

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

AGRICULTURE COMMITTEE

Tuesday and Wednesday, October 28-29, 2014
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Jim Schmidt, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Jim Schmidt, Bill Amerman, Chuck Damschen, Bob Hunskor, Dennis Johnson, Dwight Kiefert, David S. Rust, Wayne Trottier, Margaret Wall; Senators Bill L. Bowman, Robert Erbele, Larry Luick, Joe Miller

Members absent: Representatives Tracy Boe, Diane Larson; Senator Jim Dotzenrod

Others present: See [Appendix A](#)

Chairman Schmidt welcomed Representative Margaret Wall to the committee and expressed the committee's appreciation for Representative John Wall's wisdom and commitment to the legislative process.

It was moved by Senator Erbele, seconded by Representative Johnson, and carried on a voice vote that the minutes of the May 8, 2014, meeting be approved as distributed.

REPORT REGARDING 2013 SENATE BILL NO. 2211

At the request of Chairman Schmidt, Ms. Julie Ellingson, Executive Vice President, North Dakota Stockmen's Association, presented testimony ([Appendix B](#)) regarding 2013 Senate Bill No. 2211, the humane treatment of animals bill. Ms. Ellingson said, in accordance with the directive in the bill, she is presenting the report on behalf of the various agricultural organizations. She said the agricultural organizations are either pleased with the new law or have been unaffected by it. She said none of the organizations are advocating for any statutory revisions to the law at this time.

NORTH DAKOTA BEEF CHECKOFF

At the request of Chairman Schmidt, Ms. Nancy Jo Bateman, Executive Director, North Dakota Beef Commission, presented testimony regarding the history of the beef checkoff in North Dakota and the commission's past and present funding of research, education programs, and market development efforts. Ms. Bateman said the commission has been in place for 41 years. She said she hopes that when people speak about the commission they realize it is a program about ranchers and their businesses.

Ms. Bateman said the first checkoff began in 1922, with a five cent checkoff per carload. She said that was when the National Livestock and Meat Board was formed. She said the North Dakota Beef Commission came into being in 1973. She said a law creating it had been vetoed in the preceding session. She said, in 1983, the checkoff was increased to 50 cents per head. She said, in 1986, Congress passed a national beef checkoff with an assessment of \$1 per head. She said everyone was to pay the \$1 per head. She said states were given control over 50 cents of the \$1. She said a producer referendum was held in 1988.

Ms. Bateman said beef producers need to reach customers where they live. She said beef producers need to reach beef customers, as well as the people who are not eating beef. She said those people can be found in the populated centers and not in those parts of the country where cattle are located. She said if we doubled the consumption of beef in this state, it still would not impact North Dakota producers. She said we just do not have the population to support the type of market that North Dakota producers deserve.

Ms. Bateman said the nine states from North Dakota to Texas represent at least 62 percent of the checkoff dollars paid in this country. However, she said, they contain only 15 percent of the population. She said the obvious question might be why spend 62 percent of our dollars reaching only 15 percent of our consumers. She said the West Coast states account for only seven percent of the checkoff revenues and the three northeast states account for only one percent of the checkoff revenues.

Ms. Bateman said the Federation of State Beef Councils is the checkoff program arm of the National Cattlemen's Beef Association and was formerly known as the Beef Industry Council of the National Live Stock & Meat Board. She said this was prior to beef producers voting to merge the National Cattlemen's Association and the Beef Industry Council. She said this partnership of 45 state beef councils pool their resources. She said this is how North Dakota producers, through their North Dakota Beef Commission representatives, have a voice in the entire checkoff program. She said their financial investment in the Federation of State Beef Councils provides four seats at the table so that North Dakota producers can participate in developing demand-building programs. She said these programs are funded through a combination of Cattlemen's Beef Board dollars and state investments via the federation.

Ms. Bateman said research is the foundation of beef checkoff programs. She said much has been said about "muscle profiling" over the past 12 years. She said researchers realized that over 50 percent of the beef from the carcass chuck and round was bringing less than 25 percent of the value. She said researchers took the chuck and round apart, muscle by muscle. She said they cooked them, tested the tenderness at different degrees of doneness, and discovered some diamonds hidden in the middle of the chuck and round. She said cuts like the petite tender, the flat iron, medallions, the Delmonico, boneless beef short ribs, and many others that are now common place on restaurant menus have added from \$70 to \$90 per head to the value of cuts from a carcass and have given food service, retailers, and consumers many more cuts that they can purchase at an affordable price. She said the beef checkoff has contributed over \$5 million to the research, development, and introduction of innovative beef cuts. She said this work has added well over \$1 billion per year to beef.

Ms. Bateman said, in 1990, the United States Department of Agriculture (USDA) finally updated the nutrient analysis of beef. She said the USDA acknowledged that there were six cuts of beef that met the definition of "lean" and could be promoted that way. She said, in a 100-gram or 3-ounce cooked serving, there is less than 10 grams of total fat, 4.5 grams or less of saturated fat, and less than 95 mg of cholesterol per serving. She said the "skinny six" were promoted to dietitians, doctors, nurses, nutritionists, and consumers. She said, as time passed, the number of lean cuts increased. She said today they are promoting 29 lean cuts. She said, recently, more nutrition analysis was released stating that there are now up to 38 lean cuts.

Ms. Bateman said, at the state level, the primary objective is to promote the national programs across the state. She said there are also a few programs that are specific to the needs of and opportunities in this state. She said, since 2004, the North Dakota Beef Commission has partnered with the North Dakota Stockmen's Association and the North Dakota CattleWomen to recognize the contribution made by our military members, in all branches of the service. She said this is done through a picnic at the North Dakota State Fair. She said the commission has also helped with an event at the Grand Forks Air Force Base. She said the commission has fed over 16,000 military members and their families. She said the commission was chosen to receive, on behalf of all beef producers, the North Dakota National Guard's "Community Purple" award for contributions to the military, above and beyond the call of duty.

Ms. Bateman said children are also a focus of state programs. She said the "Living Ag Classroom" program began 20 years ago. She said it consists of 13 exhibits geared to 4th grade students. She said, over the years, approximately 80,000 students have viewed the exhibits. She said many of those students are now in their late 20s and their children are now going through the exhibits and learning the same thing that their parents did. She said it is a wonderful way to teach children about what our ranchers do and what they produce every day of the year.

Ms. Bateman said the North Dakota Beef Commission has a long-standing relationship with the USDA Human Nutrition Research Center and with North Dakota State University (NDSU). She said this relationship has provided numerous opportunities to further beef product research and through the extension programs, to reach out to thousands of adults and children. She said answering questions regarding beef quality, cookery, and food safety is only the beginning. She said the "red meat and low carb diets" project shows tremendous promise for beef in the diet. She said another project uses pigs as human models to explore questions surrounding the use of implants in cattle and the affect of that use on the premature onset of puberty. She said NDSU Extension Service nutrition education programs and collegiate meats judging are just a couple more programs in which checkoff dollars have been invested.

Ms. Bateman said, since the mid 1970s, cattle numbers have declined. She said the good news is that our beef production capacity has slowly but steadily grown. She said this tells us that our beef producers are very efficient at producing more beef for consumers. She said they are, however, doing so with fewer cattle. She said the issue that the North Dakota Beef Commission is running into is that beef checkoff resources are not tied to pounds of beef or price per pound. She said the checkoff is tied to cattle numbers, at \$1 per head.

Ms. Bateman said we have all seen dramatic increases in the cost of items that we purchase regularly. She said these items range from gasoline to ground beef and from entertainment to trucks. She said the price of housing has likewise increased.

Ms. Bateman said the beef checkoff was \$1 per head when it was launched 28 years ago and it is still \$1 per head today. Meanwhile, she said, the buying power of a dollar in 1986 would now require \$2.37.

Ms. Bateman said that the North Dakota Beef Commission and the national organizations have become a lot more strategic and focused about how they spend beef producers' checkoff dollars. However, she said, there has not been a national television advertising campaign for over a decade. She said new research projects have not been undertaken to the extent they used to be. She said at the state level, the commission constantly struggles with increases in fixed costs. She said even their Internet service increased by \$40 per month. She said that means 80 additional cattle have to be sold and "checked off" every month just to cover that increase. She said the research budget for the current fiscal year is zero. She said, last year, it was \$681. She said, even as checkoff expenses have increased dramatically while revenues have not, the producer leaders who serve on the Cattlemen's Beef Board and the North Dakota Beef Commission have worked diligently to leverage every dollar to the fullest extent possible.

Ms. Bateman said the latest comprehensive econometric model identifying the return on investment of every dollar sent to the national checkoff program indicates that producers get a return of \$11.20 for every dollar invested.

In response to a question from Representative Rust, Ms. Bateman said there have been ongoing national surveys of producers regarding increased checkoffs. She said they are showing an 80 percent approval of the current checkoff. She said increases are receiving mixed reviews across the country. She said the North Dakota Beef Commission has not recently done such a survey in this state. She said federal law precludes the commission from engaging in lobbying. However, she said, if additional money was made available, the commission would certainly take it.

In response to a question from Senator Luick, Ms. Bateman said federal law limits the administration costs of the Cattlemen's Beef Board to 5 percent. She said that does not, however, affect the state beef councils.

Senator Bowman said he was pleased with the slide that suggested there was an \$11.20 return for each \$1 invested in the checkoff. He said if people are going to be charged more, they will need to see that they are actually benefiting from that investment. He said he believes that the cattle numbers are strong and should remain that way for a long time.

In response to a question from Senator Miller, Ms. Bateman said there has not been any recent discussion about tying the amount of the checkoff to the market. She said, when that has been tried, it resulted in a complexity level that was too challenging for most livestock markets' administrative methods. She said, likewise, the suggestion that there be a checkoff at the packer level has not received any traction.

In response to a question from Representative Rust, Ms. Bateman said the North Dakota Beef Commission collected \$1,120,000. She said, this year, the budget has been approved for \$1.1 million. She said North Dakota actually receives half of that amount, or \$550,000.

In response to a question from Representative Trottier, Ms. Bateman said the dollar is collected whenever there is a change of ownership. She said North Dakota has a very high compliance rate.

In response to a question from Representative Hunskor, Ms. Bateman said American beef is the highest quality, most sought after beef protein in the world. She said there is, however, intense competition in the foreign markets.

In response to a question from Representative Hunskor, Ms. Bateman said the vast majority of beef that comes into this country is very lean and it goes into grinding and food service.

In response to a question from Representative Johnson, Ms. Bateman said five states do not have beef industry councils because their beef numbers are so low. She said the 50-50 split between the national and the state level is the same in all other states. She said several states have already increased the state portion of their checkoff.

In response to a question from Senator Erbele, Ms. Bateman said USDA's disappearance data has been going down consistently for a number of years. She said the demand--i.e., the willingness of consumers to purchase--still shows strong consumer demand for the product. She said there is concern about hitting the level where people are

no longer willing to regularly pay the price for beef. She said we do not want to see beef become like lobster and be eaten only on rare or special occasions. She said we are seeing more savvy shopping among our consumers.

Chairman Schmidt said he would like a breakdown of the \$11.20 as a return on investment for the \$1 checkoff. He said the \$11.20 amount was calculated on the value of the nationally based programs.

Ms. Bateman said the return on investment study was done by a researcher at Cornell University.

In response to a question from Chairman Schmidt, Ms. Bateman said there is an effort to attach the \$1 to the 1996 generic checkoff act. She said the United States Secretary of Agriculture has instructed his staff to draw up a plan and see what that would look like. She said by the time the federal officials work their way through the process, the 2015 legislative session will have concluded.

In response to a question from Senator Luick, Ms. Bateman said, several years ago, the North Dakota Beef Commission conducted an analysis and concluded that the checkoff amounts to approximately \$2.50 per head over the course of an animal's life.

With the permission of Chairman Schmidt, Mr. Kenny Graner, President, Independent Beef Association of North Dakota, presented testimony ([Appendix C](#)) regarding the discussion to increase the beef checkoff. He said the Independent Beef Association of North Dakota (I-BAND) is in favor of the beef checkoff. He said I-BAND is, however, concerned about where the checkoff dollars go. He said approximately 30 percent of the checkoff goes to the National Cattlemen's Beef Association. He said I-BAND does not believe that the National Cattlemen's Beef Association represents all cattle producers. He said that the National Cattlemen's Beef Association is awarded more than 95 percent of the contracts for promotion, research, and education.

With the permission of Chairman Schmidt, Mr. David Wright, Neligh, Nebraska, presented testimony ([Appendix D](#)) regarding the beef checkoff. He said he is a fourth generation cattle producer and is appearing on behalf of I-BAND. He said Nebraska elects producers to its state beef council. He said each producer represents a district. He said the terms are four years. He said he served for eight years on the Nebraska Beef Council and during that time also served on the Federation of State Beef Councils as a director.

Mr. Wright said, in 1922, the checkoff began at five cents per carload. He said there were 25 head to a car. He said the packers matched that with another five cents. He said the assessment was collected at the markets and was refundable. He said that first year the assessment produced \$70,000.

Mr. Wright said Mr. Thomas Wilson established the National Livestock and Meats Board to administer the dollars. He said the checkoff was applied to beef, pork, and lamb. He said, in 1931, the checkoff was increased to 25 cents per carload, or one cent per head. He said, in 1953, the rate was increased to two cents per head.

Mr. Wright said, in 1955, the Texas Farm Bureau started the National Beef Council. He said Texas had encouraged 14 other states to develop beef councils in order to help support this new national checkoff. He said it was voluntary. Meanwhile, he said, the National Livestock and Meats Board still had their refundable checkoff in place.

Mr. Wright said, in 1962, the checkoff was increased to 3 cents per head. He said, in 1963, the National Beef Council went broke. He said he was told that happened because the council could not meet its advertising commitments. He said the 17 beef councils that were formed to support the National Beef Council then joined the National Livestock and Meats Board. He said, at that point, the species were broken into separate groups--i.e., the Beef Industry Council, the Pork Industry Council, and the Lamb Committee.

Mr. Wright said, between 1963 and 1975, seven checkoffs failed in Congress. He said all were opposed by the National Livestock and Meats Board and by the Farm Bureau. He said the reason that the National Livestock and Meats Board was opposed was because the proposals were all for refundable checkoffs.

Mr. Wright said, on May 28, 1976, Congress passed the Beef Research and Information Act. He said the assessment was one-half of 1 percent of the value of the animal. He said there was a referendum on this checkoff in 1977. He said, out of 1 million potential voters, 231,046 actually voted, and of those, 130,464 voted in favor. He said that amounted to 56 percent. He said a two-thirds vote was needed.

Mr. Wright said there was another referendum in 1980. He said, out of 1 million potential voters, 231,032 actually voted, and of those, 79,913 voted in favor. He said that amounted to 34.6 percent. He said the criteria was changed from a two-thirds majority to a simple majority. He said it failed again.

Mr. Wright said Congress then rewrote the law, which is now called the 1985 Beef Research and Information Act. He said this is what we have today--i.e., the \$1 checkoff. He said, in 1988, there was another referendum. He said, out of 1 million potential voters, 256,505 actually voted, and of those, 202,408 voted in favor. He said that amounted to 78.9 percent. He said a majority was needed and so the referendum passed, with the assent of 20 percent of the producers. He said the floor had been lowered again from 50 percent of registered voters to just 50 percent of those who voted.

Mr. Wright said, in 1985, while the checkoff was still voluntary, it collected \$18.6 million. He said during the first year after the checkoff became mandatory, it collected \$70 million.

Mr. Wright said, between 1988 and 1996, before the National Cattlemen's Beef Association merger took place, the Beef Industry Council was the No. 1 contractor for those checkoff dollars. He said the National Livestock and Meats Board was the No. 2 contractor. He said the National Cattlemen's Association was the No. 3 contractor, with only \$5 million in contracts.

Mr. Wright said, in 1992, the Pork Industry Group and the Lamb Committee separated from the National Livestock and Meats Board. He said that left only the Beef Industry Council at the National Livestock and Meats Board. He said the National Cattlemen's Association was broke and so it began to talk about merging with the National Livestock and Meats Board.

Mr. Wright said, from 1985 to 1987, the National Cattlemen's Association had 45 employees. He said that was pre-checkoff. He said, after the checkoff, in 1993, the National Cattlemen's Association had 80 employees. He said, in 1993, 44 percent of the National Cattlemen's Association budget came from checkoff dollars--i.e., \$5.4 million. He said 56 percent of the National Cattlemen's Association budget--or \$6.9 million--did not come from checkoff dollars.

Mr. Wright said at the Cattlemen's Beef Board summer meeting in 1995, the board considered eight amendments to its bylaws. He said those amendments were for the formation of joint committees. Prior to that, he said, the Cattlemen's Beef Board made decisions regarding how to spend the money it received. He said the bylaws were changed to require that all annual meetings be held in conjunction with an industry nonprofit organization. He said that was in July 1995.

Mr. Wright said, in January 1996, the National Cattlemen's Beef Association was formed. He said the National Livestock and Meats Board merged with the National Cattlemen's Association and the Beef Industry Council to become the Federation of State Beef Councils. He said the federation is a nonlegal entity--i.e., an entity that does not legally exist. He said it does not pay taxes or have a checking account. He said it is a wholly owned subsidiary of the National Cattlemen's Beef Association. He said the effect of this was to eliminate the No. 2 contractor and combine the No. 1 and No. 3 contractors. He said the federation, which was the No. 1 contractor since 1996, had not received a contract since. He said the federation does not contract. He said the National Cattlemen's Beef Association does.

Mr. Wright said the Federation of State Beef Councils consists of 45 state beef councils. He said there are 660 directors on those beef councils. He said, of those 660 directors, about 85 become federation directors. He said becoming a federation director is a pay-to-play game. He said there is a scale that one must follow in order to get a seat. He said the scale accounts for the number of cattle, a state's population, etc. He said, in Nebraska, the first three seats cost \$34,000 each. He said seats 4 and 5 cost 2.5 percent of the Nebraska Beef Council's \$10 million budget, or \$250,000 each. He said seats 6 and up cost 5 percent of the Nebraska Beef Council's \$10 million budget, or \$500,000 each. He said these are called "investment" seats.

Mr. Wright said, in 2013, when he served on the board of the Federation of State Beef Councils, he asked the directors how many of them paid dues to the National Cattlemen's Beef Association. He said almost everybody raised his or her hand. He said only three were not dues-paying members. He said two of the three were from Nebraska. He said in Nebraska, there are elections. He said the directors are not appointed by some group or organization.

Mr. Wright said, by 2008, the National Cattlemen's Beef Association controls most of the checkoff and it has 126 employees. He said he believes that number is closer to 190 currently. He said 70 percent of the association's budget--or \$37 million--comes from checkoff dollars. He said the association's Chief Executive Officer earns \$450,000. He said 70 percent of that salary is paid with checkoff dollars.

Mr. Wright said his handout includes a page entitled "Summary of SBC Investments." He said it shows how much each state beef council pays for its investment seats. He said Nebraska paid \$2.1 million in 2011. He said

North Dakota paid \$164,000 for its seats and then paid \$17,200 to the United States Meat Export Federation. He said one does not have to give one's money to the National Cattlemen's Beef Association in order to contribute to the United States Meat Export Federation. He said one can give it directly to the United States Meat Export Federation. He said those seats are \$8,600 each. He said if you give the dollars to the National Cattlemen's Beef Association, the association counts that money toward their seats on the United States Meat Export Federation Board. He said the United States Meat Export Federation is a very good organization. He said the same advantage can be obtained by giving dollars directly to the United States Meat Export Federation.

Mr. Wright said the National Cattlemen's Beef Association collects approximately \$10 million from the state beef councils. He said his handout includes a page entitled "Federation Finances." He said there is a column entitled BPOC. He said that refers to the Beef Promotion Operating Committee. He said that would be the Cattlemen's Beef Board. He said this pertains to the \$40 million one hears mentioned. He said those are the contracts, which are also known as authorization requests. He said the National Cattlemen's Beef Association collected \$34 million in authorization requests. He said the association spent it on promotions research, consumer information, influence, and foreign marketing. He said one can see the total program costs. He said the beef checkoff has a cash recovery basis. He said if an item costs \$100, as a contractor, he could not charge the checkoff more than \$100 for the item. He said he can charge an implementation cost, which is what it costs him, as a contractor, to get the item. He said you will see that \$26 million was spent on direct costs. He said if you go to the Federation of State Beef Council's column in the middle of the page, you will see the \$10 million that the federation collected from the states. He said you will see that the federation paid over \$5 million for promotions, research, consumer information, influence, and foreign marketing. He said you will also find a \$1.17 million implementation cost. He said then the federation spent another \$3 million in a way that had nothing to do with promotions, research, consumer information, influence, and foreign marketing. He said that money was used to run the federation.

Mr. Wright said his handout includes two pages entitled "Authorization Request for FY 2014" and "Authorization Request for FY 2013," respectively. On the first page, he said, one will notice that the North American Meat Association is the potential contractor and that the total for which it is contracting is \$631,250. He said the direct cost is \$511,175. He said there is an implementation cost of \$120,075. He said under the column entitled "Source of Funding," there is a reference to the Federation of State Beef Councils. He said there is no money there.

Mr. Wright said the second page contains an authorization request from the National Cattlemen's Beef Association for retail marketing, which is a promotion. He said the association is requesting \$1.9 million in direct costs. He said, on this one, the Federation of State Beef Councils is contributing \$300,967. He said the money that is given to the federation can only be spent on National Cattlemen's Beef Association contracts. He said the other contractors who are there to bid for the dollars cannot access those additional funds. He said those are just for the National Cattlemen's Beef Association. He said the association does not have an implementation amount listed. He said that is because the association is allowed to develop a separate authorization request for all of its implementation costs. He said if another contractor is competing to win an authorization request, the contractor must show what it is going to cost him. He said the National Cattlemen's Beef Association does not have to do this.

Mr. Wright said, continuing in his handout, one can find implementation contracts. He said the first one is for "research." He said, at the bottom of the page, there is a table entitled "Historical Summary of Budgets and Expenses." He said that lists the budgeted price and the actual expenses. He said one can see the same thing on the authorization requests for industry information, for promotion, and for consumer information. He said all are included in the handout.

Mr. Wright said the handout also contains a page entitled "NCBA's Bread and Butter." He said the page has a blue line across the top and summarizes the foregoing information. He said the top line is the budgeted price. He said the bottom line is the actual expense. He said, in 2009, the total budgeted amount for authorization requests was \$10 million. He said the actual cost was only \$8.8 million. He said there was an over budget of \$1.2 million. He said, in 2010, the over budget was \$800,000 and in 2011 it was \$1.2 million.

Mr. Wright said, for three days each September, there is an operating committee meeting. He said all the contractors come and bid in order to win some of the \$40 million. He said the National Cattlemen's Beef Association bids high and it bids hard. He said, as the year goes on, if there are extra dollars, the National Cattlemen's Beef Association, as can be seen from the September 2013 email, which is also enclosed in the handout, asks to move money from one authorization request to another. He said if the money is not used, it goes back into the general fund for the following year. He said when the National Cattlemen's Beef Association comes in and overbids like that, the opposing contractors do not get a shot at the money.

Mr. Wright said the handout includes a page entitled "Total Dollars Collected." He said this goes back to 1988. He said the column to the left shows what the state beef councils have collected each year. He said the chart also shows what the importers have paid. He said this information comes from the annual reports of the Cattlemen's Beef Board and like all the information in the handout, is available on the Internet. He said the chart also contains a total dollar figure. He said that is the money of the Cattlemen's Beef Board. He said if one wants to determine what was collected each year, one must add the left column and the right column. He said the state beef councils kept half the dollars, which equaled \$961 million. He said, when added to the amount that the Cattlemen's Beef Board collected, since 1988, it appears that the total checkoff dollars are \$2.2 billion.

Mr. Wright said the question is: What are we doing wrong? He said, in 1985, there were 1 million beef producers and 34 million beef cows. He said, today, there are 729,000 beef producers and 29 million cows. He said, in 1994, the National Cattlemen's Association, which is now the National Cattlemen's Beef Association, had 40,000 members. Today, he said, it has 30,000.

Mr. Wright said the purpose of the 1995 Beef Promotion and Research Act was to establish, finance, and carry out a coordinated program of research, producer and consumer information, and promotion to improve, maintain, and develop markets for cattle, beef, and beef products. He said he has been doing this for 12 years and has never seen an authorization request to develop markets for cattle. He said it is always about beef. He said that is why our cow herds are going down.

Mr. Wright said there was mention earlier about return on investment and specifically that the program was returning \$11.20 for every dollar invested. However, he said, the total dollars collected during the time frame of the Cornell study was \$623 million. He said the dollars that were collected by just the Cattlemen's Beef Board amounted to \$339 million. He said the Cornell study's return on investment was calculated using only \$289 million. He said the handout includes a list of the categories used in the Cornell study. He said the return on investment is calculated on only 85 percent of the Cattlemen's Beef Board total collected dollars or on only 46 percent of the total checkoff dollars collected.

Mr. Wright said, in the "Supplementary Statements of Assessment Revenues by State," it shows that North Dakota collected \$555,924 in 2013. He said, at the end of 2013, North Dakota gave \$174,821 to the National Cattlemen's Beef Association. He said North Dakota gave 31 percent of its budget--i.e., of its 50 cents, to the National Cattlemen's Beef Association.

Mr. Wright said the budget for the North Dakota Beef Commission is included as well. He said, of the money that stays in North Dakota, 46 percent goes to administration, 23 percent goes to the National Cattlemen's Beef Association and the United States Meat Export Federation, and only 30 percent goes to programs in North Dakota.

Mr. Wright said, if a law is enacted to increase the checkoff, who will have oversight over those new dollars. He said will the North Dakota Beef Commission send all of those extra dollars to the National Cattlemen's Beef Association and the United States Meat Export Federation? He said, even if the North Dakota Legislative Assembly enacts a law stating that the new money must remain in this state, that frees up the other 50 cents for transmittal to the National Cattlemen's Beef Association.

Mr. Wright said California, Wyoming, Minnesota, Ohio, and Nebraska all tried to pass an increase and they failed. He said Ohio came back a second time, changed the criteria, and involved youngsters from the Future Farmers of America organization and the 4-H Youth Development Organization to get the increase on the ballot. Then, he said, they permitted only registered voters to participate in the referendum. He said that is how Ohio passed the \$1 checkoff increase. He said Texas passed the \$1 increase also.

Mr. Wright said, if one wants to give money to a national project, one does not have to give the money to the National Cattlemen's Beef Association. He said one can give it directly to the Cattlemen's Beef Board. He said the Cattlemen's Beef Board has to live within a 5 percent administrative cap. He said the state beef councils do not have such a cap. He said there are state beef councils that expend 60 to 70 percent for administration. He said if one sends dollars to the National Cattlemen's Beef Association, one can see in the Federation of State Beef Councils' budget that out of \$10 million, only \$5 million went to projects.

Mr. Wright said if one is going to have a mandatory increase, the new money should be sent directly to the United States Meat Export Federation or the Cattlemen's Beef Board.

Mr. Wright said the biggest difference between a checkoff under the 1985 legislation and a checkoff under the 1996 legislation is that the former requires contracts with industry nonprofit organizations. He said such organizations include the Farm Bureau, the Farmers Union, and the National Cattlemen's Beef Association. He

said even the North Dakota Beef Commission could submit an authorization request. He said they are the contractors. He said they go out and hire subcontractors to do the promotion. He said the 1996 law states that one does not have to go through a middle man. He said one can do business directly with a contractor. He said while a contractor cannot charge more than it costs, a subcontractor can charge whatever it costs. He said if the National Cattlemen's Beef Association wins a research contract, the association can subcontract that out to a university. He said a university is not going to work just for a cost of recovery.

With the permission of Chairman Schmidt, Ms. Ellingson presented testimony ([Appendix E](#)) regarding the beef checkoff program. She said this is an important issue for the beef industry. She said it is recognized that not everyone will love the idea of a checkoff increase. That is why, she said, there should be a 100 percent refund on the new dollars, just like other commodity programs.

APIARY STUDY

At the request of Chairman Schmidt, Committee Counsel presented a bill draft [[15.0032.04000](#)] relating to apiaries. She said, since the last time that the apiary bill draft was before this committee, it has been redrafted as new law. She said this allows sections and concepts to be more easily moved so that they can be put into a logical order and made as clear as possible.

Section 4.1-16-01 Definitions

Committee Counsel said in the rewrite of this section a number of definitions were removed because they were no longer applicable. She said a definition of a "colony" was added. She said that is a familial group of adult bees consisting of drones, workers, and a queen. She said a definition of a "hive" was also added. She said that is the structure that houses a colony. She said those words are frequently used interchangeably and incorrectly.

Section 4.1-16-02 Beekeeper's License Required

Committee Counsel said this section requires beekeepers to be licensed. She said current law states that the person must be licensed by March 1. She said current law does not, however, address what happens on March 2. She said the rewrite treats beekeeping licenses like fishing licenses in that a person does not need one before opening day, but a person better have one before beginning the activity. She said this same approach was used by last interim's Agriculture Committee in addressing livestock dealer licenses.

Section 4.1-16-03 Beekeeper's License - Application of Minor - Liability

Committee Counsel said this section provides that if a minor elects to be a beekeeper, the minor's parent must sign the application for licensure. She said current law references the minor's mother, father, or legal guardian. She said, by referencing a "parent," there is no intent to preclude a legal guardian from signing the application. She said a legal guardian is recognized as functioning "in loco parentis"--in the place of a parent. She said it is not necessary to reference both a parent and a legal guardian. However, she said, if a minor child spends the summer with "Aunt Mary" and if "Aunt Mary" does not have a legal guardianship status, she cannot sign the application.

Section 4.1-16-04 Beekeeper's License - Transferability - Expiration

Committee Counsel said, like current law, this section provides that a beekeeper's license is not transferable. She said subsection 2 of this section is new language. She said current law does not indicate when beekeeping licenses expire. She said the proposed language would clarify that such licenses expire on December 31 and that a new license is needed each year.

Section 4.1-16-05 License - Grounds for Denial

Committee Counsel said, under current law, a license can be denied if the applicant is found guilty of repeatedly violating this chapter or rules adopted in accordance with this chapter, and if the person has failed to pay an adjudicated civil penalty. She said those concepts remain. She said, under current law, if a person provides false or misleading information in connection with any application or notification required by the chapter, that person is subject to the penalties provided for in the chapter--i.e., a Class A misdemeanor, a \$5,000 civil penalty, or both. In other instances, she said, if false or misleading information is provided in connection with an application, or a required report, that is a ground for license denial. She said that proposal has been included for the committee's consideration.

Section 4.1-16-06 License Fee

Committee Counsel said this section maintains the current license fee of \$5.

Section 4.1-16-07 Colony Assessment

Committee Counsel said this section maintains the current colony assessment fee of 15 cents.

Section 4.1-16-08 Apiary Location - Notification

Committee Counsel said, under current law, a beekeeper is required to "register" all apiaries with the Agriculture Commissioner. However, she said, under current law, there is no minimum distance and no "do not compete" provisions. In effect, she said, all that the beekeepers are doing is telling the Commissioner where their apiaries will be placed--i.e., they are "notifying" the Commissioner. She said in the interest of modernizing this section, beekeepers would be permitted to provide the Commissioner with GPS coordinates and they would be permitted to provide the notification electronically.

Section 4.1-16-09 Identification of Apiary

Committee Counsel said this is the apiary identification section. She said current law requires an 8x11 inch placard with lettering at least one-half-inch high. She said the letters and numbers must be legible. She said Department of Agriculture personnel thought it would be helpful and simpler if beekeepers would just spray paint, on one hive, their three digit license number, in a fashion that was discernible at 20 feet. She said that language was included. She said, if a beekeeper does not want to do that, he or she can ask the Agriculture Commissioner to approve an alternate form of identification. She said, if a beekeeper wants to add additional forms of identification, that can certainly be done. She said, if an apiary is not properly identified, it can be subject to seizure.

Section 4.1-16-10 Unidentified Apiary - Notice Seizure

Committee Counsel said, under the seizure provisions, if an apiary is not identified, and if after making reasonable efforts to identify the responsible beekeeper, no name appears, the Agriculture Commissioner may publish a notice in the official newspaper indicating that if the responsible party does not appear to claim their property and pay costs, the property will be seized and destroyed or sold at auction.

Section 4.1-16-11 Confiscation and Disposal

Committee Counsel said, if bees are being transported or maintained in violation of this chapter, they may be confiscated. She said the Agriculture Commissioner or a law enforcement officer must then get a court order or an administrative order regarding the disposition of the property.

Section 4.1-16-12 Agriculture Commissioner - Powers

Committee Counsel said this section references various powers and duties of the Agriculture Commissioner. She said current law assigns many of those powers and duties to the State Bee Inspector. She said it is proposed that references to the State Bee Inspector be removed from the North Dakota Century Code because the Agriculture Commissioner is the individual who is ultimately responsible for carrying out the legislative directives. She said the Commissioner may, however, delegate his statutory and regulatory functions.

Committee Counsel said, in this section, two powers are identified. She said the first involves assisting farmers in identifying beekeepers who provide pollination services. She said current law words that rather awkwardly. She said subsection 2 contains a change.

Committee Counsel said current law provides that if the State Bee Inspector or a deputy inspector receives a complaint from a beekeeper, from an aerial sprayer, or from a farmer, the inspector may enter private property, during reasonable hours, to make an external inspection for the purpose of identifying a colony. She said the problem with this is twofold. She said what can and cannot be done if the complaint is filed by someone other than one of the three listed parties and what if the Agriculture Commissioner needs to enter private property for the purpose of enforcing the chapter?

Committee Counsel said, in the rewrite, the Commissioner was authorized to enter upon private land during daylight hours for the purpose of enforcing the chapter, regardless of who complained. She said this committee had asked earlier that verbiage be added to require that the Commissioner first make a good faith effort to notify the owner of the land or a lessee regarding the entry. She said that language has been added.

Section 4.1-16-13 Agriculture Commissioner - Inspection of Apiary - Issuance of Certificate

Committee Counsel said this is an inspection section. She said, at the request of a beekeeper, the Agriculture Commissioner must inspect an apiary for the purpose of issuing a certificate of inspection or providing other official documentation or validation. She said no charge is made for this inspection.

Section 4.1-16-14 Agriculture Commissioner - Inspection of Apiary - Noncertification Purposes

Committee Counsel said this is an unofficial inspection section. She said, if a beekeeper would like to have someone come out for any reason other than an official inspection, such as perhaps for a consultation, the Agriculture Commissioner may provide the inspection and may charge a fee to cover any attendant costs.

Section 4.1-16-15 Quarantine - Declaration - Hearing - Penalty

Committee Counsel said current law contains a rather unclear and probably unworkable section on what ought to happen in the event that Africanized bees are identified. She said it addresses migration and periods within which colonies can and cannot be moved. She said, after discussing the section with Department of Agriculture personnel, it appeared that what the Agriculture Commissioner really needed was the ability to impose a quarantine, whether that be for Africanized bees or to control the spread of disease, etc.

Under normal circumstances, she said, in order for a quarantine to be issued, there must be a notice and a hearing and if there is an order, it must state the date by which or the circumstances under which the quarantine will be lifted. She said, if there is an emergency, the Commissioner may order a quarantine and then, within 14 days, he must go through the standard notice, hearing, and order procedure that was described for nonemergency situations.

Section 4.1-16-16 Service of Process

Committee Counsel said this section allows the Agriculture Commissioner to accept service of process, in the event that neither a beekeeper nor his registered agent can be found.

Section 4.1-16-17 Penalties

Committee Counsel said the penalties are the same as current law. She said one is subject to a Class A misdemeanor or a \$5,000 civil fine. She said there is one change. She said current law provides that a person may be guilty of a Class A misdemeanor for violating this chapter or rules adopted under the chapter. She said the Legislative Assembly has been very reluctant to allow the imposition of a criminal penalty for a rules violation. In this case, she said, the Apiary Division has only minimal rules and rules have not been issued or amended since 1992. She said one does not know what future rules might address. She said, rather than commit to the imposition of a criminal penalty for a yet unknown act or omission, the language was crafted to provide that there may be a criminal penalty for violating the chapter, but not for violating a rule. She said, if an activity is worthy of a criminal penalty, it is suggested that the Agriculture Commissioner should place a bill before the Legislative Assembly.

Section 4.1-16-18 Relocation of an Apiary - Petition - Hearing

Committee Counsel said current law contains a simple little sentence that has a lot of potential repercussions. She said it states that "[t]he agriculture commissioner may cancel a registration . . . when the bees located on the apiary site are causing a nuisance, as defined in chapter 42-01." She said there is no reference to a hearing, or to any form of due process for the beekeeper. She said the definition of a nuisance is in and of itself problematic. She said these issues were raised at a previous committee meeting. She said the committee is asked to think carefully about the quoted sentence. She said, if the beekeeper owns the property on which he has placed his hives, is he being precluded from conducting an otherwise lawful activity on his property? She said, if the beekeeper has a pollination contract, who would be responsible in the case of a breach? She said, if the beekeeper has obtained permission to place hives from a landowner, what happens if the landowner will not allow the beekeeper to relocate the hives? She said the questions go on and on.

Committee Counsel said this section is now drafted in a fashion that highlights and addresses some of those concerns. She said it will be up to the committee to determine the appropriateness of the suggestions.

Committee Counsel said, if someone has an issue with the location of an apiary, that individual can petition the Agriculture Commissioner for an order requiring a relocation. However, she said, that individual must reside on land contiguous to that on which the beekeeper has placed an apiary. She said this is not to be a venue for people who live far away and just do not like bees or beekeeping.

Committee Counsel said, secondly, that individual's health or welfare must be endangered by the apiary's location. She said this is not to be a venue for people who do not like bees on their windshields.

Committee Counsel said, if the Commissioner receives a petition, he may provide notice and schedule a hearing. She said this provides everyone with an opportunity to bring forth testimony and documentary evidence.

Committee Counsel said parameters are set for the Commissioner. She said the Commissioner would have to determine that any threat to the individual's health or welfare would be eliminated or significantly mitigated through the relocation of the apiary. She said a relocation is not to be ordered on a whim, but only if it could truly make a difference to the individual's health or welfare.

Committee Counsel said the Commissioner may order a relocation. However, she said, he cannot prohibit the beekeeper from having bees on land that the beekeeper owns, that the beekeeper leases, or that the beekeeper

uses with permission. She said this last category covers the informal arrangements that allow apiary placements in exchange for honey at the end of the season.

Committee Counsel said, since this involves people's livelihoods, the Commissioner cannot require that the beekeeper remove the apiary from its current location, if the removal would negatively affect the level of honey production reasonably anticipated from that current location. She said the Commissioner cannot require that the beekeeper remove the apiary from its current location, if the landowner or lessee does not agree to a relocation of the apiary. She said the agreement between a beekeeper and a landowner might specify or limit placement to a particular area. She said the landowner might not want bees elsewhere on his property.

Committee Counsel said, if all these pieces fall into place, and if there is a cost to moving the apiary, the Commissioner may direct that the petitioner pay some or all of those costs. She said this was inserted because the beekeeper was not doing anything wrong when he first situated the apiary.

Committee Counsel said, once the Commissioner issues an order under this section, that order is not appealable. She said an order under this section expires on December 31. She said this is seasonal and not a prohibition that goes with the land.

Finally, Committee Counsel said, if a beekeeper relocates an apiary in accordance with this section, the Commissioner may not, during that same calendar year, consider any additional petition regarding the relocated apiary. She said the original petitioner cannot say that he or she does not like the second spot either. She said someone living on the other side of the apiary cannot then file another petition.

Committee Counsel said, just to make things even more complicated, current law states that the Commissioner may cancel a registration when the bees located on the apiary site "are causing a nuisance, as defined in chapter 42-01." She said Chapter 42-01 has been around since World War I. However, she said, later passed legislation provides that an agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation, after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began. She said that provision has been on the books since 1981. She said beekeeping is included in the definition of an agricultural operation.

Committee Counsel said, finally, there is the constitutional provision found in Section 29 of Article XI. She said that forever guarantees the right of farmers to engage in modern farming and ranching practices.

Committee Counsel said allowing the Commissioner to cancel a registration when the bees located on the apiary site are causing a nuisance is a simple little concept that may sound fine initially. However, she said, when one begins to look at what the words really mean, and how this would operate, one finds complexities that involve property rights, economic rights, issues of due process, etc.

Representative Damschen said people have complained that when they call the Commissioner about beekeepers who are breaking the law, nothing happens.

With the permission of Chairman Schmidt, Ms. Samantha Brunner, State Bee Inspector, Department of Agriculture, said over 1,000 new locations were registered between 2013 and 2014. She said, this year, the Commissioner is beginning to enforce the requirements in the law and is assessing fines when appropriate.

In response to a question from Representative Damschen, Ms. Brunner said if hives need to be moved, the Commissioner has to call beekeepers because the Commissioner has neither the personnel nor the equipment to engage in such activity. She said beekeepers have volunteered to help move hives when needed.

With the permission of Chairman Schmidt, Mr. Daniel Gunter, Beekeeper, Towner, presented testimony regarding the identification of hives. He said he would prefer that the law requires a beekeeper to post a placard with his or her name and contact information, rather than use just a three-digit license number.

A beekeeper from Turtle Lake said he moves his boxes up and down all the time. He said it would be a burden to require that his license number be on a top box all the time. He said he uses a placard on a 3-foot stake and places it about 20 feet from the apiary entrance.

Ms. Brunner said an 8x11 placard requires one to be much closer to the hives in order to see the information. She said people can easily read a three-digit number that is three inches high. She said beekeepers cannot put their name and phone number in three-inch letters on a hive.

Senator Miller said he likes the idea of having a three-digit number. He said it is bigger and easier to see. He said he also likes the idea of requiring a name and phone number. He said it would be better to have additional information, not less.

It was moved by Senator Miller, seconded by Representative Trottier, and carried on a voice vote that the bill draft [15.0032.04000] be amended to require that apiaries be identified with both a license number and the beekeeper's name, address, and phone number.

It was moved by Senator Miller, seconded by Senator Luick, and carried on a roll call vote that the bill draft [15.0032.04000] relating to apiaries, as amended, be approved and recommended to the Legislative Management. Representatives Schmidt, Amerman, Damschen, Hunskor, Johnson, Kiefert, Rust, Trottier, and Wall and Senators Bowman, Erbele, Luick, and Miller voted "aye." No negative votes were cast.

State Board of Agricultural Research and Education - Report

At the request of Chairman Schmidt, Mr. Mike Beltz, Chairman, State Board of Agricultural Research and Education, presented testimony regarding the board's statutory report to the interim committee. He distributed a document entitled "Update of 2013 General Fund Initiatives" ([Appendix F](#)). He said the board is responsible for budgeting and policymaking pertaining to the Agricultural Experiment Station, all seven research extension centers, and the NDSU Extension Service.

In response to a question from Chairman Schmidt, Mr. Beltz said there were 9 new full-time equivalent (FTE) positions in 2013-15.

Senator Bowman said he would like a summary of the programs that were funded during the 2013 legislative session and a brief statement regarding what happened to those programs during the intervening months.

At the request of Chairman Schmidt, Dr. Chris Boerboom, Director, North Dakota State University Extension Service, distributed a document entitled "North Dakota Agricultural Experiment Station - NDSU Extension Service 2015-2017 Biennial Budget Request" ([Appendix G](#)). He said the initiatives that were ranked by the board for the Extension Services include 1 FTE livestock extension specialist at Hettinger, 1 FTE precision agriculture economist, extension infrastructure operating support, 3.75 FTE extension fellows, 3 FTE area community vitality specialists and operating funds, 2 FTE area food and health specialists and operating funds, a salary pool to increase local county programming, and 1 FTE extension water specialist and operating funds.

In response to a question from Senator Erbele, Dr. Boerboom said one of the community vitality specialists would be housed in Dickinson or Williston, one would be housed in Minot or Bismarck, and one would be housed in Grand Forks or Fargo. He said the food systems personnel would be split between eastern and western North Dakota. He said he would assume the water quality specialist would be housed in Fargo, on the NDSU campus.

Dr. Boerboom said there is also a one-time request and for an oil patch salary differential pool. He said there is a parallel request for the extension agents. He said this will focus on staff having fewer than 10 years of experience. He said they are most likely to be recruited away and because of their lower salaries, they are experiencing the greatest financial challenges with their accommodations.

Dr. Boerboom said there is a request for a technical assistance grants program so that soil conservation districts could help landowners reduce soil erosion, improve water quality, and enhance tree plantings, grazing lands, and wildlife habitat.

Senator Bowman said the problem with salary increases is if the oil boom goes away, the salaries will still be exponentially high. He said he believes that housing incentives would be a better way to ensure affordable housing.

In response to a question from Representative Hunskor, Dr. Boerboom said the oil patch salary differential is based on the counties that have the highest number of oil rigs. He said Ward County is included because it is such a hub in servicing the oil industry. He said he would love to expand that to other oil-impacted counties, but he is trying to keep it targeted, as the Office of Management and Budget had requested that they do.

At the request of Chairman Schmidt, Dr. Ken Grafton, Vice President, Dean and Director for Agricultural Affairs, North Dakota State University, presented testimony regarding the initiatives that the board identified for the Agricultural Experiment Station. He said 38 initiatives were considered and 9 were recommended. He said, today, he will focus on the top five initiatives. He said 13 FTEs are associated with the initiatives.

Dr. Grafton said the requests include 3 FTE bioinformaticists, a scientist and a technician to work in the area of precision agriculture, and a pool of funds for internal grants directed at unmanned aerial systems and other precision agriculture activities. He said the requests include funding for 20 graduate research assistantships and \$1.1 million for a revolving equipment fund.

Dr. Grafton said the requests include a \$420,000 general fund increase to support the Center for Ag Policy and Trade Studies. He said part of that includes additional staff for the area of risk management in agriculture. He said the final item includes \$1.27 million for enhanced research capacity at the research extension centers.

Dr. Grafton said the capital improvement requests that were recommended by the board include \$18 million to replace a veterinary diagnostic laboratory, \$7.6 million to replace the meats laboratory, and \$5.25 million for four seed cleaning facilities.

Dr. Grafton said the agronomy laboratory is in need of a forage building. He said that is an unranked capital request. He said there are also several one-time requests, including the oil patch salary differential for experiment station employees, an increase in deferred maintenance, and funds for increasing the geothermal well capacity at the main station greenhouse and \$400,000 to account for underestimated utility costs at the greenhouse.

Chairman Schmidt said he is concerned about the number of one-time costs. He said he would like to see a workload analysis prior to the hiring of an individual.

Senator Bowman said these requests add up to several million dollars above what is normally funded. He said there are major issues out west. He said he does not know how the Legislative Assembly will deal with all the requests. He said the Legislative Assembly cannot again short-change the oil-producing counties. He said the Legislative Assembly will do the best it can.

Mr. Beltz said the board does its very best to identify the existing needs.

In response to a question from Chairman Schmidt, Dr. Boerboom said the NDSU Extension Service employs about 350 individuals, not 350 FTEs. He said there are approximately 300 FTEs.

SOIL CLASSIFIERS STUDY

At the request of Chairman Schmidt, Committee Counsel presented a bill draft [[15.0010.04000](#)] relating to soil classifiers. She said Sections 1 and 2 address cross-reference reconciliations. She said these sections pertain to soil surveys required for surface mining and reclamation. She said current law requires that this activity be performed by a registered soil classifier. She said these sections do not change those requirements.

Section 43-36.1-01 Definitions

Committee Counsel said the definition section for this chapter has only two parts--i.e., what is soil classification and what is not soil classification. She said she has worked with representatives of the State Board of Registration for Professional Soil Classifiers and crafted a definition that defines soil classification as the determination of a soil's suitability for a particular purpose through the examination of landscape and landform characteristics, the sampling or analysis or both of soil properties and characteristics, and the identification and description of soil profile characteristics, including soil horizons. She said, at the last meeting, Mr. Cornelius J. Heidt, Prairie Soil Consulting, suggested that the definition should also include the preparation of soil survey maps, the identification of plant growth material, and the identification of hydric soils.

Committee Counsel said the second part of the definition provides that soil classification is not the sampling and testing of soil for fertility status, it is not the sampling and testing of soil for the presence of construction materials, and it is not the practice of architecture, engineering, or landscape architecture. She said, at the last meeting, it was requested that the practice of water well contracting and a variety of duties that fall under the statutory reference to water well contracting be added to the list as well.

Section 43-36.1-02 Board of Soil Classifiers

Committee Counsel said this section establishes the five-member board. She said three of the five board members must be soil classifiers registered under this chapter.

Section 43-36.1-03 Terms of Office - Vacancy

Committee Counsel said this section establishes the terms of office, which are five years. She said a member is not permitted to serve more than three consecutive terms. She said, at the last meeting, it was suggested that this be shortened to two consecutive terms. She said the argument proffered was that 15 years is a significant portion of one's career.

Section 43-36.1-04 Board Members - Compensation

Committee Counsel said board members may be compensated in the amount established by the board, up to \$135 per day.

Section 43-36.1-05 Board Members - Removal

Committee Counsel said board members may be removed by the Governor because of misconduct, incompetency, or neglect of duty.

Section 43-36.1-06 Election of Chairman - Meetings

Committee Counsel said this section provides for the election of the Chairman and requires that the board meet at least once every six months. She said it also provides that the Chairman must call the meetings and it requires the Chairman to call a special meeting, if petitioned to do so by two of the five members.

Section 43-36.1-07 Board Powers

Committee Counsel said this section modernizes language and makes the board's authority consistent with powers that other boards have--i.e., to expend money; employ, bond, and compensate personnel; accept gifts, grants, and donations of money, property, and services; contract for any lawful purpose; sue and be sued; and do all things necessary and proper to enforce and administer this chapter.

Section 43-36.1-08 Board Duties

Committee Counsel said the duties listed herein were taken from various existing sections. She said they include adopting a code of ethics and developing and making available on the board's website a list of courses that are offered by institutions in this state, as well as those in surrounding states, and which the board determines provide academic preparation appropriate to the study of soil classification. She said, under current law, there is no guidance to a would-be soil classifier with respect to which courses the board might approve.

Section 43-36.1-09 Receipts and Disbursements

Committee Counsel said this section requires the board to deposit and disburse money in accordance with Section 54-44-12. She said that is the Office of Management and Budget section that directs boards and commissions how to deposit and expend their dollars.

Section 43-36.1-10 Records

Committee Counsel said this section directs the board to keep various records of its proceedings, applications, and registrations.

Section 43-36.1-11 Review of Transactions

Committee Counsel said this section directs the board to provide for a review of its financial transactions in accordance with Section 54-10-27. She said Section 54-10-27 requires an audit, or in the case of boards having less than \$50,000 in annual receipts, it requires an annual report to the auditor. She said this section is not necessary, statutorily. However, she said, it was inserted as a reminder to future boards that this requirement does exist.

Section 43-36.1-12 Registration Required

Committee Counsel said this section provides that before an individual transacts business as a soil classifier, that individual must be registered.

Section 43-36.1-13 Requirements for Registration

Committee Counsel said this section sets forth the requirements for licensure. She said, as proposed, it requires an application form; three references, one of whom must be registered with the board and have personal knowledge of the applicant's activities; a baccalaureate or graduate degree in a science-related field; 15 credits from the list of approved courses that the board is to compile or 15 credits that have been approved by the board; evidence that the applicant passed the fundamentals of science examination; documentation of experience in or exposure to the identification of soils, soil surveys, the preparation of various reports, the identification of plant growth materials, septic system sitings, land reclamation, etc.; and attainment of a passing score on the practical examination.

Committee Counsel said there has to be a period of three years between taking the fundamentals examination and taking the practical examination, unless the board waives the requirement. She said the thought was that this would give the applicant sufficient time to acquire experience and in the case of someone coming from out of state, the board could determine whether such a waiting period was appropriate.

Section 43-36.1-14 Application Fee

Committee Counsel said this section allows the board to set an application fee. She said the fee may not exceed \$500.

Section 43-36.1-15 Registration Fee

Committee Counsel said this section allows the board to set a registration fee. She said the fee may not exceed \$300.

Section 43-36.1-16 Examinations

Committee Counsel said this section requires the board to publish on its website the date, time, and location of the fundamentals examinations and the date and time of the practical examinations. She said since the practical examination is a site-based examination, the location does not have to be published. She said the practical examination must be offered at least once each year.

Committee Counsel said the board is given the option to offer the practical examination at a time other than that at which it is scheduled and to charge a fee for this effort. Again, she said, if someone came from out of state, he or she would not necessarily have to wait 11 months to take the practical examination.

Committee Counsel said the passing grade on the practical examination is 70 percent and if an individual fails to make the grade, the individual must wait a year before trying again. She said the individual has three chances to pass, otherwise the individual is unable to take the practical examination again for 10 years.

Section 43-36.1-17 Certificate of Registration

Committee Counsel said if one meets all the requirements and passes the examinations, this section directs the board to provide a certificate of registration.

Section 43-36.1-18 Expiration - Renewal

Committee Counsel said a certificate of registration expires on December 31. She said, if not renewed by that date, the board may charge a \$25 late fee. She said the board is to notify registrants of this deadline before November 1.

Section 43-36.1-19 Certificate of Registration - Replacement

Committee Counsel said if one's certificate of registration is lost, stolen, or destroyed, the board must replace it. She said the board may require a \$25 fee.

Section 43-36.1-20 Code of Ethics - Distribution - Revisions

Committee Counsel said this section pertains to the code of ethics. She said the board must provide each registrant with an electronic or a printed copy and notify each registrant of any revisions. She said the notification can be electronic or in printed form.

Section 43-36.1-21 Complaint - Hearing

Committee Counsel said this section permits a person to file a complaint against a soil classifier and unless the board determines the complaint to be frivolous, the board must hear it in accordance with Chapter 28-32. She said that is the state's Administrative Procedures Act.

Section 43-36.1-22 Disciplinary Action

Committee Counsel said the board can suspend, revoke, or refuse to renew a license, if a person is found to have violated the chapter; submitted false or misleading information in connection with an application for registration; engaged in gross negligence, incompetence, or misconduct in the practice of soil classification; or violated the code of ethics.

Section 43-36.1-22 Exemptions

Committee Counsel said this is the exemption section. She said the first exemption is also found in current law. She said it provides that the chapter does not apply to an employee or a subordinate of a soil classifier, so long as the work and any determinations are deemed to be those of the soil classifier.

Committee Counsel said the second exemption deals specifically and solely with an individual who identifies hydric soils for purposes of wetland delineation. She said it applies only in two circumstances and only if all of the conditions are met. She said, under the first circumstance, the individual must be employed by the state. She said the identification of hydric soils for purposes of wetland delineation must occur in the normal course of that individual's employment and the individual must have completed a course in wetland delineation.

Committee Counsel said, under the second circumstance, the individual must be employed by a private entity. She said the identification of hydric soils for purposes of wetland delineation must occur in the normal course of that individual's employment and the individual's employer must take legal responsibility for the work and determinations of the individual. In addition, she said, the individual must have completed a course in wetland delineation. She said the training course that is a requirement for both exemptions is one that provides the student with a basic understanding regarding the interaction of vegetation, soils, and hydrology in wetlands and provides the student with the background necessary to identify wetlands and determine their boundaries. She said the language is taken from the description of the Army Corps of Engineers' course, which is known as Regulatory IV and is an interagency training course. She said similar courses can be found through institutions of higher education and perhaps other governmental agencies. She said, if there is a course that does not fall into one of those categories, the bill draft leaves room for one that is approved by the board.

Section 43-36.1-23 Violation - Penalty

Committee Counsel said if someone violates this chapter, the penalty is a Class B misdemeanor.

Repeal

Committee Counsel said by repealing the old sections, we can reorder and renumber the proposed provisions, as set forth in the bill draft.

Continuing Education

Committee Counsel said, early on in discussions with the board, there was mention of continuing education. She said, right now, there are no such requirements. She said this section would propose that in the next 18 to 20 months, the board, in conjunction with personnel from NDSU, review advances in the field of soil classification and anticipated changes in the manner of classifying soils and consider whether continuing education ought to be required for a renewal of registration. She said the board would be required to present its conclusions and recommendations to the Legislative Management.

It was moved by Senator Miller, seconded by Senator Erbele, and carried on a voice vote that the bill draft be amended to expand the definition of soil classification by referencing the preparation of soil survey maps, the identification of plant growth material, and the identification of hydric soils.

With the permission of Chairman Schmidt, Mr. Lawrence Edland, Edland's Soil Consulting, presented testimony ([Appendix H](#)) regarding the soil classification bill draft. He said the board requests that the exemption for individuals employed by private entities be removed from the bill draft.

In response to a question from Senator Bowman, Mr. Edland said he is unaware of any litigation regarding the delineation of wetlands by a soil classifier.

In response to a question from Representative Damschen, Mr. Edland said there are constant changes to the definition of hydric soils. He said his definition of a wetland and that of the National Resources Conservation Service should be the same.

In response to a question from Representative Amerman, Mr. Edland said there have been individuals who have passed the practical field examination but failed the written examination. He said the board did allow the individuals to retake the written examination.

With the permission of Chairman Schmidt, Mr. Heidt said the exemption language does not mention self-employed individuals. He said, if the exemption is permitted for an employee of a private entity, self-employed individuals will be seeking to do the same work. He said it should not be necessary to specify that the employer, in the case of a private entity, takes responsibility for the work of an employee. He said that should always be the case. He said he has seen some very inexperienced people working on their own. He said he does not want to see inexperienced people making determinations regarding hydric soils.

Mr. Heidt said taking a 40-hour course does not enable one to do wetland delineations and determine whether a soil is hydric. He said people who take such a course could be from out of state. He said they are not even required to pass the course, just to take it. He said they may not even have been in the field.

Mr. Heidt said having inexperienced or unqualified people doing wetland determinations may not be a big issue when there are artificial wetlands in road right-of-ways. However, he said, even Department of Transportation projects are often outside of the road right of ways, in agricultural areas and in natural wetlands. He said we cannot over-emphasize the agricultural issues in wetland identification. He said the cost of mitigation can be very significant. He said violations of federal farm programs can be significant. He said it is important that the people

working for clients are on an equal or higher footing than the people working for the federal agencies handling appeals, etc. He said someone who has had only the Regulatory IV course will be woefully unprepared to state a case for a client.

Mr. Heidt said the people who are pushing this exemption are unaware of the complexities of hydric soils or are choosing to ignore the complexities. He said North Dakota has had this law in place for 40 years. He said other states do not require this. He said North Dakota is ahead of the game because of this law.

In response to a question from Chairman Schmidt, Mr. Heidt said you cannot build a road in North Dakota without creating a wetland that was not there before. He said a soil that was saturated for a long period of time could become hydric.

Chairman Schmidt said it appears as if Mr. Heidt is suggesting that an individual could delineate an artificial soil, even though over time that soil could change and become a hydric soil.

Mr. Heidt said the financial aspects of being wrong in a highway ditch are not as significant as in an agricultural situation.

With the permission of Chairman Schmidt, Dr. David Dewald, Wetland Mitigation Specialist, Department of Transportation, said there are two issues surrounding wetland mitigation. He said the first has to do with wetlands that are impacted, regardless of whether they are artificial or natural. He said natural wetlands require mitigation in accordance with Federal Highway Administration policy. He said artificial wetlands do not require mitigation under Federal Highway Administration policy. However, he said, if the wetlands fall under the jurisdiction of the Army Corps of Engineers, then mitigation is required.

In response to a question from Chairman Schmidt, Mr. Dewald said the Department of Transportation is always concerned about the delineation of wetlands. He said the department contracts with private consultants for the delineations and does some in-house delineations. He said, as employees of the state, they were exempt in the past and would continue to be exempt under the language of the bill draft. He said Mr. Heidt made reference to self-employed individuals. He said the bill draft references employees of a state agency and not individuals with whom an agency might contract.

In response to a question from Chairman Schmidt, Mr. Dewald said if the exemptions were to be eliminated in their entirety, the Department of Transportation would have to contract with soil classifiers for purposes of delineating artificial wetlands.

With the permission of Chairman Schmidt, Mr. Lance Loken, Soil Classifier, Western Plains Consulting, provided testimony regarding the soil classifiers bill draft. He said he is opposed to the exemption for private entities. He said if entities want to offer wetland delineation services, they should hire professional soil classifiers. He said people are being registered. He said perhaps this is not happening as quickly as we would like it to. However, he said, he is not aware of work not being completed.

With the permission of Chairman Schmidt, Ms. Kathleen Spilman, Managing Director, Keitu Engineers & Consultants, Mandan, provided testimony regarding the soil classifiers bill draft. She said the changes made in this bill draft are a significant improvement. She said a 10-year hiatus after a third failure is too long. She said given the fact that we are looking for additional practitioners, something in the neighborhood of three years should be a maximum. She said even the one-year period should be shortened to six months.

Ms. Spilman said soil classifiers are protecting their turf. She said the exemptions are an ongoing debate. However, she said, at the very least, there should be a continuing education requirement for wetland delineators.

With the permission of Chairman Schmidt, Ms. Sandi Tabor, Director of Government Relations, KLJ, presented testimony regarding the soil classifiers bill draft. She said, at prior meetings, KLJ asked for some reasonableness with respect to who can delineate wetlands. She said competent people can delineate wetlands for the federal government, without being soil classifiers, and competent people can delineate wetlands in Minnesota, without being soil classifiers. She said most employers try to make sure that their consultants know what they have to do. She said no one takes wetland delineation lightly. She said she is in support of what has been presented to the committee.

It was moved by Senator Luick, seconded by Representative Rust, and carried on a voice vote that the 10-year waiting period imposed after three failed attempts to receive a passing grade on a practical

examination be reduced to three years and that the one-year waiting period between attempts to pass the practical examination be reduced to six months.

It was moved by Senator Luick, seconded by Senator Miller, and carried on a roll call vote that the bill draft [15.0010.04000], as amended, be approved and recommended to the Legislative Management. Representatives Schmidt, Amerman, Damschen, Hunskor, Johnson, Kiefert, Rust, Trottier, and Wall and Senators Bowman, Erbele, Luick, and Miller voted "aye." No negative votes were cast.

Chairman Schmidt recessed the committee at 3:45 p.m. and reconvened the committee at 9:00 a.m. on Wednesday, October 29, 2014.

NORTH DAKOTA MILK MARKETING BOARD STUDY

At the request of Chairman Schmidt, Committee Counsel presented a bill draft [15.0082.03000] relating to the North Dakota Milk Marketing Board. She said this bill draft is literally a cleaned-up version of the current law. She said the chapter has been modernized. She said the language has been clarified. She said duplicative and unnecessary verbiage has been removed. She said the bill draft uses more sections and certainly more subsections and subdivisions in order to break up content and concepts that had been situated in interminable paragraphs. She said, in order to allow this to happen, a new chapter is again created. She said this is part of the agricultural title rewrite.

Section 4.1-26-01 Definitions

Committee Counsel said, in the rewrite, several definitions were removed because they were determined to be unnecessary. She said there is no need to define "person." She said that is already covered in the general definitions of Century Code. She said there is no need to define obvious designations, such as "licensee." She said also missing from the list are products of yore, such as mellorine, olarine, sherine, and sherbines.

Committee Counsel said the note in the middle of Page 2 points out a change based on a discussion at the last interim committee meeting. She said, under current law, the definition of a "frozen dairy product" includes one that the board finds must be regulated in order to effectuate the purposes of this chapter. She said allowing a board to define that which it chooses to regulate begins to raise due process issues. She said the recommended approach is to let the Legislative Assembly decide what if anything should be added to this list. She said this can be done every two years in an environment that allows for public input and debate.

Committee Counsel said the note in the middle of Page 3 reflects a similar situation with respect to "milk products." She said current law allows for an et cetera clause, under which the board could regulate any other product that it believes it should. Again, she said, the better approach is to leave such decisions up to the Legislative Assembly.

Section 4.1-26-02 Milk Marketing Board - Membership

Committee Counsel said this section establishes the membership of the North Dakota Milk Marketing Board. She said the names of the nominating groups have been updated. She said, whereas current law literally drew a line between certain counties and required that three members of the board come from one side of that line and two members come from the other, the rewrite, as the committee had previously directed, requires the Governor to ensure a geographic balance.

Section 4.1-26-03 Terms of Office

Committee Counsel said this section reflects current law with respect to the board members' terms of office.

Section 4.1-26-04 Compensation

Committee Counsel said North Dakota Milk Marketing Board members are entitled to receive compensation in the amount established by the board, but not exceeding \$135 per day. She said current law had capped the annual per diems at \$1,500. She said, as the committee had previously directed, the cap was removed. She said, if per chance board members have to work for more than 11 days a year, they could actually get paid for that service.

Section 4.1-26-05 Chairman - Meetings

Committee Counsel said current law requires that the North Dakota Milk Marketing Board meet at least every 60 days. She said the board requested that this requirement be removed, so that it is not statutorily required to meet if there is no good reason to do so. She said the safeguard is that if three of the five board members petition the Chairman for a special meeting, the Chairman must call one within seven days.

Section 4.1-26-06 Board Powers

Committee Counsel said this section contains standard language regarding the enforcement of the chapter, the compensation of personnel, the ability to contract, etc. She said the section also includes some language that had been the subject of committee debate at the last meeting. She said the language pertains to the North Dakota Milk Marketing Board's authority to function as a mediator or an arbitrator in disputes between the various licensees. She said the rewrite contains a clarification that the board could perform such a function, provided all parties to the dispute wanted the board to do so and the board's role was limited to issues involving the production, transportation, processing, storage, distribution, or sale of milk products or frozen dairy products. She said the rewrite removes language that authorized the board to "supervise, investigate, and regulate every segment of the state's dairy industry."

Section 4.1-26-07 Director

Committee Counsel said this section requires the board to employ and compensate a Director.

Section 4.1-26-08 Authority of Governmental Entities

Committee Counsel said this language, like current law, recognizes that there are other entities involved in providing this industry with regulatory oversight. She said it was probably more pertinent to have this provision when there was also language indicating that the North Dakota Milk Marketing Board was to regulate every segment of the state's dairy industry. She said the latter provision appeared to suggest that the board's control was exclusive in nature.

Section 4.1-26-09 Milk Marketing Areas - Boundaries

Committee Counsel said this section directs the North Dakota Milk Marketing Board to divide the state into milk marketing areas. She said it does not indicate how many areas there ought to be and it does not indicate their boundaries. She said if, however, the board sees the need to change those boundaries, or to increase or decrease the number of milk marketing areas, that must be done under Century Code

Section 4.1-26-10 Milk Stabilization Plans - Required Provisions

Committee Counsel said, like current law, the North Dakota Milk Marketing Board is to establish a milk stabilization plan for each milk marketing area. She said each plan must include the minimum price that processors located in that marketing area have to pay to dairy farmers for raw milk. She said, like current law, that minimum price determination has to be based on a variety of factors, including supplies, reserves, production and retail sales data, feed prices, and wage rates.

Committee Counsel said each milk stabilization plan must also include the minimum price that a processor must charge a retailer, that a distributor must charge a retailer, and that any person must charge a consumer.

Section 4.1-26-11 Milk Stabilization Plans - Optional Provisions

Committee Counsel said milk stabilization plans can also be extended to other areas. She said these optional areas include setting the minimum price that must be charged for milk products and frozen dairy products by any person other than those referenced in the prior section, providing for a classified pricing system based on utilization, and placing additional payment requirements on licensed processors who are subject to both the state stabilization plan and the federal order.

Section 4.1-26-12 Milk Stabilization Plans - Optional Provisions - Maximum Prices

Committee Counsel said, like current law, this section provides that a milk stabilization plan may include maximum prices for sales of milk products by a processor, a distributor, or a retailer.

Section 4.1-26-13 Milk Stabilization Plans - Optional Provisions - Quantity Discounts to Retailers

Committee Counsel said, like current law, this section provides that a milk stabilization plan may permit processors and distributors to provide quantity discounts to retailers, in connection with the sales of milk products and frozen dairy products. She said it references base periods upon which the rate must be established and how to determine the discount, if a retailer has multiple places of business. She said this is part of a section that is four pages long in Century Code. She said the rewrite simply breaks up the concepts into manageable sizes and places them into separate sections.

Section 4.1-26-14 Milk Stabilization Plans - Optional Provisions - Frozen Dairy Products - Wholesale Price - Filing

Committee Counsel said this section authorizes the North Dakota Milk Marketing Board to require that processors and distributors file with the board the uniform wholesale price at which a frozen dairy product will be

sold within the marketing area. She said, if the board elects to require uniform price filings, the board must set various parameters.

Committee Counsel said there are other conditions that the board may impose. She said those are included in current law. She said, as the note on the top of Page 11 states, those were omitted in the bill draft because they are suggestive, rather than mandatory, and because the final sentence of the section, just as in current law, provides that the board may establish other requirements as necessary to implement this section.

Section 4.1-26-15 Cost Variances - Recognition

Committee Counsel said, like current law, this section provides that minimum and maximum prices established by the North Dakota Milk Marketing Board may take into account packaging cost differences. She said home-delivered goods may also be a different price than those sold in stores.

Section 4.1-26-16 Minimum Prices Payable to Dairy Farmers - Effect of Change

Committee Counsel said this section ensures a domino effect. She said it provides that whenever the minimum prices that processors must pay to dairy farmers change, the North Dakota Milk Marketing Board must ensure that simultaneous changes occur in all other minimum and maximum prices established in accordance with the chapter.

Section 4.1-26-17 Licenses

Committee Counsel said this section sets forth who must be licensed. She said it includes dairy farmers, processors, distributors, and retailers. She said current law states that "[s]chools, hospitals, state institutions, and charitable institutions may obtain retailer licenses from the North Dakota Milk Marketing Board, regardless of whether they fall within the definition of a retailer." She said the purpose of that verbiage was to ensure that such entities could purchase milk products and frozen dairy products at wholesale prices. Therefore, she said, this section literally provides that in order to effectuate the purchase of milk products and frozen dairy products at wholesale prices, the following entities may be licensed as retailers--i.e., school districts, nonpublic schools, hospitals, state institutions, and not-for-profit entities.

Section 4.1-26-18 Vending Machine Suppliers - Authorization to License

Committee Counsel said, like current law, this section allows the North Dakota Milk Marketing Board to license "persons engaged in supplying milk products or frozen dairy products to consumers through the use of vending machines." She said this has been the case since the 1960s. She said she was unable to find any rule in the North Dakota Administrative Code that addressed this matter.

Section 4.1-26-19 License - Application

Committee Counsel said this section is an introduction to the licensing requirements. She said it states that one must get an application and complete it.

Section 4.1-26-20 License - Additional Requirements

Committee Counsel said this section provides that before processors may be licensed by the North Dakota Milk Marketing Board, they must be licensed by the Agriculture Commissioner. Similarly, she said, before distributors may be licensed by the board, they must be licensed by the Agriculture Commissioner. She said these provisions are financially focused. She said the potential licensees must demonstrate their ability to pay those from whom they purchase milk. She said dairy farmers must be inspected by the Agriculture Commissioner or the State Department of Health before they may be licensed.

Section 4.1-26-21 License Application - Hearing

Committee Counsel said, once an application is filed, the North Dakota Milk Marketing Board has 30 days within which it must issue the license or notify the applicant of the date on which a hearing will be held to receive evidence relative to the application. She said the board has 30 days after the hearing within which to notify the applicant of its decision. She said, if the board cannot do this within the 30-day period, it must do so "as soon thereafter as practicable."

Section 4.1-26-22 Refusal to License

Committee Counsel said the North Dakota Milk Marketing Board may refuse to license any person, except a dairy farmer. She said, although current law also mixes in grounds for suspension and revocation of licenses, the bill draft separates those concepts.

Section 4.1-26-23 Processor's License - Distributor's License - Grounds for Denial

Committee Counsel said, like current law, this section sets forth the grounds upon which the North Dakota Milk Marketing Board may deny an application for a processor's license or a distributor's license. She said these include

findings that persons currently licensed by the board in that capacity are supplying an adequate variety and quantity of high-quality milk products and frozen dairy products to retailers and consumers in this state and that deliveries are being made with sufficient regularity and frequency. She said another possible finding is that the issuance of additional licenses of the type sought will result in an excess of processing plant capacity, tend to increase to unsatisfactory levels the average unit processing or average unit distribution costs for persons already licensed by the board, or otherwise tend to prevent achievement of the objectives of the chapter.

Committee Counsel said this section retains adjectival phrases such as "adequate variety," "high-quality," and "sufficient regularity." She said it retains phrases such as "tend to increase" or "tend to prevent." She said this verbiage is noncommittal. She said, in a regulatory environment, such words are also nebulous. She said, in the future, there might be an opportunity to reword this provision.

Section 4.1-26-24 License Application - Required Declaration

Committee Counsel said, as a condition of licensure, an applicant for a processor's license is required to make certain declarations, as does a distributor. She said these declarations have been referenced in testimony presented to the committee at early meetings. She said a distributor must declare that he or she will not sell milk products or frozen dairy products to any person who is not appropriately licensed, will not purchase milk products or frozen dairy products from any person who is not appropriately licensed, and will sell such milk products or frozen dairy products as are customarily handled by a distributor to any retailer who wishes to purchase the products from the distributor and has a place of business in any community in which the distributor distributes or sells milk products or frozen dairy products.

Committee Counsel said, finally, the distributor must promise to offer to any retailer the same frequency of delivery and the same in-store services as are customary in the community. She said the bill draft defines a "community" to mean a city, together with any commonly recognized residential or business area adjacent to the city.

Committee Counsel said current law also requires a declaration that home-delivery services will be provided. She said, at the last meeting, the committee determined that this could be removed because very little of it still occurs.

Section 4.1-26-25 License - Expiration

Committee Counsel said, like current law, licenses are effective until there is a change of ownership or of location, until the license is suspended or revoked, or until the business that is licensed has been discontinued or has been inactive for more than 30 days.

Section 4.1-26-26 License - Fees Prohibited

Committee Counsel said, unlike other entities, the North Dakota Milk Marketing Board is not permitted to charge for licenses.

Section 4.1-26-27 Assessments - Continuing Appropriation

Committee Counsel said the North Dakota Milk Marketing Board is funded through an assessment on processors. She said this assessment is 14 cents per cwt on all milk and milk equivalents used by the processor in manufacturing milk products and frozen dairy products. She said the bill draft includes an explanation of what constitutes a "milk equivalent." She said the phrase is not just a colloquialism. She said it is a term of art and was therefore left in the bill draft.

Committee Counsel said, when the current law was written, an assessment structure was adopted and increases were phased in over several years. She said the assessment was first capped at 12 cents beginning July 1, 1995. She said, beginning July 1, 1997, the assessment was capped at 13 cents. She said, on July 1, 1999, the assessment was allowed to increase to 14 cents. She said it has stayed at that level for the past 15 years.

Committee Counsel said the board has indicated that it would like this committee to consider raising the cap to perhaps 18 cents, as part of the modernization effort.

Section 4.1-26-28 Records - Retention

Committee Counsel said current law requires licensees to maintain records that the North Dakota Milk Marketing Board deems necessary. She said current law authorizes the board to specify by rule which records must be maintained. She said current law then lists various records that the board must require licensees to maintain. She said it is not necessary to include all of these options and it is not necessary to include a laundry list of data in Century Code. She said the rewrite, therefore, simply states that the board shall specify by rule all

records that each licensee must maintain. She said, like current law, the bill draft requires that such records be kept for three years.

Section 4.1-26-29 Records - Confidential - Penalty

Committee Counsel said records collected under this chapter are confidential, except in certain circumstances. She said the bill draft contains standard language listing those circumstances in which the records may be used. She said the records may be used in administering the chapter and in judicial or formal administrative proceedings. She said the records may be shared with the Agriculture Commissioner for the purpose of determining a licensee's financial condition and they may be utilized in compiling and disseminating "general" statistical data. She said divulging confidential information is a Class A misdemeanor.

Section 4.1-26-30 Prohibitions

Committee Counsel said, like current law, this section contains a list of "thou shalt nots." She said it addresses the price at which milk can and cannot be bought and sold. She said this includes the amount listed in price filings.

Committee Counsel said, among other things, the section provides that a licensee may not engage in any activity that is contrary to a declaration made in the person's license application. She said the committee is being asked for an amendment to reference acts or omissions, and not just activities. She said the declaration not only requires that an applicant promise not to do certain things, but also requires that an applicant promise to do certain things. Therefore, she said, it would be preferable and appropriate to reference both acts and omissions.

Section 4.1-26-31 Disruptive Trade Practices

Committee Counsel said the "thou shalt nots" list continues in this section, with a little twist. She said current law begins by stating that "[t]he board shall by regulation prohibit or regulate each of the following practices. . . ." She said the first question is whether the listed activities are prohibited or merely regulated. She said determining which they should be is within the bailiwick of the Legislative Assembly.

Committee Counsel said current law goes on to provide that the list of practices is "solely for the purpose of illustrating the broad scope of the board's authority under the said subsection" and that such "listing is not intended to be an exclusive enumeration of those practices, methods, devices, schemes, arrangements, and activities which the board is authorized to prohibit or regulate." In other words, she said, the section currently provides that the North Dakota Milk Marketing Board can determine whether it ought to regulate or prohibit certain activities and then it goes on to indicate that there may be even more things that the board may want to regulate or prohibit. She said this is not the board's doing. She said this is language that was enacted many years ago.

Committee Counsel said, rather than delegating to the board the authority to determine whether an activity is to be prohibited or regulated, the proposed language clarifies which activities are to be prohibited and which are to be regulated, using current North Dakota Administrative Code provisions as a guide.

Committee Counsel said current law states that the board may prohibit or regulate the "giving of a free milk product or a free frozen dairy product to a customer." She said this committee was concerned that the language could preclude tasting samples at the local ice cream counter or having the local grocer provide ice cream cups to the boy scouts. She said the bill draft provides that a person may not give a free milk product or a free frozen dairy product to a customer. She said the bill draft then makes an exception for the provision of tasting samples to an individual and for the donation of products for charitable purposes.

Committee Counsel said the committee was also concerned about the gifting provision. She said current law states that "the board may prohibit or regulate the giving of gifts by dealers to retailers." She said, at an earlier meeting, this committee had a preliminary discussion regarding the provision. She said the committee indicated that perhaps one should consider a dollar limit or a frequency limit. She said the committee asked for alternatives that could be considered.

Committee Counsel said, in thinking about dollar amounts, the question becomes at what point does the scale tip. She said at what point does a "gift" carry expectations. She said a \$20 box of chocolates might say "Merry Christmas." She said a trip to Paris might imply something else. She said what if the box of chocolates accompanies a nice ham and what if the trip is just a weekend getaway not too far from home. She said the same approach can be used when looking at frequency. She said a ham each December might suggest nothing other than a wish for "Happy Holidays." She said a ham presented each month might come with expectations.

Committee Counsel said, similarly, if one person gives another person a box of chocolates, is it because they have a dealer and retailer relationship, or is it because they are friends or neighbors. She said she had discussed this section with Mr. John Weisgerber, Executive Director, Milk Marketing Board. She said he indicated that these

are all long-standing provisions that the industry has imposed on itself and that the questions which were posited were the reason that the section has stayed in its current form.

Section 4.1-26-32 Inspections and Investigations

Committee Counsel said this section now has language similar to that which the 2009-10 interim committee and ultimately the 2011 Legislative Assembly crafted for the Seed Commissioner. She said it authorizes a representative of the North Dakota Milk Marketing Board to enter upon real property and access any structure and personal property, at any time, for the purpose of inspecting or pursuing an investigation pertaining to the production, storage, processing, manufacturing, or sale of raw milk, milk products, or frozen dairy products or for the purpose of inspecting records to determine statutory and regulatory compliance. She said this section also authorizes the board to subpoena records, copy records, and audit records of any person doing business with an individual licensed under this chapter.

Section 4.1-26-33 License - Suspension and Revocation

Committee Counsel said this section clarifies and simplifies the concepts of license suspension and license revocation. She said it allows either a suspension or a revocation in the case of a person who violates this chapter, violates a milk stabilization plan, or violates a rule.

Section 4.1-26-34 Violation of Chapter - Civil Penalty

Committee Counsel said current law provides that a person who violates this chapter, a milk stabilization plan, or a rule may also be subject to a civil penalty in an amount not exceeding \$500 per day for each violation. She said current law indicates that the civil penalty is in lieu of a suspension or a revocation. She said it is not clear who chooses or how one chooses between one punishment and another.

Section 4.1-26-35 Administrative and Regulatory Functions

Committee Counsel said the current chapter has several sections that reference or parallel Chapter 28-32, with respect to various administrative and regulatory functions. She said, when chapters do that, what can happen over time is that the main administrative law chapter becomes amended, but similar sections in outlying chapters do not. She said then there is confusion over which version should be utilized. She said it is recommended that this chapter simply state that all administrative and regulatory functions follow Chapter 28-32. She said that has been done in the rewrite.

Section 4.1-26-36 Legal Actions

Committee Counsel said this section provides that the North Dakota Milk Marketing Board can sue and be sued. She said it could have been included in the listing of the board's powers. However, she said, since it is a separate section in current law, it has been maintained as such in the rewrite.

Other Sections

Committee Counsel said the penultimate section of the bill draft reconciles cross-references and the final section provides for the repeal of the current chapter, thereby allowing for its replacement, as reflected in this bill draft.

Committee Discussion

Chairman Schmidt said he would like the committee to consider the North Dakota Milk Marketing Board's suggested assessment increase.

With the permission of Chairman Schmidt, Mr. Weisgerber said, even though the board could have increased its assessment to 14 cents per cwt, as early as 1999, the board did not do so until July 2011. He said expenses have increased. He said the board voted on this request and spoke to the processors about this. He said the processors were supportive of the request for an increase.

Mr. Weisgerber said, on an annual basis, 195 million pounds of assessable milk products are produced in this state. He said a one cent increase would raise \$19,500. He said the intent of the board is not to go from 14 cents to 18 cents. He said he would simply like the authority to step up the assessment, as needed.

In response to a question from Representative Hunsakor, Mr. Weisgerber said, for the last several years, the board's expenses have outpaced its income. He said, currently, a one cent increase in the assessment would cover the board's expenses.

Chairman Schmidt asked the processors in the audience whether they were in agreement with this proposal. He said the record should reflect that both Mr. Arlen Franchuk, representing Dean Foods, and Mr. Jason Rapp, representing Cass-Clay, indicated that they supported the requested increase.

It was moved by Senator Luick, seconded by Representative Rust, and carried on a voice vote that the North Dakota Milk Marketing Board assessment be raised from a cap of 14 cents per cwt to a cap of 18 cents per cwt.

It was moved by Senator Bowman, seconded by Representative Hunskor, and carried on a voice vote that proposed Section 4.1-26-30 be amended to reference an act or omission, instead of merely an activity.

In response to a question from Senator Miller, Mr. Weisgerber said the board conducts various audits to ensure that the proper prices are being paid to the proper entities.

With the permission of Chairman Schmidt, Mr. Tom Woodmansee, President, North Dakota Grocer's Association said his organization is fully in support of the bill draft as rewritten.

With the permission of Chairman Schmidt, Mr. Mark Dahl, Dairy Farmer, New Salem, and Chairman, Milk Producers of North Dakota, said his organization supports the bill draft as rewritten.

It was moved by Representative Rust, seconded by Senator Bowman, and carried on a roll call vote that the bill draft [15.0082.03000], as amended, be approved and recommended to the Legislative Management. Representatives Schmidt, Amerman, Damschen, Hunskor, Kiefert, Rust, Trottier, and Wall and Senators Bowman, Luick, and Miller voted "aye." No negative votes were cast.

CENTURY CODE SECTIONS PERTAINING TO AGRICULTURE - REWRITE

At the request of Chairman Schmidt, Committee Counsel presented a bill draft [15.0270.01000] relating to a continuation of the agriculture title rewrite effort. She said this bill draft would direct a continuation of the effort to study and rewrite provisions in Century Code that relate to agriculture, for the purposes of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order.

In response to a question from Senator Miller, Committee Counsel said, to date, the rewrite effort has completed the laws relating to noxious weeds, 12 agricultural boards and commissions, agricultural seed, vegetable seed, flower seed, tree seed, seed potato control areas, potato certification, wholesale potato dealers, livestock branding, estrays, livestock dealers, and wool dealers. She said, this interim, the rewrite effort has added the laws pertaining to ginseng and apiaries, and as a result of specifically directed studies, the laws pertaining to soil classifiers and the North Dakota Milk Marketing Board.

It was moved by Senator Luick, seconded by Senator Miller, and carried on a roll call vote that the bill draft [15.0270.01000] be approved and recommended to the Legislative Management. Representatives Schmidt, Amerman, Damschen, Hunskor, Kiefert, Rust, Trottier, and Wall and Senators Bowman, Luick, and Miller voted "aye." No negative votes were cast.

It was moved by Representative Rust, seconded by Senator Bowman, and carried on a roll call vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management. Representatives Schmidt, Amerman, Damschen, Hunskor, Kiefert, Rust, Trottier, and Wall and Senators Bowman, Luick, and Miller voted "aye." No negative votes were cast.

It was moved by Senator Miller, seconded by Senator Luick, and carried on a voice vote that the committee be adjourned sine die.

No further business appearing, Chairman Schmidt adjourned the meeting sine die at 11:00 a.m.

L. Anita Thomas
Counsel

ATTACH:8