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ROLL NUMBER

DESCRIPTION

2326

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10/22/03
Date

2003 SENATE AGRICULTURE

SB 2326

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10/22/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2326

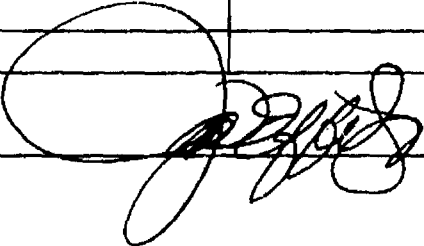
Senate Agriculture Committee

Conference Committee

Hearing Date 02/14/03

Tape Number	Side A	Side B	Meter #
1	x		77 - 2435

Committee Clerk Signature



Minutes:

Chairman Flakoll opened the hearing on SB 2326. Five members were present. Senator Erbele was absent.

Senator Tallackson introduced the bill. The bill will bring us up to date on the regulations and rules, especially regarding brokers, to reflect changes in the potato industry.

Ken Bertsch, state seed commissioner, testified in favor of the bill. (written testimony) Paul Germolus, assistant attorney general, will be coming a little later to answer legal questions if the committee has any.

Senator Nichols asked if an administrative hearing would ever be used? (meter # 1166)

Mr. Bertsch said they could. The bill would give them the flexibility to do so if desired.

Experience in the past couple of years has shown, putting the action on the fast track is best. Its best to get into court and get it settled.

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Senate Agriculture Committee
Bill/Resolution Number SB 2326
Hearing Date 02/14/03

Senator Flakoll asked regarding the section stating the attorney general's office will provide representation, does that provide for attorney's fees?

Mr. Bertsch said yes.

Paul Germolus, assistant attorney general and general counsel for the state seed department responded to Senator Nichols' question on administrative hearings. To invoke this law there has to be an insolvency, an unwillingness or unablness to pay. In the case of an unablness to pay, a bankruptcy for example, there is no need to go further with more hearings. The commissioner would go into district court, marshal the assets of the bond and distribute to the producers. If the insolvency is the unwillingness to pay, the commissioner may have to hold an investigatory hearing. From that hearing he would not be issuing an final administrative hearing that would be appealable in district court which would slow down payment to the producers for another year.

Senator Nichols asked if the seed commissioner would consult with counsel to find out how to proceed?

Mr. Germolus said there is no requirement and if the procedures are clear, there is no need, at least until they get into court.

Senator Klein said the last rewrite of this section was 1975. What is the history of the law? Were you involved in this rewrite?

Mr. Germolus said this bill was drafted by Anita Thomas of the legislative council. He did spend some time with Mr. Bertsch reviewing the bill before it was introduced. He does not recall the history of the law but the language was outdated and it was hard to work with it. It wasn't working in its present form to meet the needs of producers. There are other bonding laws,

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Senate Agriculture Committee
Bill/Resolution Number SB 2326
Hearing Date 02/14/03

particularly the dairy bonding laws and the public service commission grain warehouse bonding laws, that work very well and Ms. Thomas worked with those laws in drafting this bill.

Senator Flakoll asked regarding an administrative hearing vs. District court, will the party pay their own attorney fees?

Mr. Germolus said the potato dealer would pay their own attorney fees and so would the bonding company.

Senator Urlacher asked how the amount of the bonding requirements are set up?

Mr. Germolus said the amount of the bond is determined by the amount of business conducted by the potato dealer. There is a formula in the law for the dairy bond. In this case, the seed commissioner is asking for additional information on the application to determine the necessary bond amount. At present, there are none below \$50,000. There is flexibility to set the bond as needed.

Senator Seymour asked who are the largest potato dealers in the state?

Mr. Germolus said Cavendish Farms, Simplot, RDO and Master Potatoes in Hatton.

Chairman Flakoll closed the hearing on SB 2326.

It was moved by Senator Klein and seconded by Senator Nichols that the Senate Agriculture Committee take a Do Pass action on SB 2326.

Senator Urlacher said he hoped the bonds were set at an adequate level and he trusted they would be.

Senator Klein said the potato industry in North Dakota has changed dramatically since 1975. In Kidder county there are pivots and potato warehouses popping up. With these huge warehouses, there is a concern that producers are protected.

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Senate Agriculture Committee
Bill/Resolution Number SB 2326
Hearing Date 02/14/03

Senator Urlacher said with the high cost of inputs, a producer getting stuck without payment is a drastic problem that needs to be addressed.

The Do Pass motion passed on a roll call vote. Voting yes were Senator Flakoll, Senator Klein, Senator Urlacher, Senator Nichols, and Senator Seymour. Senator Erbele was absent and not voting. There were no negative votes cast. Senator Klein will carry the bill to the floor.

Chairman Flakoll moved on to other business of the Senate Agriculture Committee.

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10/22/03
Date

FISCAL NOTE
 Requested by Legislative Council
 01/27/2003

Bill/Resolution No.: SB 2326

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 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.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 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.

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:	ND State Seed
Phone Number:	701-231-5415	Date Prepared:	01/27/2003

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Date: 2/14/03
 Roll Call Vote #: _____

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2326

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Klein Seconded By Nichols

Senators	Yes	No	Senators	Yes	No
Senator Tim Flakoll, Chair	✓		Senator Ronald Nichols	✓	
Senator Robert S. Erbele, V. Chair	A		Senator Tom Seymour	✓	
Senator Jerry Klein	✓				
Senator Herb Urlacher	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Klein

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

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REPORT OF STANDING COMMITTEE (410)
February 14, 2003 10:32 a.m.

Module No: SR-29-2707
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2326: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2326 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-29-2707

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2003 HOUSE AGRICULTURE

SB 2326

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10/22/03

Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2326

House Agriculture Committee

Conference Committee

Hearing Date 3--13--03

Tape Number	Side A	Side B	Meter #
ONE	A		40.5 TO END
ONE		B	00.0 TO 03.5
Committee Clerk Signature <i>Edward J. Elson</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee members, we will open the hearing on SB 2326.

SENATOR TALLACKSON: I am very happy to introduce this bill for the State Seed Department. 2326 is sort of a clean up bill for the language. The bill passed the senate. The Commissioner will explain he details of the bill and all the changes that have been Made. I am happy to introduce the bill to you Mr. Chairman.

CHAIRMAN NICHOLAS: Very good. It is nice to have you in the Agriculture committee.

KEN BERTSCH: Good morning Mr. Chairman and members of the House Agriculture Committee. For the record, my name is Ken Bertsch and I serve as ND State Seed Commissioner. I would like to thank Senator Tallackson for doing the department a favor In trying help. I will ketch you up first. I might by way of explanation give you a little bit of explanation. Give you a little bit of information here. What you have here today basically is a rewrite of the entire chapter that governs insale potato dealers licensing process. An obligation

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Page 2
House Agriculture Committee
Bill/Resolution Number SB 2326
Hearing Date 3--13--03

to the state seed department. The chapter was originally written back in the forties I believe. Last up date occurred in the mid seventies. What appears to be happening here Mr. Chairman is that we have a dreadfully out dated chapter trying to govern what is an industry that has changed over the years. With SIMPLOT and business like that in the state and doing a large volume of business. We appear to have some problems here. A little bit of a explanation Section by section of the bill. I would like to point out that the real reason that this came about is the past couple of years we have had a situation where the potato producer was not paid for his potatoes. Under current law that producer has to file a claim with the State Seed Department. We have to investigate complaints. The only thing that we can do under state law is hold an administrative hearing at that point which we did in this case the administrative law judge found in favor of the potato producer. The State Seed Commissioner Then has to basically tell the bonding company to pay the bill that you owe. If the bonding company refuses to do that we are out of luck. What happened in that case, the potato producer appealed that decision to a District Court and the District Court also found in favor of the Seed Department and State Seed Commissioner, the bonding company has still not paid off. A year and a half to two years later this individual is owed 40 to 50 thousand dollars. He has legal bill building up and I just talked to him yesterday in fact and he now has a civil case in court against the processor and the bonding company. We have not been able to do anything about it. That is basically why we have this bill in front of you. If I might Mr. Chairman let me point out just a couple of things. I think that the printed testimony outlines pretty well what we are trying to accomplish with this bill. I just want to point out on the second page of the printed testimony the one area that is really critical. That is on pages seven through nine of the bill.

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Page 3
House Agriculture Committee
Bill/Resolution Number SB 2326
Hearing Date 3--13--03

Sections 14. The bulk of this language takes care of the problem that I just outlined.

Streamlines the complain process, allows the producer to file a complaint to our agency and we can just immediately shoot that complaint to the court and the validity behind the complaint.

That is the bulk of what the bill does. With that Mr. Chairman, I think the best I can do is just answer questions. (PLEASE READ PRINTED TESTIMONY THAT KEN BERTSCH REFERRED TO WHICH IS ATTACHED)

This bill is house keeping of the best kind I believe.

CHAIRMAN NICHOLAS: Any question committee members?

REPRESENTATIVE KREIDT: You purchase a bond to be protected. What grounds is the bonding company using for not paying the producer?

KEN BERTSCH: The Assistant Attorney General is not here today. I was hoping that he would be here so he could answer some questions. Legal Questions. The best way that I can answer your question is I don't know. It has always occurred to me that is part of the reason we went to work on this bill. The purpose of the bond, and I know in the dairy and the some of the PSC warehouses. Statues that you are probably more familiar with. Those bonds are put in place and as far as I know there is seldom a problem with the pay off. The bonding company in this particular case objected on a number of grounds to pay what the administrative judge said was the correct assessment on our part as to the moneys that were owed. They were the ones that basically pushed that case to district court to get a reaffirmation from the court that they did in fact owe that money. But in each separate process the bonding company has been able to get

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Page 4
House Agriculture Committee
Bill/Resolution Number SB 2326
Hearing Date 3--13--03

Away with out having to pay off the obligation. As I understand dealing with the Attorney
Generals Office but also the legislative council who wrote the bill that the technicalities within
the bill now is we can now force that payment to occur. Tightens the process down.

CHAIRMAN NICHOLAS: Representative Kingsbury.

REP. KINGSBURY: Mr. Chairman. Ken. You mentioned companies like SIMPLOT AND
AVACO coming in and changing the face of potato agriculture. Actually this is kind of a bad
seed in the whole program. I visited extensively with a broker after I saw this bill and he had no
problem with the bill. He read every word of it.. He said you have to know who you are dealing
with. By and large a bad apple dose not get to far.

KEN BERTSCH: If I could comment. When I mentioned SIMPLOT AND AVACO it was
simply to point out that the industry has changed during the past ten to twelve years.
Part of this bill is it will allow us to better regulate that licensing process, There are certain
weakness through out the law that we are starting to take care of with this bill. I did not mean
to state we are having a problem with SIMPLOT AND AVACO. There contracts are probable
some of the most reliable places to do business.

REPRESENTATIVE ONSTAD: Is the PSC involved with this? Is there any similarities with
this to the Wimbeldon Grain Company. Is it the bonding company or the company itself?

KEN BERTSCH: Both companies are withholding at this point. The buyer, the processor
Refuses to pay and the bonding company refuses to live up to its obligations to pay. A little
change on the front of the bill is the terminology for the word insolvency. We have dealt with
that in this committee. They objected on grounds that the use of the term insolvency didn't
include the definition of failure to pay. All this company did was refuse to pay. They

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Page 5
House Agriculture Committee
Bill/Resolution Number SB 2326
Hearing Date 3--13--03

processed it and they did not pay the guy. They started making legal objections base on the fact that there is no definition of what and is. We are going to tighten that down a little bit.

The second part to your question is we are trying to build some similarities as to what the PSC Bonding statues look like. So we are better able to do our job. I talked to Jon Milken

And asked him to take over this licensing process because they are more capable of it.

They have the resources to do it. We don't. There is a section in the bill that says we can recover our legal costs. Currently we can't. My agencies is out about ten thousand bucks by now. There are large legal fees for the producer as well as us.

CHAIRMAN NICHOLAS: Rep. Mueller

REP. MUELLER : In that section that you referenced, there the heavy lifting is being done in this particular bill. Dose the Commissioner currently have, commissioner being self I am assuming, have the where with all to call for financial information that may or may not result in requiring for addition bond. Is that something you do currently or can do.

KEN BERTSCH: The way the current law is written it dose allow us to investigate any financial information, in fact the application process which addresses this carries this information with it.

We are trying to tighten that up also to get better information so we can do a better job.

CHAIRMAN NICHOLAS: Anyone wanting to offer support for 2326. Any opposition to SB 2326?

CHAIRMAN NICHOLAS : WE WILL CLOSE THE HEARING ON SB 2326.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2326

House Agriculture Committee

Conference Committee

Hearing Date 3--21--03

Tape Number	Side A	Side B	Meter #
ONE	A		11.2 TO 13
Committee Clerk Signature <i>Edward J. Ellyson</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee members, we will revisit SB 2326. What are your wishes on SB 2326.

There was a short discussion on SB 2326 and Chairman asked for a motion on the bill.

REPRESENTATIVE NICHOLAS ASKED FOR A MOTION ON THE BILL.

REP. KINGSBURY : MADE A MOTION FOR A DO PASS.

REP. POLLERT SECONDED THE MOTION.

THE ROLL WAS TAKEN. THERE WERE 10 YES 1 NO AND 2 ABSENT

REPRESENTATIVE ONSTAD CARRIED THE BILL.

CHAIRMAN NICHOLAS CLOSE ON SB 2326

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SB 2326
3-21-03

Date:
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House AGRICULTURE COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Kingsbury Seconded By POLLERT

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS	✓				
VICE CHAIRMAN POLLERT	✓				
REPRESENTATIVE BELTER	✓				
REPRESENTATIVE BOEHNING	✓				
REPRESENTATIVE KELSCH	✓				
REPRESENTATIVE KINGSBURY	✓				
REPRESENTATIVE KREIDT					
REPRESENTATIVE UGLEM	✓				
REPRESENTATIVE WRANGHAM	✓				
REPRESENTATIVE BOE					
REPRESENTATIVE FROELICH	✓				
REPRESENTATIVE MELLER	✓				
REPRESENTATIVE ONSTAD	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Kingsbury

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10/22/03
Date

REPORT OF STANDING COMMITTEE (410)
March 21, 2003 11:55 a.m.

Module No: HR-51-5407
Carrier: Kingsbury
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2326: Agriculture Committee (Rep. Nicholas, Chairman) recommends DO PASS
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2326 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-51-5407

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2003 TESTIMONY

SN 2326

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North Dakota State
NDSSD
 Seed Department

Give testimony to House

1313 18th St. N., P.O. Box 5257
 Fargo, ND 58105-525
 Phone: (701) 231-5400
 Fax: (701) 231-5401
 Web: ndseed.com

Ken Bertsch
 ND State Seed Commissioner

TESTIMONY
SB 2326

Senate Agriculture Committee
 February 14, 2003

Good morning Mr. Chairman and members of the Senate Agriculture Committee. For the record, my name is Ken Bertsch and I serve as ND State Seed Commissioner. Thank you for the opportunity to provide testimony on SB 2326 relating to the Wholesale Potato Dealers License process carried out by the Seed Department and governed under N.D.C.C. Chapter 4-11.

I will attempt to briefly outline the development of the bill and significant changes in Century Code governing the process. The bill before you is anything but brief, but I would point out that many of the changes relate to an issue you discussed yesterday in SCR 4016; a chapter re-write. A large part of the language in SB 2326 can be considered "housekeeping". The major objective behind the bill is to streamline the process for determining and processing violations within our obligations of the statute.

The law is intended to provide producer protection for non-payment of potato purchases, similar to PSC Warehouse and Agriculture Department Dairy bonding statutes. We have found over the past two years that major weaknesses exist in the current language of the statute.

In December of 2001, a potato producer filed a complaint with our agency under the guidelines of Chapter 4-11. After following terms of the statute, including administrative hearings and a subsequent appeal to district court, the complaint has still not been resolved. After following all of the steps in the current law, the producer is now allowed (with permission of the Commissioner) to file a lawsuit in court. After two years, and thousand of dollars in cost to the producer and this agency, the producer is still unpaid.

This bill is intended to replace the inadequacies of the current statute with language modeled on state laws that provide producers immediate relief in cases of non-payment or insolvency.

I will provide some brief comments on the significant changes to current law, while bypassing the areas of the bill that can be considered cleanup or housekeeping. Our Assistant Attorney General, Paul Gemolus, is in attendance today and will provide information on technical corrections in the bill.

- Page 1, Section 1: Minor additions, including an updated definition of the term insolvency.
- Page 2, Section 3: Lines 19-23 provide better information to the Department in the licensing process, and are necessary in determining bonding amounts.
- Page 3, Section 3: Lines 8-15 contain language paralleled in other sections regarding licensing problems in other states.

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Page 4, Section 4: Changes outdated language, clarifies the type of financial security instruments available for use, and adds the term insolvency as defined in Section 1.

Page 4, Section 5: Creates a new section modeled after PSC statute that clarifies the process followed under a bond termination.

Page 5, Section 8: Utilizes information from Section 3 for purpose of suspending or revoking current licenses.

Page 7-9, Section 14: Covers the key issues in the bill. The bulk of pages 7 and 8 delete the language that has proven ineffective in protecting interests of potato producers. Line 26, Page 8 simplifies the complaint process for the producers, and allows the Commissioner's office to investigate the complaint.

Line 29, Page 8 eliminates the requirement for administrative hearing and allows the Commissioner (with a supportable complaint) to apply directly to District Court for relief in the case.

Line 3, Page 9 provides that the court should review the case in a summary manner, make a decision in the case and directs the Commissioner to proceed based on the judgment of the court.

Line 11, Page 9 allows the Commissioner to solicit additional information on outstanding obligations due to producers by the dealer in question (in a similar manner to current statute).

All of the changes outlined in this section are intended to condense the complaint and administrative action provisions of law to assist in providing more timely resolution to complaints.

Page 9, Section 15: Provides guidance to the Commissioner in recovery and distribution of financial security.

Page 9, Section 16: Provides that the Attorney General shall represent the Commissioner in legal actions, and allows recovery of legal costs from bond proceeds (similar to PSC and Dairy bonding statutes).

Page 13, Section 24: Line 18 references the application process, and tightens requirements for accuracy in providing information for licensing purposes. The remainder of the section is rewritten language.

Page 14, Section 26: Repeals unnecessary sections of the current law related to issuance of licenses (rewritten in other sections of the bill) and the filing schedules of commissions and charges by wholesale dealers.

Mr. Chairman and committee members, this is an outline of the most important changes to the current law sought in SB 2326. As you notice, the bill does contain an emergency clause, which would allow the Department to make the appropriate changes to the licensing process in advance of the June 30 application deadline this year.

As written, SB 2326 also accomplishes a major rewrite of an outdated chapter in state law. We believe that successful passage of the bill will provide much improved protection for producers, while allowing the Seed Department to conduct its duties in a more efficient and effective manner. I ask for your support of this legislation, and will stand for questions or defer to Mr. Germolus.

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Deanna Hall
Operator's Signature

10/22/03
Date