

2009 HOUSE AGRICULTURE

HB 1110

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1110

House Agriculture Committee

Check here for Conference Committee

Hearing Date: January 15, 2009

Recorder Job Number: 7061

Committee Clerk Signature

*LeMae Kush*

Minutes:

**Susan Keller, State Veterinarian:** I'm here on behalf of the ND Dept. of Agriculture and the State Board of Animal Health in support of HB 1110. This would put regulations in place to deal with the feral swine issues in North Dakota. **(Written testimony attached #1a)**

**(Regulations attached #1b)**

**Representative Uglem:** Does feral mean wild? Is any hog roaming free considered feral?

**Dr. Keller:** That's the beauty of using the terminology feral swine. Feral swine means an animal that was domestic that has been turned loose and has reverted back to the wild state. We have pictures that were taken. They look like domestic pigs until you try to catch them or round them up. Their hair starts getting long and they start to pretty wooly after a while.

**Chairman Johnson:** When you talk about these animals being removed and tested, are they destroyed or were they released some place else.

**Dr. Keller:** We are trying to use terminology that doesn't sound so bad on the nightly news. Removed permanently.

**Representative Mueller:** You made reference to Section #10 which refers to enclosed non-traditional livestock. You had some concern from that group of people. Are they OK with what we are doing here?

**Dr. Keller:** I can't speak for that individual. We have put together a group called the Non-traditional Livestock Advisory Council. They don't have regulatory authority but they make recommendations to the Board of Animal Health. That's how we come up with the requirements that made the domestic animal industries comfortable. If you look at the details Chapter 48-12-02.1 (**page 2 of attachment #1b**) nobody wanted to do this. It was not meant as a deterrent.

**Representative Belter:** We've got groups that are anticonfinement. What if someone decides to raise hogs on a half section of land. Could this be in conflict?

**Dr. Keller:** North Dakota has some unique things in place. They tell animal health officials they're envious of their laws in regard to animal health. Our law says if you have domestic animals they have to be fenced in. We have to give due process and let everyone know.

If no one is claiming these pigs, they can be destroyed. In order to maintain the population of feral swine, you must destroy 80-90% of the population.

**Representative Boe:** Have we talked with the reservation about mirroring the same regulations?

**Dr. Keller:** Because they are a sovereign nation, any agreements have to be done through the Federal Veterinarian's office. We've been told that they are working on the problem.

**Greg Link, ND Game & Fish Dept., Asst. Chief of the Wildlife Division:** I am here today in support of HB 1110. (**Written testimony attached #2a**)

**Representative Kingsbury:** If I saw a feral swine, do I call the Game & Fish Dept.?

**Greg Link:** You can call our department, the wardens, or the local sheriff. That's how we got our initial report in the Badlands. Some oil field workers were seeing these pigs for several months just off on their own running around. As Dr. Keller mentioned, they start taking on characteristics of a wild hog even if they were originally domestic.

**Vice Chair Brandenburg:** What kind of penalties are we looking at with this legislation?

**Greg Link:** It would be similar to violations of NTL (Nontraditional Livestock) noncompliance situations.

**Representative Belter:** Is the Federal Government participating in the eradication of these?

**Greg Link:** Yes, very much involved. They stepped in very quickly. The Park Service was not involved as we did not find any pigs in the park. In the Turtle Mountains there are some mixed land holdings with state and federal with Reservation and Tribal Trust Land. We also contacted U.S. Fish and Wildlife and kept them in the loop as well because we were operating in some of their property.

**Representative Schatz:** Is it my understanding that if you were to shoot one of these, you'd get a \$5,000 fine?

**Greg Link:** The intent is to keep people from promoting or in any way trying to entice the hunting of. If there is going to be any shooting at the direction of the Board of Animal Health. Only citizens that have a permit or direction from the Board of Animal Health are able to do any shooting. When you ask the public to assist, it gets to be a real sport. It will only be under the direction of the Board of Animal Health.

**Representative Schatz:** Would that be on your own land, too?

**Greg Link:** I guess that would be the Board of Animal Health's jurisdiction. If you've got a problem you would get the permit.

**Vice Chair Brandenburg:** What if I've got a wild pig out at my farm and he's eating my corn. I'm out there checking my corn fields and there he is. So I shoot him. Am I going to get fined \$5,000?

**Greg Link:** Pigs, of course, are like any other domestic livestock. They belong to somebody. By you killing them, you're shooting somebody's property. That's where you have to be

careful. When we know that no one is claiming them—sometimes when they're out on their own for six months and damaging other people's property, nobody is going to claim them because then they would also claim the responsibility for damages. So, No, you don't go shooting other people's property without finding out what the situation is and that's where the sheriff's dept. comes in.

**Representative Rust:** About a year or two ago there was a large pig in the Stanley area that was shot. Was that classified as a feral pig?

**Greg Link:** That was a Eurasian Wild Boar variety. That is absolutely the worst scenario. There is suspicion that it came from Canada.

**Representative Rust:** As I recall the individuals who found that pig did contact the sheriff or Game & Fish and were given permission to shoot it. They were told it was not illegal. Would this bill change that?

**Greg Link:** You just have to do some diligence as far as "Does that animal belong to anybody?" If they look somewhat domestic, it gets into that scenario where it's a little tougher.

**Representative Belter:** I don't believe that the public is aware that there's a potential problem out there. Once the hunting public finds out about this problem and they see one of these things running around, I don't believe they're not going to shoot it. Is it going to be a "don't ask—don't tell" policy?

**Greg Link:** Again those pigs, whether wild or domestic, are not in Game & Fish's jurisdiction. They're not ours to control or regulate. It's the Board of Animal Health. Dr. Keller, do you want to address that?

**Dr. Keller:** If you look on the bill at #8. **(Read aloud item #8)** (Refers to owners/legal occupants of land.) The thing to remember is the health concern. When these animals are killed somebody has to get samples on them. You've got to be careful. These things carry

pseudorabies. We don't want people to take this too lightly. The Board will never fine someone \$5,000 if they were ignorant of the law. We have a penalty matrix.

**Chairman Johnson:** Is that permitting process relatively simple?

**Dr. Keller:** If you call, you get a permit number over the phone. We also want to have the Wildlife Services people notified so they can get out there. What if they miss? We have sharp shooters that never miss. Pigs travel. If someone misses, they're gone the next day.

**Chairman Johnson:** Number 8 does require the permit to be in possession. Is that telephone call considered?

**Dr. Keller:** "In possession" means they can give that permit number back to me.

**Representative Belter:** People out there are going to shoot the darn thing. It would seem to me that the process here should allow that. We should encourage people to report that so that someone comes out to get the animal. The way it's set up now, they're going to get shot and may or may not get buried.

**Dr. Keller:** In our experiences, it's not one—it's a group. We don't want people taking out groups of pigs. They could be domestic pigs and somebody's property.

**Vice Chairman Brandenburg:** These old farmers out there don't always follow the rules. You give them \$1,000 fine for the first time. Or you give them a warning the first time. It doesn't really word that in the bill.

**Dr. Keller:** It does say up to \$5,000. It is the same process we go through for other animals with the Board of Animal Health.

**Vice Chairman Brandenburg:** Just explain the Board of Animal Health.

**Dr. Keller:** The penalty matrix is a recommendation. The first time is a warning but it depends on each situation and the knowledge of the person beforehand. The second time--\$250. The

third time--\$500. The fourth time--\$1,000. Only once since I've been here have we had a massive penalty.

**Vice Chairman Brandenburg:** How many are on the Board?

**Dr. Keller:** Nine members now.

**Representative Boe:** You indicated there were three areas. The Turtle Mountains was the only area where you felt you didn't have resolution. Are we monitoring that?

**Dr. Keller:** We worked with the person that had the feral swine that's on the reservation. He's frustrated because he believes somebody else on the reservation got his swine. I have no jurisdiction.

**Representative Uglem:** If they are out of control in other states, are they going to be moving in and be more of problem in the future?

**Dr. Keller:** The most likely way that they are showing up now is someone is hauling them in and dropping them off. Or, somebody had released domestic swine. Or, in one case we heard a barn burn down. We've got to have some way to deal with it. We're trying to get ahead. We don't have a huge swine problem but we do have the three cases. We've been warned. We need to get something going or we are going to be in the same boat Texas is.

**Julie Ellingson, ND Stockmen's Association:** (Gave childhood nursery rhyme.) We support this bill.

**Hearing closed on 1110.**

**Representative Mueller moves a Do Pass.**

**Representative Vig seconded the motion.**

**Chairman Johnson:** Comments before we take a roll vote?

**Representative Schatz:** I'm having trouble with the \$5,000 fine. I think that's a little too much. If there's a graduated scale, it should be amended so it would have all the things that were put in there.

**Representative Belter:** I still think people are just going to go out and shoot them.

In regard to the fine, the way this language is written, if it's designed to be more punitive than constructive---when this thing comes to the floor and there's a \$5,000 fine, people are going to think about their property rights.

**Chairman Johnson:** The way I look at it is to try to prevent the sport hunting. You can go up to \$5,000. We are confronted with the geese that are trying to eat our crops in the spring. You don't go out the first day and "shoot & shovel." There's a process you can go through to get the permit.

**Representative Kingsbury:** Along the same lines with the fine, it sounded reasonable to take it to the Board and they would work with the person. But it's not down there on paper.

**Representative Holman:** I see the disposal thing as an issue too. ---with the coyote population in our state.

**Representative Rust:** I would like a little more time before we take a vote. I don't have a problem with the fine but I do have a problem with the landowner. I think some landowners are willing to take care of the problem immediately. At this point in time with the information I have here, I don't know that I'd support it.

**Chairman Johnson:** Representative Mueller, would you care to withdraw your motion?

**Representative Mueller:** I will withdraw my motion.

**Representative Boe:** Whatever we decide to do, I'm going to visit with Senator Marcellais and see what his thoughts would be about getting a companion resolution that would send it

back to the Turtle Mountain Tribes to see if they would adopt something similar. If these animals can keep retreating back onto the reservation, we're just spinning our wheels.

**Representative Kingsbury:** How much education is out there so people will know what they should do?

**Chairman Johnson:** The groups that are involved, like the Stockman's Association, are going to have to work with the media. We'll work on this bill later.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1110

House Agriculture Committee

Check here for Conference Committee

Hearing Date: January 16, 2009 (Committee Work)

Recorder Job Number: 7155

Committee Clerk Signature

*ReMa Kuehn*

Minutes:

Chairman Johnson: What I'd like to do is appoint a subcommittee.

Rep. Wall, Chair of committee

Rep. Boe—Because I know feral pigs are an issue up in his area

Rep. Rust

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1110

House Agriculture Committee

Check here for Conference Committee

Hearing Date: January 30, 2009 (Committee Work)

Recorder Job Number: 8263

Committee Clerk Signature



Minutes:

### Report of Subcommittee for HB 1110

**Representative Wall, Chair of Subcommittee:** The proposed amendments are in front of you. It's a hog house—a total rewrite. One of the concerns of some people is on page 2 dealing with the permitting process. Do they need a permit before they can eradicate it? Most of the substantive language change deals with the permit process giving permission for someone to take care of the hog and then a 24 hour period to report.

**Anita Thomas, Legislative Council Staff:** (Explained some of the changes with the amendment) The original bill on page 1, #2c removed “reasonable inquiry within the area” because we weren’t sure what that meant. We added a section about **Board – Authority**. We’re clarifying that the board of animal health is the state agency that’s responsible for the control and eradication of swine on state lands and on private lands. We went into **Prohibited actions**. This is more of a structural change rather than substantive change from the first version. #3 we made into a list. **Presence of feral swine—Notification of board—Immediate threat**. The original bill would authorize the land owner to destroy feral swine on their land provided they obtain a permit, had the permit in their possession when the destruction occurred, reported the event to the board, and made the animal available to the

board for testing. The hog house amendment simplifies this a little bit. It says on top of page 2, if you believe feral swine are on your property, call the board and follow their directions. Are you going to shoot it? Is the board sending somebody out? Should you bury the animal? Does the board want it preserved for testing? If you unexpectedly encounter feral swine on your property and that animal poses a threat of harm to you or your loved ones or property destruction, shoot it. Then call the board within 24 hours and follow their instructions. **Penalty section** is the same as when the bill was introduced. A civil penalty of up to \$5,000 and the person can be held accountable for any costs incurred by a governmental agency as a result of a violation.

**Representative Belter:** The language “present on property owned by or legally occupied.” What is “legally occupied”?

**Anita Thomas:** That would be a landlord/tenant arrangement.

**Representative Belter:** “A threat of harm to others or destruction of property” Does that mean destruction to crops?

**Anita Thomas:** It does.

**Chairman Johnson:** The 24-hour reporting period, if something happens Friday night or Saturday morning, is there an answering service?

**Dr. Susan Keller:** Yes

**Representative Belter:** When you say civil penalty, does that mean it has to be court action or just administratively handed out?

**Anita Thomas:** It does not involve a crime and is done administratively.

**Representative Schatz:** Line 1 under **Prohibited actions**, a person may not possess live feral swine. What if a swine is in my feedlot and I got it cornered and I want you to come out and shoot it, I’m going to possess it.

**Anita Thomas:** I think you would have to go with intent. You are trying to corner or corral the animal for different purposes, not to have it for your kid's birthday party.

**Representative Schatz:** "Negligently allow swine to live in a feral state." What does that mean? A pig gets away from me, I'm negligent?

**Anita Thomas:** Negligently allowing something to live in a feral state would require conduct that's unreasonable disregard and substantial likelihood of the existence of the relative facts . . . . I did not draft that definition. I guess if your conduct would rise to that level, then you would be found guilty.

**Representative Schatz:** If we could remove "possess" and "negligently", I would feel better.

**Representative Uglem:** Would this then not allow somebody on the reservation to transport feral swine across state land to get to the reservation?

**Anita Thomas:** I don't have a firm understanding of where sovereign immunity comes in.

**Dr. Keller:** I remember in the past we've been told we can't stop animals in transit. We've been told that by the federal government. So animals on a vehicle moving from one reservation to another or from one country to another, we can't stop them.

**Representative Uglem:** If you have neighbors that are not getting along, would this relieve the liability for shooting your neighbor's hog on your property?

**Dr. Keller:** We had the language in there "reasonable inquiry to identify an owner." We were told you can't just go and shoot somebody's pig. Feral swine can be a domestic pig with tags in its ears that has been turned loose and not claimed any more. If the market falls apart, they revert to the wild. Our legal counsel says we have to make every effort to make sure these are not owned by somebody. There is a fencing requirement for domestic livestock in the ND

Century Code.

**Dr. Keller:** We are concerned with 2d under Definitions. This would mean that feral swine would have no tags. Feral swine can have tags. They can be domestic animals. Some of these tags are so good, they'll last for a lifetime. If we could remove 2d, we would be OK.

**Representative Belter:** The penalty of up to \$5,000?

**Dr. Keller:** Yes, that's typically how we deal with violations. We have a penalty matrix. We've worked with the Attorney General's office on all penalties.

**Representative Belter:** The question about 24 hours, you did say you have a 24-hour phone line?

**Dr. Keller:** Yes, there are three of us that all carry phones. So you can call 24 hours a day—7 days a week.

**Representative Belter:** What concerns me, people are going to shoot the hog. How is the information going out to them that they need to report this within 24 hours along with the telephone numbers, etc.?

**Dr. Keller:** That's a good point. We work with the County Agent, the Sheriff, put notices in papers, and work with the local veterinarians.

**Representative Belter:** If we would extend this to 48 hours, do you see that as a problem?

**Dr. Keller:** I think the 24 hours seems reasonable. The reason we want the shortest possible time is, if you are trying to collect samples, you also have to drive to that place, pick up the animal, take them to where they are processed, and mailed off. When you're testing for these diseases, you need to get it processed quickly.

**Representative Schatz:** I guess I'm having trouble with the \$5,000 fine. I'd rather see a \$5,000 bounty. This looks like a stick rather than a carrot.

**Dr. Keller:** We have visited with other state animal health officials. When you put the carrot out there, it increased the feral swine population. It became an opportunity.

**Anita Thomas:** I'd like to suggest one other change to the hog house amendment. On page 2, #2a, 3<sup>rd</sup> line, "swine poses a threat of harm to others or destruction of property", I would suggest we cross out "to others."

**Representative Wall:** I'll move to adopt the amendments to the amendment which strikes 2d on page 1 and removes "to others" on page 2, 2a.

**Representative Rust:** Seconded the motion. No discussion.

**Voice Vote taken. Passed.**

**Representative Belter:** I move to amend the penalty to \$500 instead of \$5,000.

**Representative Schatz:** Seconded the motion.

**Discussion:**

**Representative Wall:** When the subcommittee met on this, we talked to Dr. Keller about putting a matrix into the bill that showed first a letter on the first offense, a \$500 fine in the second offense, etc. This penalty carries through all the nontraditional animals. They felt it was best to keep it consistent. We wanted to change it also. It would be proper to have Dr. Keller speak to this.

**Dr. Keller:** We wanted to be consistent. You can have multiple violations. We've only assigned a \$5,000 penalty a couple times in the eleven years that I've worked for the Board of Animal Health. It would have to be repetitious or someone who knowingly brought in a live animal that should know what the law is and caused a lot of damage to the state with disease. Then \$5,000 doesn't seem adequate but I'll leave that up to your judgment.

**Representative Belter:** I'm not so sure if you bring this to the House floor with a \$5,000 fine, that it isn't going to raise a lot of red flags. I would trust the state vet wouldn't make a mistake and charge a \$5,000 fine but that's not what the law says. I'm not concerned about consistency with violations in other areas.

**Representative Schatz:** Was Representative Boe going to find out from the reservations what their policy was? Wasn't that one of the issues?

**Representative Wall:** Representative Boe met with Senator Marcellais and nothing was resolved. Senator Marcellais said he'd do some checking but I'd don't think that's going to go fast enough to take action.

**Chairman Johnson:** When I talked to him, he was going to bring it to the tribal meeting at home.

**Representative Schatz:** So anything we do, they don't have to abide by.

**Chairman Johnson:** That's correct.

**Representative Mueller:** Go back to the fine. The only caution I have is, I can imagine someone wanting to hunt feral swine in our state. They may have to pay \$500 if they get caught. It doesn't matter if the person wants to shoot a feral swine. A hunter may not mind \$500.

**Representative Rust:** Would it be better to keep \$5,000 in there and have it come to the floor and get totally nixed or put in \$500 and probably get through.

**Representative Holman:** In much of our law, people are given a range and people assessing the penalty are given parameters. We trust our people to use that range in a prudent way to deter the crime.

**Representative Rust:** I'm not so sure everyone enjoys that trust. I think with \$5,000 it's going to die.

**Chairman Johnson:** I guess we can adopt this change if the committee desires. If it's not working, the department will be back next session to explain why.

**Representative Kingsbury:** Maybe it could be changed and amended in the Senate after we get it through the House. I think we need this legislation. Is there another amount like \$1,000?

**Chairman Johnson:** The motion has been made for a maximum \$500 fine.

**Voice Vote taken. Passed.**

**Representative Belter moved to adopt the subcommittee's amendment as amended.**

**Representative Rust seconded.**

A Roll Call vote was taken. **Yes: 9, No: 1, Absent: 3**, (Representatives Brandenburg, Boe, Froelich).

**Representative Wall will carry the bill.**

VK  
2/3/09  
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1110

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new chapter to title 36 of the North Dakota Century Code, relating to feral swine; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new chapter to title 36 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter:

1. "Board" means the state board of animal health.
2. "Feral swine" means a hog, boar, or pig that:
  - a. Appears to be untamed or undomesticated;
  - b. Appears to have reverted from a domesticated to a wild state; and
  - c. Is freeroaming.

**Board - Authority.** The board is responsible for the control and eradication of feral swine on state lands and on private lands in this state.

**Prohibited actions.**

1. A person may not import, transport, or possess live feral swine.
2. A person may not intentionally, knowingly, or negligently allow swine to live in a feral state.
3. a. A person may not:
  - (1) Hunt or trap feral swine;
  - (2) Sponsor or promote the hunting or trapping of feral swine;
  - (3) Assist in the hunting or trapping of feral swine;
  - (4) Profit from the release of feral swine; or
  - (5) Profit from the hunting or trapping of feral swine.
- b. Paragraphs 1 through 3 of subdivision a do not apply to a state or federal agency or any person authorized by a state or federal agency to engage in the control or eradication of feral swine.

**Presence of feral swine - Notification of board - Immediate threat.**

1. Any person having reason to believe that feral swine are present on property owned by or legally occupied by that person shall notify the board and cooperate with the board in controlling or eradicating the feral swine.

- 2. a. Notwithstanding any other provisions of this chapter, if a person encounters a feral swine on property owned by or legally occupied by that person and determines that the feral swine poses a threat of harm or destruction of property, the person may immediately eradicate the feral swine.
- b. Any person eradicating a swine under this subsection shall notify the board as soon as practicable, but in no event later than twenty-four hours after the time of the eradication. The person shall follow any instructions given by the board with respect to the handling of the carcass, preservation of the carcass for testing, and disposal of the carcass.

**Penalty.** Any person violating this section is subject to:

- 1. A civil penalty in an amount not exceeding five hundred dollars per violation; and
- 2. A claim for the actual costs of control or eradication incurred by any state or federal government agency as a result of the person's violation."

Renumber accordingly

Date: 1/30/09

Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1110

House Agriculture Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep Belter Seconded By Rep. Schatz

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

*voice vote passed*

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

Absent \_\_\_\_\_

Bill Carrier \_\_\_\_\_

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

amendment to 98213.0102  
Change penalty to \$500 instead of \$5,000.

Date: 1/30/09

Roll Call Vote #: \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1110**

House Agriculture Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep. Wall Seconded By Rep. Rust

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

*Vote  
passed*

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

Absent \_\_\_\_\_

Bill Carrier \_\_\_\_\_

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

*Amendment to 98213.0102  
- Strike 2d, page 1  
- Remove "to others" page 2, 2a.*



**REPORT OF STANDING COMMITTEE**

HB 1110: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). HB 1110 was placed on the Sixth order on the calendar.

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2. A claim for the actual costs of control or eradication incurred by any state or federal government agency as a result of the person's violation."

Renumber accordingly

2009 SENATE AGRICULTURE

HB 1110

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1110

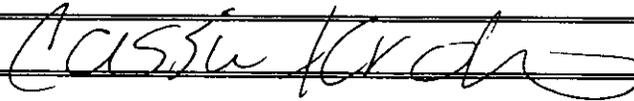
Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: March 5, 2009

Recorder Job Number: 10293

Committee Clerk Signature



Minutes:

**Sen. Flakoll** opened the hearing on HB 1110, a bill relating to feral swine. Members present (6) absent (1)-**Sen. Taylor**.

**Beth Carlson**, Deputy state veterinarian, testified in favor of the bill. See attached testimony, attachment #1.

**Sen. Flakoll**- on the pay for hunts is it shot as many as you want or is per animal?

**Beth Carlson**- I think it varies depending on the offer.

**Sen. Flakoll**- for the \$500 per violation, is that per animal or per time you got caught?

**Beth Carlson**- I would interpret that as per offense and so shooting the pig is an offense, releasing it is an offense so there could be multiple offenses.

**Sen. Wanzek**- as far as you asking to increase the penalty, why did the house take it out?

**Beth Carlson**- it was our impression that there were some concerns with penalties in general particularly in the house this session and they felt it would be easier to pass the bill changing that.

**Sen. Klein**- as we look at other states that have a hunt for pigs we are saying that we don't want to do that here, then that is more work for you guys and other groups to maintain that.

Are we the only state that prevent hunting?

**Beth Carlson-** no, in fact we drafted this bill based upon a law that passed the Kansas legislature. There are other states that do have similar laws I am just not sure of the exact ones.

**Greg Link,** ND Game and Fish Department, testified in favor of the bill. See attached testimony, attachment #2.

**Sen. Behm-** do I understand that there is a penalty if you are on your own land and you shot a swine you are fined \$500?

**Greg Link-** that is not correct, they can kill it and then they just notify the board of animal health and that is ok.

**Roger Kaseman,** ND Wildlife Federation, testified in favor of the bill. See attached testimony, attachment #3.

**Julie Ellingson,** ND stockmen's association, testified in favor of the bill. See attached testimony, attachment #4.

**Nathan Boehm,** Chairman of the board of animal health, testified in favor of the bill.

**Nathan Boehm-** we also stand in support of this bill, these hogs create damage and we need to get this issue taken care of.

No opposition to the bill.

**Sen. Flakoll** closed the hearing.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1110

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: March 5, 2009

Recorder Job Number: 10385

Committee Clerk Signature

*Cassie Herd*

Minutes:

**Sen. Flakoll** opened the discussion on HB 1110.

**Sen. Heckaman** proposed amendments to the company that were requested by the state board of animal health. **Sen. Heckaman** motioned to adopt amendments and was seconded by **Sen. Taylor**, roll call vote 7 yea 0 nay 0 absent. **Sen. Behm** motioned for a do pass as amended and was seconded by **Sen. Heckaman**, roll call vote 7 yea 0 nay 0 absent. **Sen Heckaman** was designated to carry the bill to the floor.

**Sen. Flakoll** closed the discussion.

Prepared for Senator Heckaman

March 5, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1110

Page 2, line 18, replace "hundred" with "thousand"

Renumber accordingly



Date: March 6, 09  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1110

Senate Agriculture Committee

Check here for Conference Committee

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

Action Taken Do Pass as Amended

Motion Made By Behm Seconded By Heckaman

Senators	Yes	No	Senators	Yes	No
Tim Flakoll-Chairman	X		Arthur Behm	X	
Terry Wanzek-Vice Chairman	X		Joan Heckaman	X	
Jerry Klein	X		Ryan Taylor	X	
Joe Miller	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment sen. Heckaman

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

**REPORT OF STANDING COMMITTEE**

HB 1110, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1110 was placed on the Sixth order on the calendar.

Page 2, line 18, replace "hundred" with "thousand"

Renumber accordingly

2009 HOUSE AGRICULTURE

CONFERENCE COMMITTEE

HB 1110

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1110

House Agriculture Committee

Check here for Conference Committee

Hearing Date: April 21, 2009

Recorder Job Number: 12039

Committee Clerk Signature

*ReMa Kael*

Minutes:

**Representative Wall:** There was a minor change made by the Senate.

**Senator Heckaman:** The reason we went back to the \$5,000 fine is because that is what the dept. requested. Their reasoning is because there are hunts that earn big money. A person can pay a fine for \$500 and still make money off of a hunt. So we raised the penalty. Every time you have an infraction it would be \$5,000. It matched their other matrixes on penalties.

This has an intonation of doing some illegal things as far as the hunts go. They said they were getting anywhere from \$400-900 for one pig per hunt in other states.

**Senator Wanzek:** We just didn't feel that \$500 was enough of a deterrent.

**Senator Heckaman:** When we heard this bill, one of the concerns was that they had gone around and removed about 48 feral swine over the last year and a half. One of the problems was up north of the Turtle Mountains Reservation. They weren't able to get in and do some removal.

**Representative Boe:** There are a couple of batches up there. They run between. There's 8 miles between the border and the reservation line. If they are in that 8-mile slot, we can do something about it. But once they go onto the reservation, we don't do anything. Once they go into Canada, we don't do anything. That is the only place in North Dakota where there is

still a problem. Once we get that cleaned up, there shouldn't be any hogs out there for anyone to get a penalty.

**Senator Flakoll:** When looking at the penalty, you may go "up to that amount." When looking at the history of other fines or penalties, we weren't seeing anything we felt, as a committee, that was an overzealous penalty.

**Representative Wall:** It is in alignment with Nontraditional Livestock in the code.

I have prepared another amendment which I think might address our differences

(**LC # 98213.0202**). We, in the House, didn't have a problem with the \$5,000 penalty matrix.

On page 1, the prohibitive actions, the hunting, trapping, the commercial aspects—we had no problem with the \$5,000. On the back side, the property owner who has feral swine posing a threat and destroys it and doesn't report it because they don't know it has to be reported.

That's where we have the problem with up to \$5,000 fine. We talked to Dr. Keller and Dr.

Carlson because we know they had problems with our \$500 fine not meeting the matrix. What we did with this amendment, the basic changes are under the penalty phase in the bottom at 36-26-05. We have set up two penalty phases. Any person violating the first section, the hunting, trapping, etc. they can be fined not to exceed \$5,000 per violation. Then the new language comes in #2. This would be the landowner who doesn't report it because he doesn't know he should. There the fine is only going to be \$250 for a first offense. If they do it again, they know better and can be fined up to \$5,000.

**Senator Flakoll:** Are the House member conferees in agreement with this amendment?

**Representative Wall:** Yes

**Senator Flakoll:** I move that the Senate recede from the Senate amendments and we further amend with amendment # 98213.0202 to HB 1110.

**Senator Wanzek:** Seconded it.

**Senator Wanzek:** What you are saying is in the case of a landlord, if they shoot it and don't report, they would have the leniency of the one-time reduction in penalty. It wouldn't require that they necessarily even assess a \$250 fine but they could depending upon the conduct of the individual.

**Representative Wall:** That is correct.

**Representative Uglem:** In talking with Dr. Keller she commented that it is often hard to prove the prohibitive actions. But when somebody shoots one, it is easier to catch. So that is why only the first time is exempted for the landowner, in case there is an organized hunt.

**Senator Wanzek:** Why is it easier to catch?

**Representative Uglem:** It is difficult to catch people bringing them in and hard to prove the hunt. But when one is shot, that is easy to prove. There is evidence.

**Representative Boe:** It would keep somebody from saying it was an accident, "It got away from me."

A Roll Call vote was taken. **Yes: 6, No: 0, Absent: 0.**

VR  
4/21/09  
1082

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1110

That the Senate recede from its amendments as printed on page 906 of the House Journal and page 691 of the Senate Journal and that Engrossed House Bill No. 1110 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 36-26 of the North Dakota Century Code, relating to feral swine; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Chapter 36-26 of the North Dakota Century Code is created and enacted as follows:

**36-26-01. Definitions.** As used in this chapter:

1. "Board" means the state board of animal health.
2. "Feral swine" means a hog, boar, or pig that:
  - a. Appears to be untamed or undomesticated;
  - b. Appears to have reverted from a domesticated to a wild state; and
  - c. Is freeroaming.

**36-26-02. Board - Authority.** The board is responsible for the control and eradication of feral swine on state lands and on private lands in this state.

**36-26-03. Prohibited actions.**

1. A person may not import, transport, or possess live feral swine.
2. A person may not intentionally, knowingly, or negligently allow swine to live in a feral state.
3. a. A person may not:
  - (1) Hunt or trap feral swine;
  - (2) Sponsor or promote the hunting or trapping of feral swine;
  - (3) Assist in the hunting or trapping of feral swine;
  - (4) Profit from the release of feral swine; or
  - (5) Profit from the hunting or trapping of feral swine.
- b. Paragraphs 1 through 3 of subdivision a do not apply to a state or federal agency or any person authorized by a state or federal agency to engage in the control or eradication of feral swine.

**36-26-04. Presence of feral swine - Notification of board - Immediate threat.**

1. Any person having reason to believe that feral swine are present on property owned by or legally occupied by that person shall notify the board and cooperate with the board in controlling or eradicating the feral swine.
2.
  - a. Notwithstanding any other provision of this chapter, if a person encounters a feral swine on property owned by or legally occupied by that person and determines that the feral swine poses a threat of harm or destruction of property, the person may immediately eradicate the feral swine.
  - b. Any person eradicating a swine under this subsection shall notify the board as soon as practicable, but in no event later than twenty-four hours after the time of the eradication. The person shall follow any instructions given by the board with respect to the handling of the carcass, preservation of the carcass for testing, and disposal of the carcass.

**36-26-05. Civil penalty.**

1. Any person violating section 36-26-03 is subject to:
  - a. A civil penalty in an amount not exceeding five thousand dollars per violation; and
  - b. A claim for the actual costs of control or eradication incurred by any state or federal government agency as a result of the person's violation.
2. Any person violating section 36-26-04 is subject to a civil penalty in an amount not exceeding two hundred fifty dollars for a first offense and a civil penalty in an amount not exceeding five thousand dollars for a subsequent offense."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1110 (, as (re)engrossed);

Date: 4/21/09

Your Conference Committee House Agriculture

For the Senate:

For the House:

	YES / NO			YES / NO	
<sup>PRESENT</sup> Senator Wanzek	✓		<sup>PRESENT</sup> Rep. Wall	✓	
<sup>PRESENT</sup> Senator Flakoll	✓		<sup>PRESENT</sup> Rep. Uplem	✓	
<sup>PRESENT</sup> Senator Heckaman	✓		<sup>PRESENT</sup> Rep. Boe	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 906 - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

adopt (~~farther~~) amendments as follows, and place 1110 on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1110 was placed on the Seventh order of business on the calendar.

DATE: 4/21/09  
CARRIER: Rep. Wall

LC NO. <u>98213.0202</u> of amendment <u>.0400</u>
LC NO. _____ of engrossment _____
Emergency clause added or deleted _____
Statement of purpose of amendment <u>penalty matrix for taking federal swine</u>

MOTION MADE BY: Senator Flakoll

SECONDED BY: Senator Wanzek

VOTE COUNT 6 YES 0 NO 0 ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**HB 1110, as engrossed:** Your conference committee (Sens. Wanzek, Flakoll, Heckaman and Reps. Wall, Uglem, Boe) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 906, adopt amendments as follows, and place HB 1110 on the Seventh order:

That the Senate recede from its amendments as printed on page 906 of the House Journal and page 691 of the Senate Journal and that Engrossed House Bill No. 1110 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 36-26 of the North Dakota Century Code, relating to feral swine; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Chapter 36-26 of the North Dakota Century Code is created and enacted as follows:

**36-26-01. Definitions.** As used in this chapter:

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2. "Feral swine" means a hog, boar, or pig that:
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  - b. Appears to have reverted from a domesticated to a wild state; and
  - c. Is freeroaming.

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2. A person may not intentionally, knowingly, or negligently allow swine to live in a feral state.
3. a. A person may not:
  - (1) Hunt or trap feral swine;
  - (2) Sponsor or promote the hunting or trapping of feral swine;
  - (3) Assist in the hunting or trapping of feral swine;
  - (4) Profit from the release of feral swine; or
  - (5) Profit from the hunting or trapping of feral swine.
- b. Paragraphs 1 through 3 of subdivision a do not apply to a state or federal agency or any person authorized by a state or federal agency to engage in the control or eradication of feral swine.

**36-26-04. Presence of feral swine - Notification of board - Immediate threat.**

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2.
  - a. Notwithstanding any other provision of this chapter, if a person encounters a feral swine on property owned by or legally occupied by that person and determines that the feral swine poses a threat of harm or destruction of property, the person may immediately eradicate the feral swine.
  - b. Any person eradicating a swine under this subsection shall notify the board as soon as practicable, but in no event later than twenty-four hours after the time of the eradication. The person shall follow any instructions given by the board with respect to the handling of the carcass, preservation of the carcass for testing, and disposal of the carcass.

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1. Any person violating section 36-26-03 is subject to:
  - a. A civil penalty in an amount not exceeding five thousand dollars per violation; and
  - b. A claim for the actual costs of control or eradication incurred by any state or federal government agency as a result of the person's violation.
2. Any person violating section 36-26-04 is subject to a civil penalty in an amount not exceeding two hundred fifty dollars for a first offense and a civil penalty in an amount not exceeding five thousand dollars for a subsequent offense."

Renumber accordingly

Engrossed HB 1110 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1110

Roger Johnson  
AGRICULTURE COMMISSIONER

Dr. Susan Keller  
STATE VETERINARIAN

Dr. Beth Carlson  
DEPUTY STATE VETERINARIAN

Dr. Jesse Vollmer  
ASSISTANT STATE VETERINARIAN

Nathan Boehm, Mandan  
PRESIDENT, DAIRY CATTLE

Paula Swenson, Walcott  
SECRETARY, SHEEP

Dr. Charlie Stoltenow, Fargo  
CONSULTING VETERINARIAN



**STATE BOARD OF  
ANIMAL HEALTH**

ND Department of Agriculture  
600 E. Boulevard Ave. Dept. 602  
Bismarck, ND 58505-0020  
(701) 328-2655  
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**Testimony of Susan J. Keller, DVM  
State Veterinarian  
House Bill 1110  
House Agriculture Committee  
Peace Garden Room  
January 15, 2009**

1/15/09 1110 - Susan Keller

1a

Dr. Dick Roth, Fargo  
VETERINARIAN

Melvin Leland, Sidney, MT  
REGISTERED PUREBRED CATTLE

Joel Olson, Almont  
COMMERCIAL BEEF CATTLE

Ron Fraase, Buffalo  
SWINE

Dr. W.P. Tidball, Beach  
VETERINARIAN

Dr. Kenneth Throlson, New Rockford  
BISON

Shawn Schafer, Turtle Lake  
NONTRADITIONAL LIVESTOCK

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Chairman Johnson and members of the Agriculture Committee, I am State Veterinarian Susan Keller. I am here today on behalf of the North Dakota Department of Agriculture and the State Board of Animal Health in support of HB 1110, which will put regulations in place which will better help us deal with feral swine issues in North Dakota.

NDCC §36-01-08 defines the duties of the State Board of Animal Health. Included in this statute is the mandate to 'protect the health of the domestic animals and non-traditional livestock of the state'. This can be done 'by using the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and nontraditional livestock of the state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests'.

Feral swine are an invasive species. They are a risk to domestic animal and wildlife health. They also can be very destructive to crops, pastures, wildlife, and the environment. There are about 4 million feral swine in the United States. In Texas alone, it is estimated that there are approximately 2 million feral swine which cause 52 million dollars per year in damages.

Since animal health is my responsibility, I will focus on the animal health concerns with feral swine. They have the potential to carry many diseases, including pseudorabies, brucellosis, tuberculosis, tularemia, leptospirosis, classical swine fever/hog cholera, vesicular stomatitis, and foot and mouth disease. These diseases can affect multiple species; many of them can affect humans as well. These diseases can have a broad spectrum of implications that can include widespread disease in domestic and wild animal populations as well as economic devastation. There are documented cases of outbreaks of some of these diseases that were directly linked to feral swine. Recently, a pseudorabies outbreak in Wisconsin was directly linked to an operation which released Eurasian boars for sport hunting.

In the past year and a half, we have addressed three reports of feral swine in North Dakota--one near Medora, one in the Turtle Mountains, and one in Sheridan County. Additionally, we have investigated several other reported sightings. As a result, we formed a feral swine working group. This group was composed of individuals from the State Board of Animal Health, the ND Game and Fish Department, USDA Veterinary Services, USDA Wildlife Services, the US Forest Service and the ND Department of Health. With this multiagency effort, we were able to remove about 48 feral swine in two locations and monitor to ensure that none remained. All animals which were removed were tested for a battery of diseases, and we were fortunate in that all tests

were negative. Most of this on-the-ground work was done by USDA Wildlife Services with the assistance of the Game and Fish Department. Without this assistance, we would not have been able to successfully handle these situations. The feral swine working group also assisted in drafting this bill and approved it as submitted.

HB 1110 enacts specific regulations prohibiting the importation, release, and hunting of feral swine. The purpose of prohibiting hunting of these animals is prevent "pig hunting" from becoming a sport. Other states that are dealing with this issue have found that allowing the animals to be hunted does not help in eradicating them, and in fact, can promote the activity. This bill will also institute penalties for those involved in the introduction, release, and profiteering of feral swine. This will help us address these situations and serve as a deterrent.

We have received feedback from an individual regarding number 10. This portion of the bill is included because North Dakota has very stringent fencing and importation requirements for anyone wishing to obtain a non-traditional livestock license for non-domestic swine. Any facility meeting those requirements would have negligible risk. You will find those regulations attached to my testimony.

Chairman Johnson and committee members, for these reasons, we urge a do pass on HB 1110. I would be happy to answer any questions you may have.

1110 - Susan Keller  
16  
1/15/09

**48-12-01.1-03. Penalties.**

1. The board may order any nontraditional livestock brought into this state which is not in compliance to be returned to the state of origin, or in the alternative, the board may order the animals slaughtered or destroyed.
2. If, after a hearing, the board finds that a person has brought, kept, or received any nontraditional livestock in this state and the livestock are not in compliance with the rules, a civil penalty not to exceed five thousand dollars per violation may be assessed against that person.
3. Any person who knowingly violates any rule of the board is guilty of an infraction.

**History:** Effective January 1, 2007.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-08, 36-01-12

**48-12-01.1-07. License requirements for category 2 and category 3 species.**

1. The owner must obtain a license from the board prior to acquiring the livestock. Fees must be paid under North Dakota Century Code section 36-01-08.1 prior to issuance of a license.
2. Upon initial application, inspection of premises and facilities to meet board guidelines will be conducted by a game and fish department representative, licensed veterinarians, or individuals approved by the board and subsequent inspections as deemed necessary by the board.
3. An owner of nontraditional livestock must allow inspection of inventory and health records, holding facilities, and licensed nontraditional livestock by the board or its agent during the term of the license and during normal working hours. The licensee or the licensee's agent must accompany the person conducting the inspection.
4. Additional disease testing may be required by the board prior to importation or sale if there is reason to believe other diseases, parasites, or health risks are present.
5. All category 2 or category 3 nontraditional livestock owners must provide a description of the premises and facilities and a sketch or map of the facilities. The sketch or map must include the proposed exterior boundary, location of the holding and handling facilities, the quarantine area, and the proposed location of all gates at the time of application for a nontraditional livestock license. The board may require additional information.
6. Category 2 and category 3 species may not be maintained, released, imported, transported, sold, bartered, or traded within the state except as authorized.
7. Reclassification of any species is contingent upon scientific information indicating the risks posed by these species to native wildlife populations and domestic livestock and must be reviewed by the board.
8. Any animal determined by the board to pose a significant threat to the state's wildlife resources, domestic animals, or human health must be held in quarantine at the owner's expense until disposition is determined by the board.
9. Licenses expire on January thirty-first of each year, and failure to renew a nontraditional livestock license within ninety days requires the owner to dispose of livestock as specified by the board.
10. Inventory reports are due on January thirty-first of each year. Failure to file an inventory report by its due date is cause for revocation of the license. When an annual inventory report is received, the board may evaluate the existing holding facility to determine if it is adequate to contain the number and type of nontraditional livestock for which applied and the purpose for which they will be held.
  - a. Annual inventory reports must be recorded on the forms provided by the board and must be filled out completely and accurately.
  - b. Total purchases, sales, deaths, releases or other animal transfers, and births must be reported on the annual inventory reports. Increases by birth for the year must be reported on the annual inventory report.

- c. Any livestock transferred, bought, or sold must include an itemized bill of sale, a certificate of veterinary inspection, or a manifest at transfer of ownership that must include individual identification if applicable, species, age, sex, number of animals, buyer and seller and their respective addresses, date of sale, and available nontraditional livestock license numbers. All manifests and bills of sale must be submitted to the board within two weeks of the occurrence.
11. No owner of category 2 or category 3 nontraditional livestock may, without prior written approval from the board, release or abandon livestock. Game bird releases must be stipulated in the license application.
12. Upon expiration or revocation of a license, all formerly licensed nontraditional livestock in possession must be disposed of by the licensee as directed by the board. No formerly licensed nontraditional livestock may be abandoned, released, or removed from the holding facility without prior written approval of the board. All formerly licensed nontraditional livestock remaining at the holding facility upon a reasonable period after expiration or revocation of the license may be disposed of by the board.
13. The board may revoke any license or deny any license application and may dispose of any nontraditional livestock imported or transported for failing to comply with these rules or with conditions placed on the license at the time of issuance. The board may revoke any license or deny any license application if the applicant, or agent, falsified information on the license application or on the certificate of veterinary inspection, or falsified or failed to keep or submit records as required by this chapter. The revocation of a license or denial of a license application must comply with North Dakota Century Code chapter 28-32.

**History:** Effective January 1, 2007.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-08, 36-01-12

## **CHAPTER 48-12-02.1 CATEGORY 3 SPECIES**

### **48-12-02.1-01. Housing, handling, and health requirements.**

1. All wild species of the family suidae (hogs and pigs) except swine considered domestic in North Dakota by the board of animal health.
  - a. Housing requirements (perimeter fence aboveground) and confinement or holding area:
    - (1) A perimeter fence at least six feet tall must be present.
    - (2) Twelve-gauge or stronger mesh is required and must be no greater than three inches by four inches.
    - (3) Four inch diameter treated posts or two inch steel pipe must be no more than eight feet apart. Posts must be set three feet deep.
    - (4) Fence must be attached on the inside.
    - (5) Two electric wires must be six inches inside the fence.
      - (a) The first wire must be six to eight inches above the ground.
      - (b) The second wire must be eight to twelve inches above the first wire.
      - (c) Generator backup is required.
      - (d) Snow that could affect the integrity of the fence must be removed before animals are allowed into the enclosure.
      - (e) An electric fence must be maintained in working order and be kept clear of foliage and debris.
    - (6) If a wooden structure is used, posts must be no more than eight feet apart with a gap no more than four inches between planks, except that if young pigs are present, the fencing gaps must be no more than two inches.
    - (7) In the confinement area, an underground fence must be constructed with concrete or imperviable surface comparable to concrete that meets the following requirements:
      - (a) Same strength as perimeter fence.
      - (b) Buried two feet below ground.
      - (c) Three feet angled forty-five degrees toward interior of enclosure.
      - (d) Four to six inches aboveground overlapped and attached to aboveground fence to monitor and ensure proper connection.

- b. Gates in confinement area must meet the following requirements:
  - (1) A gate at least six feet tall must be present.
  - (2) Any gaps must be less than four inches between the gate and ground, except that if young pigs are present, the fencing gaps must be no more than two inches.
  - (3) An electric wire must span across the gate. The electric fence must be constructed of twelve-gauge wire and consist of a minimum of a two joules charge.
  - (4) An underground fence must span the gate opening and must anchor the gating to the ground with a two-inch steel pipe or equivalent.
- c. Importation requirements for all wild species of the family suidae (hogs and pigs) except swine considered domestic in North Dakota by the board of animal health.
  - (1) A health certificate and import permit from the board.
  - (2) All suidae must have a negative pseudorabies serologic test approved by the state veterinarian within thirty days prior to entry into North Dakota.
  - (3) A negative brucellosis test within thirty days of importation.

1/15/09

Greg L. N. S.  
HB 1110

2a

## TESTIMONY RELATED TO HB1110: REGULATION OF FERAL SWINE

### House Agriculture Committee

January 15, 2009

The Game and Fish Department's role and responsibility is to protect, conserve, and enhance our state's wildlife populations and their habitats. Because feral pigs have the potential to directly impact public wildlife resources through disease transmission, predation, and habitat degradation and destruction, we view them as a public enemy.

**Disease:** Feral swine are highly mobile disease reservoirs and can carry at least 30 important viral and bacterial diseases (Davidson and Nettles 1997, Samuel et. al 2001, William and Barker 2001), in addition to a minimum of 37 parasites that affect people, pets, livestock, or wildlife (Forrester, 1991). Therefore, disease transmission is our number one concern regarding feral swine's threat to our state's wildlife resources. Once diseases become established in wildlife populations, they are extremely difficult to eradicate and not only impact the viability of those species, but increase the threat to humans and domestic livestock through secondary transmission. Intensive and expensive sampling and depopulation of the public wildlife is then required.

**Predation:** Feral pigs are opportunistic feeders and can be highly effective predators on both small livestock and wildlife. Ground nesting birds and their eggs, as well as deer fawns and other small mammals, can fall victim to their appetites.

**Habitat Destruction:** In addition to impacts of disease transmission and predation, feral swine are known to cause extreme ecological damage. Their rooting and wallowing lead to soil erosion along creeks, springs, and wetlands, resulting in degradation of water quality and shoreline habitat. Feral pigs compete with wildlife species for food, destroy native vegetation, consume native seed crops, alter succession sequences of plant communities, promote invasive species, are destructive to rare and sensitive habitats, and reduce overall species diversity.

Because of these impacts and our concern over this issue, the North Dakota Game and Fish Department spent nearly \$22,000 on salaries and operating expenses to assist a multi-agency task force to eradicate pigs associated with the three known feral swine cases in North Dakota over the last 18 months.

It is the Department's belief that clear legislative intent, increased regulation provisions, and stiffer penalties will help curb intentional promotion and establishment of feral swine in our state. Therefore the Department supports a **DO PASS** on HB1110.

*SAUE*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1110

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new chapter to title 36 of the North Dakota Century Code, relating to feral swine; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new chapter to title 36 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter:

1. "Board" means the state board of animal health.
2. "Feral swine" means a hog, boar, or pig that:
  - a. Appears to be untamed or undomesticated;
  - b. Appears to have reverted from a domesticated to a wild state;
  - c. Is freeroaming; and
  - ~~d.~~ Has no readily visible tags, markings, or characteristics indicating it is from a domestic herd.

**Board - Authority.** The board is responsible for the control and eradication of feral swine on state lands and on private lands in this state.

**Prohibited actions.**

1. A person may not import, transport, or possess live feral swine.
2. A person may not intentionally, knowingly, or negligently allow swine to live in a feral state.
3. a. A person may not:
  - (1) Hunt or trap feral swine;
  - (2) Sponsor or promote the hunting or trapping of feral swine;
  - (3) Assist in the hunting or trapping of feral swine;
  - (4) Profit from the release of feral swine; or
  - (5) Profit from the hunting or trapping of feral swine.
- b. Paragraphs 1 through 3 of subdivision a do not apply to a state or federal agency or any person authorized by a state or federal agency to engage in the control or eradication of feral swine.

**Presence of feral swine - Notification of board - Immediate threat.**

1. Any person having reason to believe that feral swine are present on property owned by or legally occupied by that person shall notify the board and cooperate with the board in controlling or eradicating the feral swine.
2. a. Notwithstanding any other provisions of this chapter, if a person encounters a feral swine on property owned by or legally occupied by that person and determines that the feral swine poses a threat of harm to others or destruction of property, the person may immediately eradicate the feral swine.
  - b. Any person eradicating a swine under this subsection shall notify the board as soon as practicable, but in no event later than twenty-four hours after the time of the eradication. The person shall follow any instructions given by the board with respect to the handling of the carcass, preservation of the carcass for testing, and disposal of the carcass.

**Penalty.** Any person violating this section is subject to:

1. A civil penalty in an amount not exceeding five thousand dollars per violation; and
2. A claim for the actual costs of control or eradication incurred by any state or federal government agency as a result of the person's violation."

Renumber accordingly

Roger Johnson  
AGRICULTURE COMMISSIONER

Dr. Susan Keller  
STATE VETERINARIAN

Dr. Beth Carlson  
DEPUTY STATE VETERINARIAN

Dr. Jesse Vollmer  
ASSISTANT STATE VETERINARIAN

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BISON

Shawn Schafer, Turtle Lake  
NONTRADITIONAL LIVESTOCK

**Testimony of Beth W. Carlson, DVM  
Deputy State Veterinarian  
House Bill 1110  
Senate Agriculture Committee  
Brynhild Haugland Room  
March 5, 2009**

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Chairman Flakoll and members of the Agriculture Committee, I am Deputy State Veterinarian Beth Carlson. I am here today on behalf of the North Dakota Department of Agriculture and the State Board of Animal Health in support of HB 1110, which will put regulations in place which will better help us deal with feral swine issues in North Dakota.

NDCC §36-01-08 defines the duties of the State Board of Animal Health. Included in this statute is the mandate to 'protect the health of the domestic animals and non-traditional livestock of the state'. This can be done 'by using the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and nontraditional livestock of the state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests'.

Feral swine are an invasive species. They are a risk to domestic animal and wildlife health. They also can be very destructive to crops, pastures, wildlife, and the environment. There are about 4 million feral swine in the United States. In Texas alone, it is estimated that there are approximately 2 million feral swine which cause 52 million dollars per year in damages.

Since animal health is my responsibility, I will focus on the animal health concerns with feral swine. They have the potential to carry many diseases, including pseudorabies, brucellosis, tuberculosis, tularemia, leptospirosis, classical swine fever/hog cholera, vesicular stomatitis, and foot and mouth disease. These diseases can affect multiple species; many of them can affect humans as well. These diseases can have a broad spectrum of implications that can include widespread disease in domestic and wild animal populations as well as economic devastation.

There are documented cases of outbreaks of some of these diseases that were directly linked to feral swine. Recently, a pseudorabies outbreak in Wisconsin was directly linked to an operation which released Eurasian boars for sport hunting.

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In the past year and a half, we have addressed three reports of feral swine in North Dakota--one near Medora, one in the Turtle Mountains, and one in Sheridan County. Additionally, we have investigated several other reported sightings. As a result, we formed a feral swine working group. This group was composed of individuals from the State Board of Animal Health, the ND Game and Fish Department, USDA Veterinary Services, USDA Wildlife Services, the US Forest Service and the ND Department of Health. With this multiagency effort, we were able to remove about 48 feral swine in two locations and monitor to ensure that none remained. All animals which were removed were tested for a battery of diseases, and we were fortunate in that all tests were negative. Because they are not considered wildlife, the Board of Animal Health is responsible for dealing with feral swine, but we would be unable to do so without the assistance

of other agencies. Most of this on-the-ground work was done by USDA Wildlife Services with the assistance of the Game and Fish Department. Without this assistance, we would not have been able to successfully handle these situations. The feral swine working group also assisted in drafting this bill and approved it as submitted.

HB 1110 enacts specific regulations prohibiting the importation, release, and hunting of feral swine. The purpose of prohibiting hunting of these animals is prevent "pig hunting" from becoming a sport. Other states that are dealing with this issue have found that allowing the animals to be hunted does not help in eradicating them, and if fact, can promote the activity.

The bill does allow landowners to destroy feral swine on their property with no penalty as long as they report to our office and make the swine available for disease testing.

We appreciate the support of the House in passing this bill. We do have concerns, however, that the penalty we requested has been reduced to \$500 in the amended version which passed the House. A quick internet search shows pig hunts advertised for sale in other parts of the country for between \$400 and \$900. The Board of Animal Health has statutory authority to fine up to \$5000 for most violations of our laws, although this is rarely done. Attached to my testimony you will find a copy of the fining authority of the Board, as well as a copy of our penalty matrix for violations. We urge you to consider amending this bill to change the penalty to 'up to \$5000' which will be consistent with violations of other laws of the Board of Animal Health. We feel this is necessary to provide a deterrent to feral swine activity. This amount is minimal compared to the economic consequences to agriculture, wildlife, and the environment, should a feral swine population become established.

Chairman Flakoll and committee members, for these reasons, we urge a do pass on HB 1110, with a change to the penalty portion to provide consistency with other Board penalties. I would be happy to answer any questions you may have.

Roger Johnson  
AGRICULTURE COMMISSIONER

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**36-01-28. Enforcement orders - Administrative hearing - Penalty.**

1. Except when otherwise ordered by a court of competent jurisdiction, the board may order any domestic animal or nontraditional livestock brought into this state which is not in compliance with the provisions of this chapter to be returned to the state of origin, or in the alternative, the board may order the animal slaughtered or destroyed. The board may grant an exception for any nontraditional livestock if a zoo licensed by the animal care program of the animal and plant health inspection service of the United States department of agriculture takes possession upon confiscation of the animal.
2. If, after a hearing, the board finds that a person has brought, kept, or received any domestic animal or nontraditional livestock in this state and the animal or livestock is not in compliance with the provisions of this chapter or rules adopted under this chapter, a civil penalty not to exceed five thousand dollars per violation may be assessed against that person.
3. Any person who violates any of the provisions of this chapter for which a specific penalty is not provided, or who knowingly violates any rule adopted by the board, is guilty of an infraction.

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## Penalty Matrix Guideline

### First Time Offenders

- Letter and/or \$500 fine (suspended 2-3 years with no further violations)

### Second Time Offenders

- \$2,000 fine

\$5,000/violation if the plea and waiver agreements are not met **OR** for multiple offenses.

**TESTIMONY RELATED TO HB1110: REGULATION OF FERAL SWINE**

**Senate Agriculture Committee**

**March 5, 2009**

The Game and Fish Department's role and responsibility is to protect, conserve, and enhance our state's wildlife populations and their habitats. Because feral pigs have the potential to directly impact public wildlife resources through disease transmission, predation, and habitat degradation and destruction, we view them as a public enemy.

**Disease:** Feral swine are highly mobile disease reservoirs and can carry at least 30 important viral and bacterial diseases (Davidson and Nettles 1997, Samuel et. al 2001, William and Barker 2001), in addition to a minimum of 37 parasites that affect people, pets, livestock, or wildlife (Forrester, 1991). Therefore, disease transmission is our number one concern regarding feral swine's threat to our state's wildlife resources. Once diseases become established in wildlife populations, they are extremely difficult to eradicate and not only impact the viability of those species, but increase the threat to humans and domestic livestock through secondary transmission. Intensive and expensive sampling and depopulation of the public wildlife is then required.

**Predation:** Feral pigs are opportunistic feeders and can be highly effective predators on both small livestock and wildlife. Ground nesting birds and their eggs, as well as deer fawns and other small mammals, can fall victim to their appetites.

**Habitat Destruction:** In addition to impacts of disease transmission and predation, feral swine are known to cause extreme ecological damage. Their rooting and wallowing lead to soil erosion along creeks, springs, and wetlands, resulting in degradation of water quality and shoreline habitat. Feral pigs compete with wildlife species for food, destroy native vegetation, consume native seed crops, alter succession sequences of plant communities, promote invasive species, are destructive to rare and sensitive habitats, and reduce overall species diversity.

Because of these impacts and our concern over this issue, the North Dakota Game and Fish Department spent nearly \$22,000 on salaries and operating expenses to assist a multi-agency task force to eradicate pigs associated with the three known feral swine cases in North Dakota over the last 18 months.

It is the Department's belief that clear legislative intent, increased regulation provisions, and stiffer penalties will help curb intentional promotion and establishment of feral swine in our state. Therefore, the Department supports a **DO PASS** on HB1110 and concurs that an amendment to increase the civil penalty to an amount not to exceed five thousand dollars per violation would be prudent.

Roger Kaseman for the North Dakota Wildlife Federation  
751-0882

Testimony in favor of HB 1110

Mister Chairman, members of the committee, the North Dakota Wildlife Federation supports HB 1110.

The problems with hogs are numerous. A quick survey of states that have feral hogs showed that the same states have feral hog problems.

Feral hogs are capable of breeding at six months of age with an average litter size of four to six, but under good conditions may be as many as ten to twelve. Hogs are capable of producing two litters per year. The young are capable of breeding at six months making for population explosions which leads to habitat destruction. Feral hogs root and wallow destroying vegetation, ruining water holes used by other wildlife, and contribute to erosion and siltation, which can adversely affect water quality.

Hogs are omnivores and eat anything including nesting birds, such as pheasant, grouse, ducks, and many other birds.

Disease transmission to domestic livestock is a problem. Feral hogs carry brucellosis which can and has spread from feral hogs to domestic stock resulting in direct economic loss and indirect loss through quarantines.

Disease transmission to humans is another problem. There have been cases documented in Arkansas of feral hogs transmitting brucellosis and trichinosis to humans, either directly or indirectly.

Hogs cause heavy damage to crops of all sorts. A feral hog in a cornfield is destructive.

Abuse of landowner rights. Down South, people that don't care about landowner rights, raise, buy or otherwise obtain hogs then release them on public or private, damaging land that land owners don't want damaged.

Arkansas, the Razorback state, found that the most effective means of controlling feral hogs is to prevent the release of hogs in the first place.

In short, feral hogs are varmints. We ought not allow them in this state.

Thank you.

North Dakota



## STOCKMEN'S ASSOCIATION

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### HB 1110

Good morning, Mr. Chairman and committee members. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

In the childhood nursery rhyme, this little piggy goes to market, this little piggy goes home and at least one little piggy has the good sense to eat roast beef! As I understand it, landowners and livestock producers across North Dakota would be the ones crying, "Wee, wee, wee" if feral swine become established in our state due to their highly destructive nature and disease-harboring ability and because they are so highly prolific.

Protecting our landscape and its vital grasses and the health integrity of our domestic livestock herd are critical priorities for the state's beef cattle industry. Therefore, we support this bill and ask for your favorable consideration of it.