

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**AGRICULTURE AND NATURAL RESOURCES COMMITTEE**

Wednesday, July 13, 2016  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Kenton Onstad, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives Kenton Onstad, Roger Brabandt, Bob Hunsakor, Dwight Kiefert, Diane Larson, Wayne Trottier; Senators Bill L. Bowman, Robert Erbele, Larry Luick, Joe Miller, Philip M. Murphy

**Member absent:** Representative Dennis Johnson

**Others present:** John Walstad, Legal Division Director, Legislative Council  
See [Appendix A](#) for additional persons present.

**It was moved by Senator Bowman, seconded by Senator Murphy, and carried on a voice vote that the minutes of the May 4, 2016, meeting be approved as distributed.**

**STUDY OF GAME AND FISH DEPARTMENT  
SPECIAL ALLOCATION HUNTING LICENSES**

The Legislative Council staff presented a bill draft [17.0121.03000] regarding the issuance of special allocation hunting licenses by the Game and Fish Department. He said the bill draft is before the committee for the third time and changes suggested at the prior meeting were incorporated into this bill draft. He said in subsection 3 on page 8, line 17, the language needs to be amended to remove the word "a" and add "an elk or moose." He said only receiving an elk or moose license under the discretionary provision should disqualify an applicant from receiving an elk or moose license under the general lottery provision. As the section currently reads, he said, an applicant could be disqualified from obtaining an elk or moose license through the general lottery if the applicant received an antelope or deer license under the discretionary provision. He said that is an unintended error that should be amended. On page 8, line 19, he said, the language "subsection 1" also should be removed and replaced with "section 20.1-05.1-01." He said North Dakota Century Code Section 20.1-05.1-01 is the section containing the grandfathered provisions. He said the intent is to prevent anyone who received a discretionary license from also obtaining a license through one of the grandfathered provisions. He said the amendment would achieve the desired intent. He said language also would need to be added to prevent an individual who received a license under a grandfathered provision from also receiving one under the discretionary provisions. He said on page 8, line 20, a sentence should be added to read "If an individual receives an elk or moose license under section 20.1-05.1-01, that individual may not obtain an elk or moose license under this section."

Mr. Scott Peterson, Deputy Director, Game and Fish Department, said the Game and Fish Department is comfortable with the amendments recommended by the Legislative Council staff. He said the bill draft meets the intent of the directive included in the legislative study.

In response to a question from Chairman Onstad, Mr. Peterson said in the past if an organization wanted a special allocation hunting license the organization would ask the Legislative Assembly. He said this bill draft requires the Game and Fish Department to make the determination regarding special allocation hunting licenses without going to the Legislative Assembly.

In response to a question from Representative Hunsakor, Mr. Peterson said if the bill draft becomes law, the Game and Fish Department would draft administrative rules to determine who is eligible to potentially receive a special allocation hunting license. He said to be eligible an organization would need to be a nonprofit organization under Section 501(c)(3) requirements of the Internal Revenue Code. He said an organization also would need to have a presence in North Dakota. He said 10 percent of the proceeds from a raffle or auction would go toward a conservation project in North Dakota as approved by the Director of the department.

In response to a question from Chairman Onstad, the Legislative Council staff said once all of the amendments are incorporated into the bill draft, an individual only will be able to receive one license under either the general lottery, the grandfathered provisions, or the discretionary provisions. He said the bill draft would not allow an individual to be able to obtain more than one license per year.

**It was moved by Senator Murphy, seconded by Senator Luick, and carried on a roll call vote that bill draft [17.0121.03000], as amended, relating to the issuance of special allocation hunting licenses, be approved and recommended to the Legislative Management.** Representatives Onstad, Brabandt, Hunskor, Kiefert, Larson, and Trottier and Senators Bowman, Erbele, Luick, and Murphy voted "aye." Senator Miller voted "nay."

### **AGRICULTURE REWRITE PROJECT Livestock Market Financial Transactions**

The Legislative Council staff presented a bill draft [[17.0029.05000](#)] regarding livestock auction market financial transactions. He said after working with the North Dakota Stockmen's Association at the request of the committee, language was added on lines 13 and 14 of the bill draft to provide, "For a noncash purchase and transfer of title to be valid, the financial institution of the purchaser must honor the payment at the time of presentation." He said a cash transaction would automatically make the transfer valid because the transaction is completed immediately. He said the language added in this bill draft addresses situations in which the transaction is being conducted through means other than the use of cash.

Chairman Onstad said the language changes reflect modern-day practices in the industry.

The Legislative Council staff said this section of code is being looked at by the committee separately to ensure the language accurately reflects modern practices. He said the committee already approved the rewrite of the remainder of the chapter. He said if the committee approves the rewrite of this section, the language could be inserted as part of the rewrite of the chapter as a whole.

Chairman Onstad requested the Legislative Council staff insert the language in the bill draft into the rewrite of the chapter. Chairman Onstad also requested the Legislative Council staff place the bill draft in the approved folder to be recommended to the Legislative Management.

### **Livestock Auction Markets**

The Legislative Council staff presented a bill draft [[17.0136.02000](#)] regarding livestock auction markets. He said this is the second time this bill draft has been before the committee. He said at the last meeting there was discussion regarding attempting to rewrite the definition of "livestock" throughout Century Code. He said the Legislative Council staff recommends the definition of "livestock" not be made uniform throughout Century Code at this time. He said each definition was intentionally written a specific way unique to the chapter in which it is relevant. He said making the definition uniform throughout Century Code may go against the intent of the drafters of each specific definition. He said only changes specifically directed by the committee at the last meeting were incorporated into this bill draft. He said everything else in the bill draft remained the same.

Chairman Onstad requested the Legislative Council staff place the bill draft in the approved folder to be recommended to the Legislative Management.

### **Satellite Livestock Auction Markets**

The Legislative Council staff presented a bill draft [[17.0095.02000](#)] regarding satellite livestock auction markets. He said the only change made in this bill draft from the previous bill draft was to remove all references to "satellite" as it is an outdated and obsolete term.

Chairman Onstad requested the Legislative Council staff place the bill draft in the approved folder to be recommended to the Legislative Management.

### **Discrimination in the Purchase of Farm Products**

The Legislative Council staff presented a bill draft [[17.0061.03000](#)] regarding discrimination in the purchase of farm products. He said the chapter in this bill draft was repealed at the direction of the committee at the last meeting.

Chairman Onstad requested the Legislative Council staff place the bill draft in the approved folder to be recommended to the Legislative Management.

### Soil Conservation Districts

The Legislative Council staff presented a bill draft [[17.0088.02000](#)] regarding soil conservation districts. He said this is the second time the committee is reviewing this bill draft. He said despite the fact this is a long bill draft, the majority of this bill draft contains only minor clean up language. He said he sent the bill draft to representatives of the Soil Conservation Districts Association for review at the request of the committee. He said he has received no response.

Chairman Onstad requested the Legislative Council staff place the bill draft in the approved folder to be recommended to the Legislative Management.

### Miscellaneous Agriculture Provisions

The Legislative Council staff presented a bill draft [[17.0098.02000](#)] regarding miscellaneous agriculture provisions. He said the committee approved the bill draft to be placed in final format at the last meeting. He said no other changes were made to the bill draft, but the committee had requested the bill draft be brought back for one final review.

Chairman Onstad requested the Legislative Council staff place the bill draft in the approved folder to be recommended to the Legislative Management.

### Forestry and the State Forester

The Legislative Council staff presented a bill draft [[17.0083.02000](#)] regarding forestry and the state forester. He said at the previous meeting the committee requested the bill draft be placed in final format and brought back for final consideration. He said no additional changes were made to the bill draft. He said the State Forester was in support of the bill draft.

Chairman Onstad requested the Legislative Council staff place the bill draft in the approved folder to be recommended to the Legislative Management.

### Anhydrous Ammonia

The Legislative Council staff presented a bill draft [[17.0040.04000](#)] regarding anhydrous ammonia. At the last meeting, he said, the committee requested language be added to clarify who is and who is not authorized to repair anhydrous ammonia storage and nurse tanks. He said clarifying language stating that it is a prohibited act to make ". . . repairs or additions of appurtenances directly to pressurized storage containers or nurse tanks by any individual not authorized under rules adopted by the commissioner" was added to subsection 8 on page 8. He said the previous bill draft did not include the language ". . . by any individual not authorized under rules adopted by the commissioner." He said the language was added after consulting with representatives of the Department of Agriculture and the Chief Boiler Inspector at the Insurance Department. He said the language was added because clarification regarding who is authorized to repair the tanks already existed in the administrative rules for the Agriculture Commissioner to reference the administrative rules where the authorized personnel can be located.

The Legislative Council staff said an additional change was made to the bill draft to remove references to the Chief Boiler Inspector of the Insurance Department. He said at the last meeting the Chief Boiler Inspector was added to provisions in the bill draft in Section 4 on page 3 and Section 6 on page 5 regarding licensing and siting requirements. He said in previous legislative sessions the Chief Boiler Inspector was removed from those statutory provisions. He said the Chief Boiler Inspector and representatives of the Insurance Department requested the Chief Boiler Inspector not be reinserted into those statutory provisions as those requirements are completely under the authority of the Department of Agriculture, and the Insurance Department no longer plays any role in the requirements.

Mr. Eric Delzer, Fertilizer Program Manager, Department of Agriculture, said the language regarding the Chief Boiler Inspector was inserted in the last bill draft upon his recommendation to the Legislative Council staff. He said he was attempting to harmonize rules and requirements between the Department of Agriculture and the Insurance Department. He said the anhydrous ammonia storage containers are pressure vessels that fall under the rules of the Chief Boiler Inspector. He said the Chief Boiler Inspector must approve the vessels before the Department of Agriculture can issue a license for the facility in which the container is housed. After speaking with representatives of the Insurance Department, which has no direct input on licensing requirements, he said, he is not opposed to the removal of the Chief Boiler Inspector from this bill draft.

In response to a question from Senator Luick, Mr. Delzer said the rewrite project is the first time the Department of Agriculture has looked at updating code provisions regarding anhydrous ammonia for the state. He said there have been many discussions regarding the storage and handling requirements of anhydrous ammonia at the federal level. He said the federal Occupational Safety and Health Administration (OSHA) recently revised standards on anhydrous ammonia. He said the federal Environmental Protection Agency (EPA) also is attempting to revise rules on risk management. If those rules go into effect, he said, North Dakota would have to enforce the updated standards and rules.

In response to a question from Senator Miller, Mr. Delzer said the cost to retailers of anhydrous ammonia in North Dakota to comply with the updated OSHA rules would be approximately \$30,000 to \$50,000 per facility. He said if the proposed EPA rules are enacted, the rules would add another \$5,000 to \$10,000 in costs per facility. He said there have been approximately 14 anhydrous ammonia facilities in the state shut down due to the increased costs.

In response to questions from Senator Luick, Mr. Delzer said to the best of his knowledge there has not been an increase in anhydrous ammonia safety violations in the state or nationally. He said the revisions to the OSHA and EPA standards were prompted by executive order 13650 signed by the President in 2013. He said the main directive in the executive order was for all major federal agencies to revise and modernize rules pertaining to chemical facility storage. He said nothing in these changes would affect the end user or farmer.

In response to a question from Senator Bowman, Mr. Delzer said the main liability for an anhydrous ammonia accident or incident lies with the facility. He said there could be liability for the company that created the storage container if the container fails. He said some liability could fall on the Department of Agriculture if there was an inspection of a facility that failed to recognize a default or malfunction which later caused an accident.

Senator Miller said it would be a good idea for the Legislative Assembly to consider expanding the loan programs at the Bank of North Dakota to help facilities update and comply with the new safety standards. He said the closure of anhydrous ammonia storage facilities in the state causes more hazardous situations because it causes anhydrous ammonia to be transported further over roadways which creates more possibilities for an incident or accident to occur.

In response to questions from Representative Kiefert, Mr. Delzer said a conclusion could be drawn that the updated rules and regulations by the federal government may result in the forced phase out of anhydrous ammonia. However, he said, rather than a phase out of anhydrous ammonia, the changes likely will result in consolidation of the industry into the hands of large corporations.

In response to a question from Chairman Onstad, Mr. Delzer said there was a reference to a specific fund in Section 11 on page 8 which was repealed several sessions ago. He said that would explain why that section of the bill draft does not include a specific fund where the collected fees are held for use.

Chairman Onstad requested the Legislative Council staff place the bill draft in the approved folder to be recommended to the Legislative Management.

### **Agriculture Commissioner**

The Legislative Council staff presented a bill draft [[17.0035.01000](#)] regarding the powers and duties of the Agriculture Commissioner. He said the definitions in Section 1 of the bill draft will apply to the entire Title 4.1. He said the majority of the remaining changes in the chapter are minor changes meant to clean up language. He said Section 9 of the bill draft was overstruck and removed because it deals with the Agriculture Commissioner keeping records regarding the Commissioner of Immigration. He said the provision was enacted in the 1920s to encourage people to immigrate to the state. He said records associated with this section of law no longer exist and the provision is likely obsolete.

Chairman Onstad requested the Legislative Council staff place the bill draft in the approved folder to be recommended to the Legislative Management.

### **Sequential Numbering of Agriculture Law Chapters**

The Legislative Council staff presented a bill draft [[17.0090.01000](#)] regarding sequential numbering of the agriculture law chapters under Title 4.1 and to repeal Title 4. He said in the prior 8 years of agriculture law revision, chapters of Century Code were moved into the new Title 4.1. He said there were gaps left in between the new chapters in case additional chapters needed to be added. He said now that the project is nearing its conclusion the chapters can be redesignated and the gaps may be closed. He said this bill draft will condense the chapters in Title 4.1 and close the gaps between chapters. He said the numbering of the chapters will be in sequential order

without unnecessary gaps. He said this bill draft does not amend any existing laws. He said the bill draft instructs the Code Revisor to close the gaps between chapters at the conclusion of the 2017 legislative session after all of the bills have been enacted.

Chairman Onstad requested the Legislative Council staff place the bill draft in the approved folder to be recommended to the Legislative Management.

### **Agriculture Laws Revised and Relocated**

The Legislative Council staff presented a memorandum ([Appendix B](#)) entitled *Table of Agriculture Laws Revisions for 2017 Legislative Consideration*. He said the first table on page 1 is intended to reflect the chapters of the new Title 4.1 that will be placed by the committee. He said at the conclusion of the interim the committee will have approved 35 bills. He said the goal is to consolidate the 35 bills into 4 bills for introduction during the legislative session so that the bills may be more easily tracked. He said the goal is to consolidate similar subject matter together. He said blue color coding corresponds to chapters addressing primarily administrative statutory provisions. He said green corresponds to chapters addressing pesticides and fertilizers. He said yellow corresponds to chapters addressing plants, trees, and other growing things. He said orange corresponds to chapters addressing livestock and other animals.

**It was moved by Senator Miller, seconded by Senator Luick, and carried on a roll call vote that the bill drafts as described in [17.9383.01000] relating to administrative, pesticide and fertilizer, livestock, and plant topics, be consolidated, approved, and recommended to the Legislative Management.** Representatives Onstad, Brabandt, Hunskor, Kiefert, Larson, and Trottier and Senators Bowman, Erbele, Luick, Miller, and Murphy voted "aye." No negative votes were cast.

**It was moved by Senator Murphy, 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 Onstad, Brabandt, Hunskor, Kiefert, Larson, and Trottier and Senators Bowman, Erbele, Luick, Miller, and Murphy voted "aye." No negative votes were cast.

No further business appearing, Chairman Onstad adjourned the committee sine die at 1:00 p.m.

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Dustin Assel  
Counsel

ATTACH:2