be concerned with endangered species? We are concerned that if North Dakota would not have some type of program in place, this Endangered Species Protection Program could be like playing the lottery. On June 1st, you go on the EPA website, click on North Dakota, click on your perspective county, and see what the latest bulletin has listed for your county. It may say nothing, and as a county weed control officer, that means business as usual. Follow the current label, on the chemical you are using, and go out and spray noxious weeds. Or, the bulletin could say, you have 2 endangered species; you can only spray outside the shaded areas as shown on the map. Well, looking at the map, I see that 45% of my county is in the shaded area; and it states that no chemicals can be used in this area; therefore for the month of June, I or anyone else in my county, cannot spray in that area. Therefore I wait for July's bulletin and hope for better results.

This of course, would be a worst-case scenario, but with a state program in place, that same bulletin might only say that due to those 2 endangered species, I cannot spray for that month of June on 5% of the county acres, which are shaded. Or it could now also say that there are 2 chemicals that I can use in that area.

With a state program in place, it gives everyone a voice. If we are concerned with a certain area, we know whom we can call. Without a state program, we would be calling Washington DC. I always talk of not wanting to lose local control. SB 2323 would allow us to have that local control, even though here, local control would be State government dealing with Federal government issues.

We need to take a proactive approach. In having discussions within our organization, and also with other Ag groups, one question has arisen. Do we have a "window", in which we could wait, possibly until next session, to see what happens, and then start a statewide program? My answer to that is no! If the 60th Legislative session approves this bill, it will take approximately 6 months to a year to get North Dakota's program up and running. That may be the extent of our "window".

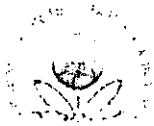
SB 2323 also has a fiscal note. As Mr. Gray has stated, this would provide for an appropriation of \$325,000. to fund the program. It would create 2 new FTE's to the Department, and also monitor pesticide levels.

The funding mechanism for SB 2323 is the Environmental and Rangeland Protection Fund (EARP). When the EARP Fund was created in 1991, it annually appropriated \$25 from each registration fee (\$150) to be put in the general fund in the state treasury. In 1995, the Legislature changed this from annual to biannual. The EARP fund then appropriated \$50 from each registration fee (\$300) to be put in the general fund.

What we are asking to have happen through SB 2323, is to have the \$50 registration fee, which is currently going to the general fund, to have that remain in the EARP fund, and to be the funding source for the Endangered Species Protection Program.

Mr. Chairman, and members of the Senate Agriculture Committee, on behalf of the ND Weed Control Association, I ask that you consider a do pass of SB 2323.

Thank-you



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

JAN 23 2007

Ref: 8P-P3T

Mr. Roger Johnson
Commissioner
North Dakota Department of Agriculture
600 E Boulevard Avenue
Bismark, ND 58505-0020

Dear Mr. Johnson:

This letter is to provide you with additional information on EPA's Endangered Species Protection Program with respect to North Dakota Senate Bill 2323.

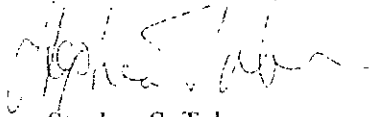
I commend your Department's efforts to protect listed species from pesticides by working closely with agricultural groups to ensure the greatest flexibility for pesticide users in your state. In doing so, North Dakota's unique program has become a national model on the forefront of implementing the new Endangered Species Protection Program (ESPP).

The goals of EPA's ESPP are to protect threatened and endangered species from pesticides while not placing undue burden on pesticide applicators. There are two critical components of the ESPP in which states are asked to provide information to EPA:

1. In order to determine the risk a pesticide product may pose to listed species, states are asked to provide EPA cropping and pesticide use information during the risk assessment process of registering pesticides. State specific data will result in better protections for listed species and fewer restrictions for pesticide applicators.
2. EPA will also rely upon states to provide local information for the Endangered Species Bulletins (Bulletins). Bulletins are the cornerstone of the ESPP and provide pesticide applicators with the pesticide use limitations necessary to protect listed species. Use limitations may include no-spray zones, spray buffers, and reduced application rates, and are enforceable under the Federal Fungicide, Insecticide, and Rodenticide Act. Again, state input will ensure the greatest protection for listed species as well as increased flexibility for pesticide users. We anticipate the first draft Bulletins will be completed later this year.

I am looking forward to continuing our excellent working relationship as North Dakota implements the new Endangered Species Protection Program. If we can be of any assistance to you, please do not hesitate to contact me at 303-312-6241 or Sadie Hoskie, Director of our Pollution Prevention, Pesticides and Toxics Program. at 303-312-6390.

Sincerely,



Stephen S. Tuber
Assistant Regional Administrator
Office of Partnerships and Regulatory Assistance

cc: Jim Gray, NDDA



Senate Bill No. 2323
Testimony by Brian Rau
1 / 25 / 07

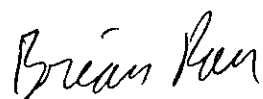
Brian Rau
Farmer / Commercial Applicator
Medina, ND
701 486 3414, 701 320 9505

I am testifying to urge you to support the funding that SB 2323 would supply. It is very important to agriculture to minimize the impact of the endangered species act regarding the use of crop protection materials in the state.

Several years ago, when the issues of endangered species and crop protection materials were first brought forward, the EPA's plan could have affected large areas of land in ND. Under the EPA's plan, large parts of counties and in some cases whole counties could have had the use of crop protection materials severely limited. After the state was able to go in and more specifically define the area where the endangered species actually were, the amount of land affected was greatly reduced. For example; under the EPA's plan much of Stutsman County would have been affected because of the presence of the Least Tern and the Piping Plover. After the state's plan was accepted, this area was brought down to a few sections. The results of this action were that endangered species were protected without having a negative impact on agriculture.

The funding SB 2323 would provide is of great importance and should be approved.

Sincerely,

A handwritten signature in cursive script that reads "Brian Rau".

Brian Rau

RE: SB 2323 Endangered Species Funding Bill

Ivan Williams

ND Ag. Assn.

BayerCropscience Sales Rep.

**Representing Ag Retailers, Ag Manufacturers and other Ag
Professionals across North Dakota.**

We are in favor of the development plan for a Endangered Species EPA response and coordination department within our Ag. Dept. We also support the funding mechanism out of the EARP Fund. These registration fees should be used to defend our labels and proper management of pesticide use. Returning the \$50 per registration from the general fund back into the EARP fund makes good sense as we search for the funding to start this effort. The Ag Dept. has minimalized the funds needed to \$325,000. With the good money management by other EARP fund users and the returned \$50 per, the funds needed are there.

The tendency will be for you to want to put this off for another session, but waiting for the EPA to make the rules could cost us years and millions. Wait and see is what Idaho, Washington and Oregon did with the salmon in the Columbia River. The EPA used their best estimates and pressure from environmentalist to request an additional 200 ft. set back from the water. The problem was that over 100,000 acres of irrigated potato land was taken out of use. It took 2+ years and millions in legal fees to get a compromise out of the EPA and reduce the set back to certain areas proven to be hazardous. They had to prove their position with the very data this new department will generate. How much set back from our potholes do you think the EPA and some environmentalist's might want. An eighty acre field with 9 to 10 potholes could lose 40 acres of existing crop land. Our endangered species right now might require restrictions on 19 to 25 counties. With the right data and positioning we could reduce restrictions issues to 4 county bulletins. If for no other reason other than to have a say in our county bulletins and their restrictions, we should fund this department. Don't wait for the EPA to rule against our better judgement.

NORTH DAKOTA



www.ndgga.com

*Working for you,
the producer!*

January 26, 2007

Senate Agriculture Committee Chairman Flakoll, Members of the Senate Agriculture Committee, for the record my name is Dan Wogsland, Executive Director for the North Dakota Grain Growers Association. NDGGA is in support of SB 2323.

The use of county bulletins by the Environmental Protection Agency as a means of enforcement for the federally mandated Endangered Species Act will have a direct effect on North Dakota agriculture. The way in which these bulletins are prepared and administered will have a major consequential bearing on the land use of North Dakota farms. That said, it is critical that North Dakota agriculture, through the North Dakota Agriculture Department, have a seat at the table when EPA is developing and implementing county bulletins for our state.

According to the North Dakota Agriculture Department, all but 5 North Dakota counties could be impacted by EPA county bulletins, because of endangered species thought to be found in their borders. NDGGA fears that if EPA is left to their own devices, it is entirely possible that the agency could adopt land use restrictions that would have a detrimental effect on North Dakota farms. Allowing EPA to go unchecked could mean the regionalization of county bulletin regulations; the net effect of this would be to saddle North Dakota with regulations that may not have any practical application for our state whatsoever.

SB 2323 seeks to allow the North Dakota Agriculture Department the means to "ride herd" so to speak on the EPA county bulletin process. Since the North Dakota Agriculture Department's warnings about the potential impacts of EPA county bulletins, the NDGGA Board of Directors has taken a serious look at the process. NDGGA has met with the North Dakota Agriculture Department to discuss our concerns, and we have testified in front of the Legislative Interim Committee on Agriculture to favor the North Dakota Agriculture's intercession in the county bulletin process on North Dakota agriculture's behalf. We come before the Senate Agriculture Committee today to do the same.

Therefore, Mr. Chairman, Members of the Senate Agriculture Committee, NDGGA asks for your favorable consideration of SB 2323 and would be open to any questions.

Thank you.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

**Testimony of Jim Gray
Pesticide Registration Coordinator
Senate Bill 2323
Senate Appropriations Committee
Roosevelt Park Room
February 1, 2007**

Chairman Holmberg and members of the Senate Appropriations Committee, I am Jim Gray, Pesticide Registration Coordinator with the North Dakota Department of Agriculture. I am here today to testify regarding SB 2323, a bill that addresses the risks of pesticides to threatened and endangered species.

On November 2, 2005, the U.S. Environmental Protection Agency (EPA) published a final notice on implementation of its Endangered Species Protection Program (ESPP). The ESPP was developed to better protect threatened and endangered species from pesticides, as well as to address recent litigation in which a U.S. District Court ruled that EPA had not fulfilled its obligations under the Endangered Species Act by failing to specifically consider effects of pesticides on threatened and endangered species as part of the pesticide registration process.

EPA's ESPP has two main components. The first component is a revised consultation process that EPA has developed with the U.S. Fish and Wildlife Service (FWS) and the National Oceanic

and Atmospheric Administration (NOAA) to assess the potential risk of every pesticide action to threatened and endangered species. These actions could include new FIFRA Section 3 pesticide registrations for either new chemicals or new uses for previously-registered chemicals, as well as pesticide uses evaluated through EPA's re-registration and registration review programs. States are also asked to provide a credible effort to assess the risks of pesticide uses under Section 18 exemptions and Section 24(c) registrations to threatened and endangered species.

The second major component of EPA's ESPP involves the use of Endangered Species Protection Bulletins ("Bulletins") to add use restrictions above and beyond those on the pesticide label whenever EPA determines that additional risk mitigation measures are needed to protect listed species. Bulletins will be published on a county-by-county basis and may contain a variety of use restrictions, such as pesticide use buffers, a reduction in the allowable pesticide use rates in sensitive areas, or similar measures to reduce pesticide exposure to listed species. Bulletins are intended to be updated whenever a risk assessment determines that additional use restrictions are needed. The Bulletins will be considered to be pesticide labeling and therefore enforceable documents under both state and federal pesticide law.

There are eight threatened and endangered species in North Dakota that would be covered under the ESPP. These include the interior least tern (*Sterna antillarum*), whooping crane (*Grus americana*), pallid sturgeon (*Scaphirhynchus albus*), black-footed ferret (*Mustela nigripes*), grey wolf (*Canis lupus*), bald eagle (*Haliaeetus leucocephalus*), piping plover (*Charadrius melodus*), and Western prairie fringed orchid (*Platanthera praeclara*). The bald eagle is scheduled to be

de-listed in the near future. However, even considering the remaining seven species, at least one listed species is found in all but six counties of North Dakota.

At the present time, we don't have any Bulletins in North Dakota under EPA's ESPP, but feedback from the Agency indicates that Bulletins will be available in the near future. The only question is how reasonable or overbearing the use restrictions in Bulletins will be.

States can play as large or small a role in developing Bulletins as they want to. On one end of the spectrum, states could step back and play a minimal role in developing Bulletins, and simply enforce whatever Bulletins that EPA develops.

On the other end of the spectrum, we could take complete ownership of the ESPP in North Dakota under a state-initiated plan, meaning that we would have to conduct our own pesticide risk assessments, develop our own risk mitigation measures, publish our own Bulletins, and update the Bulletins whenever a risk assessment determines that an update is needed. This option is extremely resource intensive, and we estimate that this could require up to five new Full Time Employees (FTEs) and up to \$1.5 million per biennium.

There is a third option in which EPA would retain ownership and ultimate responsibility to prepare and update the Bulletins, with the state offering data and recommendations as Bulletins are developed. Under this hybrid option, the state could furnish EPA with pesticide use data, local cropping data, and other information in response to draft Bulletins and proposed use

restrictions. The state would also participate in the open comment process as EPA solicits input on pesticide risk assessments related to listed species.

An anticipated budget for use of the appropriation created by SB 2323 is as follows:

Salary & Benefits:	\$210,000
Operating:	\$40,000
Lab Support:	\$75,000
Total:	\$325,000

SB 2323 would fund two new FTEs in the North Dakota Department of Agriculture and total funding of \$325,000 per biennium to participate in the process under this third option. If this bill is enacted, it is anticipated that one of these FTEs would have expertise in geographic information systems (GIS) to gather and compile pesticide use data, crop information, soils data, and listed species distributions on a county-by-county basis. This person would also compile environmental fate and toxicity information on pesticides most commonly used in North Dakota. We anticipate that the second FTE would likely be a person with expertise in environmental toxicology and pesticide chemistry, would use available data to conduct local risk assessments, and would provide science-based input and counterarguments to EPA on draft Bulletins. In addition to the duties described above, the Department would need to solicit input from partner state and federal agencies, do outreach to growers and other members of the regulated community, and work with other members of the Department's pesticide program.

The appropriation under SB 2323 also includes \$75,000 per biennium to monitor pesticide levels in surface water and other media in highly sensitive areas in the state. These monitoring data are critical to monitor success in those areas that have an overlap of pesticide use and listed species habitat.

Adding pesticide use restrictions via Bulletins may sound scary to agriculture producers, although it does not need to be. EPA will be developing Bulletins and pesticide risk mitigation measures based on the best available data at the Agency's disposal. In my opinion, EPA does not intend to create use restrictions that will severely impact agriculture. However, the Agency is forced to regulate pesticides conservatively when it comes to threatened and endangered species. SB 2323 will allow the state to provide EPA with refined data and science-based input, allowing North Dakota to have Bulletins that are both protective of listed species and reasonable.

Chairman Holmberg and committee members, I would be happy to answer any questions.

NORTH DAKOTA GAME & FISH DEPARTMENT

"Variety in Hunting and Fishing"

GOVERNOR, John Hoeven

DIRECTOR, Terry Steinwand

DEPUTY, Roger Rostvet

*100 North Bismarck Expressway
Bismarck, North Dakota 58501-5095*

Phone: (701) 328-6300

FAX: (701) 328-6352

Feb. 28, 2007

Rep. Matthew M. Klein

Dear Rep. Klein:

Re: Federally Threatened or Endangered Species in North Dakota

North Dakota has 7 species of animals and 1 species of plant that currently listed as federally threatened or endangered. Endangered species are those species which are in danger of extinction throughout all or a significant portion of their range. Threatened species are those species likely to become endangered in the future. Our states list includes the following.

Mammals

Black-Footed Ferrets (currently not found in the state) are listed as federally endangered.
Gray Wolves are listed as federally endangered.

Birds:

Least Terns are listed as federally endangered.
Piping Plovers are listed as federally threatened.
Whooping Cranes are listed as federally endangered.
Bald Eagles are listed as federally threatened.

Fish:

Pallid Sturgeon are listed as federally endangered.

Plants:

Prairie Fringed Orchid is listed as federally threatened.

Sincerely,



Roger Rostvet
Deputy Director



NORTH DAKOTA WEED CONTROL ASSOCIATION
724 5th Street
Langdon, ND 58249

Myron Dieterle
NDWCA President
661 2nd St NE
Keif, ND 58723
701-626-7470

Derrill Fick
NDWCA 1st Vice-President
P.O. Box 5005
Minot, ND 58702-5005
701-852-1970
wcweeds@ndak.net

Bruce Fagerholt
NDWCA 2nd Vice-President
7591 Hwy 18
Hoople, ND 58243
701-894-6292

Randy Mehlhoff
Executive Secretary
724 5 St.
Langdon, ND 58249
701-256-5491 / 701-570-3545 (cell)
rmehlhof@ndsuent.ndak.edu

Testimony of Merlin Leithold

Lobbyist # 284

SB 2323

House Agriculture Committee

March 1st, 2007

Chairman Johnson, and members of the House Agriculture Committee. My name is Merlin Leithold. I am the south central area director and the lobbyist for the ND Weed Control Association. I am also the weed control officer in Grant County.

This morning you have before you SB 2323, a bill that provides funding for establishing the Endangered Species Protection Program, in North Dakota. In late 2005, the United States Environmental Protection Program implemented the Endangered Species Protection Program. This program was mainly developed to protect the threatened and endangered species from pesticides.

In North Dakota we currently have eight threatened and endangered species. These include the least tern, pallid sturgeon, black-footed ferret, grey wolf, bald eagle, piping plover, and western fringed orchid.

What the Endangered Species Protection Program (ESPP) has the potential to do is a major concern to our rural state. This program maps areas that have the threatened or endangered species in them. The ESPP then decides which pesticides, if any can be used in that area, and which months. Bulletins are issued for each state and for each month. Those bulletins will show

what and where pesticides can be used. This is in addition to the actual label of a certain pesticide.

Lets take Grant County, for an example. The grey wolf is listed, as an endangered or threatened species. What could happen is, for instance, in June, which is probably the busiest pesticide applied month of the year, the ESPP issues a bulletin. That bulletin would show, by shading, what area in the county is the habitat of the grey wolf. The bulletin would list what pesticides, if any, can be applied in that area, and what the use rate would be. The grey wolf's habitat is along all three rivers in Grant County that could be forty-five percent of the county. If the bulletin states that no pesticides can be used for the month of June, that not only severely reduces my county cost share program; it also prevents a lot of farmers from applying pesticides on their crops. This of course could be a worst-case scenario, but on the other hand it could very well take place.

The North Dakota Weed Control Association, after careful consideration, realized that, as chemical applicators, we had no choice but to become proactive.

Talking to the ND Department of Agriculture, they gave us three different options in which this program could be approached.

The first option would be to take complete ownership of the Endangered Species Protection Program in North Dakota. This option would need five FTE's, and would cost approximately \$1.5 million for the biennium. This would create one very large state run program.

The second option would be to play a stepped back role. A wait and see role. Talk with EPA and try and persuade them to relax their bulletins when they post them for North Dakota. This approach would cost us virtually nothing, as far as funding is concerned, but could cost us the most as far as agriculture is concerned.

The third option, which is referred to as the hybrid approach, would leave ownership to the EPA. North Dakota would furnish EPA with information to help them draft these bulletins and propose use restrictions.

This option would require 2 FTE's. Those two FTE's would be responsible to provide EPA with the required data, to ensure North Dakota that the bulletins issued through ESPP would be such that pesticide users in the state would not be hindered by too much extra regulations. One question that was asked was whether this option could be reduced to perhaps one FTE. That answer would have to be no. Mr. Jim Gray from the Ag Department will explain the jobs of the two FTE's in more detail in his testimony.

SB 2323 would fund that hybrid approach. The bill would receive its funding from the Environmental Rangeland and Protection Fund (EARP). When EARP was created in 1991, it annually appropriated \$25 annually from each registration fee (\$150) to the general fund. In 1995, the ND Legislature changed this from annual to biannual. The EARP fund then appropriated (\$50.00) to the general fund. SB 2323 would change it so that the funds would all stay in EARP, and part of that \$50.00 registration fee would become the funding source for SB 2323. We are not eliminating anyone from EARP with this bill.

This bill asks for \$325,000. \$75,000 of that sum would be for monitoring pesticide levels in surface water in highly sensitive areas in the state. The remainder would go to fund the two FTE's and for operating costs.

In discussions within our organization and in discussions with other Ag groups, one question has arisen. Do we have a "window" in which we could wait, possibly until next session, to see what happens, and then start a statewide program? My answer to that would be no! If the 60th

Legislative session approves this bill, it will take approximately 6 months to a year to get North Dakota's program up and running. That may be the extent of our "window".

As I mentioned earlier, the ND Weed Control Association feels very strongly about this issue. Not only are we worried about how ESPP could affect us in our spraying season activities; we also want to be good stewards of the land. We feel that SB 2323 is not only a good fit for funds from EARP; we feel that it is a needed program for North Dakota.

Mr. Chairman and members of the House Agriculture Committee, on behalf of the ND Weed Control Association, I ask that you consider a do pass on SB 2323.

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

**Testimony of Jim Gray
Pesticide Registration Coordinator
Senate Bill 2323
House Agriculture Committee
Peace Garden Room
March 1, 2007**

Chairman Johnson and members of the House Agriculture Committee, I am Jim Gray, Pesticide Registration Coordinator with the North Dakota Department of Agriculture. I am here today to testify in support of SB 2323, a bill that addresses the risks of pesticides to threatened and endangered species.

On November 2, 2005, the U.S. Environmental Protection Agency (EPA) published a final notice on implementation of its Endangered Species Protection Program (ESPP). The ESPP was developed to better protect threatened and endangered species from pesticides, as well as to address recent litigation in which a U.S. District Court ruled that EPA had not fulfilled its obligations under the Endangered Species Act by failing to specifically consider effects of pesticides on threatened and endangered species as part of the pesticide registration process.

EPA's ESPP has two main components. The first component is a revised consultation process that EPA has developed with the U.S. Fish and Wildlife Service (FWS) and the National Oceanic

and Atmospheric Administration (NOAA) to assess the potential risk of every pesticide action to threatened and endangered species. These actions could include new FIFRA Section 3 pesticide registrations for either new chemicals or new uses for previously-registered chemicals, as well as pesticide uses evaluated through EPA's re-registration and registration review programs. States are also asked to provide a credible effort to assess the risks of pesticide uses under Section 18 exemptions and Section 24(c) registrations to threatened and endangered species.

The second major component of EPA's ESPP involves the use of Endangered Species Protection Bulletins ("Bulletins") to add use restrictions above and beyond those on the pesticide label whenever EPA determines that additional risk mitigation measures are needed to protect listed species. Bulletins will be published on a county-by-county basis and may contain a variety of use restrictions, such as pesticide use buffers, a reduction in the allowable pesticide use rates in sensitive areas, or similar measures to reduce pesticide exposure to listed species. Bulletins are intended to be updated whenever a risk assessment determines that additional use restrictions are needed. The Bulletins will be considered to be pesticide labeling and therefore enforceable documents under both state and federal pesticide law.

There are eight threatened and endangered species in North Dakota that would be covered under the ESPP. These include the interior least tern (*Sterna antillarum*), whooping crane (*Grus americana*), pallid sturgeon (*Scaphirhynchus albus*), black-footed ferret (*Mustela nigripes*), grey wolf (*Canis lupus*), bald eagle (*Haliaeetus leucocephalus*), piping plover (*Charadrius melodus*), and Western prairie fringed orchid (*Platanthera praeclara*). The bald eagle is scheduled to be

de-listed in the near future. However, even considering the remaining seven species, at least one listed species is found in all but six counties of North Dakota.

At the present time, we don't have any Bulletins in North Dakota under EPA's ESPP, but feedback from the Agency indicates that Bulletins will be available in the near future. The only question is how reasonable or overbearing the use restrictions in Bulletins will be.

States can play as large or small a role in developing Bulletins as they want to. On one end of the spectrum, states could step back and play a minimal role in developing Bulletins, and simply enforce whatever Bulletins that EPA develops.

On the other end of the spectrum, we could take complete ownership of the ESPP in North Dakota under a state-initiated plan, meaning that we would have to conduct our own pesticide risk assessments, develop our own risk mitigation measures, publish our own Bulletins, and update the Bulletins whenever a risk assessment determines that an update is needed. This option is extremely resource intensive, and we estimate that this could require up to five new Full Time Employees (FTEs) and up to \$1.5 million per biennium.

There is a third option in which EPA would retain ownership and ultimate responsibility to prepare and update the Bulletins, with the state offering data and recommendations as Bulletins are developed. Under this hybrid option, the state could furnish EPA with pesticide use data, local cropping data, and other information in response to draft Bulletins and proposed use restrictions. The state could also participate in the open comment process as EPA solicits input

on pesticide risk assessments related to listed species. Through participation during the open comment period, a state could negate the need for a Bulletin by providing scientific arguments as to why the intended use will not result in adverse effects to listed species.

SB 2323 would provide funding of \$325,000 to the North Dakota Department of Agriculture per biennium to participate in the process under this third option. If this bill is enacted, it is anticipated that the Department would add two staff members. One of these FTEs would have expertise in geographic information systems (GIS) to gather and compile pesticide use data, crop information, soils data, and listed species distributions on a county-by-county basis. This person would also compile environmental fate and toxicity information on pesticides most commonly used in North Dakota. We anticipate that the second FTE would likely be a person with expertise in environmental toxicology and pesticide chemistry, would use available data to conduct local risk assessments, and would provide science-based input and counterarguments to EPA on draft Bulletins. In addition to the duties described above, the Department would need to solicit input from partner state and federal agencies, do outreach to growers and other members of the regulated community, and work with other members of the Department's pesticide program.

The appropriation under SB 2323 also includes \$75,000 per biennium to monitor pesticide levels in surface water and other media in highly sensitive areas in the state. These monitoring data are critical to monitor success in those areas that have an overlap of pesticide use and listed species habitat.

Please allow me to provide a recent example of how we could have offered input to EPA regarding the potential for pesticides to impact listed species. On February 2, 2007, the Agency opened a docket to solicit stakeholder comments on recent findings on the pesticides lactofen (sold as Cobra®), clomazone (sold as Command®), hexythiazox (sold as Savey®), and sulfosate (sold as Touchdown®) as part of the Agency's Registration Review program. EPA asked for comments on a variety of the Agency's findings, including ecological risk assessments that describe the potential for these chemicals to cause unacceptable effects to listed species and other non-target organisms. This is an opportunity for us to furnish EPA with information on how much each of these pesticides are used in ND, how they are used, where they are used, and whether we anticipate any adverse effects to listed species based on those state-specific use patterns. If we find that the intended use may impact listed species, we could recommend some reasonable measures to protect those species.

It is anticipated that there will be 12 such open comment opportunities for different pesticides in 2007, with approximately 40 open comments per year thereafter. Unfortunately, until the Department can add resources, we will not be able to offer meaningful feedback in this proactive fashion.

Adding pesticide use restrictions via Bulletins may sound scary to agriculture producers, although it does not need to be. EPA will be developing Bulletins and pesticide risk mitigation measures based on the best available data at the Agency's disposal. In my opinion, EPA does not intend to create use restrictions that will severely impact agriculture. However, the Agency is forced to regulate pesticides conservatively when it comes to threatened and endangered species.

SB 2323 will allow the state to provide EPA with refined data and science-based input, allowing North Dakota to have Bulletins that are both protective of listed species and reasonable.

Chairman Johnson and committee members, I urge you to pass SB 2323. I would be happy to answer any questions.



P.O. Box 2599
Bismarck, ND 58502
(701) 355-4458
FAX (701) 223-4645

MEMBERS

AmeriFlax
Milk Producers Association of
North Dakota, Inc.
Minn-Dak Farmers Co-op
North Dakota Ag Aviation
Association
North Dakota Ag Consultants
North Dakota Agricultural
Association
North Dakota Agri-Women
North Dakota Association of Soil
Conservation Districts
North Dakota Association of
Agricultural Educators
North Dakota Barley Council
North Dakota Beef
Association
North Dakota Corn Growers
Association
North Dakota Corn Utilization
Council
North Dakota Crop
Improvement and Seed
Association
North Dakota Department of
Agriculture
North Dakota Dry Bean Council
North Dakota Elk Growers
North Dakota Farm Bureau
North Dakota Farm Credit Council
North Dakota Grain Dealers
Association
North Dakota Grain Growers
Association
North Dakota Lamb and Wool
Producers
North Dakota Oilseed Council
North Dakota Pork Producers
North Dakota Soybean Growers
Association
North Dakota State Seed
Commission
North Dakota Wheat
Commission
Northern Canola Growers
Association
North Dakota Plains Potato Growers
Association
North Dakota Pulse Growers
Association
Red River Valley Sugarbeet
Growers

Testimony of Kent Albers
North Dakota Ag Coalition
Senate Bill 2323
March 1, 2007

Chairman Johnson and members of the House Agriculture Committee:

I am Kent Albers. I farm and ranch near Center and serve as the chairman of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I would encourage your support of SB 2323.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for 20 years. Today, we represent 30 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. Through the Ag Coalition, these members seek to enhance the business climate for North Dakota's agricultural producers.

The Ag Coalition takes a position on only a limited number of issues brought to us by our members that have significant impact on North Dakota's agriculture industry. Providing North Dakota producers and pesticide applicators and dealers a voice in pesticide regulations, while being courteous and aware of the state's endangered species is one of these issues.

SB 2323 would give North Dakota a say in pesticide regulations mandated by the Environmental Protection Agency by providing funding for the establishment of an endangered species program through the North Dakota Department of Agriculture.

This would give North Dakota a much-needed seat at the table in the development of the EPA's county pesticide regulation bulletins. Participating at this level would provide North Dakota producers and pesticide applicators and dealers fair representation as the documents are being developed. This is important to the future of the state's ag industry.

Therefore, we urge you to support SB 2323.

3-1-2007

Chairman Johnson, members of the committee, my name is Myron Dieterle, I am a farmer and rancher and serve on the Sheridan County Weed Board. I am here on behalf of our board in support of Senate Bill 2323.

In our county our biggest concern is our surface water. If the EPA would mandate a "one size fits all", 200 foot set back on surface water for pesticides, could we feasibly control noxious weeds, much less produce crops on cropland in the east of the Missouri region?

Think back two- three years and the ten years previous. Let's not look at only the last year when it was dry in a large part of the state. Could have the farmers and ranchers controlled the weeds? If they couldn't have, would it have paid for the county weed boards to use state and local tax dollars to address the other noxious weed problems? Thank-you, and there any questions?



Northern Pulse Growers Association

Testimony of Eric Bartsch
Northern Pulse Growers Association
Senate Bill 2323
House Agriculture Committee
Peace Garden Room
March 1, 2007

Chairman Johnson, members of the House Agriculture Committee, for the record my name is Eric Bartsch and I am the Executive Director of the Northern Pulse Growers Association. The Northern Pulse Growers Association represents the pea, lentil and chickpea growers and processors throughout North Dakota and Montana. I am here in support of SB 2323.

SB 2323 would allocate funding to allow North Dakota to have local input regarding the Environmental Protection Agency's county bulletin development. Having local input regarding pesticide applications is vital to North Dakota's agriculture industry to prevent regulations and bulletins that would not be appropriate to the State's environment and pesticide use patterns. In addition, local input would provide information to EPA that would give them the most accurate information to allow them to make the best decision that they can regarding the pesticide bulletin.

Chairman Johnson and committee members, I urge you to support SB 2323. I would be happy to answer any questions you may have.



February 23, 2007

House Agriculture Committee Chairman Johnson, Members of the House Agriculture Committee, for the record my name is Doyle Lentz, Director for the North Dakota Grain Growers Association. NDGGA is in support of SB 2323.

The use of county bulletins by the Environmental Protection Agency as a means of enforcement for the federally mandated Endangered Species Act will have a direct effect on North Dakota agriculture. The way in which these bulletins are prepared and administered will have major consequences on the land use of North Dakota farms. That said, it is critical that North Dakota agriculture, through the North Dakota Agriculture Department, have a seat at the table as EPA develops and implements county bulletins for our state. SB 2323 seeks to give the North Dakota Agriculture Department the means necessary to give North Dakota agriculture a say in the development of county bulletins by the EPA.

According to the North Dakota Agriculture Department, all but 5 North Dakota counties could be impacted by EPA county bulletins because of endangered species thought to be found in their borders. NDGGA fears that if EPA is left to their own devices, it is entirely possible that the agency could adopt land use restrictions that would have a detrimental effect on North Dakota farms. Allowing EPA to go unchecked could mean the regionalization of county bulletin regulations; the net effect of this would be to saddle North Dakota with regulations that may not have any practical application for our state whatsoever.

SB 2323 seeks to allow the North Dakota Agriculture Department the means to "ride herd" on the EPA county bulletin process. Since the North Dakota Agriculture Department's warnings about the potential impacts of EPA county bulletins, the NDGGA Board of Directors has taken a serious look at the process. NDGGA has met with the North Dakota Agriculture Department to discuss our concerns, and we have testified in front of the Legislative Interim Committee on Agriculture to favor the North Dakota Agriculture's intercession in the county bulletin process on North Dakota agriculture's behalf. We come before the House Agriculture Committee today to do the same.

Therefore, Mr. Chairman, Members of the House Agriculture Committee, NDGGA asks for your favorable consideration of SB 2323 and would be open to any questions.

Thank you.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

2005-07

Final

Senate Version

House Version

Balance, July 1, 2007 \$ 915,396 SB2009 \$ 462,509 SB2179 \$ (15,719) SB2323 \$ (95,219) SB2009 \$ 462,509 SB2179 \$ (420,719) SB2323 \$ (500,219)

Revenues¹

Repeal of Sunset² \$ 2,505,000 \$ 2,525,000 \$ 2,525,000 \$ 505,000 \$ 505,000
 \$50 from general fund² \$ 500,000 \$ 505,000 \$ 505,000 \$ 505,000
 General Fund Transfer \$ 150,000 \$ 150,000
 NDSU Extension Service Transfer³ \$ 50,000 \$ 50,000

Total Available \$ 3,920,396 \$ 3,492,509 \$ (15,719) \$ 409,781 \$ 3,187,509 \$ (420,719) \$ 4,781

Appropriations

Health Department (2005 SB 2004, 2007 HB 1004) \$ 202,808 \$ 216,119 \$ 216,119
 ND Stockmens Association \$ 50,000 \$ 50,000 \$ 50,000
 Pesticide Programs \$ 425,875 \$ 506,792 \$ 506,792
 Safesend \$ 580,371 \$ 622,462 \$ 597,462
 Noxious Weeds \$ 1,723,833 \$ 1,683,355 \$ 1,683,355
 Crop Harmonization Board \$ 25,000 \$ 50,000 \$ 25,000
 Ag in the Classroom \$ 100,000 \$ 100,000 \$ 100,000
 Farmers Markets \$ 79,500 \$ 79,500 \$ 29,500
 Minor Use Fund \$ 200,000 \$ 200,000
 Agriculture Experiment Station \$ 150,000
 Endangered Species \$ 325,000 \$ 200,000
 Blackbird Research \$ 79,500 \$ 79,500

TOTAL APPROPRIATIONS \$ 3,457,887 \$ 3,508,228 \$ 79,500 \$ 325,000 \$ 3,608,228 \$ 79,500 \$ -

Balance, June 30, 2009 \$ 462,509 \$ (15,719) \$ 84,781 \$ (420,719) \$ (500,219) \$ 4,781

¹Revenues are based on 10,000 pesticide registrations for the 2005-07 biennium and 10,100 pesticide registrations for the 2007-09 biennium.

²Senate Bill No. 2009 amended NDCC Section 19-18-04 to continue the biennial pesticide registration at \$350, with \$50 of each registration deposited in the general fund. The House removed this section of the bill. Senate Bill No. 2323 amended NDCC Section 19-18-04 to return the biennial pesticide registration to \$300 and eliminate the transfer of \$50 per registration fee to the general fund. The House further amended Senate Bill No. 2323 to continue the biennial registration fee at \$350, with \$50 of each registration being deposited in the general fund.

³The North Dakota State University Extension Service will provide \$50,000 for the endangered species program from civil penalties related to pesticide use.

Handout #1

SB 2323
March 15, 2007

Senate Bill 2323
Testimony for House Agriculture
Senator Terry M. Wanzek
District 29

Chairman Klein and House Appropriations Sub-committee members, my name is Terry Wanzek, I am District 29's State Senator. I wish to express my support of SB 2323.

SB 2323 deals with pesticide registration fees and pesticide regulations when it comes to the implementation of the Endangered Species Protection Program (ESPP).

On November 2, 2005, the Federal Environmental Protection Agency (EPA) published a final notice on implementation of the ESPP. The ESPP was developed to better protect threatened and endangered species from pesticides as well as to address recent litigation in which a US District Court ruled that EPA had not fulfilled its obligations under the Endangered Species Act.

As a result of this suit and EPA's final notice, EPA will be introducing bulletins to possibly add use restrictions above and beyond those on the pesticide labels whenever EPA deems it necessary in meeting their obligation to implement the ESPP. Bulletins will be published on a county by county basis and may contain a variety of use restrictions that could have a dramatic effect on our states agriculture producers.

Here is the issue in this bill: Given that EPA is court ordered to do more to address the ESPP we as a state have a choice to make. States can play as large a role in developing bulletins as they want to.

We have an option of entirely allowing EPA to write the county bulletin rules and regulations or on the other hand our state can accept the entire obligation of writing the bulletins and taking on the responsibility that comes with it. The bill is a hybrid version. This bill attempts to find a place in the middle of the two extremes. I question whether North Dakota wants to inherit the entire responsibility and a huge liability; but I do want to see local state input into the final drafting of these bulletins.

With the dollars available we will be able to have the resources to collect data, do research, etc. to provide informational input that more directly addresses our local concerns which are unique to North Dakota's environment. I feel it is very important that we provide this input.

So, simply put, the question is do we trust the EPA to have entire control regarding the implementation of the ESPP and the development of county bulletins or do we want to be sure that local input is provided and directly implemented into the final development of these county bulletins. So Mr. Chairman and members of the House Agriculture Committee, to borrow a phrase from a late great president during the cold war "Trust but verify!"

Thank you for your time and favorable consideration of SB 2323.

Handout #2

SB 2323
March 15, 2007

Suggested

Noxious Weeds	\$	1,683,355.00	
Safe Send	\$	622,462.00	
Pesticide Programs	\$	506,792.00	
Ag in Classroom			
Pride of Dakota			
Minor Use	\$	200,000.00	Move to General Fund
Crop Research	\$	25,000.00	Move to General Fund
Ground Water	\$	202,808.00	
Stockmen's	\$	50,000.00	
Endangered Species	\$	325,000.00	
Black Birds	\$	54,812.00	
	\$	3,670,229.00	

\$100,000
\$79,500
\$179,500

Impact to the General Fund

Highlighted

Amend NDCC 4-35-28 to move pesticide violations to EARP. The Department estimates \$150,000 per biennium.

\$ 179,500.00
\$ 150,000.00
\$ 329,500.00

8/16



Handout # 3 SB 2323 March 15, 2007

NORTH DAKOTA WEED CONTROL ASSOCIATION

724 5th Street

Langdon, ND 58249

Our Web site is: www.ndweeds.homestead.com

Myron Dieterle
NDWCA President
661 2nd St NE
Keif, ND 58723
701-626-7470

Derrill Fick
NDWCA 1st Vice-President
P.O. Box 5005
Minot, ND 58702-5005
701-852-1970
wcweeds@ndak.net

Bruce Fagerholt
NDWCA 2nd Vice-President
7591 Hwy 18
Hoople, ND 58243
701-894-6292

Randy Mehlhoff
Executive Secretary
724 5 St.
Langdon, ND 58249
701-256-5491 / 701-570-3545 (cell)
rmehlhof@ndsuxext.nodak.edu

Testimony of Merlin Leithold

Lobbyist # 284

SB 2323

House Appropriations

March 22nd, 2007

Good Morning Chairman Wald and members of the House Appropriations Committee on Education and Environment. For the record, my name is Merlin Leithold. I am the south central area director with the ND Weed Control Association. I serve as their lobbyist, and I am also the weed control officer in Grant County.

This morning you have before you SB 2323, a bill that would provide funding for establishing the Endangered Species Protection Program (ESPP), in North Dakota. The ND Department of Agriculture, in particular, MR. Jim Gray, pesticide registration coordinator, spoke at our convention in January, on what ESPP is about, and what the effects without a program in place could be. Our board of directors met at the conclusion of our convention and decided that we, as an association, cannot sit back, without trying to ask you, our legislators to help us in giving a tool to the ND Department of Agriculture, to fight for our rights as a state.

On Friday, January 12, our association president, Mr. Myron Dieterle, met with other agriculture groups to get their input, and the consensus was to let us get a bill drawn up to be introduced to start the process in motion. The process has brought us to your committee.

I have asked Mr. Ken Junkert, program manager for plant industries with the Department, to help answer technical questions, on the concept of the bill, and I have also have asked Mr. Jeff Weispfenning, deputy agriculture commissioner, to answer possible questions on the funding source for SB 2323.

In late 2005, the United States Environmental Protection Program implemented the ESPP. This program was developed to protect the threatened and endangered species from pesticides. This program is a result of a lawsuit in Washington State. In September 2006 the ND Ag Dept still had not received a clear definition from EPA on what the state's role would be. In November the department finally received information on what type of role states would have.

In North Dakota, we currently have eight threatened and endangered species. These include the least tern, pallid sturgeon, black-footed ferret, grey wolf, bald eagle, piping plover, and western fringed orchid.

What the Endangered Species Protection Program (ESPP) has the potential to do is a major concern to our rural state. This program maps areas that have the threatened or endangered species in them. The ESPP then decides which pesticides, if any can be used in that area, and which months. Bulletins are issued for each state and for each month. Those bulletins will show what and where pesticides can be used. This is in addition to the actual label of a certain pesticide.

Lets take Grant County, for an example. The grey wolf is listed, as an endangered or threatened species. What could happen is, for instance, in June, which is probably the busiest pesticide applied month of the year, the ESPP issues a bulletin. That bulletin would show, by shading, what area in the county is the habitat of the grey wolf. The bulletin would list what pesticides, if any, can be applied in that area, and what the use rate would be. The grey wolf's habitat is along all three rivers in Grant County that could be forty-five percent of the county. If the bulletin states that no pesticides can be used for the month of June, that not only severely reduces my county cost share program; it also prevents a lot of farmers from applying pesticides on their crops. This of course could be a worst-case scenario, but on the other hand it could very well take place.

In January, Mr. Gray spoke about the different options a state could implement a program. The first option would be to take complete ownership of the ESPP in North Dakota. This option would require us to conduct our own pesticide risk assessments, develop our own risk assessments, publish our own bulletins, and update the bulletins whenever necessary. This option could take up to 5 FTE's, and cost approximately \$1.5 million per biennium.

The second option would be to play a stepped back role, a wait and see role. We could wait and see what the bulletins say, and hope everything turns out beneficial to our state. This approach would cost us virtually nothing, as far as funding is concerned, but could cost us the most, as far as agriculture is concerned.

The third option would be something we have come to call the hybrid option. Under this option, the EPA would retain ownership and ultimate responsibility to prepare and update the bulletins, but with the state offering data and recommendations as bulletins are developed. The state could furnish EPA with pesticide use data, local cropping data, and other information in response to draft bulletins and proposed use restrictions. The state would also participate in the open comment process to EPA as they solicit input on pesticide risk assessments related to the species.

This option would require two new FTE's. One FTE would have to have the expertise in geographic information systems (GIS), to gather and compile pesticide use data, crop information, soil data, and listed species distributions on a county-by-county basis. This person would also compile environmental fate and toxicity information on pesticides most commonly used in North Dakota. The second FTE would be a person with expertise in environmental toxicology and pesticide chemistry, would use available data to conduct local risk assessments, and to provide science based input and counterarguments to EPA on their draft bulletins. The department would also need to do outreach to growers and other members of the regulated community, solicit input from partner state and federal agencies, and also work with other members of the Department's pesticide program.

SB 2323 would create and fund this last option, the hybrid option. SB 2323 would fund that hybrid approach. The bill would receive its funding from the Environmental Rangeland and Protection Fund (EARP). When EARP was created in 1991, it annually appropriated \$25 annually from each registration fee (\$150) to the general fund. In 1995, the ND Legislature changed this from annual to biannual. The EARP fund then appropriated (\$50.00) to the general fund. SB 2323 would change it so that the funds would all stay in EARP, and part of that \$50.00 registration fee would become the funding source for SB 2323. We are not eliminating anyone from EARP with this bill.

The bill was originally asking for \$325,000. This would fund the two FTE's, with a cost of \$210,000, for the biennium. This would cover the actual cost of anticipated salaries and benefits. \$40,000 would be to cover operating costs, such as vehicle use, some office equipment, and

other costs associated with operating the program. \$75,000 would be for surface water testing of pesticides. These tests cost \$1000 per test. So that would cover approximately 75 tests for the biennium.

I have discussed with department personnel different options whether we could cut anything from the \$325,000. When looking at the breakdown, it's obvious that it would be hard. The House Agriculture Committee passed it out with only a \$50,000 appropriation. I ask that you restore the appropriation back to its original appropriation.

In discussions within our organization and in discussions with other Ag groups, one question has arisen. Do we have a "window" in which we could wait, possibly until next session, to see what happens, and then start a statewide program? My answer to that would be no! If the 60th Legislative session approves this bill, it will take approximately 6 months to a year to get North Dakota's program up and running. That may be the extent of our "window".

As I mentioned earlier, the ND Weed Control Association feels very strongly about this issue. Not only are we worried about how ESPP could affect us in our spraying season activities; we also want to be good stewards of the land. We feel that SB 2323 is not only a good fit for funds from EARP; we feel that it is a needed program for North Dakota.

Mr. Chairman and members of the House Appropriations Committee on Education and Environment, I ask that you restore the funding in this bill to \$325,000 and give it a do pass recommendation.

Thank-you for giving me the opportunity to speak before you this morning,



March 1, 2007

To: Merlin Leithold, ND Weed Control Association

From: Jim Gray, Pesticide

Subject: Potential NDDA roles in EPA's Endangered Species Protection Program and corresponding resource needs

I thank you for your recent inquiry with my office regarding EPA's Endangered Species Protection Program (ESPP). Please allow me to provide the following information on EPA's ESPP, along with potential roles that the North Dakota Department of Agriculture can play in the process.

As you may be aware, the Department testified in front of the Interim Agriculture and Natural Resources Committee this past summer regarding this issue. As recent as September 2006, the Department was still receiving mixed messages from EPA regarding state involvement in this program. In November 2006, the Department learned that EPA would allow the states to play a larger role by allowing the states to furnish pesticide use data, local cropping data, and other information in response to draft state-specific bulletins and proposed use restrictions.

On November 2, 2005, the U.S. Environmental Protection Agency (EPA) published a final notice on implementation of its Endangered Species Protection Program (ESPP). The ESPP was developed to better protect threatened and endangered species from pesticides, as well as to address recent litigation in which a U.S. District Court ruled that EPA had not fulfilled its obligations under the Endangered Species Act by failing to specifically consider effects of pesticides on threatened and endangered species as part of the pesticide registration process.

EPA's ESPP has two main components. The first component is a revised consultation process that EPA has developed with the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA) to assess the potential risk of every pesticide action to threatened and endangered species. These actions could include new FIFRA Section 3 pesticide registrations for new chemicals or new uses for previously-registered chemicals, as well as pesticide uses evaluated through EPA's re-registration and registration review programs. States

are also asked to provide a credible effort to assess the risks of pesticide uses under Section 18 exemptions and Section 24(c) registrations to threatened and endangered species.

The second major component of EPA's ESPP involves the use of Endangered Species Protection Bulletins ("Bulletins") to add use restrictions above and beyond those on the pesticide label whenever EPA determines that additional risk mitigation measures are needed to protect listed species. Bulletins will be published on a county-by-county basis and may contain a variety of use restrictions, such as pesticide use buffers, a reduction in the allowable pesticide use rates in sensitive areas, or similar measures to reduce pesticide exposure to listed species. Bulletins are intended to be updated whenever a risk assessment determines that additional use restrictions are needed. The Bulletins will be considered to be pesticide labeling and therefore enforceable documents under both state and federal pesticide law.

There are eight threatened and endangered species in North Dakota that would be covered under the ESPP. These include the interior least tern (*Sterna antillarum*), whooping crane (*Grus americana*), pallid sturgeon (*Scaphirhynchus albus*), black-footed ferret (*Mustela nigripes*), grey wolf (*Canis lupus*), bald eagle (*Haliaeetus leucocephalus*), piping plover (*Charadrius melodus*), and Western prairie fringed orchid (*Platanthera praecleara*). The bald eagle is scheduled to be de-listed in the near future. However, even considering the remaining seven species, at least one listed species is found in all but six counties of North Dakota.

At the present time, we don't have any Bulletins in North Dakota under EPA's ESPP, but feedback from the Agency indicates that Bulletins will be available in the near future. The only question is how reasonable or overbearing the use restrictions in Bulletins will be.

States can play as large or small a role in developing Bulletins as they want to. On one end of the spectrum, states could step back and play a minimal role in developing Bulletins, and simply enforce whatever Bulletins that EPA develops.

On the other end of the spectrum, we could take complete ownership of the ESPP in North Dakota under a state-initiated plan, meaning that we would have to conduct our own pesticide risk assessments, develop our own risk mitigation measures, publish our own Bulletins, and update the Bulletins whenever a risk assessment determines that an update is needed. This option is extremely resource intensive, and we estimate that this could require up to five new Full Time Employees (FTEs) and up to \$1.5 million per biennium.

There is a third option in which EPA would retain ownership and ultimate responsibility to prepare and update the Bulletins, with the state offering data and recommendations as Bulletins are developed. Under this hybrid option, the state could furnish EPA with pesticide use data, local cropping data, and other information in response to draft Bulletins and proposed use restrictions. The state would also participate in the open comment process as EPA solicits input on pesticide risk assessments related to listed species.

Please allow me to provide a recent example of how we could have offered input to EPA regarding the potential for pesticides to impact listed species. On February 2, 2007, the Agency

opened a docket to solicit stakeholder comments on recent findings on the pesticides lactofen (sold as Cobra®), clomazone (sold as Command®), hexythiazox (sold as Savey®), and sulfosate (sold as Touchdown®) as part of the Agency's Registration Review program. EPA asked for comments on a variety of the Agency's findings, including ecological risk assessments that describe the potential for these chemicals to cause unacceptable effects to listed species and other non-target organisms. This is an opportunity for us to furnish EPA with information on how much each of these pesticides are used in ND, how they are used, where they are used, and whether we anticipate any adverse effects to listed species based on those state-specific use patterns. If we find that the intended use may impact listed species, we could recommend some reasonable measures to protect those species.

It is anticipated that there will be 12 such open comment opportunities for different pesticides in 2007, with approximately 40 open comments per year thereafter. Unfortunately, until the Department can add resources, we will not be able to offer meaningful feedback in this proactive fashion.

When this matter was discussed with the Interim Agriculture and Natural Resources Committee this past summer, the Department estimated that we would need \$500,000 and 3 FTEs under the third for state involvement. We made some critical decisions about our resource needs and the best use of state funds, and have since revised that estimate to \$325,000 and 2 FTEs. The appropriation in the original draft of SB 2323 was \$325,000, and the anticipated budget for use of that appropriation was:

Salary & Benefits:	\$210,000
Operating:	\$40,000
Lab Support:	\$75,000
Total:	\$325,000

Under the original appropriation, SB 2323 would fund two new FTEs in the North Dakota Department of Agriculture to participate in the process under this third option. It was anticipated that one of these FTEs would have expertise in geographic information systems (GIS) to gather and compile pesticide use data, crop information, soils data, and listed species distributions on a county-by-county basis. This person would also compile environmental fate and toxicity information on pesticides most commonly used in North Dakota. We anticipate that the second FTE would likely be a person with expertise in environmental toxicology and pesticide chemistry, would use available data to conduct local risk assessments, and would provide science-based input and counterarguments to EPA on draft Bulletins. In addition to the duties described above, the Department would need to solicit input from partner state and federal agencies, do outreach to growers and other members of the regulated community, and work with other members of the Department's pesticide program.

The original appropriation under SB 2323 also included \$75,000 per biennium to monitor pesticide levels in surface water and other media in highly sensitive areas in the state. These monitoring data are critical to monitor success in those areas that have an overlap of pesticide use and listed species habitat.

Adding pesticide use restrictions via Bulletins may sound scary to agriculture producers, although it does not need to be. EPA will be developing Bulletins and pesticide risk mitigation measures based on the best available data at the Agency's disposal. In my opinion, EPA does not intend to create use restrictions that will severely impact agriculture. However, the Agency is forced to regulate pesticides conservatively when it comes to threatened and endangered species. SB 2323 will allow the state to provide EPA with refined data and science-based input, allowing North Dakota to have Bulletins that are both protective of listed species and reasonable.