

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### **AGRICULTURE COMMITTEE**

Wednesday and Thursday, March 26-27, 2008  
Fort Union Room, State Capitol  
Bismarck, North Dakota

Representative Phillip Mueller, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Phillip Mueller, Mike Brandenburg, Rodney J. Froelich, Curt Hofstad, Dennis Johnson, Joyce Kingsbury, Gerry Uglem; Senators Arthur H. Behm, Bill Bowman, Tim Flakoll, Ryan M. Taylor

**Members absent:** Representatives Tracy Boe, Dorvan Solberg; Senators Robert S. Erbele, Terry M. Wanzek

**Others present:** See attached [appendix](#)

**It was moved by Representative Hofstad, seconded by Senator Flakoll, and carried on a voice vote that the minutes of the previous meeting be approved.**

Chairman Mueller said it is his intention to address only those bill draft sections that contain substantive changes; however, he said, if anyone has questions or concerns about any other section of a bill draft, he will gladly allow time for discussion.

#### **HONEY ASSESSMENTS**

At the request of Chairman Mueller, Mr. Jeff Knudson, Program Manager, Department of Agriculture, and Ms. Sara Kelsch, Pride of Dakota Administrator, Department of Agriculture, presented testimony regarding the bill draft [\[90073.0100\]](#) to rewrite North Dakota Century Code (NDCC) provisions pertaining to the honey assessment.

Mr. Knudson said the Agriculture Commissioner acts as a fiscal agent for the purpose of collecting honey assessments.

Ms. Kelsch said the honey assessments are approximately \$35,000 per biennium. She said the board of the North Dakota Beekeeper's Association meets twice each year and determines how the assessments should be spent. She said the major uses to which honey assessments are directed are honey promotion in the classroom and support of the state honey princess.

#### **Section 1**

##### **(Amendment of NDCC Section 4-12.1-01)**

Chairman Mueller said in this section and throughout the rewrite, listings of multiple entities are replaced by the word "person." He said NDCC Section 1-01-49 defines a person as a human being, foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited

liability company, limited liability partnership, limited partnership, partnership, trust, any legal or commercial entity, government, political subdivision, or government agency or instrumentality. He said several of the definitions are not used elsewhere in the chapter and will therefore be eliminated. However, he said, the definition of "market development" appears to contain powers and duties and the purposes for which honey assessment dollars should be expended. He said it is the consensus of the committee that the purposes for which dollars may be expended should be placed in a separate section.

#### **Section 3**

##### **(Amendment of NDCC Section 4-12.1-03)**

Chairman Mueller said current law authorizes the North Dakota Beekeepers' Association to charge fees for items sold to promote honey. He said it was removed because the association is a private entity and does not require statutory authorization to charge fees for items it sells.

#### **Section 4**

##### **(Amendment of NDCC Section 4-12.1-04)**

Chairman Mueller said current law provides a 30-day window within which a beekeeper may obtain an application for a refund, complete it, and submit it to the commissioner. He said the committee has standardized the refund language for other commodities.

**It was moved by Representative Johnson, seconded by Senator Behm, and carried on a voice vote that beekeepers be given 60 days from the date of the assessment within which to request an application form and 90 days from the date of the assessment within which to return the completed form.**

#### **Section 5**

##### **(Amendment of NDCC Section 4-12.1-05)**

Chairman Mueller said current law requires the commissioner to impose a penalty equal to 5 percent of the amount due, plus interest at the rate of 6 percent per annum from the due date. He said it is the consensus of the committee that the penalty not be mandatory.

In response to a question from Senator Flakoll, Mr. Knudson said the North Dakota Beekeepers'

Association provides research dollars to the University of Minnesota.

In response to a question from Representative Hofstad, Mr. Knudson said the honey assessment is based on the number of hives and is paid at the time the beekeeper submits a license application.

## **TURKEY ASSESSMENTS**

At the request of Chairman Mueller, Mr. David Muehler, President, North Dakota Turkey Federation, presented testimony regarding the bill draft [\[90074.0100\]](#) to rewrite North Dakota Century Code provisions pertaining to the turkey assessment.

Mr. Muehler said he is from Hankinson, North Dakota. He said there are only 11 turkey farmers in the state. He said in the mid-1970s, there were 45. He said the trend is toward year-round production. He said, last year, North Dakota turkey farmers raised 45 million pounds of turkeys.

In response to a question from Representative Brandenburg, Mr. Muehler said there are four or five Hutterite Colonies in the state and they produce the bulk of North Dakota turkeys.

### **Section 1**

#### **(Amendment of NDCC Section 4-13.1-02)**

Chairman Mueller said the rewrite removes definitions that are not used elsewhere in the chapter. He said this bill draft, like the one pertaining to the honey assessment, includes a definition of "market development." He said the phrase is not used elsewhere in the chapter. However, he said, it contains powers and duties. He said it also contains purposes for which the turkey assessment should be used. He said it is the consensus of the committee that the content of the definition be placed in a separate powers or duties section, as appropriate.

### **Section 2**

#### **(Amendment of NDCC Section 4-13.1-03)**

Chairman Mueller said present law provides that the assessment is one cent for turkeys weighing less than 10 pounds and "up to" two cents for turkeys larger than that. He said since the statute does not provide either the circumstances under which the rate varies or the method by which a varying rate is to be determined, the rewrite simply provides that the assessment is one cent for turkeys under 10 pounds and two cents for those that are larger.

Mr. Muehler said the North Dakota Turkey Federation has developed a graduated scale for assessments. He said the scale is based on a turkey's size and weight. He said the North Dakota Turkey Federation would ask that this graduated scale be reflected in the rewrite. He said, currently, turkeys under 18 pounds are assessed one cent per head; turkeys weighing 18 to 28 pounds are assessed 1.5 cents per head; and turkeys weighing more than 28 pounds are assessed 1.75 cents per head. He said the assessment is based on the flock average

live weight upon arrival at the processing plant and a final headcount is done upon actual processing.

**It was moved by Senator Flakoll, seconded by Senator Behm, and carried on a voice vote that the rewrite reflect the graduated scale for assessments as described by Mr. Muehler.**

In response to a question from Senator Behm, Mr. Muehler said he is not aware of anyone having requested a refund of assessments paid in accordance with NDCC Chapter 4-13.1.

### **Section 3**

#### **(Amendment of NDCC Section 4-13.1-04)**

Chairman Mueller said, under current law, assessments are placed only on those turkeys taken to processors and a processor is defined as any person who purchases more than 1,000 turkeys for slaughter each year.

Mr. Muehler said that is the intent of the law. He said all turkeys are shipped to either Minnesota or South Dakota for processing.

Chairman Mueller said current law provides that a processor shall remit the assessments quarterly. He said it is not clear with respect to the date by which the assessments must be submitted. He said the rewrite suggests submission by the 30<sup>th</sup> day after conclusion of each quarter. He said the timeframe for submission can certainly be lengthened or shortened. However, he said, because the chapter imposes a mandatory penalty on late submissions and subjects the violator to a Class B misdemeanor, it is important that the timeframe for submitting assessments be clearly articulated.

Mr. Muehler said the North Dakota Turkey Federation is supportive of the requirement that assessments be submitted within 30 days after the conclusion of each calendar quarter.

### **Section 5**

#### **(Amendment of NDCC Section 4-13.1-06)**

Chairman Mueller said this section sets forth the documentation that must be prepared, signed, and dated by a processor. He said the section authorizes the commissioner to require "such other records as may be necessary to expedite the collection and remittance of the assessment."

Committee counsel said the law requires the submission of the assessments on a quarterly basis and if the committee's proposal is accepted, the law will state that the assessments must be submitted within 30 days after the conclusion of each calendar quarter. She said the chapter also includes a penalty for late assessments. She said she questions whether the authority given to the commissioner is in fact for purposes of expediting the collection and remittance of any assessment under this chapter. She said it appears that the commissioner's authority to require additional records should be based on perhaps enforcing and administering the chapter.

Chairman Mueller said committee counsel should review this section with Mr. Muehler and propose to the committee a more appropriate reason for having the commissioner require additional records.

### **Section 6**

#### **(Amendment of NDCC Section 4-13.1-07)**

Chairman Mueller said current law provides that a producer who makes a written application within 60 days of the date on which the producer's turkeys were delivered to a processor shall receive a refund of the assessment. He said, with respect to other commodity groups, the committee has directed that 60 days be given from the date of the assessment within which a producer may request an application form and 90 days has been given from the date of the assessment within which the producer must return the completed form.

**It was moved by Representative Johnson, seconded by Representative Kingsbury, and carried on a voice vote that turkey producers be given 60 days from the date of the assessment within which to request an application form and 90 days from the date of the assessment within which to return the completed form.**

Chairman Mueller said this makes the refund provisions consistent with those found in other commodity chapters.

### **Section 7**

#### **(Amendment of NDCC Section 4-13.1-08)**

Committee counsel said because this section authorizes the commissioner to do all things necessary and proper to enforce and administer the chapter, it may not be necessary to include verbiage in NDCC Section 4-13.1-06 allowing the commissioner to require additional records for purposes of enforcement and administration. She said she will review both sections to ensure that the next bill draft does not contain duplication.

In response to a question from Representative Mueller, Mr. Muehler said the budget for the North Dakota Turkey Federation is in the mid-\$20,000 range per year.

### **Section 11**

#### **(Amendment of NDCC Section 4-13.1-12)**

Chairman Mueller said current law provides that if a processor fails to remit the assessments required by this chapter, the payment is considered delinquent and the commissioner is to levy a penalty equal to 5 percent of the amount due plus interest at the rate of 6 percent per annum from the due date. He said the committee has determined, with respect to other commodity groups, that it is more appropriate to allow discretion with respect to the imposition of a monetary penalty. He said it is the consensus of the committee that the rewrite authorize the commissioner to impose a penalty but not mandate that the commissioner impose a penalty.

## **DRY PEA AND LENTIL ASSESSMENTS**

At the request of Chairman Mueller, Ms. Shannon Berndt, Administrator, North Dakota Dry Pea and Lentil Council, and Mr. Stanley Myers, Chairman, North Dakota Dry Pea and Lentil Council, presented testimony regarding the bill draft [\[90071.0100\]](#) to rewrite North Dakota Century Code provisions pertaining to the dry pea and lentil assessment. Ms. Berndt said assessments that are collected under NDCC Chapter 4-10.7 are distributed on a contract basis to national and regional entities.

### **Section 1**

#### **(Amendment of NDCC Section 4-10.7-01)**

Chairman Mueller said current law defines "dry peas and lentils" as meaning all pulse crops, including lentils, dry peas, chickpeas, and lupins.

Committee counsel said the definition appears to be at the very least awkward. She said it appears that the phrase "pulse crops" is the all-encompassing term.

Ms. Berndt said dry beans and peas and lentils are all pulse crops. She said the intent of this chapter is to include all pulse crops except dry beans.

In response to a question from committee counsel, Ms. Berndt said pulse crops are edible legumes that produce their own nitrogen. She said pulse crops include soybeans.

In response to a question from Senator Behm, Ms. Berndt said the only lupins grown in North Dakota are on approximately three acres at the Carrington Research Center.

Chairman Mueller said it is the consensus of the committee that the definition of dry peas and lentils should not refer to pulse crops. He said the definition section should list the crops intended to be covered by this chapter. He said that would include dry peas, lentils, chickpeas, and lupins.

### **Section 3**

#### **(Amendment of NDCC Section 4-10.7-02)**

Chairman Mueller said current law provides that the Agriculture Commissioner is an ex officio member of the North Dakota Dry Pea and Lentil Council.

Committee counsel said the original Latin meaning of the phrase "ex officio" has become widely misunderstood and it is often not clear whether the intent is to include the commissioner as a voting member or as a nonvoting member present only by virtue of office.

In response to a question by committee counsel, Ms. Berndt said it is the intent of the North Dakota Dry Pea and Lentil Council that the Agriculture Commissioner be a voting member.

### **Section 4**

#### **(Amendment of NDCC Section 4-10.7-03)**

Chairman Mueller said this section provides that the commissioner or a county agent designated by the commissioner, in cooperation with the cooperative Extension Service, shall conduct all elections in the

manner the commissioner deems fair and reasonable. He said because the North Dakota Dry Pea and Lentil Council is a governmental entity, charged with the collection and expenditure of tax dollars, it would be preferable to fully describe the election process in statute, so that anyone can determine what that process is and also to ensure that the burden of determining what constitutes a fair and reasonable election is not delegated solely to the Agriculture Commissioner.

Chairman Mueller said, aside from that issue, the section provides that prospective candidates for the council must have planted dry peas or lentils in the previous year or "intend to plant" dry peas or lentils in the coming year.

In response to a question from Representative Mueller, Mr. Myers said, when the chapter was originally drafted, it was intended that an individual not be precluded from being a member of the North Dakota Dry Pea and Lentil Council simply because the normal crop rotation on the individual's farm was such that the individual did not plant dry peas or lentils during a single growing season. He said the people who are involved with the Dry Pea and Lentil Council know who among them are in fact dry pea and lentil growers.

Senator Bowman said perhaps it would be clearer if the North Dakota Century Code referred to rotational history.

In response to a question from Representative Mueller, Mr. Neal Fisher, Administrator, North Dakota Wheat Commission, said the wheat chapter currently provides that a commission member may forgo growing wheat for one growing cycle. However, he said, if a commissioner does not grow wheat for more than one growing cycle, that individual is deemed ineligible to be on the Wheat Commission.

Mr. Gerald Sturn, District Director, North Dakota State University Extension Service, said the phrase "intend to plant" causes innumerable problems at the county level.

Mr. Myers said the members of the North Dakota Dry Pea and Lentil Council would be in favor of statutory language to clarify their election procedure.

Chairman Mueller said committee counsel will work with representatives from the North Dakota Dry Pea and Lentil Council to reword the election requirements.

### **Section 5**

#### **(Amendment of NDCC Section 4-10.7-05)**

Chairman Mueller said current law provides that the chairman of the council shall call all meetings and must call special meetings within seven days when petitioned to do so by three council members. He said what current law does not provide for is the manner in which one becomes a chairman and the frequency with which this happens. He said the rewrite provides that the council shall elect one of its members to serve as the chairman annually.

### **Section 6**

#### **(New Section to NDCC Chapter 4-10.7)**

Mr. Myers said current law provides that each council member is entitled to receive compensation in the amount established by the council, but not exceeding \$75 per day plus reimbursement for expenses. He said he would like to see the bill draft include an increase in the per diem paid to council members.

In response to a question from Representative Mueller, committee counsel said representatives of several commodity groups have asked for such a change. She said the position of the interim committee has been that the language in the North Dakota Century Code is not problematic from either a statutory or a legal perspective. She said an increase in council member salaries would be a substantive change that would merit the presentation of testimony and a full hearing by legislators during the 2009 legislative session.

### **Section 7**

#### **(Amendment of NDCC Section 4-10.7-06)**

Chairman Mueller said this section provides that expenditures must be recorded on itemized vouchers and records must be maintained in accordance with standards adopted, as directed by the State Auditor. He said the North Dakota Century Code assigns this duty not to the State Auditor but to the State Records Administrator. He said it is the consensus of this committee that the bill draft reflect this change.

### **Section 8**

#### **(Amendment of NDCC Section 4-10.7-07)**

Chairman Mueller said under current law, this section contains both powers and duties. He said a power is the authorization to perform an act. He said a duty is a mandate to perform an act. He said the rewrite has separated powers and duties into two sections.

Chairman Mueller said subsection 7 contains the directive that the council contract with the governmental entity responsible for administration of the dry pea and lentil assessment in another state or province and provide for the return by that entity of any assessment charged on dry peas and lentils grown in this state and provide for the return by the North Dakota Dry Pea and Lentil Council of any assessment charged on dry peas and lentils grown in another state or province.

In response to a question from Representative Mueller, Ms. Berndt said it is the preference of the North Dakota Dry Pea and Lentil Council that the directive to contract for the reciprocal return of assessments be considered a power rather than a duty. She said circumstances and relationships with other states and provinces are such that reciprocal agreements with all those entities are not a possibility at this time but may be in the future. She said they

prefer an option not a mandate to enter into such contracts.

### **Section 9**

#### **(New Section to NDCC Chapter 4-10.7)**

Chairman Mueller said this section sets forth the council's duties. He said the language is taken from NDCC Section 4-10.7-07(6). He said that language provides that the council shall "formulate the general policies and programs of markets and industries for the utilization of dry peas and lentils grown within this state." He said it is not clear what is intended by that verbiage.

In response to a question from Representative Mueller, Ms. Berndt said she was likewise not certain what that verbiage means. She said she would appreciate the opportunity to work with committee counsel and draft a clear and meaningful set of duties for the council.

### **Section 12**

#### **(Amendment of NDCC Section 4-10.7-10)**

Chairman Mueller said this section provides that first purchasers shall keep certain documents as part of their permanent records. He said the council should reconsider whether or not there is a justified need to keep such records permanently. He said he is not concerned with the precise number of years that the council selects. However, he said, it would be preferable to articulate in the statute a reasonable number of years during which records should be kept.

Chairman Mueller said the section also directs each purchaser to file a report with the council at the time and in the manner prescribed by the council. He said the section provides that the assessments must be remitted with the above required report and that all money collected under the chapter must be paid to the council within 30 days of the end of each calendar quarter. In effect, he said, the report must be filed not necessarily at the time prescribed by the council but rather at the time prescribed by the statute, which is within 30 days of the end of each calendar quarter. He said it is the consensus of the committee that committee counsel work with members of the North Dakota Dry Pea and Lentil Council to further clarify the intent of this section.

### **Section 13**

#### **(Amendment of NDCC Section 4-10.7-11)**

Chairman Mueller said this section sets forth the procedure that must be followed by a grower intending to receive a refund of assessments paid under this chapter. He said this section already reflects the committee's directive for consistency in that it changes the current refund application process to provide growers with 60 days from the date of the assessment or final settlement during which they may request a refund application and 90 days from the date of the assessment or final settlement within which they must file the application for refund.

## **DRY BEAN ASSESSMENTS**

At the request of Chairman Mueller, Mr. Tim Courneya, Administrator, North Dakota Dry Bean Council, and Mr. James Sletten, Chairman, North Dakota Dry Bean Council, presented testimony regarding the bill draft [\[90069.0100\]](#) to rewrite North Dakota Century Code provisions pertaining to the dry bean assessment.

Mr. Courneya said dry beans include all varieties of dry beans except soybeans.

### **Section 1**

#### **(Amendment of NDCC Section 4-10.3-02)**

Chairman Mueller said current law defines a grower as any person who plants, raises, and harvests dry beans from more than 10 acres. He said in similar situations the interim committee opted to remove the minimum acreage requirement.

Mr. Courneya said the 10-acre requirement was initially inserted to ensure that hobby farmers were not deemed eligible to serve on the North Dakota Dry Bean Council.

Chairman Mueller said current law provides that a "participating grower" means a grower who has gained exemption from the payment of taxes on dry bean production under this chapter for a particular year or a grower who is not exempt from the payment of taxes on dry bean production under this chapter.

In response to a question from Representative Mueller, Mr. Courneya said it was the intent to exempt seed producers from having to pay the assessment set forth in this chapter.

In response to a question from Representative Froelich, Mr. Courneya said, at the time the chapter was written, seed production did not exist in North Dakota. He said, even now, it is a very small percentage of the dry bean acreage.

Chairman Mueller said the rewrite should reflect that seed growers are exempt from paying the assessment.

### **Section 3**

#### **(Amendment of NDCC Section 4-10.3-03)**

Chairman Mueller said current law provides that the North Dakota Dry Bean Council is composed of one participating grower from each of the six dry bean districts and the Agriculture Commissioner. He said the Agriculture Commissioner serves as an ex officio member of the council.

In response to a question from Representative Mueller, Mr. Courneya said the Agriculture Commissioner is a nonvoting member of the North Dakota Dry Bean Council.

Chairman Mueller said the Agriculture Commissioner has expressed a desire to be removed from the various councils, boards, and commissions and instead focus on an annual meeting of all commodity groups.

Mr. Sletten said the North Dakota Dry Bean Council considers it advantageous to have the Agriculture Commissioner serve as an ex officio member. However, he said, he understands the other demands on the Agriculture Commissioner and believes that while advantageous, the presence of the Agriculture Commissioner at council meetings is not always necessary.

#### **Section 4**

##### **(New Section to NDCC Chapter 4-10.3)**

Chairman Mueller said this section sets forth as new language the provisions governing the election of council members. However, he said, because the North Dakota Dry Bean Council is a governmental entity, charged with the collection and expenditure of tax dollars, it would be preferable to have the election process described in statute, so that anyone can determine what that process is and also to ensure that the burden of determining what constitutes a fair and reasonable election is not delegated to one individual, i.e., the Agriculture Commissioner. He said, as with several other commodity groups, committee counsel will work with representatives of the Dry Bean Council to provide more detailed directives regarding the election of council members.

#### **Section 5**

##### **(Amendment of NDCC Section 4-10.3-05)**

Chairman Mueller said current law sets forth the duties of the chairman of the North Dakota Dry Bean Council. However, he said, current law does not indicate the frequency with which a chairmanship is determined. He said the rewrite provides that this determination be made annually.

Mr. Courneya said that is in accordance with existing council procedures.

#### **Section 8**

##### **(Amendment of NDCC Section 4-10.3-07)**

Chairman Mueller said current law sets forth council powers and duties. He said since "powers" are grants of authority and "duties" are mandates, the committee has elected to place each in a separate section. However, he said, committee counsel needs to work with Mr. Courneya and Mr. Sletten to review NDCC Section 4-10.3-01. He said this section sets forth legislative policy and contains numerous references to activities that appear to be either powers or duties.

#### **Section 11**

##### **(Amendment of NDCC Section 4-10.3-08)**

Chairman Mueller said this is the section that imposes an assessment on all dry beans grown in this state, delivered into this state, or sold to a designated handler. He said a significant portion of the section is overstruck. He said that language refers to the certification of designated handlers. He said that

language was incorporated in Section 10 of this bill draft.

Chairman Mueller said under current law every designated handler is to keep, as a part of its permanent records, documentation of all purchases, sales, and shipments of dry beans.

In response to a question from Chairman Mueller, Mr. Courneya said it is not necessary for designated handlers to keep these records permanently. He said he will consult other members of the North Dakota Dry Bean Council and provide committee counsel with the number of years such records should be kept.

#### **Section 13**

##### **(New Section to NDCC Chapter 4-10.3)**

Chairman Mueller said current law provides that if a grower pays the tax more than once on the same dry beans, that grower is entitled to a refund of the overpayment. He said, at a prior meeting, the committee determined that the terminology should be changed so that there is no confusion between a person who requests a refund as a result of a double payment and a person who requests a refund as a result of unwillingness to support the promotional efforts of a commodity board, commission, or council. He said it is the consensus of the committee that the rewrite reference reimbursements for double payments.

Representative Froelich said we need to ensure that this council and any other board, commission, or council has the ability to refund or credit any "excess" payments made by a grower in the event of a miscalculation. He said more work needs to be done on the qualification of North Dakota Dry Bean Council members. He said, as a result of normal crop rotations, and sometimes as a result of commodity prices, a person who otherwise considers himself to be a dry bean grower might have several growing seasons during which he does not plant and harvest dry beans.

Chairman Mueller said qualifications for membership on the various boards, commissions, and councils are something that the committee counsel should discuss with representatives of the various entities and their determinations regarding this issue should be incorporated in the next bill draft.

### **SOYBEAN ASSESSMENTS**

At the request of Chairman Mueller, Ms. Deborah Johnson, Executive Director, North Dakota Soybean Council, presented testimony regarding the bill draft [\[90059.0100\]](#) to rewrite North Dakota Century Code provisions pertaining to the soybean assessment. She said, to the greatest extent possible, it would be preferable to reconcile definitions in the state statute with those in the federal statute.

### Section 1

#### (Amendment of NDCC Section 4-10.5-01)

Chairman Mueller said current law defines a "grower" as any person who plants, raises, and harvests soybeans from more than 10 acres. He said, in similar situations, the interim committee has opted to remove the minimum acreage requirement.

Committee counsel said the definition of a grower might very well fall into the category of "we know what we mean." However, she said, the definition could include individuals who are employees and who do not have any ownership interest in the soybeans. She said the federal definition provides that the term means any person engaged in the growing of soybeans who owns, or who shares the ownership and risk of loss of such soybean.

Ms. Johnson said it would be preferable to use the federal definition and reference ownership interests.

Chairman Mueller said current law defines a "participating grower" as a grower who "has not been exempted from the payment of taxes on soybean production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on soybean production under this chapter."

In response to a question from Representative Mueller, Ms. Johnson said the federal law provides an exemption from the soybean assessment for a producer who operates under an approved national organic program and who produces only products that are eligible to be labeled as 100 percent organic.

Chairman Mueller said current law defines "soybeans" as any and all varieties of soybeans, excluding edible beans, harvested within the state.

Committee counsel said the federal law defines "soybeans" as all varieties of glycine max or glycine soya.

In response to a question from Representative Mueller, Ms. Johnson said it would be appropriate to remove the definition of soybeans from the section.

### Section 3

#### (New Section to NDCC Chapter 4-10.5)

Chairman Mueller said current law provides that the North Dakota Soybean Council is composed of one individual elected from each of the eight districts provided for in Section 2 of this bill draft and the Agriculture Commissioner, who serves as an ex officio member.

In response to a question from committee counsel, Ms. Johnson said the Agriculture Commissioner serves as a voting member of the North Dakota Soybean Council.

Ms. Johnson said she would like an opportunity to review the qualifications for North Dakota Soybean Council members. She said present law provides that the North Dakota Soybean Council is composed of one participating grower elected from each of the soybean districts. She said when one looks at the definition of a participating grower, as set forth in NDCC Section 4-10.5-01, it is not clear whether an

individual who requested a refund prior to the time that refunds were forbidden by federal law is in fact eligible to serve on the Soybean Council. She said the federal law was written in 1991. She said before 1995, a grower could request a refund of the soybean assessment. She said after that time, refunds were not permitted under federal law.

Chairman Mueller said it is the consensus of the committee that committee counsel work with Ms. Johnson to clarify the qualifications of North Dakota Soybean Council members.

### Section 4

#### (New Section to NDCC Chapter 4-10.5)

Chairman Mueller said this section parallels the election language currently found in NDCC Section 4-10.5-02. He said because the North Dakota Soybean Council is a governmental entity, charged with the collection and expenditure of tax dollars, it would be preferable to describe the election process in statute so that anyone can determine what that process is and also to ensure that the burden of determining what constitutes a fair and reasonable election is not delegated to one individual, i.e., the Agriculture Commissioner.

Ms. Johnson said it would be most helpful to include greater detail regarding the manner in which North Dakota Soybean Council elections should be conducted. She said, from the perspective of the Soybean Council, absentee ballots should be included as a method for electing council members.

Senator Flakoll said absentee ballots are not specifically permitted under current law.

Representative Froelich said if we can elect the President of the United States by absentee ballots, we should be able to elect members of the North Dakota Soybean Council using absentee ballots.

Chairman Mueller said committee counsel should work with representatives from the North Dakota Soybean Council to clarify the manner in which members of the Soybean Council are elected.

### Section 6

#### (Amendment of NDCC Section 4-10.5-04)

Chairman Mueller said current law provides that the chairman of the council must be a member of the council elected by a majority vote of the council. He said current law does not clearly indicate the frequency with which a chairmanship is determined.

In response to a question from Representative Mueller, Ms. Johnson said the election of the North Dakota Soybean Council chairman takes place annually.

### Section 9

#### (Amendment of NDCC Section 4-10.5-06)

Chairman Mueller said current law combines the powers and duties of the North Dakota Soybean Council into one section. He said, as with other commodity groups, it has been the position of this

committee that the powers and duties be placed into separate sections.

Chairman Mueller said current law provides that the North Dakota Soybean Council may "formulate policies and programs regarding the discovery, promotion, and development of markets and industries for the utilization of soybeans grown within the state." He said this appears to be a duty and has therefore been redrafted as new language and placed in Section 10.

Ms. Johnson said she would like to ensure that the North Dakota Soybean Council has specific verbiage requiring that it promote research.

### Section 11

#### **(New Section to NDCC Chapter 4-10.5)**

Chairman Mueller said current law provides for the certification of designated handlers. He said the language is found in NDCC Section 4-10.5-07. He said because that section deals with the assessments, the certification of designated handlers was moved to its own section.

Ms. Johnson said the certification of designated handlers is not something that the North Dakota Soybean Council is interested in maintaining in statute. She said it serves no purpose in the conduct of its business and would recommend that it be repealed.

**It was moved by Representative Brandenburg, seconded by Senator Behm, and carried on a voice vote that Section 11, pertaining to the certification of designated handlers, be removed from the bill draft and repealed from the chapter.**

### Section 12

#### **(Amendment of NDCC Section 4-10.5-07)**

Chairman Mueller said current law requires every designated handler to keep as a part of its permanent records documentation governing all purchases, sales, and shipments of soybeans.

In response to a question from Representative Mueller, Ms. Johnson said she will contact representatives of the North Dakota Soybean Council and determine the number of years that records need to be kept.

Ms. Johnson said the quarterly report required to be filed by designated handlers under NDCC Section 4-10.5-07 must, according to current law, include the quantity of soybeans received, sold, or shipped. She said the information that the council needs is the quantity of soybeans received and assessed.

**It was moved by Senator Flakoll, seconded by Representative Hofstad, and carried on a voice vote that the records required by NDCC Section 4-10.5-07 reference soybeans that are received and assessed rather than soybeans that are received, sold, or shipped.**

### Section 13

#### **(Amendment of NDCC Section 4-10.5-09)**

Chairman Mueller said NDCC Section 4-10.5-09 provides that when petitioned to do so by 15 percent of the participating soybean growers, the North Dakota Soybean Council is to conduct an advisory referendum to determine whether the growers believe the assessment should be raised or lowered. He said current law provides details regarding the manner in which the referendum is to be conducted and then provides that if a majority of the participating growers voting upon the question are in favor of the proposed change, the council is to request that the Agriculture Commissioner prepare a bill to submit to the next Legislative Assembly to amend the chapter. He said the difficulty lies in the fact that the North Dakota Legislative Assembly is in no position to amend the federal law.

Chairman Mueller said he wondered if it is appropriate to keep the referendum section. He said he also wondered if the referendum section, rather than requiring the Agriculture Commissioner to introduce a bill for consideration by the Legislative Assembly, could require that the North Dakota Soybean Council communicate the results of its referendum to an appropriate federal entity.

Ms. Johnson said she would appreciate the opportunity to consult with members of the North Dakota Soybean Council and determine what changes should be made to NDCC Section 4-10.5-09.

### Section 14

#### **(Amendment of NDCC Section 4-10.5-11)**

Chairman Mueller said many of the chapters pertaining to commodity assessments provide that the respective board, commission, or council may levy a penalty on delinquent payments. He said current law provides that the North Dakota Soybean Council is to levy a penalty on delinquent payments. He said he wondered if it would be appropriate to allow discretion in the decision to assess a penalty.

Committee counsel said the federal law provides that any "unpaid assessment due the board or a qualified state soybean board from a person responsible for remitting assessments . . . shall be increased 2 percent each month beginning with the day following such assessments were due. . . ."

Chairman Mueller said the mandatory penalty will stand as currently written in statute.

## **POTATO ASSESSMENTS**

At the request of Chairman Mueller, Ms. Diane Peycke, Executive Director, North Dakota Potato Council, and Mr. Duane Maatz, President, Northern Plains Potato Growers Association, presented testimony regarding the bill draft [\[90076.0100\]](#) to rewrite North Dakota Century Code provisions pertaining to the potato assessment. Ms. Peycke said the North Dakota Potato Council is responsible for the collection of assessments and enforcement of the

chapter and contracts with the Northern Plains Potato Growers Association for the actual expenditure of the dollars.

### **Section 1**

#### **(Amendment of NDCC Section 4-10.1-02)**

Chairman Mueller said the caption on this section is "legislative policy." He said in reviewing similar chapters, the interim committee has recommended the repeal of legislative policy sections. However, he said, this particular policy section includes various directives that appear to be either council powers or duties. He said it is the consensus of the committee that committee counsel work with Ms. Peycke and place the pertinent concepts in the appropriate powers or duties sections.

### **Section 2**

#### **(Amendment of NDCC Section 4-10.1-03)**

Chairman Mueller said this section defines a grower as any person who plants, raises, and harvests potatoes from more than 10 acres. He said NDCC Section 4-10.1-09 provides that the assessment is to be on all potatoes. However, he said, Section 4-10.1-12 makes refunds available only to growers, i.e., to those who plant, raise, and harvest potatoes from more than 10 acres.

Ms. Peycke said the North Dakota Potato Council would like to retain the 10-acre requirement in the definition of a grower and, in keeping with that concept, allow the refund to be claimed only by those who grow potatoes on more than 10 acres.

Chairman Mueller said NDCC Section 4-10.1-03 defines a "participating grower" as a grower who has not gained exemption from the payment of taxes on potato production under this chapter for a particular year, or a grower who is not exempt from payment of taxes on potato production under the terms of this chapter.

In response to a question from Representative Mueller, Ms. Peycke said the reference to an exemption is directed toward those growers who plant, raise, and harvest potatoes from fewer than 10 acres.

### **Section 3**

#### **(Amendment of NDCC Section 4-10.1-04)**

Chairman Mueller said this section provides a cursory description of the manner in which members of the North Dakota Potato Council are elected. He said because the Potato Council is a governmental entity, charged with the collection and expenditure of tax dollars, it would be preferable to describe the election process in statute, so that anyone can determine what that process is and also to ensure that the burden of determining what constitutes a fair and reasonable election is not delegated to one individual, i.e., the Agriculture Commissioner.

Ms. Peycke said the Agriculture Commissioner sends out nomination letters in May of each year.

She said the election is held in June. She said the election is conducted entirely by mail.

In response to a question from Representative Mueller, Ms. Peycke said the Agriculture Commissioner serves as the chairman of the North Dakota Potato Council. She said he is a voting member.

### **Section 10**

#### **(Amendment of NDCC Section 4-10.1-09)**

Chairman Mueller said current law provides that the potato assessment is equal to two cents per hundredweight. He said current law also provides that the North Dakota Potato Council may increase the assessment by not more than one-half cent per hundredweight annually, until a maximum assessment of four cents per hundredweight is reached. He said it would be appropriate to insert the current assessment and maintain the provision allowing for an increase in that assessment. Ms. Peycke said the current assessment is three cents per hundredweight.

Committee counsel said NDCC Section 4-10.1-09 provides that the assessment is not to be imposed on any potatoes retained by growers for seed or for consumption by the grower. She said there is no reason to assume the provision was intended to be that narrow. She said it would be appropriate to provide that the assessment is not to be imposed on any potatoes retained by the grower for seed or for consumption by the grower, the grower's family, and nonpaying guests.

Chairman Mueller said that same section requires designated handlers to keep as a permanent record documentation of all purchases, sales, and shipments of raw potatoes.

In response to a question from Representative Mueller, Ms. Peycke said it would be quite sufficient to require that the records be kept for three years.

### **Section 11**

#### **(Amendment of NDCC Section 4-10.1-12)**

Chairman Mueller said this section articulates the requirements for refunds.

In response to a question from Representative Mueller, Ms. Peycke said in order for a grower to receive a refund, the grower must submit a letter to the council between January 1 and July 15 of a given year and in that letter indicate the grower's intent to request a refund of assessments paid on potatoes during that calendar year. She said between June 1 and June 15 of the following calendar year, that grower must submit another letter to the council requesting a refund of the assessments paid by the grower during the prior calendar year.

### **Section 12**

#### **(Amendment of NDCC Section 4-10.1-13)**

Chairman Mueller said this section pertains to the manner in which participating potato growers may request that a refund be conducted. He said current

law provides that if a majority of the participating growers are in favor of a particular change in the assessment, the council is to request that the Agriculture Commissioner submit a bill to the Legislative Assembly. He said this has been changed to provide that the council itself is to submit the bill.

In response to a question from Senator Bowman, Mr. Maatz said the Northern Plains Potato Growers Association and the North Dakota Potato Council use a variety of means to communicate with potato growers. He said these include a magazine and electronic newsletters.

In response to a question from Senator Taylor, Mr. Maatz said the North Dakota Potato Council continues to appreciate the role of the Agriculture Commissioner on the council. He said if the Agriculture Commissioner's involvement with the council has to change, the council would be willing to examine alternatives.

Ms. Peycke said she would like to recommend an additional change to the bill draft. She said the council would prefer to have the "spud fund" referred to in statute as the "potato fund."

## **DAIRY ASSESSMENT**

At the request of Chairman Mueller, Ms. Char Heer, Program Manager, North Dakota Division, Midwest Dairy Association, and Mr. Jerry Messer, Chairman, North Dakota Division, Midwest Dairy Association, presented testimony regarding the bill draft [\[90081.0100\]](#) to rewrite North Dakota Century Code provisions pertaining to the dairy assessment. Ms. Heer said the dairy assessment program also is governed by federal law.

### **Section 1**

#### **(Amendment of NDCC Section 4-27-02)**

Chairman Mueller said this section sets forth the purpose of this chapter. He said sections articulating purpose amount to testimony and while they have an appropriate place in the legislative record, they do not need to be part of the statute. He said most of what is set forth as a purpose in NDCC Section 4-27-02 is provided for elsewhere in the chapter. He said the notable exception is found in subsection 4. He said that subsection provides for a referendum vote among dairy farmers to determine whether they favor the assessment provided for in Section 4-27-06. He said the committee will need to determine whether a referendum vote is to be an option in light of the federal legislation and whether the parameters and consequences of a referendum vote should be articulated in the state statute.

### **Section 2**

#### **(Amendment of NDCC Section 4-27-03)**

Chairman Mueller said current law provides that the "dealer" means and includes any person who handles, ships, buys, or sells dairy products, or who acts as a sales or purchasing agent, broker, or factor

of dairy products. He said the use of the word "means" in a definition indicates exclusivity. He said the use of the word "includes" in a definition indicates no exclusivity. He said it is important for the committee to determine which word should be used in the definition.

Mr. Messer said it would be appropriate to use the word "means." However, he said, the statute needs to be clear that farm cheese production is included in the reference to the act of selling dairy products.

In response to a question from Senator Flakoll, committee counsel said the federal law defines "dairy products" as "products manufactured for human consumption which are derived from the processing of milk and includes fluid milk products."

Senator Flakoll said he would like to see the definition section include the federal definition of dairy products.

Chairman Mueller said the section defines "gross receipts" as "the amount paid to a producer for milk or some product therefrom sold by such producer." He said he wondered if it was necessary to include this in the definition section.

Mr. Messer said the gross receipts refer to the amount that is brought in and therefore should be maintained in the definition section.

Committee counsel said the section defines a producer as "a person who produces milk from cows and thereafter sells the milk or some product therefrom." She said the rewrite defines a producer as "a person who obtains milk from cows and sells the milk or sells a product produced from the milk." She said the committee might want to consider the federal definition of a producer, which is "any person engaged in the production of milk for commercial use."

Chairman Mueller said it is the consensus of the committee that the federal definition of a producer be inserted into a state statute.

### **Section 3**

#### **(Amendment of NDCC Section 4-27-04)**

Chairman Mueller said this section sets forth the makeup of the North Dakota Dairy Promotion Commission.

Ms. Heer said the changes in this section were needed because several of the associations referenced in current law no longer exist. She said the rewrite provides that the commission consists of two producers appointed by the Governor from a list of nominees submitted by the North Dakota Milk Producers Association, the chairman of the North Dakota Division of the Midwest Dairy Association, and two individuals who are members of and elected by the North Dakota Division of the Midwest Dairy Association. She said the rewrite also provides that the commission may appoint up to three nonvoting members from the following list--the chairman of the North Dakota State University Animal and Range Sciences Department, the Agriculture Commissioner, and a processor located in North Dakota. She said if the Agriculture Commissioner elects not to participate

as a member of the North Dakota Dairy Promotion Commission, the proposed language would not have to be rewritten.

Mr. Messer said he would prefer that the rewrite would allow the inclusion, as a nonvoting member, of a cooperative representative. He said cooperative members have been very important in the realm of dairy promotion and such a change would ensure their continued presence on the commission and involvement with the commission.

Representative Kingsbury said such a change is beyond the scope of the interim committee's directive and therefore should be introduced as a separate bill in the 2009 legislative session.

Chairman Mueller said he agreed with Representative Kingsbury's assessment.

#### **Section 4**

##### **(Amendment of NDCC Section 4-27-05)**

Committee counsel said this section, under current law, is entitled powers and duties of the commission. She said it included the authority to enforce and administer the chapter, a description of a quorum for purposes of transacting business, the election of the chairman, vice chairman, and the secretary-treasurer, the authority to adopt rules, compensation payable to members of the commission, the selection of a state manager and the employment of additional personnel, the authority to expend moneys, to contract for purposes of research, education, public relations, advertising, sales promotion, and other promotion programs, the acceptance of voluntary contributions, and the authority to collect an assessment. She said the content of the section needs to be placed in several separate sections. She said this was not done in the initial bill draft because it was deemed important that the committee members have a chance to evaluate language that is underscored and language that is overstruck.

Chairman Mueller said the rewrite provides for the election of a chairman. He said it would be appropriate to include in the next bill draft specific authority given to the chairman. For instance, he said, the chairman is generally charged with calling meetings of the commission. He said the chairman might be charged with calling regular meetings and special meetings of the commission. He said Ms. Heer had indicated that the chairman is elected annually and that has already been included in the rewrite.

Chairman Mueller said because the makeup of the North Dakota Dairy Promotion Commission may include an individual employed by North Dakota State University and the Agriculture Commissioner, it was important to provide that the compensation paid to commission members may not be paid to any member who already receives a salary or other compensation as an employee or official of this state.

Ms. Heer and Mr. Messer said they were in favor of this addition.

Committee counsel said current law provides that the commission shall select a state manager. She said Ms. Heer indicated that this reference is not needed. She said the provision, as proposed, would state that the commission may employ and compensate necessary personnel.

#### **Section 5**

##### **(Amendment of NDCC Section 4-27-06)**

Chairman Mueller said this section provides that there is levied on each producer an assessment of 10 cents per hundredweight on "all milk or some product therefrom produced and sold by that producer."

In response to a question from Representative Mueller, Mr. Messer said it is the intent of the section that the assessment be levied on milk and on milk used to produce other products. He said it is not the intent to place the assessment on the other products.

Chairman Mueller said it is the consensus of the committee that the current law be amended to reflect that the assessment is to be on milk that is for sale and on milk that is used in the manufacturing of other dairy products.

Chairman Mueller said current law provides that assessments which are unpaid on the date they are due may be increased by 1.5 percent.

In response to a question from Representative Mueller, Mr. Messer said, in accordance with federal law, this is a one-time penalty.

Chairman Mueller said current law provides that if a producer wishes to receive a refund of the assessment, the producer must apply to the commission. He said it is not clear that federal law currently prohibits a producer from obtaining a refund. He said perhaps this section could be rewritten so that the commission is authorized to provide for refunds by rule if permitted by federal law. He said if the federal law goes away, at least such an option would be available until the Legislative Assembly could come together.

Committee counsel said if the committee wishes to condition certain activities on the repeal of the federal law, it would be appropriate to include verbiage perhaps requiring a certification by the Attorney General that the federal law has changed.

Mr. Messer said he is willing to work with committee counsel and the members of the North Dakota Dairy Promotion Commission to rework the refund section and address the concerns that have been raised.

#### **Section 6**

##### **(Amendment of NDCC Section 4-27-07)**

Chairman Mueller said this section addresses the retention of records. He said current law requires that records be retained for a period of two years but does not indicate the date on which the calendar begins to run. He said the rewrite provides that the records

must be retained for a period of two years from the date of the transaction.

Mr. Messer said the North Dakota Dairy Promotion Commission would prefer to have the retention of records last for two full fiscal years after the date of the transaction. He said this reference should be made in both NDCC Sections 4-27-07 and 4-27-08.

In response to a question from Senator Flakoll, committee counsel said NDCC Section 4-24-10 requires that between the 1<sup>st</sup> and 10<sup>th</sup> legislative days of each session, the agricultural commodity groups file a uniform report at a public hearing before the standing Agriculture Committee of each house of the Legislative Assembly.

## **BEEF ASSESSMENT**

At the request of Chairman Mueller, Ms. Nancy Jo Bateman, Executive Director, North Dakota Beef Commission, and Mr. Jerry Schaefer, Vice Chairman, North Dakota Beef Commission, presented testimony regarding the bill draft [\[90063.0100\]](#) to rewrite North Dakota Century Code provisions pertaining to the beef assessment. Ms. Bateman said the assessment on beef under NDCC Chapter 4-34 generates approximately \$1 million to \$1.4 million per year. She said half the amount raised goes to the national beef program. She said the Beef Commission annually determines whether it wants to send more than the required half to the national program.

### **Section 1**

#### **(Amendment of NDCC Section 4-34-01)**

Chairman Mueller said although the caption of this section indicates that it is setting forth the purposes of the chapter, the content of the section appears to be duties of the North Dakota Beef Commission.

Chairman Mueller said it is the consensus of the committee that the content of NDCC Section 4-34-01 be reviewed by committee counsel and representatives of the North Dakota Beef Commission and that in the next bill draft the various concepts be placed in the appropriate powers or duties section.

### **Section 2**

#### **(Amendment of NDCC Section 4-34-02)**

Chairman Mueller said current law defines the beef producer as any person engaged in the production of cattle. He said the difficulty with this definition is that an employee could be engaged in production of cattle but that employee might not meet the intent of this chapter. He said the federal law defines a producer as a "person who owns or acquires ownership of cattle."

Ms. Bateman said it would be acceptable to the North Dakota Beef Commission if the federal definition of a beef producer was inserted to the state law.

Chairman Mueller said under current law a cattle feeder is defined as a person engaged in the growing of cattle or finishing of cattle for slaughter. He said while most in the industry understand the nuances

between a cattle feeder and a beef producer, in terms of the statute, the definitions seem not to be sufficiently distinguishable. He said this gets to be a concern with respect to the description of members who must be on the North Dakota Beef Commission.

Ms. Bateman said a cattle feeder is a person who buys calves and feeds them in lots to put additional weight on them. She said the industry also refers to back-grounding, which is the adding of 200 to 300 pounds before the cattle go to a finishing lot.

Chairman Mueller said it is the intent of the committee that committee counsel work with members of the North Dakota Beef Commission to propose definitions that are sufficiently distinguishable to those not in the industry.

Senator Flakoll said a beef producer is someone who has a cow-calf operation and the cattle feeder is a subset of that operation.

In response to a question from Representative Mueller, Ms. Bateman said a dairy producer is defined in NDCC Section 4-34-02 because a dairy producer sits on the North Dakota Beef Commission.

Chairman Mueller said rather than defining a livestock auction market, current law provides that the phrase means the same thing as that defined in NDCC Section 36-05-01.

Committee counsel said it would be preferable to include a definition of a livestock auction market in this chapter. She said when definitions are cross-referenced to another chapter, it is not impossible for the definition in the other chapter to be amended in a fashion that is inappropriate given this chapter. She said a drafter may not be aware that the drafter needs to look for cross-references in other chapters. She said the rewrite literally takes the definition from NDCC Section 36-05-01, cleans it up to some extent, and places it in this chapter. She said Section 36-05-01 refers to a livestock auction market as a "place or establishment conducted or operated for compensation or profit as a public market." She said she wonders if the reference to a "for profit" market is necessary.

Mr. Wayne Carlson, Department of Agriculture, said the section could very easily refer to livestock markets licensed under NDCC Chapter 36-05.

Ms. Bateman said a livestock dealer is defined as any person who purchases horses, mules, cattle, hogs, goats, sheep, or wool from a producer, terminal market, or livestock auction market, for resale, slaughter, or shipment. She said the definition could be shortened by omitting all components of the list, except cattle.

Chairman Mueller said the section provides that a "participating producer" is a person who has not claimed a refund for the payment of an assessment under this chapter for the preceding three years. He said he wondered if it would be clearer to use the phrase "obtained a refund" rather than "claimed a refund." He said it is the consensus of the committee that the phrase "obtained a refund" be used.

Chairman Mueller said the section defines a selling agency as any person engaged in the business of buying or selling in commerce livestock on a commission basis. He said the function of a selling agency appears to be included in the definition of a livestock dealer.

Ms. Bateman said it would be acceptable to the North Dakota Beef Commission if the definition of a selling agency was removed from NDCC Section 4-34-02.

### **Section 3**

#### **(Amendment of NDCC Section 4-34-03)**

Chairman Mueller said this section establishes the makeup of the North Dakota Beef Commission and sets forth the various associations that must submit names to the Governor for consideration in appointing members of the commission. He said current law provides that each member of the commission must be "actually engaged" in that phase of the cattle industry the member represents, must have been "actually engaged" in that phase of the cattle industry for a period of five years and must have, during that period, derived a "substantial portion" of the individual's income therefrom. He said he believes that phrases such as "actually engaged" and "substantial portion" are very unclear in their intent and interpretation.

Ms. Bateman said some years ago there was a vacancy on the commission and the Governor was going to appoint, as an at-large member, an individual who had not been active in the business for at least 10 years.

Senator Bowman said this section is trying to ensure that any individual appointed to the commission is presently involved in the industry represented by that individual.

Senator Flakoll said the parameters set for commission membership would appear to allow any young person who participates in something like the Future Farmers of America to be nominated by one of the listed associations and ultimately to be on the board.

Ms. Bateman said the nominating process allows for some vetting by the interested associations. However, she said, if the individual was put forth by a nominating association and duly appointed by the Governor, then that individual would have a right to serve on the North Dakota Beef Commission.

Chairman Mueller said committee counsel should work with representatives from the North Dakota Beef Commission to define phrases such as "actually engaged" and "substantial portion."

### **Section 5**

#### **(Amendment of NDCC Section 4-34-05)**

Chairman Mueller said this section sets forth the commission's duties. He said much of the section has been overstruck. He said some of that material is placed in the powers section, some of the material is

addressed elsewhere, and some of the material is simply unnecessary.

Ms. Bateman said she would like to ensure that nothing in Section 5 impairs the designation of the North Dakota Beef Commission as a qualified beef council and that nothing impairs the commission's ability to function in this capacity, in accordance with federal law.

Committee counsel said the section will be reviewed to ensure that there is no change in the status of the North Dakota Beef Commission with respect to its role and mission as a qualified state beef council.

### **Section 6**

#### **(Amendment of NDCC Chapter 4-34)**

Chairman Mueller said this section took those activities that appear to be powers from NDCC Section 4-34-05 and rewrote them as new law.

Committee counsel said the committee is asked to look at subsection 6, which provides that the North Dakota Beef Commission may borrow money, not in excess of its estimate of revenue from the current year's assessments. She said it is not clear whether this is to be the limit of the commission's indebtedness at any one time or whether the commission may obtain a long-term loan in this amount each year, without regard to any prior debt.

Ms. Bateman said, to the best of her knowledge, the North Dakota Beef Commission has never borrowed any money and she has no idea why that provision would even be present in the statute.

In response to a question from Senator Flakoll, Ms. Bateman said the North Dakota Beef Commission is particularly cautious about obligating a future commission to make payments of any kind. She said the commission has never obligated itself for an amount greater than what it had in the bank at any time.

Chairman Mueller said it is the consensus of the committee that subsection 6 be reworded to maintain the commission's authority to borrow money but clarified to provide that the commission's total debt may not exceed the current year's revenue.

### **Section 7**

#### **(Amendment of NDCC Section 4-34-06)**

Chairman Mueller said current law provides that the commission shall hold at least three regular meetings each year at the call of the presiding officer and may hold special meetings at the call of the presiding officer or if requested by any three voting members of the commission. Committee counsel said the rewrite has been changed to provide that the chairman shall call all meetings of the commission and must call a special meeting within seven days, when petitioned to do so by three voting members by the commission. She said this implies a written request, not merely an oral request. She said the

language proposed in the rewrite is consistent with that used in other commodity chapters.

Chairman Mueller said under current law the presiding officer is to establish the time, manner, and place of all meetings and is to give reasonable notice to the members. He said this language has been removed. He said NDCC Section 44-04-20 already establishes the notice requirements for meetings for all public entities.

### **Section 9**

#### **(Amendment of NDCC Section 4-34-08)**

Chairman Mueller said current law provides that there is levied on each resident of this state selling cattle within the state or from the state an assessment of 50 cents per head or the amount stated in the Federal Beef Promotion and Research Act, whichever is greater. He said there is concern with the use of the word "resident." He said it appears that if a person has a cattle operation in North Dakota but actually resides across the state line in Montana or South Dakota, that person is not obligated to pay an assessment under this chapter. He said that is clearly not the intent of the chapter.

Ms. Bateman said it is the intent of this chapter to require an assessment on all cattle coming into this state, on all North Dakota cattle sold in this state, and on all North Dakota cattle sold elsewhere. She said perhaps using the word "person" rather than "resident" would address this concern.

### **Section 10**

#### **(Amendment of NDCC Section 4-34-09)**

Chairman Mueller said this section, among other things, provides that if a person sells North Dakota cattle outside this state or if a person sells North Dakota cattle to an out-of-state buyer, the person shall forward any assessments due under this chapter to the commission. He said the law goes on to provide that this requirement does not apply if the assessment has been paid to "a brand inspector or a qualified beef council in another state." He said this language is not clear with respect to the phrase "in another state" and particularly whether the reference is to a brand inspector in another state or whether the reference is to a brand inspector in this state.

Ms. Bateman said the intent of the section is to provide that the person selling cattle may pay the required assessment to a brand inspector in another state or to a qualified state beef council in another state.

### **Section 11**

#### **(Amendment of NDCC Section 4-34-10)**

Chairman Mueller said this section provides that the assessments are due on the 15<sup>th</sup> day of the month. However, he said, the penalty is not to be imposed until the 30<sup>th</sup> day of the month. He said, in effect, the assessment may be due on the 15<sup>th</sup> day of the month but there is no consequence to a person

who remits the assessment late, provided the person remits the assessment by the 30<sup>th</sup> day.

Ms. Bateman said the requirement for a submission of assessments on the 15<sup>th</sup> day and the imposition of a penalty on the 30<sup>th</sup> day is in accordance with federal law. She said the state law should retain reference to those dates.

In response to a question from Representative Mueller, Ms. Bateman said current law provides that any unpaid assessments due pursuant to this chapter may be increased by 2 percent each month, beginning with the day following the date the assessments are due. She said the rewrite provides that any unpaid assessment due pursuant to this chapter "must" be increased by 2 percent. She said the use of the word "must" is in accordance with federal law. She said the United States Department of Agriculture has a system under which certain late fees can be waived. However, she said, the waiver by the United States Department of Agriculture is not to be confused with the mandatory penalty required by this section.

### **Section 12**

#### **(Amendment of NDCC Section 4-34-11)**

Chairman Mueller said this section provides that any person who has made payment of an assessment under this chapter may request and receive a refund, unless prohibited by federal law. He said it is important to ensure that there is no misunderstanding about the fact that the refund is available only if federal law is changed to permit it. He said, as with the committee's discussion regarding the dairy refund, it would be appropriate to have a formal certification by the Attorney General indicating that the federal law has been changed and that refunds are now permitted. He said committee counsel should work with representatives from the North Dakota Beef Commission to draft a workable system for obtaining refunds, in the event federal law is changed.

### **Section 15**

#### **(Amendment of NDCC Section 4-34-14)**

Chairman Mueller said this section requires any person who must pay or collect an assessment to keep a record of certain data and to make that data available for inspection by the commission.

Ms. Bateman said current law requires a person to keep a record of the "identification of the seller of cattle." She said it would be helpful if the rewrite referenced the need not only to keep a record of the person's name, but also the person's address.

Chairman Mueller said current law provides that the "records must be maintained for the period of time that the commission may prescribe by rule, but the records must be maintained for at least three years." He said the North Dakota Beef Commission has indicated that three years is an appropriate period of time for the retention of records. Therefore, he said, the rewrite maintains the three-year requirement but removes the requirement that the commission may

prescribe a longer period by rule. He said, as the committee has discussed previously, the committee is not concerned about the length of time that a record must be retained. He said the committee just wishes to ensure that there is clarity in the statute with respect to the required time for which a record must be held.

### **FINAL ACTION**

No further business appearing, Chairman Mueller adjourned the meeting at 12:00 noon.

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L. Anita Thomas  
Counsel

ATTACH:1