2011 SENATE AGRICULTURE

SB 2085

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2085
January 6, 2011
12634

☐ Conference Committee

Committee Clerk Signature Greta Nelson

Explanation or reason for introduction of bill/resolution:

Amend the state noxious weed list, make it illegal to distribute or sell noxious weeds.

Minutes: One Attachment #1

Chairman Senator Flakoll called the meeting to order on the 6th day of January 2011. Senator Klein has some legislation he is working on. Senate members present (7). Open hearing Bill 2085.

Judy Carlson: (Attachment #1) Plant Industry Division Director for the ND Dept of Agriculture. Here to support the Bill 2085, amending the State Noxious Weed list, making it illegal to distribute or sell noxious weeds and allow the use of environment and rangeland funds (EARP) to control invasive species.

Senator Flakoll: Questions

Senator Miller: Did the Ag Commissioner utilize that 50k?

Judy Carlson: In McLean County used it for houndstongue control.....and had federal funds used money as a grant, able to control. They sprayed 200 acres of hounds tongue and surveyed another 500. They had troubles getting contractors and hope to do a lot more this spring. Personally went out with our staff and US Forest Service people and looked at it. It had spread all along the river.....a rancher who allowed public hunting so houndstongue seeds got on hunting dogs and people, so it has spread all along the river. We do believe it is a good idea.

Senator Murphy: So you have a problem.....in a small area. So you were hesitant of the cost to add it to the list?

Judy Carlson: It is not just the cost, but it takes at least 4 to 5 months to make rule making. In the old days you could go through this in a month, but process that is set out in administrative code, it takes several months. The previous ag commissioner said if we found some weed really bad, get rid of it. Now if you found it in the summer, you would not have the rule, so you wouldn't get rid of it until the late fall.

Senator Heckaman: If this does pass, are you considering putting additional species on the noxious list? Do you have some you are considering? Like the houndstongue?

Judy Carlson: Our preference would be to keep a small noxious weed list. And have new weed that we think that think we can control, we would control it right away instead of waiting and then adding it to the list.

Senator Heckaman: So on houndstongue not considering it serious enough to put it on the list?

Judy Carlson: Now that it is in our radar. We are finding more, so maybe in the next year; we will add it to our list.

Senator Flakoll: Questions

Senator Heckaman: Assistance for putting a weed on the noxious weed list does that come out of the University or out of your department or where do you get the consideration to put weeds on the list?

Judy Carlson: Part of they look at whether it is a native species and are hesitant and they have never had us put native species on the list. American Liquorish - Cockleburs is not on our weed list because it is on the native list. NDSU looks at those kinds of things look at how it is controlled, but something we can't control they wouldn't recommend putting on the list. We see them as the experts in management and control and research.

Senator Flakoll: In the bill, page 21 -22 ...$100 for each violation, if you have 21 gallon containers of some type of plant at a big box filler, could they be fined $100 for each of those? Or is it per ...is it one or twenty? What is the legislative intent?

Judy Carlson: The intent is not to exceed with the law re-write last session, we lost a lot of that enforcement up to the local entities. Most cases they will give you warning to get it off the shelves....from the department standpoint, compliance is our goal.....give them warning and try to work with them.

Senator Flakoll: Since we invoked this the last session, had there been any fines?

Judy Carlson: We do an annual report on the weed board; we could get back to you with that number. We ask all weed boards as part of their surveys what they do as far as fines.

Senator Flakoll: Interesting for whoever has to carry it to the floor.

Senator Flakoll; Give 3 examples of Big Box Stores

Judy Carlson: 1. Wormwood 2.Polish Castle 3.Yellow and Dalmatian Toadflax (looks like a little yellow buttercup)

Senator Flakoll: Is there any way to monitor other states? How do you notify them not to send to North Dakota?

Judy Carlson: Why we included in bill draft we included seed because sometimes people can order seed packets as Leafy Spurge seed as it has a pretty green leaves. We wanted to tell them they can't sell this in North Dakota. Attorney said you can't control unless it is growing in the state.

Merlin Leithold: North Dakota Week Control Association. Compile of weed boards from every county in the state and city weed boards. I am here to testify in favor of SB 2085. On line 13 -14 of the bill where it talks about noxious weeds....I thought it was in the law ....it is definitely not in the law and needs to put in the law. Bigger Box Stores are getting in salt cedar and they know it is not salt cedar, but is tamarix...same thing. Something to protect everyone. Whatever it takes to fight the weeds.

Senator Flakoll: Oppositions

Senator Flakoll: Close the hearing on Bill 2085

Senator Flakoll: want to take care of the third bill?

Senator Miller: I move the amendments to Senate Bill 2085 as presented by Judy Carlson

Senator Klein: Second

Senator Flakoll: Moved and second to adopt the proposed amendment Senate Bill 2085, the Carlson amendment page 1 line 13 replace the third underscored comma with an underscored period. Page 1, remove line 14 and renumber accordingly.

Senator Flakoll: Discussion?

Clerk: Roll call vote

Senator Miller: I move the Senate Bill 2085 accepted as ended.

Senator Klein: Second

Senator Flakoll: Discussion?

Senator Heckaman: I don't want to see it coming in on every bill ....ok here...I will support the bill.

Senator Flakoll: Any other discussion?

Senator Flakoll: Motion as a Do Pass as amendment to Senate Bill 2085

Clerk: Take roll as a Do Pass

Senator Flakoll: Motion carries (7votes for 0 against)

Senator Flakoll: Senator Miller carrier

Senator Flakoll: Reminder for Joint Committee Friday morning

Senator Flakoll: Adjourned

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2085
March 31,2011
Job # 16222

☐ Conference Committee

Committee Clerk Signature Greta Nelson

Explanation or reason for introduction of bill/resolution:

Relating to the control and sale of noxious weeds; to provide a penalty; and to allow the agriculture commissioner to use environment and rangeland protection funds for invasive species control.

Minutes: You may make reference to "attached testimony."

Senator Flakoll; Meeting called to order this 31st day of March, 2011 Committee meeting at 10:00am. Clerk take roll call

Clerk: Roll call: 7-0-0

SB 2085: Senator Miller carried bill on noxious weed.....amended. With House amendment.

Senator Miller; The Ag Commissioner is not in agreement with this....the intention was not have to go through having all the hearing and adding or taking away the weeds.....which is based on more science than politics. It is not worth wasting much time over this .....should we go to conference committee ....substance of the bill.

Senator Heckaman; In testimony from Judy, the interim committee re-write has set out. The commissioner could change the noxious weed list after consultation with the NDSU extension service. If we go back to change this, does that change it in the re-write?

Senator Larsen; The weed list is where they have the authority to kill that weed or section of weeds. If we are taking the weed list out, how are they going to determine to spray .....the weed along the river is the one causing trouble and it was not on the list. They wanted that one put on the list.....is that the understanding of the history of this bill?

Senator Miller; The noxious weed list is a list a very nasty weed that if you are propagating, you get into trouble first. There are 12 weeds on the list and sometimes gotten under control and not much of an issue .....then take them off the list, then

something else on the list. In the past we have invasive versus noxious. Invasive can be an outbreak of weed that (example-dandelions) are not included on the noxious list, but are causing a problem that needs to be controlled. This helps with the cost sharing and if you have noxious weed problem.

Senator Larsen: If it is not on the weed list and they want to spray for it, will they get funded to help offset the cost? Or if we take the weed list off there, they won't pay?

Senator Miller: You won't get the cost share for .....you only get the cost share for the noxious weed; however, another component that is below the $50,000 from the plant where the Ag Commissioner has his own authority ....with an invasive problem in a certain area, he can "nuke" the problem.

Senator Flakoll; I am thinking we should not concur

Senator Klein; The Conference Committee would look at Judy's testimony indicated that the department always easy rule making and legal staff said they should continue with the same process. They opted to not thinking they wanted to do that because it takes time and costs money. Her other concern was when there is emergency rule making, they can do that when something dramatically happens and needs to be gotten out right away....they like to get started and can through the emergency process but have to go through rule making after they have established the emergency through the governor's office. It would be good to know how that relates. Need to know how it relates.....why have they gone against what it says ..... the legal council advised to continue

SenatorFlakoll: Miller, Luick, Murphy on this one.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2085

Page 1, line 13, insert a period after "weed"

Page 1, remove line 14

Renumber accordingly

(1)

Date: 1-6-11

Roll Call Vote #: 7

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2085

Senate Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ND Dept of Agriculture (Jerry Carlson)

Action Taken Adopt Amendment

Motion Made By Miller Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
SenatorTim Flakoll	✓		Senator Joan Heckaman	✓	
Senator Oley Larsen	✓				
Senator Jerry Klein	✓				
Senator Larry Luick	✓				
Senator Joe Miller	✓				
Senator Bill Murphy	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Joe Miller

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

(2)

Date: 1-6-11

Roll Call Vote #: 7

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2085

Senate Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number N.D. Dept of Agriculture (Judy Carlson)

Action Taken Do pass

Motion Made By Miller Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
SenatorTim Flakoll	✓		Senator Joan Heckaman	✓	
Senator Oley Larsen	✓				
Senator Jerry Klein	✓				
Senator Larry Luick	✓				
Senator Joe Miller	✓				
Senator Bill Murphy	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Joe Miller

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

REPORT OF STANDING COMMITTEE

SB 2085: 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). SB 2085 was placed on the Sixth order on the calendar.

Page 1, line 13, replace the third underscored comma with an underscored period

Page 1, remove line 14

Renumber accordingly

2011 HOUSE AGRICULTURE

SB 2085

2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

SB 2085
March 10, 2011
Job #15235

☐ Conference Committee

Committee Clerk Signature Le Mae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to the process by which the noxious weed list is amended and the penalty for selling noxious weeds; relating to the control and sale of noxious weeds; to provide a penalty; and to allow the agriculture commissioner to use environment and rangeland protection funds for invasive species control.

Minutes:

Judy Carlson, Plant Industries Director, ND Ag. Dept.: (See attached #1)
Seed is not included because the Seed Dept. regulates seed. Dandelion seed is regulated by the seed department.

Representative Rust: Do you see anyone having a problem with being able to add or remove weeds at the will of the commissioner?

Judy Carlson: The Commissioner of Ag. is an elected official. If he does something the people don't like, they have that process. When we changed the noxious weed list about a year ago, we went through formal rule making. It costs several thousand dollars. The hearing lasted 15 minutes. But the public notice in all newspapers is very expensive. Many people don't see the notices. By law we have to consult with NDSU Extension service. It has to be a weed that has a chance to become a noxious weed because of how it spreads. Usually it is not a native. It has to be a perennial and very obnoxious.

Representative Rust: The reason I am asking, with hemp there are laws. Now you have a group of people who feel this is a viable commodity. Is that a possibility with certain noxious weeds? Could that be with noxious weeds that have significance to another group?

Judy Carlson: I am also in charge of the industrial hemp program. Marijuana used to be on our state noxious weed list and was removed. A weed is a weed. By removing the language that we have to go through formal rulemaking, if we have a plant with medicinal use, we could take it off the list much faster.

Vice Chairman Kingsbury: When you discover a plant that you feel has come in from another area and you are suspicious, how much of a new plant do you have to see to put it on the noxious weed list?

Judy Carlson: It depends on the weed. We have a lot of acres of houndstongue. We are trying to control it using our invasive species money and we have a U.S. Forest Service Grant. If in a year or two we can't control it, we will try to put it on the state noxious weed list. If we have it in a county, they can put it on the county weed list and then they are eligible for state cost shares.

Representative Boe: How many weeds are on the list?

Judy Carlson: I think there are 12.

Representative Boe: How much has that list grown?

Judy Carlson: We removed field bindweed and star thistle and added toadflax.

Representative Boe: Who identifies? Is NDSU in on this? How do you get nominated for the top twelve?

Judy Carlson: It starts at the local level. We work closely together.

Representative Trottier: Is wild baby's breath a noxious weed?

Judy Carlson: It is on the county list in Bowman Co., Grant Co., and a few others. It is not on the state list. In Bowman Co. it has spread so it is on the county list. They can use cost share monies and control that.

Representative Trottier: Southeast of Devils Lake it is in the ditches and creeping to the fields.

Representative Holman: Line 13, did you run that by your legal counsel? So it wouldn't punish somebody if it was blended or mixed with something without their knowledge. What if it is mixed in with forage, or gravel, etc.?

Judy Carlson: If it is in seed, it is regulated by the State Seed Dept. If it is a plant, the intent is to try to control your plants.

We do an annual survey of the Weed Boards to see how much enforcement activity is out there. Generally, they are working for compliance. In a few situations they assess a tax on the land for control.

Merlin Leithold, ND Weed Control Assn.: It isn't easy to control baby's breath. I haven't found a chemical yet that does a good job on it. I did try a new blend of chemicals last spring. We are in favor of the bill. I thought it was already illegal to sell noxious weeds. I believe it was in the old law and part of it was omitted under the new law. Line 14 that was omitted from the original law, please do not put that back in.
There are 11 noxious weeds. When I became Weed Officer in '91 there were 10. I have five on my county list. I can go on someone's property if I am looking for noxious weeds.

I remember when Commissioner Vogel put purple loosestrife on the noxious weed list and nurseries had issues with that. They didn't contest it though. Noxious weeds are ornamentals that have gone wild.

Representative Trottier: Is there any livestock value to baby's breath?

Merlin Leithold: Not that I am aware of.

Representative Trottier: What is the status of leafy spurge in the state?

Merlin Leithold: I think the acreage is down. The acres being control are higher. Biocontrol has done a phenomenal job. Ants will eat the larva from the spurge flea beetle. If you have a lot of ants you won't have as many bugs. Canada thistle is a different story. We are getting the bio agents in for Canada thistle but they are slow.

Representative Belter: In Cass County we used to get bugs for leafy spurge. Are they still available and how do you get them?

Merlin Leithold: In my county we have had a field day for 13 years. This last year we collected nearly a million beetles. Some counties have beetles but they are not collectible. In June I would contact the ag dept. and they will have a list of field days. I've had one on the same site practically every year.

Representative Rust: There is a bug for Canadian Thistle?

Merlin Leithold: Yes, there are two or three species released in the state.

Representative Rust: So we contact the ag dept.?

Merlin Leithold: They can tell you if a county has some to distribute.

Representative Boe: Back to the bill--Line 13, "No person may distribute, sell, or offer for sale within this state a noxious weed." You mentioned people's flower beds containing noxious weeds. How do they get them? They were offered for sale at one time?

Merlin Leithold: Perennial flower mix. The new noxious weed--Yellow toadflax—butter and eggs is a slang for it, my grandparents' had it on their farm. Ornamentals gone wild.

Representative Boe: This will affect seed sales for gardens?
How about bird seed? Niger seed resembles thistle. Will that be prohibited for sale in the state?

Merlin Leithold: This bill is dealing with plants not seeds. Tamarix, which is salt cedar, could be sold today because you can sell noxious weeds because it is not in the law. You can't haul that noxious weed home because it is illegal to haul and distribute noxious weeds.

Julie Ellingson, ND Stockmen's Assn.: (See attached #2)

Vice Chairman Kingsbury: Closed the hearing.

Representative Belter: Moved Do Pass

Representative Rust: Seconded the motion.

A Roll Call vote was taken. **Yes: 11, No: 0, Absent: 3,**
(Representatives Johnson, Headland, Mueller)

DO PASS carries

Representative Conklin will carry the bill.

2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

SB 2085
March 18, 2011
Job #15676

☐ Conference Committee

Committee Clerk Signature Pe Mae Kuehn

Explanation or reason for introduction of bill/resolution:

Committee Work—relating to the process by which the noxious weed list is amended and the penalty for selling noxious weeds; relating to the control and sale of noxious weeds; to provide a penalty; and to allow the agriculture commissioner to use environment and rangeland protection funds for invasive species control.

Minutes:

Chairman Johnson: The concern I had after the hearing was on the first page, line 16 & 17. This would be the first time that we would be allowing an agency to circumvent administrative rules.

Representative Mueller: Moved to reconsider action whereby we passed out SB 2085.

Representative Rust: Seconded the motion

Voice vote taken. Motion passed

Representative Rust: Moved to remove Section 2, lines 14-17.

Vice Chair Kingsbury: Seconded the motion

Representative Rust: At the hearing I asked the question of whether or not this would create a problem. The process explained made me feel comfortable with it. This section though should be removed so it is not up to one person.

Representative Wrangham: I am going to support the amendment. I think there are times it is required to speed up the process to adding a noxious weed. Through administrative rules, the Agriculture Commissioner has authority to do emergency rule making.

Representative Schmidt: On line 14 &15, it says "ND Century Code is created." I was wondering if the word "created" means that we have to have something that addresses this. If that is the case, what would happen if we removed "not" out of line 16? Then it would say "the commissioner is required to comply with rulemaking." Is that necessary to say?

Chairman Johnson: I would think that by removing it, he is. I don't think we have to spell in language that he is.

Representative Mueller: I think you are correct. It is there, you don't need to say it. Was this addressed as to why we do it this way? Does anybody know how long it takes to get them on the list?

Representative Rust: Judy Carlson, Dept. of Ag. testimony Section 2: "Because the department has historically used rulemaking to change the state noxious weed list, our legal counsel advised us to continue with that same process. Rule making is time consuming and expensive. The commissioner will consult with NDSU extension service prior to changes of the state noxious weed list."

Chairman Johnson: I was told it is $1,500 to $3,000 for the advertising process and the time to get an administrative hearing for this process.

Vice Chair Kingsbury: In the conversation in the minutes, Representative Rust asked "does anyone have a problem with being able to add or remove weeds at the will of the commissioner?" Judy Carlson said "Because he is an elected official, if he does something people don't like they have that process. When we changed the noxious weed list about a year ago, we went through the formal rulemaking. It costs several thousand dollars. The hearing lasts 15 minutes but the public notice in all the newspapers is very expensive. Many people don't see the notices. By law we have to consult with NDSU Extension Service. It has to be a weed that has a chance to become a noxious weed because of how it spreads. Usually it is not native. It has to be a perennial and very obnoxious."

Chairman Johnson: The issue here is circumventing the process of going through administrative rules. Not how long it takes, but the process itself.

Voice Vote taken on motion for amendment. Motion passed.

Vice Chair Kingsbury: Moved Do Pass as amended.

Representative Rust: Seconded the motion.

A Roll Call vote was taken. **Yes: 14, No: 0, Absent: 0,**

DO PASS as amended carries.

Representative Conklin will carry the bill.

Date: 3/10/11

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2085

House **Agriculture** Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Belter Seconded By Representative Rust

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	AB		**Tracy Boe**	X	
Joyce Kingsbury, Vice Chair	X		**Tom Conklin**	X	
Wesley Belter	X		**Richard Holman**	X	
Craig Headland	AB		**Phillip Mueller**	AB	
David Rust	X				
Mike Schatz	X				
Jim Schmidt	X				
Wayne Trottier	X				
John Wall	X				
Dwight Wrangham	X				

Total **Yes** 11 **No** 0

Absent 3

Bill Carrier Representative Conklin

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

Date: 3/18/11

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2085

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended

☐ Rerefer to Appropriations **Motion to reconsider previous vote**

Motion Made By Representative Mueller Seconded By Representative Rust

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair			Tracy Boe		
Joyce Kingsbury, Vice Chair			Tom Conklin		
Wesley Belter			Richard Holman		
Craig Headland			Phillip Mueller		
David Rust					
Mike Schatz					
Jim Schmidt			Voice		
Wayne Trottier					
John Wall					
Dwight Wrangham					
	Voice		Passed		

Total **Yes** _____ **No** _____

Absent _____

Bill Carrier _____

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

Date: 3/18/11

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2085

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Rust Seconded By Representative Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair			Tracy Boe		
Joyce Kingsbury, Vice Chair			Tom Conklin		
Wesley Belter			Richard Holman		
Craig Headland			Phillip Mueller		
David Rust					
Mike Schatz					
Jim Schmidt					
Wayne Trottier					
John Wall					
Dwight Wrangham					

Voice Vote Passed

Total **Yes** _____ **No** _____

Absent _____

Bill Carrier _____

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

Remove Section 2, lines 14-17

VR
3/18/11

11.8113.02001
Title.03000

Adopted by the Agriculture Committee

March 18, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2085

Page 1, line 1, remove "subsection 3 to section 4.1-47-05 and"

Page 1, line 2, remove "the process by"

Page 1, line 3, remove "which the noxious weed list is amended and"

Page 1, remove lines 14 through 17

Renumber accordingly

Date: 3/18/11

Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2085

House **Agriculture** Committee

Legislative Council Amendment Number 11.8113.02001

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Kingsbury Seconded By Representative Rust

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	X		Tracy Boe	X	
Joyce Kingsbury, Vice Chair	X		Tom Conklin	X	
Wesley Belter	X		Richard Holman	X	
Craig Headland	X		Phillip Mueller	X	
David Rust	X				
Mike Schatz	X				
Jim Schmidt	X				
Wayne Trottier	X				
John Wall	X				
Dwight Wrangham	X				

Total **Yes** 14 **No** 0

Absent 0

Bill Carrier Representative Conklin

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

REPORT OF STANDING COMMITTEE

SB 2085, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2085 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2085, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2085 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 3 to section 4.1-47-05 and"

Page 1, line 2, remove "the process by"

Page 1, line 3, remove "which the noxious weed list is amended and"

Page 1, remove lines 14 through 17

Renumber accordingly

2011 SENATE AGRICULTURE

CONFERENCE COMMITTEE

SB 2085

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2085
April 7, 2011
Job # 16416

☒ Conference Committee

Committee Clerk Signature Greta Nelson

Explanation or reason for introduction of bill/resolution:

Relating to the control and sale of noxious weeds; to provide a penalty; and to allow the agriculture commissioner to use environment and rangeland protection funds for invasive species control.

Minutes:

Senator Miller: Meeting called to order this 7th day of April, 2011 for SB 2085. Clerk take the roll.

Clerk: Roll call 6-0-0

Senator Miller; Reason why the Senate did not concur was for the deletion of Section 2 which would allow the Ag Commissioner to suspend the rule making requirement and add or subtract weeds from the noxious weed list by consultation with NDSU rather than normal procedure. Asking the House for reasons for the changes?

Representative Wall; Removed section 2, we didn't think it was in the best interest of anyone to allow Commissioner to get away from rule making process. Perhaps a bad precedence to set.....was the primary reason for the deletion.

Senator Miller: Perhaps once every 5 years there is a consideration....the week list stays very static. The Senate agrees to not go away from rule making. Entertain a motion that the Senate accedes to House amendments,

Senator Murphy: I so move.

Senator Luick: Second

Senator Miller: Discussion? Clerk take roll call vote.

Clerk: 6-0-0

Senator Miller: Motion passes Senator Miller carries the bill.
Senator Miller; Adjourned

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: AGRICULTURE

Bill/Resolution No. SB 2085 as (re) engrossed

Date: 4/7/11

Roll Call Vote #: _____

Action Taken

- ☒ SENATE accede to House amendments
- ☐ SENATE accede to House amendments and further amend
- ☐ HOUSE recede from House amendments
- ☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 877 -

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

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

Motion Made by: Senator Murphy Seconded by: Senator Luick

Senators	4/7			Yes	No	Representatives	4/7			Yes	No
MILLER	✓			✓		REP. WALL	✓			✓	
LUICK	✓			✓		REP MUELLER	✓			✓	
MURPHY	✓			✓		REP. SCHMIDT	✓			✓	

Vote Count: Yes 6 No 0 Absent 0

Senate Carrier Senator Miller House Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2085, as engrossed: Your conference committee (Sens. Miller, Luick, Murphy and Reps. Wall, Mueller, Schmidt) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ page 877 and place SB 2085 on the Seventh order.

Engrossed SB 2085 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2085

COMMISSIONER
DOUG GOEHRING

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NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
BISMARCK, ND 58505-0020

Testimony of Judy Carlson, Division Director
Senate Bill 2085
Senate Agriculture Committee
Roosevelt Room
2:30 pm, January 6, 2011

Chairman Flakoll and members of the Senate Agriculture Committee, I am Judy Carlson, the Plant Industries Division Director at the North Dakota Department of Agriculture (NDDA). I am here today in support of Senate Bill 2085, which would clarify the process for amending the state noxious weed list, make it illegal to distribute or sell noxious weeds, and allow the use of environment and rangeland funds (EARP) to control invasive species.

The department provides coordination, resources, education, and cost-share assistance to landowners and county and city weed boards to control noxious weeds.

The Legislature appropriates funds to the department to administer two cost share programs:

The Landowner Assistance Program (LAP) provides weed boards with cost-share assistance for noxious weed control. Weed boards must levy at least three (3) mills for noxious weed control, or budget an amount equal to the revenue that could be raised by a levy of three (3) mills to be eligible to receive LAP funds. A formula is used that considers reported weed acreages and land in farms. For the 2009-2011 biennium, $900,000 has been allocated to the weed boards.

The Targeted Assistance Grant (TAG) Program targets noxious weed control needs and provides a cost-share opportunity to county and city weed boards to meet those needs. Approximately $400,000 is available for TAG.

The department also administers the Weed Seed Free Forage Program, provides weed boards with mapping equipment and technical assistance, and utilizes federal funding to further benefit landowners and weed boards controlling noxious weeds.

Educational material and financial resources are provided in the form of posters, pamphlets, brochures, and workshops as well as biological control agents and necessary equipment and cost-share assistance for noxious weed control.

Following is an explanation of the bill before you:

Section 1. We have been advised by legal counsel that in the current law the enforcement mechanism is directed toward weeds growing on land. This draws into question whether "control" includes a prohibition on the sale of noxious weeds. Section 4.1-47-02 NDCC requires that "Each person shall do all things necessary and proper to control the spread of noxious weeds." In order to control noxious weeds, it is important to prohibit the sale and subsequent distribution and growing of noxious weeds.

Section 2. Because the department has historically used rulemaking to change the state noxious weed list, our legal counsel advised us to continue with that same process. Rulemaking is time consuming and expensive. The interim committee's re-write had set out that the commissioner could change the state noxious weed list after consultation with the North Dakota state university extension service (NDCC 4.1-47-05). The language added by this bill would exempt the commissioner from the rule making process when the commissioner changes the state noxious weed list. The commissioner will consult with North Dakota state university extension service prior to changes of the state noxious weed list.

Section 3. This section establishes a penalty for selling noxious weeds.

Section 4. Last session, legislation was passed that allowed the department to use up to $50,000 of available funds (EARP funds that were appropriated for noxious weed control) for invasive species. The invasive weed language was in SB 2371 and the funding only applies to the current

biennium. We would like to retain the ability to assist weed boards in control of invasive weeds. No new funds are requested; we would use funds appropriated for noxious weed control.

We recently received input from the North Dakota State Seed Department (NDSSD) regarding their concerns on Section 1 of this bill. NDSSD is the designated authority for all seed certification and regulatory matters. They are concerned with how this could affect the sale of agricultural seed if there were any noxious weed seeds present. Agricultural seed is currently required to be free of prohibited noxious weed seeds (state noxious weed list) and restricted noxious weed seeds (declared by the seed commissioner). Under the seed law re-write (HB 1027), the seed commissioner will set the tolerances for regulated weed seeds. Another issue was the possibility that this could add another agency or the weed boards in regulating seed.

Our concern is the sale of plants. We agreed with NDSSD to offer an amendment to remove noxious weed seed and noxious weed propagating parts from this bill.

Chairman Flakoll and committee members, I urge a "do pass" recommendation for SB 2085 and favorable consideration of the amendment.

Thank you for your consideration, and I would be happy to answer any questions.

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Testimony of Judy Carlson, Division Director
Senate Bill 2085
House Agriculture Committee
Peace Garden Room
9:30 am, March 10, 2011

Chairman Johnson and members of the House Agriculture Committee, I am Judy Carlson, the Plant Industries Division Director at the North Dakota Department of Agriculture (NDDA). I am here today in support of Senate Bill 2085, which would clarify the process for amending the state noxious weed list, make it illegal to distribute or sell noxious weeds, and allow the use of environment and rangeland funds (EARP) to control invasive species.

The department provides coordination, resources, education, and cost-share assistance to landowners and county and city weed boards to control noxious weeds.

The Legislature appropriates funds to the department to administer two cost share programs:

> The Landowner Assistance Program (LAP) provides weed boards with cost-share assistance for noxious weed control. Weed boards must levy at least three (3) mills for noxious weed control, or budget an amount equal to the revenue that could be raised by a levy of three (3) mills to be eligible to receive LAP funds. A formula is used that considers reported weed acreages and land in farms. For the 2009-2011 biennium, $900,000 has been allocated to the weed boards.
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biological control agents and necessary equipment and cost-share assistance for noxious weed control.

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Chairman Johnson and committee members, I urge a "do pass" recommendation for SB 2085.

Thank you for your consideration, and I would be happy to answer any questions.

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SB 2085

Good morning, Vice Chairman Kingsbury and members of the House Agriculture Committee. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

Our association supports SB 2085, which prohibits anyone from selling or distributing a noxious weed and penalizes them if they do.

As you know, noxious weeds can wreak havoc on otherwise productive cropland or rangeland, which can have long-term economic ramifications due to lost production and costly control methods not only for an individual landowner, but an entire community and even the state.

For these reasons, we support SB 2085 and ask for your concurrence.