

# MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2326

2005 SENATE AGRICULTURE

SB 2326

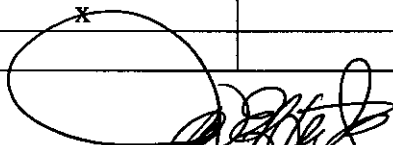
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2326

Senate Agriculture Committee

Conference Committee

Hearing Date January 27, 2005

Tape Number	Side A	Side B	Meter #
1	x		2141 - 4761
2	x		2907 - 3414
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the hearing on SB 2326, a bill relating to seed potato certification requirements. All members were present except Senator Taylor.

**Senator Tallackson** introduced the bill. There have been many changes in the potato industry over the years. In the past, potatoes were raised primarily in the Red River Valley, now there are a lot around Tappen and Jamestown, under irrigation. This bill would not permit a grower to buy certified seed and save some of that seed for the second year. It would also strengthen the rules on seed coming into North Dakota from Canada. He is introducing the bill for discussion and debate.

**Senator Klein** asked if there is a provision in the law that allows the commissioner to permit saving seed if there is a lack of seed.

**Senator Tallackson** said that is correct.

**Ken Bertsch**, North Dakota Seed commissioner, testified in favor of the bill.. (written testimony)  
(meter 2390)

**Senator Flakoll** asked if Mr. Bertsch would be offering any other amendments.

**Mr. Bertsch** said there could be some rumblings about the bill. The commercial industry is going to have some questions about making some changes in the law. There is some year out seed being planted, estimates are give or take 5%. The seed department thinks that is fairly low. The commercial industry may disagree. The major reasons for the bill, 20 years after the law was written and given the evolution of the industry, it is time to look at the exemption for some good, solid reasons.

**Senator Urlacher** asked if year out seed is classified as certified. (meter 3476)

**Mr. Bertsch** said no. There are five generations of certified seed and a certified generation that ends the process. For health reasons, the generation system has been adopted. It helps keep the seed pure, clean and healthy up to the end of that generation at which point it is flushed out of the system. In North Dakota you have one more year to use that seed but it is not field inspected.

**Senator Flakoll** asked Mr. Bertsch to give the legislative intern the case number on the case referred to in testimony.

**Mr. Bertsch** said if he can find it, he will get it to the committee. (meter 3663)

**Mark Thompson**, a seed grower from Park River, testified in favor of the bill. He has been directly involved with the MOU through the National Potato Council. The National Potato Council three years ago formed a committee, IIP (Industry Improvement Plan), and discussed the major problems in the industry and possible solutions. Most of the problems ended with Canada.

Canada has increased their production 17% per year for the past 9 years. They export 75 - 80% of their potatoes to the United States. They are our main problem. The MOU is an agreement between APHIS (Animal and Plant Health Inspection Service) and the state Departments of Agriculture. There are 17 states that have a certified seed program and export seed to other countries. All the states are involved and the goal is to make it consistent between all of the states. The changes would help our seed laws be consistent with the laws of all potato producing states across the country.

**Duane Mautz**, Northern Plains Potato Growers Association, testified in favor of the bill.. (meter 3900) The MOU has a lot to do with international recognition of our standards. The European Union has regulations and right now, they don't recognize the United States as having a single standard, we have 17 state standards. The MOU helps clarify that on an international level. It will help us improve our competitive advantage . If we do not make these changes, we risk becoming land locked and unable to export our potatoes.

Canada's standards aren't equivalent to ours. We need to do a better job of looking at any seed that comes into our state.

**Senator Klein** asked if without the provisions of only growing certified seed, does it put the MOU in jeopardy.

**Mr. Mautz** said yes.

**Senator Seymour** asked if this fits the needs of the commercial growers.

**Mr. Mautz** said yes. This would not change our practices on the farm. The benefit of the MOU is great.

**Senator Urlacher** asked how the Canadian producers react to this. Are they trying to change their regulations.

**Mr Mautz** said one of the biggest issues about shipping to Canada is the ministerial exemption. They have imposed their regulations on the US growers. This would level the playing field. We have to test for ring rot at our expense and they do not.

**Senator Urlacher** asked if they will change their requirements.

**Mr. Mautz** said the National Potato Council has worked closely with Canada on changing their regulations. Because of their outbreaks of bacterial ring rot, they are looking more closely at their programs. We still think their inspection service is inferior to ours. They have eliminated the third inspection which when ring rot is identified. (meter 4550)

**Senator Flakoll** asked if this could have unintended consequences. The refund on the potato check off is already high.

**Mr. Mautz** said there is always that risk. We need to do education, he does not expect a heavy impact.

Chairman Flakoll closed the hearing on SB 2326. (meter 4775)

**Senator Klein** moved the emergency clause for SB 2326. (tape 2 side A meter 2974)

**Senator Erbele** seconded the motion.

**Senator Klein** said this sends a message to Canada. This would get the bill in time for spring planting.

The motion passed on a roll call vote, 4 - 0 -2.

**Senator Klein** moved a do pass as amended on SB 2326.

**Senator Erbele** seconded the motion.

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Senate Agriculture Committee

Bill/Resolution Number SB 2326

Hearing Date January 27, 2005

**Senator Klein** said the bill seems to address the issues the seed commissioner had. The MOU could increase exports of North Dakota potatoes. We need to move it forward.

**Senator Seymour** said there was concern on the part of a house member. Sometimes with Frito Lay, they have a contract and don't need certified seed.

**Senator Klein** said they have a certain potato with a patent. They contract with growers to raise the Frito Lay stock and the growers have to follow Frito Lay's rules.

**Senator Flakoll** said the representative offered no amendments.

The motion passed on a roll call vote 4-0-2. Senator Klein will carry the bill.

50708.0100  
Title.

Senate Agriculture Committee  
January 27, 2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2326

NOT YET ADOPTED BY THE COMMITTEE

Page 1, line 2, after "requirements" insert "; and to declare an emergency"

Page 2, after line 26 insert:

"SECTION 4. EMERGENCY. Section 3 of this Act is declared to be an emergency measure."

Re-number accordingly







**REPORT OF STANDING COMMITTEE**

**SB 2326: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2326 was placed on the Sixth order on the calendar.

Page 1, line 2, after "requirements" insert "; and to declare an emergency"

Page 3, after line 26, insert:

**"SECTION 4. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure."

Renumber accordingly

2005 HOUSE AGRICULTURE

SB 2326

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2326

House Agriculture Committee

Conference Committee

Hearing Date 2---25---05

Tape Number	Side A	Side B	Meter #
TWO	A		5.7 TO 29
Committee Clerk Signature <i>Edward D. Elson</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee Members we will go to SB 2326

RELATING TO SEED POTATO CERTIFICATION REQUIREMENTS; AND TO DECLARE AN EMERGENCY.

SENATOR TALLACKSON: GRAFTON N.D.

You have before you today a bill that is a potato regulation bill. It is an attempt to keep disease free from potato seeds. Potato Farmers fight a continues battle against disease, weather and insects. [[PLEASE READ PRINTED TESTIMONY BEING PRESENTED BY SENATOR TALLACKSON]] The Senator said he was very happy to introduce you to SB 2326 SECTION THREE OF THIS BILL IS IMPORTANT. THE BILL ALSO TIGHTENS UP IMPORTATION REGULATIONS FOR POTATOES. It level the playing field between us and Canada. Thank you and the committee.

CHAIRMAN NICHLAS: Any other legislator to offer testimony on this bill.

All right, we will take testimony from folks involved with this bill.

KEN BERTSCH: STATE SEED COMMISSIONER: Good morning Mr. Chairman and Committee members. My name is Ken Bertsh and I serve as State Seed Commissioner and Administrator of the North Dakota State Seed Department. I am here to speak in support of SB2326 which speaks to three issues regarding certification and trade of seed potatoes. I will provide an overview of the bill, and discuss the origination and intent of the legislation.

[[please read attached printed testimony passed out by KEN BERTSCH]] KEN BERTSCH

Mentioned that the producer must use certified seed in order for insurance to cover any losses.

The Canadian inspection system is not of the same quality as the U.S. inspection process. We

provide three field inspections and laboratory tests for diseases especially bacterial ring rot

[BRR] That is not done at the same level in Canada. We thought it would be important to

provide some language in the Century Code that would help us. We don't know whether it is

legal or if it would help us but we don't know. We need to be able to go to the federal agencies

that are responsible for boarders. That might be homeland security, customs, who ever it is

that is responsible for products coming across the boarder. This language may allow us to go

say this is a serious problem in ND and all we are asking you to do is to make sure that anything

coming across the boarder meets the same standards is as required of us We want potatoes

coming across the boarder to have a health certificate and proof of certification like they do now

we feel

They need the certificates mentioned above. They should have the same requirement as US..

The emergency clause was added to speed things up.

REPRESENTATIVE ONSTAD: Are we currently having a problem with ring rot?

KEN: Not in ND There may be in commercial operations. We don't know about.

CHAIRMAN NICHOLAS: Any other comments in support of this bill.

DUANE MAATZ?? NORTH DAKOTA GROWERS ASSOCIATION.

I support the bill 2326 from the perspective of the national memorandum of understanding

We call it the MOU. It took about eighteen months to develop the memo. It establishes minimum standards as a canopy across the country and for our state to sign on to the MOU

We need to have a few things clarified within our seed law and we think We believe this will be one of the things we need to fix. The MOU has minimum standards that another country could look at as a minimum standard for quality for seed but also as we go into the future

This will also tie into commercial exports So that those conditions are met under commercial Production based on the seed that was used. I think it give us an international look that we won't have if we cannot sign on the memorandum of understanding Risk Management look at

our seed laws as inadequate in our laws. We need to look forward These are futuristic Thing. They may not all come into play but I'd rather be prepared for it. Rather then do it later.

Minnesota is ready to move forward with this. We may have to make some changes because of the commercial industry. We may have some work to do on this but I would like to see it move forward if at all possible. Any questions:

CHAIRMAN NICHOLAS: Duane, I have a couple. How many growers are there in the industry.

DUANE: Our mailing list for Minnesota and North Dakota about 375. ND grower not including partnerships may be as low as 100 to 150 Not a large number of people

CHAIR: And how many growers will be affected by this change. Commercial Growers that are using there own seed.

DUANE: I don't know. We are think 10 to 15 percent. Of total production.

CHAIR: We are talking about 10 to 20 growers. What is the average size of the ND producer.

DUANE: 6 TO 7 HUNDRED ACRES. Remember we have the 5000 acre farm.

CHAIR: The acreage that was lost now with SIMPLOT pulled there 6000 acres contracts is that a acreage the shifted to other areas in ND the irrigated growers or has that been pulled out of state completely.

DUANE: The expatiation is that it would become irrigated burbank. We would not have 6000 acres of non irrigated. Have they been replaced at this time, not entirely some but not all.

CHAIR: Is there consideration to give them back to the same growers or same area.

DUANE: I believe it will be a direct shift to a different grower. I think there is an opportunity If it is a non irrigated grower who wants to become an irrigated grower. If they have exhibited a high performance in past. I am not hearing about that now.

CHAIR: They didn't give anyone any time to make the adjustment at all. They just pulled the contracts.

DUANE: We discussed this with SIMPLOPT last summer and we thought they were going to give us a three year time period to accommodate the seed growers commercial growers to give us a step down method and obviously they have not done that.

CHAIRMAN NICHOLAS: Any other support for this bill. Any testimony in opposition of this bill.



2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2326

House Agriculture Committee

Conference Committee

Hearing Date 3---17---05

Tape Number	Side A	Side B	Meter #
ONE	A		19.5 TO 26.7
Committee Clerk Signature			

*Edward D. Ellerson*

Minutes:

CHAIRMAN NICHOLAS: O.K. Committee members. We will go to the potato bill.

I see Mr. Bertsch from the State Seed Department is here. The bill is SB 2326.

We had asked the groups to get together and meet and I received an E-mail stating that there are still some differences. They have agreed to disagree. Maybe you can enlighten us.

KEN BERTSCH: I am with the Seed Commission. Chairman Nicholas, you asked us about three weeks ago to go back and have more discussion. I will talk specifically about Section Two of the bill. I am also speaking for the Northern Plains Growers Association, the board of directors have pulled their support of bill. I would ask that the committee amend the bill and remove the overstrike and let the bill go through in that form.

CHAIRMAN NICHOLAS: O.K what Ken is referring that would be on top of page three

And it is Section two and remove the overstrike on that. Ken if this bill would have passed like how much seed would this emergency clause obviously those growers would have had to line up seed from certified growers. How much seed dose this entail?

KEN: Actually there would be no effect this year. It would not go into effect until July 31st A lot of the concern is they just don't want to have there tools taken away. There are only one or two large growers Small amount of commercial growers that have had a concern.

It is loosing the tools for them that is there concern. We can look at this again in two years.

CHAIRMAN NICHOLAS: Any other questions of Ken.

REPRESENTATIVE KINGSBURY: Ken really did good job and I appreciate it as to our sub committee.

CHAIRMAN NICHOLAS: Committee Members we don't have an amendment in front of us But.

REPRESENTATIVE BOE: Mr. Chairman, I move to amend the bill. Representative Kingsbury seconded the motion as to amendment.

CHAIRMAN NICHOLAS: I will have our intern work the amendment.

**ANY DISCUSSION.**

**I WILL ENTERTAIN A MOTION ON THIS BILL AS AMENDED. 2326**

**REPRESENTATIVE KINGSBURY: MADE A MOTION FOR A DO PASS**

**REPRESENTATIVE DAMSCHEN: SECONDED THE MOTION.**

**ANY FURTHER DISCUSSION.**

**O.K. THE CLERK WILL TAKE THE ROLL ON SB 2326.**

**THERE WERE 11 YES 0 NO 2 ABSENT.**

Page 3  
House Agriculture Committee  
Bill/Resolution Number SB 2326  
Hearing Date 3---17---05

**REPRESENTATIVE KINGSBURY WILL CARRY THE BILL.**

**CHAIRMAN NICHOLAS CLOSED ON SB2326**

SB 2326

Date: 3-17-05  
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House HOUSE AGRICULTURE COMMITTEE Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS AS AMENDED

Motion Made By KINGS BURY Seconded By DAMSCHEN

Representatives	Yes	No	Representatives	Yes	No
REP. EUGENE NICHOLAS CHAIRMAN	✓		REP. TRACY BOE	✓	
REP. JOYCE KINGSBURY VICE CHAIRMAN	✓		REP. ROD FROELICH	✓	
REP. WESLEY BELTER			REP. PHILLIP MUELLER	✓	
REP. M. BRANDENBURG			REP. KENTON ONSTAD	✓	
REP. CHUCK DAMSCHEN	✓				
REP. CHAIG HEADLAND	✓				
REP. GARY KREIDT	✓				
REP. GERALD UGLEM	✓				
REP. JOHN WALL	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment KINGSBURY

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

**REPORT OF STANDING COMMITTEE**

**SB 2326, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2326 was placed on the Sixth order on the calendar.**

Page 1, line 1, remove ", 4-10-06.1,"

Page 2, remove lines 21 through 30

Page 3, remove lines 1 through 13

Page 3, line 27, replace "3" with "2"

Renumber accordingly

2005 TESTIMONY

SB 2326



North Dakota State  
**NDSSD**  
Seed Department

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Fargo, ND 58105-5257  
Phone: (701) 231-5400  
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Web: [ndseed.com](http://ndseed.com)

**Ken Bertsch**  
**State Seed Commissioner**

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**Testimony**  
**Senate Bill 2326**

**Senate Agriculture Committee**  
**January 27, 2005**

Good morning Mr. Chairman and committee members. For the record, my name is Ken Bertsch and I serve as State Seed Commissioner and Administrator of the North Dakota State Seed Department. Thank you for the opportunity to speak in support of SB 2326, which speaks to three issues regarding certification and trade of seed potatoes. I will provide an overview of the bill, and discuss the origination and intent of the legislation.

SB 2326 was developed at the request of the Seed Certification sub-committee of the North Dakota Certified Seed Potato Growers Association. The Association has a close working relationship with the Seed Department and has also collaborated with the Northern Plains Potato Growers Association, representing commercial potato producers in the tri-state area, to draft the legislation and gain support for SB 2326.

Please keep in mind during the course of testimony today that SB 2326 is very much a prospective piece of legislation. The bill seeks to provide tools to address problems are anticipated to expand in the near future, within the window of opportunity of this legislative session.

**Section 1**

A definition for the term variety is added to Chapter 4-10. The purpose for the amendment is to address current and future legal questions regarding the separation of varieties and varietal strains in certification. This definition is a scientific model utilized at the federal level and will assist the Seed Department in providing interpretation in the variety vs. strain issue.

**Section 2**

The exemption for "year-out" seed is repealed in this section. North Dakota passed a certified seed law in the mid-1980's that required the planting of certified seed in commercial production. In order for the seed law to pass, an exemption was negotiated allowing a producer to re-plant certified seed one year after the year of purchase.

It should be noted: the commercial producer is not planting certified seed the second year; he/she is planting legal seed under our laws.

Besides the obvious industry-wide benefits of effective seed laws, seed-quality programs and utilization of healthy seed sources, the following are basic reasons for seeking repeal of the exemption:

**1. Continuing and expanding problems with potato diseases, magnified by the use of non-certified seed sources.**

Bacterial Ring Rot (BRR), traditionally a concern in the potato industry, is at higher risk of spread with usage of seed that has not been field inspected and/or laboratory tested. BRR is a high threat for mechanical transmission (direct physical contact), and can spread readily from field to field. Worse yet, the symptoms are latent and may not be visible for years.

Elimination of the year-out clause will assist in limiting the proliferation of diseases like BRR (among others) that is controlled or suppressed through the production and usage of certified seed. BRR is only the best example in this case; there are numerous other diseases in potato production that receive constant attention by state and federal agencies around the U.S.

**2. A movement toward nationwide certification standards: The Memorandum of Understanding**

The National Potato Council is facilitating the development of a Memorandum of Understanding (MOU) between USDA-APHIS and state certification agencies. The MOU describes a set of minimum uniform requirements for certification programs and agencies that sign the agreement. These minimum standards are being developed in order to facilitate interstate and international trade, and to facilitate cooperation in pest management for those states that have signed the memorandum. The main objective of the MOU is to help USDA negotiate market access agreements with foreign importers on behalf of signatories.

North Dakota may choose to sign the agreement within the next year, since our certification program meets or exceeds the standards in most areas of the agreement. However, one of the requirements of the MOU is a "working" certified seed law. While North Dakota does have a certified seed law/requirement, it may not be considered "pure", in terms of the year-out exemption. North Dakota's compliance would hinge on demonstrating to APHIS that state law and regulatory programs meet this standard.

In order to comply with the proposed MOU, it is necessary (under our interpretation of the MOU language) to eliminate the exemption allowing planting of non-certified seed.

**3. Federal Crop Insurance**

By all accounts, the crop insurance industry is in the process of reviewing the industry standards and contracts regarding the year-out clause.

A recent court case found in favor of a producer whose claim had been denied based on the usage of a non-certified, "year-out" seed source. The producer appealed to the courts to force the insurance company to pay the claim, on the basis the seed was legal, and won the case.

We believe that this precedent will inevitably impact insurance contracts for potato production in some manner, either in terms of cost, coverage or availability. While unknown at this time, it appears that the insurance providers will take some type of action regarding the year-out exemption in the future.

I recognize that there may be concerns regarding the "mandatory" nature of the certified seed law, and potential arguments that production costs and/or seed availability will suffer as a result of limitations to the planting of non-certified seed.



**Testimony SB 2326**  
**Senator Tallackson**

SB 2326 is a potato regulations bill.

It is an attempt to keep disease free potato seed. Potato farmers fight a continuous battle against disease, weather and insects.

As the law stands now, a potato farmer may plant seed the second year out of certification. This bill does not permit that.

One of the very dangerous diseases of potatoes is ring rot. There is a disturbing amount of ring rot present in some areas.

SB 2326 seeks to require growers to plant only certified and inspected potato seed.

Section 3 of the bill also tightens up importation regulations for potatoes.

There are several people to testify on this bill, and they will give you more detailed information.

I am very happy to introduce you to SB 2326.

Thank you Mr. Chairman and committee members.



North Dakota State  
**NDSSD**  
Seed Department

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**Ken Bertsch**  
**State Seed Commissioner**

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**Testimony**  
**Senate Bill 2326**

**House Agriculture Committee**

**February 25, 2005**

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It should be noted: the commercial producer is not planting certified seed the second year; he/she is planting legal seed under our laws.

Besides the obvious industry-wide benefits of effective seed laws, seed-quality programs and utilization of healthy seed sources, the following are basic reasons for seeking repeal of the exemption:

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Elimination of the year-out clause will assist in limiting the proliferation of diseases like BRR that is controlled or suppressed through the production and usage of certified seed. BRR is only the best example in this case; there are numerous other diseases and regulated pests in potato production that receive constant attention by state and federal agencies around the U.S.

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A recent court case found in favor of a producer whose claim had been denied based on the usage of a non-certified, "year-out" seed source. The producer appealed to the courts to force the insurance company to pay the claim, on the basis the seed was legal, and won the case.

We believe that this precedent will inevitably impact insurance contracts for potato production in some manner, either in terms of cost, coverage or availability. While unknown at this time, it appears that the insurance providers will take some type of action regarding the year-out exemption in the future.

I recognize that there may be concerns regarding the "mandatory" nature of the certified seed law, and potential arguments that production costs and/or seed availability will suffer as a result of limitations to the planting of non-certified seed.

However, I would ask the committee to note that another exemption does exist (page 3, line 9) wherein the Commissioner may permit the planting of non-certified potatoes in situations where seed shortages exist. Please note, even in this section of law, bacterial ring rot is recognized as a serious problem in potato production.

### **Section 3**

Section 3 creates new language designed to combat what North Dakota producers believe are inequities in potato trade with competitors.

The main thrust of the language is found in subsection 2. This subsection creates language that requires imported seed to comply with the same requirements for documentation and testing that are imposed on North Dakota seed moving to other states or provinces.

For example, a North Dakota producer attempting to export seed to Canada is required to produce a phytosanitary certificate, a health certificate, an import certificate AND documentation that the seed was tested by a Canadian approved laboratory. Conversely, Canadian seed only requires grade certificates, health certificates and proof of certification for import into North Dakota.

Admittedly, there may be questions regarding the value or legality of this language. However, legal counsel suggests that trade agreements require "fair application" of North Dakota import rules to all trading partners, national or international. This language is intended to clearly describe the States' expectation that our import requirements will match our neighbors.

A secondary issue, again, involves bacterial ring rot. It is no secret in the potato industry that Canada is experiencing a severe outbreak of BRR. It should be noted that the Canadian inspection system is not as thorough as in North Dakota and sister states, including the lack of a 3<sup>rd</sup> field inspection designed to capture evidence of BRR.

We believe it is necessary to have baseline language in code that allows the Seed Department additional flexibility in requiring adequate, and accurate information on the cleanliness of seed entering the state. It may be impossible to influence border entry without the assistance of other federal agencies, including USDA-APHIS, Customs or Homeland Security. However, this language should help our agency to assure the health of seed sources entering North Dakota, and push federal agencies to pursue fairness in export standards while protecting our producers from import of potentially dangerous pests.

An **emergency clause** was added in the Senate to allow implementation of Section 3 prior to planting of the 2005 crop.

We have a number of potato producers and interested associations in attendance that can speak to all of these issues from a grower and commercial production perspective. Thank you for your support for SB 2326, I will be happy to answer any question you may have.