

FISCAL NOTE
Requested by Legislative Council
01/19/2015

Bill/Resolution No.: SB 2261

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill is primarily related to clarifying seed law. The bill also seeks an increase in the agency's regulatory enforcement provisions. Any fiscal impact would depend upon fines levied in cases of violations.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

None

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

None

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

None

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

None

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Agency: ND State Seed

Telephone: 701-231-5410

Date Prepared: 01/23/2015

2015 SENATE AGRICULTURE

SB 2261

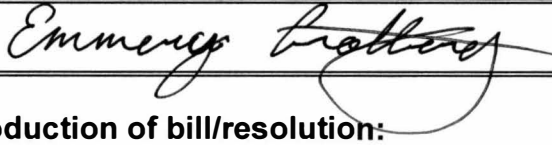
2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee Roosevelt Park Room, State Capitol

SB 2261
2/5/2015
Job # 23268

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to agricultural seed; and to provide a penalty

Minutes:

Attachments: #1

Chairman Miller: opened the hearing on SB 2261.

Senator Wanzek: introduced SB 2261 on behalf of the seed producers in ND. Senator Wanzek stated that he was supporting the bill because as a seed producer, there are a lot of costs that go into seed production and individuals who brown-bag or sell seed illegally without the expense, damage the business and the quality of lawful seed industries. The most significant part of the bill has to do with doubling the penalty on violations.

Vice Chairman Luick: (5:02) Once you have conditioned your seed to a point of sale versus the individual who is brown-bagging the seed is your seed quality any better or different than their seed that they are pirating?

Senator Wanzek: That's somewhat difficult to answer; I don't know the integrity of the seed that they started with. We have to buy seed that's gone through the same scrutiny but it's a newer generation. You start with foundation seed, generated by the university or the company. It goes from foundation to registered and then registered to certified. Perhaps someone who is brown-bagging didn't even start out with certified seed. You know when you buy certified seed that it came from a new generation parent, so I would argue that their seed quality is not up to the same level that ours would be.

Vice Chairman Luick: When that brown-bag seed is sold, do the farmers have any indication that they are receiving a lesser quality seed or is it being advertised as being the quality that you have for sale?

Senator Wanzek: I'm assuming that they don't necessarily know that it is a lower quality; all they see is that it is a lower price. When I am buying seed, I'm making sure that the seed is certified because I'm investing so much into that crop and starting with bad seed is a huge risk.

Vice Chairman Luick: Is this a big problem state wide or how do you identify a need for this particular change?

Senator Wanzek: I know it happens, but I don't know how large the problem is state wide.

Senator Klein: This only deals with the sale of seed? You can plant seed that you grew?

Senator Wanzek: That's right. With most of these plant protected varieties, you are allowed to grow your own seed to use it for your own purposes on your own farm. If you are holding your seed out for sale to other farmers and it's a plant protected variety and you aren't going through the process to certify, then you're brown-bagging.

Vice Chairman Luick: Supposing you have beans or wheat in your bin and you're not advertising for seed but your neighbor wants to purchase your grain for seed, would this prohibit that sale?

Senator Wanzek: I don't know if this would change the law. If they come over and want to buy your seed and it's a plant protect variety and you're aware of that, you would be prevented from selling it as seed but that's already in the law. I know there is a part in here about cover crops, it's my understanding that if it's a plant protected variety or a royalty variety and you want to sell it, you have to have it certified. If I have the seed and you want to buy it, it doesn't matter if you are going to use it for a crop or a cover crop; I have to follow the state seed laws.

Chairman Miller: How does the royalty stuff work? I'm wondering if people are actually getting paid royalties. At some point in time are we protecting seed to protect seed dealers or is the originator of the seed still getting paid?

Senator Wanzek: The fees are probably larger than the private companies because they don't have public dollars helping them with their research and development and to develop new varieties and to get them approved through the federal government or the USDA, costs a lot money.

Senator Larsen: We had a discussion about the canola issue where they didn't want people to sell it after the first year and part of that was the genetics where they were saying that it wouldn't do as well after the second time around. So with the seeds you're growing, after the first generation does the next generation quality become stronger or does it become weaker?

Senator Wanzek: We certainly see the generation quality become weaker the next time around on our farm. The only thing I can attribute it to is that the updates produce newer and better quality seed. The certified seed doesn't just do the germination test but also do a stress test. We noticed that as we updated our seed, some of those problems disappeared.

Ken Bertsch, ND State Seed Department: (17:30) (see attachment #1)

Chairman Miller: (23:12) What if there is a big surge in rye production and we have new varieties, should we think about adding a character that says this variety is unknown to the label rather than just getting rid of it altogether?

Ken Bertsch: If you look on page 2 part 2, the overstruck of rye basically says that rye may be labeled by a variety name. If we have a surge in rye protection, we are going to find that people who have a new variety of rye are going to label it by variety name because they want to market the seed under the particular characteristics of that variety. Rye would basically be treated like some of the minor crops that are not on that list.

Chairman Miller: Do you classify rapeseed as canola or by itself?

Ken Bertsch: Rapeseed would be considered canola and regulated in the same way as canola.

Ken Bertsch: (continued testimony #1 on page 2) (25:50)

Senator Larsen: Wouldn't you think that it's not the fine that is the deterrent but the enforcement? How many times have folks been charged this \$5,000?

Ken Bertsch: The fine and the enforcement go hand in hand. I have been here for 15 years and there have been half a dozen cases we have levied a penalty for brown-bagging. Most of those penalties also included some fine for labeling because if you are brown-bagging seed, you're not even providing a label. In terms of enforcement do you mean the misdemeanor violation?

Senator Larsen: We had some legislation last session on animal cruelty and they had a fine on there and no one had ever paid the full amount of the fine. I'm just wondering how many people are paying the \$5,000. If we raise this to \$10,000, how many people are going to pay \$10,000?

Ken Bertsch: Each time we have levied a penalty in a case of brown-bagging that fine has been paid. If we discover a violation or a variety owner discovers a violation, the variety owner has the right under federal law to assess their losses. Our part of the bargain is to look at state seed laws which include language about PVP. In each case we have discovered a violation, the violation has been admitted to and we've levied a penalty and they paid it. I see the value in both the civil violation and the civil penalty parts of what we're talking about.

Chairman Miller: Can we go to section 9 and can you give me more details on that? You said it had something relating to potatoes?

Ken Bertsch: Yes, section 9 deals with chapter 4.1-56 which is the seed potato control area chapter. There was a penalty provision section in that chapter; we're just replicating the same penalty provision across all of them except one.

Chairman Miller: Why didn't we include that in the rewrite?

Ken Bertsch: All of the chapters were included in the rewrite. Section 9 of the bill, chapter 4.1-56 we had the language that said any person violating this chapter is guilty of a class B misdemeanor at that time, and then we inserted the penalty language behind that so it matched the rest of the chapters that had the penalty provision. Why? Because if you are going to have a violation then you should have a penalty.

Senator Warner: Both section 5, 8, and 9--does the reclassification to class A misdemeanor, does that follow the increase in the fine? Does the fine dictate what the class of the misdemeanor is or are they separate actions?

Ken Bertsch: The change from B to A in the misdemeanor statute was done at legislative council and I assume there's a reason behind it but I'm not sure.

Senator Klein: I guess we're drilling down on the \$10,000. How do the producers come to find that the penalties have been increased? When you call folks into the office for brown-bagging, are people aware of what the law is?

Ken Bertsch: You wouldn't believe the number of responses we get that declare ignorance of the law, whether it's labeling, testing, or PVP. If this bill passes, I would intend to put that out in public information terms to create some awareness in the industry that this is no small thing. We've put out press releases to make people aware of the seedlaws, this bill will allow us to make our point resonate better.

Senator Klein: 15 years ago when we had the tech fee debates, there were folks who didn't believe they should have to pay that fee to that particular company to raise their seed. At that time people became aware that if they interfered with plant variety regulations they would incur a fine. Is that a method you are hoping to use?

Ken Bertsch: In my mind that is an educational thing, I think over the course of years people understand the consequences. If someone makes the claim that they didn't know, I tend to believe them because virtually everyone know varieties are protected, some varieties have tech fees associated and most varieties of royalties associated. It can get confusing because on one side you are dealing with royalties, research, and tech fees that we don't have much to do with. Our job is plant variety protection and state labeling laws and to provide education about the consequences.

Vice Chairman Luick: (1) You mentioned grain; let's say you have an individual who buys grain from the local elevator and wishes to use it for seed? (2) What is the fine money used for?

Ken Bertsch: (1) If that happens and if we find out about it, we approach the elevator as the seller. If we find a situation like that under the law, both the buyer and the seller are in violation of variety protection laws and we would handle them the same way. (2) The money goes into our fund and we allocate that revenue to our regulatory program to be used for the expenses associated with running that program.

Vice Chairman Luick: If an individual purchases that seed for feed and cover crop, is he in violation? The feed portion would be no issue, but would the elevator be in violation if they did not know the seed was going to be used for cover cropping?

Ken Bertsch: In the particular scenario you described, the elevator man will probably have an invoice that states the sale was for the purpose of feed--he's not liable. However, if we found that the farmer used some for feed and spread the rest on his field, he's in violation. In a case like that there's nothing written in the law. We have some internal policies that we try to adhere to concerning intent. If the intent was not to plant that to grow a crop, we're going to take it easy. However, if he holds it over and plants it in the spring and grows a crop, his intent was violate PVP by purchasing that grain of a certain variety to plant and grow a commercial product.

Vice Chairman Luick: I have a problem using these protected varieties and fines where they are used as cover crops instead of a cash crop because the use is entirely different. You are using it for protecting soil, you aren't putting that out there for the purpose of cash cropping that seed. I have some angst about looking at the same way as someone who is violating the law for a cash crop production.

Ken Bertsch: I understand your angst; the federal seed branch of the USDA would say it doesn't matter, it is still a PVP violation because that is a protect variety. Use is of no concern, it goes back to that "for planting purposes" language in our code. All I can tell you is that our regulatory action involves intent. The max penalty is never used or imposed except in the cases of planting for commercial purposes.

Chairman Miller: A class B misdemeanor is 30 days in jail and a thousand dollar fine, and a class A is a three thousand dollar fine and up to a year in jail. If you imposed a fine on someone, a court could still come and proceed with action, correct?

Ken Bertsch: I believe that is the case; In our case, our authority only extends to what is in our chapter which is to issue a civil penalty. Any criminal language would be from outside.

Chairman Miller: I am wondering about the royalty provisions. Even if I buy something that isn't plant protected and I don't have a label on it and I use it for cover crops, then I'm still in violation of the law correct?

Ken Bertsch: No. In your scenario where the variety you are talking about regardless of crop type, when I said no it was only because you outlined the scenario by saying it is not plant variety protected. When I say no, it is because it wouldn't involve a PVP penalty that we're talking about here. It may involve some labeling issues if you purchased it from someone who didn't follow the labeling provisions of our law, but if it's not PVP protected we don't have anything to do with it.

Chairman Miller: But if I bought it from someone and it wasn't labeled, that's a violation?

Ken Bertsch: That's a marketing issue, and we do have something to do with that because all of our chapters contain labeling language. So seed still has to be labeled. If you go by the rules that all seed that's sold has to be labeled, that puts a cover on top of all of this.

Nobody can sell you something that's not labeled if it's for planting purposes in ND. The protection provisions are slightly different depending on the case, you would not find another certification agency in the US that has to deal with this stuff--that's all a regulatory agency usually assigned to a state department of agriculture. In ND, you're blessed that we have to do this. Not so much for us because we have to pay attention to the PVP language, both federal and state, that protects variety owners. The only time we have anything to do with that is if it involves a plant variety protected PVP variety. Usually we only deal with those PVP title 5 varieties.

Chairman Miller: If I have a non PVP plant that I'm purchasing from someone for cover crop, what does that label cost that person?

Ken Bertsch: You probably can't make that scenario legally happen because let's say the neighbor who grew a non PVP with only a plant patent on that variety and nothing else, the company would not allow the grower to label that so the cost of the label is irrelevant?

Chairman Miller: So there are absolutely no crops out there that aren't protected either by a patent or a plant protection variety?

Ken Bertsch: There are a few seed varieties out there that aren't protected. There aren't very many and there are fewer all the time because they are not used often.

Chairman Miller: Can you give me an example?

Ken Bertsch: There were a few varieties. A variety of NDSU wheat called Jerry winter wheat that was released without PVP protection. You can buy that from your neighbor, if your neighbor is going to sell that to you, your neighbor has to have it conditioned and cleaned and has to send a sample to us so he can create a label with the information on it--the germination, the purity, the absence or presence of weeds--all of those things that are required under the labeling laws.

Chairman Miller: So how much would that cost the neighbor to certify that?

Ken Bertsch: Let's say he is going to sell 1,000 bushels of Jerry winter wheat. It would probably cost your neighbor 50 to 75 cents a bushel to get that cleaned. Then he has to create a label. He sends us a sample and it costs him \$18 dollars to get a germination test and then another \$18 to get a purity test and then he has all the information he needs to create a label. If he asks us to create a label for him, we charge a penny. So less than \$40 and he has himself a label.

(59:50) **Ken Bertsch** completed his testimony (see section 6, page 2 on attachment #1)

Senator Warner: Relative to section 6, this gives you immunity, but it doesn't give the seller immunity for not disclosing variety identities, correct?

Ken Bertsch: This just applies to our agency and what is being warranted by the agency. The warranty disclaimer line says that we're warranting and we're following all the rules of the department in the process of inspecting and testing seed.

Senator Warner made a comment about merchant ability issues.

Chairman Miller closed the hearing on SB 2261.

2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee Roosevelt Park Room, State Capitol

SB 2261
2/6/2015
Job # 23385

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Emmery Brothberg

Explanation or reason for introduction of bill/resolution:

Relating to agricultural seed; and to provide a penalty
(Committee Work)

Minutes:

Attachments: n/a

Chairman Miller opened the hearing by stating that he felt comfortable with everything in the bill but only had slight discomfort about doubling the fined.

Senator Larsen: I understand that by changing this, they can levy up to \$10,000. My concern is that the \$5,000 fine isn't being enforced. If we increase the fine, are they even going to enforce it?

Senator Oban: I agree with Senator Larsen in that if we enforced the laws we already have we wouldn't have to worry about increasing fines because we would actually enforce what's there. In the last 15 years, they have levied half a dozen fines and each time the full penalty has been enforced. I don't think because they've done it 6 times in the last fifteen years that it's worth doubling either; I'm fine with everything in the bill except perhaps the dollar amount.

Chairman Miller: The reason he has come with this bill is because the cost of seed has gone up. \$5,000 isn't much in farming anymore. Everything you do costs more money, so I think he wants a bigger hammer to keep this under control.

Senator Klein: Ken Bertsch has been there quite a while and he has been in front of the committee every session I have been here and he is extremely thorough. He can answer every question and I think his request for the \$10,000 is reasonable. Generally I hedge on raising these fees and penalties. It has certainly quitted over the years on this patent infringement and brown bagging that we discussed a lot in the early 2000s. I will support whatever the committee supports but I would leave it the way it is.

Senator Warner: I would prefer it to be \$5,000. I would like to point out a couple of inconstancies with Ken Bertsch's testimony. He said that it reclassified in three different

sections from a class B demeanor to a class A. It really is only in section 9 that it's reclassified. We checked and it was already an A misdemeanor in sections 5 and section 8. So just on the record that it's only in the one section we are increasing the penalty. The criminal penalty besides that carries an up to \$3,000 fine and a year in jail--it's a pretty serious impediment. I'm not entirely sure because the commissioner cannot imitate a criminal suit; that would take a state's attorney making the decision. Does that require a formal complaint from the patent owner in order to initiate that or can they initiate that on their own?

Chairman Miller: If someone is not paying the fee, I think someone makes a formal complaint to the seed department and then the seed commissioner steps in.

Senator Warner: He can do the civil part; he can't do the criminal part?

Chairman Miller: The criminal part would probably have to be from the patent holder.

Senator Warner: So Monsanto or whoever would initiate it with the state's attorney, I assume.

Chairman Miller: What if we split the difference?

The committee agreed that that would not be an agreeable decision and decided to run the bill as it is with the penalty increased to \$10,000.

Vice Chairman Luick moved a Do Pass on SB 2261.

Senator Larsen seconded the motion.

A Roll Call vote was taken. Yea: 6; Nay: 0; Absent: 0.

Do Pass carries.

Senator Larsen will carry the bill.

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2261**

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Luick Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Joe Miller	Y		Sen. Erin Oban	Y	
Vice Chairman Larry Luick	Y		Sen. John M. Warner	Y	
Sen. Jerry Klein	Y				
Sen. Oley Larsen	Y				

Total Yes 6 No 0

Absent 0

Floor Assignment Senator Larsen

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

REPORT OF STANDING COMMITTEE

SB 2261: Agriculture Committee (Sen. Miller, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2261 was placed on the
Eleventh order on the calendar.

2015 HOUSE AGRICULTURE

SB 2261

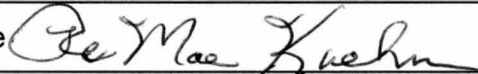
2015 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2261
3/19/2015
Job #25131

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to agricultural seed; and to provide a penalty

Minutes:

Attachment #1

Ken Bertsch, State Seed Commissioner: (Attachment #1)

(10:46)

Representative Craig Headland: Have you had to put these penalties on farmers for brown bagging seed and at what level?

Ken Bertsch: Yes. The variety owner might find a violation. Sometimes we find it and we corroborate with those variety owners determine intent and then levy the fine. We have used the \$5,000 maximum to assess penalties on violations of brown bagging. If it was unlabeled seed, we will assess additional fines but those are at a lower level such as \$100, \$250, etc. depending on intent.

Representative Craig Headland: How many violations?

Ken Bertsch: In about 15 years it has happened about 6 times.

(16:13))

Senator Wanzek, Bill Sponsor: We grow ND registered and certified seed. The first part clarifies the current law which is if you are selling seed and it is a plant protected variety, it needs to be certified.

Seed producers have to purchase new generation seed so you pay a premium price for registered seed. Then you have to apply for certification through the state seed department. There is an inspector that checks the fields two times per year. They make sure the field is uniform and clean of weeds. After harvest we have to send away for lab, germination, and purity testing. That all adds to the cost. For the Plant Protect Varieties (PPV) we also have to pay a royalty fee.

When you total all of the costs we are probably spending a couple of dollars per bushel more to develop and raise that certified seed. When someone else doesn't follow the rules and undercuts our price, to me it is theft.

Representative Craig Headland: With the economics in agriculture and the high cost of inputs such as seed, I can see the possibility of brown bagging becoming more prevalent. Do you think \$10,000 is enough of a deterrent?

Senator Wanzek: It is twice the current number. Farmers can grow their own seed and not put it out for sale. Good quality seed doesn't cost, it pays.

Representative Diane Larson: What is brown bag seed?

Senator Wanzek: It is black marketing seed. You are not following the rules. You are not paying the royalty fees. The way that farmers get new seed with new genetics is through research and development.

Representative Dwight Kiefert: On page 1, line 8 shouldn't that read protected agricultural seed? All seeds are not protected that are grown in agriculture? What if we have older varieties?

Ken Bertsch: It shouldn't say protected because the law says any seed sold has to be labeled if sold from person to person.

Representative Dwight Kiefert: Is that a new definition or has that been in effect for some time?

Ken Bertsch: That is old language. Part A has in place for decades and is unchanged.

Representative Cynthia Schreiber Beck: What is the process of discovery? Is brown bag seed allowed to be grown?

Ken Bertsch: Procedurally in ND this is the only place with a regulatory agency that has the authority to participate with a variety owner only on PVP variety piracy. If we discover a violation, we talk to that producer. We only have authority to deal with the one who sold the seed not the one that bought it. Then we do an investigation. The variety owner can also go after the buyer. Many say they didn't know. There is a certification agency in every state.

Opposition: none

Chairman Dennis Johnson: Closed the hearing.

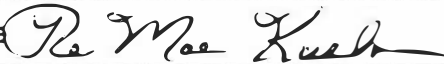
2015 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2261
3/20/2015
Job #25199

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Agricultural seed law
(Committee Work)

Minutes:

Representative Cynthia Schreiber Beck: Moved Do Pass

Representative Alex Looyen: Seconded the motion.

A Roll Call vote was taken: Yes 11, No 0, Absent 2.

Do Pass carries.

Representative Schreiber Beck will carry the bill.

Date: 3/20/2015

Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2261**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation

: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Schreiber Beck Seconded By Rep. Looyen

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Bosch	X	
Vice Chairman Wayne Trottier	X		Rep. Jessica Haak	X	
Rep. Bert Anderson	X		Rep. Alisa Mitskog	AB	
Rep. Alan Fehr	X				
Rep. Craig Headland	X				
Rep. Tom Kading	AB				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. Alex Looyen	X				
Rep. Cynthia Schreiber Beck	X				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Schreiber Beck

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

REPORT OF STANDING COMMITTEE

SB 2261: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **DO PASS**
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2261 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

SB 2261



**Testimony
Senate Bill 2261**

**Senate Agriculture Committee
February 5, 2015**

Ken Bertsch, Commissioner

Good morning Mr. Chairman and members of the Senate Agriculture Committee. For the record, my name is Ken Bertsch and I serve as State Seed Commissioner and administrator of the ND State Seed Department. I appreciate the opportunity to speak to you today regarding SB 2261, which is a measure drafted by the Seed Department, approved by the State Seed Commission and introduced by Senator Wanzek on our behalf.

The Department is asking for your consideration on a few issues that would be considered follow-up work to the rewrite of our code that was completed in the 2013 session. We are also seeking an increase to the regulatory enforcement section of code, specifically related to fine amounts.

Section 1 (page 1)

The language on line 10-11 ((Ch. 4.1-53-12.(1.a)) is intended to simply create clarity in the code governing labeling of seed, specifically seed intended for use as cover crop. Cover crops are becoming a more important seed product every year, and the marketing of these products is expanding at the same rate.

The term ***“for planting purposes”*** is used throughout our chapters to define all seed that falls within certification and regulatory guidelines of the code, regardless of use. This should be fairly straightforward to the reader.

In reality, seed marketers and farmers often fail to recognize that the testing and labeling of seed sold/purchased also applies to seed products that are not used to produce a commercial crop. The labeling sections are really consumer protection statutes, and are in place to require “truth in labeling”, and to also require that all seed products must be tested and labeled correctly to protect both the seller and the buyer.

This language serves as a clear notice to the public that cover crops and cover crop mixtures fall under the same requirements as other seeds sold and planted in ND.

Sections 2 and 3 (pages 1-2)

The overstrike of the term rye in Sections 2 and 3 removes the requirement that rye seed must be sold by variety name.

Very little rye is grown in ND, and most rye sold and planted in the state is used for the purpose of establishing ground cover or production of forage. Further, most available rye seed originates from out of state and is of unknown variety. The labeling and sale of rye becomes very difficult with the requirement for variety name in place. We have little concern that the removal of the naming requirement will cause consumers difficulty, since all other labeling and testing conditions will remain in effect.

Sections 4 (page 2) and 7 (page 3-4)

This language simply updates our code to reference the most current version of federal Plant Variety Protection (PVP) law. This is commonly done each time we appear before the legislature to keep all references to PVP in our seed laws current with federal statutes. The Seed Department has authority in North Dakota to pursue violations of PVP Title V by virtue of the authority in state seed laws.

Sections 5 (page2-3), 8 and 9 (page 4)

Language in Sections 5, 8, and 9 amend the penalty provisions of code related to the Seed Department's regulatory authority to levy fines in cases of seed law violation.

Section 5: references Chapter 4.1-53 governing our field crops chapter. The max civil penalty provision increases from \$5000 to \$10,000 and the criminal violation is reclassified to a Class A Misdemeanor.

Section 8: references Chapter 4.1-55 governing our potato program chapter. The max civil penalty provision increases from \$5000 to \$10,000 and the criminal violation is reclassified to a Class A Misdemeanor.

Section 9: references Chapter 4.1-56 governing our potato control area chapter. The max civil penalty provision increases from \$5000 to \$10,000, and the criminal violation is reclassified to a Class A Misdemeanor.

As with all civil penalties, fines levied by the Department serve as a deterrent to violating seed laws. The Department Regulatory program carries the responsibility to enforce state and federal seed laws including Plant Variety Protection (PVP), and relies on the penalty provisions as a deterrent to violating these laws. The Department only utilizes the max penalty provisions in cases of violation of PVP, or "brownbagging"; the unauthorized sale of protected varieties of seed. Other labeling violations normally carry a fine in the \$250-500 range.

The agriculture industry has changed dramatically over the past decade; especially in the input cost side of operating. The cost of seed, chemical, fertilizer and land rent are the highest input cost areas in our industry. The temptation to reduce costs by acquiring illegal seed, rather than through appropriate and legal channels, increases as those other input costs rise. This is not an alternative with other inputs like chemicals and fertilizer, where a cheaper and/or illegal source does not exist.

I believe the deterrent factor of a \$5000 penalty has lessened over time, and that doubling that penalty is reasonable in the current production environment. Further, some states (North Carolina) have already begun to recognize these factors and increase their maximum penalty amounts.

Section 10 (page 4-5)

Language in Section 5 changes the penalty provision in Chapter 4.1-57 governing the Wholesale Potato Dealer licensing program from the current \$500 maximum penalty to a \$1000 maximum. This change effectively doubles the fine associated with violations in this chapter, in the same way the fines for violation of seed laws are doubled in the previous sections of the bill.

The Class A Misdemeanor criminal penalty already existed, and remains the same in this Chapter.

Section 6 (page3)

Lastly, we ask that the warranty disclaimer language in Chapter 4.1-53 (Field Crops) be amended to reflect a change that was made in the 2013 Chapter rewrite, SB 2026, which amended the chapters governing Potato Programs.

SB2026 amended the disclaimer to include the term "varietal identity" along with merchantability, fitness and absence of disease which are those areas the state does not warranty. All of these factors are beyond the control of the Department to provide any type of performance warranty. The only warranty made by the state is that the Department is following the rules of certification in the process of inspecting and testing seed crops.

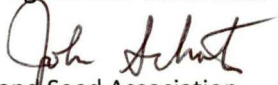
SB2026, which was rewritten and passed during the 2011 Session, amended the disclaimer language in Chapter 4.1-54, 4.1-56 and 4.1-57 (the Potato Program chapters), but not 4.1-53 (the Field Crop/Seed Law Chapter). The amendment in Section 6 would make all the disclaimer sections consistent throughout our chapters.

I ask for your support of SB2261, and will answer any questions you may have.



To: Members of the Senate Agriculture Committee

February 5, 2015

Fr: John Schatz, President 
ND Crop Improvement and Seed Association

The ND Crop Improvement and Seed Association requests your support for Senate Bill 2261.

We have been briefed on the entirety of SB 2261 by Commissioner Bertsch. While we believe all of the issues entailed in this legislation are important and worthy passage by the Senate, we would like to speak specifically about those sections related to increasing the penalties for seed piracy, or "brownbagging" of seed.

As farmers and seed growers, we are aware that seed is transferred from farmer to farmer. It is perfectly legal for a farmer to buy PVP Title V certified seed and grow it on his own farm for as long as he wants. However, it is illegal for that same farmer to sell or transfer the grain he produced to another individual for the purpose of planting and producing a crop. We all know this happens, and we all know that in almost every case it is illegal under state and federal variety protection laws, since nearly every variety produced is protected under PVP laws.

It is impossible to estimate how much "brownbagging" of seed takes place in North Dakota, or how much money is lost by seedsmen and variety owners. What is not in question is that each time it happens, it costs both parties. The seed grower loses a sale that year, and sales of that variety in future years. The variety owner loses a royalty payment for each bushel of illegal seed that is sold.

The issue of seed piracy is also critical to variety owners, who supply new varieties that we depend on for our business. By way of example, NDSU Research Foundation is the owner of varieties released by NDSU breeding programs and the largest supplier of new varieties to our member-growers. The financial impact of lost royalty revenues to the University ultimately impacts their ability to fund research efforts at breeding program levels. The NDSU/RF collects the smallest royalty fee in the industry from most varieties it releases, and yet suffers a substantial loss of revenues it uses for variety development each time its varieties are pirated. The University can pursue damages in cases where its intellectual property rights have been violated, but the deterrent of an additional and significant fine from the state regulatory agency makes the practice of seed piracy much riskier to the individual illegally transferring a non-certified or "brownbag" variety.

The Commissioner is correct in his view of increasing penalties as a deterrent to seed piracy, which negatively impacts all public and private breeding programs and seed companies. At the farm level, the only way to deter "brownbagging" of seed is to increase the risk of illegally selling or transferring a variety simply because it is less expensive than buying it legally.

Thank you for consideration of support for SB 2261.

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AMERICAN SEED TRADE ASSOCIATION



February 2, 2015

To: North Dakota Senate Agriculture Committee

Re: ND SB 2261 (Sen. Terry Wanzek, prime sponsor)

The American Seed Trade Association (ASTA) is writing this letter in support of SB 2261, which is currently pending before the North Dakota legislature. The first change of the existing law's requirements to extend to agricultural seed used for cover crops will ensure growers receive quality seed to produce the desired results of their plantings. The second change, an increase in penalties for violations of the seed law, will enhance the intention of the entire law.

The American Seed Trade Association is committed to the support of a viable and efficient regulatory system for the seed industry. Per the strategic plan, it is a priority of ASTA's policy efforts to ensure a sustainable state infrastructure to support these regulatory systems. The changes offered in this bill will benefit all facets of the seed industry. That is, growers will continue to have access to quality seed and seed manufacturers can be assured their intellectual property will be protected.

ASTA members carefully balance the development and marketing of new varieties necessary to support America's farmers. Members of the seed industry are committed to providing the quality seed that helps North Dakota farmers and producers everywhere maintain and enhance their competitive edge. This bill will assist their ability to meet the growing and changing needs of America's farmers and customers around the world.

Founded in 1883, ASTA is one of the oldest trade organizations in the United States. Its membership consists of over 720 companies involved in seed production and distribution, plant breeding, and related industries. ASTA's membership is comprised primarily of U.S. companies, although it does have members from 15 other countries. ASTA advocates science and policy issues of importance to the seed industry. Its mission is to enhance the development of movement of seed worldwide.

ASTA is a diverse organization. It represents all types of seed companies and technologies – seed from alfalfa to zucchini, technologies from organic to biotechnology, and companies from “mom and pop” to multinationals. ASTA has members in 47 states, including North Dakota. It works on behalf of all of its members at the state, national, and international levels. In other words, ASTA represents every seed company that would be affected by the proposed legislation, and it works in cooperation with the rest of agribusiness and consumers, whom the proposed legislation would also benefit.

In summary, this bill enhances existing laws for the seed industry, which will ultimately benefit growers and consumers. In our view, SB 2261 as it is now drafted conveys a commitment to research, innovation and the continued resources provided through high quality seed. ASTA considers high quality seed a critical sector of modern agricultural production systems, and an integral focus of the regulatory system.

Please do not hesitate to contact us if you have any questions. Thank you for your consideration.

Sincerely,

Andrew W. LaVigne
President & CEO



North Dakota State
NDSSD
Seed Department

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Testimony
Senate Bill 2261

House Agriculture Committee
March 19, 2015

Ken Bertsch, Commissioner

Good morning Mr. Chairman and members of the House Agriculture Committee. For the record, my name is Ken Bertsch and I serve as State Seed Commissioner and administrator of the ND State Seed Department. I appreciate the opportunity to speak to you today regarding SB 2261, which is a measure drafted by the Seed Department, approved by the State Seed Commission and introduced by Senator Wanzek on our behalf.

The Department is asking for your consideration on a few issues that would be considered follow-up work to the rewrite of our code that was completed in the 2013 session. We are also seeking an increase to the regulatory enforcement section of code, specifically related to fine amounts.

Section 1 (page 1)

The language on line 10-11 ((Ch. 4.1-53-12.(1.a)) is intended to simply create clarity in the code governing labeling of seed, specifically seed intended for use as cover crop. Cover crops are becoming a more important seed product every year, and the marketing of these products is expanding at the same rate.

The term "**for planting purposes**" is intentionally used throughout our chapters to define all seed that falls within certification and regulatory guidelines of the code, regardless of use. This should be fairly straightforward to the reader.

In reality, seed marketers and farmers often fail to recognize that the testing and labeling of seed sold/purchased also applies to seed products that are not used to produce a commercial crop. The labeling sections are really consumer protection statutes, and are in place to require "truth in labeling", and to also require that all seed products must be tested and labeled correctly to protect both the seller and the buyer.

This language serves as a clear notice to the public that cover crops and cover crop mixtures fall under the same requirements as other seeds sold and planted in ND. **The language does not change (in any way) existing requirements for cover crop seed to be tested and labeled under ND seed laws.**

Sections 2 and 3 (pages 1-2)

The overstrike of the term rye in Sections 2 and 3 removes the requirement that rye seed must be sold by variety name.

Very little rye is grown in ND, and most rye sold and planted in the state is used for the purpose of establishing ground cover or production of forage. Further, most available rye seed originates from out of state and is of unknown variety. The labeling and sale of rye becomes very difficult with the requirement for variety name in place. We have little concern that the removal of the naming requirement will cause consumers difficulty, since all other labeling and testing conditions will remain in effect.

Sections 4 (page 2) and 7 (page 3-4)

This language simply updates our code to reference the most current version of federal Plant Variety Protection (PVP) law. This is commonly done each time we appear before the legislature to keep all references to PVP in our seed laws current with federal statutes. The Seed Department has authority in North Dakota to pursue violations of PVP Title V by virtue of the authority in state seed laws.

Sections 5 (page2-3), 8 and 9 (page 4)

Language in Sections 5, 8, and 9 amend the penalty provisions of code related to the Seed Department's regulatory authority to levy fines in cases of seed law violation.

Section 5: references Chapter 4.1-53 governing our **field crops** chapter. The max civil penalty increases from \$5000 to \$10,000 and the criminal violation is reclassified to a Class A Misdemeanor.

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I ask for your support of SB2261, and will answer any questions you may have.

"To assure integrity of the seed industry through commitment to client service and product quality."



To: Members of the House Agriculture Committee

March 10, 2015

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AMERICAN SEED TRADE ASSOCIATION



March 5, 2015

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Sincerely,

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