

2009 HOUSE AGRICULTURE

HB 1025

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1025

House Agriculture Committee

Check here for Conference Committee

Hearing Date: January 8, 2009

Recorder Job Number: 6718 & 6724

Committee Clerk Signature

*R. Mae Kuehn*

Minutes:

**Anita Thomas, Legislative Council**, testified as to the reasons for HB1025. This bill is a rewrite of the twelve commodity chapters which will eventually help to organize and combine the 95 chapters of agricultural law. **(Written Testimony attached)** She presented an amendment that would insert "willfully" after "person" on Page 25, line 17 and on Page 69, line 27. LC #90349.0101 **(Attached)**

**Testimony in support of this bill:**

**Jeff Enger, ND Corn Council:** Refer to page 16, line 26. Insert after "another qualified producer" we would like to insert "from that district."

**Representative Boe:** If he wasn't from that district, wouldn't that make him not qualified for it anyway?

**Jeff Enger:** Correct.

**Representative Boe:** In order to meet the qualifications, he has to be from that district?

**Jeff Enger:** Correct.

**Representative Boe:** So you don't need to have that in there.

**Chairman Johnson :** Anita, would you like to address that please?

**Anita Thomas:** Representative Boe is correct. On line 17 & 18 it specifies that each member of the council must be a resident of the district that member represents. So while I appreciate the added clarity, it's statutorily not necessary.

**Chairman Johnson :** Are you comfortable with the wording from the previous lines then?

**Jeff Enger:** I guess, if this is duplication.

**Jeff Enger:** Then I would like to refer you to page 18, line 27. We would like to eliminate "grown and sold" and put the word "purchased" in there. Because I think there's some instances where corn is brought into the state and sold within the state but it's not necessarily grown in the state. If you have a corn processing plant in one of the border states, the corn is not necessarily grown in the state but it's coming across the state lines.

**Representative Mueller:** We had some lengthy discussions about the issue you referenced. What you are doing with that is assessing corn grown out of state. We had some difficulty with that—paying the assessment in another state and getting dinged again. I remember there were some concerns about that and I know where you're going with that and I know why you're going with that. But I do think it created a can of worms that we never had a resolution for.

**Jeff Enger:** I think some that was brought in from Minnesota has been taxed already and it's being sold in North Dakota. I think sometimes a farmer has land in North Dakota and Minnesota and/or South Dakota.

**Representative Mueller:** I would like to refer to Anita of Legislative Council Staff if she has an answer for that.

**Anita Thomas:** Representative Mueller is right. We did have discussions about that during the interim. Perhaps what you want to do after the hearing is closed is have some discussion about whether it should be "corn grown or sold." We're getting into a different mind set whether we're taxing corn just grown in North Dakota or corn grown elsewhere. I suspect

there are consequences to making changes in this section. We want to insure that there are not unintended consequences to those changes.

**Jeff Enger:** I would like a discussion on page 17. We would like to have inserted before 4.1-04-04 we would like the inclusion of "county representation." Currently we do not have county representation within our districts and I think we would like to pattern this after the barley council and the wheat council. Right now we choose someone from within our districts. I think this would make it a lot more clean. If this is something we should do today or if we should do a bill specifically for this matter.

**Chairman Johnson :** We can visit with Anita too as far as if we have to put some amendments in here to address your concerns if they are overlooked.

**Representative Mueller :** Again getting into this issue of substantial changes—in someone eye's that might not be and in someone's eyes that might be. I think Chairman Johnson referenced stand alone bill to kind address some of that stuff. My only concern about dealing with it now or leaving it is that another 2 or 3 days goes by and we haven't resolved the issue, that's 3 or 4 days less that you have to get that bill hung together. We need to decided if that is a substantial change so we get a bill in before the deadline for bills.

**Representative Froelich:** I think it's only fair with all the commodity groups that if they want to come in and make substantial changes, a bill would have to be drafted so we can hold a public hearing on it.

**Chairman Johnson:** You can work with any of us as far as moving that bill draft over as far as sponsors, etc.

**Debra Johnson, Executive Director of the Soybean Council:** I have some information, not testimony, that may help the discussion that we just had. In the soybean program, by federal law, there is a State of Origin section. That State of Origin section mandates that soybeans

purchased in this state are a part of the assessment. The first purchaser is obligated to indicate on documentation what ground the beans were grown on. That assessment is sent to the soybean office. The indication of the state where the beans were grown is given, required by federal law to give those assessment dollars to that respective state.

**Chairman Johnson:** So the ground it's grown on—it's what state it's grown in.

**Debra Johnson:** Beans are sold in North Dakota and they were grown in Minnesota, I get that assessment. I owe that money to Minnesota. I have to by federal law send that to Minnesota.

**Representative Mueller:** Again we had a lot of discussion about federal law vs. what we do here in North Dakota. I don't recall that set of terms being in the bill as it was before it was rewritten---after it was rewritten. Because that is a federal issue. We can probably figure out some way to handle this whole thing. We need some discussion about that—but I'm not so sure we just want to follow federal law with all the commodity groups. But you are bound to do that. But we in the State of North Dakota are not bound to do that with other commodity groups.

**Debra Johnson:** Representative Mueller, it was not my intent to imply that should be done. I'm just sharing this information with you.

**Representative Mueller:** I appreciate that.

**Dan Wiltse, ND Oilseed Council:** Our board approved the rewrite. We think it simplifies and unifies for everyone.

**Steven Edwardson, ND Barley Council:** This was a productive process. We're good with everything that's in it. We approve it from our side.

**Steve Strege, ND Grain Dealers:** (Difficult to understand) We collect all the grain check offs. I've been in contact with Anita from early on. Make sure that the reporting cycle is the same. I think wheat is 20 days. Most of the others are 30 days. I think they've all been changed to 30.

Another comment made is the first purchaser should retain the records of check off collections permanently. That's a long time. I haven't read the bill in its entirety. Another thing is that the records at the elevator would be available to the check-off group upon request. Maybe that should be standardized. Grain elevators want consistency. When the border elevators receive grain from out of state---the situation from last session with the Dry Bean & Lentil Council, the elevator would collect on everything that was sold and send it to the state in which it was sold and then the councils are responsible to separate one state from another.

Now if you go back to page 67 of the bill, the wheat commission is the granddaddy of all check offs in the state. On lines 21, 22, 23 they have it pretty well covered.

I'm not saying which way, just so we have consistency.

**Senator Tim Flakoll:** I just want to add my support. There were a lot of nervous people at first when they saw us digging into this. The only thing that I wanted to add, would be to try to not add anything that wouldn't be deemed a technical correction or have anything in there that might be somebody's favorite old bill that was killed six sessions in a row. We would like to have a clean bill.

There's also a companion resolution to this bill that we continue to study. But that would be subject to Legislative Council approval and we may get to a point where we say we've got this down and then look at including the study as a "shall study."

**Deb Johnson, ND Soybean Council:** We thought this was a very good process that went extremely well and approve.

**Neal Fisher, ND Wheat Commission:** I would like to add our support for this process.

I would ask for an amendment for the one word be considered because I think that's not a substantive change. The word "willfully" could be a significant addition.

**Char Heer, Midwest Dairy Association and representing the ND Dairy Promotion**

**Commission:** On behalf of the Dairy Promotion Commission, we approve of any of the rewrites that have been put forth on the Century Code and also agree with adding the word “willfully.”

**Shannon Berndt, Administrator for the ND Dry Pea & Lentil Council:** The Dry Pea & Lentil Council is in support of all the changes that are made with HB 1025.

To speak to what Mr. Strege had mentioned earlier, in the Dry Pea & Lentil Council's commodity act, we do have written into our code “grown or sold” in North Dakota. Two years ago we helped Montana and South Dakota draft their check off law. Both reading “sold” in those states. So we do have an issue where we have border state elevators that are assessing 2 percent—they're assessing 1 percent for North Dakota and also 1 percent for Montana and South Dakota. How we've avoided a situation with that or what we are working on is reciprocal agreements with those two states. We have information that comes into the Dry Pea & Lentil Council. We get attachments to the check off forms that are submitted. It shows all the growers names, addresses. So we have a way of seeing where that grower is actually from. So the work is not going to be done by the elevators. It comes back to our office and we submit the assessments back to Montana and South Dakota.

**Chairman Johnson:** On your grower, Shannon, if it's identified as being a Montana residence and sell in North Dakota, are you tracking mainly the grower and its residency or are you tracking the land that it was actually grown on? Do you have growers that are producing on both sides of the line?

**Shannon Berndt:** What we are tracking is where the producer is located or where they live. Part of the situation in trying to figure out how this work gets done, Montana does not require supporting materials to their check off. Basically the elevator fills out a form and sends it in.

So it's really back at our office. We're the only ones that collect that type of information. You can always get a list generated from Farm Service Agency where you can look for a grower name and find out which state they are actually residents of and return an assessment back to them and for us there's probably going to be 3 or 4 elevators total where we're going watch the assessments that come in. It's not a major problem for us.

**Dan Wiltse, Oil Seed Council:** We need to make it simple for all commodities for the elevators. There's a refund ability. I don't know why we aren't just collecting it and if someone doesn't like it they can always refund it. We need to unify it.

**Nancy Jo Bateman, ND Beef Commission:** We are one of the few commodity groups in the state that has a federal and state law. Our Beef Commission members are totally in support of the rewrite of this chapter.

One change that was made in our section that I want to point out to you, we didn't really consider it substantive. We do have a provision for ex officio nonvoting members that can sit on the Beef Commission at the elected members request. And that number of ex officio members has been increased from 2 to 4. I only mention that because in some people's minds they might think that's a big change. For us the reason that we requested the number be increased was because in working with our national organizations, since we have 6-year term limits on the Beef Commission, it's hard many times to get a North Dakota producer elevated to a leadership position at the national level so North Dakota can have a voice in national beef industry issues within that 6-year period. By allowing ex officio members we can take board members that have put in their time as a ND Beef Commission member, we can continue or extend their time on the national committee. Our national organization requires that those committee members be active Beef Commission members or ex officio members.

Thank you for allowing us to increase that number so that we can have North Dakota producers have a bigger voice at the national level.

**Dan Wogsland, Executive Director of the ND Grain Growers Association:** The ND Grain Growers supports HB 1025.

**Dianne Peycke, North Dakota Potato Council:** They are in support of HB 1025. The major change important to the Potato Council is that Roger Johnson, Commissioner of Agriculture, serves as our chairman. Now the Potato Council will elect annually a Potato Council member to serve as their chairman.

No Opposition

**Chairman Johnson:** I'll close the hearing on HB 1025.

**Afternoon committee work on HB 1025**

Amendment of HB 1025 –LC #90349.0101 (**attachment #1b**)

**Representative Boe** moved and **Vice Chairman Brandenburg** seconded to accept the amendment. Voice vote was taken and it passed.

**Representative Mueller:** Did we miss “willfully” any place else?

**Anita Thomas, Legislative Council:** The Beef Commission has one section which is a little bit different than the two that you have. We asked them to visit with their Federal Council and make sure the change isn't because of federal law that might impact that. If they have a “willful” in their section, it could be caught in the Senate.

**Chairman Johnson:** We'll adjourn for the day.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1025

House Agriculture Committee

Check here for Conference Committee

Hearing Date: January 15, 2009 (Committee work)

Recorder Job Number: 7060

Committee Clerk Signature

*Re Mae Kuehn*

Minutes:

**Chairman Johnson:** We'll go back to discuss HB1025. That was the one with the rewrite for the commodity groups.

**Representative Rust:** I received some input from people offering amendments. The input I've been getting is to have them submit a separate bill.

**Chairman Johnson:** Yes, that's what we've heard from our Interim Chairman is, if there are substantial changes to language in the bill to have a stand-alone bill. All the other amendments, except for the word "willfully" which we adopted last week with the dairy and wheat folks, --if they felt that strongly to come forward with a standalone bill. I did receive a letter from Mr. Strege here with some concerns and I think some of those were addressed. If not there will be another hearing before the Senate until we are out of here.

**Vice Chair Brandenburg:** I think all the commodity groups had a chance during the interim to give their input.

**Chairman Johnson:** Is there a motion for a Do Pass on HB 1025?

**Vice Chair Brandenburg moved Do Pass as Amended**

**Representative Boe seconded.**

A Roll Call vote was taken: **Yes: 12, No: 0, Absent: 1** (Representative Froelich)

**Representative Mueller will carry the bill.**

V/R  
1/15/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1025

Page 25, line 17, after "person" insert "willfully"

Page 69, line 27, after "person" insert "willfully"

Renumber accordingly

Date: 1/15/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1025

House Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number 90349.01a2

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep. Brandenburg Seconded By Rep. Boe

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	✓	
Mike Brandenburg, Vice Chair	✓		Rod Froelich	AB	
Wesley R. Belter	✓		Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust	✓		Benjamin A. Vig	✓	
Mike Schatz	✓				
Gerry Uglem	✓				
John D. Wall	✓				

Total (Yes) 12 No \_\_\_\_\_

Absent 1

Bill Carrier Rep. Mueller

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

**REPORT OF STANDING COMMITTEE**

**HB 1025: Agriculture Committee (Rep. D. Johnson, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1025 was placed on the Sixth order on the calendar.

Page 25, line 17, after "person" insert "willfully"

Page 69, line 27, after "person" insert "willfully"

Renumber accordingly

2009 SENATE AGRICULTURE

HB 1025

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1025

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 27, 2009

Recorder Job Number: 9860

Committee Clerk Signature



Minutes:

**Sen. Flakoll** opened the hearing on HB 1025, a bill relating to agricultural commodity boards and commissions. All members were present.

**Rep. Mueller**, district 24, testified in support of the bill.

**Rep. Mueller-** I am just going to go over the changes that have been made over in the House Agriculture committee on this bill. (went over changes with committee)

**Sen. Flakoll-** do you recall anything that would stand out on changes that you made that would stand out to us?

**Rep. Muller-** nothing that I remember that would be very significant.

**Anita Thomas, Legislative Council.** Walked the committee through the bill section by section explaining each sections changes that were made in the bill, time 8:12-31:00.

**Nancy Jo Bateman**, ND Beef Commission, testified in favor of the bill.

**Nancy Jo Bateman-** The beef commission finds no problem in this, we were very pleased to work with the interim committee and Anita and drafting this new language. We urge you to support this bill.

**Char Heir**, ND Dairy promotion commission, testified in favor of the bill.

**Char Heir-** We are here to stand in support of this bill and urge a do pass.

**Neal Fisher**, ND Wheat Commissioner, testified in favor of the bill.

**Neal Fisher**- We also stand in support of this bill.

**Sen. Flakoll**- when the changes were made what did you do as far as member involvement?

**Neal Fisher**- we knew about this for a long time so it was sent out in our newsletter and we discussed it as our county representative meeting.

**Shannon Berndt**, ND Dry Pea and Lentil Council, testified in favor of the bill.

**Shannon Berndt**- we are here to stand in support of this bill as well we work with Anita and the interim committee. There were no substantial changes made to our section.

**Steve Strege**, ND Grain Dealers, testified in favor of the bill.

**Steve Strege**- We are buy and large the people that collect these check-offs. We are glad to see that reporting cycles are pretty uniform and we support the bill and urge a do pass.

Testimony was also submitted in support of the bill by **Jean Schaefer**, see attachment #1.

No opposition to the bill.

**Sen. Flakoll** closed the hearing and opened discussion on the bill.

**Sen. Taylor** motioned a Do Pass and was seconded by **Sen. Behm**, roll call vote 7 yea, 0 nay, 0 absent. **Sen. Flakoll** was designated to carry the bill to the floor.



**REPORT OF STANDING COMMITTEE (410)**  
February 27, 2009 11:46 a.m.

**Module No: SR-35-3710**  
**Carrier: Flakoll**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1025, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1025 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1025

Anita Thomas (HB 1025) Testimony  
January 8, 2009

Anita Thomas  
# 1025  
1/8/09  
1a

Mr. Chairman:

This effort had its roots in 2007 Senate Bill 2139.

Senator Flakoll, the bill's primary sponsor, said, when he walks into the education committee, he can take one volume of the NDCC with him. When he walks into the agriculture committee, his topic matter is all over the Code.

He was correct. The agriculture laws of this state are found in 95 different chapters, which are scattered throughout at least seven volumes of the Code. That in and of itself was not the sole reason for the rewrite.

Within those 95 chapters, we had many years of legislation and many years of amendments. We had many years of "we know what this is supposed to mean" and "we know how this is supposed to work." While corporate memory is a good thing, it does tend to get lost. Succeeding generations are left without sufficient direction, and -- ways of doing business then develop to fill in the gaps. From a statutory perspective, the problem is that those ways of doing business are not articulated.

The next thing that happens is probably best described by the closet analogy. You start out with your suits, your shirts, your dress pants, and your blazers. If each time you go to the dry cleaners, you just throw the cleaned clothes on the end, pretty soon, your closet becomes disorganized. Your wife's dresses are in with your suits -- Your coats are in with your shirts -- and you are having trouble finding things.

The same thing happens statutorily. An existing section can be repealed and replaced by a new section. Often that section is tossed in at the end of an existing chapter. Over time, you can find councils being elected before they are created and directives to spend money before the money is even assessed.

Going back to the closet analogy, we do sometimes have to ask ourselves "Do we still need this." Nehru jackets and white John Travolta disco suits were all the rage at one time. They probably don't need to be taking up closet space anymore. Last session, people joked at chicken branding. That I believe was repealed earlier. We do however still require the agriculture commissioner to maintain immigration records.

When the interim agriculture committee started its work, Chairman Mueller and I sat down with Commissioner Johnson and his staff and representatives of the Attorney General's office and looked at how we could begin to tackle the 95 chapters. It was decided that we would start with a rewrite of the twelve commodity chapters and the noxious weed chapter. The noxious weed chapter will be discussed later this morning.

As for the twelve commodity chapters, we worked very closely with each of the groups. Chairman Mueller was insistent that we stay within the parameters of our legislative directive. That directive was to focus on clarity, on consistency, on logical placement and order, and on removing duplication and unnecessary language. It was not the intent or the purpose of the interim committee to change legislative policy. In addition, while the interim committee wanted consistency, it was also respectful of the fact that the commodity groups are different and that they have unique ways of doing business. Over the course of the interim, the committee reviewed each of the chapters with representatives of the commodity groups at the podium.

What is being presented to you today is a bill draft containing twelve new chapters to a new title of the Century Code.

You'll find that the chapters are based on alphabetical order according to the commodity and you will find, to the greatest extent possible, consistency of order within each chapter. Each chapter begins with a definition section.

Districts, if used, are delineated and councils or commissions are established. Terms of office are defined and vacancies are addressed.

Under current law, many of the commodity groups had elections governed only by language such as "in the manner deemed fair and reasonable by the commissioner." The interim committee determined that election procedures needed to be spelled out so that there was no disagreement about roles and functions and what was fair and what was reasonable.

Under current law, all of the commodity groups compensate their board members. Several of them had language precluding compensation to employees or officials of the state. All of us knew what that meant. The Agriculture Commissioner was not going to get paid from two sources. Similarly, if a member of the ag experiment station staff is assigned to a board, nobody wanted that individual getting paid double. If on the other hand a farmer works as a part time janitor, he couldn't get paid for sitting on the board. The language now accurately reflects intent.

Many of the groups included a powers and a duties section. What the interim committee did was sort out which activities fall under which heading. A power is authorization - permission to do something. A duty is a mandate - Something that must be done.

Each group has its assessment addressed in a separate section, as well as how that assessment is to be collected, and the manner in which it is to be submitted.

For those that allow refunds of assessments, the committee did some standardization. Rather than every group having their own time period for the submission of requests, the committee created a sixty day window from the date of the assessment within which a producer must request a refund application and a ninety day window from the date of the assessment within

which the producer must submit the application. If memory serves me correctly, potatoes are the only refund group with a different scheme.

One thing which the committee did add was the provision that if a refund was less than \$5, the producer was not entitled to it. That same provision is used by the tax commissioner.

The committee also, to the extent possible, standardized language regarding double payments of assessments, expenditures of funds, and continuing appropriations.

With respect to advisory referenda, the interim committee again clarified that the referenda was for the purpose of finding out by how much producers believe their assessment should be raised or lowered - not just whether it should be raised or lowered. Some of the current commodity chapters are silent regarding what should happen after the referendum. Others directed the agriculture commissioner to prepare a bill. The interim committee believed that rather than requesting the agriculture commissioner to submit a bill that he may or may not support, each council or commission, by virtue of being a state entity, could and should submit its own bill.

The last four pages of the bill draft contain sections that needed cross reference changes. That's also the case with the very first section. We did not look at the content of those sections because they were not within the scope of what we were amending. That's why the very first section still includes a reference to "purpose" in the caption. We will deal with that in the future when we address that particular chapter. For those of you who were not on the interim committee, we eliminated all statements of purpose and statements of legislative intent. Why you pass a section and what you hope to accomplish by so doing is important from a historical perspective. It makes great testimony. It just does not need to take up space in the Century Code.

On the very last page, we have a repeal section. Those are the twelve chapters containing the current commodity language.

With that Mr. Chairman, if any of the members who did not participate in the interim process wish to have more detail regarding specific chapters or portions thereof, I will gladly make time available to meet with them.

90349.0101  
Title.

Prepared by the Legislative Council staff for  
Representative D. Johnson  
January 7, 2009

*Anita Thomas* 16  
1/8/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1025

Page 25, line 17, after "person" insert "willfully"

Page 69, line 27, after "person" insert "willfully"

Renumber accordingly

Attachment #1

Flakoll, Tim

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From: Jean Schaefer [schaeferchiangus@srt.com]  
Sent: Thursday, February 26, 2009 11:05 AM  
To: Flakoll, Tim

Senator Tim Flakoll

I am unable to attend the hearing for House Bill # 1025 on Friday am. On behalf of the North Dakota Beef Commission I urge a do pass as we have no opposition to the rewrite of the language for our commodity group. I thank you for you work and attention to HB # 1025 Jerry Schaefer ND Beef Commission Chairman