

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2104

2001 SENATE AGRICULTURE

SB 2104

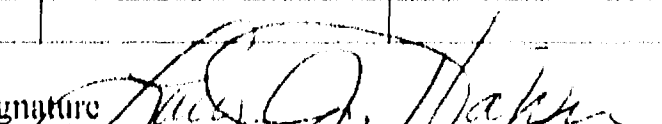
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2104

Senate Agriculture Committee

Conference Committee

Hearing Date January 25, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0 - End
3	X		21.4 - 43.0
Committee Clerk Signature 			

Minutes:

KEN BERTSCH, State Seed Commissioner. See attached testimony.

SENATOR WANZEK, The word farmer is already included but not necessary?

KEN BERTSCH, Farmer is implied with individual persons.

SENATOR NICHOLS, Will the bill take care of language that are vague or is there still more?

KEN BERTSCH, I believe that this will, unless there is something we missed.

DAVE NELSON, Agriculture Department Plant Services Division. See attached testimony.

JIM HENNESEY, Weed Control Officer - Mountrail County. See attached testimony.

SENATOR WANZEK, Can't your concerns be addressed within the State Seed Department and Commission without listing in statute specifically one weed?

JIM HENNESEY, We could but when look at all the noxious weeds as far as the prohibited, we could add others but it would make the list very long.

BRIAN HOLLINGER, Mountrail County Weed Control Board. See attached testimony.

Page 2
Senate Agriculture Committee
Bill/Resolution Number SB 2104
Hearing Date January 25, 2001

MERLIN LEITHOLD, North Dakota Weed Control Assoc., testified in support of this bill.

KEN BERTSCH, I have a concern only in terms of using this bill as a vehicle to talk about noxious weed issues. Primarily the concern come because of the emergency clause. I think the word meet and exceed as there written in our bill is considered terms of art, in legal terms. In legal terms it is intended to mean more strict than.

ORDEAN FOSSAU, State Seed Commission, testified in support of this bill.

The hearing was closed.

January 25, 2001

SENATOR KLEIN, moved DO PASS on amendment 18145.0101.

SENATOR ERBELE, seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR KLEIN, moved a DO PASS as amended on SB 2104.

SENATOR ERBELE, seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR KLEIN will carry the bill.

FISCAL NOTE
 Requested by Legislative Council
 12/26/2000

Bill/Resolution No.: SB 2104

Amendment to:

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

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This is a policy and housekeeping bill and has no fiscal effect on the Agency or the State.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Ken Bertsch	Agency:	State Seed Department
Phone Number:	701-239-7210	Date Prepared:	01/02/2001

Date: 1-25-01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2104

Senate Agriculture Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By SEN. KUEN Seconded By SEN. ERBELE

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment SEN. KUEN

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

REPORT OF STANDING COMMITTEE (410)
January 26, 2001 1:48 p.m.

Module No: SR-14-1749
Carrier: Klein
Insert LC: 18145.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2104: Agriculture Committee (Sen. Wanzek, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2104 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 15 of section 4-09-01,"

Page 1, remove lines 5 through 8

Page 3, line 2, remove "as of July 1, 2001"

Page 3, overstrike line 28

Page 3, line 29, overstrike "section 4-09-14.3."

Page 5, line 6, after "Establish" insert "with the approval of the state seed commission,"

Renumber accordingly

2001 HOUSE AGRICULTURE

SB 2104

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2104

House Agriculture Committee

Conference Committee

Hearing Date 3--08--01

Tape Number	Side A	Side B	Meter #
TWO	A		00 TO 1990
Committee Clerk Signature <i>Edward D. Clayton</i>			

Minutes:

CHAIRMAN NICHOLAS: We will open the hearing on SB 2104.

KEN BIRCH: I serve as the State Seed Commissioner. Please see printed testimony.

SB 2104 IS A FAIRLY SIMPLE BILL, AND STRAIGHT FORWARD. What I will do is take a few minutes to walk with you through the Bill and tell you why we need these adjustments.

Refer to written testimony.

CHAIRMAN NICHOLAS: QUESTIONS.

REPRESENTATIVE RENNER: PAGE THREE. DELETING THESE FEES. Is this the fee schedule for that annual report that we had to do every June or July

KEN BIRCH: That is it. All we will do in this case and we will practice consistency in the department too. It will likely remain the same, for the foreseeable future. We have customers out there that think they get nicked and dimmed to death, with things like these fees

but we are prohibited from making some consolidated fees, and creating a different fee schedule.

We have fees but no consistency. Consistency is what our goal is.

REPRESENTATIVE ONSTAD: When we get to page two we talk about tolerance's.

Explain tolerance. Take CRP for an example. In CRP there might be three or four different varieties there. Now if you have a tolerance level for one particular seed because we have a mixture of seeds. You might want to explain those tolerances. I would feel more comfortable by actually seeing those tolerances. EXPLAIN THAT PLEASE.

WE can get you some information on that. The Federal tolerances are different. In regulatory terms. Ken is going to get some information for Rep. Onstad as the tolerances, seed mixes etc.

REP. ONSTAD: To follow up on that. Is it safe to say that the tolerance levels when they are seeded separate is one thing but when you start taking a mixture of seeds and throwing it in the mix as to CRP and the concern is that sits idly for who knows the number of years, are those tolerances tighter or are they about the same. Because we are mixing several seeds together, and we have a problem cleaning that up in that CRP, I hope and I want to find out are those tolerances tighter when you mix those seeds together versus seeding them separately in a field here and there.

KEN: To my understanding a mix of seeds will not raise the total rate of grass seeds.

REPRESENTATIVE ONSTAD: I Am hoping that we can address the tolerances in the Bill. Noxious weeds, alfalfa whatever in one field. Especially in CRP that is what I am talking about. This is a problem in our area

KEN: I think in SB 2204 it will talk specifically about your question. Allowable limits etc.

Page 3
House Agriculture Committee
Bill/Resolution Number SB 2104
Hearing Date 3--8--01

It will also deal specifically with noxious weeds. Our standards must meet or exceed. I am not sure, it is not our Bill. I think all of your discussion points are in SB 2204

VICE CHAIRMAN JOHNSON: Any more questions Committee Members.

JOHN LEPPERT: I am a noxious weeds specialist in the Plant Industries division of the North Dakota Department of Agriculture. Please see printed testimony which is attached.

Talks about identical legislation in two Bill.

JOHN LEPPERT: Page two, of SB 2104 AND it would be lines 23 to 29 of Section two amendment. I am suggesting that those be removed because they are in fact in SB 2204.

CHAIRMAN NICHOLAS: A CODE REVISOR WILL TAKE CARE OF THIS FOR US.
Give us the specifics on that again.

JOHN: Lines 23 to 29 of Section two on page two. The language has been changed slightly in 2204. It states to establish tolerances that are more strict rather than meets or exceeds. Otherwise the language is identical.

CHAIRMAN NICHOLAS: Again, I believe the code revisor will take care of that.

CHAIRMAN NICHOLAS: Any other questions Committee Members?

Thank you John. Anyone else wishing to offer testimony in support of this Bill. Any Opposition? I think that we can have the code revisors take care of this and I'll have Nicky check with the council. COMMITTEE MEMBERS WHAT ARE YOUR WISHES ON SB 2204. IT WAS DECIDED TO HOLD THIS BILL UNTIL WE HAVE HAD A CHANCE TO LOOK AT THE OTHER BILL BE REFEREED TO. CHAIRMAN DECIDED TO HOLD THE BILL. 1A:1990

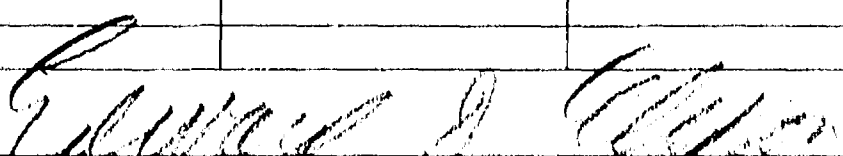
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2104

House Agriculture Committee

Conference Committee

Hearing Date 3--22-01

Tape Number	Side A	Side B	Meter #
ONE	A		4490 TO 5930
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: COMMITTEE MEMBERS, WE WILL OPEN THE HEARING ON SB 2104. O.K. COMMITTEE MEMBERS SB 2104 IS THE ONLY BILL THAT WE HAVE LEFT. REPRESENTATIVE BERG WOULD YOU GIVE US A REPORT ON YOUR FINDINGS ON YOUR VISIT WITH THE SEED COMMISSIONER.

REPRESENTATIVE BERG: IN A NUT SHELL, SOME OF THE FEES THE COMMISSIONER HAS ARE SET BY ADMINISTRATIVE RULES. SOME OF THE FEES ARE SET BY STATUE, SOME ARE JUST SET BY THE SEED COMMISSIONER. THIS BILL BASICALLY TAKES THEM OUT OF ADMINISTRATIVE RULES PROCESS PER-SAY. I GUESS THAT IS THE ESSENCE OF I THINK THE DISCUSSION HERE. THE BENEFITS FOR TAKING THEM OUT IS A LOT OF THESE FEES ARE RELATIVELY SMALL FEES. THEY ARE APPROVED BY THE SEED COMMISSIONER AND BY THE SEED COMMISSIONER BOARD. WHICH IS THE PRODUCER RUN BOARD. THERE

Page 2

House Agriculture Committee

Bill/Resolution Number SB 2104

Hearing Date 3--22-01

CHARGED WITH SETTING FEES THAT ARE REFLECTIVE OF THE ACTUAL COST FOR WHAT EVER TESTING AND THINGS THEY ARE DOING. IT IS A MORE STREAMLINED PROCESS IF WE PASS THE BILL IN IT'S PRESENT FORM. THE NEGATIVE OF IT IS WE ARE DELEGATING SOME LEGISLATIVE AUTHORITY. WE ARE SAYING THAT WE ALLOW THIS BOARD THAT WE SET UP TO SET THEIR OWN FEES. THE POTENTIAL THAT THEY COULD BE CHARGING FEES THAT THERE IS NO RECOURSE. I TALKED TO KEN ABOUT IT AND THERE ARE THINGS IN THE BILL THAT ARE IMPORTANT AND I TOLD HIM THAT WE WOULD DISCUSS THIS IN COMMITTEE. THREE TWO OPTIONS ARE RUN THE BILL OUT LIKE IT IS OR TWO KEEP THEM IN THE RULE MAKING PROCESS FOR FEES AND LET THEM TAKE THE NEXT COUPLE YEARS AND TRY AND WORK IT OUT SO THAT CAN PUT A MORE UNIFORM TAX TOGETHER.

CHAIRMAN NICHOLAS: SO REPRESENTATIVE BERG ARE YOU RECOMMENDING THAT WE HOLD THE BILL AND TRY TO COME UP WITH SOME AMENDMENTS.

CHAIRMAN BERG: I GUESS IF ANYONE THOUGHT STRONG THAT THEY REALLY NEED THIS AUTHORITY TO TO IMMEDIATELY RAISE THEIR FEES AND BY-PASS THE ADMINISTRATIVE RULES [[[COULD NOT UNDERSTAND A FEW WORDS]]] THEN WE SHOULD RUN THE BILL OUT LIKE IT IS.

CHAIRMAN NICHOLAS: LETS HEAR FROM THE COMMITTEE; DO WE WANT TO ROLL IT OUT AND DUKE IT OUT ON THE FLOOR WITH SOME OF THE ADMINISTRATIVE RULES.

Page 3

House Agriculture Committee

Bill/Resolution Number SB 2104

Hearing Date 3--22-01

REPRESENTATIVE LLOYD: O.K. THE SEED COMMISSION SET THE FEES AND THEY START UTILIZING THE FEES, WHY CAN'T THE ADMINISTRATIVE RULES LOOK AT IT WHEN EVER THEY WANT. AT SOME POINT, I DON'T KNOW WHAT THEY CAN'T BE CHARGING THOSE FEES AND TELL THEM WHICH ONES THEY CAN BE USING.

REPRESENTATIVE BERG: I DID NOT QUITE FOLLOW THAT, IT'S KIND OF A CHICKEN AND EGGS KIND OF THING. WE SAY WE SAY SEED COMMISSIONER, WE ARE AUTHORIZING YOU TO SET YOUR FEES BY RULE WHICH MEANS HE SETS HIS FEES, ADMINISTRATIVE RULE, GOES IN, THEN IF HE IS GOING TO HAVE A CHANGE IN HIS FEES THERE IS A PROCESS OF PUBLIC INPUT AND ALTERCATION AND THEN IT GOES THROUGH ADMINISTRATIVE RULES. AND THEY APPROVE IT. IF HE IS GOING TO CHANGE THAT IT HAS TO GO BACK THROUGH THE ADMINISTRATIVE PROCESS. THERE IS SOME FLEX ABILITY.

KOPPANG: QUESTION. THE SEED COMMISSION IS SELF-SUPPORTING, IS IT NOT? I MAY TAKE A LITTLE BIT DIFFERENT STANCE AS TO WHAT WE ARE DISCUSSING HERE. I THINK THE NEED TO HAVE A REAL ENTREPRENEURIAL SPIRIT AND BE ABLE TO REACT TO THINGS MUCH QUICKER THEN HAVE TO GO THROUGH THE PROCESS OF ADMINISTRATIVE RULES. AND I GUESS I AM THINKING OF LETTING THEM DO A LITTLE EXPERIMENTING AND TEST IT OUT AND IF NOT CHANGE IT LATER. ESPECIALLY WHEN THEY ARE IN A SELF-SUPPORTING SITUATION.

CHAIRMAN NICHOLAS: REPRESENTATIVE I RESPECT YOUR COMMENTS BUY WHAT I THINK WE SHOULD DO IS REPRESENTATIVE BERG HAS ALREADY

Page 4
House Agriculture Committee
Bill/Resolution Number SB 2104
Hearing Date 3--22-01

VISITED WITH MR. BIRCH, I WILL LET HIM VISIT WITH MR. BIRCH AND IF COLLECTIVELY THEY FEEL A DISCUSSION IS TO GET AMENDMENTS PREPARED, MR. BIRCH CAN CALL LEGISLATIVE COUNCIL WITH EITHER MY AUTHORITY OR REPRESENTATIVE BERGS AND WE WILL BRING IT IN NEXT THURSDAY MORNING AND DECIDE WHAT WE ARE GOING TO DO WITH IT. IS THAT FAIR ENOUGH?

O.K. I DON'T WANT TO DISRUPT THINGS FOR THE SEED COMMISSION EITHER AND PUT THEM ON SPOT REPRESENTATIVE KOPPANG. REPRESENTATIVE BERG HAS ALREADY HAD COMMUNICATION. I DON'T WANT TO DUMP MORE ON YOU REPRESENTATIVE BERG BUT IF YOU WANT TO.

REPRESENTATIVE BERG: WE DEFINITELY WOULD HAVE A FLOOR FIGHT. SO IT MIGHT BE BETTER TO GO AHEAD AND TRY TO TALK TO MR. BIRCH. THE ADMINISTRATIVE RULES COMMITTEE WILL NOT BACK DOWN.

CHAIRMAN NICHOLAS: ANY OTHER COMMENTS.

O.K. WE WILL CLOSE THE HEARING ON SB2104.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2104

House Agriculture Committee

Conference Committee

Hearing Date 3--29--01

Tape Number	Side A	Side B	Meter #
ONE	A		00 TO 540
Committee Clerk Signature <i>Edward D. Ellison</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee Members. We will open the hearing on SB2104.

At the request of Representative Lemieux and some of the others I am going to pass out an amendment. Please see attached amendment.

REPRESENTATIVE MOVED FOR A DO PASS ON THE AMENDMENTS AND IT WAS SECONDED BY REPRESENTATIVE BRANDENBURG.

CHAIRMAN NICHOLAS: ALL THOSE IN FAVOR SIGNIFY BY SAYING YES. THE CHAIR WILL ENTERTAIN A MOTION ON SB 2104 AS AMENDED. REPRESENTATIVE BERG MADE A DO PASS MOTION AND IT WAS SECONDED BY REPRESENTATIVE PEITSCH.

CHAIRMAN NICHOLAS: NOW WE WILL HAVE DISCUSSION. SHORT DISCUSSION AS TO THE BILL.

CHAIRMAN NICHOLAS: THE CLERK WILL TAKE THE ROLL.

Page 2

House Agriculture Committee

Bill/Resolution Number SB 2104

Hearing Date 3--29--01

THERE WERE "*****15 YES*****0 NO*****0 ABSENT*****"

REPRESENTATIVE LEMIEUX WILL CARRY SB 2104

THE HEARING WAS CLOSED ON SB 2104

18145.0201
Title.0300

Adopted by the Agriculture Committee
March 29, 2001

VJR
3/29/01

HOUSE AMENDMENTS TO ENGROSSED SB 2104 HOUSE AGR. 3-29-01
Page 1, line 1, remove "4-09-14.3,"

Page 1, line 3, replace the first comma with "and" and remove ", and seed fees"

Page 2, remove lines 30 and 31

Page 3, remove lines 1 through 16

Page 5, line 1, remove "with the approval of the state seed commission."

Renumber accordingly

3-29-01

Date:
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

SB2104

House AGRICULTURE Committee

Subcommittee on _____

or

Conference Committee

BERG BRANDENBURG

Legislative Council Amendment Number

WITH AMENDMENT

Action Taken

DO PASS

Motion Made By

BERG

Seconded By

PIETSCH

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	✓		Rod Froelich	✓	
Dennis E. Johnson - Vice Chairman	✓		Doug Lemieux	✓	
Rick Berg	✓		Philip Mueller	✓	
Michael Brandenburg	✓		Kenton Onstad	✓	
Joyce Kingsbury	✓		Sally M. Slandvig	✓	
Myron Koppang	✓		Dennis J. Renner	✓	
Edward H. Lloyd	✓		Dwight Wrangham	✓	
Bill Pietsch	✓				

Total (Yes)

15

No

0

Absent

0

Floor Assignment

LEMIEUX

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

REPORT OF STANDING COMMITTEE (410)
March 30, 2001 8:43 a.m.

Module No: HR-56-7231
Carrier: Lemieux
Insert LC: 18145.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2104, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2104 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "4-09-14.3,"

Page 1, line 3, replace the first comma with "and" and remove ", and seed fees"

Page 2, remove lines 30 and 31

Page 3, remove lines 1 through 16

Page 5, line 1, remove ", with the approval of the state seed commission,"

Renumber accordingly

2001 SENATE AGRICULTURE

CONFERENCE COMMITTEE

SB 2104

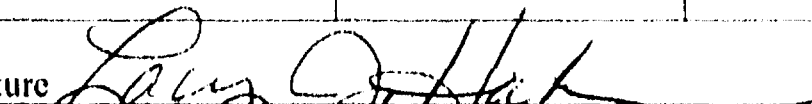
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2104

Senate Agriculture Committee

Conference Committee

Hearing Date April 12, 2001

Tape Number	Side A	Side B	Meter #
I	X		7.2-14.9
Committee Clerk Signature 			

Minutes:

The conference committee on SB2104 was opened by SENATOR WANZEK. Members present were SENATORS WANZEK, ERBELE, NICHOLS, REPRESENTATIVES PIETSCH, D. JOHNSON, MUELLER.

SENATOR WANZEK: All conferees are present and accounted for were on the bill dealing with the state seed commission. Are we all on the right place, and I think the major change with the House was the fees. If one of the House members would fill us in a little bit yet. I think I might know what concerns everybody, could I get someone to comment on it.

REPRESENTATIVE PIETSCH: I think we as a committee had seen pending floor scraps over taking the fee setting responsibility out of administrative rules. I know that in the Seed Commission there are fees that are set in statute, there are fees that are set by rules, there are fees set in a variety of different ways. This bill originally, I believe, was intended to try and consolidate them all so that the Seed Commission, in fact, would be responsible for setting all of

the fees that the Seed Commission charges for tests and other things. Quite frankly, we'd simply seen enough resistance to ignoring the administrative rules process even for fee setting that the Agriculture Committee simply amended out the fee setting responsibility or flexibility as part of the commission. The commissioners said it may slow the process down, but frankly we can live with it. It is not worth another fight. It is not worth someone else breaking out within the bill. That's my assessment of what we did and so we took out those couple of words.

REPRESENTATIVE MUELLER: I think Rep. Pietsch explained it extremely well. I don't know that the House Ag Committee had a problem necessarily with what the structure of 2104 and fees. It all kind of came back to an event that occurred the day before, or a couple of days before where there was kind of a nasty fight up there in regard to administrative rules and what they can and can't do and the kind of oversight they would like to keep. I think you know maybe there is a little bit of a change in the thoughts and feelings up there about that. I certainly appreciate the Seed Commission concern here, because if I understood it and looking through the testimony and remembering what I can from that time period when we looked at this, he is able to do some under current statute and law, but he can't do this other category. I mean for him to move forward, he would like to have all that, the where with all to do all those seed. I think the other thing too is we think and I don't want to put words in my fellow Ag committee members mouths, but we thought it was a good bill and we did not want to see the bill get killed because of that factor and that is why we pulled that out of there.

SENATOR WANZEK: I sense that its' not, you know I've only talked to seed commissioner and we had a chance to talk to any of the seed commission members.

REPRESENTATIVE MUELLER: I don't know have any of you had a chance to talk to any members, but I sense the same thing that you guys have. It's not worth the battle. I was trying to

understand what, you know, what most of these members the majority of these members are our seed growers. I mean they are setting fees that there going to pay, thought that was a pretty good check and balance I mean. We think that no one would especially those who are going to pay would forgive out of alignment uses like. I don't see any reason to push the issue. Maybe your asking the members why did you come here and I thought it would be worth some discussion. I don't see anybody that's really bent out of shape or doing what you did. Again, if Senator Freborg was here he wouldn't be very, I ought to meet because they give in to easy, but for Senator Nichols.

SENATOR NICHOLS: Perhaps, it is best at this time to keep the important parts of this bill together and go ahead and stay with the amendments the House made and then maybe in two years from now and things are looking right it would be a good time to make that change. Because there were a lot of changes in the bill.

REPRESENTATIVE MUELLER: I guess I know as I say maybe the thought process up there on the floor has changed, but I certainly wouldn't count on that. And I think the other issue as I read through the testimony, and even Commissioners Burschs' response to the change, you know he wasn't particular happy, but if I read that correctly he thought maybe going along with Senator Nichols he could live with it for another two years and maybe we could come back and fix it another time.

REPRESENTATIVE JOHNSON: I think just to agree with the others have said here that we had a good hearing and we worked this bill for sometime and sat on it for sometime over in the House Ag, and I just got a sense for different parts of Chamber up there and I think rather than loose the whole bill, that's why we did what we did with it here to get it to pass through our Chambers.

Page 4

Senate Agriculture Committee
Bill/Resolution Number SB 2104
Hearing Date April 12, 2001

SENATOR WANZEK: I think there is within the Legislative body some are very parochial protective interest. You know we always get bent out of shape when we know there is no administrative rules and thinking that we're losing some control their. I can appreciate what your saying. We had some of those concerns in our side. But I guess maybe we had already argued that these budgets go before the Appropriations every year, they are being set by farmers who are going to pay fees. They just seem like there is so many checks and balances, but I again, I think I'm given. I wish it was just this easy in education, lets' put it that way. So I guess maybe. Is Senator Erbele in, do you have any strong feelings on this.

SENATOR ERBELE: I am ready to make a motion.

SENATOR ERBELE: I motion that we accede to the House amendment.

SENATOR NICHOLS, seconded the motion.

SENATOR WANZEK: We've got a motion by the Senators to accede to the House amendments.

Motion made by Senator Erbele and seconded by Senator Nichols.

Roll call vote: 6 Yeas, 0 No, 0 Absent

Conference Committee Adjourned.

Date: April 12, 2001

Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2104

Senate Agri. Conference Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken accede to house

Motion Made By Sen. Erbele Seconded By Sen. Nichols

Senators	Yes	No	Senators	Yes	No
Sen. Wampler	✓		Rep. Fiatsch	✓	
Sen. Erbele	✓		Rep. D. Johnson	✓	
Sen. Nichols	✓		Rep. Mueller	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

REPORT OF CONFERENCE COMMITTEE (420)
April 12, 2001 10:48 a.m.

Module No: SR-65-8464

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

SB 2104, as engrossed: Your conference committee (Sens. Wanzek, Erbele, Nichols and Reps. Pietsch, D. Johnson, Mueller) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 1100 and place SB 2104 on the Seventh order.

Engrossed SB 2104 was placed on the Seventh order of business on the calendar.

2001 TESTIMONY

SB 2104



**NORTH DAKOTA
STATE SEED
DEPARTMENT**

STATE UNIVERSITY STATION
P.O. BOX 6267
FARGO, ND 58106-6267
701-239-7210 FAX: 701-239-7214

Testimony: **SB 2104**
Senate Agriculture Committee

Ken Bertsch
ND State Seed Commissioner
January 25, 2001

Mr. Chairman and members of the Committee, thank you for the opportunity to present testimony on SB 2104 on behalf of the State Seed Commission. I will walk through the changes to Chapter 4-09 of Century Code (which governs the State Seed Department), proposed in this bill and requested by the Commission.

Most of the changes offered in SB 2104 are intended to bring the Department into compliance with federal law or create consistency in language governing department operations. I will point out and explain each of these and other proposed changes to 4-09, including a couple discovered after filing of the bill.

Section 1:

1. Clarifies the definition of person. Section 4-09-15, which provides exemptions to the chapter, refers only to a "farmer". I am advised that this change is not necessary, since the "ordinary meaning" of farmer prevails in legal terms, if not defined in the chapter.

Section 2:

1. Names the Associate Dean and Director of the Experiment Station as a voting member of the Commission. There are two reasons for the change:

- *Language is outdated.* Dean of the College of Agriculture is now the Vice President for Agriculture. The Seed Commission believes that the Director of Experiment Station is the most logical representative to the Commission from NDSU, and should be accorded a vote in Commission actions.
- *Creates an odd-numbered voting group* for Commission business.

2. Eliminates the legal requirement that the commission meetings be held during November and June. While the group meets 3-4 times during the year, defining which months are mandatory creates some potential legal problems if schedules prohibit meeting on a particular month. (example: June 2000 flood in Fargo)

Section 3:

1. Brings NDCC in to compliance with federal law by bringing ND code "up to date" with amendments to Federal Seed Act. The current language only refers to the Act as of the date implemented. This is housekeeping that should occur when any major changes to federal law take place, since only tax code can be prospectively implemented.

However, we must ask for a change in the bill as currently written. The change should read:

"as of July 1, 2001, except if the commissioner, by rule, establishes tolerances that meet or exceed Federal Seed Act tolerances."

As currently written, the changes are redundant and would force the Seed Department to write and implement emergency rules that mirror the Federal Seed Act. The language above would not require rules to be written covering the Federal Seed Act, only to comply with the minimums established under the Act.

I have included all amendments to SB 2104 as an attachment to testimony.

Section 4:

1. This change is a continuation of consistency sought in SB 2103. This change merely applies the same language in current law to the fee-setting authority of the Seed Commission in 4-09-08, which reads:

"The commissioner, with the approval of the seed commission, shall establish and charge fees for laboratory tests and services."

In addition, Chapter 28-32-01 (paragraph 11.c) exempts state agencies from rulemaking requirements in regard to "establishing specific prices to be charged for particular goods or services sold by an agency".

Section 5:

1. The addition of the term "annual", and the removal of the last sentence in the section, creates consistency in code language and Department policy.

The requirement for filing reports on a quarterly basis was removed from NDCC in the 1991 or 1993 session. The Department has operated on a policy of annual statements since that time, and felt that updating the language to more accurately reflect operations is appropriate while making other changes to the language in 4-09.

Section 6:

1. The removal of the term "inspected" (line 25, page 4; line 2 and line 17, page 5) is intended to avoid potential problems related to an expanded list of services provided by the department.

As quality assurance and identity preservation inspections unrelated to certification programs are developed, inclusion of the term "inspected" may technically prohibit the use of the term in promoting seed or products which have complied with the service standards.

These changes simply remove the prohibition of using the word "inspected" for any other purpose than certification, while still allowing the commissioner the flexibility to apply labels, including the term "inspected" to products inspected by the department.

Another change should also be made to this section for the purpose of providing some consistency in language. Paragraph 6 (line 6, page 5) should read:

"The Commissioner, with the approval of the Seed Commission, shall
Establish an"

The change should be self-explanatory given previous discussion on SB 2103 and SB 2104.

Section 8:

1. This is the same update to federal law as in Section 3, and as applied to the Plant Variety Protection Act.

I will point out that the language changes in relation to the Federal Seed Act in Section 3 and Section 8 are under advice of the Attorney General's office.

Section 9:

1. These changes are simply a continuation to changes in reference to fee schedules as outlined in Section 4, and in SB 2103.

The changes outlined in SB 2104 will bring much of the language governing the Department into a more consistent and compliant form. The remaining changes are intended to also provide consistency and common-sense improvements in the Seed Commission's responsibility as outlined in Century Code.

I ask for the Committee's support for SB 2104, and will answer any questions you have on the bill.

Amendments to SB 2104

Page 1, line 7:

After the word "individual", remove the word "farmer" from the definition section.

(The Attorney General's office advises that the addition of the word is unnecessary.)

Page 3, line 2:

Insert a (.) after the word "tolerances".

Remove the term "~~as of July 1, 2001~~".

(Attorney General advises that this correction removes the redundancy of the language, and negates the inevitable requirement of the original language in forcing the Department to file emergency rules associated with the Federal Seed Act.)

Page 3, line 28:

Overstrike the term;

~~"Each statement must be itemized to show the number of each class of containers referred to in section 4-09-14.3."~~

(The language is unnecessary with the changes made in 4-09-14.3.)

Page 5, line 6;

After #6., insert the words;

"The commissioner, with the approval of the seed commission, shall"

(Provides consistency throughout Chapter 4 in regard to fees.)

COMMISSIONER OF AGRICULTURE
ROGER JOHNSON



PHONE (701) 328-2231
(800) 242-7535
FAX (701) 328-4567

DEPARTMENT OF AGRICULTURE
State of North Dakota
600 E. Boulevard Ave. Dept. 602
Bismarck, ND 58505-0020

**Testimony of David R. Nelson
Agriculture Department
Senate Bill 2104
Senate Agriculture Committee
Roosevelt Room
January 25, 2001**

Chairman Wanzek and members of the Agriculture Committee, I am David Nelson from the Agriculture Department Plant Services Division. I am here today in support of SB 2104, with a suggested amendment. This bill allows the State Seed Commissioner to establish, by rule, tolerances used in determining correctness and accuracy in labeling seed that meet or exceed Federal Seed Act tolerances for noxious weeds.

Noxious weeds are a serious threat to the productivity of agricultural lands in North Dakota. One only needs to consider the losses attributed to leafy spurge to realize the impact of noxious weeds in the state.

A recently recognized threat to North Dakota is yellow starthistle, which was added to the noxious weed list in 1999 through rulemaking and to the prohibited noxious weed seed list during the previous legislative session. Since then there have been several instances where seed that was contaminated with yellow starthistle was used in CRP plantings and resulted in infestations. Thanks to the concern and actions of the affected landowners and the county weed officers, these infestations were recognized and actions taken to eliminate the weeds.

Currently Chapter 4-09-13 relies on Federal Seed Act tolerances in determining correctness and accuracy in labeling seed. With respect to CRP seed offered for sale in North Dakota that contained yellow starthistle seed, a labeling violation would not be recognized unless there were three or more yellow starthistle seeds per the sample size prescribed by the Federal Seed Act. We do not believe this provides sufficient protection to North Dakota. We suggest that the bill be amended so that for yellow starthistle, the tolerance used in determining correctness and accuracy in labeling would be zero and that this provision be declared an emergency measure.

We also suggest that the bill wording be changed to clarify that the intent of SB 2401 is that the state seed commissioner may establish, by rule, tolerances that are 'more strict' than the Federal Seed Act tolerances. The current bill language states that the commissioner may establish tolerances that 'meet or exceed' Federal Seed Act tolerances.

Chairman Wanzek and committee members, I urge a do pass on SB 2104 with a provision to establish a zero tolerance for yellow starthistle. I would be happy to answer any questions you may have.

Fifty-seventh
Legislative Assembly
of North Dakota

PROPOSED AMENDMENT TO SENATE BILL NO. ~~2401~~²¹⁰⁴

SECTION 3. AMENDMENT. Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

4-09-13. Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939, and subsequent amendments ~~thereto~~ as of July 1, 2001, except that the tolerance for yellow starthistle shall be zero and the commissioner may, by rule, establish tolerances that are more strict the Federal Seed Act tolerances.

SECTION 10. Section 3 of this Act is declared to be an emergency measure.



Yellow starthistle

Centaurea solstitialis

Background

Yellow starthistle, native to Mediterranean areas, probably first came to North America in contaminated alfalfa or other crop seed. Yellow starthistle seeds were found in adobe brick in California beginning in the early 1800's. There are several early records of yellow starthistle from University plant collections in California from the mid and late 1800's. First reports of yellow starthistle in the Pacific Northwest are from Walla Walla, Washington around the turn of the century. Infestations are currently reported to be more than 10 million acres in California, 300,000 in Idaho, and 150,000 acres each in Oregon and Washington. Yellow starthistle continues to invade new areas at rates up to several thousands of acres per year within these states.

Identification

Yellow starthistle is a grayish-green annual plant with a vigorous and quick-growing

taproot. It produces bright yellow flowers with sharp spines surrounding the flowerheads.

Yellow starthistle may grow to heights of only a few inches to more than three feet. Mature plants are rigid, spreading and branching from the base. Both stems and leaves are covered with pubescent hairs that give them the grayish-green appearance. Stems may appear flattened because the bases of leaves sometimes extend past the nodes. The deeply-lobed basal leaves are typically two to three inches long. Upper

leaves are shorter and are narrow and sharply pointed.

Biology and Ecology

Yellow starthistle reproduces only by seed. A single large plant can produce as many as 150,000 seeds under ideal conditions, but the number of seeds per plant can vary greatly. Depending upon plant density and on precipitation during the growing season, seed production may be 5,000 to 21,500 seeds per square yard.





Yellow starthistle produces two different types of seed, one with parachute-like plumes and another without plumes. Most are plumed and disperse at maturity. Plumeless seeds stay in the seedhead, and disperse in the fall and winter. Most yellow starthistle seeds that reach the soil fall within 2 feet of the parent plant. This tends to result in a slow invasion front in local areas. Birds, other animals, wind and vehicles may all contribute to long-distance dispersal. A majority of seeds may survive dispersal to be available for germination in the fall.

Ring-neck pheasants, quail, and finches are reported to feed on yellow starthistle seed. Finches tend to shell seeds, leaving most of the consumed seed non-viable. Quail and pheasants consume whole seeds which may occasionally be passed in a viable form.

Yellow starthistle germinates and grows more rapidly than many of its competitors under a variety of conditions. At 68°F with no moisture stress, plumed seeds initiate germination within 16 hours. Seventy-five percent of plumed seed can germinate within 48 hours. Plumeless yellow starthistle seed germination was lower than plumed seed germination in a research study. Dry or saline soil conditions reduce yellow starthistle germination. Rapid germination and root growth give yellow starthistle the ability to occupy a site by capturing and utilizing resources more quickly than other, competing species.

Nearly all seed is viable at maturity, and 10% of the seed can remain dormant for as long as 10 years. Seed banks in heavily infested areas are a small proportion of total seed production, and most of these seeds are the plumeless type. Dormant seed in or on the soil create problems for land managers because they allow yellow starthistle to reestablish at sites after herbicide treatments.

Plant Growth

Yellow starthistle usually germinates and grows in the fall following precipitation.

If seeds are present, seedling numbers increase until soil moisture and/or soil temperatures become limiting. Seedling populations may reach densities of 2500 plants per square foot. Frost heaving sometimes reduces population density. Seedlings can emerge in the spring and complete their life cycle in the same year, or continue into the next growing season, depending upon growing conditions.

As additional leaves emerge from the base of seedling plants, a rosette is formed. Rosettes often have 6 to 15 leaves which range up to eight inches in length. The rosette's spring growth stage appears to be a difficult time for yellow starthistle. Seedlings and rosettes are sensitive to competition for light, water, nutrients, and space and are subject to high mortality when stress conditions prevail.

Flower stalks emerge from the center of the rosettes and grow to heights up to 3 feet in ideal conditions, but may be only a few inches in limiting situations. Flowering occurs as early as late spring, and flower production can continue into September.

In the fall, yellow starthistle plants lose their leaves and dry to a silver-grey skeleton with cottony white terminal seedheads, which are distinctive in appearance.



Impacts

Yellow starthistle invades disturbed sites and rangelands throughout the western United States. The most susceptible rangelands are those with deep soils, south slopes, and 12 to 25 inches of winter precipitation. Yellow starthistle favors sites naturally supporting perennial grasses, primarily bluebunch wheatgrass, Idaho fescue, and Sandberg's bluegrass. It does not compete well in desert shrub communities, but does invade disturbed desert areas.

Yellow starthistle's success is directly related to its quick germination and growth and its ability to capture moisture and nutrients. Seedlings tend to grow more rapidly than most perennial grass seedlings, which can lead to poor grass stand establishment. Vigorous stands of perennial grass limit invasion by yellow starthistle.

In rangelands with deep soils dominated by annual species, the roots of yellow starthistle grow deep and avoid direct competition. In such circumstances, yellow

starthistle can come to dominate the site. Densities at such sites can influence movement of livestock and wildlife.

Toxicity

Incidents of horses being poisoned by yellow starthistle have been documented. Often called chewing disease, the inability to eat or drink is often the first sign of yellow starthistle poisoning in horses. Horses must eat an amount about equal to their body weight before evidence of poisoning becomes apparent, and signs of poisoning may not appear for several weeks after eating yellow starthistle. The symptoms, which may include trembling and stiffness, result from permanent brain damage caused by yellow starthistle, and affected horses usually do not recover.

Management

Prevention

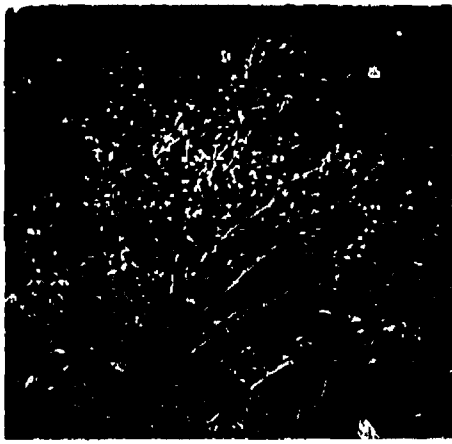
Stopping or reducing seed production within existing infestations, restricting movement of seed from infested to non-infested areas and maintaining healthy, competitive vegetation are all methods of value in preventing the expansion or establishment of yellow starthistle stands.

Wherever practical, small outlying infestations should

be prevented from seeding. On existing infestations not subject to intensive control measures, biological control agents are available which prevent or reduce seed production. Five such agents are available, three weevils species (*Bangasternus orientalis*, *Eustenopus villosus* and *Larinus curtus*) and two flies, (*Urophora sirinuseva* and *Chaetorellia australis*), in the Pacific Northwest.

Movement of yellow starthistle seed into uninfested areas may be limited by such action as cleaning vehicles and purging animals moving from infested to non-infested areas. Movement of any commodities, including hay, grain, or seed should also be carefully monitored. Seed can be tested for the presence of yellow starthistle seed. Road-sides throughout the Pacific Northwest are open to invasion by yellow starthistle, and they need continuous attention so that new infestations are detected and controlled.

Proper grazing management is essential in preventing yellow starthistle invasion by maintaining healthy and competitive vegetation. Utilization of annuals should usually be limited to about 50%, seasons of grazing can be altered, and livestock can be rotated so that perennial plants can recover before grazing.

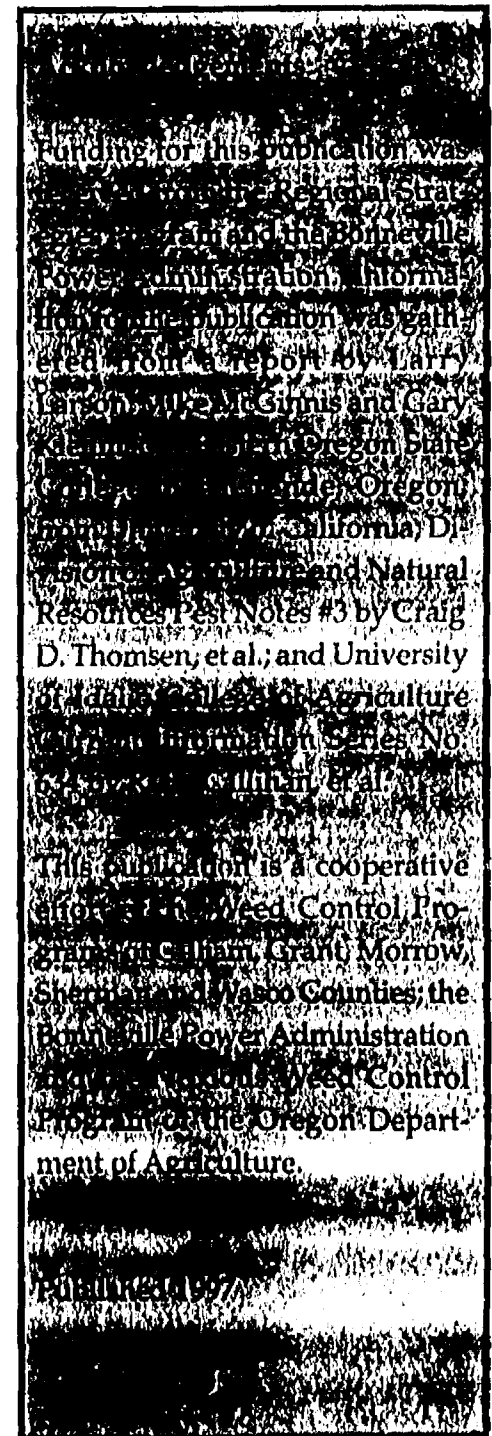


Effective management of existing infestations involves reducing and maintaining yellow starthistle densities to acceptable levels with cost-effective techniques. This ordinarily will involve the integration of herbicide treatments, grazing management, cultivation and seeding and regular monitoring of infested areas. Research supporting such control is underway at Eastern Oregon State College, the University of Idaho, Oregon State University, and the University of California at Davis. Some current literature reports are given in the reference section.

Preventing invasion and establishment of yellow starthistle is the most desirable course of action for land owners and managers. Successful management of yellow starthistle, once it is established, requires a long-term commitment, and total eradication is not often a realistic goal.

References:

- Borman, M.M., W. C. Krueger, and D. E. Johnson. 1991. Effects of established perennial grasses on yields of associated annual weeds. *Journal of Range Management* 44(4), 318-322.
- Larson, L. and M. McInnis. 1989a. Response of yellow starthistle and grass biomass to grass, picloram, and fertilizer combinations. *Weed Tech* 3:497-500.
- Larson, L. and M. McInnis. 1989b. Impact of grass seedings on establishment and density of diffuse knapweed and yellow starthistle. *Northwest Science* 62:162-166.
- Sheley, R. and L. Larson. 1994a. Observation: comparative life-histories of cheatgrass and yellow starthistle. *J. Range Manage.* 47:450-456.
- Sheley, R. and L. Larson. 1994b. Comparative growth and interference between cheatgrass and yellow starthistle seedlings. *J. Range Manage.* 47:470-474.
- Sheley, R., L. Larson, and D. Johnson. 1993. Germination and root dynamics of range weeds and forage species. *Weed Tech.* 7:234-237.
- Thomsen, C. D., W. A. Williams, M. R. George, W. B. Henry, F. L. Bell, and R. S. Knight. 1989. Managing yellow starthistle on rangeland. *California Agriculture*. 43(5),4-7.



Funding for this publication was provided by the Regional Strategic Plan and the Bonneville Power Administration. Information for this publication was gathered from a report by Larry Larson, M. McInnis and Gary Kleiman, et al. at Oregon State College, Corvallis, Oregon, from June 1993. California Department of Agriculture and Natural Resources Pest Notes #3 by Craig D. Thomsen, et al.; and University of Idaho, College of Agriculture Extension Information Series No. 62, by Robert Gilman, et al.

This publication is a cooperative effort of the Weed Control Program of Clallam, Grant, Morrow, Sherman and Wasco Counties; the Bonneville Power Administration; and the National Weed Control Program of the Oregon Department of Agriculture.

Published 1997

MOUNTRAIL COUNTY WEED CONTROL

JIM HENNESSY, WEED OFFICER

PO Box 40

STANLEY, ND 58784

(701) 628-2835

FAX: (701) 628-2735

Testimony of Jim Hennessy - Weed Officer
Mountrail County Weed Control Board
Senate Bill 2104

Jan 25, 2001

9:00 AM

Senate Committee Hearing

BOARD OF DIRECTORS

CHAIRMAN
BRIAN HOLLINGER,
STANLEY, ND

VICE-CHAIRMAN
KELLY HANSON,
STANLEY, ND

SECRETARY
NEIL BARTELSON,
PARSHALL, ND

DIRECTOR
JERRY URAN,
NEWBORN, ND

DIR
GARY HANSON,
PLAZA, ND

Mr Chairman and members of the committee, My name is Jim Hennessy. I am the Weed Officer for Mountrail County Weed Control. I am here to testify in support of SB 2104.

Mountrail County Weed Control is actively involved in the control of Noxious Weeds and New & Invasive weeds in Mountrail County. This past summer the introduction of Yellow Starthistle on a large scale has posed a threat to grasslands in the Mountrail County, with 650 acres infested. (See attached)

Mountrail County presently has 53,000 acres enrolled in CRP Contracts, while the State of North Dakota has 3.16 million acres enrolled (See Attached). With the continued signups for CRP acres in the state and the need for seed, poses the threat of further infestations if contaminated seed is used. The present tolerance allows for infestations, of a highly invasive weed, to increase state wide as a leader in the number of CRP acres.

Under the present budget for Noxious Weeds, the New and Invasive Weed survey allows for a 75% cost share on all newly invasive weeds which pose a threat to the state. Under these tolerances it puts the State's Noxious Weed budget into a no win situation which affects the tax payers of this state.

In the Western State of California, Washington, Oregon and Idaho the Yellow Starthistle Invasion has left the states working on containing these weeds and unable to completely control the eradication of the invasive weeds such as Yellow Starthistle. California alone has over 8 million acres of Yellow Starthistle. Furthermore due to demand of CRP grass seed demands, seed has been imported

from Argentina which also has extensive Yellow Starthistle acres infested.

The infestation of Yellow Starthistle, which is a Prohibited Noxious Weed, has hit the State of North Dakota first in Kidder County then Williams County in smaller tracts. This past summer the infestations of Yellow Starthistle in Mountrail, Ransom and La Moure counties has reinforced the need for tighter tolerances for the Prohibited Noxious Weeds (See Attached).

As a concern weed control officer I ask myself what will be done to rectify the problem in Mountrail County, or will there be any enforcement action taken now on this infestation or future cases? Will this be prevented in the future?

As weed control officer for Mountrail County, I recommend the support for this **senate bill 2104** to help stop the spread of Noxious Weed Invaders in North Dakota.

Thank you for your consideration !

Jim Hennessy

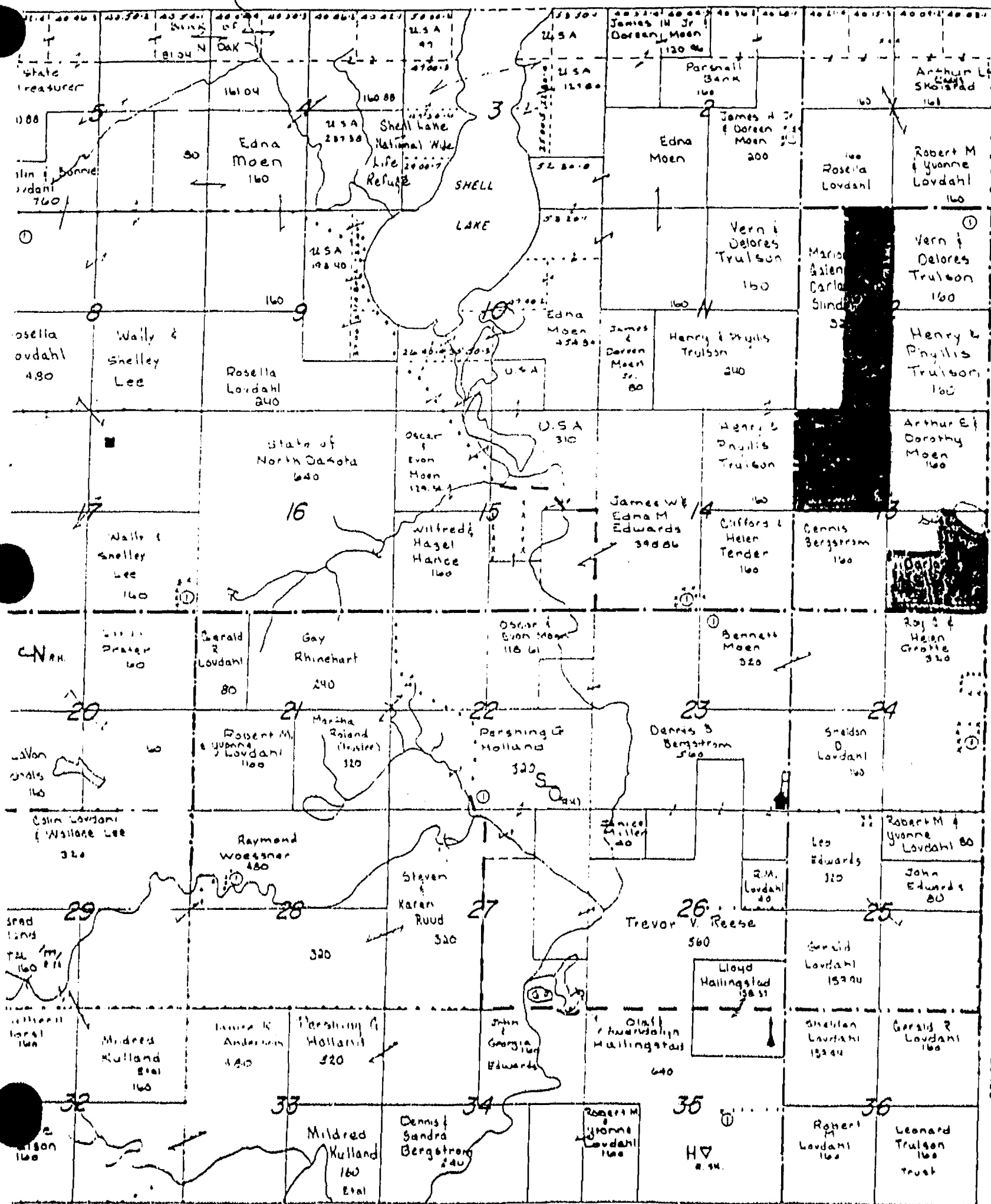
MAP OF: OAKLAND

OWNSHIP: 154 N.

RANGE: 89 W.

CODE: OK

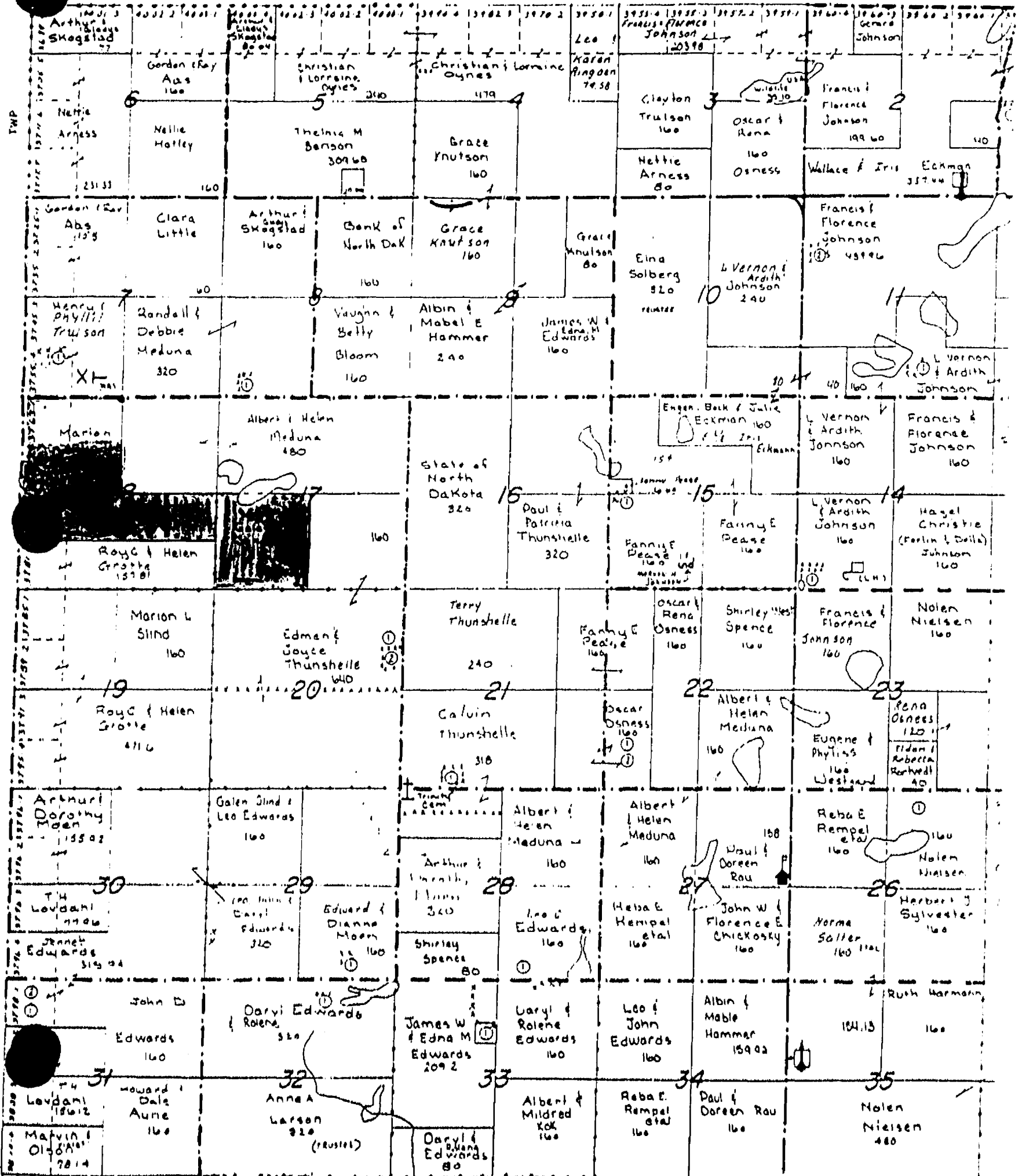
TWP



TWP

OSLOE

KICKAPOO



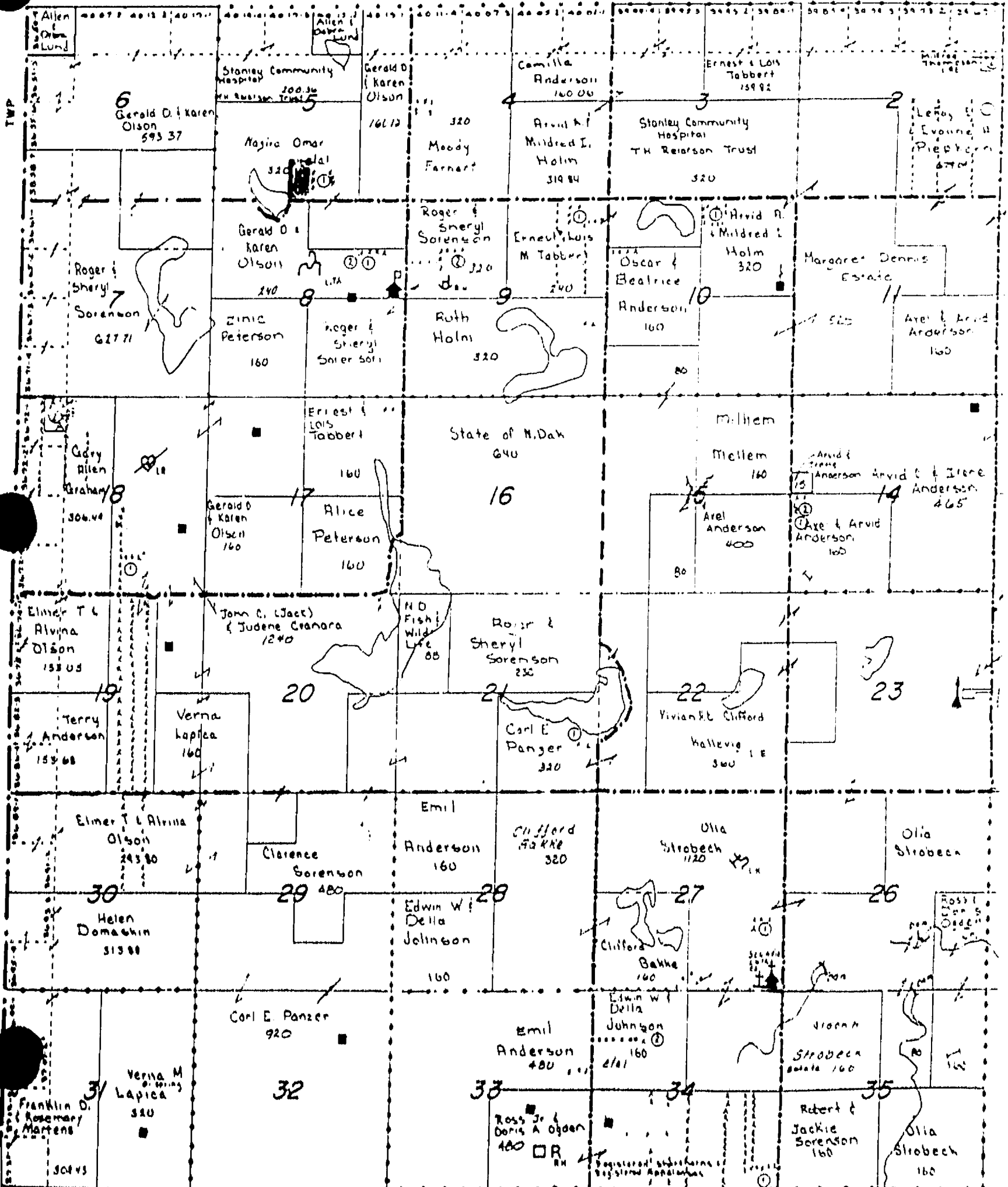
TOWNSHIP: 155 N.

MAP OF: ALGER

RANGE: 92 W

CODE: AL

ROSS



CRP Acreage, September 2000, and October 2000 Rental Payments 1/

STATE NAME	Acres Enrolled	Number of Contracts
ALABAMA	456,584	8,944
ALASKA	29,984	58
ARIZONA	33	1
ARKANSAS	144,632	2,349
CALIFORNIA	129,896	380
COLORADO	2,088,487	10,461
CONNECTICUT	283	20
DELAWARE	2,362	215
FLORIDA	86,664	1,847
GEORGIA	284,199	7,275
HAWAII	2	1
IDAHO	781,545	4,639
ILLINOIS	792,279	41,626
INDIANA	270,869	15,552
ICWA	1,598,828	57,677
KANSAS	2,520,238	32,063
KENTUCKY	268,573	8,045
LOUISIANA	181,685	2,230
MAINE	24,350	764
MARYLAND	34,449	2,502
MASSACHUSETTS	91	16
MICHIGAN	274,200	9,634
MINNESOTA	1,458,280	33,658
MISSISSIPPI	790,747	14,307
MISSOURI	1,425,914	25,077
MONTANA	3,227,590	16,132
NEBRASKA	1,048,049	15,845
NEVADA	151	1
NEW HAMPSHIRE	181	12
NEW JERSEY	2,057	104
NEW MEXICO	592,334	2,570
NEW YORK	53,797	1,787
NORTH CAROLINA	94,515	5,006
NORTH DAKOTA	3,163,759	29,416
OHIO	280,308	12,672
OKLAHOMA	996,906	8,126
OREGON	417,239	2,037
PENNSYLVANIA	66,113	2,078
PUERTO RICO	666	18
SOUTH CAROLINA	203,018	7,380
SOUTH DAKOTA	1,328,087	16,611
TENNESSEE	231,721	6,252
TEXAS	3,898,136	22,478
UTAH	189,531	961
VERMONT	326	24
VIRGINIA	44,147	1,893
WASHINGTON	1,082,863	7,543
WEST VIRGINIA	994	40
WISCONSIN	592,956	23,552
WYOMING	277,822	976
NATIONAL TOTAL:	31,438,441	462,855

1/ Approximate because of incomplete continuous signup data.

Summary of Total CRP Contracts in Mountrail County:

Total Number of CRP Contracts:	469
Total Acres Accepted:	53,113.3
Total Producers with Shares:	643

NORTH DAKOTA
Noxious-Weed Seeds
2000

Prohibited

Bindweed, field or Creeping Jenny	<i>Convolvulus arvensis</i>
Cress, hoary	<i>Cardaria draba</i> <i>Lepidium repens</i> (syn.) <i>Cardaria pubescens</i>
Hemp	<i>Cannabis sativa</i>
Knapweed, Russian	<i>Centaurea picris</i> (syn.)
Knapweed, spotted	<i>Centaurea maculosa</i>
Sowthistle, perennial	<i>Sonchus arvensis</i>
Spurge, leafy	<i>Euphorbia esula</i>
Starthistle, Yellow	<i>Centaurea solstitialis</i>
Thistle, Canada	<i>Cirsium arvense</i>
Thistle, musk	<i>Carduus nutans</i>
Wormwood, absinth	<i>Artemisia absinthium</i>

The sale of seed which contains any of the prohibited noxious-weed seeds is unlawful.

Restricted

Bindweed, hedge	<i>Convolvulus sepium</i>
Dodder	<i>Cuscuta</i> spp., except <i>coryli</i>
Oat, wild	<i>Avena fatua</i>
Quackgrass	<i>Agropyron repens</i>

NORTH DAKOTA - continued
Noxious-Weed Seeds
2000

The label for agricultural or vegetable seeds shall show the name and rate of occurrence per pound of each kind of restricted noxious-weed seeds present, if the restricted noxious-weed seeds are present:

- A. In seeds of grasses and small seeded legumes, in excess of thirteen seeds per pound, and
- B. In other agricultural seeds including the cereals, oil seed crops, millets, and seeds of similar size, in excess of five seeds per pound.

Percentage by weight of all weed seeds shall not exceed 1 percent.

The maximum number of restricted noxious-weed seeds allowed in a seed lot is 90 per pound.

MOUNTRAIL COUNTY WEED CONTROL

JIM HENNESSY, WEED OFFICER

PO Box 40

STANLEY, ND 58784

(701) 628-2835

FAX: (701) 628-2735

**Testimony of Brian Hollinger, Chairman -
Mountrail County Weed Control Board
Senate Bill 2104**

Jan 25, 2001

9:00 AM

Senate Committee Hearing

BOARD OF DIRECTORS

CHAIRMAN
BRIAN HOLLINGER,
STANLEY, ND

VICE-CHAIRMAN
KELLY HANSON,
STANLEY, ND

SECRETARY
NEIL BARTTELSON,
PARSHALL, ND

DIRECTOR
JERRY STANLEY,
NE STANLEY, ND

DIRECTOR
GARY JOHNSON,
PLAZA, ND

Mr Chairman and members of the committee, My name is Brian Hollinger. I am the Chairman of the board for Mountrail County Weed Control. I am here to testify in support of **SB 2104**.

During the growing season of the year 2000, Mountrail County Weed Control was involved in a Prohibited Noxious Weed infestation of Yellow Starthistle on new CRP Planting in Central Mountrail County. Upon followup of the infestation, approximately 650 acres were contaminated with Yellow Starthistle. Seed samples were sent to the state for analysis and found 3/lb(See Attached). Also after initial infestation the custom seeding outfit had transferred Yellow Starthistle to a second producer CRP contract.

Cost for controlling the infestation are extensive for the first year and total as follows: \$12,000 - Chemical Cost, \$1875 - Application Cost, and \$2950 - clipping costs, this does not include scouting or monitoring and any future costs.

Under the New & Invasive Weeds Reporting with the Dept of Agriculture; This bill would be subject to cost share at 75% by the Department. This would impose a substantial cost to the tax payers of this state.

Presently the budget proposed for the Noxious weeds is approximately \$1.4 million dollars and could be insufficient if further infestations were to occur across the state of North Dakota.

Mountrail County Weed Control supports SB2104 as ammended
Brian Hollinger, Chairman Mountrail County Weed Control

COMMISSIONER OF AGRICULTURE
ROGER JOHNSON



PHONE (701) 328-2231
(800) 242-7535
FAX (701) 328-4567

January 15, 2001

Ken Bertsch, Seed Commissioner
North Dakota State Seed Department
State University Station
P.O. Box 5257
Fargo, North Dakota 58105

Dear Ken:

I recently spoke with Jim Hennessy, Mountrail County weed officer, regarding his concern about a situation this past summer in his county with a CRP seed mix containing yellow starthistle. I share his concern and believe we need to have mechanisms to reduce the risk of introduction and establishment of yellow starthistle and other new invasive weeds.

A brief chronology of the Mountrail County situation is as follows:

Yellow starthistle was reported on August 21 to the North Dakota Department of Agriculture by Denise Markle of the North Central Research Center from a sample submitted by a Mountrail County farmer. Follow-up investigation by Ken Eraas, NDDA and Jim Hennessy, Mountrail County weed officer showed about 340 acres infested with yellow starthistle at a rate of about 100 plants per acre and another 400 acres infested at a rate of about 5 plants per acre. Subsequently, another field of approximately 160 acres was found infested at a rate of less than one yellow starthistle plant per acre, which presumably arose from contamination of the NRCS planter.

The grower had about 40 pounds of leftover seed, a sample of which was sent to the NDSSD on August 24 for yellow starthistle analysis. Telephone conversations between NDDA and NDSSD described the seed source and distribution channel. The seed was labeled by Grassland West out of Clarkston, Washington. It was purchased by UAP, Williston, distributed to Plaza-Makoti Equity Elevator in Plaza and finally sold to the Mountrail County farmer. Photocopies of seed tags accompany this letter. The NDSSD analysis report showed 3 yellow starthistle seeds per pound. The report was sent to the NDDA and the Mountrail County weed officer.

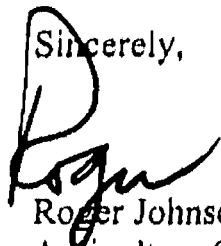
During the week of August 28 the landowner and Mountrail County weed officer arranged for application of 1 quart of Clarity per acre on all infested acres. Clarity was selected because of its safety to legumes in the CRP stand. Some areas were clipped during the second week of

September because yellow starthistle was nearing seed production stage. Control costs were approximately as follows: Chemical - \$12,000, Application - \$1875, Clipping - \$2950. This does not include the cost of scouting or costs for scouting and control in future years.

We believe yellow starthistle poses a serious threat to North Dakota and that a major pathway for introduction is associated with imported seed mixes used in CRP and similar plantings. I request that the State Seed Department investigate the seedlot involved in the Mountrail County situation to determine appropriate actions under Chapter 4-09 and to communicate your determination to me as well as to the Mountrail County weed officer. Additionally I have asked my staff to work with your staff as well as NRCS and others to develop means to mitigate the risks of noxious weeds associated with CRP seed.

If you have any questions, please contact Dave Nelson or Ken Eraas of my staff at 800 242-7535. Thank you.

Sincerely,



Roger Johnson
Agriculture Commissioner

RJ: dn

Enc: Seed tags

cc: Jim Swanson
Jim Hennessy
Paul Germolus

SEED LABORATORY REPORT

Seed Department 287 ex 701-239-7214 ND DEPT OF AG ATTN: KEN ERAAS 600 E BLVD AVE BISMARCK, ND 58505-0020	DATE RECEIVED 08-25-2000	DATE COMPLETED 08-25-2000	SAMPLE NO. 2000376
LOT...: NO LOT # PROVIDED			
KIND..... GRASS MIXTURE VARIETY..... VNS BIN REF..... COPY SENT TO: MOUNTRAIL COUNTY EXT OFFICE BILL SENT TO: ND DEPT OF AG * - INFORMATION IN THIS BOX PROVIDED BY SENDER			

WARNING - It is unlawful to use the name of the State Seed Department or the name of the official laboratory for advertising purposes in connection with this report, except in the case of Registered or Certified Seed. IF THIS SEED IS TO BE SOLD IT MUST BE LABELED TO COMPLY WITH EXISTING NORTH DAKOTA SEED LAWS AND REGULATIONS UNLESS SPECIFICALLY EXEMPT. FOR SEED LABELING INFORMATION CONTACT THE STATE SEED DEPARTMENT.

THE LETTER 'X' MEANS THE TEST IS NOT COMPLETED OR WILL NOT BE CONDUCTED. VARIETAL PURITY GUARANTEED BY LABELER. THE ANALYSIS REPORT SHOWN BELOW IS ACCURATE ONLY FOR THE SAMPLE RECEIVED AT THE LABORATORY. WHOEVER MAKES USE OF THIS INFORMATION FOR LABELING PURPOSES IS GUARANTEEING THAT THE SAMPLE IS REPRESENTATIVE OF THE LOT OF SEED FROM WHICH IT WAS DRAWN.

		GERMINATION	DORMANT	HARD SEED
PURE SEED COMPONENT(S)	Perc.			
TALL FESCUE	5.65%	X	X	X
INTERMEDIATE WHORASS	17.03%	X	X	X
SWEET CLOVER	18.18%	X	X	X
ALFALFA	48.12%	X	X	X
OTHER CROP SEED	0.73%			
INERT MATTER	10.02%	COMMENTS:		
TOTAL GRAMS ANALYZED: 14.990	WEED SEED	0.27%		

OTHER CROP SEED	#/LB	NOXIOUS WEEDS	#/LB
KENTUCKY BLUEGRASS (Poa pratensis)		UNLAWFUL TO SELL IN ND-CONTAINS PROHIBITED NOXIOUS W	
ALSIKE CLOVER (Trifolium hybridum)		YELLOW STARTHISTLE (Centaurea solstitialis)	3 PER LB
SMOOTH BROME (Bromus inermis subsp. inermis)			

INERT MATTER:

WEED SEED	#/LB	OTHER TESTS
Galium spp.		NOT REQUESTED
DOWNY BROME (Bromus tectorum)		
AMERICAN DRAGONHEAD (Dracocephalum parviflorum)		
REDCOOT PIGWEED (Amaranthus retroflexus)		
JAPANESE BROME (Bromus japonicus)		
ANNUAL SCWTHISTLE (Sonchus oleraceus)		
RUSSIAN PIGWEED (Axyris amaranthoides)		
FIELD GRCMWELLRUSH		
PURITY		

RULES FOLLOWED UNLESS NOTED HERE: _____ SIGNATURE:

Total Amount Billed: \$56.00

ALLEN

SLIND

TO: JAF--WILLISTON
 MIX NAME: 527.9 ACRE MIX
 LOT: 2-915

PUS LBS/ACRE	KIND	DIFF SEED IN MIX	SEEM	QUALITY	CP/50%
3.2 LB	ALXAR TALL WHEATGRASS	26.33%	91.00%	91.32%	10.
4.3 LB	CAPE INTERMEDIATE WHEATGRASS	26.33%	92.00%	92.29%	10.
1.0 LB	LADAK ALFALFA	12.35%	90.00%	90.31%	10.
0.4 LB	YELLOW BLOSSOM SWEET CLOVER	4.58%	95.00%	95.53%	09.

OTHER CROP SEED: 0.05% INERT MATTER: 3.98% WEEDS: 0.28%

BAG WEIGHT: 50 LBS NET DATE OF TEST: 02.01.00

NOXIOUS: NONE FOUND

SEEDING RATE: 3.39 BULK LBS. TO SUPPLY 7.50 PUS LBS TO THE ACRE.

GRASSLAND WEST COMPANY, CLARKSTON WA 99403

TO: JAF--WILLISTON
 MIX NAME: 527.9 ACRE MIX
 LOT: 0-915

PUS LBS/ACRE	KIND	DIFF SEED IN MIX	SEEM	QUALITY	CP/50%
3.2 LB	ALXAR TALL WHEATGRASS	26.33%	91.00%	91.32%	10.
4.3 LB	CAPE INTERMEDIATE WHEATGRASS	26.33%	92.00%	92.29%	10.
1.0 LB	LADAK ALFALFA	12.35%	90.00%	90.31%	10.
0.4 LB	YELLOW BLOSSOM SWEET CLOVER	4.58%	95.00%	95.53%	09.

OTHER CROP SEED: 0.05% INERT MATTER: 3.98% WEEDS: 0.28%

BAG WEIGHT: 50 LBS NET DATE OF TEST: 02.01.00

NOXIOUS: NONE FOUND

SEEDING RATE: 3.39 BULK LBS. TO SUPPLY 7.50 PUS LBS TO THE ACRE.

GRASSLAND WEST COMPANY, CLARKSTON WA 99403

(509) 7589100

TO: JAF--WILLISTON
 MIX NAME: 527.9 ACRE MIX
 LOT: 0-915

PUS LBS/ACRE	KIND	DIFF SEED IN MIX	SEEM	QUALITY	CP/50%
3.2 LB	ALXAR TALL WHEATGRASS	26.33%	91.00%	91.32%	10.
4.3 LB	CAPE INTERMEDIATE WHEATGRASS	26.33%	92.00%	92.29%	10.
1.0 LB	LADAK ALFALFA	12.35%	90.00%	90.31%	10.
0.4 LB	YELLOW BLOSSOM SWEET CLOVER	4.58%	95.00%	95.53%	09.

OTHER CROP SEED: 0.05% INERT MATTER: 3.98% WEEDS: 0.28%

BAG WEIGHT: 50 LBS NET DATE OF TEST: 02.01.00

NOXIOUS: NONE FOUND

SEEDING RATE: 3.39 BULK LBS. TO SUPPLY 7.50 PUS LBS TO THE ACRE.

GRASSLAND WEST COMPANY, CLARKSTON WA 99403

TO: JAF--WILLISTON
 MIX NAME: 527.9 ACRE MIX
 LOT: 2-915

PUS LBS/ACRE	KIND	DIFF SEED IN MIX	SEEM	QUALITY	CP/50%
3.2 LB	ALXAR TALL WHEATGRASS	26.33%	91.00%	91.32%	10.
4.3 LB	CAPE INTERMEDIATE WHEATGRASS	26.33%	92.00%	92.29%	10.
1.0 LB	LADAK ALFALFA	12.35%	90.00%	90.31%	10.
0.4 LB	YELLOW BLOSSOM SWEET CLOVER	4.58%	95.00%	95.53%	09.

OTHER CROP SEED: 0.05% INERT MATTER: 3.98% WEEDS: 0.28%

ALLEN

SLIND

TO: JAP--WILLISTON
 MIX NAME: 827.3 ACRE MIX
 LOT: 8-915

PLS LBS/ACRE	KIND	PURE SEED IN MIX	SEEM	PURITY	ORIGIN
1) 2.2 LB	ALKAR TALL WHEATGRASS	26.89%	91.00%	91.32%	ID.
2) 4.3 LB	DAHE INTERMEDIATE WHEATGRASS	52.82%	92.00%	97.29%	WA.
3) 1.0 LB	LADAK ALFALFA	12.25%	90.00%	99.81%	ID.
4) 0.4 LB	YELLOW BLOSSOM SWEET CLOVER	4.68%	95.00%	99.53%	CAN.

OTHER CROP SEED: 0.05% INERT MATTER: 3.98% WEEDS: 0.02%
 BAG WEIGHT: 50 LBS NET DATE OF TEST: 02/01/00
 NOXIOUS: NONE FOUND
 SEEDING RATE: 3.99 BULK LBS. TO SUPPLY 7.90 PLS LBS TO THE ACRE.
 GRASSLAND WEST COMPANY, CLARKSTON WA 99403

TO: JAP--WILLISTON
 MIX NAME: 827.3 ACRE MIX
 LOT: 8-915

PLS LBS/ACRE	KIND	PURE SEED IN MIX	SEEM	PURITY	ORIGIN
1) 2.2 LB	ALKAR TALL WHEATGRASS	26.89%	91.00%	91.32%	ID.
2) 4.3 LB	DAHE INTERMEDIATE WHEATGRASS	52.82%	92.00%	97.29%	WA.
3) 1.0 LB	LADAK ALFALFA	12.25%	90.00%	99.81%	ID.
4) 0.4 LB	YELLOW BLOSSOM SWEET CLOVER	4.68%	95.00%	99.53%	CAN.

OTHER CROP SEED: 0.05% INERT MATTER: 3.98% WEEDS: 0.02%
 BAG WEIGHT: 50 LBS NET DATE OF TEST: 02/01/00
 NOXIOUS: NONE FOUND
 SEEDING RATE: 9.99 BULK LBS. TO SUPPLY 7.90 PLS LBS TO THE ACRE.
 GRASSLAND WEST COMPANY, CLARKSTON WA 99403

TO: JAP--WILLISTON
 MIX NAME: 827.3 ACRE MIX
 LOT: 8-915

PLS LBS/ACRE	KIND	PURE SEED IN MIX	SEEM	PURITY	ORIGIN
1) 2.2 LB	ALKAR TALL WHEATGRASS	26.89%	91.00%	91.32%	ID.
2) 4.3 LB	DAHE INTERMEDIATE WHEATGRASS	52.82%	92.00%	97.29%	WA.
3) 1.0 LB	LADAK ALFALFA	12.25%	90.00%	99.81%	ID.
4) 0.4 LB	YELLOW BLOSSOM SWEET CLOVER	4.68%	95.00%	99.53%	CAN.

OTHER CROP SEED: 0.05% INERT MATTER: 3.98% WEEDS: 0.02%
 BAG WEIGHT: 50 LBS NET DATE OF TEST: 02/01/00
 NOXIOUS: NONE FOUND
 SEEDING RATE: 9.99 BULK LBS. TO SUPPLY 7.90 PLS LBS TO THE ACRE.
 GRASSLAND WEST COMPANY, CLARKSTON WA 99403

TO: JAP--WILLISTON
 MIX NAME: 827.3 ACRE MIX
 LOT: 8-915

PLS LBS/ACRE	KIND	PURE SEED IN MIX	SEEM	PURITY	ORIGIN
1) 2.2 LB	ALKAR TALL WHEATGRASS	26.89%	91.00%	91.32%	ID.
2) 4.3 LB	DAHE INTERMEDIATE WHEATGRASS	52.82%	92.00%	97.29%	WA.
3) 1.0 LB	LADAK ALFALFA	12.25%	90.00%	99.81%	ID.
4) 0.4 LB	YELLOW BLOSSOM SWEET CLOVER	4.68%	95.00%	99.53%	CAN.

OTHER CROP SEED: 0.05% INERT MATTER: 3.98% WEEDS: 0.02%
 BAG WEIGHT: 50 LBS NET DATE OF TEST: 02/01/00
 NOXIOUS: NONE FOUND

TO: UAP-WILLISTON
MIX NAME: 627.9 ACRE MIX

LOT: 0-915

PLS LBS/ACRE	KIND	PURE SEED IN MIX	GERM	PURITY	ORIGIN
1) 2.2 LB	ALKAR TALL WHEATGRASS	26.87%	91.00%	91.32%	ID.
2) 4.3 LB	DAHE INTERMEDIATE WHEATGRASS	52.82%	92.80%	97.59%	WA.
3) 1.0 LB	LADAK ALFALFA	12.36%	98.00%	99.31%	ID.
4) 0.4 LB	YELLOW BLOSSOM SWEET CLOVER	4.68%	95.00%	99.53%	CAN.

OTHER CROP SEED: 0.25% INERT MATTER: 3.98% WEEDS: 0.82%

BAG WEIGHT: 50 LBS NET

DATE OF TEST: 06/01/79

NOXIOUS: NONE FOUND

SEEDING 8.99 BULK LBS TO SUPPLY 7.90 PLS LBS

PER ACRE

AMS 630

COMMISSIONER OF AGRICULTURE
ROGER JOHNSON



PHONE (701) 328-2231
(800) 242-7535
FAX (701) 328-4567

DEPARTMENT OF AGRICULTURE
State of North Dakota
600 E. Boulevard Ave. Dept. 602
Bismarek, ND 58505-0020

**Testimony of John Leppert
Agriculture Department
Senate Bill 2104
House Agriculture Committee
Peace Garden Room
March 8, 2001
10:00 AM**

Mr. Chairman and members of the committee, my name is John Leppert. I am a noxious weeds specialist in the Plant Industries division of the North Dakota Department of Agriculture. I support the provision of SB 2104 that would allow the State Seed Commissioner to establish, by rule, tolerances used in determining correctness and accuracy in labeling seed that meets or exceeds Federal Seed Act tolerances for noxious weeds.

The provisions of SB2104 dealing with tolerances used in determining correctness and accuracy in labeling seed were incorporated by amendment into SB2204. I believe movement of this provision to SB2204 is logical, since that bill deals with issues related to weed seed tolerances. I urge that the weed issues be addressed through SB2204. The Agriculture Department will comment on these issues during that hearing.



**NORTH DAKOTA
STATE SEED
DEPARTMENT**

STATE UNIVERSITY STATION
P.O. BOX 5257
FARGO, ND 58105-5257
701-239-7210 FAX: 701-239-7214

SB 2104

Testimony: **SB 2104**
House Agriculture Committee

Ken Bertsch
ND State Seed Commissioner

March 8, 2001

Mr. Chairman and members of the Committee, thank you for the opportunity to present testimony on SB 2104 on behalf of the State Seed Commission. I will walk through the changes to Chapter 4-09 of Century Code (which governs the State Seed Department), proposed in this bill and requested by the Commission.

Most of the changes offered in SB 2104 are intended to bring the Department into compliance with federal law or create consistency in language governing department operations. I will point out and explain each of these and other proposed changes to Chapter 4-09.

Section 1:

(page 1, line 22)

Names the Associate Dean and Director of the Experiment Station as a voting member of the Commission. There are two reasons for the change:

- *Language is outdated.* Dean of the College of Agriculture is now the Vice President for Agriculture. The Seed Commission believes that the Director of Experiment Station is the most logical representative to the Commission from NDSU, and should be accorded a vote in action of the Seed Commission.
- *Creates an odd-numbered voting group* for Commission business.

(page 2, line 3)

Eliminates the legal requirement that the commission meetings be held during November and June. While the group meets 3-4 times during the year, defining which months are mandatory creates some potential legal problems if schedules prohibit meeting on a particular month. (example: June 2000 flood in Fargo)

Section 2:

(page 2, line 27)

This change brings NDCC in to compliance with federal law, by bringing ND code "up to date" with amendments to Federal Seed Act. The current language only refers to the Act as of the date implemented (August 9, 1939).

This is housekeeping that should occur as changes to federal law take place, including amendments to federal seed law which impact our Department. The Attorney General office believes this change is necessary, since only tax code can be prospectively implemented.

Section 3:

(page 3, line 1)

This section outlines a continuation of consistency sought in SB 2103. This change merely applies the same language in current law to the fee-setting authority of the Seed Commission in 4-09-08, which reads:

"The commissioner, with the approval of the seed commission, shall establish and charge fees for laboratory tests and services."

Section 4 removes seed tax fees from code, which would inevitably be replaced by a fee schedule similar to those used in other areas of operation.

As noted in testimony on SB 2103, Chapter 28-32-01 (paragraph 11.c) exempts state agencies from rulemaking requirements in regard to "establishing specific prices to be charged for particular goods or services sold by an agency".

Section 4:

(page 3, line 22; page 4, line 2)

The addition of the term "annual", and the removal of the last sentence in the section, creates consistency in code language and Department policy.

The requirement for filing reports on a quarterly basis was removed from NDCC in the 1991 or 1993 session. The Department has operated on a policy of annual statements since that time, and believe that updating the language to more accurately reflect operations is appropriate in the process of making other housekeeping changes to the language in 4-09.

Section 5:

(page 4, line 21 & 28)

The removal of the term "inspected" is intended to avoid potential problems related to an expanded list of services provided by the department.

As quality assurance and identity preservation inspections unrelated to certification programs are developed, usage of the word "inspected" would be prohibited in promoting seed, or products which have complied with the service standards of these programs.

These changes simply remove the prohibition of using the word "inspected" for any other purpose than certification, while still allowing the commissioner the flexibility to apply labels, including the term "inspected" to products validated by department programs.

SB 2235, which will be heard in this committee tomorrow, is an example of specialized programming falling outside of the certification realm, and potential candidate for use of the term "inspected".

(page 5, line 1)

The change should be self-explanatory given previous discussion on SB 2103 and SB 2104, in regard to fee setting authority of the Commission.

Section 6:

(page 5, line 13)

This change is a continuation of changes in language related to the term "inspected" in Section 5 of the bill.

Section 7:

(page 5, line 22)

This is the same update to federal law as in Section 2, and as applied to the Plant Variety Protection Act.

Section 8:

(page 5, line 29; page 6, line 3)

These changes are simply a continuation to changes in reference to fee schedules as outlined in Section 3, and in SB 2103.

The changes outlined in SB 2104 will bring much of the language governing the Department into a more consistent and compliant form. The remaining changes are intended to also provide consistency and common-sense improvements in the Seed Commission's responsibility as outlined in Century Code.

I ask for the Committee's support for SB 2104, and will answer any questions you have on the bill.



**NORTH DAKOTA
STATE SEED
DEPARTMENT**

STATE UNIVERSITY STATION
P.O. BOX 8257
FARGO, ND 58105-8257
701-239-7210 FAX: 701-239-7214

To: Members of House Agriculture Committee
Fr: Ken Bertsch, State Seed Commissioner
Re: SB 2104

Given the discussion (controversy) on the House floor in the past week regarding removal of Administrative Rulemaking requirements for agencies, I would like to offer some facts concerning the intent behind portions of SB 2104. My primary concern is that SB 2104 may fall in the House over misconceptions related to fee setting authority for the Seed Commission -vs- accountability of agencies to the legislature through the Administrative Rules Committee.

I have attached a paper outlining the main intent of SB 2104 (in combination w/ SB 2103) relating to fee setting language. The combination of this paper and my written testimony before the committee on March 8 provides the rationale of the Seed Commission on the issue of fee setting authority.

The Seed Commission is not looking to circumvent the administrative rulemaking process by removing fee language from Century Code. Neither are we attempting to limit or prohibit public input into the issue of fees charged for services rendered. The fact is, state law already gives the authority to all agencies providing goods and services to set the fees for the products they provide to the public. Point #2 of the attached paper outlines this issue.

As a self-funded agency, governed by a board of directors who are payors of the fees in question, the exemption to rulemaking in regard to fees is tailor-made for State Seed. At the same time, the agency is **not** requesting or anticipating any additional exemptions from the process, and will need to bring any repeal language for fees currently in rule before the Administrative Rules committee for final approval. All of the remaining operating standards will remain in rule, and proposed changes will be submitted to the full range of administrative rulemaking requirements.

The changes in SB 2103 and SB 2104 are what I envision as the first step in a 2-3 year process of providing consistency to century code and administrative code governing the Seed Department. Page two of the attached paper outlines some of the inconsistencies we face, and discussed in testimony with your committee, regarding the "hodge-podge" of fee related language.

I would remind the committee that part of our intent is for the fee setting authority to work both ways. We recently cut in half our fees for GMO testing, when the lab supplies for the tests were drastically reduced in price. The only reason this could happen is because GMO testing is not listed in the administrative rule schedules.

Thank you for your consideration, and please contact me with concerns or questions.



NORTH DAKOTA STATE SEED DEPARTMENT

STATE UNIVERSITY STATION
P.O. BOX 5257
FARGO, ND 58105-5257
701-239-7210 FAX: 701-239-7214

Information: Removal of Fee Setting Requirements by Rule SB 2103 and SB 2104

SB 2103 and SB 2104 contains sections related to removal of fees, and the requirement for setting fees in administrative rule by the North Dakota State Seed Department.

The main objective to the fee sections in both bills is to bring consistency to a fee setting system that is currently either codified, written in rule, or completely under the authority of the State Seed Commission (depending on the type of fee for service).

There are a number of logical, and legal, reasons to set a consistent standard for the agency:

1. The NDSSD is one of the state agencies governed by a board of directors, who are citizen members and pay the fees in question. However, the NDSSD may be the only agency with this governance format, which is also completely **self-funded**. The flexibility of fee setting by board action is critical in the competitive business environment the agency operates within.
2. State agencies providing goods and services are exempted from the rulemaking process in Chapter 28-32-01.11.c, which reads (regarding the definition of rules, "not including"):

"A rule establishing specific prices to be charged for particular goods or services sold by an agency."

The fact that any fees are listed in administrative rule is contrary to the basic intent of this law, and is a major reason for fixing this inconsistency.

3. Multiple references exist in code regarding fee setting authority for the Commission, most of them inconsistent;
 - a. 4-09-08 reads (in part), "The commissioner, with the approval of the seed commission, shall establish and charge fees for laboratory tests and services."

Yet, until January of 2001 when removed through the rulemaking process, lab fees were listed. We believe that this section sets a standard of intent in law for the Commission to carry out duties regarding **fiscal management** for the agency.

- b. 4-10-02 reads (in part, in regard to potato field inspection, grade inspection etc.), "Fees for the cost of performance of these duties must be established by the seed commission with the approval of the directors of the North Dakota seed potato growers association."

To create consistency, this section should have also been removed during the 2001 Session. However, oversight by another public entity representing fee payors is seen as an extension of Seed Commission responsibility in this area.

- c. There are numerous references in code that the fees charged for services rendered by the Department "must as nearly as possible approximate the cost of service."

Fees remaining in Century Code or Administrative Rule

SB 2103 removes the administrative rulemaking requirement for grade inspections, and relates only to potato, mustard, buckwheat and rapeseed grading, and the fees for providing those grade inspection services. They are **all** still listed in administrative rules, and will have to be removed through the rulemaking process.

A minor portion of SB 2104, which makes a number of important housekeeping adjustments to code governing the Department, relates to **seed labeling fees**. The labeling (or seed tax) fees are the only ones codified. Seed Tax fees are the only revenue source for Regulatory Program work in the Department, and are subject to adjustment only by legislative action.

Chapter 74-03-01-10 contains **field inspection** and **final certification** fee schedules for the NDSSD Field Seed Program.

Chapter 74-04-01-04.6 contains **field inspection, grade inspection** and **field virus testing** fee schedules for the NDSSD Potato Program.

Chapter 74-06-01 through 03 contain fees schedules associated with **grading** of mustard, buckwheat and rapeseed.

Regardless of passage of SB 2103 and SB 2104, the Seed Department would be required to utilize the administrative rulemaking process to repeal the fee schedules currently in place.