

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2117

2007 SENATE AGRICULTURE

SB 2117

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2117

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: January 18, 2007

Recorder Job Number: 1344

Committee Clerk Signature

*Cassie Krohn*

Minutes:

**Sen. Flakoll** opened the hearing on SB 2117, a bill relating to fair practices in potato production contracting and to provide a penalty, all members (7) were present.

**Sen. Wanzek**, district 29, testified in favor of the bill.

**Sen. Wanzek**- this bill is before you at request of the potato council and also some potato producers from my area. Seems there was or were some situations where a potato farmer was negotiating on behalf of the farmers position on a contract negotiation process some felt that at the end of the process when they achieved the results they were looking for they were unfairly treated or contracts were pulled. I felt it was important enough that we put it in and there was a discussion about it, I don't want to go to far to the point that we discourage congress and discourage contract in production with our processing friends and things of that nature. However I feel it is important that all parties in the negotiation be treated fairly and there's not any unfair repercussions or unfair treatment as a result of being one of the representative growers in the process of negotiating. I understand a few of those that asked me to put this in aren't here today, I'm not quite sure why whatever the reason might be.

Anyways, I felt the bill was an important enough issue that it deserved discussion. There are producers and the counsel here to offer input on this bill.

**Duane Maatz**, representing the ND Potato Council and the Northern Plains Potato Growers Association testified in favor of the bill, see attached testimony.

**Sen. Klein**- I know that in another committee we have been discussing employment discrimination issues with human rights and how it trickles down and things you do beyond what you do and how your employer can't retaliate against you. Don't we have something like that covered somewhere that your being discriminated against your being retaliated because of your issue?

**Duane Maatz**- we don't in ND have legislation that would protect against these types of activities, there is a federal law and the only way that a grower would have any retribution toward having that kind of activity taken against them would be to actually start a lawsuit against the processor which is not good business practice if you are the one receiving the contract.

**Sen. Klein**- and you mentioned that the federal law, other states have they adopted something?

**Duane Maatz**- we have similar type of law for potatoes in Maine, Oregon and possibly in the state of Washington. Washington produces more french fried potatoes then any other state in the union. In regard to their organizations they have a commission that works on advertising promotions, they have an organization specifically set up to operate as a bargain cooperative, so I'm thinking that Washington has some protection in place as well.

**Bob Moe**, raises potatoes for Fry Processors in ND, director on the ND Potato Council, the Northern Plains Potato Growers Association and a member of the ND Seed Commission, testified in favor of the bill. See attached testimony. He also submitted testimony for

**Camburn Shepard** who could not be present to testify. See attached testimony.

**Sen. Taylor-** how much of the processors production is tied to the production of that bargaining cooperative, are they also doing individual contracts with a number of producers, can they still cut one specific growers contract?

**Bob Moe-** the second part of the contract can they just cut, yes they can. That has nothing to do with Mindak bargaining cooperative, if a processor doesn't want you as a grower they will find a way for you not to be a grower. If you don't provide a quality that they're looking for or if you are not on their top matrix levels, there are ways that you will not become a grower. On the first question, there is no individual bargaining done, Mindak is the recognized entity to negotiate for all of the growers weather they are a member of Mindak or not. The plants in ND cannot issue any contract that is not voted on and approved by Mindak bargaining cooperative.

**Sen. Klein-** you've been a part of this process a long time, it sounds like it is getting worse that's why you're here?

**Bob Moe-** yes.

**Sen. Behm-** how much of the raw potato production is sent out of state and does Mindak still contact with these people that are shipped out of state?

**Bob Moe-** most of that volume is contracted for the state at this facility, the finished product gets shipped out. That is not in Mindak's contract, they are only for North Dakota and Minnesota growers for ND processors.

**Sen. Wanzek-** with potato production if you don't have a contract you don't have a market, its not like you can go to a elevator down the road is that true?

**Bob Moe-** that's correct.

**Sen. Wanzek-** in your opinion, part of the reason that some of the growers didn't show up is maybe because of fear of maybe further retribution?

**Bob Moe-** absolutely, I spoke with several growers before coming to this and how many were going to be in attendance, they support it but they don't want to be seen here for fear of retaliation.

**Sen. Taylor-** so how confident are you in your next years contract?

**Bob Moe-** I have lost many contracts in the years that I have started Mindak, I have lost and my partners that are with me close to 500,000 bags since I started Mindak 8 years ago. But I believe in it and that's why I'm here.

**Sen. Klein-** your 500,000 bags down, do you have a place to go with them then or do you find another spot kind of less of a attractive contract, more mileage? Are you able to get some type of income from what you have left, you aren't just out that entire amount?

**Bob Moe-** no I am out, cause in this area its not like I can just go to a different place, there is only two options.

**Sen. Klein-** do you want to explain that? If your cut and you have a contract for 100,000 potatoes they cut you to 50,000 what happens to the other 50,000?

**Bob Moe-** I have to find someone to rent my bins to, if I can't pick up that volume the investment that I have in equipment and capital investment such as warehouses and etc. my overhead gets extremely high. In this state you only have 2 sources and a third alternative source. So I'm just out that other 50,000. I've gone from 2500 acres to 450 acres.

**Sen. Taylor-** the cut came before the seed potatoes in the ground?

**Bob Moe-** absolutely.

**Sen. Wanzek-** what happens if you are contracted for 100,000 and something happens and say you only get 80,000?

**Bob Moe-** you don't want excess production, they contract what they need. If we do not have the 100,000 and only have the 80,000 bags it is an act of god contract.

**Sen. Heckaman**- so the processors aren't cutting down on production, is that right or are they bringing product in from other states at a cheaper rate? If they have a contract and they are cutting you down is that because they're over supplied or cant process anymore or are they bringing product in from another state at a cheaper rate?

**Bob Moe**- kind of a combination of all three. A lot of times they have over contracted, they have under contracted. They are bringing in raw products from other areas from inside the US as well as Canada, that has happened and does happen.

**Deana Wiese**, testified on behalf of Kent Albers chairman of the ND Ag Coalition, see attached testimony.

**Ben Tucker**- ND Potato Council lobbyist 444, **Joel Gilbertson**- lobbyist 1, **Sophia Prezler**- concerned citizen, were present at the hearing in favor of the bill.

**Kayla Pulvermacher**- NDFU, was present at the hearing and had a neutral opinion of the bill.  
No opposition to the bill.

**Sen. Flakoll** closed the hearing.

**Sen. Behm** motioned for a Do Pass **Sen. Wanzek** seconded the motion **Sen. Behm** was designated to carry the bill to the floor. 7 yeas, 0 nays, 0 absent.

Date: Jan 18, 2007  
Roll Call Vote #: 1

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2117**

Senate Agriculture Committee

☐ Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Behm Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Tim Flakoll-Chairman	X		Arthur H. Behm	X	
Terry M. Wanzek-Vice Chairman	X		Joan Heckaman	X	
Robert S. Erbele	X		Ryan M. Taylor	X	
Jerry Klein	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment sen. Behm

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



**REPORT OF STANDING COMMITTEE**

**SB 2117: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS**  
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2117 was placed on the  
Eleventh order on the calendar.

2007 HOUSE AGRICULTURE

SB 2117

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No.SB 2117

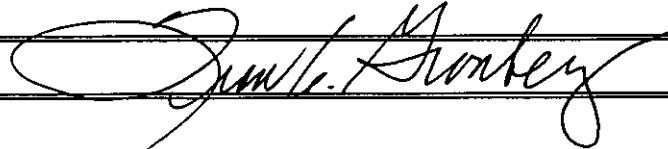
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: 3-15-07

Recorder Job Number: 5098

Committee Clerk Signature



Minutes:

**Chairman Johnson** opened the hearing on SB 2117.

**Senator Wanzek, Dist 29:** I introduced this bill at the request of the Potato Growers.

It relates to a situation where a potato farmer, representing the potato growers as a collective, sat down in good faith and bargained contract negotiations with a processor. As a result, he already had potatoes in the ground, and as a result of being the lead negotiator he lost his potato contracts. I don't want to go too far and hinder private enterprise and how they develop their contracts, but on the other hand I think both sides should be operating in good faith. A potato grower should not be fearful of representing his group and the repercussions from it.

**Duane Maatz, ND Potato Council:** ( testimony attached - also two other letters - Bob Moe and Camburn Shepard)

**Rep Kingsbury:** How are the members of the bargaining committee chosen"

**Maatz:** They are selected by a process after they have volunteer to be a part of the process.

We conduct a training program for them.

**Rep Boe:** Explain Section 5.

**Maatz:** The intent is the protection of contracts.

**Deana Wiese, ND Ag Coalition:** We are in favor of the bill. (testimony attached from Mike Beltz)

There was no opposition and **Chairman Johnson** closed the hearing.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2117

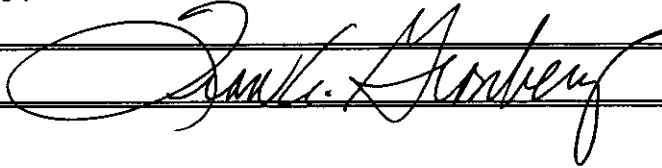
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: 3-15-07

Recorder Job Number: 5101

Committee Clerk Signature



Minutes:

**Chairman Johnson** asked the committee what it wanted to do about SB 2117.

**Rep Kingsbury** moved a Do Pass

**Rep Boe** seconded the motion

(yes) 13 (no) 0 (absent) 0

**Carrier: Rep Kingsbury**

Date: 3/15/07  
Roll Call Vote #:

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 2117

Action Taken Do Pass

Motion Made By Rep Kingsbury

Seconded By Rep Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	✓		Tracy Boe	✓	
Vice Chair Joyce Kingsbury	✓		Rodney Froelich	✓	
Wesley Belter	✓		Phillip Mueller	✓	
Mike Brandenburg	✓		Kenton Onstad	✓	
Craig Headland	✓		Benjamin Vig	✓	
Brenda Heller	✓				
John D Wall	✓				
Gerry Uglem	✓				

Total (Yes) 13

No 0

Absent 0

Floor Assignment Rep Kingsbury

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

**REPORT OF STANDING COMMITTEE**

**SB 2117: Agriculture Committee (Rep. D. Johnson, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2117 was placed on the  
Fourteenth order on the calendar.

2007 TESTIMONY

SB 2117



State of North Dakota  
Senate Agriculture Committee  
Regarding SB 2117

Mr. Chairman and members of the North Dakota Senate Committee on Agriculture. My name is Duane Maatz and I am here on behalf of the North Dakota Potato Council and the Northern Plains Potato Growers Association to discuss the need for passage of Senate Bill 2117. The Northern Plains Potato Growers Association owns and operates the Minn-Dak Bargaining Cooperative, established under the Capper-Volstad Act, for the negotiation of process / frozen potato contract negotiations.

In a perfect world we should have no need for legislation like SB 2117. Realizing that ours is not a perfect world it is exactly what we need. This bill encourages negotiations be done in good faith.

SB 2117 would provide protection for potato growers who contract their production and are members of associations and bargaining cooperatives. Members who volunteer their time and talents to help themselves and their fellow growers by working within the bargaining cooperative and / or association activities, are sometimes scrutinized for their involvement. They are scrutinized, because it strengthens the grower position when they band together for the good of the group and the industry. It is no secret that we are most successful when cost of production, supply and demand, product prices and grower unity collide.

We have had growers lose their production contracts during the negotiation of the contract. That event, by design puts fear into the remainder of the group. They tend to fear for their own business interest and agree to whatever contract offer is on the table without regard to the level of return it represents. We do not want our growers to be subject to the loss of contract because of their willingness to volunteer and take an active role to represent the group.

This legislation does intend to protect the grower who's production history does not meet contract specifications on a regular basis. The bill would provide advance notice of the intent to discontinue a production contract in a timeline that would not be as deleterious to the producer's financial health.

The bargaining coop, coupled with my involvement is designed to put a buffer between grower and processor. The grower does not need to be the guilty party during difficult conversations. One plant has told me I cannot negotiate with our group because I am not a producer and I have nothing to lose by my actions in that setting. It is clear that the threat of retaliation is a promise.

We are asking that potato producers be provided protection from an unwarranted cut in their production contracts. We have witnessed eight of these producer cuts in the past seven years without grower recourse to that action. Passage of SB 2117 would provide the security needed by growers producing in a mature agricultural market that maintains its volume through contracting.

Thank you for your support and attention in passing SB 2117.

January 16, 2007

Mr. Chairman & Members of the Senate Agriculture Committee:

My name is Bob Moe. I live in Fargo, ND and I raise potatoes for Fry Processors in ND. My potato production and warehouse / shipping facilities are located near Lisbon, ND. I am a director on the North Dakota Potato Council, the Northern Plains Potato Growers Association and a member of the North Dakota Seed Commission. I am a founder and former President of the Minn Dak Potato Growers Bargaining Cooperative.

Every potato producer in North Dakota benefits from the work done by and the representation of the Minn Dak Potato Growers Bargaining Cooperative. These benefits include, but are not limited to the following:

1. Unified grower / processor production contract negotiations
2. The opportunity for collective and equitable representation within the recognized potato grower negotiations cooperative.
3. The benefits from the grower collective bargaining process, without the fear or threat of retaliation against them individually by a Processor.

Since 1998 there have been several growers that have had their contract volumes reduced or eliminated because of their involvement either as a director, negotiation team member or simply being a member of the Minn Dak Cooperative. To maintain a positive return on their investment, all producers need the ability to negotiate with the Processors for the good of the Cooperative, without the fear of retaliation.

In conclusion, this letter is being written to confirm my support for the passage of SB # 2117

Sincerely,



Bob Moe  
Valley View Farms  
P. O. Box 582  
West Fargo, ND 58078

State of North Dakota  
Senate Agriculture Committee  
SB 2117

Mr. Chairman, members of the Senate Agriculture Committee, I am Camburn Shepard. I grow potatoes for the process and fresh market. I live near Crystal, North Dakota in the northeast part of the state. I have served our industry on contract negotiation teams for two decades as well as having served on the board of directors for the Minn-Dak Bargaining Cooperative.

The Bargaining Coop works to negotiate production contracts for all process growers. A single contract is issued. The contract contains quality incentives and disincentives along with a base price to determine value of the product delivered. Our Cooperative bargains in good faith representing the interests of all producers. After a tentative agreement is reached between the committee and the processor, the grower group votes before an agreement is approved.

Volunteering to serve on a negotiation team has had negative impacts on some operations ability to stay in business. Persons who are working for the betterment of the group put their own operations at risk when doing so. Negotiating a business contract should not be taken to a personal level of retaliation, but it has been taken there on several occasions.

This is not an aggressive attack on our processors, but rather a defensive move to protect ourselves. Our intent is to give protection to those who are willing to work toward price improvements in our potato contracting negotiation process.

I appreciate your support for SB 2117. Thank you.



P.O. Box 2599  
Bismarck, ND 58502  
(701) 355-4458  
FAX (701) 223-4645

#### MEMBERS

AmeriFlax

Milk Producers Association of  
North Dakota, Inc.

Minn-Dak Farmers Co-op

North Dakota Ag Aviation  
Association

North Dakota Ag Consultants

North Dakota Agricultural  
Association

North Dakota Agri-Women

North Dakota Association of Soil  
Conservation Districts

North Dakota Association of  
Agricultural Educators

North Dakota Barley Council

North Dakota Beef  
Commission

North Dakota Corn Growers  
Association

North Dakota Corn Utilization  
Council

North Dakota Crop  
Improvement and Seed  
Association

North Dakota Department of  
Agriculture

North Dakota Dry Bean Council

North Dakota Elk Growers

North Dakota Farm Bureau

North Dakota Farm Credit Council

North Dakota Grain Dealers  
Association

North Dakota Grain Growers  
Association

North Dakota Lamb and Wool  
Producers

North Dakota Oilseed Council

North Dakota Pork Producers

North Dakota Soybean Growers  
Association

North Dakota State Seed  
Commission

North Dakota Wheat  
Commission

Northern Canola Growers  
Association

Northern Plains Potato Growers  
Association

Northern Pulse Growers  
Association

Red River Valley Sugarbeet  
Growers

Testimony of Kent Albers

North Dakota Ag Coalition

SB 2117

January 18, 2007

Chairman Flakoll, members of the Senate Agriculture Committee:

I am Kent Albers. I farm and ranch near Center and am here today as the chairman of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I would encourage your support of SB 2117.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for 20 years. Today, we represent 30 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. Through the Ag Coalition, these members seek to enhance the business climate for North Dakota's agricultural producers.

The Ag Coalition takes a position on only a limited number of issues brought to us by our members that have significant impact on North Dakota's agriculture industry. Fair contracting practices is one of those issues.

The Ag Coalition supports the North Dakota Potato Council's proposed bill that would protect North Dakota potato growers from retaliation for taking advantage of contract bargaining associations or cooperatives. These entities provide an increase in gross revenues for farmers through improved contract negotiations. Providing protection for North Dakota's contract potato growers will provide a renewed incentive for potato production and thus play a role in enhancing the North Dakota's agricultural business climate.

For these reasons, we encourage your support of SB 2117.

State of North Dakota  
House of Representatives Agriculture Committee  
Regarding SB 2117

Mr. Chairman and members of the House Agriculture Committee. My name is Duane Maatz and I am here on behalf of the North Dakota Potato Council and the Northern Plains Potato Growers Association to discuss the need for passage of SB 2117. The Northern Plains Potato Growers Association owns and operates the Minn-Dak Bargaining Cooperative, established under the Capper Volstad Act, for the negotiation of process / frozen potato contracts.

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SB 2117 would provide protection for potato growers who contract their production and are members of associations and bargaining cooperatives. Members who volunteer their time and talents to help themselves and their fellow growers by working within the bargaining cooperative and / or association activities, are sometimes scrutinized for their involvement. They are scrutinized, because it strengthens the grower position when they band together for the good of the group and the industry. It is no secret that we are most successful when cost of production, supply and demand, product prices and grower unity collide.

We have had growers lose their production contracts during the negotiation of the contract. That event, by design puts fear into the remainder of the group. Growers tend to fear for their own business interest and agree to whatever contract offer is on the table without regard to the level of return it represents. We do not want our growers to be subject to the loss of contract because of their willingness to volunteer and take an active roll to represent the group.

This legislation does not intend to protect the grower who's production history does not meet contract specifications on a regular basis. The bill would provide advance notice of the intent to discontinue a production contract in a timeline that would not be as deleterious to the producer's financial health.

The bargaining coop, coupled with my involvement is designed to put a buffer between grower and processor. The grower does not need to be the guilty party during difficult conversations. One plant does not allow me to negotiate with our growers because I am not a producer and I have nothing to lose by my actions in that setting. It is clear that the threat of retaliation is a promise.

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Thank you for your support and attention in passing SB 2117.

February 15, 2007

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In conclusion, this letter is being written to confirm my support for, and respectfully ask that you vote " Do Pass " on SB #2117.

Sincerely,



Bob Moe  
Valley View Farms  
P. O. Box 582  
West Fargo, ND 58078

State of North Dakota  
Senate Agriculture Committee  
SB 2117

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North Dakota Pork Producers

North Dakota Soybean Growers  
Association

North Dakota State Seed  
Commission

North Dakota Wheat  
Commission

Northern Canola Growers  
Association

Northern Plains Potato Growers  
Association

Northern Pulse Growers  
Association

Red River Valley Sugarbeet  
Growers

Testimony of Mike Beltz

North Dakota Ag Coalition

Senate Bill 2117

March 9, 2007

Chairman Johnson, members of the House Agriculture Committee:

My name is Mike Beltz. I farm near Hillsboro and am here today as the vice chairman of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I encourage your support of SB 2117.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for 20 years. Today, we represent 30 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. Through the Ag Coalition, these members seek to enhance the business climate for North Dakota's agricultural producers.

The Ag Coalition takes a position on only a limited number of issues brought to us by our members that have significant impact on North Dakota's agriculture industry. Fair contracting practices is one of those issues.

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