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**Testimony on House Bill 1371
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**Senate Agriculture and Veterans Affairs Committee
Friday, March 24 2023, 9:00 a.m.
Fort Union Room, State Capitol**

Chairman Luick and members of the Senate Agriculture and Veteran's Affairs Committee, I am Dutch Bialke. I will testify this morning on behalf of North Dakota Agriculture Commissioner, Doug Goehring.

Chairman Luick and members of the Committee, the Commissioner strongly supports and respectfully recommends the passage of an amended version of the first engrossed version of House Bill 1371. Although this bill proposes various amendments to the Corporate and Limited Liability Farming Chapter 10-06.1, the heart of House Bill 1371 is North Dakota animal agriculture.

House Bill 1371, or what is better known as the **North Dakota Animal Agriculture Farm Freedom Act**, would pragmatically update the Corporate Farming Chapter that is nearly a century old and that has been amended numerous times during its existence.

House Bill 1371 would allow North Dakota livestock producers the practical option and opportunity to utilize better suited and more practical business structures for their animal agriculture operations, permitting North Dakota animal agriculture to develop, grow, and flourish, and provide many additional local markets for our grain producers.

The Chairman of the House Agriculture Committee sponsored and introduced the original version of House Bill 1371. Subsequently, during

many hearings and after the House Committee coordinated with and had several very positive rounds of discussions with the North Dakota Farmers Union and numerous other stakeholders, this original bill underwent significant revision.

These many useful and constructive discussions brought about a general framework that, instead of simply removing certain forms of animal agriculture from regulation under the Corporate Farming Chapter, these types of animal agriculture – specifically, livestock backgrounding, livestock finishing, or the production of poultry or poultry products, milk or dairy products, or swine or swine products – would be allowed to use business structures very similar to the business structures that family farm or ranch corporations and limited liability companies already lawfully and effectively use today.

These two new animal agriculture business structures in the first engrossed version are called Authorized Livestock Farm corporations and Authorized Livestock Farm limited liability companies, or what are informally nicknamed ALFs – ALFs are substantially modeled after family farm or ranch corporations, and family farm or ranch limited liability companies.

After the first engrossed version was voted out of the House Agriculture Committee with a solid do pass recommendation and was subsequently passed on the floor of the House with a vote of 70 – 24, these highly productive discussions then continued with local farm organizations as well as with the Office of the Secretary of State.

After reviewing and implementing everyone's very helpful input, we together developed an improved, balanced, and workable proposed draft amendment to the Corporate Farming Chapter.

Accordingly, we now propose to this Committee, for its consideration, this proposed consensus amendment to the first engrossed version – specifically, the North Dakota Animal Agriculture Farm Freedom Act.

This proposed amendment carries over, from the first engrossed version, amendments that would affirm and clarify that certain agricultural support services – like custom combining and crop dusting – do not come under the Corporate Farming Chapter.

Likewise, just like the first engrossed version, this proposed

amendment also carries over that aquaculture and greenhouse agriculture – only when their facilities occupy 40 acres of farmland or less – continue to not fall under the Chapter. Beekeeping is added back into this proposed amendment – again instructing that beekeeping is not included in the definition of farming or ranching. The proposed amendment also defines farmland or ranchland.

Of highly significant note, this proposed amendment would also correct a part of the anti-corporate farming chapter that currently prohibits a surviving spouse from retaining that surviving spouse's shares or member interests in either a family farm corporation or family farm limited liability company. The proposed amendment before you would rectify this unfairness by no longer forcing a surviving spouse to divest personal or inherited shares or interests upon the death of their spouse. It would properly permit a surviving spouse to retain their shares or interests, if the surviving spouse so chooses.

Finally, the Corporate Farming Chapter has 27 separate sections. They all closely interrelate with each other. Accordingly, because adding new provisions in the Chapter to create ALFs would consequently affect all the other parts of the Chapter, this proposed amendment also serves to appropriately amend all those affected provisions. This avoids conflicts within the Chapter, as well as with other parts of the Century Code, and it clearly distinguishes ALFs from family farm corporations and LLCs.

In this proposed amended version, we also respectfully propose amendments that would ensure statutory language is consistent throughout the Chapter, remove obsolete & constitutionally problematic language, and make the Chapter better organized and more readable.

Now, once again, this proposed amendment before you is an animal agriculture bill. If enacted, it would allow producers to create an ALF corporation or ALF LLC to permit the producers who own that ALF corporation or ALF LLC to more effectively produce hogs or poultry, engage in livestock backgrounding or finishing, or operate a dairy – while being subject to numerous regulatory requirements and compliance restrictions.

Among these many restrictions, an ALF corporation would be limited to a maximum of 10 shareholders, of which at least 75% of the shares must be owned by individual producers, or family farm corporations or LLCs. This means that no more than 25% of the total shares in an ALF corporation can be owned by partnerships or other ALFs. Accordingly, agriculture producers

would retain more than a 2/3 majority of the voting power of the ALF corporation.

Likewise, an ALF LLC would also be limited to a maximum of 10 members, of which at least 51% of the membership interests must be owned by individual producers, or family farm corporations or LLCs. No more than 49% of the ALF LLC membership interests can be owned by partnerships or other ALFs. Accordingly, agriculture producers would retain the controlling interest and the majority of the voting power of the ALF LLC.

Also, of significant note, are the ALF farmland or ranchland acreage limitations – one ALF can own or lease no more than one quarter, or 160 acres of farmland or ranchland. Additionally, each shareholder or member in an ALF may only have shares or interests in multiple ALFs, that in combination with each other possess no more than a total of 640 acres, or one section.

As mentioned earlier, the proposed amendment to create ALFs, for the most part, closely resemble the longstanding provisions in the Corporate Farming Chapter that already permit family farm corporations and LLCs – agriculture business structures that have been permitted and have operated lawfully and effectively under the Chapter since 1981.

For one example of similarity between ALFs and family farm corporations, in both ALFs and in family farm corporations, a minimum of 65% (roughly 2/3) of the gross income of both the ALF or family farm corporation must be directly tied to the agriculture operation, and no more than 20% (one fifth) of the gross income of both the ALF or a family farm corporation can be from ancillary sources, such as nonfarm rent, nonfarm royalties, or investments.

There are also many other similarities between ALFs and family farm corporations, along with several restrictions placed upon ALFs that are not placed on family farm corporations.

To begin, the number of shareholders or members are strictly limited in both ALFs and in family farm corporations. Further, officers and governors in both must be actively engaged in farming or ranching. Shareholders or members in both must be U.S. citizens or permanent resident aliens. Both are required to submit initial and annual compliance reporting.

Finally, unlike family farm corporations and LLCs, according to the proposed amendment, ALFs also would be subject to several additional regulatory compliance requirements and restrictions, that family farm corporations and family farm LLCs don't have.

For some examples of these additional restrictions, ALFs are also subject to the following:

- ALFs corporations must be at least 75% owned by producers and ALF LLCs must be at least 51% owned by producers;
- ALFs are strictly limited to a total of 160 acres, one quarter, of farmland or rangeland;
- ALF shareholders or members may only own shares or interests in ALFs that - combined - own no more than 640 acres, one section, of farmland or rangeland;
- ALFs cannot grow crops or graze livestock;
- ALFs must break ground within one year and become fully operational within six years of obtaining agricultural land;
- ALFs are prohibited from partnering with other individuals, other ALFs, or family farm corporations or LLCs; and
- ALFs, because of these additional restrictions and limitations, have extra initial and annual reporting requirements.

That said, even with these many more requirements and limitations that would be placed upon ALFs, this proposed amendment to NDCC Chapter 10-06.1, the Corporate Farming Chapter, would be a huge positive step forward in the promotion, rising development, advancement and expansive growth of North Dakota's animal agriculture industry. It is clear, consistent, balanced, and workable for our state's livestock producers.

Once again, this 2023 modernization bill is all about boosting animal agriculture in North Dakota. It will permit dairies, livestock feedlots, and swine and poultry production to flourish and create economic engines that will bolster our state's economy and help revitalize our rural communities.

The Agriculture Commissioner strongly supports and respectfully recommends the passage of the revised version of the first engrossment of House Bill 1371, the **North Dakota Animal Agriculture Farm Freedom Act**.

Chairman Luick and committee members, thank you for your consideration of House Bill 1371. I will respectfully stand for any questions.