

2015 SENATE AGRICULTURE

SB 2351

# 2015 SENATE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Roosevelt Park Room, State Capitol

SB 2351  
2/13/2015  
Job # 23859

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Emmery Broberg*

## Explanation or reason for introduction of bill/resolution:

Relating to the ownership or leasing of farm and ranch land by corporations.

## Minutes:

Attachments: #1-19

**Chairman Miller** opened the hearing on SB 2351.

**Senator Wanzek, District 29** introduced SB 2351 (see attachments #1a and #1b)

**Senator Klein:** The agriculture committee heard during the presentation by the commodity groups in January and we heard the concerns that Senator Wanzek has pointed out in the Dairy Industry. The emails that I'm getting seem to imply that by passing this the corporations will be able to buy sections of land across the state and monopolize the landownership. What I heard you say was that there's only an opportunity for 640 acres of land. To make it simple for me, if we had ten dairies to come to ND how many sections of land would we have to give up?

**Senator Wanzek:** First of all, understand that is the maximum. Many of these operations may not want that much land. These types of operations focus on operating the dairy farm. They are most likely going to purchase most of their feed from surrounding farmers. Having said that, if ten of them came the most they could ever own or lease--and we included lease because we don't want them coming in and leasing up a bunch of land either--if ten of them came there could be ten sections. There are 62,000 sections of farm land. I insisted that restriction be in there, SD does not have a restriction. I feel pretty strongly about the lands staying in the hands of our family farmers and having them in control.

**Vice Chairman Luick:** Is it possible for that corporate farm--whether dairy or swine structure--to divide and purchase more sections of land under a division of that corporation?

**Senator Wanzek:** That's a good question; it's my understanding that if you're operating under one entity, that one entity could only own or lease one section of land. The rationale behind the one section is that there are environmental regulations where there are setback requirements. I envision very few of these are going to utilize a full section, they're going to



contract their feed production and they won't need a full section. Some of them will probably only need 40-80 acres to put the facility and operation up. I see potential for a neighborhood of farmers and local community businessmen coming together.

**Senator Klein:** You spoke briefly about keeping the land in the hands of the family farmers, why wouldn't we want to expand this for the crop farmers? What would the difference be?

**Senator Wanzek:** When it comes to crop farming, many young people who want to get into that industry already have equity partners called landlords. If a young farmer wanted to get into crop farming and was required to buy all of his land, there is no way he could get into farming because it would take a huge sum of capital. But in many instances, young farmers are able to get in because they have these equity landlords. It allows our younger generation to get into crop farming. When you go in to build a dairy, you're in it all on your own and it's hard to get investors. Some say that dairy farmers can already do this under a general partnership. But I like the corporate shield because I know the limit to my liability and I am willing to invest half a million or a million in it--that's the extent of my risk. If I go in as a general partner, my risk is losing everything--the rest of the farm and my personal assets--if there was some sort of incident that cost a huge liability.

**Senator Oban:** I don't think anyone thinks that we shouldn't do anything and I do look forward to asking them for their ideas if this is own that they're opposed to. Going back to something you said in your testimony at the beginning on your first page, you said that "we've tried many other approaches to this problem over the years and they obviously are not working." Can you help me understand what we have tried and why they haven't been working?

**Senator Wanzek:** Many of them dealt with credit; they looked at ways to give credit to dairy farmers. Farmers don't necessarily need to take on more debt; a lot of us already have a high level debt to the point where it puts the business in jeopardy. We need someone who is willing to share the risk rather than taking out a bank loan. There have been a number of programs and efforts with the dairy coalition and dairy efforts with the dairy coordinator trying to facilitate development and get development off the ground. We mostly approach it from the standpoint that we are going to provide loans and lending and that presents a problem in today's environment. Not many family farmers want to take on 6-8 million dollars' worth of debt.

**Senator Warner:** I would like to address the labor question, it seems to me where we've seen these kinds of corporate structures come in the way they get out from under risk is by lowering their labor costs. I think we see the solution in other areas has been through low cost immigrant labor. The benefits offered to them are helping them sign up for Medicaid, the supplement to their income comes in the form of food stamps. How does that benefit the general economy when we subsidize corporate agriculture by allowing them access to the common wealth in that way rather than paying market price for their labor? How do we benefit family farm agriculture when we undercut them by subsidizing corporate agriculture?

**Senator Wanzek:** I'm not sure--are you certain these individuals who are working on these dairy farms are applying for these things?

**Senator Warner:** I'm saying that at \$12 an hour they are.

**Senator Wanzek:** I don't know whether that's true or not, I know from visiting some of the corporate dairy farms that they employ these people and the ones that I've met seem to be satisfied with their jobs. That might be an issue we are going to have to address, but in most instances that wouldn't be the case. The one dairy that I'm thinking of provides housing and amenities and complete families come in and work. With new technology, we are getting into the robotic age and there will be more mechanized and more technology involved in the labor.

**Senator Warner:** I would never dismiss immigrant labor and the quality of their work ethic. That raises a question about the impact of the tax structure that we're raising here. I think we can reasonably expect that if a dairy had 10 employees, it would but 10-20 kids in the school system. Yet the dairy is only paying property taxes on the land. It's not paying on any of the capital construction costs, so as little as \$3,000-4,000 per section of land. How you justify the kinds of tax exemptions that we are giving to these very intensive agriculture industries?

**Senator Wanzek:** I'm sure the body will address that whether they should be taxed or not. I know that right now we have some individual dairies that are still in existence that are under the same scenario. These operations will generate additional wages and dollars that will bring in other taxes as well. I believe that the benefits will far outweigh any challenges. When it comes to immigrants, almost everyone in this room come from a line of immigrants; these people are coming here looking for an opportunity and hope.

**Chairman Miller:** Are you aware of the farm exchange labor program? These are family farms that are utilizing this now. The labor issue isn't centered around if it's a corporate entity or not. The labor issue is simply a labor issue.

**Senator Wanzek:** You're right, the labor issue will be there regardless of the structure of the business. I see this corporate structure as business tool. It's not the answer for every operation, it's not the only issue that helps enhance our livestock production. I believe that one of the major barriers to develop is the inability to generate equity capital, so it's probably the number one barrier, but it's not the only thing we should do to enhance livestock operations.

**Chairman Miller:** You serve on appropriations and you are well aware of the welfare programs we create as a state, we set those thresholds as a government. If a corporation is abusing the system, we have to share in some of that blame.

**Senator Wanzek:** We have wage and labor laws they have to adhere to, and I would suspect and want them to be responsible corporate citizens and adhere to our laws.

**Chairman Miller:** As far as foreign labor goes, that's a federal policy correct?

**Senator Wanzek:** Correct. I know there are farmers in our area that are utilizing that program.

**Senator Klein:** You spoke about the current corporate structures that we are allowing under current law and I believe you have on at your farm?

**Senator Wanzek:** Yes.

**Senator Klein:** Could your little corporation invest in your cousin's corporation?

**Senator Wanzek:** From what I understand, I would not be able to do that.

**Chairman Miller:** What are the degrees of kinship?

**Senator Wanzek:** It is my understanding in ND that it goes to the third degree of kinship which would be aunts and uncles, parents, siblings, and first cousins.

**Doug Goehring, Agriculture Commissioner:** (33:30) Testified in support of SB 2351 (see attachment #2)

**Senator Klein:** Just to confirm what Senator Wanzek stated in his testimony, only 9 states have any sort of corporate farm law and of those ND is the only state without exemptions. Is that correct?

**Doug Goehring:** To my knowledge, that is correct.

**Senator Klein:** When you travel with other commissioners, are there issues in other states where they are being overrun by major corporations buy up land and taking over?

**Doug Goehring:** Those types of discussions have not happened. The group you are referring to is called the National Association of State Departments of Agriculture. It's comprised of commissioners, secretaries, and directors of agriculture from different states. Those discussions don't come up, we tend to discuss what we can do to enhance and develop. A lot of states deal more with biosecurity than anything else but they love animal agriculture and what it brings to their rural communities. The one thing about animal agriculture is the multiplier effect on economies. The fact that in agriculture itself, which is about a 3.7 multiplier effect in our economy, animal agriculture ranges from 4.5 - 9. So it adds a lot of value back into agriculture and the economy.

**Senator Oban:** There's no doubt in my mind that you have spent a lot of time to figure out how to address an issue that is clearly a problem. When you gave a presentation to us a few weeks ago, you said you have been working with a group of people to figure out the best approach to this. Who has been a part of those discussions? Were there other conclusions or is this the only suggestion that came out of it?

**Doug Goehring:** The group was comprised of barley producers, corn producers, soybean producers, and a lot of dairy farmers and a few swine producers. I wouldn't say these were a formal matter, but we have sought ways of addressing some of these issues. There have been a lot of things over the years that haven't been considered and I wouldn't consider them. In this situation, it made a good argument to consider what SD has done given the



success that they've had. I decided to make a presentation to the agriculture community and let the agriculture community decide how they wanted to proceed. I made suggestions that there should be land ownership limitations. There's a perception that if you are going to own large amounts of land, that is competition. Our farmers and ranchers don't need competition; they need enterprises that will complement their efforts in agriculture.

**Senator Oban:** Were either of the largest ND farm advocacy groups apart of these conversations?

**Doug Goehring:** No, but how often do those groups show up at my office and propose a solution? I've been asked here lately why they haven't been part of the discussions. I serve and sit on many committees, commissions, and task forces. I am simply presenting the information; these groups are the ones who need to have a discussion, and then they need to determine when working with the legislators how you're going to move forward and what you're going to consider and what you're going to do.

**Senator Oban:** I'm not making any assumptions or accusation about the way we came about this. But when you say a little decision, this isn't a little decision--it's a pretty big one. I just want to make sure that the voices of two groups who represent all of these producers have a part in these discussions.

**Doug Goehring:** Since it's not my decision, it wasn't for me to put that in front of them. As far as discussion, I did ask Farmers Union because I knew they were going to be the most concerned and sensitive to this to come in and think about it. Before anyone else knew what my presentation was going to be about, I asked Farmers Union to come in and we talked about it. I wanted to let them know so when the meeting happened, they would have an opportunity to think about it and not necessarily feel like they were being blindsided.

**Chairman Miller:** This conversation has been evolving through the legislative process for years.

**Senator Klein:** We had a removal of corporate farm laws back in 2003, which I voted against but this bill would reach those parameters we were looking at in 2003. Would it be your assumption that we're only looking at a narrow change in the law; there won't be a bunch of folks buying up a bunch of property in the state?

**Doug Goehring:** In the presentation that I made, I did suggest that there would only be three areas: (1) Feed lots (2) Dairy (3) Swine. I will oppose the bill if it goes any further than that. I don't get to make a vote, but I will oppose it if it goes beyond that. I believe this particular bill complements agriculture in ND, not compete with it.

Submitted testimony from **Walt Bones, Previous Secretary of Agriculture in SD:** (see attachment #3)

**Senator Klein:** In our previous discussion, we had some concerns about the impact on the social community as these dairies are established in our state. In your experience, has SD felt a major concern when they open these dairies that we will have this group that is using cheap labor? Is that a concern SD has seen that we should be addressing?

**Doug Goehring:** I've not heard those conversations or concerns from SD. The dairies and the swine operations I have visited, the lowest paying job I'm aware of was \$11.40 an hour and they were provided with housing. On my farm, my top paying position is \$13 an hour and they're not on Medicare. That doesn't mean that there aren't situations that force people into a place where they have to seek assistance someplace else. Some of those labor jobs went all the way up into the upper teens, low twenties. There were other jobs that were office jobs and veterinarians; those certainly pay a lot more. Everyone did seem happy and there were families working there too so there were two or three incomes.

**Senator Warner:** Since I've been in the legislature, we passed triple LP legislation, Limited Liability/Limited Partnerships. Why do you think that that model is inadequate? Why do we need to take another step when we haven't seen the kind of results from the triple LP that we were expecting?

**Doug Goehring:** The only thing I can attest to is some of the challenges that we experienced when working these facilities was that they wanted to come in and do an LLP. The problem was which surprised us was that if there was a corporate structure to one of those partners, it was deemed out of compliance and they could not operate. That's what we ran into when working with a facility that did want to come to ND and be under an LLP; we tried to help them and look at the options but they were denied based on having two farmers who were incorporated.

**Senator Warner:** I'm no expert on corporate law, but farmers do not incorporate, they belong to a corporation that they own. A corporation of a business entity is a thing which has been given substance or body and is incorporated. But these farmers still remain individuals. How is it that they disqualify themselves as individuals from using some portion of their capital which was outside of the capital corporation structure and investing in another enterprise? Certainly if you were invested as a farmer, you could still invest individual money in a stock market. How do you disqualify yourself by owning part of a family farm corporation when you still remain individual and you still have capital which is liquid and can be moved around?

**Doug Goehring:** I'm no expert in corporate law, but maybe one felt like they didn't want to personally be a part of something but they wanted the corporate structure in place since that's probably where most of the capital or assets are. I'm not sure. I know when we tried to help them with their situation, and out of the 240 entities, people that were shareholders and stockholders, a couple of those farmers in there were part of that structure and it couldn't exist so they couldn't come to ND.

**Chairman Miller:** Do you know if there's a typical average for equity held by a farmer in ND?

**Doug Goehring:** I do not have that information, but I could provide it to you. I suppose it all depends on how long you've been at this fame.

**Clark Price, Farmer and Rancher:** (58:41) (See attachment #4) Testified in support of SB 2351 and proposed an amendment to include feedlots.

**Chairman Miller:** (1:04:21) Would you still support the bill without the amendment?

**Clark Price:** I would still support the bill but I would prefer the amendment.

**Senator Klein:** You talked about the expansion into feedlot and you talked about how SD changed that law ten years ago, has there been a major take over by corporations in SD? The whole concern I would see is the competitive nature of you competing with Cargill or Tyson. Do you have any statistics that would support that that has been a problem in SD?

**Clark Price:** I'm not aware of any takeover of any sort. I am aware of some of the farmer organizations that combine and make corporations. I would like to correct you; SD has had the feedlot exemption in their law since 1974.

**Chairman Miller:** What is the case with NE?

**Clark Price:** I'm not certain about NE law; my nutritionist is from NE so I did ask him a couple questions on how many corporate feedlots are there. He said that there is some corporate structure but it hasn't taken over the state.

**Senator Warner:** I appreciated your comments relative to banding together your farm with your neighbors to form business structures. I remember fifteen years ago that those were exactly the same arguments we heard with the development of the triple LP, the Limited Liability/Limited Partnership. That's still an existing business structure within ND which is perfectly legal. Why don't you pursue that route?

**Clark Price:** I'm not an expert on the corporate structure versus the LLLP structure, but when I set up my family corporation, we consulted some professionals in the industry and they told me that the feedlot structure needs to be the coop structure. It's legal to do that in your family structure but not outside your family structure. I'm no expert on it, but that was the advice that I go.

**Senator Klein:** You spoke to SD, what I heard you say is that its groups of individuals who gather together, it's not something huge outside of the state interest, it's folks who would like to invest in their neighbors. Is that what we're seeing, small individual farms, family groups, neighbor groups, or community groups--is that what those corporations are in SD?

**Clark Price:** That is exactly how I envision this law to allow and bring equity in to get this done. I personally believe it's the reason why we're not seeing growth in the feedlot sector in this state, because it is such an intense capital and management investment to the point where we don't have the expertise on a small scale. I do believe that this will add value to the community.

**Senator Oban:** I've told people who are opposed to this that I don't like the slippery slope argument. I don't think it is a good enough argument to not do something. However, you bring in number three in to add to this demonstrates that everyone will have an interest at

some point that will probably be left off of here. Doesn't that prove what their concern is, if anybody who comes up here who supports this but wants to add their interest in, does that give them a better argument?

**Clark Price:** I'm not sure I understand; from my perspective, the hog and the dairy industry today are in dire straits for getting something done. I believe the feedlot industry in this state is in the same position. We produce a large number of high quality in this state and with the Aberdeen plant sitting there ready to roll, we need to have a structure that will allow us to feed cattle in this state. We have the cheapest feed anywhere in the nation, let's add some value to it and the large scale feedlot structure is a perfect way to do it.

**Senator Klein:** You're here for yourself; you're not representing any Stockman's or Beef organization? But you also understand that early on in the commodity group presentation that you guys were somewhat included. But at this point, you are just representing yourself.

**Clark Price:** I am representing myself; I hope that we will get the organization's support once this language is added to the bill.

**Senator Klein:** So you are an independent person here on your own, and we heard some discussion that some groups weren't involved in the decision. Do you do service with those groups?

**Clark Price:** Absolutely.

**Senator Larsen:** So you are representing them on a small scale and you are one of those guys.

**Clark Price:** I am one of those guys and I am a member of those organizations as well.

**Senator Larsen:** Are you going to buy more stuff if you have more cows then?

**Clark Price:** I will, absolutely.

**Kenton Holle, Dairy Farmer, ND Milk Producers Association, Mandan ND:** (see attached #5) (1:11:56) Testified in support of SB 2351.

He also stated in addition to his testimony that the idea of a corporate farm is alarming to some but that fear is because animal agriculture is under attack by special interest groups. He said that these groups like to label corporate farms as factory farms. No matter what size the farm is, it's the dedication to the farm and the animals that matters. He said that there's too much at stake for a dairy farmer to abuse his cows, land, or employees.

He also addressed the issue of labor. He stated that he had 12-15 employees on his farm and employees students to help with special projects. He said that he did not have cheap labor on his farm because if someone wants good help, they have to pay them well. His wage scale varied from \$30,000-50,000 a year, when housing meals, and hourly wage is included.



**Chairman Miller:** You have an integrated relationship with your fellow dairy farmers in your area correct? How dependent are you on volume from other people to make it work?

**Kenton Holle:** That is a great question because dairy is a community because we are relying on a lot of special infrastructure. We need specialized equipment and people who can work with modern technology and equipment. We need nutritionist and veterinarians. No matter what our different operation looks like, we have a lot of things in common. As we begin to lose our dairy far neighbors, the ability to secure that infrastructure disappears with them. As we begin to lose producers, we lose people who are willing to buy that milk. Without a source for that milk to go, what choice will we have than to shut down so we are very dependent on one another. Seeing an industry grow within our state will only make those opportunities more available to us where we are able to secure the kind of infrastructure help that we need.

**Senator Warner:** I appreciate your comments about the positive impacts that you've done with your dairy and your community. It seems almost impolite to point out that you did all of that without a corporate structure. I have a great respect for the intelligence and the insight that you are bring to this issue. We have a poverty of detail on the bill before us, it's only a couple of paragraphs. One of the issues I would like to ask for your advice on, I don't understand how we see the beginning of these projects develop. Is there some sort of certificate of intent? We've seen the acquisition of farmland which has to be the first step before construction. What's to prevent a corporation or an insurance company or a hedge fund from coming in and buying up one sections of land and holding that land until the market forces indicate that it's prudent to build. What's to prevent them from buying up land and holding it until market forces are up and capital flow goes a different direction so they sell the land back into the market take their profits out of state and put it back into their corporate structure. How do you initiate these projects to become legitimate dairies without being just the acquisition of land?

**Kenton Holle:** I think that the steering of land is necessary in order to set up a facility. Going back to the decision we made in order to move, and obviously our scale is much smaller than what the larger scale is, there is more to dairy farm than just the land that it is on. There are requirements that need to be met in regards to animal waste, building structures, township permits, etc. That may be a job that falls into your laps to make sure that within the structure there is an accountability that's held forward in these corporations who make the intent to put up a dairy facility and don't follow through. Certainly to get financing to do the move that we did, there were checklists that we needed provide to provide assurances to the financing part that we had things in order to put up a facility and make it work. I think that there is a varied point of view that comes into that picture as far as where are the restrictions in place to make sure that what is said is done.

**Senator Warner:** If this is going to go forward, I see that as an issue. I sense that you have a deep insight, and I would appreciate your thoughts.

**Senator Klein:** A lot of these things do get settled in the rule making authority that we give to the authority in the state. I would assume that the agriculture commission would have the rule making authority which would come before the administrative rules. As a member of the dairy industry, do you see any push back from your industry? We're always concerned



about the complete nature of allowing something to happen that hasn't happened in the past.

**Kenton Holle:** I don't believe that's present at all. I think that the dairy industry has been trying since 2000 to build up ourselves and keep our industry viable. We rely on one another and who wants to be part of a losing program. When dairy farms leave the area, it's a domino effect. When we see increase and rallying, it brings spirit back into the industry. As far as competitive nature, we are all competitive. We also all thrive on one another and I enjoy going to dairy farms to get ideas.

**Senator Klein:** The processor needs to have x amounts gallons of milk coming to his door every day. As you lose producers, does that increase your costs? Are those big concerns?

**Kenton Holle:** I think that if we use the example that we've seen over the past number of years of multiple large grain terminals being built in our state, they haven't put them out on the prairie hills, they've put in the area where there's potential for grain to be shipped to them. Fortunately we're twenty miles from our plant right here in Bismarck. But as we've seen the number of processing plants decline, there are individuals in the state who are paying 2 dollars a hundredweight of milk for shipping costs. If we can see any type of additional processing facilities built in the state, we'll get some competition then for the milk to be able to go to different places. The cows need to come first, you can't put up a facility and expect the cows to come.

**Jerry Messer, Dairy Farmer from Richardson, ND:** (1:36:13) Testified in support of SB 2351. Offered three arguments in support:

- (1) Where we're at. We're not doing well as a state and I see other states that are doing better in improving their industry. We're in a different situation in ND. We have the opportunity to do things that other states can't do because we found revenue of wealth we never had before. There a lot of royalty owners in ND who are looking for a home for their wealth. There are a lot of outside opportunities, but a lot of these people would like to invest back into agriculture in ND.
- (2) This bill affects me as a dairy farmer as I have to pay to get the milk to the market. I have been fortunate in the last couple of years because some of my milk has been able into 5 gallon bags and goes to the man camps which has helped me diversify. The rest of my milk gets shipped to SD. As a farmer, I understand because we pay freight for everything.

What you see happening in the other states is the structure they are using and why they picked SD when they could have picked any other state. These people are coming from other states that are urbanizing. The upper Midwest is one of the cheapest and most abundant feed supplies in the nation. Two or three years ago, we got a little lax thinking that \$7 corn and \$8 was going to stay there forever. Right now diversification is one of the key things our agriculture community needs. It's not just about being a part of a corporation, it's the ability to grow community and provide dollars to help that community grow. These people come and invest in every community their involved in.

- (3) What's the future of dairy? What makes us want to be part of the dairy industry and grow in the state of ND? Between now and 2020, the world is going to need 30 billion more pounds of dairy products. We have to decide (1) if the US a place that could supply dairy products? Quicker than anywhere else in the world, the US could supply

that need. (2) Where in the US can we grow? The upper Midwest is one of the number one areas that the growth of dairy and can fill the need of those exports and needs domestically and internationally. We've developed markets overseas that have never been developed before and we have the ability to continue those markets because the protein needs in India, China, and other third world countries. As the middle class moves up a step, the first thing they want is western diet and a big part of that is protein needs from dairy. We can be part of the people that help solve that problem.

**Senator Warner:** Nobody in the room is disputing the positive aspects of animal agriculture and that there's lots of room for growth but almost every word that came out of your mouth seems to be doable under current law under double LPs or triple LPs. It's very easy for oil money to invest into partnerships. The bill we have before us opens up the corporate ownership of land. What's the distinction that the bill before us enhances.

**Jerry Messer:** My hope would be that some of these bigger dairies would move into our state. Liquidity is a big part of them and they have share drives which allows shareholders to be part of that investment in that dairy and then they take the other part of the equity and invest in a dairy and build a dairy. So then you as a shareholder have the opportunity to share the revenues from the income from that dairy.

**Senator Warner:** But that's still a triple LP, a Limited Liability/Limited partnership. Those are main street businesses investing in local farms. All of that's legal under current law.

**Senator Klein:** I know you've been around a while and we've talked about the programs that we've tried. I worked with you, the previous agriculture commissioner, and we tried to work out some programs. We heard today that those programs have not been able to solve this problem. Can you address that since you were there at the beginning?

**Jerry Messer:** I think the biggest question is is there is a way for us to continue the dairy industry without putting as much burden on the dairy themselves but bringing other partners in to allow us to share that responsibility. Whether it's an LLP or a corporation, whatever it takes, we need to understand that the dairy industry will continue to dwindle under what's happening. We have no cheese processing plant in the state whatsoever. Since SD has changed their law, and I'm not going to say that this was just because they changed their law but it happened to coincide, they have 7 major worldwide cheese manufactures in their state. For some reason these plants have decided to make their home in the upper Midwest and they need milk. My question is what can we do as an industry to supply those needs from our state rather than see MN, SD, and IA take all the production? Every month ND continues to decline and their states rise.

**Senator Klein:** You're on the dairy promotion board, despite all of our past effort obviously the LLPs the triple LPs are not working because we've got them. Obviously you think there is something more that would better adapt to what we're doing here.

**Jerry Messer:** That's our true belief. The true belief is that there is some reason these herd owners have felt this as an important tool to invest into dairy in other states. That one of the main reasons that I support it is because they saw the value of other states and that's where they're moving. They're not a thousand miles away from us, they're across the border and

it's not just one or two dairies, ten to fifteen dairies that are 1,000-2,000 cows. They do it very well, they're very much part of the community.

**Jeff Enger, Farmer, Marion, ND:** (149:50) (See attachment #6) Testified support of SB 2351.

**Dwight Grotberg, Farmer, Barnes County, ND:** (1:54:25) Testified in support of SB 2351. I think Senator Warner asked the question about what there would be to stop a corporate farm from coming in buying up parcels of land. I had an experience with Cenex Harvest States who are building 3 and a half billion dollar fertilizer production facility. I sat through the township meetings and listened to all the pros and cons of bring that size of a business in our community and I decided to sell my quarter section to CHS because of the benefit it would bring to our community. I asked for a clause in our contract that would allow me to farm the land if it was not built on yet, my concern was that the quarter section would grow up in weeds. They still have not built on that section and it is in weeds.

I'm more concerned about that kind of a business more than I am concerned about a dairy farm coming in for less than 600 acres simply because to my knowledge CHS has already purchased two sections of land with the hopes of finding the place they can build their facility on. I still support CHS, but I release that while CHS is a customer owned company, they also do function as a corporation. My concern and other people that I've talked about bring large dairies in particular into the state. I've only heard of a half section, 320 acres being needed for that size of an operation. The concerns that I've heard so far would not stop me from supporting this bill.

**Harvey Hoff, ND Dairy Coalition:** (1:58:14) (see attachment #7)

Submitted testimony from **Alan Qual, Dairy Farmer Lisbon, ND:** (2:00:24) (see attachment #8)

**Craig Jarolimek, Pork Producer:** (2:00:46) (see attachment #9)

**Chairman Miller:** (2:05:54) You have large hog operations that are operating in ND already, do you think that we are currently limiting other companies unfairly in investment opportunities, do you see greater potential once we change this law?

**Craig Jarolimek:** Absolutely. As you know, I've not only been involved in production but I've also been involved in the pork industry as a whole. Through my experiences and acquaintances, ND is in want of pork production. The current law causes fear, there's no other way to say it. They say that they don't want to have that struggle. If this law is changed, it will open that opportunity for those entities to start to partner with people in ND.

**Senator Warner:** You painted a very rosy scenario about this transition from corporate agriculture back into sole proprietorships. We've seen in other states, particular with hogs and chickens, that some of these things are structured in such a way that the person lured into assuming the sole proprietorship ends up with a bunch of abandoned worn buildings and the corporation takes the equity and capital when they leave. Could you speak a little bit



to that issue of protecting young farmers who are using this mechanism as a way of establishing sole proprietorships? How do we protect them when the capital disappears?

**Craig Jarolimek:** The model that I see that happens in MN and other hog operating states is quite simple. The people who actually want to have the growers raise the hogs for them become a big brother who helps them through the financing situation. They actually want them to be a sole proprietor. They may look at that young person and say that we'll help you to this point but we want you to have some ownership itself. I know of one coop elevator in Iowa called Rock Valley that has a good program where a person can enter into the swine feeding operation and he can choose his percent of ownership. Each year on a calendar year, he has the opportunity change that percentage. So as his equity and expertise grows, he can make that choice. Those type of scenarios are out there. Those business models are proven and they work. A lot of the operations that have these contract growers encourage percent of ownership because they feel their percentage will be looked at better. The way that the buildings are built now is much enhanced and longer life.

**Tamra Heins, rancher, New Salem:** (2:10:33) (see attachment #10)

Submitted Testimony from **Seth Bacon, ND Pork Council:** (2:14:41) (see attachment #11)

**Scott Rising, ND Soybean Growers Association:** (2:16:10) (see attachment #12a-12c)

Submitted Testimony, **Bruce Gibbens, Gibbens Law Office, Cando, ND:** (2:21:26) (see attachment #13)

## **Opposition**

**Mark Watne, President of ND Farmers Union:** (2:21:50) (see attachment #14)

**Senator Klein:** (2:33:51) Jerry Messer could talk about all the things that the dairy promotion folks have done. Do you milk cows?

**Mark Watne:** No, I don't own them.

**Senator Klein:** What I hear is the enthusiasm from the dairy industry that we cannot ignore. They're the ones out in the trenches trying to make a difference. We have partnered over the years, many number of times with the state trying to expand that--obviously it is not working. You referenced 49 dairies coming to SD that didn't need that law, well then obviously if we provide this opportunity; maybe we won't need those corporations. Maybe 49 folks will come--we don't know that. The difficult thing for me is to see that sort of enthusiasm from people who are in the trenches and then to come and say let's go home and start promoting it.

**Mark Watne:** It is true that you can suggest that we aren't going to do anything but we did a lot of things. This bill is only about allowing another business model. There are a lot of tools here that are allowable that are not being used. That tells me that there is some other barrier and I think we can't ignore the barrier of price. We can't ignore the barrier of the logistics to the market place and then suggest that this bill is the fix. We need to do all that at the same

time and we need to have greater conversations and have more people involved in trying to figure out the solution.

**Senator Klein:** We have heard about a variety of different corporate structures, but as I recall your organization was not on board with that as we worked through that some years ago until we finally carefully defined how we could come with a structure that would represent some sort of cooperative, cooperation. This whole milk thing is a nationally driven pricing scheme and strategy which is beyond what we in ND can do. You look at that national marketing strategy and there are farmers who are frustrated that they have to follow some sort of convoluted marketing strategy that creates this price. I think we've attempted to change all of those and agriculture makes our little communities grow. We certainly know that livestock agriculture is a multiplier. Is this the right thing to do? I haven't supported a total expansion; I think we are looking at a very narrow change in what we are doing here.

**Senator Larsen:** I like this flow chart of how the SD dairy farms are in decline. And then I also like the analogy of the bigger truck. In a farm industry, there's more grain in a hopper of a bigger combine. As I look at this flow chart, and we're down to 260 farms in SD, we have 19,000 cows in ND but there's a permitting for another 25,000 in SD. Did they not build a bigger truck in SD and how many head of cattle are on each one of these farms? So it must be working for them?

**Mark Watne:** It's not working for the existing dairies; it's the dairies that are growing in size. So if that's the model you would prefer, then we can have a debate on whether this truly helps the existing dairies. You can suggest with that slide too that if they've added some new ones, they are still giving away a bunch. I think you make some good observations.

**Chairman Miller:** Are you saying that in SD the existing dairies are now opposed to any expansion?

**Mark Watne:** I don't have any idea.

**Vice Chairman Luick:** You had eluded to that the fact that there's maybe an opportunity for the state to set up a facility for processing. What would be the difference between that particular state owned/operated/corporated entity rather than a different structure of some other individual?

**Mark Watne:** I'm not suggesting that we have state owned dairy, I'm suggesting that we have state owned processing. It can be a public/private opportunity to them, similar to the state mill and elevator, the state mill and elevator doesn't farm. With that I did include that you need to do significant research to figure out where you go into the market channels with this additional product. We're short of milk here as I understand; maybe they need to pay a little more. I find it odd that you are not thinking about what drives the so-called free enterprise: what drives supply is price.

**Vice Chairman Luick:** If you look at it that way then we probably will have to throw our hands in the air and say that we will buy it from whoever will produce it for a lesser cost and that is then going to be shipping it in from other states. And that milk will be grown and produced by corporate entities in those other states.

**Mark Watne:** I disagree with that because I believe American family farms can produce this, we just need to find our path forward on where we're going to market the product. I think we can compete just as well. I don't know if there is an efficiency with the corporation farming. I do know that the American farmers are excellent at what they do. I do know that we over produce every market and until we figure out the avenue to sell more of that product or turn to another product, we have times when prices are bad. When prices are bad, credit dries up. Everything we want to happen is based on the price of it. A corporation isn't going to come into a bank in ND or a credit union and say that they want to build a dairy and we want to borrow money from you. They aren't going to get the luxury of saying that because we're a corporation we don't want any responsibility to it, we simply just want to borrow money from you. That doesn't change--it's the economics that are really important here. The economics of doing dairy in ND has to change so that we can pay these hard working people for what they do and what they want to do.

**Chairman Miller:** If we went down the avenue of creating state owned processor, we would have to expand our dairy herd immensely in order to feed that machine.

**Mark Watne:** Isn't that what we're trying to do?

**Chairman Miller:** Exactly, but I don't understand why you would suggest a state facility when we're not at capacity at this time in our current facilities now.

**Mark Watne:** Because it's going to go along with additional work. We are going to find avenues to enter into the market place where we can truly create an advantage and we are going to define our market place. Every business out there that's trying to figure out how to market to this new generation of people is looking for the avenue of how people want it and to think that we can live in the same way that we are today and grow it when we have a small populations and a logistics disadvantage to the market place means that someone is not looking at how do we sell this product for a price that makes it work for our dairy farmers. Until you have that conversation, you can change the business model as much as you want. Even a dairy coming in here has to step back and ask how they are going to market their product and how am I going to exist in price fluctuations that aren't in the interest of me succeeding. This is fundamental economics.

**Chairman Miller:** isn't that the advantage of having a corporation, you have the ability to retain earnings despite the highs and lows of the market? That's the advantage of dry grain, I'm on a cash basis so I can choose to hold off on some money one year, and balance my ta

**Mark Watne:** I don't see that a corporation is more efficient than a family farm, I think we can do the same thing. I see in a corporation is that they have the ability to not live up to responsibilities. I agree that there's less risk, but do we really want livestock production in ND be able to walk away and leave a mess when it doesn't work?

**Senator Klein:** That begs the question with only nine states in the country having a corporate law, and 97% of the dairies being family owned, are there messes all over the country from the 3% of corporations existing?



**Mark Watne:** I don't have an answer--I know we have toured some states where there were hog and poultry operations and there are a number of instances of abandoned barns.

**Justin Sherlock, Farmer, Dazey, ND:** (2:46:10) (see attachment #15) Testified in opposition to SB 2351.

**Michelle Zeisch, Rancher, Pettibone, ND:** (2:50:30) I am a former dairy producer. I don't believe that some of the benefits that they've been talking about that will come with corporate farming are completely true. When we were milking, the bigger dairies got the bigger breaks on all of their costs and the smaller producers made up the difference. So if the bigger corporations got \$1.80, we got \$2.20 to average it out to \$2 a hundredweight. There won't be more vets in the state because they will be isolated and contracted to their corporations. The corporations will be dominated by people out of state. It comes down to the base price of milk, so perhaps there should be a program in place to help support the price of milk or establish a retirement program for retired dairymen.

**Senator Oban:** Did you say you used to be in dairy; if so, why aren't you anymore?

**Michelle Zeisch:** It was because of price. We were getting paid \$9 a hundredweight for the milk and we were paying \$5 for a bushel of corn and the milk company would deduct for things beyond our control. We couldn't make it economically feasible.

**Larry Kinev, Independent Beef Association of America:** (2:57:23) (see attachment #16)

**Tom Asbridge, Bismarck, ND:** (3:00:22) (see attachment #17)

**Chairman Miller:** (3:14:05) You speak in broad terms and I wonder if some of your discussion is based in national numbers, but you look at SD and they're permitting cattle, building and expanding their dairies. So obviously there's room for growth and people want to move those businesses into our state. Dairy is not a strictly intranet operations. Our barrier in this state is our corporate law.

**Tom Asbridge:** I would disagree with your premise; I don't find any evidence that it is grounded in fact. There are more cows in SD and they did increase, that is indisputable. Some of that was California cows and dairy operations moving. That's almost entirely because of urban setting in California is pushing agriculture out just like it did orange groves. Most of them have come to SD for those reasons, but I can't see any profit in those businesses and there won't be any investors in a nonprofit industry. My concern isn't the dairy industry, the corporate structure that we are talking about and the opportunity for that to evolve into a total corporate structure and corporate farming lends itself to cheap, mistreated labor.

**Charles Linderman, Carrington, ND:** (3:19:39) (see attachment #18)

**Christopher Dodson, Executive Director of ND Catholic Conference:** (3:26:05) (see attachment #19)

**Senator Warner:** (3:31:00) In the *Compendium of the Social Doctrine of the Church*, I need to be refreshed on a chapter dealing with the 19<sup>th</sup> century pope who had written an encyclical about the dangers of using humans and human labor as a commodity. Back to the argument I made a while ago, these enterprises rely on underpaid labor and in order for that labor to succeed on living on the wages that they pay; they need to rely on the social services available from the state. Can you remind me the name of the pope and address this issue of the commoditization of human labor?

**Christopher Dodson:** Pope Leo XIII and what he said was developed further by subsequent popes. In 1939 when Aloisius Muench wrote the *Manifesto on Rural Life*, he was looking at what would happen if we allow the industrialization of farming or the industrial ownership of farming and what the consequences would be for treating humans as commodities and mere labor as economic cogs. That has borne out and when you talk to the bishops from other states, it used to be that primary concerns of the catholic bishops when it came to agriculture were the family farmers. Now the primary concern is the working conditions and the treatment of the laborers. We can debate whether the success in SD is due to them changing the law, but we do know that the changes in SD according to the President of the SD Dairy Producers has led to immigration reform being their top priority because they must rely on undocumented workers. We strongly support immigration reform and believe we should open up our arms to migrants. But we have to recognize that is a consequence that is beyond the dollars and cents and success of a single dairy farm, there are consequences when you start changing the fundamental laws which have to do with how we as an entire society relate to the land and food and clothing that we produce. It's a unique vocation beyond any other for that reason. It affects who we are as a community and that's where we talk about the soul of agriculture.

**Chairman Miller:** What's the churches position on corporations in general?

**Christopher Dodson:** The church does not have a position on corporations, but like any economic or legal structure, everything has to be evaluated according to what we know about the human person. For example, when Pope Leo XIII first started writing about this and it became doctrine of the church, it was in response to the growth in the industrial revolution and the shift between ownership being part of labor and ownership being part of capital. The church is teaching is not that capital is in itself inherently evil but it raises new questions about what happens when we separate ownership from the labor and production.

**Chairman Miller:** You have to look at this in a historical fashion, the church at that time there were people who were transitioning from a serfdom and living under the rule of a king who owned everything, an autocratic system and the pope was trying to offer guidelines for businesses to behave.

**Christopher Dodson:** This was settled pretty clearly by Pope John Paul II saying that these pronouncements about labor and capitalism and ownership are not mere papal expressions or concerns about the conditions of the time but are actual doctrines which are immutable and apply forever.

**Senator Larsen:** When I was listening to the testimony earlier today, someone brought up the question asking why we don't just open up corporate farming to everyone, including



grain farming. The person said we already are because someone is renting property from someone who lives down in Arizona. We have all these people renting properties from people they may not know and we have people coming in from different countries to help farm it, so should they not be doing that either?

**Christopher Dodson:** That's a difficult question to ask. Everything is on a degree in a sense, there are better ways to do things. But the fact that someone does something one way which is not the preferred way doesn't mean that we all have to do it. There are always preferences on how things are done and we respond according to the time. Just because something is not intrinsically wrong does not mean it's not a moral issue.

**Senator Larsen:** So you're saying it's not a moral issue for these folks to be small grain farming renting property from people they don't know and then hiring these people from other countries?

**Christopher Dodson:** On the contrary, everything is a moral issue.

**Chairman Miller:** I understand what you said about Pope John Paul and this is important to me because I'm Catholic and I believe very much in my faith. But I think what Pope John Paul was talking about in this various encyclicals always have the context of the time and place in which they were said. Throughout history they will reign true, but there's a reason why they were said when they were said.

**Ronda Throener, Farmer, Cogswell, ND (3:39:53)** Testified in opposition to SB 2351. She expressed concern over the vague language in the bill. She also stated that when corporations come in, there won't be a direct connection with that land and it's important for people to stay in connection with the land. She requested that the senate take their time making a decision on the bill.

**Senator Klein:** If this bill happens to pass, there are still a lot of opportunities to correct any issues or concerns you might have as it goes through the process.

**Roger Zetik, Sterling ND: (3:43:20)** Testified in opposition to SB 2351. Talked about the mistreatment his dad experienced at the hand of a corporation and stated that corporations lack personal connection with their labor.

**Keith Smith, Madock, ND: (3:45:25)** Testified in opposition to SB 2351. He stated that there already is a corporation stipulation in the law and exceptions to the laws.

**Jim Kerzman, Mott, ND: (3:48:08)** Testified in opposition to SB 2351. He stated that he would hate to see the lifestyle change in ND.

**Chairman Miller** closed the hearing on SB 2351.

# 2015 SENATE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Roosevelt Park Room, State Capitol

SB 2351  
2/19/2015  
Job # 24128

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Emmery Brothberg*

## Explanation or reason for introduction of bill/resolution:

Relating to the ownership or leasing of farm and ranch land by corporations.

## Minutes:

Attachments: #1

**Chairman Miller** handed out an amendment offered by Clark Price (see attachment #1)

**Senator Klein:** Mr. Price made a great argument, certainly we have commodities that could be recycled rather than shipped out. I can see where that would potentially be a positive but I think our concentration has been on the industries where we've seen the most decline and concerns. His gravest concern is losing a processing plant; I'm not ready to add this in there.

**Chairman Miller:** I just wanted to put this before the committee so we can talk about it. I think we are making a big change here as it is and we want to see what happens with that before we go too far.

**Senator Larsen:** How many feedlots are currently in ND?

**Chairman Miller:** I don't know--they come in all shapes and sizes so I couldn't tell you how many feedlots there are.

**Senator Klein:** I believe that the idea with the Aberdeen processing plant reopening is that there could be positive opportunities because it would be a close source to process those animals.

**Chairman Miller:** There are similar liabilities and issues, which is why the same argument can be made to incorporate a feedlot into this bill. If this committee is not willing to even entertain a motion, I'd just as soon dispose of the amendment.

**Senator Warner:** I'm not going to move the amendment. But one of the ongoing discussions we've had about cattle marketing prices is that there's always been the issue of captive supply--having corporations own processing plants and feedlots so they can monopolize and regulate. The corporations can hold back their own feed when price times

are low but then flood the market with their own cattle at times to drive down prices as well. I'd be very leery of adopting corporate structures which included feedlots in ND.

The committee decided to dispense with the amendment.

**Senator Larsen** moved Do Pass on SB 2351.

**Vice Chairman Luick** seconded the motion.

**Chairman Miller** invited any discussion on the bill.

**Senator Oban:** I came into the hearing with an open mind and I think we'd be much more suited to study this over the interim and find out what the answer to this problem is. We all acknowledge that this is a problem and nobody wants these industries to be struggling. We do need to find an answer, but my fear is that we are opening up a can of worms I don't know if we want to open up.

**Senator Warner:** I mentioned in the hearing that I have trouble imagining the genesis of these projects. I'm concerned that these corporations are going to privately evaluate locations and secretly purchase land. No corporation or hedge fund is going to tip their hand that they are an entity with very deep pockets when it comes to negotiating the price of land. Only once they have established that they have a land are they going to begin the permitting process. Even if the permitting process goes forward smoothly, corporations are going to face the same market and price problems that anyone else does. These corporations are only going to establish those enterprises if there's actually money to be made. I mentioned in the hearing that no government has any business ordering a capitalist enterprise to go into an enterprise where it's going to lose money. The corporations are going to need price as much as sole proprietorships are going to need price. So they are not going to build unless the price structure is there to support the enterprise. So we end up having corporations/corporate entities/hedge funds owning farmland in ND which they will just sit on until they have a price in which to go forward with the enterprise.

Unless you have price, there's no reason why anyone could make any money at these; whether it's a corporation or these very efficient family farm operations that we have traditionally relied on. I can't see where incorporating the land or allowing corporate investors to come in really helps anyway, we need price. If there is a price and a market, ND is very enterprising and farmers are going to find a market.

**Senator Klein:** I've been in a lot of conversations, I've tried to understand why there is a concern that corporations and hedge funds will buy land all over. I've considered what happens in the other states with corporations and how they survive. They have survived because these are corporations and are not necessarily land investors. I think we are talking about a group of individuals who may not be related, but are going into this to produce dairy. This bill is pretty specific that you need to own or lease that land for the purpose of a dairy. If you do not put a dairy on that land, than you need to divest that property if they do not put a facility on that property. Having said that, they have to file as a corporation in ND; they would need a permit from the agriculture department and the health department. I don't see the land concern as being an issue.

This discussion began in early January when we listened to the commodity groups and I heard the dairy folks say that we have a problem. Is this the only solution? Maybe not, but we've tried a lot of things. Gary Hoffman is a gentleman who worked very hard for the promotion of dairy in ND. He spent a lot of time here and we worked with other areas to squirrel up some money to try to lure dairies to ND. Yesterday, he sent a message telling me that this is a good idea, we've tried everything and we need to move this forward. When he said that, it reminded me of a bill we had earlier this week about the right to try. This is a narrow opportunity to give the dairy industry the right to try. I don't want to have this expand into crop land and I think it has been written very tightly.

**Chairman Miller:** I agree; when I read the various case law that has been laid out in other states regarding this issue and I read cases from the supreme court of ND, they talk about the dormant commerce clause. They are talking about the ability for Americans to freely conduct business across state lines. When you try and inhibit that, you run into trouble. The reason why our law has not been successfully challenged is because no one has gone after it. The concern that I'm hearing from people is that this is a carve out that is going to explode. But every corporation and person is freely capable to conduct business as a dairy or swine in ND under this proposal. It's not an issue of interstate commerce, it's an issue of ND allowing or disallowing a certain business which we do all the time. I feel our carve out is strong and proper and as a landowner and a grain farmer, I have no worry.

**Senator Oban:** I agree that this is very specific and I think you sort of helped reiterate the point people are trying to make in that when you start poking holes in this is when it starts. That's perhaps why it hasn't been challenged, because there are no holes.

**Chairman Miller:** My point is that we can't discriminate against you because of what state you're from. There was some talk about people saying that the corporation has to be owned by people from ND. That's when we start creating a problem; if we start doing that then we are into constitutional issues. This bill is saying that anyone can own this and I would say that in that family component, is the reason why it's held up is that you could be a family member from any other state. If we tried to limit the corporate structure to people from ND, we'd be in trouble.

**Senator Oban:** My point is that we are doing a carve out for two specific industries within agriculture. Why doesn't that become discrimination with someone who wants to do that with grain?

**Chairman Miller:** It's a whole new enterprise; it'd be like if we want to prohibit uranium mining in ND, we could do that. It wouldn't violate the commerce clause. I'm confident in what we've done here. I've spent a lot of hours trying to think of a better way to write this or trying to carve out a way in the triple LP model and inject a corporation into there if somebody wanted to invest into that model. But that's when you get into more trouble, you can't do that. If we're going to go down this road, this is the right way in the language that we have before us.

**Senator Larsen:** As I looked at the testimony one thing that kept coming back to me was in the 1930s, we had 500,000 milk cows; now we have 19,000. So clearly from the thirties to



now, something's happening. When I heard in the testimony of these great ideas that we should have more research, we don't have time for research--we have 19,000 cows and dwindling. They want us to have the state own a facility? I'm not into state government owning more stuff--I think we need less government and getting government out of the way and letting it have a chance, what's it going to hurt? We are law makers so if it is bad, we can come back and fix it--that's our job.

**Senator Warner:** A point on the 500,000 cows, simultaneously we were the number one export of cream--we couldn't afford to export the bulk of whole milk because of distance and proximity to market. So we refined off the cream, sold the cream, and wasted the milk or fed the milk to hogs, which is why we had so many hogs in the state at the same time. We certainly never had the market; nobody was drinking that much milk. The other point I wanted to make was that this most recent election on which we had Measure 5 where we had a specter of outside interests coming in and buying up agricultural land for conservation use. All the way across the political spectrum we saw people's alarm about outside interests coming in and buying up agricultural land and competing with ND's farmers. I, for one, would never initiate a referendum or support a referendum. I firmly believe as a member of the legislature that this is my forum and voice in the matter, what we do with this I'll make it work. But I'm not the only guy in the room and I have to believe that that spectrum is still out there of referendum. I would have to think, given the political atmosphere of ND and the unpopularity of corporate ownership of farmland and the stance of one of the major religions within the state, I would have to believe there's going to be a referendum if this passes. I'm not going to support it.

**Senator Klein:** I take a little issue with Senator Larsen saying that government should get out of the way; we should, but there are times when we need to have some regulation. Once again, I believe that Measure 5 would suggest that they could come in and just buy up whatever property they wanted with our money. We are saying with this bill that you can have a section of land, but you have to put a dairy on it. I think there's a difference. In 2003, I voted against opening this thing wide open because I don't think we should have corporations owning mega farms. I still believe that the land is for the farmers and in this case, a section would be for the dairy company. I don't think this is opening up anything, I think it's very narrow.

Seeing no further discussion, a **Roll Call vote was taken. Yea: 4; Nay: 2; Absent: 0.**

**Chairman Miller** will carry the bill.

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2351**

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 Larsen Seconded By Senator Luick

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

Total Yes 4 No 2

Absent 0

Floor Assignment Senator Miller

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

**REPORT OF STANDING COMMITTEE**

**SB 2351: Agriculture Committee (Sen. Miller, Chairman)** recommends **DO PASS**  
(4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2351 was placed on the  
Eleventh order on the calendar.

2015 HOUSE AGRICULTURE

SB 2351



# 2015 HOUSE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Peace Garden Room, State Capitol

SB 2351

3/5/2015

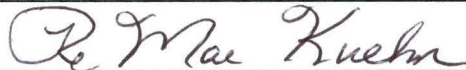
**Morning session**

Job #24397

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to the ownership or leasing of farm and ranch land by corporations.

## **Minutes:**

Attachments #1-17

**Senator Wanzek:** Sponsor of the Bill (Attachment #1)

(17:55)

Refers to Attachment #1, page 21. The numbers for swine in 2014 according to the National Agricultural Statistics Service show Iowa with 20,900,000 head, Minnesota with 7,850,000 head, Nebraska with 3,100,000 head and South Dakota with 1,250,000 head. North Dakota had 139,000 head. It takes about 25 bushels of corn to produce a market hog. 25 bushels of corn today is worth about \$75 to \$85. If you put it through that hog it becomes worth \$260 to \$270. The rural agriculture dollar turns over five times in a community. So one hog would add about \$1,200 impact to a community. By adding another 100,000 hogs that is \$120,000,000 of economic impact. These are billion dollar industries in other states.

In Iowa corn farmers don't export much of their corn. They use it all within their state. Their basis is a plus over the Chicago board of trade. Ours in past years has been around a dollar under.

Our individual family farms can't afford to get into this business all on their own. What if we had a law that said no farmer can farm the land unless he owns the land? There wouldn't be hardly any beginning young farmers in our industry. But they have equity investors in the form of landlords. When a young farmer wants to get into a dairy or hog operation now they have to fund it all by themselves.

I understand there has been a poll done. I believe it is a leading poll seeking a desired result. I believe in that organization, but take that into account when you consider the poll.

(21:50)

**Representative Dwight Kiefert:** Think about how we got here. The only commodity that is regulated in price is the dairy industry. The Milk Board's mission statement is to provide an adequate supply of milk for North Dakota. They set the price. In the past ten years they have seen a decline in dairies in the state. Why didn't they raise the price of milk to make it profitable?

**Senator Wanzek:** This bill is not the only solution. Other dairies in other states face the same federal rules and regulations and yet their dairy industry is thriving. One of the reasons is they have exemptions for investment into dairy. There are other things we can look at in addition to enhance our livestock industries in North Dakota.

**Representative Craig Headland:** How does the size of the average farm in Iowa compare to the average size in North Dakota?

**Senator Wanzek:** Acreage wise the Iowa farms are smaller.

**Representative Craig Headland:** Why are they smaller?

**Senator Wanzek:** In my opinion, because there is livestock opportunity. They use their commodities within the state and don't have to ship it out.

**Representative Craig Headland:** You are suggesting they don't have to be as large because they can squeeze more profit per acre. The fact that they can get a better price from operations within the state helps everybody.

**Senator Wanzek:** This bill is about providing a cooperative effort to complement each other.

**Representative Craig Headland:** If I am going to compete with Iowa as a corn farmer, I need an avenue to get rid of that corn. Shipping out on the rail is not the solution. This is more of a benefit to a family farmer than a hindrance.

**Senator Wanzek:** Just raising the price 50 cents would add around \$160 million to the corn value for our farmers.

**Representative Joshua Boschee:** (Referring to Attachment #1, page 19) If we allow for the exemptions, what would success look like? How many more head would be successful?

**Senator Wanzek:** Success would be reversing the trend. I think we could get back to the late 90s or early 2000s. It is not going to change overnight.

**Representative Joshua Boschee:** Since 1930 we have seen a dramatic decrease in all states in dairy. When looking at individual states, from the most recent high point to today there are three states: Illinois, North Dakota, and Nebraska have seen a decrease. What is our goal?

**Senator Wanzek:** Production agriculture has become that much more efficient. A cow produces more today than in the 1930s. That is typical in all of agriculture. But with our trend we won't have a dairy industry if we don't try something.

**Representative Jessica Haak:** Can you give a breakdown of what percentage of cows in South Dakota are owned by corporations and what percentage are owned by family farms?

**Senator Wanzek:** I can get that information to you. Family farmers can still dairy. It takes economies of scale. The average person cannot afford this.

**Representative Jessica Haak:** Those numbers would be important. When you are giving the numbers of the investment, where did you get the numbers?

**Senator Wanzek:** The Department of Agriculture or NDSU.

**Vice Chair Wayne Trottier:** The main objective in the dairy industry is to keep our current processing plants going.

**Senator Wanzek:** That is the biggest concern. The people impacted have come to me and asked for this help. In Stutsman County there are only four or five dairies left. If they don't get enough dairies, it will close a processing plant. Then transportation costs will increase or the dairy will have to go out of business.

**Representative Diane Larson:** This bill limits the size to 640 acres. If it were a family-owned operation, there would not be a limit?

**Senator Wanzek:** Families would not be restricted. We don't want outside interests coming in and buying or leasing large segments of land. Most operations want to focus their efforts into operating the dairy. They don't want to spend time producing feed. The reason we chose 640 acres is so there can be an allowance for setbacks. Many would not purchase that much land.

**Representative Alan Fehr:** The average person is wondering about zoning, smell, waste products, etc.

**Senator Wanzek:** We still maintain all local zoning ordinances. We have laws in the Century Code that deal with confined animal feeding operations and the permitting process. They have to go through the Health Department, EPA. With the newer technologies the odor is controlled. Manure is a positive resource. Most farmers would rather use manure than synthetic fertilizer.

**Representative Diane Larson:** I got a phone call about a concern that manure would have seeds for noxious weeds.

**Senator Wanzek:** That would be poor quality feed with weed seeds. They don't feed the cows garbage because they won't get top quality production.

**Representative Dwight Kiefert:** When losing our processors, it was mentioned they would have to ship out of state. Federal law prohibits that. Exporting to South Dakota won't be an option.

**Senator Wanzek:** I thought there was a cheese plant in Pollock, South Dakota that takes North Dakota milk.

**Chairman Dennis Johnson:** I think cheese is a different situation.

(40:40)

**Senator Miller:** (Attachment #2a & #2b)

Refers to Century Code (Attachment #2b).

Family farmers have to make a conscious decision to sell or lease this land to a corporation.

Currently we are limited to a third degree of kinship in our family corporation. Second cousins have to dissolve the corporation. Fathers were partnered with first cousins and that worked until this point.

Why is the corporate structure advantageous? There are liability protections that you can't get with a limited liability company or an LLLP. There is the ability to withhold earnings, tax advantages, etc. Taking on massive amounts of debt opens you up to large amounts of liability.

In South Dakota they are using the limited partnership method. But they may use a corporate partner.

We are not going to see massive corporations coming in. They will be small family-owned corporations. We won't see the massive Walmart-type corporations buying dairies.

If you are not engaged in dairy or swine, you will have to divest the land in three years.

I believe we are doing the right thing for North Dakota agriculture. This will bring more wealth into rural North Dakota.

(46:30)

**Representative Jessica Haak:** Do you believe North Dakota farmers and ranchers would be better served by getting rid of the corporate farming law?

**Senator Joe Miller:** Yes, if we enhance our current law by providing more of these types of carve outs, they would be better served if we go down that avenue

**Representative Tom Kading:** If I had a dairy operation, could I get someone in person to invest in my dairy without being a corporation?



**Senator Joe Miller:** Yes he can invest if he wants to expose himself to that liability. You're dealing with sewage systems, etc. with a great deal of risk. If there is a problem, the investor as a person would be exposed to liability and could lose everything he owns.

**Representative Diane Larson:** If you have a corporation, you can limit your liability but a person won't. A farmer would lose everything? This corporation would allow only a certain amount of liability?

**Senator Joe Miller:** I can't answer all of that. A corporation has to have insurance. There are people waiting to attack agriculture along with any success.

**Representative Alan Fehr:** Is there anything currently that would prevent second cousins from forming joint ventures and continue to operate?

**Senator Joe Miller:** With a new corporation but they would have to do away with the current structure that has been built over generations.

(53:00)

**Doug Goehring, North Dakota Agriculture Commissioner:** (Attachment #3a)

South Dakota does grant exemptions for dairies and feedlots. Starting in 2014 South Dakota has permitted 22,681 new head and added 7,930 more head to its existing dairies. That is over 30,000 head in just an 18 month period.

Our processors have been importing milk to keep the facilities open. If we lose many more operations we may have to close our processing plant in central North Dakota. That would cause our farmers to transport their milk many miles at a significant cost or quit milking and sell the cows.

Our livestock numbers are declining. Beef is holding steady. Swine production from 2003 to 2013 has gone down by 10%. Dairy has declined by 55%. North Dakota produces an abundance of feed stocks. We provide a bio secure environment. We have an opportunity to use the manure and offset other costs of production for our grain farmers. We have the ability to support services such as feed mills and veterinarians. We do need more diversification that will complement what we have--not compete with it.

(56:00)

**Representative Dwight Kiefert:** The North Dakota Milk Board sets the price the dairy farmers receive. Why didn't they raise the price so the dairy farmers would have a profitable atmosphere?

**Doug Goehring:** I have no control over the Milk Stabilization Board. There are economies of scale that after a point it seems to be more profitable. In 1960 we had 19.2 million dairy livestock in the county and we produced 123 billion pounds of milk. Today we have 60% less cows in the United States and we are producing 202 billion pounds of milk. We have become more efficient. The size of the operation has to be large enough so they can operate efficiently.

A 1,600 cow dairy operation costs about \$7.5 to 9.5 million. When we talk to one of the managers of the larger operations, he wasn't as concerned about the price of milk as he was about how his operation is running and the relationships needed for his feed in case there is a drought. With others providing the feed they can concentrate on just milking cows.

**Representative Diane Larson:** Can you help me understand the difference between the liability issues of a corporation and an individual farmer?

**Doug Goehring:** No, I can't. When this conversation started, we were looking at an LLP. If you have two farms that are incorporated, they can't be part of an LLP. That would be a corporate farm structure. We need to clarify with exemptions in Century Code. I would be opposed to going any further than a dairy, a swine, or a feedlot operation.

**Representative Alan Fehr:** Will economies of scale be enough to turn around the dairy industry?

**Doug Goehring:** If we have more dairies and more production, we would be getting the milk from within our state. The processing facility in Bismarck has a 600 cow/day deficit. If we lose production, we either need to import more milk or close the plant.

The two largest producing counties in the state are Morton and Emmons County. If we lose this plant we only have the cheese plant in South Dakota and Cass Clay in Fargo-Moorhead.

**Representative Jessica Haak:** Are you offering an amendment for feedlots?

**Doug Goehring:** No I am not offering an amendment. At the beginning feedlots were in the discussion along with dairy and swine?

**Representative Jessica Haak:** Do you believe opening up the corporate farming law could lead to further opening of the law?

**Doug Goehring:** If by adding feedlots it would give more weight to the bill?

**Representative Jessica Haak:** No, it gives weight to the argument that by offering these two exceptions, this is the first step to repealing the corporation farming law.

**Doug Goehring:** That is a judgment call. Those three areas would best compliment North Dakota. I would oppose going any further.

There are three areas here that limit what can be done. This will help them. No one sees this as competition. We can form some different structure to operate under.

**Representative Jessica Haak:** Can you give insight as to who you had conversations with?

**Doug Goehring:** The livestock industry has reached out to corn and soybean farmers. More emphasis was put on the issue during this last year when more dairy farmers have said they are hurting.

We spend time with South Dakota at livestock shows. They have opportunities and are getting the business. They can feed dairy heifers.

**Representative Craig Headland:** How familiar are you with the decision by the 8<sup>th</sup> circuit in tossing out the corporate farming laws in Nebraska and South Dakota?

**Doug Goehring:** I only know a little about it. It wouldn't be fair for me to comment.

**Representative Craig Headland:** It appears it was thrown out because of the discriminatory nature to keep out large corporations. That is what we are talking about here. If challenged here in North Dakota, the same decision would be made by the 8<sup>th</sup> circuit.

**Doug Goehring:** I have had conversations with our attorney. There are those in agriculture that want to have a different structure. In Minnesota they have 250 farmers involved in a dairy operation. They have 242 farmers involved in a hog operation. So far the challenges have come from nonprofit organizations that want to own and purchase land in North Dakota.

**Representative Jessica Haak:** Do you know what percentage of dairy farmers are corporate and what percentage are family owned in South Dakota? USDA says 93% of all farms in the U.S. are family owned and operated. What percent of the 93% are dairies?

**Doug Goehring:** I am not sure. If they are LLPs, do they have a corporate partner? One corporate partner would require operating under the corporate structure. In my conversations with the Secretary of Agriculture in South Dakota about the 30,000 head they have permitted this year, he did say that 7,930 of those were to existing dairies. The remaining was new permitted. We could find that information for you.

Handed out testimony from Walt Bones, Former South Dakota Secretary of Agriculture.  
(Attachment #3b)

(1:19)

**Craig Jarolimek, Pork Producer, Walsh County:** (Attachment #4)

(1:25:47)

**Vice Chair Wayne Trottier:** One of the concerns about dairy is to keep a processing plant open. Currently there are no pork processing plants in the state. Is there a demand for processing pork?

**Craig Jarolimek:** Absolutely. John Morrell in Sioux Falls is always seeking animals. The Brandon plant owned by Maple Leaf foods is at a deficit of 10,000 hogs a day. They would like to run double shift. Exchange rates vary and affect the opportunity. More opportunity may exist in the future. You legislate for the future. We are the only state in the union that can export live hogs to Canada because we haven't had pseudorabies.

**Vice Chair Wayne Trottier:** One of the negatives I hear, where are the workers going to come from? How many people are employed at a farrowing barn with 5,000 or 6,000 sows?

**Craig Jarolimek:** A 5,000 farrowing operation needs about 14 or 15 full time workers and 3 to 4 part time workers. They like to employ youth on weekends or holidays or summer months. If you build it, they will come. It is the same with the oil industry. More competition raises wages. They are skilled workers. Being a manager of a 5,000 swine operation is a skill. Many of them make six figures. They make more than a school superintendent. The part time workers will be in the \$12 to \$15 range.

**Vice Chair Wayne Trottier:** If this bill passes, will this be finishing units or farrowing units that come to the state?

**Craig Jarolimek:** I am involved in a farrowing operation. We export isowean pigs to partners in Iowa. An isowean pig is a 21-day-old weaned pig transported to where the corn and finishing markets are. We have bio security and high health. We have all the feed grains and land mass to distribute the nutrients and the manure. That would come within a year of this bill. Then the finishing units would follow. The finishing is more of an opportunity for individuals that may have a job in town but want to be involved in agriculture. That is not a full time job.

**Vice Chair Wayne Trottier:** The other concern is the waste and disposal and setbacks. Setbacks being how far away you have to be from a home or farm. What are the current regulations for setbacks?

**Craig Jarolimek:** The State Health Department would have those numbers. The permitting and application process is quite thorough. It takes at least a year and includes public hearings. You have to also have county approval. I don't know of any violations. Our State Health Department does a good job of oversight.

**Vice Chair Wayne Trottier:** One of the larger barns in North Dakota is not only in Cass County but in the city of Fargo. That is the NDSU hog barn.

**Representative Craig Headland:** In looking at the numbers, it appears something happened between 1995 and 2000. We lost about 1/3 of our hog production. The same thing happened in neighboring states where they implemented the law prohibiting corporate farming. It looks like they moved to Iowa. Can you add anything?

**Craig Jarolimek:** We have increased production in the swine industry. We have gone from weaning 8 pigs to 14. Sows now have 2 ½ litters per year rather than 1 litter. Some numbers are misleading. Our market weights have also gone up.

The commitment for swine is not as much as for dairy but it is close. We also lost some market when Cloverdale closed. We used to run a 160 sow farrow-to-finish operation. We lost network in our area with other producers leaving. We used to load a semi load of hogs weekly with other producers to go to John Morrell. We can't do that today without the other producers. You can't control the markets so you have to control the inputs.



**Chairman Dennis Johnson:** Would you share about the basis of corn and the value we can add to corn?

**Craig Jarolimek:** Senator Wanzek eluded that Iowa is a corn deficit state. They import corn. Corn is mostly all they raise. You also see a lot of hog barns. Their basis is zero. Some of the best operations are two or three brothers that have a farm and are involved with another farm and have no debt and are feeding their corn to Iowa select hogs. It is a guaranteed income. The corn market may fluctuate but that hog operation supports them.

**Representative Jessica Haak:** Are there provisions in current law that would allow investments into your operation?

**Craig Jarolimek:** Yes. I am involved in one, an LLLP. I got involved in 2006. We attracted some partners in Iowa. We were able to build two 5,000 head finishing barns. We could do that because I knew people. I served as President of the National Pork Producers Council. We have to submit yearly reports to make sure we are operating under the law. Oversight is very important to protect our state.

**Representative Jessica Haak:** If this is a solution for animal operations, why would we not open this up to all operations?

**Craig Jarolimek:** That is for you to decide.

(1:41)

**Jerry Messer, Farmer:** We have a dairy herd and a beef herd. We raise corn, wheat, barley, canola, soybeans, field peas, and alfalfa. The milk truck comes to my place every other day to pick up milk. Some of it goes to the fluid industry out in the man camps. When it doesn't go there, it goes to Pollack, SD to be finished into cheese.

By the year 2020 there will be a need for 35 billion more pounds of milk worldwide. The Midwest area is one of the areas that can fill the need. We have an abundant feed supply. We have reasonable land prices.

Of the top twelve priced markets in the United States, we are in the top five. Last year I averaged \$22.50 per hundred weight for my milk. Dairy and beef are the best producers on our farm. This bill is not a negative but an opportunity to invest in agriculture in this state. They are not looking to take over a community. They want to be a part of it. They have a strong faith-based lifestyle which they portray onto their workers.

Refer to charts (Attachment #5)

Fluid milk is trending downward. The number one occasion for milk is breakfast. We need to capture that milk need for other parts of the day.

Every seventh day of milk production in the U.S. is exported overseas. We have found what they need.

Greek yogurt takes 3 ounces of milk to make 1 ounce of yogurt and has gone over very well. Regular yogurt takes 1 ounce of milk to make 1 ounce of yogurt.

Coca Cola came to us and said they wanted to be part of the dairy industry. Fairlife is the result of a partnership with Coca Cola. Fairlife will compete against almond, soy, and rice commodity milk beverages. Fairlife has twice as much protein, twice as much calcium, half the sugar and lactose free.

We convinced Domino's pizza to put 30% more cheese on their pizza. Since then Domino's stock has gone from \$8 per share to over \$100 per share.

We have used other tools and they haven't worked.

(1:50:37)

**Representative Jessica Haak:** Did you visit with the owner of the dairy in South Dakota about the number of workers and the average salary?

**Jerry Messer:** I'll tell you about mine. We milk 250 cows. We have four workers. My average salary is \$14.50 to 16.50 per hour. No other state is as prosperous as North Dakota. We should grab some of that royalty money in western North Dakota and invest it into agriculture. That would keep it in North Dakota.

**Representative Jessica Haak:** Isn't there a provision in law now to allow people to invest in your operation.

**Jerry Messer:** Yes. Opening this corporate farming bill is hard because it is the unknown. You as a committee can watch this progress.

**Representative Dwight Kiefert:** You said North Dakota is #5 as far as the top ranked price. Who is #1 and what is the price?

**Jerry Messer:** Number 1 is the fluid milk states. In answer to your other question, the Milk Stabilization Board sets a minimum retail price for milk. If a company from Minnesota wants to ship milk to North Dakota that minimum price cannot be undercut. Without that, milk would come in from other states undercutting our price and run us out of business. That price fluctuates according to supply and demand.

Florida is #1 by about \$4 per hundred weight because 100% of their milk goes into fluid. The higher the utilization in federal orders, the higher the price for milk. The lowest markets in the nation are Idaho, California, and Colorado.

**Representative Dwight Kiefert:** Looking at \$4 per hundred. Would we be in this predicament if we had \$4 per hundred more in the last ten years?

**Jerry Messer:** That is hard to say. We have an aging population of farmers. If we can bring back young people, we need to have opportunity for them. Corporate farming will help. The main focus is to tell consumers what we are doing and if it is safe for them.

**Representative Jessica Haak:** You testified that by 2020 we will have a great need for milk. How do we rank as a country as far as producing fluid milk?

**Jerry Messer:** We are number 1 in the world for fluid milk. China and India are two of the main needs for protein. Chinese consumers don't trust their milk. We are working on five initiatives. One of them is to provide China with fluid milk. So we are exporting with ESL (Extended Shelf Life). It is heat treated milk that has 10 to 16 months shelf stability. They can ship it over warm in containers.

(2:00)

**Jeff Enger, Farmer and Livestock Producer, Marion, ND:** (Attachment #6)

(2:05)

**Kenton Holle, Dairy Farmer South of Mandan:** (Attachment #7)

The dairy coalition has been active in trying to save our industry. We have had success but not enough to stop the decline.

In 2014 we had the highest record prices ever and we still saw a decline in dairy cow numbers. What are we doing to save the industry? This bill limits to 640 acres. There are existing facilities in North Dakota that would shadow 640 acres and would look more like a corporate farm. I would not support corporate farming without restrictions.

Ten years ago we moved our farm from New Salem to south of Mandan. Without the help of family we would not be in business. We can't predict how this will help. This is another tool for structure of a business.

**Representative Jessica Haak:** Where do you take your milk to process?

**Kenton Holle:** Bismarck, Land O Lakes plant. That is the same plant that my grandfather shipped to.

**Representative Craig Headland:** Does that plant run at full capacity?

**Kenton Holle:** Yes. There is milk coming from outside of the state. It is 600 cows short. We could double our capacity and fill that plant.

**Representative Craig Headland:** Wasn't there a Cass Clay processing plant in Mandan that has closed?

**Kenton Holle:** It closed in 2005 or 2006.

(2:15)

**Havey Hoff, Dairy Farmer:** (Attachment #8a)

Also handed out testimony from **Alan Qual** who could not attend. (Attachment #8b)

(2:19)

**Jim Gibbens, Farmer and Businessman, Cando, ND:** I own the largest sow barn in the state.

**Chairman Dennis Johnson:** How do you impact the local community?

**Jim Gibbens:** The 6,000 sow barn has about 44 full time employees. It has over \$2 million impact in wages. There are 80 students in the school district in Cando that are involved in the business that we run. Iowa likes to import Canadian isowean pigs because of the colder climates they have a higher health status. In Cando, ND it is cold and also a high health area. There is always a need for capital.

**Doug Lemieux, Rolette, ND:** (Attachment #9)

When I served in the legislature I voted for corporate farming in North Dakota. As a producer I am at risk all the time. If we could incorporate our farms, we could limit our liability.

We do not have a dairy farmer left in Rolette County. When Pride Dairy closed in Bottineau and Cass Clay pulled out, our cost of transportation was too high. Every dairy farmer shut down their barns. We lost feed sales, etc. We invest billions of dollars outside of North Dakota. It may be PERS, Workforce Safety and Insurance, or the Legacy Fund. We need to look at investing in North Dakota.

My handout (Attachment #9) talks about what happened in the 30s and in the teens. The old Chinese proverb says "you should study where you can from so you know where you can go." In the early 1900s we allowed corporations and insurance companies to take the land away from the small farmer. We as a government have the ability to control large corporations that come in. Right now all pork is processed outside of North Dakota. We used to have a lot of hog farms in Rolette County. We don't any more.

The true fiscal responsibility that comes with allowing corporate farming is the education of students that do not speak English.

In 1998 there was a strike in Canada. They shut down their processing of hogs. The ramifications on pork production in North Dakota, South Dakota, Minnesota, and Iowa are that we wiped out a lot of hog farmers. Had we been corporate hog farmers, we could have limited our losses because the corporation would have been broke but we wouldn't have lost all the farmers off the land. When agriculture suffers the local communities suffer.

**Representative Jessica Haak:** Are you suggesting that opening corporate farming for dairy and swine, the state will be on the hook for more investments?

**Doug Lemieux:** I think it would be good if we had corporate farming all across. We could limit the corporations. We can't remain back in the 1900s.

**Representative Jessica Haak:** Will the state have to make further investments?

**Doug Lemieux:** If we bring in people we will have to invest in bilingual education. The border patrol has to check for proper documentation.



(2:34:34)

**Tamra Heins, New Salem, Executive Director of the ND Pork Council:**  
(Attachment #10a)

(2:38:50)

**Representative Jessica Haak:** We have heard concerns about finding labor. In your testimony you are saying they are going elsewhere to get a job. Which one is it?

**Tamra Heins:** Our enrollees in the programs are going other places to find jobs.

Read testimony from **Seth Bacon, President of ND Pork Council:** (Attachment #10b)

(2:40:53)

**Jennifer Holle, Director of ND Dairy Coalition:** Read testimony from several dairy producers from South Dakota who were unable to attend.

--**Marv Post**, President of SD Dairy Producers (Attachment #11a)

--**Rodney Elliot**, Drumgoon Dairy, Lake Norden, SD (Attachment #11b)

(2:48:40)

**Representative Jessica Haak:** What is the size of a local community that Marv Post refers to?

**Jennifer Holle:** I think he is talking about his community.

**Representative Jessica Haak:** Did he submit numbers to see how it grew? You have taxes paid. Do you know what it was before they opened?

**Jennifer Holle:** I can get those numbers.

**Clark Price, Feedlot Operator, Washburn, ND:** Would like to add feedlot amendment (Attachment #12a)

As a sole proprietor, I have to pay 100% of my self-employment tax. Under the corporate structure that tax stays in the company as working capital.

Every pound of beef produced takes about ten pounds of corn or DDGs (dried distiller's grain). That one pound of beef today is worth \$1.60. If you take that ten pounds and 56 pounds a bushel of corn, it takes about 5.6 times that \$1.60 which turns into about \$9 corn. That will alleviate a lot of rail problems. We put that beef on tires and take it to a processor. We have a processor south of our border in Aberdeen. That plant has the capacity to process around 425,000 head per year. We produce the best genetics in the country. We need to supply to that plant.

(2:54)

Refer to graph (Attachment #12b) It is a travesty to have that small of amount of cattle fed in our state when we all the resources.

Table comparisons of ownership (Attachment #12c)

**Representative Jessica Haak:** Do we have anything now that limits risk?

**Clark Price:** There is in the LLP structure. As was discussed earlier if there is a corporation that would like to invest in that, we can't under current law.

**Representative Jessica Haak:** I was talking about risk. We do have a structure that limits risk.

**Clark Price:** Yes. Under the LLP structure we can limit risk.

**Chairman Dennis Johnson:** Did you offer this amendment to the Senate hearing?

**Clark Price:** Yes.

Also handed out testimony from another feedlot operator, **David Spickler**, who couldn't attend. (Attachment # 12d)

**Gabe Thompson, Cow/calf producer and Small Grain Farmer:** (Attachment #13)

(3:02:38)

We in North Dakota are notorious about not embracing change readily. It has taken us 80 years to have this discussion on some limited exemptions. I don't foresee the flood gates suddenly opening.

**Representative Joshua Boschee:** I came in opposed. Hearing the support has brought me to the middle. There hasn't been one attorney to say this wouldn't open the flood gates.

**Gabe Thompson:** This bill requires the production facility be on the 640 acres. I don't know how many corporations are going to form separate entities to produce on each section.

**Representative Jessica Haak:** Commissioner Goehring testified that he met with livestock and grain producers over several years. Why are you not in the original bill?

**Gabe Thompson:** Our industry didn't pursue this as aggressively as we should have.

(3:05:20)

**Roger Effertz, Effertz Key Ranch, Incorporated, Velva, ND:** (Attachment #14)

We are a family corporation. We would like to expand with another family corporations or several farmers in the area. We can do that under a partnership plan; but I would like this option.

We have out-of-state corporate ownership of cattle in feedlots today.

I asked our family attorney what would be the "slippery slope" argument. He said this would strengthen our position against any challenge of our whole corporate farming law. His basis was the commerce clause. We are not restricting commerce now on the areas in this bill.

(3:11)

**Vice Chair Wayne Trottier:** There is a point of expertise in the livestock industry. There is also a point of expertise in running a feedlot. Is that true?

**Roger Effertz:** The last 500 to 700 pounds that you put on an animal are critical as far as management, nutrition, etc. I need to have a reliable manager on the payroll.

**Representative Jessica Haak:** You say adding this amendment would be an opportunity for the livestock industry in North Dakota. Would you want to open this for all farming operations?

**Roger Effertz:** There are huge farms in this state. There is already corporate farming in farming. It is the government that helps people farm. From the livestock sector it is different. It takes a large amount of assets. Confinement livestock is unique.

**Representative Craig Headland:** There are other states with laws that are open to corporate ownership. How many other states have corporations owning all the cattle?

**Roger Effertz:** I don't see an issue. We feed cattle in Nebraska and South Dakota. The manager of the plant in Aberdeen owns a corporate formed lot in Kansas. It doesn't affect the industry.

**Representative Craig Headland:** Corporations in some states may dominate the feeding aspect of raising the cattle; it is still the farmer or rancher who is calving, back grounding, etc.

**Roger Effertz:** The ball is in the cow/calf court. They are always needed.

**Representative Craig Headland:** The way this bill is drafted with the 640 acres, there isn't an opportunity for an outside corporation.

**Roger Effertz:** I don't see them coming in here.

**Chairman Dennis Johnson:** The 640 acres was put in this bill for a reason. When you look at other states south of us with unlimited acreage, are they buying acres or are they buying cattle?

**Roger Effertz:** They are focused on the operation. If they are successful in feeding cattle, they will reinvest it back in and do more feeding.

(3:18)

**Andrew Holle:** Read testimony from **Greg Moes**, South Dakota Farmer:  
(Attachment # 15)

**Andrew Holle:** I see a lot of dairy farms starting to leave. We had a great year in 2014. 2015 will probably be a little rocky. How many more will leave? What does that mean for us? We produce 1/5 the milk that goes to the Land O Lakes plant in Bismarck. When I looked at this bill, it is not corporate farming. It is farm families that are incorporated. Today I milk 600 cows and we have about a \$5 million investment in our farm. If I want to keep the plant open in town if these farms exit, I need to expand by five times to keep the supply. \$5 million times 5 more partners is \$25 million. How do I come up with that money? Now I am in partnership with my parents. If you become incorporated you can allow others to buy shares and become part of your business.

We produce fertilizer and manure. I just had four people contact me in the last week making sure we will put manure on their crops this spring.

(3:22:15)

**Lynn Hovde, Farm & Ranch in Williston/Watford City area:** My son needs tools to best operate his business. The capital requirements are huge.

Our grain producers have become dependent on rail to market their commodity. The difference in price between the Chicago Mercantile Exchange and the local market has become so wide. If they could sell it to a dairy or feedlot, it would save freight and enhances the local community.

I would like the bill to include all confinement livestock operations. We should have picked up the ball and included beef. We have a peak market for beef. Then you don't worry about things. Someday we will be in the dairy or hog situation.

The opponents to this bill don't have an alternative. This also gives opportunities for our animal science graduates. Many are seeking employment out of state.

**Representative Jessica Haak:** Why not open this up to all farming?

**Lynn Hovde:** Confinement agriculture is so capital intensive. It can't be lumped with grain farming. It takes expertise and specialization. I am not afraid of competition. If corporations come, it is because they see a profit.

**Dennis Miller, District 15, Past President of the Landowners Association:** A number of us invested in a hog feeding operation in Iowa. We would have preferred to invest in North Dakota. The restrictions that one of our neighbors had in getting their hog feeding operation told us investing couldn't be done in a timely manner. Iowa didn't have problems and it was easy. The land restriction of 640 acres sometimes is not enough for disposal of manure. We have so many regulations that cause people to move out of the state. We have wetland issues in North Dakota that they don't deal with in other states. We have 11,500 Fish and Wildlife easements. We have rules that discriminate between wildlife and water.



**OPPOSITION:**

**Mark Watne, ND Farmers Union President:** (Attachment #16a)

(3:37)

Refers to charts (Attachment #16b) If you look at dairies in South Dakota, they have declined faster than North Dakota. The bill passed in 2008 to allow for corporation dairies. That trend line on the chart didn't even bump up. They substituted corporate dairies for family dairies. When looking at the 2012 census, of the dairies that came after that passed, 49 of the 51 were family farm dairies. You can have a family corporate dairy in North Dakota. Why couldn't we even attract one?

The second and third charts show the North Dakota pig crop and gross income from hogs. We are growing in hogs. When looking at what caused the decline: the price of 12 cents per pound, the recession, pork oversupply, and the swine flu.

The price in Iowa is \$3.59 for corn. In Edgeley, ND it is \$3.29 which is 30 cents basis. We had some terrible basis. We should push the railroad for the dollars they cost everybody in the state.

Family corporations are allowed up to 15 people.

Don't ignore the "slippery slope." It is more than dairy and swine.

In answer to Representative Diane Larson--yes, corporations have less responsibility because they only have at risk what the shareholders invest.

**Representative Diane Larson:** Typically in business people don't want competition. In this situation it is the people that are in the industry, that fear if something else isn't done, their own operations will be at risk. Why are you opposed to making their industry stronger?

**Mark Watne:** It is not all dairy farms that want this. Isn't it good to have a processor to want more milk? If they have all the milk they need, don't they pay less? Look at the South Dakota chart. This doesn't save the family dairies currently here now. They are losing the same number of dairies as we are over the same period of time.

When you want to add value you start with feed. Now we are saying we are going to stop and allow a corporation to own the system between the retailer and the farmer. We need the dairy farms as our products and find a market to enter and integrate the dairy farms up --just like we did with ethanol and pasta. When the prices drop you have the ability to offset with some ownership elsewhere. Simply adding more production to a market system that is concentrated and overproduced does not solve the problem.

**Representative Craig Headland:** You said this bill is about ownership of land. The bill is specific on how much ownership they would allow. They have to have an operation or divest that land within three years. If we have to give up a couple of sections of land to generate some interest in dairy, how is that putting all family farms at risk?

**Mark Watne:** This is a very broad bill. The limitation is written wrong and opens the door wide open.

**Representative Craig Headland:** This is not about the ownership of land but choosing the structure of how you want to operate your business. When Farmers Union chose to build the restaurants in Washington, DC, they chose LLCs. Why is it good in that example to have a corporate structure and here you are disagreeing with it?

**Mark Watne:** Yes, we are an LLC. The challenge is when you have a cooperative you have to track something that is delivered, sold, or bought from the cooperative. We did make the bylaws to match a cooperative. One member--one vote. We have distribution back to the investors. Then we insure that farmers would own over 50% of that at all times and be in charge of the board.

**Representative Craig Headland:** There were other benefits. Opening the first restaurant was a risky venture. It created some challenges. One of the benefits of setting up the LLC is it did shield those investors from a finance agency from coming after the assets of the people who chose to put that money at risk.

**Mark Watne:** That wasn't the purpose. The LLC still signed the guarantee and certain partners had to sign. We couldn't figure out the avenue to track the food to the market. The goal was to educate the consumers of the United States. We do that with 30,000 people a week. We run it like a cooperative.

**Representative Craig Headland:** I've eaten at your restaurants and we appreciate them. But we are talking about a specific industry that is on the brink of collapse. If you want to help, you can help us with the language to get where we want to go instead of just opposing it.

**Mark Watne:** Our members set policy. Our restaurants are an avenue to diversify income and move up the food chain. Simply adding another business model doesn't change the economics of dairy. We need to spread our risk over a broader base.

**Representative Craig Headland:** You said it is the economics in the dairy industry as the reasons why we don't have them. Dairies are viable businesses but the challenge is generating further investment. We want to give them opportunity to access capital.

**Mark Watne:** It took us five or six years of good prices in grain before we saw young people come back to grain farming. If the prices stay economical, family farmers will start doing dairy again. We have to make it profitable.

**Representative Craig Headland:** You can't compare grain farming to what it takes to get into dairy or hogs. If you have a willing landlord, you can start farming. Do they have the same opportunity if they want to milk cows?

**Mark Watne:** Rented land can be taken from you at any time. The profitability is way more important.

**Representative Craig Headland:** If I was a young person with a willing landlord, I could put in a crop for less than \$100,000. That is not the same for dairy and swine.

**Raymond Martinson, Sargent County Farmer:** (Attachment #17) I raised hogs until 1998. When NAFTA (North American Free Trade Agreement) passed in 1994 and allowed free access along with the strike in Canada, it took the market from us to 12 cents.

I have a list of the top 25 hog producers in this country. The bottom one raises more hogs than the whole state of North Dakota. Smithfield Foods, owned by a Chinese company, owns over 800,000 sows. How can anybody compete with that?

We talk about basis on our corn. Ethanol plants help but now it is back to 60 to 90 cents.

We have one dairy left in our county and it is an LLP. Some investors bought it but it is still in bankruptcy. Producers have sold feed to it but they have not been paid. Their manure is priced the same as commercial fertilizer. When it was run by a single farmer, we sold feed and got a check every month and we took manure in the fall. When you take it away from the local farmer, things change.

**Representative Jessica Haak:** You are out of the swine industry. Why?

**Raymond Martinson:** I didn't have the resources to survive at 12 cents per pound? There was no incentive to continue.

**Representative Craig Headland:** I don't believe basis is the reason we have to do this. If you don't believe that we will have a lot of dairies or swine operations locating here, what is the danger?

**Raymond Martinson:** I don't think this will save the industry. It has to be individual initiative. I would like to more work on LLPs or other avenues.

--Recess until after floor session this afternoon--

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Peace Garden Room, State Capitol

SB 2351  
3/5/2015  
**Afternoon**  
Job #24413

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the ownership or leasing of farm and ranch land by corporations

## Minutes:

Attachments #1-9

## Continuing after floor session with opposition

**Mark Watne, ND Farmers Union President** at the podium:

**Representative Cynthia Schreiber Beck:** On the chart that you provided with the number of dairies in South Dakota compared to North Dakota. Do you have the number of cattle? To me the significant amount would be the head number rather than the number of farms.

**Mark Watne:** The number of head is up in South Dakota and the production is up. This didn't fix the decline. A dairy farm in South Dakota is a 388 cow average.

**Representative Cynthia Schreiber Beck:** I am thinking the number of cattle is the important element in production, not the number of farms.

**Mark Watne:** I represent family farms. My job is to maximize the number of farms. We don't put a size on farms.

**Representative Alan Fehr:** If we pass this, I am not convinced it will make a big difference. From the numbers in South Dakota it doesn't look like there was a flood of corporations that moved in. What is the worst case scenario if we try this?

**Mark Watne:** It is hard to predetermine what will happen. Corporations tend to want to own everything except for the high cost assets like the barns. If they can do better elsewhere, they pick up the business and move. Things don't last very long. A private dairy may get pushed out. Shareholders aren't going to do this for free. They want a return on their investment. Some of that ranges from 10 to 20 percent.



**Vice Chair Wayne Trottier:** The term family farm is often misused. We have a family farm in our area and they farm 50 or 60 quarters. Isn't that true?

**Mark Watne:** We don't care about size. We just want a family operation that lives in that community and are responsible for what that farm does.

**Representative Cynthia Schreiber Beck:** Corporate vs. family. What is the number of farms with the family corporate structure in North Dakota?

**Mark Watne:** I don't have that information. The Secretary of State would have that information.

**Kristi Schlosser Carlson, ND Farmers Union General Counsel:** (Attachment #1)

The language in the bill is broad and open.

(18:25)

**Representative Craig Headland:** I think we need legal counsel down here to offer testimony in regards to this.

**Tom Asbridge:** (Attachment #2)

(21:00)

What kind of state are we going to have? The rapid decline in the hog and dairy industry has been going on since 1980. This band aid is foolish. How can investment capital fix this? The milk futures are just one of the problems. Now we let investors determine the price of milk. It has nothing to do with the value of fluid milk in your diet. There should be a correlation between the nutrients in that food and what it is worth. This bill only adds to the confusion. How will investment cure the price structure?

The number of farms is important. Those farms are what keep the rural communities going. Is it the intent to reduce the number of farms and concentrate all the people in Fargo and Bismarck?

Parity is the measure of farm production vs. all the other sectors of the economic world and what price needs to be paid so they are in balance. The farm won't have to acquire huge debt to survive. We had three periods in our country where everything was in balance --1910 to 1914, 1925 to 1929, and 1947 to 1949. Many remember the farms were paid off and machinery was paid for with cash with no debt. It was the result of the Stegall Amendment to the War Stabilization Act that obligated the market place to 90% of parity with 115% cap. This was at no cost to the taxpayer.

For 2014 farm income--net farm income and oppose it to the parity number that should have been paid for the commodities and wasn't paid, amounts to about \$700 billion in the national economy. NDSU says farm money turns seven times. That means we have a shortfall of \$4.7 trillion in the national economy. That is measured in all the new debt which is the same number since 1952. Agriculture needs income. Income creates capital. The absence of income shrinks capital.

What happens when the market collapses? Land needs to be in the hands of individuals who will stay here.

(35:30)

**Representative Craig Headland:** What is your expertise?

**Tom Asbridge:** I was a member of the Commodity Futures Trading Commission. I served as National Director of American Agriculture Movement in Washington. I've traded commodities. I was a registered trader with 1% of all the feeder contracts in the nation. I was in an economic think tank for 35 years and that is all we do is study these issues.

We should have public debate outside this room.

(37:30)

**Representative Craig Headland:** You said the reason dairy is dead is because of price. You're telling me that I am in business because the government props me up. I found your testimony to be condescending.

**Tom Asbridge:** It wasn't meant to be offensive. It was meant to be humorous. You are talking about a micro issue. I am talking about macroeconomics. Everyone testifying for this is talking about expanding their business. If you are in a profitable business, why do you need investment capital? If you do, there is an abundance of banks and insurance companies.

**Representative Craig Headland:** I have been successful in my endeavor. You're making assumptions that I can get money to build a dairy. You can't. The margin is based on numbers and the profit per cow wouldn't justify any bank to build a dairy.

**Tom Asbridge:** On a micro basis if you know what you are doing and you want to expand, you can if you are profitable.

**Representative Craig Headland:** In earlier testimony we talked about the amount of milk needed in the world. The way our structure is today we aren't providing it here. Wouldn't it be beneficial to produce milk here?

**Tom Asbridge:** No, it is the wrong premise. Somebody is going to feed the world. Somebody needs to feed North Dakota. We are short of milk so we are importing.

**Vice Chair Wayne Trottier:** We have lost our work ethic over the years. Meat production requires you to be there 24/7. The younger people would be willing to work 40 hours per week. With a corporation I can see a young person get ahead and buy into that corporation.

**Tom Asbridge:** It is true, but it misses the mark. That isn't relevant to the issue. If dairy farms were profitable, the size would be irrelevant. Government has no business being involved in the size of a farm or ranch. That should be dictated by the profits. You are transferring risk to somebody else because you are worried it might not make it.

**John Maddock:** (Tells story of how farms have increased in size with less farmers and smaller rural towns and schools closing.) If this bill is passed who knows how the acres will increase each legislative session.

**Shelly Ziesch, Rancher and Dairy Farmer:** March 17, 1997 was the last day we milked cows. We loaded them on a truck. It still bothers me today. It represents failure. The price of milk was \$9/hundred. Corn was \$5/bushel. We hung on as long as we could. We didn't declare bankruptcy. We worked hard to get out from underneath that debt. We did it in beef cattle.

We felt we got pushed out of the dairy industry. We were a Grade A dairy. Our inspector told us we weren't big enough. He was told he should crack down on any dairy with fewer than 150 head because his superiors didn't want that size of dairy out there anymore. We along with our friends and neighbors were written up for everything you can think of including dust on the light bulbs, a muddy driveway the end of March, etc.

There is nothing that can replace the care and concern of an owner. Corporate boards as owners will be located elsewhere.

CRP (Conservation Reserve Program) caused ruin to the community. People moved to larger cities. I have heard arguments that we will have more vets, dairy services, nutritionists, etc. Most corporations hire their own. They get the volume discounts with the cost passed on to the smaller local producers.

Can the 640 acres be on one section or can it be in multiple tracts? What is the minimum number of animals? I can see a lot of money being funneled into shell corporations and purchasing land with no business plan and possibly buying the prime land that others need.

The dairy industry wants to become CEOs and manage people rather than animals.

Bessy's Best Dairy got the contract for a restaurant in town. They make yogurt, cheese and a lot of other products except for cream. The processor in Bismarck told the restaurant they can't sell them the cream. So the restaurant has to make a separate trip to the store. We have to keep the competition fair. Corporations don't play fair and it is not a level playing field when they have bottomless pockets.

Lamb and wool producers aren't getting involved with the corporate band wagon. Their numbers have decreased. In 2008 they developed a program for a starter flock for young producers. Applicants are given ten young ewes and the use of a ram. In the second, third, and fourth year they repay 20% of the original cost of the first ten sheep. That money goes back into the program for the future. The North Dakota pork producers and dairy don't have similar ideas.

Senator Wanzek said capital is not there. A milking parlor can start small and not everything has to be new.

Offered solutions:

- Have a state-funded price support for farmers with a stipulation for young producers.
- Start a dairy and hog program for the young people like the lamb and wool producers have. Maybe the beef industry will follow.
- Develop an internship program for college students requiring them to work on a dairy or hog farm with a scholarship attached. Have a mentor or advisor involved. Some discourage their kids from farming and ranching.

I understand corn and soybean growers wanting a better price for their product. Many grain prices are reflective of the rail service.

Most of the farms are 93% family owned. How many are hobby farms with just a few cows, hogs, etc.? Many are going organic with gardens and selling at farmers markets.

Please vote no because a corporation is not as likely to care for the land like we do.

**Don Tripp, Pork Producer:** Most of the reasons Iowa and North Dakota are different has nothing to do with the law. It is the climate and growing season. North Dakota gets 9 inches of moisture. Iowa gets 33 inches annually. In Iowa it is 2 ½ acres per cow/calf unit. In North Dakota it is 10 acres per cow/calf unit. A large pasture in North Dakota is 500 acres. In Iowa it is 80 acres.

I can't see how this bill is going to add anything to North Dakota agriculture.

(1:18)

**Roger Zatocha, Stirum, ND (Attachment #3)**

During the tough times of the 70s and 80s the philosophy of the Federal Land Bank was if you have the equity make the loan. The main office chastised our local bank board for standing up and saying the payments couldn't be made.

You cannot borrow yourself out of debt. If you are making money you are going to spend it. Corporations aren't going to do it for nothing. This is not the way to go.

**Vice Chair Wayne Trottier:** If your banker said you need 35% equity before he will lend you any money but then will give you 50%. Wouldn't that make it easier? If the investors come in to start a dairy or swine operation and they come up with 50%, that would be a lot easier to make a go of it if you don't have the whole debt to repay immediately.

(1:26)

**Roger Zatocha:** Back in the Russian grain deal, farmers got \$12 per bushel for durum. The banker said to get bigger. When the 80s came along and the prices were down, the banker said "Why did you listen to me?"

If the money is there, it is not necessary to get a corporation. This law will not stop corporations from getting more sections. Corporations don't take as good care of the land as one owner would.



**Representative Craig Headland:** When you mentioned more sections, what would be wrong with that?

**Roger Zatocha:** You are competing against you neighbor. Corporations will find a way to work out the angles.

**Representative Craig Headland:** If there is profit there, they could. Someone would have to be willing to sell the land and work for them. I don't think corporations are out there waiting to gobble up the land. We haven't seen that in other states.

**Roger Zatocha:** It goes back to economics. If the money is there they will be there.

**Representative Craig Headland:** If there is no economic benefit, I don't think there is anything to worry about.

**Roger Zatocha:** I disagree.

**Randy Richards, Steele County Farmer:** (Attachment #4)

It has been said it takes millions of dollars to invest. Our LLC which is owned by 14 shareholders has an operating line of credit of \$18 million. In the world of finance no one gives money unless you put skin in the game. It is about being profitable and sustainable.

(1:35)

**Representative Craig Headland:** If you wanted to invest in dairy today you couldn't do it.

**Randy Richards:** Yes, I could invest as a person and take the risk of losing what I have invested.

**Representative Craig Headland:** The rest of your assets would not be as risk?

**Randy Richards:** No. It is a Limited Liability Corporation. The only risk I have is what I have invested in there unless I sign a personal guarantee. Otherwise it is just the dollars I have put in. My farming operation is not at risk.

**Christopher Dodson, Executive Director of the ND Catholic Conference:**  
(Attachment #5)

(1:42)

**Representative Diane Larson:** The previous speaker said people can invest in a LLC. This is already being done. What the bill is proposing isn't even a change in common practice.

**Christopher Dodson:** Under the current system there still has to be a relationship of family to have ownership of the land.

**Vice Chair Wayne Trottier:** You said by going to corporations, they won't take care of it. The experience I have had with large hog farms--they are regulated and have to have a plan. The manure has to be injected into the soil at a rate that doesn't exceed what is recommended. I as a small producer can spread the manure any way I want to.

The large hog units' motto is "We care." They do care about their neighbors, facilities, churches, communities, and are dedicated people.

**Christopher Dodson:** You are confusing the type of covenantal relationship that must exist for generations as opposed to mere regulations. How far are we removing the relationship with the land?

**Chairman Dennis Johnson:** Are your views the same way with U.S. Fish and Wildlife and Ducks Unlimited with their ownership across the state?

**Christopher Dodson:** The principles would be the same. It is always preferred that the people owning the land are working the land.

**David Porsborg, Farmer from Oliver County and retired hog producer:** I am concerned the wording of this bill might put dairy and swine family corporations we have now within the limit of the 640 acres. The bill says to sort out dairy and swine. Once the gate is open, how will it be closed?

**Shawn Kaylor, Verendrye Electric Cooperative:** I am on the Board of Directors. At our last board meeting we discussed SB 2351. We voted to stand in opposition of this bill.

(1:49:51)

**Justin Sherlock, Dazey, ND:** (Attachment #6)

If we are going to change our philosophy in how we view agriculture, we should have public debates. There should be public forums. It should be a political issue during campaigns. To push this through in a month is not giving it the respect that it deserves.

**Vice Chair Wayne Trottier:** Do you understand the problem that the dairy and swine people are asking for help in some way?

**Justin Sherlock:** I do recognize the need. Where was the discussion before this on a larger scale? I do feel capital is available. If they have a solid business plan, why do they need outside investors? I would still have to show corporate investors that my idea is profitable. Are the loans from the Bank of ND large enough? Maybe they have to offer additional credit.

**Chairman Dennis Johnson:** We get the commodity reports each year during session. This has been going on for several sessions. What we are trying to do is look at dairy and swine. It wasn't farm groups that asked. It was the producers.

**Justin Sherlock:** It seems like this came out of nowhere. I am afraid of opening up the door to lawsuits. A Federal court could say you cannot favor certain sectors and strike down our entire corporate farming law. Subsidiary corporations could be formed. There are too many loopholes the way it is written.

**Chairman Dennis Johnson:** Have you looked at the South Dakota corporate farming law?

**Justin Sherlock:** No.

**Chairman Dennis Johnson:** The corporate farming law does stay in place expect for the exemptions.

**Representative Cynthia Schreiber Beck:** You have restrictions on the back of your testimony. Item #2 is taken care of. There is a time requirement.

**Justin Sherlock:** I did not see that. Some legal analysis needs to occur.

**Brad Greff, Dairy Farmer 1979-94, Mott-Regent, ND:** We quit because of the price. My concern is that we do have a lot of hunters in our area. Many investors have purchased land that is no longer farmed. This last year there was 5,000 acres with the majority of it, 4,200 acres, being bought by a man from Oregon. He has no intention of farming it and left most of it in CRP. One from Missouri, who bought land, is asking \$5,000 per acre. If this does pass, corporations can pay more per acre.

My dairy inspector from the state told me to get out of dairy farming because of the cold. I don't think opening this up will bring dairy. We aren't a dairy state. The cows have to be housed inside. It does cost a lot.

In my area in 1980 there were 19 dairy farmers and now there is 1. They couldn't make a profit.

But to allow someone from outside and buy the 640 acres--when they leave, do they have to sell it to someone from North Dakota? I don't feel it is right for outside investors.

**Perry Ostmo, Sharon, ND:** Several farmers have lost land to bigger farmers. This bill is going to compound that problem. This simple bill doesn't restrict what is important. The current law was enacted through the initiated measure process. It protects the current and future farmers. This opens the gate for out-of-state nonfamily corporate pool of money at a time when the average North Dakota farmer can hardly afford the purchase of land. The intention of dairy and swine is only a deception for the abuse of this law

**Representative Craig Headland:** How is that?

**Perry Ostmo:** If a corporation were to move in next to me and buy 640 acres. What is the minimum number of livestock?

**Representative Craig Headland:** It has to be either a dairy or swine operation and it has to be a functioning corporation.

**Perry Ostmo:** 640 acres is more than is needed.

**Chairman Dennis Johnson:** That is the maximum number of acres. South Dakota has no restrictions. Most of them have 80 acres or 160 acres. There is no money in buying land. They put the money into livestock and buildings.

**Perry Ostmo:** This is just the start. Next session will be more

**Representative Craig Headland:** That is speculation.

**Jim Teigen, Rugby:** (Attachment #7a & b son)

(2:16)

There are 27 states that cannot supply their need for milk. If allowing corporate farming is the answer, why do we still have 27 states that aren't producing enough milk for their citizens? Why isn't it just North Dakota?

It was said this morning that corporations limit risk. Limiting risk is the same as walking away from financial commitment.

**Representative Diane Larson:** I've heard from several people that we are setting up for a similar situation as to what happened in the housing collapse by limiting the risk in their investment. I don't see a correlation. In the housing collapse banks were told by the federal government to issue loans when they didn't have the proper backing to do that. In this situation they can't get investors in a corporation unless they have the business plan.

**Jim Teigen:** The advantage is to allow an investor to walk away from an obligation. They may have bills they are not paying. It is shirking responsibility

**R. Jay Paul, former dairy farmer, Rugby, ND:** Read from article in the Farm Forum written by Stan Wise, Farm Forum Editor. (Attachment #8)

This editor is from South Dakota and we are modeling this law after South Dakota.

Dairies in California are getting forced out because dairy needs more water. Their people need the water. A dairy cow needs twice as much water as that of a stock cow. The price they receive for their land in California is way more than they have to pay when coming here. We can't compete with that. Leave the dairies in South Dakota.

Corporations will buy their feed as cheap as they can.

I sold my calves three weeks ago for the most money in my life. I sold 59 head and came home with a little over \$90,000. I don't want more competition.



**Bob Kuylen, Farmer, South Heart, ND:** The banks in the western part of the state are full. They are insured out. If a project is viable, the money is there. My banker said in 1978 there were 60 dairies on his portfolio. Now there are two and one of them is thinking about quitting.

The price is what puts out the dairy farmers. Last week I was in Washington, DC for a USDA outlook meeting. They figure the price of milk will be back down to \$14. Your average investor wants to see a 10 to 25% return on their money. That money is not in agriculture.

Coming from western North Dakota, there are really bad actors in oil. The same will be in agriculture. We care about the land because we want to pass it down.

(2:38)

**Bob Kuylen, South Heart, ND:** The average age of farmers is 58 years old. There are a lot in the 70-year old range. They have a lot of equity. If they sell, they will get hooked on taxes. Why can't we have an incentive for retiring farmers/ranchers that could be a mentor to young people? We could give them a tax break if they sell at a discount rate to a young farmer. Free market to some does not exist. We do this for doctors, dentists, etc.

If corporate America takes over farming in the United States they will set the price of food.

**Neutral:**

(2:40)

**Clara Jenkins, Secretary of State Office:** (Attachment #9)

The section that requires the attorney general to do compliance checks--it is possible that the only way the attorney general will find out about these organizations is if their neighbors complain. Then they could ask us for the records. The compliance check will be a lot more involved.

(2:48)

**Representative Craig Headland:** Who makes the decision on the land purchase?

**Clara Jenkins:** The purchase of the land is made before we get the document. Once the deed is recorded in the county, the recorders are sending the information. We have no idea what type of data base they maintain to make sure they don't exceed the 640 acre limitation.

**Representative Craig Headland:** There was a question earlier whether an LLC could be set up for a dairy today?

**Clara Jenkins:** Yes they can.

**Representative Craig Headland:** With members unrelated?

**Clara Jenkins:** They have the same requirement of kinship.

**Representative Craig Headland:** You can't have 15 people that are unrelated to form an LLC.

**Clara Jenkins:** No.

**Vice Chair Wayne Trottier:** Those that question if North Dakota is suitable for dairy or swine--Swine are totally environmentally controlled so the weather doesn't matter. In the summer time it is not as warm and humid as in southern climates.

Would Kenton Holle address weather conditions for dairies?

(2:51)

**Kenton Holle:** The future of dairy based on weather-- We work with a nutritionist from Wisconsin. He is amazed at the ability to produce milk here. Our winters are cold. We have to design the barns and corrals for that. In the summer we don't have the humidity. Our milk cows are all inside. The barn is 150 feet by 500 feet. I would never want to milk cows in Arizona. We can acquire alfalfa hay for a lower price. You have to design the facilities to handle the environment.

**Representative Jessica Haak:** Has the bank ever turned you down?

**Kenton Holle:** Yes. Part of it had to do with a level of equity that was required. Part of it had to do with the fact that we were the only dairy customer. They didn't have the expertise to handle our situation. We bought the dairy from a bank. When we wanted to grow they weren't willing to work with us. We used the Bank of ND. But we needed to find a lead lender in order to participate with the Bank of ND. That wasn't easy. We have a bank in North Dakota but we also have a bank from Minnesota that is financing which was found by my daughter-in-law.

**Representative Jessica Haak:** When were you turned down?

**Kenton Holle:** We started in 2012. We did the deal in December of 2013.

**Chairman Dennis Johnson:** Closed the hearing

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Peace Garden Room, State Capitol

SB 2351  
3/6/2015  
Job #24453

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to the ownership or leasing of farm and ranch land by corporations.

(Committee Work)

## **Minutes:**

Attachment #1 & 2

**Representative Craig Headland:** I have two versions of amendments that do the same thing. The first version, Amendment #15.0895.01004 (Attachment #1), addresses the concerns of the attorney general. It spells out the domestic corporation will be limited to 640 acres. They will have to have a dairy farm operational within three years. The dairy farm is also permitted as a CAFO (concentrated animal feeding operation). It does the same for swine. It gives the Agriculture Commissioner authority to adopt and enforce rules and notify the Secretary of State or the Attorney General if there would be a compliance issue. Then the current corporate laws would govern.

**Representative Craig Headland:** Moved amendment #15.0895.01004.

**Representative Alex Looyen:** Seconded the motion.

**Representative Jessica Haak:** Would the Agriculture Department need to add FTEs to implement the rule making process?

**Representative Craig Headland:** We put this together with the help of the Ag. Dept. There are no additional FTEs needed.

**Representative Alan Fehr:** I'm trying to sort out if this amendment still has the problems the original bill had in terms of allowing prohibitions to not apply to corporations.

Under the original bill, the language says prohibitions on ownership and leasing of land do not apply to corporations owning and operating a dairy or facility for production of swine. That means they are now opted out of the exclusions. Does this language also opt them out of the exclusions such as they can buy other land?

**Representative Craig Headland:** That is one of the concerns we have addressed. We are not going to preclude a corporation if they want to partner with another corporation on another section of land and enter a different structure. They will have that opportunity. But why would they? 640 acres under Corporation A might have its limitations. If they want to partner with someone else and expand their operations, this language will allow it. But Corporation A wouldn't be able to buy another section.

(7:53)

**Representative Alan Fehr:** Under the original bill if a corporation met the requirements under subsection a, they are opted out and could buy other land not just 640 acres. Once they met that requirement now the prohibitions didn't apply to them.

**Representative Craig Headland:** That is what we were told so we are clarifying. The Agriculture Commissioner is going to write rules in subsection 4 to clarify.

**Representative Alan Fehr:** Would you allow adding the word "exclusive" in subsection 1 and 2 of the amendment?

**Chairman Dennis Johnson:** The attorneys are the ones that put this together and said the language would be tight.

**Representative Jessica Haak:** Would that clean up for example if big dairy wants to invest in a dairy farm and has a different farmer in 20 counties. Could they own land in 20 counties with a different partner under a different corporation title?

**Representative Craig Headland:** In theory, yes.

**Chairman Dennis Johnson:** We are the last state to look at legislation like this and it hasn't happened in other states.

**A Roll Call vote was taken:** Yes 13, No 0, Absent 0.

**Amendment 15.0895.01004 passes.**

**Representative Craig Headland:** I have another version of the same language to add feedlots. Hand out amendment #15.0895.01003 (Attachment #2).

I don't think our intention is to open the door to full corporate farming. We did have many people tell us the need for feeding operations to be included in this bill. We owe it to them to have the discussion. I talked with the bill sponsor and he is going to leave it up to us.

**Representative Craig Headland:** Moved amendment #15.0895.01003.

**Representative Alex Looysen:** Seconded the motion.



**Representative Diane Larson:** I will resist this amendment. Swine and dairy made a compelling story in the need for more people involved to stay in business. I didn't feel the same for feedlots.

**Representative Alan Fehr:** I will echo that. Our hearing was not on feedlots. That may be for another legislative session.

**Vice Chair Wayne Trottier:** We did hear from some feedlot owners and operators concerning the Aberdeen processing plant. They are counting on North Dakota feedlots. I appreciate that. We can look at this in another session. Corporations come with money available to last through some hard times.

The hog plant in Brandon, Manitoba is waiting for North Dakota hogs. We all know the dairy situation.

**Representative Dwight Kiefert:** I will vote against the amendment. It is not fair to the Stockmen's Association to receive an amendment this late in the game without going through all the channels.

**Representative Craig Headland:** We know this as a sensitive issue. I don't think any of us want it opened up for full corporate farming. Investment to get equity is different than getting more into debt.

**Chairman Dennis Johnson:** I understand where the feeders are coming from. If this works, we can look at other options down the road.

A Roll Call vote was taken: Yes 3, No 10, Absent 0.

**Amendment #15.0895.01003 failed.**

**Representative Alex Looyen:** Moved Do Pass as amended.

**Representative Tom Kading:** Seconded the motion

**Representative Dwight Kiefert:** I don't see it as a rescue for the dairy operation. What dairy needs is a fair price. A corporate dairy can't survive either without making a profit. The milk price has to be adjusted which is set by the national milk board. I will resist the bill.

**Representative Diane Larson:** Some of the same family farms in dairy could have friends help to invest in their program. More people are needed in order to keep the processors open. Usually you don't want competition. The people that want to keep their businesses viable are the ones asking for this.

**Representative Craig Headland:** I am in support of the bill also. It is not about price support. It is about allowing for a size of a dairy so the volume can provide a profit and then allowing for an investment into that.

**Representative Jessica Haak:** We now have corporate farming for those living in North Dakota. We want people here to call North Dakota home. Agriculture impacts every part of our economy. It is important to keep those dollars in the state and to keep people living on the land. I will strongly resist this bill.

**Vice Chair Wayne Trottier:** Having higher prices for milk in other parts of the country probably still results in less net than North Dakota because of the other costs. In other states the cost of feed, land, and labor are higher. The margin of profit is in the calves and manure.

Swine producers that had to quit didn't have the equity behind them to continue on. When going to Farm Service Agency Agriculture Credit, hogs and dairy have a bad reputation for going broke. Swine producers have become so much more efficient with the big units. Most of the private small producers get 15 to 18 pigs per sow per year. The barn at Larimore right now is turning out 27 to 28 pigs per sow per year. They can operate for a lot less. That is due to management, genetics, nutrition, etc.

**Representative Tom Kading:** There are a lot of misconceptions about corporations. All are not bad. They are a tool that farmers can use. You can raise funds, get legal protection, etc. I will support this.

**Representative Dwight Kiefert:** We heard producers quit because of the price. No matter who has the dairy they have to make a profit.

**A Roll Call vote was taken:** Yes 8, No 5, Absent 0.

Do Pass as amended carries.

**Chairman Dennis Johnson** will carry the bill.

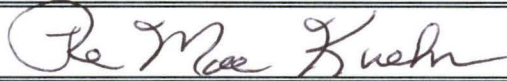
# 2015 HOUSE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Peace Garden Room, State Capitol

SB 2351  
3/13/2015  
Job #24837

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the ownership or leasing of farm and ranch land by corporations  
(Committee Work)

## Minutes:

Attachments #1 & 2

**Chairman Dennis Johnson:** We thought we had this bill ready for the full house to vote. With the word "concentrated" or defining what we meant by the size of the dairy or swine operation, it would be perceived as eliminating smaller operations like an AFO or animal feeding operation.

**Karl Rockeman, Director of Water Quality, ND Department of Health** at the podium.

**Chairman Dennis Johnson:** When we amended this bill, we put into language a 50-head dairy and 500-head swine operation. That would eliminate an AFO.

Referring to amendment #15.0895.01005 (Attachment #1)

The language on letter c as we rewrote it on both sections, we added in "an animal feeding operation" before "or as a concentrated animal feeding operation." This would address either one.

**Karl Rockeman, ND Depart. of Health:** I have prepared a diagram to help explain that. (Attachment #2) An animal feeding operation is a broader term. A concentrated animal feeding operation is a subset of the overall animal feeding operations. The concentrated animal operations have to meet some additional criteria. The larger facilities, such as 700 head of dairy cattle or more, are considered concentrated simply by size. The small and medium size operations, they are designated as concentrated because of some environmental impact to our water quality. That is not desirable. The Department of Health does not have any permitted small or medium concentrated animal feeding operations. We have permitted animal feeding operations within the state.

**Chairman Dennis Johnson:** You do have oversight if need be?

**Karl Rockeman:** Correct. Our oversight for our permitted operations covers animal feeding operations not solely the concentrated ones. We do permit those. As part of the permit they are required to have a system to manage their manure and the runoff to use appropriately to grow crops.

**Chairman Dennis Johnson:** The way our bill is written with a 50-head minimum on the dairy, would you still be required to oversee that project if there were 25 head for example?

**Karl Rockeman:** For smaller than 50 head, we may be involved. Typically those size operations are not required to have a permit, but they are eligible.

**Representative Craig Headland:** Moved to reconsider the committee's actions and bring this bill back to committee.

**Representative Alex Looyen:** Seconded the motion.

**Voice vote taken.** Motion passed.

**Representative Craig Headland:** Moved the Amendment

**Representative Alex Looyen:** Seconded the motion

**A Roll Call vote was taken:** Yes 8, No 4, Absent 1.

**Amendment 15.0895.01005 passes.**

**Representative Alex Looyen:** Moved Do Pass as amended.

**Representative Craig Headland:** Seconded the motion

**Representative Jessica Haak:** This says they have to have a permit to be an AFO or CAFO. If they don't, would they still be allowed to incorporate?

**Chairman Dennis Johnson:** They are allowed to incorporate by going through the Ag. Dept. The AFO or CAFO designation just determines what the operation is considered to be in.

**A Roll Call vote was taken:** Yes 8, No 4, Absent 1.

**Do Pass as amended carries.**

**Chairman Dennis Johnson will carry the bill.**



APR  
3-6-15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2351

Page 1, replace lines 7 through 16 with:

- "1. This chapter does not apply to the ownership or leasing of land used for the operation of a dairy farm by a domestic corporation or a limited liability company and does not prohibit the operation of a dairy farm by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The dairy farm is operational within three years from the date the land is acquired; and
  - c. The dairy farm is permitted as a concentrated animal feeding operation by the state department of health and consists of at least fifty cows.
2. This chapter does not apply to the ownership or leasing of land used for the operation of a swine production facility by a domestic corporation or a limited liability company and does not prohibit the operation of a swine production facility by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The swine production facility is operational within three years from the date the land is acquired; and
  - c. The swine production facility is permitted as a concentrated animal feeding operation by the state department of health and consists of at least five hundred swine.
3. The agriculture commissioner shall by rule develop reporting and monitoring requirements to ensure compliance with this section.
4.
  - a. If the agriculture commissioner determines that a domestic corporation or a limited liability company is not operating within the exceptions provided by this section, the commissioner shall notify the secretary of state and the attorney general.
  - b. A domestic corporation or a limited liability company that is not operating within the exceptions provided by this section is subject to the enforcement provisions of this chapter."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2351

Page 1, replace lines 7 through 16 with:

- "1. This chapter does not apply to the ownership or leasing of land used for the operation of a dairy farm by a domestic corporation or a limited liability company and does not prohibit the operation of a dairy farm by a domestic corporation or a limited liability company provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The dairy farm is operational within three years from the date the land is acquired; and
  - c. The dairy farm is permitted as a concentrated animal feeding operation by the state department of health and consists of at least fifty cows.
2. This chapter does not apply to the ownership or leasing of land used for the operation of a swine production facility by a domestic corporation or a limited liability company and does not prohibit the operation of a swine production facility by a domestic corporation or a limited liability company provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The swine production facility is operational within three years from the date the land is acquired; and
  - c. The swine production facility is permitted as a concentrated animal feeding operation by the state department of health and consists of at least five hundred swine.
3. This chapter does not apply to the ownership or leasing of land used for the operation of a cattle feedlot by a domestic corporation or a limited liability company and does not prohibit the operation of a cattle feedlot by a domestic corporation or a limited liability company provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The cattle feedlot is operational within three years from the date the land is acquired; and
  - c. The cattle feedlot is permitted as a concentrated animal feeding operation by the state department of health and consists of at least two hundred fifty cattle.
4. The agriculture commissioner by rule shall develop reporting and monitoring requirements to ensure compliance with this section.

5.
  - a. If the agriculture commissioner determines that a domestic corporation or a limited liability company is not operating within the exceptions provided by this section, the commissioner shall notify the secretary of state and the attorney general.
  - b. A domestic corporation or a limited liability company that is not operating within the exceptions provided by this section is subject to the enforcement provisions of this chapter."

Renumber accordingly



HO  
3-13-15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2351

In lieu of the amendments adopted by the House as printed on page 954 of the House Journal, Senate Bill No. 2351 is amended as follows:

Page 1, replace lines 7 through 16 with:

- "1. This chapter does not apply to the ownership or leasing of land used for the operation of a dairy farm by a domestic corporation or a limited liability company and does not prohibit the operation of a dairy farm by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The dairy farm is operational within three years from the date the land is acquired; and
  - c. The dairy farm is permitted as an animal feeding operation or as a concentrated animal feeding operation by the state department of health and consists of at least fifty cows.
2. This chapter does not apply to the ownership or leasing of land used for the operation of a swine production facility by a domestic corporation or a limited liability company and does not prohibit the operation of a swine production facility by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The swine production facility is operational within three years from the date the land is acquired; and
  - c. The swine production facility is permitted as an animal feeding operation or as a concentrated animal feeding operation by the state department of health and consists of at least five hundred swine.
3. The agriculture commissioner shall by rule develop reporting and monitoring requirements to ensure compliance with this section.
4.
  - a. If the agriculture commissioner determines that a domestic corporation or a limited liability company is not operating within the exceptions provided by this section, the commissioner shall notify the secretary of state and the attorney general.
  - b. A domestic corporation or a limited liability company that is not operating within the exceptions provided by this section is subject to the enforcement provisions of this chapter."

Renumber accordingly



Date: 3/6/2015

Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2351**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: 15.0895.01004

**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. Headland Seconded By Rep. Looyen

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

**Total**    (Yes) 13    No 0

**Absent**    0

Floor Assignment    Rep.

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

Administrative rule by the Agriculture Department

Date: 3/6/2015

Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2351**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: 15.0895.01003

**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. Headland Seconded By Rep. Looyen

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

*Failed*

**Total**    (Yes) 3    No 10

**Absent** 0

Floor Assignment Rep.

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

Add feedlots

Date: 3/6/2015

Roll Call Vote #: 3

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2351**

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. Looyen Seconded By Rep. Kading

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

**Total**    (Yes) 8    No 5

**Absent** 0

Floor Assignment Rep. Dennis Johnson

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



Date: 3/13/2015

Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2351**

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. Headland Seconded By Rep. Looyen

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

*Vote passed*

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

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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



Date: 3/13/2015

Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2351**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: 15.0895.01005

**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. Headland Seconded By Rep. Looyen

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

**Total**    (Yes) 8    No 4

**Absent** 1

Floor Assignment Rep.

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

Adds animal feeding operation

Date: 3/13/2015

Roll Call Vote #: 3

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2351**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: 15.0895.01005

**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. Looyzen Seconded By Rep. Headland

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

Total (Yes) 8 No 4

Absent 1

Floor Assignment Rep. Dennis Johnson

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

**REPORT OF STANDING COMMITTEE**

**SB 2351: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). SB 2351 was placed on the Sixth order on the calendar.

Page 1, replace lines 7 through 16 with:

- "1. This chapter does not apply to the ownership or leasing of land used for the operation of a dairy farm by a domestic corporation or a limited liability company and does not prohibit the operation of a dairy farm by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The dairy farm is operational within three years from the date the land is acquired; and
  - c. The dairy farm is permitted as a concentrated animal feeding operation by the state department of health and consists of at least fifty cows.
2. This chapter does not apply to the ownership or leasing of land used for the operation of a swine production facility by a domestic corporation or a limited liability company and does not prohibit the operation of a swine production facility by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The swine production facility is operational within three years from the date the land is acquired; and
  - c. The swine production facility is permitted as a concentrated animal feeding operation by the state department of health and consists of at least five hundred swine.
3. The agriculture commissioner shall by rule develop reporting and monitoring requirements to ensure compliance with this section.
4.
  - a. If the agriculture commissioner determines that a domestic corporation or a limited liability company is not operating within the exceptions provided by this section, the commissioner shall notify the secretary of state and the attorney general.
  - b. A domestic corporation or a limited liability company that is not operating within the exceptions provided by this section is subject to the enforcement provisions of this chapter."

Renumber accordingly



REPORT OF STANDING COMMITTEE

SB 2351: Agriculture Committee (Rep. D. Johnson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). SB 2351 was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on page 954 of the House Journal, Senate Bill No. 2351 is amended as follows:

Page 1, replace lines 7 through 16 with:

- "1. This chapter does not apply to the ownership or leasing of land used for the operation of a dairy farm by a domestic corporation or a limited liability company and does not prohibit the operation of a dairy farm by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The dairy farm is operational within three years from the date the land is acquired; and
  - c. The dairy farm is permitted as an animal feeding operation or as a concentrated animal feeding operation by the state department of health and consists of at least fifty cows.
2. This chapter does not apply to the ownership or leasing of land used for the operation of a swine production facility by a domestic corporation or a limited liability company and does not prohibit the operation of a swine production facility by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The swine production facility is operational within three years from the date the land is acquired; and
  - c. The swine production facility is permitted as an animal feeding operation or as a concentrated animal feeding operation by the state department of health and consists of at least five hundred swine.
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  - a. If the agriculture commissioner determines that a domestic corporation or a limited liability company is not operating within the exceptions provided by this section, the commissioner shall notify the secretary of state and the attorney general.
  - b. A domestic corporation or a limited liability company that is not operating within the exceptions provided by this section is subject to the enforcement provisions of this chapter."

Renumber accordingly



2015 TESTIMONY

SB 2351

Testimony on SB 2351

Senator Terry Wanzek

Senate Agriculture Committee

Good morning Chairman Miller and Senate Agriculture Committee members. My name is Terry Wanzek, State Senator from district 29.

In my many years in the legislature, there always is an issue, ~~now and then~~, that is very difficult to address and/or discuss. Many times these issues bring out strong emotions, passion, and conviction, one way or another. While they are difficult to deal with and it would be easier to ignore them and just leave them alone, that would be ~~just plain~~ irresponsible and a dereliction of our duty as a state legislator. We are charged with addressing problems facing our state and seeking solutions. We are expected to deal with the tough issues, not just the easy ones!

This is one of those bills. Will it be the answer? I believe it could be. Only time will tell. But we cannot afford to ignore and do nothing about this issue. If it should not work, as I see it, we would be no worse off for trying. We have tried many other approaches to deal with this problem over the years, and they obviously are not working. This bill's proposal has been implemented in other surrounding states and seems to be working. This bill would be very similar to the current law in SD. It patterns the SD law.

This bill is an attempt to help the dying Dairy industry and our declining Swine Industry in this state by opening the door, just a little bit, to allow capital investment into these two specific agriculture enterprises. This is accomplished in SB 2351 by exempting Dairy and Swine operations from our anti-corporate farming law. However, the bill would restrict these types of agriculture operations to a total of 640 acres of farmland, owned or leased. SD law is unlimited in acres owned or leased.

There are 9 states with anti-corporate farming laws. Three of them, Nebraska, South Dakota and Iowa's laws were ruled unconstitutional recently under the dormant commerce clause. Kansas totally repealed its anti-corporate farming law in 2012. Almost all of them allow livestock exemptions of one kind or another, except for our law (ND).



These farming industries, dairy and swine, have been on a steady decline over the past years, especially the dairy industry. ND Dairy production fell by 41.5% from 2002 to 2013, from 585 million lbs.(2002) to 320 million lbs.(2014). ND Dairy cow numbers went down 60% from 40,000 (2002) to 16000 (2014). Dairy production in 1990 was 1.1 billion lbs. and 85000 milk cows. If you look back to the 30's to 40's we had over 500,000 dairy cows in ND and over 2 billion lbs. of milk. At one time ND led the nation in the production of cream! Today we are down to 91 dairy farms with a number of those likely to quit within the year. In 2002 we had over 350 dairy farms. We already have ND dairy processors importing milk. These processing plants will be in jeopardy of closing if there is no milk production in ND. I hope we are not too late!

In comparison, SD has increased, over the past 13 years, from 86,000 dairy cows in 2002 to 97,000 cows in 2014. 7000 head were just added in last 6 years since SD passed their corporate farming exemption for dairy. Another ~~25000~~<sup>22,700</sup> head are already permitted to enter into SD in 2015. SD Dairy production went from 1.29 billion lbs. of milk in 2002 to 2.02 billion lbs. of milk in 2013, an increase of 730 million. SD's annual production increase alone is more than double what ND produces currently in total annual milk production. All this information is from NASS (National Ag Statistical Service of the USDA).

I believe our farm producers need access to the same business tools that other state's farmers have to be competitive. I believe this measure can make a difference. Not many family farmers want to take on the risk and labor commitment alone anymore, nor do they have the personal capital it requires, to develop such an enterprise like a current dairy farm. I believe capital generation is a barrier to development. We need more opportunity to access equity capital, not just capital debt. Today a 1600 head dairy farm demands anywhere from 7 to 10 million dollars in investment to construct. A hog facility is between \$16-18 million.

Some say this will bring "out of state" investment into our state. Is that bad thing? That could happen, but I also see this as an opportunity for our state's farmers and other community citizens to build from within, to expand on an existing dairy for instance. Case in point, this could be my cousin, who happens to be one of the remaining 91 dairy farms. He is adding robots to milk cows and may be interested in expanding his herd but can't swing it alone. He has mentioned he may be interested in seeking equity partners. He does not need more debt; he needs someone willing to take on some of the risk with him.

If we do nothing to enhance our milk production in ND, we will lose our dairy industry and our processors. Our fellow ND citizens will continue to consume dairy products like milk; cheese, ice cream, yogurt, butter etc. and they will be shipped in from SD or MN or another state at a higher cost and ironically, most likely produced on a corporate dairy farm! One way or another, ND citizens will be supporting corporate dairies. I prefer to support dairies vested within our own state.

Mr. Chairman and Senate Ag committee members, I would like to share with you that I am a fourth generation family farmer. My Great Grandparents, both maternal and paternal, were some of the first farmers to cultivate land in Stutsman County in the 1880's. We have a 5<sup>th</sup> generation of Wanzeks' currently starting their careers and preparing to take over our family farm, and hopefully the 6<sup>th</sup> generation, our grandchildren, will have that opportunity too.

Our ancestors followed a Catholic priest to ND and started a mission church and have been instrumental in building our Catholic Church, our community and our farm in its current location. So, I get it when it comes to supporting and protecting our family farms and community way of life. But farming still comes down to the fact that it is a business. It is a business that has to be financially successful to stay within our family.

As much as some of us would like things to be the way they were in the good old days, a family farm on every section raising crops and a few milk cows, a few beef cattle, a few hogs, a few sheep and chickens, it is not reality today! Our farms have changed but I contend they are still mostly operated by families. USDA says 93% of all our farms in the US today are family owned and operated.

I, as a family farmer in ND, personally do not feel my/our way of life will be threatened by this measure. This can help and will assist our family farmers by presenting more opportunities. It will diversify our ag economy. It will provide balance between grain and animal production. These kind of operations will need to contract with our local farmers to grow feed for the cows and receive the manure, a very high quality organic fertilizer. It would also benefit the corn, soybean, feed, implement, etc. industries by providing additional demand for feed, equipment, supplies, electricity, etc. I could go on and on. Just a small increase in demand for corn or feedstock could create at least \$ millions increase in agricultural income. These are value added agriculture operations.

*There is a lot of potential in animal ag in ND  
untapped*



The ND Century Code will continue to protect and remain consistent with keeping the land in the hands of family farmers. That is where the true power lies, allowing our family farmers to remain in control of the land through ownership or leasing. As our state coat of arms motto reads "Strength from the Soil", our family farmers gain their strength from the soil! We are keeping the soil in control of family farmers.

There will be some here today who will tell you that this won't work. If that is true, what is their worry? We will be no worse off than we currently are. I would also encourage those who will oppose this effort, and I respectfully recognize that is their right, to offer their solution to this problem. To sum up my position on this issue, "doing nothing is not an option"! Thank you and I will try to answer any questions.

## North Dakota Dairy Industry: By the Numbers

1/15/2015

Two largest dairy producing counties in North Dakota: Emmons and Morton

### \*Dairy Production:

- **North Dakota dairy production fell** from 585 million lbs. (2002) to a low of 342 million lbs. (2013)
  - 41.5% decrease
  - Still falling
  - Since 2007, **lost** 102 million pounds of production
    - 23.0% decrease
- **South Dakota dairy production steadily increased** from 1.4 million lbs. (2002) to 2.0 million lbs. (2012)
  - 53.8% increase
  - Since 2007, added 3.3 billion pounds of milk production
    - 22% increase

### \*Dairy Headcount:

- **North Dakota:** Down from 40,000 (2002) to 16,000 (2014)
  - 60.0% decrease
- **South Dakota:** ~~Down from 96,000~~ <sup>INCREASE</sup> from 96,000 (2002) to 97,000 (2014)  
12,800 ~~10%~~ increase <sup>86,000</sup>
  - Increased 7,000 head just six years after passing corporate farming reform
    - From 90,000 in 2008 to 97,000 in 2014
  - 25,000 head **already permitted** to enter the state in 2015

### Costs to construct a dairy facility:

- Minimum herd size recommendation: 1600 head
- Cost: \$,4800-\$5,900/cow; \$7.68 - \$9.44 million total

### Smaller dairy operations:

- Can utilize robotic milkers effectively
- Robotic milkers cost approximately \$250,000
- One robot milks 55-60 cows/day

### Processors:

- Currently there are two large-scale, fluid milk processors in the state:
  - Dean's Foods, Bismarck
  - Kemps/Cass-Clay, Fargo
- Dry, specialty cheese plant in Polluck, SD heavily supplied by North Dakota milk
- As milk production in North Dakota continues to fall, the likelihood of losing a dairy processor greatly increases.

## **North Dakota Swine Industry: By the Numbers**

1/15/2015

**Two largest swine producing counties in North Dakota:** Grand Forks and Towner

### **\*Swine Production (thousand pounds):**

- **North Dakota swine production fell** from 6.7 million lbs. (2003) to a 5.2 million lbs. (2013)
  - 22.4% decrease
  - Still falling
- **South Dakota swine production steadily increased** from 604.4 million lbs. (2003) to 702.3 million lbs. (2013)
  - 16.2% increase

### **\*Swine Headcount:**

- **North Dakota:** Down from 150,000 (2003) to 135,000 (2013)
  - 10% decrease
- **South Dakota:** Down from 1.3 million (2003) to 1.2 million (2013)
  - 7.7% decrease
  - Proposing bill to add swine exemption this year

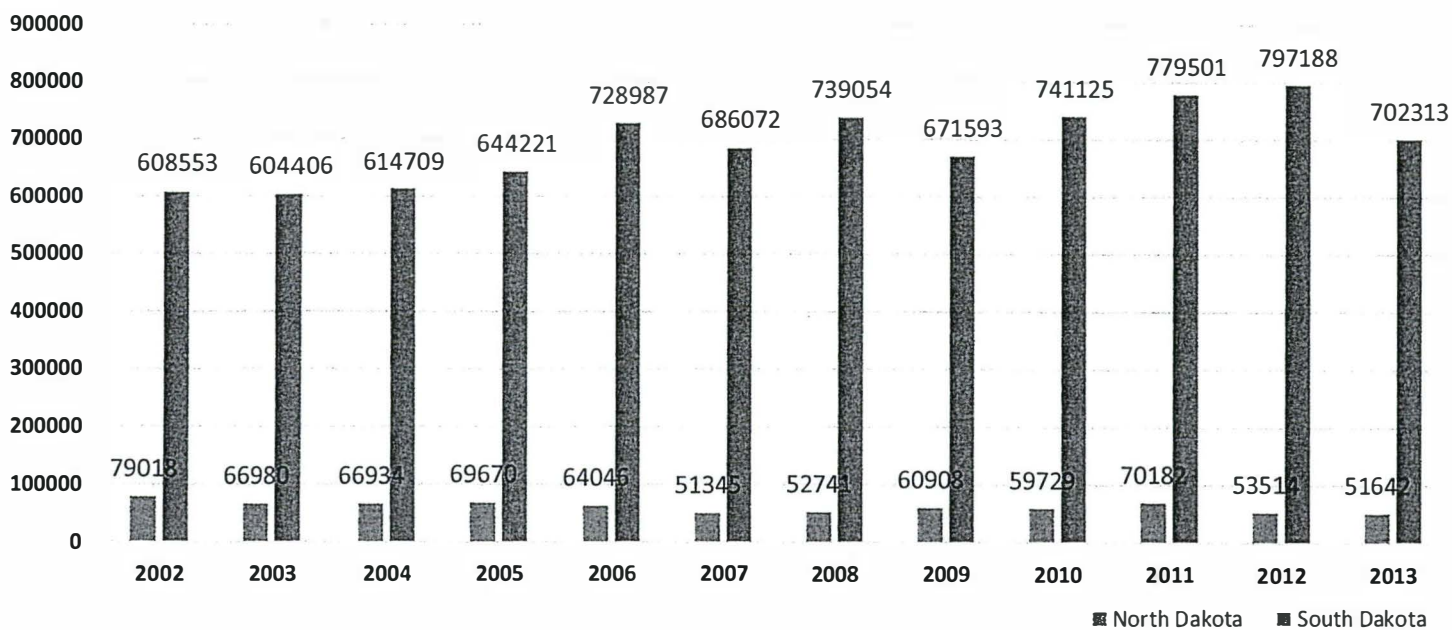
### **Costs to construct a swine facility:**

- **5,400 head farrowing unit start-up cost:** \$16 million
  - Structure: \$12 million
  - Animals, feed, labor: \$4 million
- **Annual Operating Expenses:** \$5-6 million

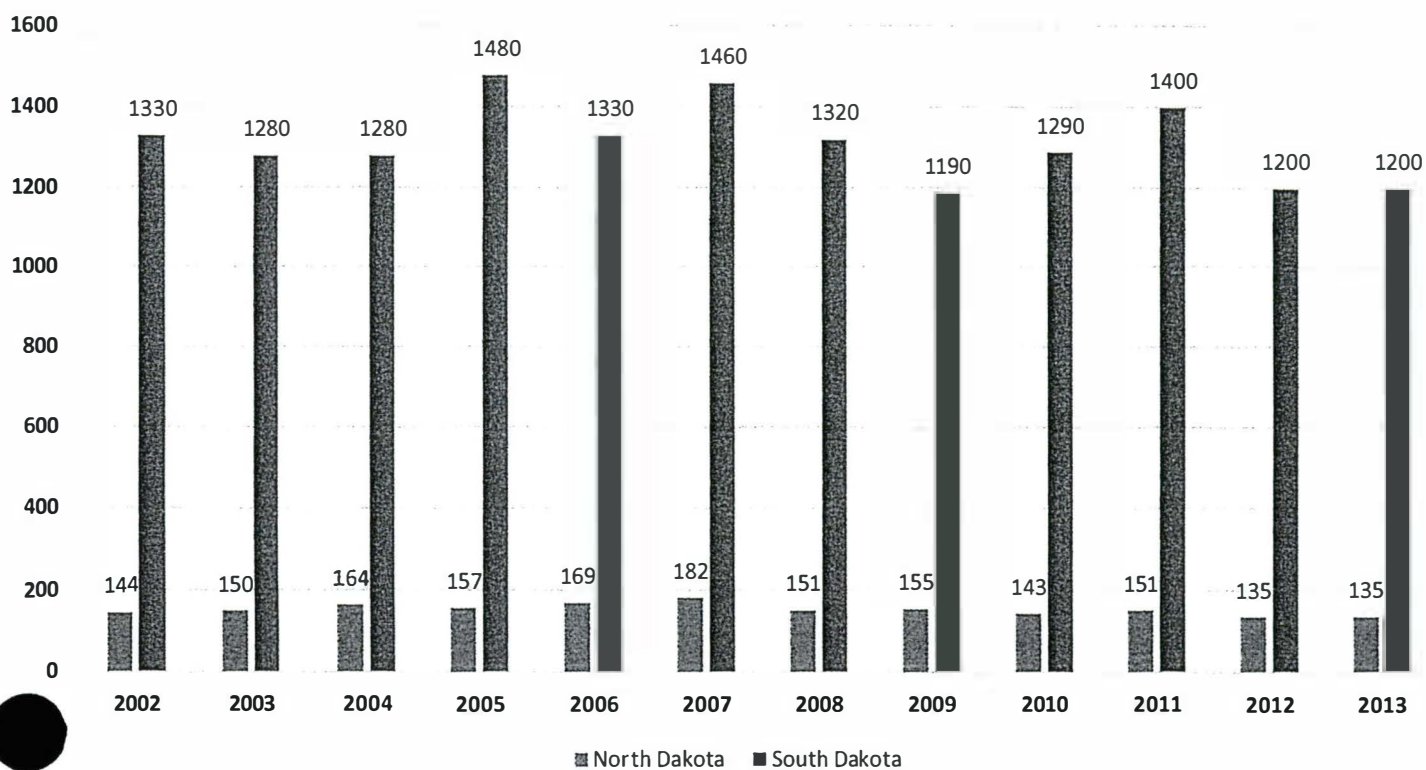
### **Feedstuffs used in 5,400 head farrowing operation (annually)**

- Corn: 150,000 bushels
- Soybean Meal: 750 tons
- DDGs: 2,500 tons
- Minerals, Vitamins & Minor Grains: 250 tons

## North Dakota vs. South Dakota Hog and Pig Production (Thousand Pounds)

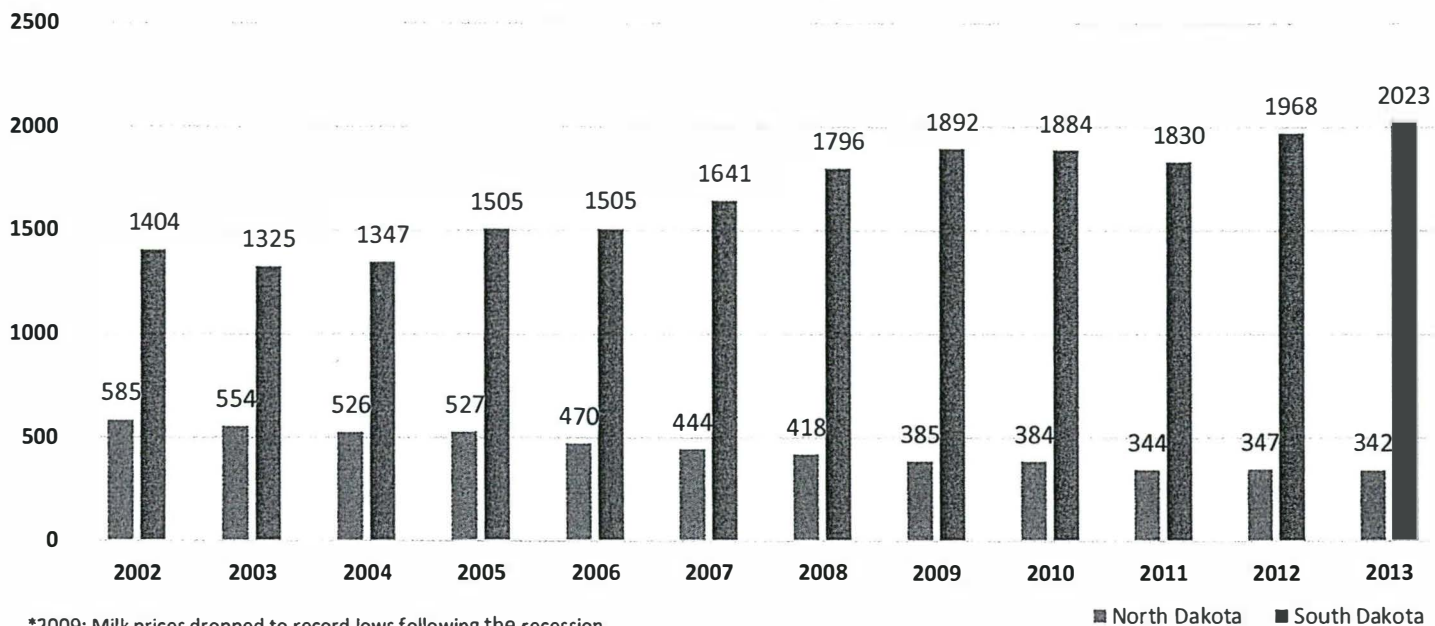


## North Dakota vs. South Dakota Swine Headcount (Thousand)



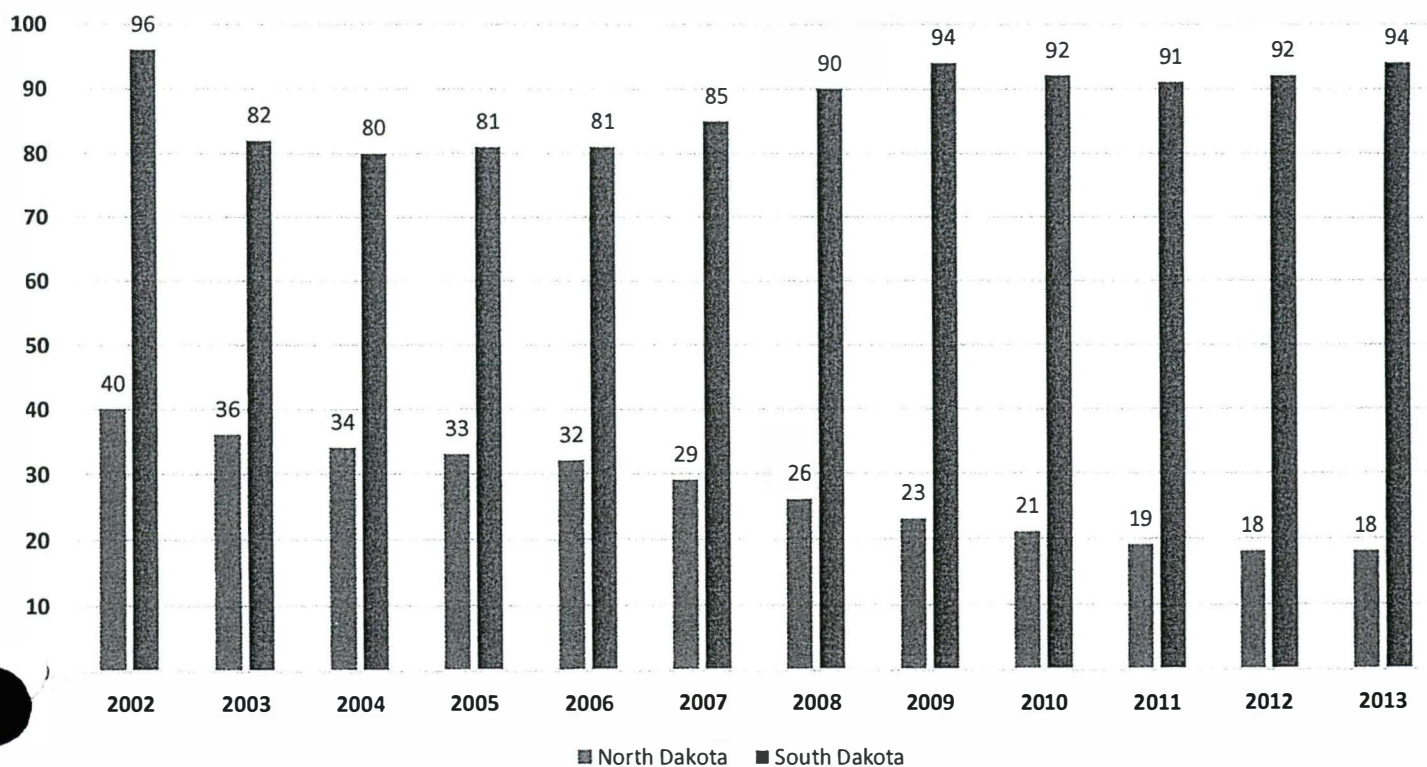


## North Dakota vs. South Dakota Milk Production (Million Pounds)



\*2009: Milk prices dropped to record lows following the recession.

## North Dakota vs. South Dakota Dairy Cow Headcount (Thousand)



Eight states have laws that prohibit or limit corporate farming—Kansas completely repealed their law in 2012.

- **South Dakota, including exemptions for:**

- Certain breeding stock, products and facilities
- Certain greenhouse operations
- Facilities for feeding poultry or producing meat or eggs
- Dairy on agricultural lands
- Banks and trust companies—Purchase of agricultural land through pooled investment fund
- Land owned by a corporations as of July 1, 1974
- Encumbrance taken for security exempt
- Gifts to nonprofit corporations exempt
- Farms, for scientific, medical, research, or experimental purposes exempt if sale of products incidental
- Raising breeding stock for resale exempt—nurseries and seed farms
- Livestock feeding
- Family farm and authorized corporations
  - Family farm—majority of stock held by family members

- **North Dakota**

- No exemptions

- **Oklahoma, including exemptions for:**

- Exemptions limited to domestic corporations
- Engages in research and or/feeding arrangements concerned with the feeding of livestock or poultry, but only to the extent of such research and/or feeding arrangements or such livestock or poultry operations
- Engages in operations concerned with the production and raising of livestock or poultry for sale or use as breeding stock
- Swine operations, including only directly related operations, such as facilities for the production of breeding stock, feed mills, processing facilities, and providing supervisory, technical and other assistance to any other persons performing such services on behalf of the corporation
- Engages in poultry operations, including only directly related operations, such as operating hatcheries, facilities for the production of breeding stock, feed mills, processing facilities, and providing supervisory, technical and other assistance to any other persons performing such services on behalf of the corporation to the extent of such operations in this state by the corporation on the effective date of this act
- Engages in forestry
- Non-profits
- Presently engages in fluid milk processing

- **Iowa, including exemptions for:**

- Authorized farm corporation
  - Stockholders do not exceed 25, are all natural persons or acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations
- Land owned by nonprofit corporations
- Land owned by municipal corporations
- Agricultural land held for research or experimental purposes

- **Minnesota, including exemptions for:**

- Authorized farm corporations
  - No more than five shareholders, who are natural persons and obtain specific amounts of their receipts from agriculture, actively engaged
- Authorized livestock farm corporation
  - Engaged in production of livestock other than dairy
  - All shareholders are natural persons, family farm trusts, or family
  - Revenue does not exceed 20% of gross receipts
  - Does not own more than 1500 acres of agricultural land

- Religious farms
- **Wisconsin, including exemptions for:**
  - Owned by a corporation on June 5, 1974
  - Acquired to meet pollution control requirements
  - Engaged primarily in research, breeding operations or the production of any crop primarily for seed
- **Nebraska, including exemptions for:**
  - Family Farm corporations
  - Non-profit corporations
  - Indian tribal corporations
  - Held by a corporation to meet the requirements of pollution control regulations
  - Raising poultry
  - Alfalfa production
  - Growing seed, nursery plants, or sod
  - Mineral rights on agricultural land
  - Custom spraying, fertilizing, or harvesting
- **Missouri, including exemptions for:**
  - Authorized farm corporation: all shareholders are natural persons and it must receive two-thirds or more of its total net income from farming
    - Family farm corporation includes corporations created for the purpose of farming,
    - At least one-half of the voting stock is held by and at least one-half of the stockholders are members of a family related to each other within the third degree of consanguinity,
    - At least one stockholder must be actively operating a farm
- **Kansas**
  - Completely repealed in 2012.

The United States Court of Appeals for the Eighth Circuit has struck down the Nebraska, South Dakota and Iowa laws on the dormant commerce clause.



## Drop in dairy discouraging



JANUARY 18, 2015 7:15 AM • BY JESSICA HOLDMAN

A drop in the number of North Dakota dairy farms -- from 350 in 2000 to 91 today -- has led to scrutiny of a state law that allows only family members to form farming corporations.

While the rule protects family-owned enterprises from corporate entities, farm numbers have dropped so low that the viability of milk-processing facilities in the state has become endangered, according to Doug Goehring, the state's commissioner of agriculture.

Some producers say they would like to follow South Dakota's lead to allow corporate farming in an effort to lure more dairy operators into the state.

"Our dairy industry is hurting terribly," Goehring said.

As a result, Goehring proposed to allow exceptions to North Dakota's non-corporate farming law for dairies, swine operations and feedlots to a full room of legislators during the first week of the legislative session.

"If the legislature wants to take this up and the ag community wants to push it, then I would think it probably would happen (this session)," said Goehring, adding producers need to own the issue in order to facilitate the change.

In 2000, there were about 49,000 dairy cows. Now, there are about 16,000 dairy cattle, according to Goehring. For swine operations, the headcount has decreased from 18,500 pigs in 2000 to 13,900. Beef cattle numbers have remained more stable, and a new slaughter plant scheduled to come online in Aberdeen, S.D., next year has more ranchers interested in starting feedlots.

"Dairy has probably been the one that has been the most hurt and in more dire need. We just continue to see declines," said Goehring, adding that out-of-state producers see benefits to moving their operations to North Dakota, but they would need to incorporate to make it financially feasible.

Jerry Messer, who raises dairy cattle on Beaver Creek Ranch in Richardton, said, when South Dakota tweaked its laws to allow multiple dairy investors instead of just one family, the state became successful at recruiting dairies.

### Positive ramifications

The vibrant dairy industry also benefits corn growers by allowing them to diversify and make more money, according to Messer.

"In North Dakota, corn goes to two places: It either goes to the ethanol plants or on a train to



another market," said Goehring, adding that grain farmers want another option for their grain. "For every 3,300 bushels of feed that is consumed by a cow or pig, that means one less rail car going out of the state."

## Importing milk

A milk processing facility in central North Dakota has been operating at a 600-cow-a-day deficit, forcing it to import milk into the state.

"When operations have to start doing that, plants start closing doors," Goehring said. "We don't have enough cows in central North Dakota anymore."

Goehring gave the example of a 25-partner outfit along the border. Farmers partnered with a dairy operation, providing feed while the one family operated the dairy. The dairy wasn't in competition with the farmers for land because it was content to allow others to grow feed while it did what it does best – manage the animals.

"I think it's those type of structures that seem appealing and seem to be working," Goehring said.

Kenton Holle, of Northern Lights Dairy of Mandan, agreed there is room for expansion of the industry.

"I think that there's a real possibility in North Dakota to see some livestock industries expand," said Holle, adding the adoption of current laws governing corporate farming would help.

Holle said he did not know of any dairy processing plants importing out-of-state milk. He said he thinks milk produced in the state now is adequate to keep them running.

"I think that's the key to it right there," Holle said of partnerships between dairies and farmers growing feed crops. If a law change were to be proposed, he says there should be a clause prohibiting large producers from buying up large amounts of land to plant their feed.

## Investment dollars

Producers need the ability to pool resources because dairy operations cost so much, according to Goehring, who said an operation often needs to be milking 600 to 800 cows to break even and a 1,600-head dairy operation takes several million dollars to start.

"Most farmers don't have that kind of money sitting around," he said, and many banks won't lend it to a single investor.

"Because our state has been primarily grain production ... lenders are not very familiar with animal agriculture. It's hard for them to understand the ebbs and flows that exist in the livestock industry, and they have more apprehension about lending," he said.

Messer, who is chairman of the Midwest Dairy Association and a member of the North Dakota Dairy Promotion Commission, said, with much of its new oil wealth, North Dakota is in a good position to recruit more dairies.

He suggested creating an investment fund for those with oil royalties who want to support North Dakota agriculture. He said the investors would get tax write-offs and the fund would supplement programs offered by the Bank of North Dakota for starting and growing farmers.

# Repealing corporate farming laws

By [REDACTED] ren Speidel • Daily News newsmonitor@midconetwork.com | Posted: Wednesday, February 4, 2015 3:00 pm

To compensate for the decline in both dairy and swine production, the North Dakota Legislature is looking into repealing its corporate farming laws.

Both industries have shown significant declines the past 10 years. Legislators say without intervention, swine and dairy production may disappear from the North Dakota plains. If the current law is amended, it would only allow corporate farming in the swine and dairy industries.

North Dakota has had anti-corporate farming laws on the state books since 1932. Until 1981, all corporations were prohibited from farming within the state until the Legislature amended its law to prohibit corporations from owning or leasing land used for farming or ranching.

Sen. Larry Luick, R-District 25, supports repealing the corporate farming laws, as long as there are limits. He said the trend among corporate farms is to buy valuable farmland and squeeze out local farmers. The Legislature is looking to limit the amount of land that can be purchased to only the property on which the facility will be located, Luick said.

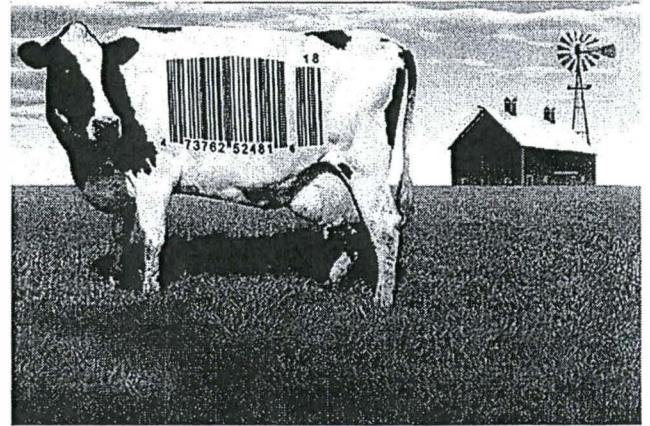
Allowing limited corporate farming by itself should not be a deterrent, Luick said, since many N.D. farmers already have formed corporations. Corporations themselves are more about tax structures and to limit liability.

He said there are large dairies in other states interested in locating to North Dakota, but only if they have the protection of a corporation.

The Legislature has looked at amending its corporate farming law during the past three sessions. Luick said he thinks this is the year it will be amended to allow corporate dairy and swine farms.

The past 10 years have shown significant decreases in swine and dairy production within the state as there are 100 fewer head of hogs and 20,000 fewer head of dairy cows.

North Dakota had 467 dairy producers in 2003. That number dropped to 91 dairy producers in 2013. Since then, Luick said, two more dairies have closed and two more are on the brink of closure, to leave North



## Repealing corporate farming laws

To compensate for the decline in both dairy and swine production, the North Dakota Legislature is looking into repealing its corporate farming laws.

Dakota with about 87 dairy producers.

“North Dakota is importing milk. We’ve never had to do that before,” Luick said.

Luick was raised on a beef and hog farm, and said his neighbor operated a dairy. He understands the work involved in keeping a dairy operation running. “Kids are not wanting to pick up a dairy business. The physical demands and commitment isn’t there to milk twice a day,” he added.

To compound the issue, processors themselves are looking at pulling out of the state because there aren’t enough materials to stay operational.

Testimony was heard in the Senate Agriculture Committee that shifts are being cut at two dairy processing plants, Cass Clay in Fargo and Dean Foods in Bismarck, since milk production is down.

Dairy farming in the United States is undergoing dramatic changes, driven by both supply and demand factors, according to a report by the Economic Research Service with the U.S. Department of Agriculture. The number of dairy farms with fewer than 200 cows is shrinking rapidly while very large operations, with 1,000 to 30,000 cows on one site account for rapidly growing shares of production.

Dairy production continues to increase in South Dakota and Minnesota, according to monthly numbers released Jan. 22 by the National Agricultural Statistics Service, an arm of USDA. So far, North Dakota doesn’t produce enough milk to be included in the report. South Dakota produced 183 million pounds of milk in December, 6.4 percent more than the same month a year ago, while Minnesota produced 784 million pounds, up from 766 million pounds in the same period a year earlier.

There are two Grade A dairies in Richland County. Luick said repealing the corporate farm ownership among dairy and swine operations should benefit local dairies.

Luick said he sees many benefits to corporate farming, such as better utilizing corn for feed, alfalfa, soybean meal and other ethanol plant byproducts. “It is another market for grain raised in a specific area. We are shipping way too much soybean and grain out of this state. We should focus on adding value to that product and utilize it here in our state,” he added.

(Text Missing)



## Anti-corporate exemptions proposed for dairy, swine

JANUARY 26, 2015 5:00 PM • BY JESSICA HOLDMAN

As the dairy industry continues to shrink in North Dakota, lawmakers are looking to save it by allowing operators to incorporate.

Sen. Terry Wanzek, R-Jamestown, introduced a bill Monday that would exempt certain dairies and swine operations from the state's anti-corporate farming law.

Wanzek, a fourth-generation family farmer, said the bill would follow South Dakota's lead by tweaking the 80-year-old law. Under the legislation, operations with no more than 640 leased or owned acres would be allowed to incorporate under the exemption.

"Our goal is to provide complementary operations where farmers can maintain their land and corporations manage the animals and operations," Wanzek said in a statement. "The sheer start-up costs alone for a hog or dairy operation make it cost-prohibitive without more access to capital."

The bill also would benefit the corn and soybean industries by providing additional demand for feed, Wanzek said.

"A small increase in demand for corn or feedstock could create at least \$100 million in increased agricultural income," said Bart Schott, a North Dakota Corn Growers Board member and former National Corn Growers Association president.

Dairy production has dropped 42 percent in the past 10 years, and swine operations are on a similar decline.

"Doing nothing is not an option," Wanzek said. "We have to do something to save these industries in our state."



## Dairies looking for ways to rebound

JANUARY 21, 2015 3:30 AM

Dairy farming always has been a demanding business. It requires early morning milking followed by another round of milking late in the afternoon.

And it's hard to take a break — you can't let the cows wait a day.

North Dakota hasn't ranked among the top dairy states, in fact, the state's dairy numbers are falling. In a Sunday story, reporter Jessica Holdman noted that the number of dairy farms has slipped from 350 in 2000 to 91 today.

This has prompted a search for solutions. One idea being considered is changing the state law that allows only family members to form farming corporations.

Agriculture Commissioner Doug Goehring warns that the future of milk-processing facilities in the state are at stake. He's urging producers to take the lead in seeking changes.

He's suggested exceptions to North Dakota's non-corporate farming law for dairies, swine operations and feedlots.

"If the Legislature wants to take this up and the ag community wants to push it, then I would think it probably would happen (this session)," he said.

South Dakota has made changes to allow corporate farming in an effort to lure more dairy operators into the state.

Goehring thinks out-of-state producers would move their operations to North Dakota if they could incorporate to make it financially feasible.

He also said producers need to be able to pool their resources because dairy operations are expensive.

Jerry Messer, who raises dairy cattle on Beaver Creek Ranch in Richardton, told the Tribune when South Dakota tweaked its laws to allow multiple dairy investors instead of just one family, the state saw success at recruiting dairies.

A slaughter plant scheduled to begin operating in Aberdeen, S.D., next year already has ranchers interested in starting feedlots.

Giving new life to dairy farms, feedlots and swine operations can have trickle down benefits. It provides more customers for corn producers and allows them to diversify. Also, if the corn is sold locally the producers don't have to rely as much on rail service. If we produce more milk it will reduce milk imports.

The proposals have merit and it's up to producers to get the Legislature's approval. Goehring thinks legislators will approve but he's made it clear that producers will have to lead the way.

2/12/2015

Dairies looking for ways to rebound

p. 17

If the decision is made to pursue changes in the law, everyone should realize this could just be the beginning. Once the law is modified, it's likely to draw more attention.

This would be a good time to review the entire law and see if fits the needs of North Dakota in 2015.

It's up to the producers to make the next move.

**Dairy Cow Headcount - IL, IN, IA, KS, MI, MN, NE, ND, SD, WI**  
**Source: National Agricultural Statistics Service, [www.nass.usda.gov](http://www.nass.usda.gov)**

YEAR	ILLINOIS	INDIANA	IOWA	KANSAS	MICHIGAN	MINNESOTA	NEBRASKA	NORTH DAKOTA	SOUTH DAKOTA	WISCONSIN
2013	97,000	176,000	208,000	134,000	380,000	464,000	54,000	18,000	94,000	1,271,000
2012	98,000	175,000	205,000	126,000	375,000	465,000	56,000	18,000	92,000	1,270,000
2011	98,000	172,000	204,000	123,000	366,000	468,000	57,000	19,000	91,000	1,265,000
2010	100,000	170,000	210,000	119,000	358,000	470,000	59,000	21,000	92,000	1,262,000
2009	102,000	168,000	214,000	118,000	355,000	469,000	61,000	23,000	94,000	1,257,000
2008	102,000	167,000	213,000	117,000	350,000	464,000	58,000	26,000	90,000	1,252,000
2007	103,000	166,000	213,000	110,000	335,000	460,000	59,000	29,000	85,000	1,247,000
2006	103,000	165,000	205,000	112,000	320,000	450,000	61,000	32,000	81,000	1,243,000
2005	104,000	156,000	195,000	111,000	312,000	453,000	60,000	33,000	81,000	1,236,000
2004	107,000	151,000	193,000	113,000	303,000	463,000	61,000	34,000	80,000	1,241,000
2003	111,000	149,000	201,000	111,000	302,000	473,000	64,000	35,000	82,000	1,256,000
2002	115,000	151,000	209,000	107,000	301,000	487,000	67,000	40,000	86,000	1,271,000
2001	116,000	153,000	210,000	93,000	303,000	510,000	72,000	46,000	89,000	1,292,000
2000	120,000	146,000	215,000	91,000	300,000	534,000	76,000	48,000	95,000	1,344,000
1995	151,000	144,000	251,000	82,000	326,000	592,000	74,000	64,000	118,000	1,490,000
1990	174,000	156,000	280,000	99,000	340,000	710,000	97,000	85,000	140,000	1,731,000
1985	227,000	192,000	352,000	109,000	394,000	913,000	109,000	101,000	162,000	1,876,000
1980	233,000	201,000	368,000	123,000	395,000	862,000	121,000	93,000	159,000	1,815,000
1975	243,000	215,000	401,000	142,000	411,000	884,000	152,000	115,000	174,000	1,812,000
1970	297,000	237,000	497,000	188,000	433,000	949,000	174,000	137,000	183,000	1,814,000
1965	422,000	330,000	718,000	247,000	585,000	1,232,000	255,000	223,000	226,000	2,075,000
1960	570,000	426,000	851,000	332,000	641,000	1,265,000	327,000	277,000	248,000	2,150,000
1955	788,000	579,000	1,022,000	468,000	809,000	1,378,000	428,000	368,000	302,000	2,302,000
1950	925,000	693,000	1,124,000	560,000	863,000	1,349,000	462,000	375,000	333,000	2,160,000
1945	1,111,000	803,000	1,343,000	723,000	985,000	1,660,000	575,000	495,000	440,000	2,360,000
1940	1,061,000	738,000	1,383,000	708,000	908,000	1,632,000	605,000	484,000	456,000	2,165,000
1935	1,136,000	770,000	1,455,000	831,000	860,000	1,630,000	686,000	542,000	501,000	2,030,000
1930	1,000,000	688,000	1,323,000	757,000	778,000	1,524,000	642,000	521,000	532,000	1,973,000



**Milk Production (Pounds) - IL, IN, IA, KS, MI, MN, NE, ND, SD, WI**  
**Source: National Agricultural Statistics Service, [www.nass.usda.gov](http://www.nass.usda.gov)**

YEAR	ILLINOIS	INDIANA	IOWA	KANSAS	MICHIGAN	MINNESOTA	NEBRASKA	NORTH DAKOTA	SOUTH DAKOTA	WISCONSIN
2013	1,879,000,000	3,830,000,000	4,606,000,000	2,932,000,000	9,164,000,000	9,140,000,000	1,165,000,000	342,000,000	2,023,000,000	27,572,000,000
2012	1,868,000,000	3,752,000,000	4,513,000,000	2,732,000,000	8,991,000,000	9,073,000,000	1,186,000,000	347,000,000	1,968,000,000	27,224,000,000
2011	1,814,000,000	3,553,000,000	4,323,000,000	2,585,000,000	8,478,000,000	8,890,000,000	1,173,000,000	345,000,000	1,873,000,000	26,058,000,000
2010	1,840,000,000	3,416,000,000	4,342,000,000	2,497,000,000	8,333,000,000	9,102,000,000	1,168,000,000	384,000,000	1,884,000,000	26,035,000,000
2009	1,862,000,000	3,383,000,000	4,301,000,000	2,488,000,000	7,968,000,000	9,019,000,000	1,198,000,000	387,000,000	1,892,000,000	25,239,000,000
2008	1,862,000,000	3,287,000,000	4,236,000,000	2,415,000,000	7,763,000,000	8,782,000,000	1,083,000,000	418,000,000	1,796,000,000	24,472,000,000
2007	1,917,000,000	3,371,000,000	4,278,000,000	2,187,000,000	7,625,000,000	8,656,000,000	1,075,000,000	444,000,000	1,641,000,000	24,080,000,000
2006	1,983,000,000	3,277,000,000	4,126,000,000	2,345,000,000	7,115,000,000	8,369,000,000	1,118,000,000	470,000,000	1,505,000,000	23,398,000,000
2005	1,958,000,000	3,166,000,000	4,025,000,000	2,276,000,000	6,750,000,000	8,195,000,000	1,077,000,000	468,000,000	1,437,000,000	22,866,000,000
2004	1,978,000,000	3,027,000,000	3,851,000,000	2,216,000,000	6,330,000,000	8,102,000,000	1,049,000,000	465,000,000	1,347,000,000	22,085,000,000
2003	2,047,000,000	2,939,000,000	3,810,000,000	2,130,000,000	6,375,000,000	8,258,000,000	1,129,000,000	500,000,000	1,330,000,000	22,266,000,000
2002	2,051,000,000	2,658,000,000	3,804,000,000	2,030,000,000	6,120,000,000	8,458,000,000	1,167,000,000	593,000,000	1,289,000,000	22,074,000,000
2001	2,020,000,000	2,567,000,000	3,785,000,000	1,610,000,000	5,870,000,000	8,812,000,000	1,166,000,000	644,000,000	1,370,000,000	22,199,000,000
2000	2,094,000,000	2,419,000,000	3,934,000,000	1,540,000,000	5,705,000,000	9,493,000,000	1,255,000,000	686,000,000	1,474,000,000	23,259,000,000
1995	2,399,000,000	2,214,000,000	4,047,000,000	1,180,000,000	5,565,000,000	9,409,000,000	1,095,000,000	838,000,000	1,581,000,000	22,942,000,000
1990	2,559,000,000	2,276,000,000	4,233,000,000	1,245,000,000	5,234,000,000	10,030,000,000	1,345,000,000	1,073,000,000	1,716,000,000	24,187,000,000
1985	2,721,000,000	2,358,000,000	4,058,000,000	1,285,000,000	5,568,000,000	10,835,000,000	1,340,000,000	1,120,000,000	1,744,000,000	24,700,000,000
1980	2,540,000,000	2,210,000,000	3,994,000,000	1,330,000,000	4,970,000,000	9,535,000,000	1,315,000,000	939,000,000	1,669,000,000	22,380,000,000
1975	2,446,000,000	2,210,000,000	3,893,000,000	1,392,000,000	4,411,000,000	8,946,000,000	1,431,000,000	917,000,000	1,556,000,000	18,900,000,000
1970	2,850,000,000	2,382,000,000	4,670,000,000	1,740,000,000	4,602,000,000	9,636,000,000	1,566,000,000	1,065,000,000	1,578,000,000	18,435,000,000
1965	3,844,000,000	2,954,000,000	5,945,000,000	1,749,000,000	5,528,000,000	10,731,000,000	1,821,000,000	1,467,000,000	1,580,000,000	18,841,000,000
1960	4,229,000,000	3,178,000,000	5,940,000,000	1,922,000,000	5,173,000,000	10,272,000,000	2,008,000,000	1,731,000,000	1,463,000,000	17,780,000,000
1955	5,027,000,000	3,845,000,000	5,958,000,000	2,354,000,000	5,396,000,000	8,833,000,000	2,298,000,000	1,785,000,000	1,368,000,000	16,482,000,000
1950	5,208,000,000	3,708,000,000	6,171,000,000	2,548,000,000	5,420,000,000	8,067,000,000	2,250,000,000	1,699,000,000	1,402,000,000	14,796,000,000
1945	5,777,000,000	3,814,000,000	6,702,000,000	2,943,000,000	5,506,000,000	8,599,000,000	2,501,000,000	1,970,000,000	1,650,000,000	14,939,000,000
1940	5,188,000,000	3,225,000,000	6,611,000,000	2,860,000,000	4,949,000,000	8,405,000,000	2,589,000,000	2,081,000,000	1,746,000,000	12,665,000,000
1935	4,873,000,000	3,049,000,000	6,009,000,000	3,075,000,000	4,257,000,000	7,384,000,000	2,689,000,000	1,951,000,000	1,603,000,000	10,921,000,000
1930	4,650,000,000	2,931,000,000	5,927,000,000	3,058,000,000	4,014,000,000	7,590,000,000	2,806,000,000	2,136,000,000	2,197,000,000	11,207,000,000



**Swine Headcount - IL, IN, IA, KS, MI, NE, ND, SD, WI**  
**Source: National Agricultural Statistics Service, [www.nass.usda.gov](http://www.nass.usda.gov)**

YEAR	ILLINOIS	INDIANA	IOWA	KANSAS	MICHIGAN	MINNESOTA	NEBRASKA	NORTH DAKOTA	SOUTH DAKOTA	WISCONSIN
2014	4,600,000	3,600,000	20,900,000	1,800,000	1,100,000	7,850,000	3,100,000	139,000	1,250,000	300,000
2013	4,550,000	3,650,000	20,200,000	1,750,000	1,060,000	7,800,000	3,050,000	135,000	1,200,000	295,000
2012	4,600,000	3,800,000	20,600,000	1,900,000	1,090,000	7,650,000	3,000,000	135,000	1,190,000	320,000
2011	4,650,000	3,800,000	20,000,000	1,890,000	1,050,000	7,800,000	3,100,000	149,000	1,390,000	340,000
2010	4,350,000	3,650,000	19,100,000	1,800,000	1,040,000	7,700,000	3,150,000	143,000	1,290,000	330,000
2009	4,250,000	3,600,000	18,900,000	1,800,000	1,080,000	7,200,000	3,050,000	155,000	1,180,000	350,000
2008	4,350,000	3,550,000	19,900,000	1,740,000	1,030,000	7,500,000	3,350,000	151,000	1,280,000	360,000
2007	4,350,000	3,700,000	19,400,000	1,880,000	1,030,000	7,700,000	3,350,000	182,000	1,460,000	440,000
2006	4,200,000	3,350,000	17,300,000	1,860,000	990,000	6,900,000	3,050,000	169,000	1,270,000	450,000
2005	4,000,000	3,250,000	16,600,000	1,800,000	960,000	6,600,000	2,900,000	157,000	1,430,000	430,000
2004	4,100,000	3,200,000	16,300,000	1,720,000	950,000	6,500,000	2,850,000	164,000	1,280,000	430,000
2003	4,000,000	3,100,000	15,900,000	1,660,000	950,000	6,500,000	2,900,000	150,000	1,280,000	480,000
2002	4,150,000	3,250,000	15,500,000	1,530,000	870,000	6,100,000	3,000,000	144,000	1,330,000	520,000
2001	4,250,000	3,200,000	15,400,000	1,570,000	960,000	5,800,000	2,900,000	154,000	1,290,000	540,000
2000	4,150,000	3,350,000	15,100,000	1,520,000	950,000	5,800,000	3,050,000	185,000	1,320,000	610,000
1995	4,800,000	4,000,000	13,500,000	1,300,000	1,100,000	4,950,000	4,050,000	280,000	1,450,000	880,000
1990	5,700,000	4,400,000	13,800,000	1,500,000	1,250,000	4,500,000	4,300,000	265,000	1,770,000	1,200,000
1985	5,400,000	4,150,000	13,500,000	1,520,000	1,190,000	4,100,000	3,900,000	285,000	1,610,000	1,250,000
1980	6,600,000	4,600,000	16,100,000	1,900,000	830,000	5,100,000	3,900,000	265,000	1,860,000	1,680,000
1975	5,600,000	3,900,000	12,600,000	1,650,000	700,000	3,000,000	2,700,000	350,000	1,400,000	1,150,000
1970	7,630,000	5,129,000	16,110,000	2,202,000	870,000	3,752,000	3,691,000	408,000	2,009,000	1,932,000
1965	6,618,000	3,944,000	12,857,000	1,242,000	652,000	2,856,000	2,761,000	290,000	1,493,000	1,476,000
1960	7,096,000	4,850,000	12,433,000	1,142,000	741,000	3,522,000	2,527,000	248,000	1,315,000	1,786,000
1955	6,348,000	4,610,000	11,602,000	929,000	783,000	3,637,000	2,423,000	421,000	1,494,000	1,865,000
1950	6,536,000	4,701,000	12,639,000	1,504,000	902,000	3,735,000	2,999,000	401,000	1,543,000	1,854,000
1945	6,337,000	4,157,000	11,494,000	1,470,000	949,000	4,082,000	3,168,000	621,000	1,997,000	1,866,000
1940	5,232,000	3,938,000	9,048,000	1,276,000	977,000	3,402,000	1,813,000	441,000	1,103,000	1,729,000
1935	3,860,000	2,942,000	7,250,000	1,248,000	620,000	2,242,000	2,238,000	345,000	855,000	1,340,000
1930	4,415,000	2,637,000	10,509,000	2,487,000	542,000	3,665,000	4,820,000	766,000	3,000,000	1,536,000



**Swine Production (Pounds) - IL, IN, IA, KS, MI, NE, ND, SD, WI**  
**Source: National Agricultural Statistics Service, [www.nass.usda.gov](http://www.nass.usda.gov)**

YEAR	ILLINOIS	INDIANA	IOWA	KANSAS	MICHIGAN	MINNESOTA	NEBRASKA	NORTH DAKOTA	SOUTH DAKOTA	WISCONSIN
2013	2,020,410,000	1,648,744,000	10,660,075,000	901,099,000	571,196,000	3,909,753,000	1,176,722,000	51,642,000	702,313,000	169,479,000
2012	1,962,779,000	1,753,128,000	10,345,144,000	907,366,000	548,754,000	3,938,732,000	1,239,968,000	53,480,000	790,048,000	166,642,000
2011	1,867,443,000	1,736,994,000	9,789,483,000	924,568,000	615,658,000	3,675,511,000	1,328,259,000	67,433,000	773,741,000	174,266,000
2010	1,915,998,000	1,753,822,000	9,211,017,000	877,774,000	619,869,000	3,685,752,000	1,348,289,000	59,469,000	734,825,000	174,125,000
2009	1,825,859,000	1,726,612,000	9,614,705,000	910,834,000	600,484,000	3,651,800,000	1,351,209,000	60,908,000	667,493,000	190,076,000
2008	1,698,057,000	1,726,027,000	9,405,442,000	866,318,000	572,559,000	3,765,589,000	1,376,728,000	52,741,000	736,454,000	201,129,000
2007	1,513,202,000	1,607,328,000	8,444,429,000	874,765,000	549,965,000	3,540,381,000	1,437,629,000	51,345,000	686,072,000	217,526,000
2006	1,523,074,000	1,484,896,000	8,021,396,000	799,949,000	482,308,000	3,327,429,000	1,412,340,000	62,401,000	721,462,000	219,648,000
2005	1,614,032,000	1,485,217,000	7,741,072,000	779,315,000	471,420,000	3,238,914,000	1,363,224,000	65,065,000	644,221,000	213,519,000
2004	1,732,642,000	1,424,664,000	7,195,120,000	754,837,000	488,241,000	3,107,935,000	1,374,997,000	66,665,000	622,884,000	207,084,000
2003	1,827,857,000	1,568,223,000	6,797,817,000	681,291,000	478,077,000	3,016,013,000	1,427,503,000	62,985,000	611,406,000	238,925,000
2002	1,811,346,000	1,466,485,000	6,701,425,000	656,466,000	499,504,000	2,785,923,000	1,508,053,000	79,018,000	608,553,000	230,983,000
2001	1,826,191,000	1,445,711,000	6,400,094,000	644,674,000	491,070,000	2,773,774,000	1,450,821,000	92,042,000	612,385,000	279,636,000
2000	1,744,572,000	1,391,956,000	6,478,938,000	687,493,000	464,577,000	2,514,895,000	1,491,368,000	100,229,000	580,611,000	264,092,000
1995	2,184,541,000	1,753,240,000	5,681,967,000	587,225,000	446,182,000	2,013,666,000	1,705,401,000	110,119,000	701,314,000	436,632,000
1990	2,224,798,000	1,665,960,000	5,394,390,000	629,510,000	480,809,000	1,714,484,000	1,623,580,000	87,885,000	753,185,000	459,914,000

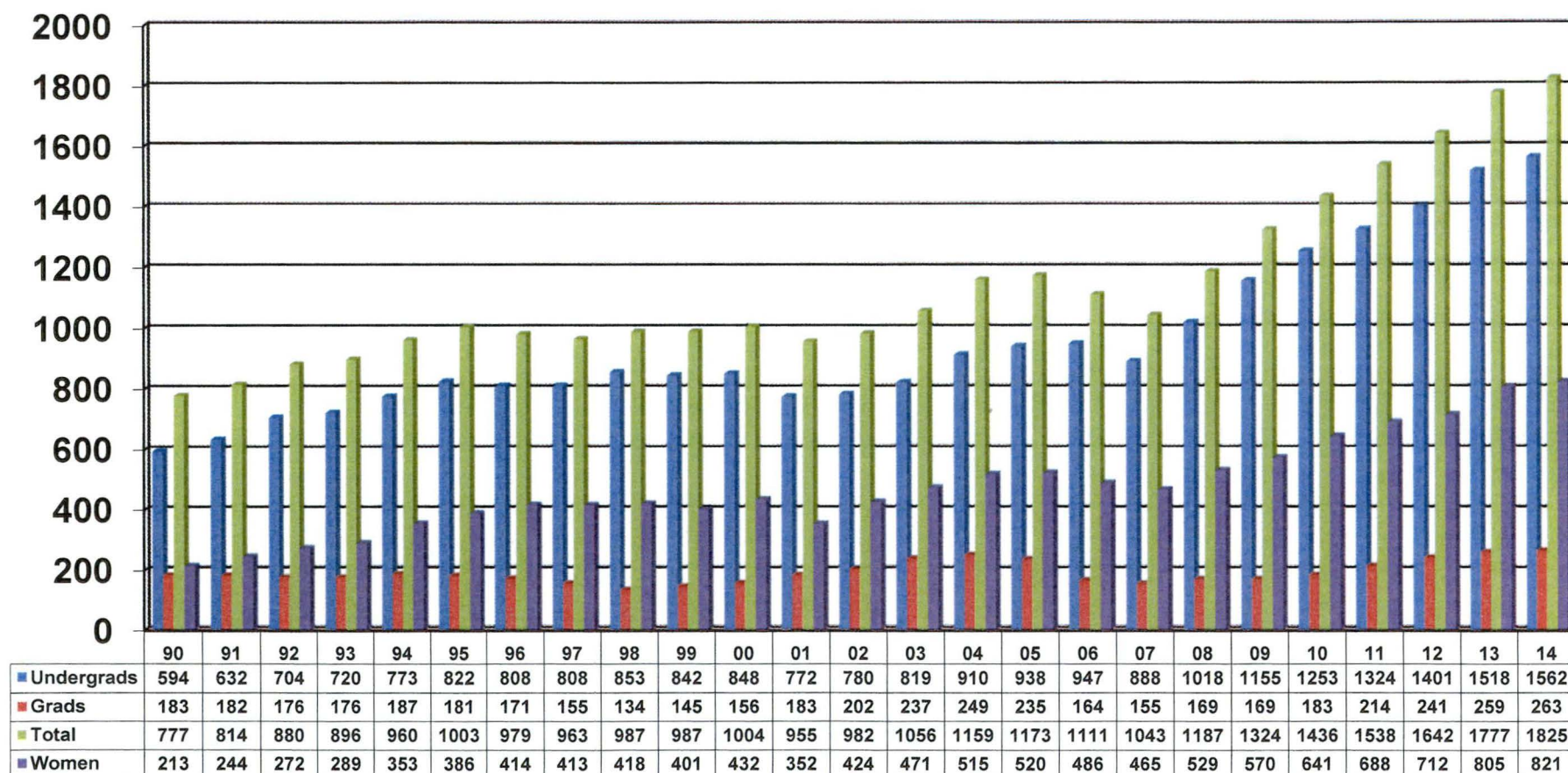
**Cattle on Feed (Total Head) - IL, IN, IA, KS, MI, MN, NE, ND, SD, WI**  
**Source: National Agricultural Statistics Service, [www.nass.usda.gov](http://www.nass.usda.gov)**

YEAR	ILLINOIS	INDIANA	IOWA	KANSAS	MICHIGAN	MINNESOTA	NEBRASKA	NORTH DAKOTA	SOUTH DAKOTA	WISCONSIN
2013	250,000	82,000	1,270,000	2,240,000	155,000	385,000	2,550,000	51,000	410,000	260,000
2012	240,000	100,000	1,300,000	2,370,000	150,000	340,000	2,650,000	60,000	380,000	270,000
2011	240,000	125,000	1,380,000	2,400,000	170,000	340,000	2,550,000	60,000	410,000	280,000
2010	250,000	120,000	1,360,000	2,370,000	170,000	310,000	2,500,000	90,000	400,000	260,000
2009	240,000	115,000	1,300,000	2,370,000	165,000	300,000	2,500,000	70,000	390,000	260,000
2008	170,000	110,000	1,350,000	2,630,000	170,000	325,000	2,700,000	70,000	400,000	250,000
2007	215,000	110,000	1,250,000	2,620,000	175,000	285,000	2,700,000	60,000	420,000	240,000
2006	205,000	115,000	1,180,000	2,550,000	190,000	290,000	2,600,000	60,000	400,000	230,000
2005	210,000	125,000	1,100,000	2,460,000	190,000	290,000	2,470,000	60,000	400,000	225,000
2004	200,000	105,000	1,050,000	2,480,000	210,000	310,000	2,450,000	65,000	375,000	210,000
2003	215,000	115,000	1,090,000	2,240,000	180,000	300,000	2,300,000	70,000	395,000	200,000
2002	225,000	115,000	1,020,000	2,530,000	190,000	285,000	2,400,000	62,000	370,000	200,000
2001	225,000	110,000	1,050,000	2,450,000	190,000	290,000	2,550,000	65,000	385,000	180,000
2000	240,000	130,000	1,100,000	2,370,000	200,000	285,000	2,450,000	70,000	360,000	190,000
1995	280,000	200,000	910,000	2,040,000	210,000	300,000	1,940,000	100,000	340,000	150,000
1990	310,000	235,000	980,000	1,595,000	220,000	300,000	2,060,000	40,000	260,000	120,000
1985	540,000	260,000	880,000	1,530,000	165,000	370,000	1,880,000	38,000	355,000	120,000
1980	460,000	250,000	1,390,000	1,270,000	165,000	390,000	1,680,000	39,000	350,000	112,000
1975	500,000	250,000	1,200,000	920,000	200,000	380,000	1,160,000	36,000	345,000	135,000
1970	755,000	349,000	2,213,000	892,000	210,000	589,000	1,477,000	63,000	361,000	146,000
1965	791,000	272,000	1,850,000	451,000	178,000	506,000	1,027,000	136,000	322,000	137,000



# NDSU Undergraduate & Graduate Enrollment

## College of Agriculture, Food Systems & Natural Resources



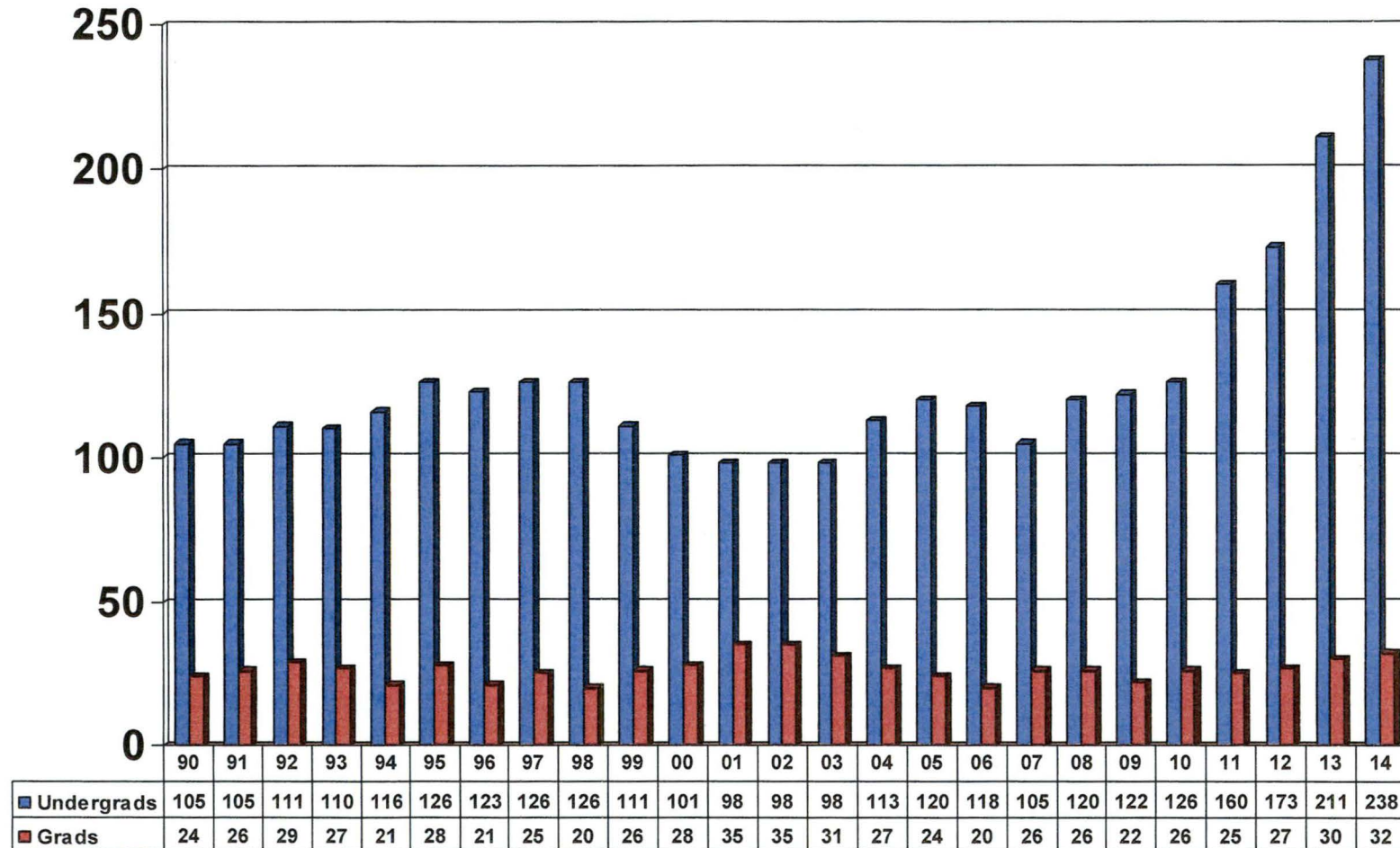
Please note: Interdisciplinary programs transferred to Graduate School for Fall Semester 2006.

NDSU College of Agriculture, Food Systems, and Natural Resources

September 2014



# NDSU Animal Science



NDSU College of Agriculture, Food Systems, and Natural Resources

September 2014

COMMISSIONER  
DOUG GOEHRING



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**NORTH DAKOTA  
DEPARTMENT OF AGRICULTURE**  
STATE CAPITOL  
600 E BOULEVARD AVE DEPT 602  
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**Testimony of Doug Goehring  
Agriculture Commissioner  
Senate Bill 2351  
Agriculture Committee  
Brynhild Haugland Room  
February 13, 2015**

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Chairman Miller and members of the Senate Agriculture Committee, I am Agriculture Commissioner Doug Goehring. I am here today in support of SB 2351, which will add exemptions to NDCC 10-6.1 for beef, dairy, and swine facilities that lease or own less than 640 acres.

After many conversations with producers and reviewing livestock data, I support the proposed changes to NDCC 10-6.1 on the condition that the bill is limited to swine, dairy and beef feedlots. The proposed changes would allow shareholders to invest into livestock entities and provide support for farmers and ranchers starting these capital intensive businesses. Diversification and sustainability of our livestock industry is critical to its growth, and I believe this bill will help achieve that goal.

The producers of the state have been asking for ways to revitalize their industries. Instead of me telling their stories, I want to allow them time to provide this committee with first-hand information and stories regarding the real state of their industries.

Chairman Miller and committee members, thank you for your time. I urge a do pass on SB  
2351. I would be happy to answer any questions you may have.



Livestock have been an integral part of my family's farm since my Great Grandfather homesteaded here in SE South Dakota in 1879. My 3 brothers, brother-in-law and 3 nephews carry on that tradition today with a beef cow herd and beef feedlot. Back in 1997 we were looking for opportunities to grow our business so that we could make room for our 5<sup>th</sup> generation. We thought land prices were way too high to buy a lot more land and the corresponding land rents were also too high we thought (back then!). So we made the decision to try and get more out of every acre we operated rather than to just get more acres.

We looked to livestock to accomplish that and settled on spearheading an effort to build a 1500 cow dairy. We were able to get a few neighbors interested but saw that we were going need to attract some outside capital to make that happen. We did, the Turner County Dairy was built and has worked out so well for the farmers that we have since bought out all but two of our outside investors. In round numbers, selling our corn to the dairy has returned us \$100 more per acre than combining the corn and selling it to the local elevator.

We do not have many of these "cooperative" dairies here in SD, but in our case, we would not have been able to accomplish this without the outside capital.

According to our South Dakota State University economist, Dr. Gary Taylor, each dairy cow generates \$14,000 in annual economic activity. Similar modeling has been done in Minnesota and Iowa and the number is well over \$20,000 per cow per year. Well over half of that "activity" stays in the local community, primarily to the local farmers that are raising the feed and getting the organic nutrients returned to their soil.

Our Governor, Dennis Daugaard grew up on a dairy farm and I was fortunate to serve as his first Secretary of Agriculture. We shared a passion for livestock and a

vision for the economic well-being of our rural communities. Livestock development was one of our top priorities.

Agriculture is South Dakota's number one industry and agriculture is the only industry that is consistently investing in our rural communities. Fortunately, our Legislators understand that and have witnessed firsthand how encouraging SD agriculture has benefited our state. Therefore, since our Family Farm Act of 1974 was enacted, the law has been amended and all but the swine industry have been exempted. That being said, an Attorney General's opinion has given new life to our swine industry so that it has been able to expand by 5% each of the last 3 years.

A vibrant and expanding livestock industry is critical to the future success of our farmers, ranchers and the communities they live in.

Walt Bones

45874 268<sup>th</sup> St.

Parker, SD 57053

605.940.8371

Chairman Miller and members of the committee I am Clark Price, a fourth generation farmer, rancher, feedlot and stocker operator from the Washburn area. Thank you for the opportunity to appear before the committee. I am here today in support of SB 2351 with an amendment that would add an exemption for feedlot facilities.

Mr. Chairman, you can't choose your family, but under this structure I can choose my partners. I would like the ability for four of my neighbors, fellow producers, college friends, local businesses or maybe Blue Flint Ethanol to contribute capital to form this business.

Corporate structures can and will help feedlot owners like myself by shifting the structure under which we do business. The ability to form a corporation would benefit me personally and everyone else in the industry in the following ways.

- This structure limits personal risk and protects individual assets.
  - Corporations can retain earnings until the profits from the company move to the investors in the form of dividends. This will put more revenue back into the business immediately, preventing further borrowing.
- Feedlot operations require about ten pounds of corn/DDGs per pound of beef. This structure presents good opportunities for corn farmers. Those growers should have the opportunity to invest, and find local markets to add value to their farms.
  - This would relieve transportation constraints.
  - Reduce commercial fertilizer use for area farmers.

I want my family and neighbors to have the ability to be involved in this business. The Cobblestone Inn is trying to build a facility in Washburn and looking for local investors. Once they hit 40% equity, they will build the hotel. Why in this state am I not allowed to do that same exact thing to build a feedlot?

Mr. Chairman, we have a state-of-the-art processing facility just south of our border in Aberdeen, SD. This facility has the capacity to process 425,000 head of fed cattle. I personally believe this business structure is a necessity for North Dakota to compete in a market where feedlots are shifting north. North Dakota cattle need to be supplying this facility. We have the cheapest feed supplies in the nation and yet, we aren't feeding cattle here.

There were 940,000 calves in North Dakota in 2013 but we only had 51,000 head of cattle on feed. In the same year, South Dakota had 410,000 cattle on feed; of which 20,000 are in the five counties that border southeast North Dakota.

Chairman Miller and committee members, I urge you to support SB 2351 with a feedlot exemption amendment. I would be happy to answer any questions you may have.



# 2013 Cattle on Feed

**North Dakota**

**North Dakota**

**51,000**

**South Dakota**

**Brown, Campbell, Marshall,  
McPherson, & Roberts  
Counties**

**20,556**

**South Dakota**

**410,000**

3. Domestic corporations and limited liability companies owning and operating a feedlot facility, provided the land owned or leased for that purpose does not exceed six hundred and forty acres.

## Testimony SB 2351

Kenton Holle 3<sup>rd</sup> Generation Dairy Farmer  
Mandan, ND

I would like to address three areas in my testimony in support of SB 2351.

First I would like to update you on the status of our present dairy farm industry.

Second would be what impact this bill would have on our dairy producers.

Third is the impact it would have on the other Ag producers in North Dakota.

It is well known that the numbers of dairy farmers in our state is on the decline.

There are several reasons for the lack of dairy farms. I don't think that I could rank them as far as the most prominent reason. Dairy farming is a very capitol and labor intensive business. It requires 24-7-365 attention. Family life style often suffers because of the labor requirements. Often times more labor for the farm than the family can provide is required. Finding good year around dairy farm help is difficult. That in itself is a very strong reason why some farmers quite or for that matter why a younger generation may not want to be involved.

Many of the dairy farm families in the state are using a facility that more than likely their grandfather built, which at one time their fathers remodeled or added onto and at some time the current generation added to that barn. So the facility is getting out dated and maybe even worn out. Many of today's dairy farming technologies are difficult to fit into a barn that was built more than 15 years ago. The solution to that would be to build a new facility. Dairy facilities require a lot of capitol to build and in order to provide for a sufficient cash flow to meet debt payments, may require a sizable increase in the number of milking cows. A new facility and additional cows means a lot of money. A producer may not be able to secure the needed credit or is not interested in making the jump to a different larger facility.

Those are probably some of the major reasons for our declining herd numbers.

Now lets consider those families who have a strong desire to continue in our state or someone who may wish to build a new facility.

The new robot milking technologies are a definite advantage to the labor struggles that we face.

With the larger herd size the requirements for labor is a must. So with either the robots or the large herds the individuals family labor roles change. Many times shifting from managing cows to managing computers and people. So a more acceptable lifestyle can be achieved by updating the dairy.

Changes, updates or new construction cost will certainly be in the hundreds of thousand of dollars and for new large barns into the multimillion s of dollars.

If an existing farm wishes to finance with the local bank they may run into credit limits that might restrict them on the amount of capitol available to borrow.



I am aware of the programs that the Bank of North Dakota has available to those banks who would be interested in financing a dairy farm expansion. It takes an exceptional institution willing to take on the role of the lead lender for a project such as this.

The area of start up capital is where the passing of this bill would have a very positive impact on not only the dairy but the swine industry as well. These livestock development programs take a lot of capital.

One of the greatest financial needs is that of patient capital. When a livestock facility is just starting there is a period of time, and it can be anywhere from 2-5 years, when the returns are not very good. We all know that no matter how good the terms we get from our bank, interest starts working against us as soon as we sign the note and the banks are looking for payments on a regular basis. Investors in these projects know that and they must be willing to wait it out till the cash flow has begun to generate some positive returns to get a return on their investment.

The other important part of the financial picture is the knowledge of the industry by the person lending or investing in a livestock facility. Having a knowledgeable and experienced financial person with livestock insights can be so critical to the success of an operation. Someone from within a corporate structure can bring that kind of expertise to a farming operation.

Eleven years ago our farm moved 45 miles from New Salem to St Anthony. I saw an opportunity to expand our farm from 120 cows to 600. My wife and I had been considering expanding our herd for several years but could never find a financial package that made that possible. Finding a built but not finished facility that was for sale allowed us to expand and make room for the next generation. That move changed a lot of things for us. One of the biggest things it did was to put us into a community where we did not really know anyone. Without our land base close by we became a marketing option for those farmers around us. Our cows require a minimum of 600 acres of corn silage every year, because of the cost to truck the wet silage those acres need to be within 8 miles from our farm. Over the years we have bought thousands of tons of alfalfa hay and thousands of bushels of corn grain from a very large radius around St. Anthony. In the spring and fall we inject the liquid manure from our lagoon onto the neighbors cropland. In 2014 between the cropland we farm at the dairy and what we applied onto our neighbors land we put down over \$100,000.00 in soil nutrients.

The vendor list that we do business with in our local area numbers in the hundreds. Repairs and improvements, fuel, feed, dairy farm supplies, just to name a few.

I only tell you that information so you can get an idea of the impact that a livestock facility can have.



Some are being very critical of this bill and are alarming others that it will completely change the structure of agriculture in North Dakota. When I compare the swine and dairy industry to the other sectors of North Dakota agriculture we really need to change. I started farming with my Dad in 1976, a lot has changed since then and my old neighborhood doesn't look the same. Most of the dairy farms are gone they are still farms but are now thousands of acre crop farms and have hundreds of head of beef cattle. The current corporate structure is fitting those producers just fine and they are not requesting any changes.

The wide spread support that this bill has would not be present if it were not restricting the scope and size of the operations able to participate.

I certainly would not be in support of it with out the acreage and facility restrictions in place.

I understand that many of the issues I addressed relating to investors and partners could already happen within the financial structure we have in North Dakota.

Passage of this bill would be another financial tool, another option, for the development of our dairy and swine industry.

Mr Chairman and Senators of the Ag Committee, since the year 2000 the North Dakota Dairy Coalition has been working to promote our states dairy industry from within and attracting others to come to North Dakota. It has had limited success and quite possibly we didn't have enough to offer. Even though this bill offers tremendous opportunities, it does not come with any guarantee's to our Swine and Dairy Industry.

The only thing that we know for sure is without this bills passage, what we have seen in the past will continue to happen, our swine and dairy numbers will decline. Without passage of SB 2351 we wont see the type of developments that others have indicated a strong interest in bringing to our state.

With the restrictions and requirements that this bill carries, why wouldn't we allow for the expansion of an agricultural base that can bring so many new and promising opportunities to our existing farms.

Good morning Chairman Miller and members of the Senate Agriculture Committee. For the record my name is Jeff Enger. I am a 2<sup>nd</sup> generation farmer and livestock producer from Marion, North Dakota. I am former chairman of the North Dakota Ag Coalition and a former chairman of the North Dakota Corn Utilization Council. My brother, son, nephew and I are active in a 1,000 head Holstein cattle feedlot operation. I stand in support of Senate Bill 2351.

Currently we get our cattle from Northeast Iowa and sell them finished to Tyson in Sioux City. The current dairy infrastructure is not enough for us to purchase cattle in North Dakota. Barnes County where our farm and feedlot are located is down to 4 functioning dairies. Our cattle buyer follows the calves and health program from birth to 550 lbs. which is when we purchase them to be finished. The care and health program is then transferred to our veterinarian.

You will likely get arguments that by changing this law out of state interests will come in and run small operations like ours out of business. I'm here today to tell you that it is getting harder and harder for our operation to function because so many have already gotten out of the business. This leads to less large animal veterinarian's, less feed suppliers, less sale barns, less students for livestock careers – generally less infrastructure. This change in the law will not impede family farms but it will compliment them. My only concern with making an exemption for our dairy and swine industries is that we may already be too late.

I will not be redundant in my testimony. You have heard from others that we are down to 16,000 dairy cattle in North Dakota. We are now a net importer of milk. This is a critical change in the law that may save the North Dakota dairy industry. A 1,600 head dairy for today's economy of scale has an estimated cost of \$7.7 to \$9.5 million to build. Current single owner family farms do not have the capital, labor resources and man power to compete at this economy of scale. By granting these exemptions in the law you will support the current economy of scale and allow more access to capital for facilities development and operating needs.

Livestock production is a method of adding value to crops by processing feed through animals. More livestock production increases local markets for corn, soybean meal, distiller's grains and other feeds. Corn production in North Dakota

has expanded from 120.7 million bushels in 2004 to 352 million bushels in 2014. Even though the corn industry has experienced tremendous growth in the past ten years, the opposite has occurred in our states dairy and swine industries. Because of this our feed is undervalued in North Dakota due to railroad congestion and distance to terminal markets. Livestock can add real value. In looking at Blue Flint (Underwood) and Tharaldson (Casselton) ethanol plant current bids for the months of February through May basis levels are at -.50 to -.70 per bushel. In looking at neighboring states that have more dairy, swine and livestock production, particularly southwestern Minnesota and southeastern South Dakota, typical ethanol plant bids for the same delivery months are -.23 to -.30 per bushel. Just across the border in Lyons & Sioux counties, Iowa - corn bids are -.05 to -.13. Sioux county, Iowa has an established livestock industry and is a net importer of corn. Think about that for a minute. Another .45 to .57 cents per bushel at current production levels would yield an additional \$158.4 to \$200 million to our economy before multiplier effects. This is due to the grain and the livestock industry competitively bidding to local farms.

Livestock enterprises help mitigate risks of weather, markets and price variability of crops. Intergrated crop and livestock production is more biologically sustainable as livestock manure for fertilizer improves soil health and crop productivity. When we export our corn we are also exporting phosphorous and other vital soil nutrients in unit train loads of grain. Livestock enterprises would serve to retain and recycle these nutrients in state and create a more sustainable agricultural economy for the long term.

Members of the Committee, I would urge a yes vote on Senate Bill 2351 and would be happy to take any questions.

Testimony SB 2351

Mister chairman, members of the committee,

My name is Harvey Hoff, chairman of the ND Dairy Coalition, and 3<sup>rd</sup> generation dairyfarmer from Richardton. My wife Janal and I have been dairy farming together for 34 years. We consider ourselves a family dairy milking 100 cows with an additional 100 head of youngstock.

In 2001 we completed our new 18,000 square foot dairy facility to house and milk 120 head of dairy cows. In February 2012 we retrofitted 2 Lely A3 next robotic milkers into the barn. This new technology helped us better manage our cows, farm, and family life, but it came at a huge cost, one that a younger dairy couple could not incur.

I support SB 2351 because it would give young couples and existing farmers another option for financing. Local banks are careful when lending money to dairies because of credit limits and capital needed. It would allow existing dairies and new dairies to expand and grow to meet our states needs for dairy products in our grocery stores and schools.

I believe this bill would help us when we plan our retirement strategy in the future, as it would make it easier to pass it on to a new generation or couple wanting to dairy. Our facility alone is worth several hundred thousand dollars and would be impossible for them to borrow money from a local bank. This would be an opportunity for us or another individual to incorporate and give them that needed start and keep another dairy farm from sitting empty.

This bill would also bring dairies from other states and possibly bring a processing plant with them, creating more jobs and help build the dairy infrastructure in our state.

Please pass this SB 2351 to help bring back dairies and the much needed balance our Ag state needs.



#8  
SB 2351  
2/13/15

Alan Qual  
13407 73<sup>rd</sup> ST SE  
Lisbon, N.D. 58054  
February 12, 2015

Senate Agriculture Committee  
Legislative Assembly of North Dakota

Dear Senate Agriculture Committee:

I am a long-time resident of our state and I am writing to support Senate Bill 2351.

I have watched our North Dakota Dairy Industry retract for the past 40 years and we need to make a move that will improve the future expansion and regrowth of our industry in our state.

This bill has in place acreage limits that will keep it focused on Dairy and Swine Farms and not impact other ranching and farming enterprises.

This bill will also allow family dairy farms incorporated under the Family Farm Corporation rules to maintain their operations without being forced to dissolve them if relationship rules can no longer be met. This is provided they do not exceed the acreage rules.

The next generation of my family members may face this challenge on our family's dairy farm.

Please consider supporting this legislation and help North Dakota's Dairy Industry get back on track towards a bright future.

Thank you!

Alan Qual

Mister Chairman, members of the committee;

My name is Craig Jarolimek, a Pork Producer from Forest River located in Walsh County

I come before this committee today in support of Senate Bill 2351

Passage of this bill, allowing an exception to the ownership or lease of land for swine and dairy operations is vital to the future sustainability and growth of livestock operations in this State

Defeat of this bill, puts ND in the back row; perhaps not even a seat in the arena of livestock based agriculture.

You will hear two messages from the opponents of this bill;

- 1) Passage of this bill hinders and competes with the family farms raising swine and operating dairies.
- 2) That mega farms or CAFOS will appear in ND, destroying our environment and destroying our communities.

I urge you not to be swayed by these false and misleading messages

Both messages are based on fear and emotion, not fact.

Let me address the 1<sup>st</sup> accusation;

That this will hinder the family farm opportunities.

- 1) Passage of this bill actually enhances the opportunity of a family farm wishing to enter into a career in agriculture.

The current law hinders individuals' access to capital, management support, sustainable markets, veterinarian support, and risk management.

If enacted this bill offers the opportunity for an individuals to partner with entities that can bring these expertise to them, greatly increasing their opportunity to succeed in their venture.

Animal agriculture is many times used as an entrance to family farming.

I would go so far as to say the current stature has been the hindrance to the family farm opportunities. It has been a catalyst to large acreage farming which leads to the decline of our rural churches and schools.

A young person wishing to engage in production agriculture in ND either has to be born into a family or marry into one or have a rich relative that is willing to help out.

For a young person to start out today takes a tremendous amount of capital with many risks.

This exemption to the current stature allows an individual wishing to enter production agriculture to partner with those that have the experience and capital to succeed

A custom feeding swine operation often is a stepping stone to complete owner held operations, once management expertise is learned, debt is retired, and capital is built.

Being an employee of a swine operation or dairy is a learning experience of management and business practices need to succeed. Also industry relationships can

be built during that period that can spur assistance in starting their own operation.

The 2nd accusation;  
The community and environment.

Today we have at least 10 swine operations and several dairies operating in this state that would be considered CAFO's or mega operations.

All have gone through a permitting and community approval process in operate in this state.

They are continually monitored and inspected by our State Health Dept

To my knowledge, there have not been any major violations or damage to the environment from these operations.

The process to site a livestock operation needs State and County approval.

I have trust in this process to be the gate keepers to protect our environment and way of life in ND

Believe me, as one who has gone through this process in siting and operating a large swine operation, this process is thorough and intense.

To receive a permit one must submit a complete plan of construction blue prints, manure management complete with easements to acres for manure application, not every year, but every third year, and mortality management.

( show booklet for permit of Turtle Mt Pork)



This plan for Turtle Mt Pork, west of Bottineau had to be approved by the State and Bottineau County Commission. A public hearing was held for the public to comment on the application.

Al though painful and stressful, this process leads to good planning and safe operations.

We must move forward and not be left behind  
Without this exemption swine and dairy will continue to struggle in this state

Thank you for your time and I am will answer any questions the committee may have.

#10  
SB 2351  
2/13/15

Chairman Miller, and members of the Senate Agriculture Committee,

My name is Tamra Heins, I live in New Salem, ND, I am here both personally and professionally to urge you to support a "do pass" recommendation of Senate Bill 2351.

I am a rancher, hog farmer, wife, mother and step mother of 6 and have been involved in livestock production agriculture my entire life.

Professionally, I have served as the Executive Director for the North Dakota Pork Council for the last 15 months. I have learned much about modern swine production and how dramatically it has changed in just a few years. Being a "pig farmer" has become a high tech industry with operations run by well trained and well educated people. While attending a national meeting, I was curious why our state has dramatically decreased in numbers of producers while others have not? Our state has so much to offer the swine industry. Our geography and demographics promotes an inherit level of biosecurity that is critically important for modern swine operations. As crop genetics have allowed the corn and soybean belt to grow farther north and west, we have more abundant feed resources to offer than ever before. And I believe the farmers of North Dakota would enjoy the idea of narrowing their basis and being able to deliver corn locally. We could become less dependent on rail service and enjoy corn prices that are similar to our Minnesota, South Dakota and Iowa counterparts.

In working with swine operations that are looking at North Dakota for new opportunities, I have found the biggest hurdle in growing the North Dakota swine industry is our current century code. Currently, swine operations would have to change their present business structure to operate within our state. They have been unwilling to do that since their present business structure has allowed them to operate successfully in other states; so they look elsewhere to operate. By supporting Senate Bill 2351 we would be saying to them that we are open to entertain opportunities for swine industry development in North Dakota.

As taxpayers, we have supported the NDSU Swine Barn and the teaching and research that happen there when other states were closing their swine facility doors. We support a State Swine Extension Specialist, many other states do not, and we are lucky to have one of the best in the nation. At NDSU, we have some

of the largest enrollments in swine production classes in the nation, yet upon graduation we tell them to go to a neighboring state to find a job in the swine industry.

With more growth and development in the swine industry in North Dakota, we would see more veterinarians with swine expertise, more animal health companies and more feed companies that would help to support the existing swine producers, like myself, in this state.

Personally, as a parent, if you have children in North Dakota that have a passion for livestock production agriculture, there are very few job opportunities in our state. This bill could help to create opportunities for families such as mine and others like mine that would have outside capital and expertise available to them. We could work with an existing swine operation to become a contract grower or many other options that would only be available through the passage of this bill.

As a community member of New Salem, a town that is proud of its dairying heritage, judging by the 40 foot dairy cow and having their team mascot be the Holsteins, the loss of their milk processor would only mean more dairy farmers that are my friends and neighbors, leaving the industry, by no fault of their own. I believe this would be detrimental to our community. I have already witnessed the selling of herds in my area that have made local employees have to search for other employment outside of agriculture and our community.

For generations we have not altered our century code to allow for livestock development, and here we are with record low numbers of dairy and swine. While some say this bill goes too far, some say it doesn't go far enough. I say that this is compromise, the foundation of good government. These industries are not asking for you to do something visionary, but to pass this bill so we are allowed to once again be competitive in the swine and dairy industry.

Thank you Chairman Miller for the opportunity to speak and I urge you and the committee members to vote for a do pass recommendation on Senate Bill 2351.

#11  
SB 2351  
2/13/15



*North Dakota Pork Council*  
*Seth Bacon, President*  
*3444 25<sup>th</sup> Ave NE*  
*Larimore, ND 58251*

Chairman Miller and members of the Senate Agriculture Committee,

My name is Seth Bacon. I am currently the president of the North Dakota Pork Council. Our organization represents a wide variety of hog producers. We have members who raise 4-H and FFA show pigs, niche producers, who direct sell their product, as well as larger commercial farms. On behalf of these producers, our board passed a resolution on February 3, 2015, to support Senate Bill 2351 to allow corporations and LLC's to own and operate swine and dairy farms.

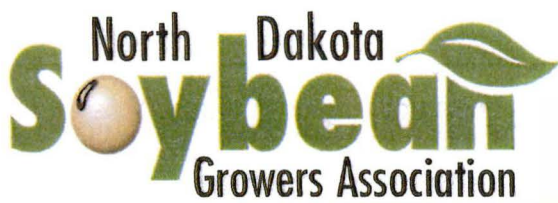
We feel that this will be a major step for promoting the dairy and swine industry in our state and will allow us to be able to compete with our neighboring states for market share. This bill will also bring jobs and economic development to small town North Dakota.

On behalf of the members of the North Dakota Pork Council, we ask you to recommend a do pass for Senate Bill 2351.

Thank You,  
Seth Bacon, President  
North Dakota Pork Council



#12a  
SB 235  
2/13/15



North Dakota Soybean Growers Association  
1555 43rd Street South, Suite 103, Fargo, ND 58103  
(701) 640-5215 | [www.ndsoygrowers.com](http://www.ndsoygrowers.com)

SB 2351

13 Feb 15

The soybean industry is has been thriving in North Dakota for a number of years. In 2007 North Dakota farmers produced 108,630,000 bushels on slightly over 3 million acres at an average price of \$9.63. I shared with the legislature that we had produced North Dakota's first \$1 Billion Soybean Crop.

In 2014 North Dakota farmers produced 202,515,000 bushels on 5.87 million acres at an average price of . . . maybe \$10. I will share with you today that we produced second \$2 Billion Soybean Crop. (1<sup>st</sup> one was in 2012).

In 2014 we were the nation's 5<sup>th</sup> largest producer of soybeans and it's 2<sup>nd</sup> leading exporter.

We believe there has been a significant model revision across agricultural in the last couple of decades driven by market and production efficiencies, technology and demographics. The family dairy farms of my youth were rooted in sparring family structures rich in generational inheritance opportunities. Large families farmed in close proximity to other close and extended family members with individual enterprise, and sharing necessary feedstock activity labor, equipment and perhaps storage.

Many of these farms were very diversified. Many had a variety of livestock and poultry, both for their own consumption and for market. And as more competitive markets evolved, required efficiency improvements gradually led to narrowing of focus on the most profitable activities based on a number of considerations about existing conditions and future needs and intentions. Some farms grew, others stabilized at a "good enough" level to be viable and some disappeared with the next economic downturn or retirement.

The storied Acme Bothers Farms of yesterday have become the Acme farm of today. The demographics of smaller families coupled with ever increasing cost of entry and production, an individual's appetite for risk tolerance and business skills to grow an agricultural enterprise have all combined to reduce the number of farms and ranches in our state and elsewhere. The business structures of these enterprises have evolved as well. Single entities and simple partnerships find themselves in the company of Limited Liability companies and corporations, family corporations, and more.

Many of today's farm and ranch owners seek also to mitigate their financial risk by investing in other entities as well. Many of the Soybean Growers I serve would jump at the chance to invest in a soybean value-added processing enterprise that could generate additional income when commodity prices are lower. Other value-added

processing opportunities present themselves, as do other business opportunities, time passes. Some succeed and some do not.

Farming and Ranching are noble vocations, but they do not come with anymore cradle to grave economic promises than any other business or vocational endeavor.

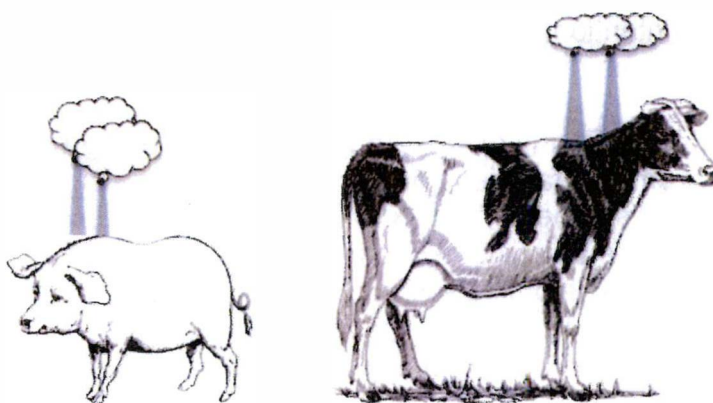
The soybean industry is basically a feedstock industry. The soybean produces both soybean meal and oil. The oil is used for a variety of products ranging from fuel to cosmetics to car seat material to printer ink. Soybean meal is feedstock . . . for poultry, swine, beef, dairy and aquaculture. Soybeans are also human food.

Include in my testimony is study data provided by the United Soybean Board, the soybean communities national check-off organization, on the value of Animal Agriculture in North Dakota.

SB2351 proposes a process to grow industries that consume soybean feed stocks. We would very much like to be in a growing position to provide our feedstock to animal agricultural enterprises right here in North Dakota.

Those opportunities would provide some of ND's Soybean Growers with reduced transportation costs (basis change), increasing profit potential; a diversified investment option, spreading risk; and provide access to potential fertilizer cost reductions with local manure available.

**Each and Every Cow and Pig are Value-Added Processing to us . . .**



## NATIONAL

### Output

Total value of animal agriculture on each state's economy

**\$345,641,880,873**

### Earnings

The estimated household income generated from poultry and livestock

**\$60,124,968,243**

### Employment

Total employed in animal agriculture at the farm, processing and manufacturing levels

**1,850,813**

### Income Tax

Funds received by local, state and federal governments from taxes imposed on income from poultry and livestock operations

**\$12,223,406,044**

### Property Tax (using latest assessment)

Funds received by local, state and federal governments from taxes imposed on property related to poultry and livestock operations

**\$6,223,047,000**

## NORTH DAKOTA

### Output

Total value of animal agriculture on each state's economy

**\$2,563,850,052**

### Earnings

The estimated household income generated from poultry and livestock

**\$408,669,799**

### Employment

Total employed in animal agriculture at the farm, processing and manufacturing levels

**10,535**

### Income Tax

Funds received by local, state and federal governments from taxes imposed on income from poultry and livestock operations

**\$94,607,058**

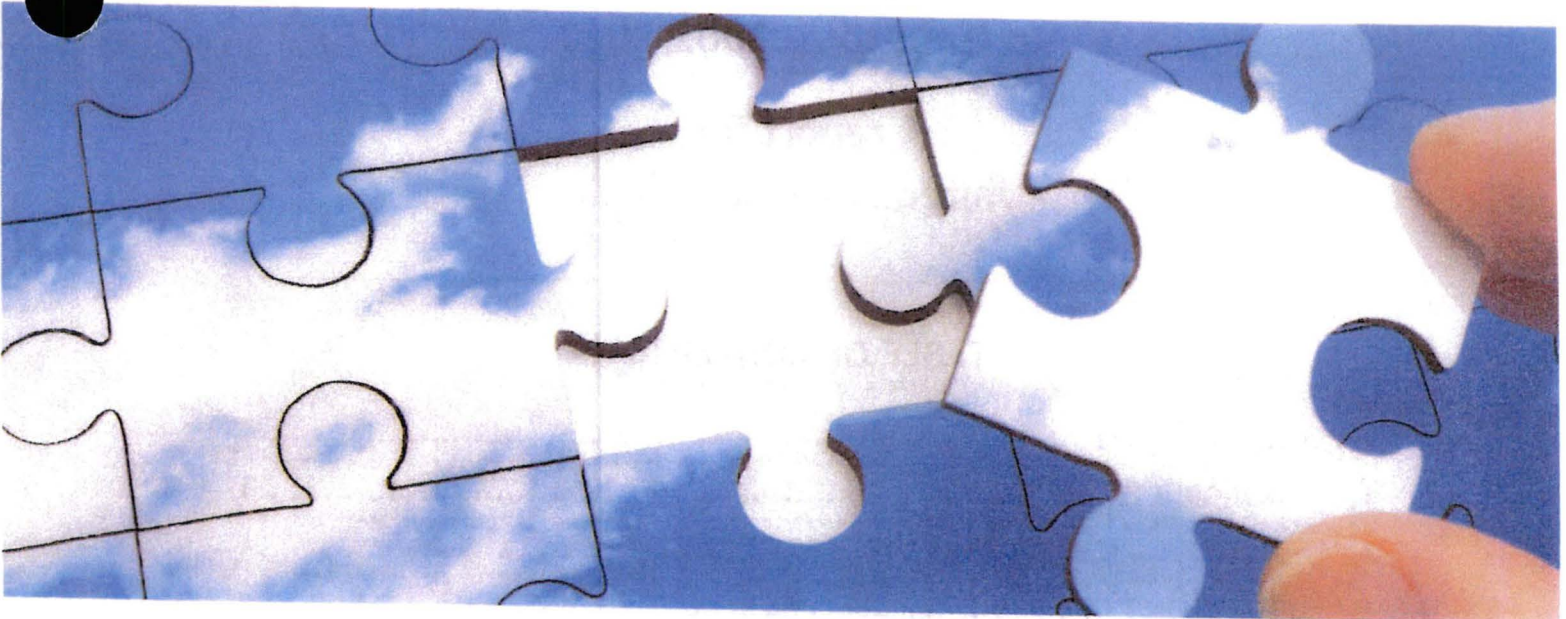
### Property Tax (using latest assessment)

Funds received by local, state and federal governments from taxes imposed on property related to poultry and livestock operations

**\$110,963,000**



#126  
SB 2351  
2/13/15



## Animal Agriculture Economic Analysis: North Dakota, 2002-2012

A Report for  
United Soybean Board

July 2013



**Agralytica**  
CONSULTING

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## Animal Agriculture Economic Analysis: North Dakota, 2002-2012

A report for  
United Soybean Board

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## EXECUTIVE SUMMARY

Soybean meal (SBM) plays an important role in animal agriculture in North Dakota, which in turn has a significant impact on the state's economy. In North Dakota:

- Animal agriculture in 2012 used an estimated 47,000 tons of SBM: 48% in beef production, 37% for pork, and 7% in milk production;
- At the state level, animal agriculture represented \$2.6 billion in revenues, \$409 million in household income, and 10,500 jobs. In addition, it yielded an estimated \$95 million in income taxes and the last census (2007) reported \$111 million in property taxes; and
- Over the past decade, the contraction of animal agriculture in North Dakota has led to decreases of \$166 million in economic output, \$28 million in household wages, 720 jobs, and \$6.4 million in tax revenue.

This report provides a concise look at the positive impact animal agriculture has on North Dakota's economy.

## 1. INTRODUCTION

Domestic livestock industries are by far the major source of demand for US soybean meal, and future soybean demand is tightly linked to the health of those industries. In order to act at the state and local levels, one needs data and analysis on the economic importance of animal agriculture at those levels. This report addresses this constraint.

On behalf of the United Soybean Board, Agralytica has compiled data on the breakdown of animal agriculture by species in each state, estimated soybean meal consumption by species, and analyzed the economic impact of animal agriculture by calculating its effect on output, wages, employment and tax revenue. We have also highlighted long-term trends and recent developments, where relevant.

For explanations on data sources and our analysis, please review our national report, "Animal Agriculture Economic Analysis: 2002-2012."

## 2. ANIMAL AGRICULTURE SBM USE: NORTH DAKOTA

In this section, we provide information on soybean meal use in animal agriculture in the state. The state database contains information such as: livestock production and value data, taxation data, and computation of meal use by livestock and poultry.

Animal agriculture in North Dakota used an estimated 47,000 tons of soybean meal in 2012.

## ANIMAL AGRICULTURE ECONOMIC ANALYSIS

The impact of animal agriculture in North Dakota

SBM use by animal agriculture category: North Dakota

ND	SBM Usage	Share
2012	1,000 s. tons	Percent
Beef	23	48.3%
Pork	18	37.1%
Broilers		
Turkeys		
Eggs	1	1.3%
Milk	3	6.8%
Other	3	6.5%
<b>TOTAL</b>	<b>47</b>	<b>100.0%</b>

Source: NASS, Agralytica

SBM usage in North Dakota is dominated by beef production, which accounted for 48%; pork (37%) and milk (7%) accounted for most of the rest. A gray row indicates a product for which data was withheld or not collected.

### 3. THE IMPACT OF ANIMAL AGRICULTURE IN NORTH DAKOTA

#### 3.1. Output, earnings and employment multipliers

To estimate the impact of livestock production on North Dakota's economy, we applied RIMS II multipliers from the Department of Commerce for cattle ranching and farming, dairy cattle and milk production, poultry and egg production, and other animal production (mostly hogs and pigs), when applicable. The table below shows the multipliers for North Dakota. They represent the impact associated with \$1 million of industry sales.

Economic impact multipliers: North Dakota

ND	Output (\$)	Earnings (\$)	Employment (jobs)
Cattle & calves	2.7048	0.4290	11.0528
Hogs, Pigs, & Other	1.8966	0.3107	7.9587
Poultry & Eggs	2.4467	0.3877	9.5476
Dairy	2.1195	0.3594	9.4065

Source: RIMS II, BEA, Department of Commerce

The economic impact of animal agriculture in North Dakota is substantial. \$1 million in production in the above segments yields \$1.9-2.7 million in total economic activity, \$310,000-\$430,000 in household wages, and 8-11 additional jobs.



### 3.2. Impact estimates for output, earnings, employment, and taxes

When applied to production values for each livestock category, the multipliers above yield an estimate of the overall economic impact, household earnings, and jobs supported in North Dakota by the livestock industries.

Economic impact of animal agriculture - North Dakota

Total Economic Impact	2012	Change 2002 - 2012	% change 2002 - 2012
Output (\$1,000)	\$ 2,563,850	(166,461)	-6.10%
Earnings (\$1,000)	\$ 408,670	(27,675)	-6.34%
Employment (jobs)	10,535	(718)	-6.38%
Income taxes (\$1,000)	\$ 94,607	(6,407)	-6.34%
Property Taxes in 2007 (\$1,000)	\$ 110,963		

Source: RIMS II, BEA, Department of Commerce; NASS; USDA Census; Agralytica

At the state level, animal agriculture in North Dakota represents \$2.6 billion in revenues, \$409 million in household income, and 10,500 jobs. In addition to the effect on income and jobs, animal agriculture is a significant source of tax revenues. In North Dakota in 2012, it yielded an estimated \$95 million in income taxes. The last Census of Agriculture (2007) also reported receipts of \$111 million in property taxes.

### 3.3. Long term impact of animal agriculture

The contraction of animal agriculture in North Dakota over the past ten years has led to decreases of \$166 million in economic output, \$28 million in household wages, 720 jobs, and \$6.4 million in tax revenue.

Note: In order to remove the influence of price changes, we used production unit values (at 2012 prices) as the basis for comparison over time. In addition, our multipliers are for categories that aggregate poultry and egg production, and hogs and pigs and "other." Thus, for example, a decline in egg production can be masked by an increase in broiler or turkey products.

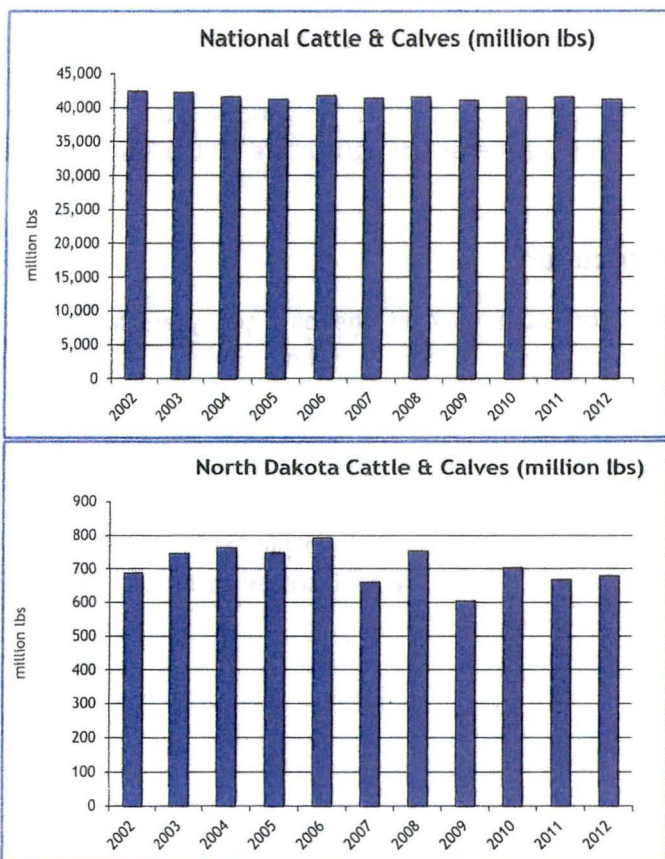


## 4. RECENT DEVELOPMENTS AND LONG TERM TRENDS

### 4.1. Recent developments

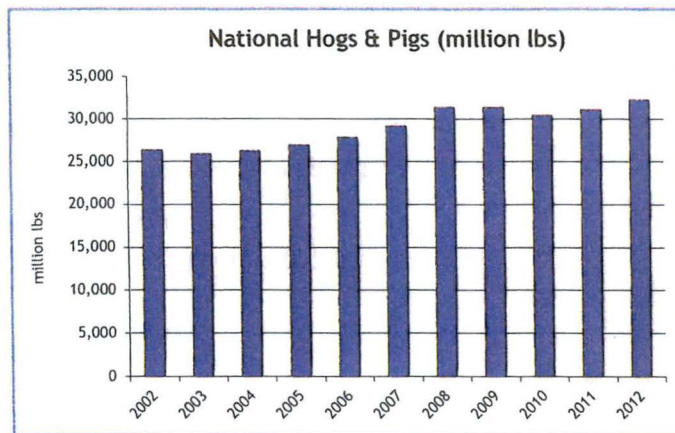
Animal agriculture in North Dakota means cattle, which in recent years have accounted for 80-90 percent of the value of animal products produced in the state. The North Dakota Stockmen's Association has been very concerned about the U.S. Environmental Protection Agency collecting and publishing the names and locations of animal feeding operation, since that information can be misused by activists who oppose animal agriculture. The Association contends that the Section 308 reporting rule exceeds EPA's authority under the Clean Water Act and puts the national food supply at risk by publicizing private business information. In early 2013, environmental groups were able to obtain the information through a Freedom of Information Act request.

### 4.2. Long term trends



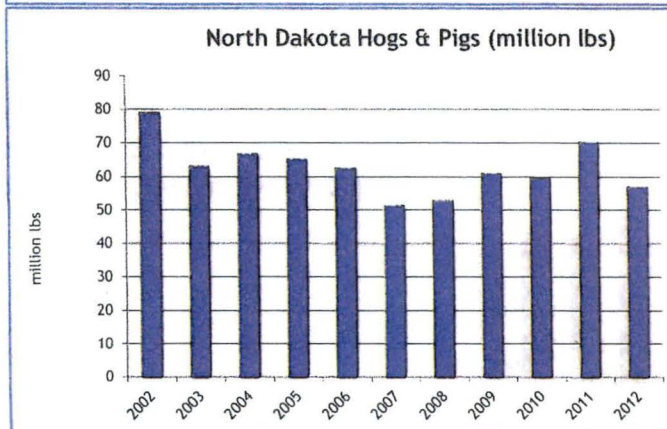
#### Cattle

- Nationally, cattle production has decreased by 2.8% in the last decade.
- Production has varied by up to 2% from year to year.
- In North Dakota, cattle production expanded through 2006, but has since varied sharply.
- In 2012 cattle production was 679 million pounds.

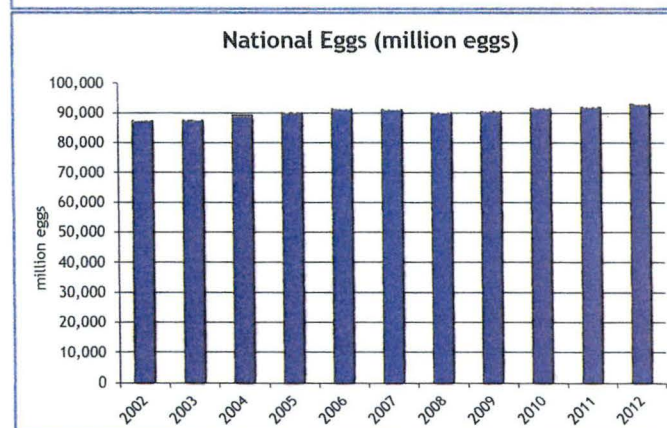


### Hogs and pigs

- Nationally, hog and pig production has increased by 22.7% in the last ten years.
- Production set a record in 2012, at 32.2 billion pounds.

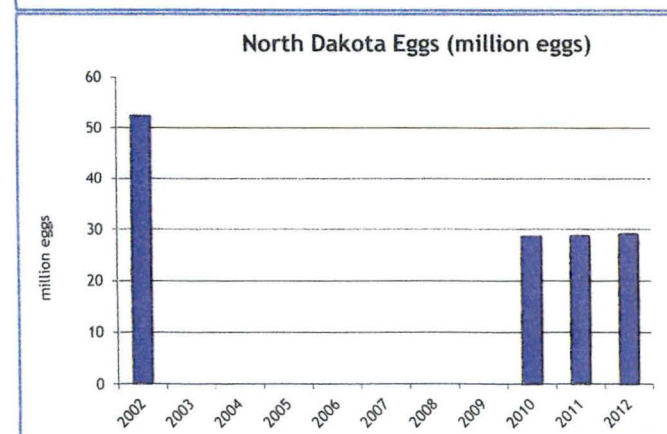


- In North Dakota, production dropped 27.8% over the past decade, to 57 million pounds.



### Eggs

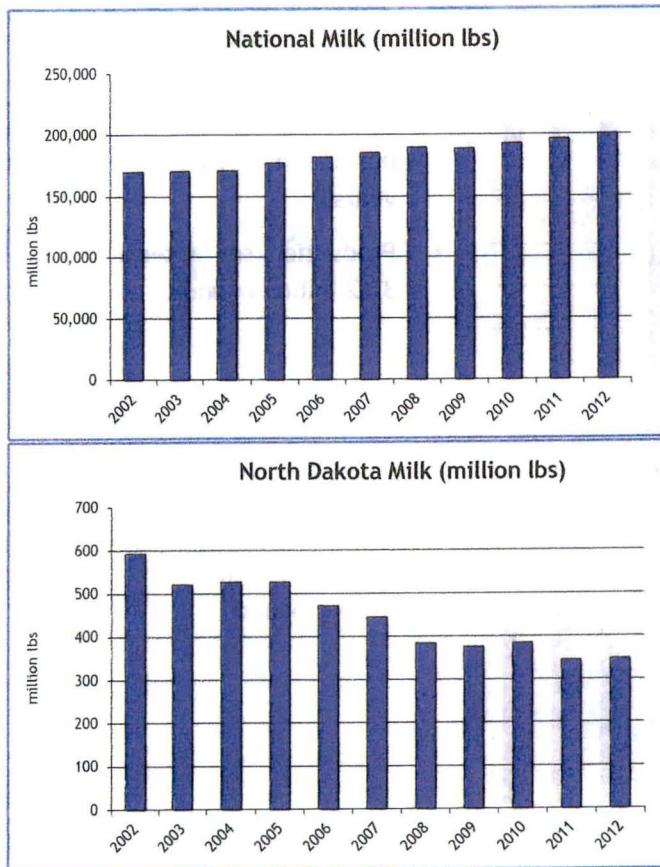
- National egg production has increased by 7% over the past decade.
- Production reached an all-time high in 2012 at 92.9 billion eggs.



- Egg production data is withheld for North Dakota. Agralytica has estimated these numbers using the 2002 and 2007 Census of Agriculture data. Using these estimates, production is estimated at 30 million eggs.

## ANIMAL AGRICULTURE ECONOMIC ANALYSIS

### The impact of animal agriculture in North Dakota



#### Milk

- Milk production has grown by 17.8% over the past decade.
- National milk production reached a record 200 billion pounds in 2012.
- In stark contrast, milk production in North Dakota has decreased substantially, from 593 million pounds in 2002 to 347 million pounds in 2012.



#13

**From:** Bruce Gibbens [mailto:bruce@gibbenslaw.com]

**Sent:** Sunday, February 01, 2015 12:15 PM

**To:** Dennis Johnson

**Subject:** Senate Bill 2351

SB2351

2/13/15

Ji Dennis,

Judy said you would like me to look at the above noted bill relating to an exception, for corporate farming for dairy and swine operations. I think the bill is fine and it is needed, because anyone thinking of owning and operating either one of these type operations needs some type of liability protection for their personal, unrelated assets.

These are also fairly intensive, high capital operations, that make it difficult for an individual or family to be able to provide all the necessary funding and expertise to operate such a business. If you have the corporate option available, I would think it will allow a group of people, with diverse areas of expertise, to come together to pool their expertise and resources, thus improving the odds of having a successful business result from their undertaking. I just think it is very difficult in today's environment, for an individual or a family, to have all of the necessary tools and expertise to make these kind of businesses successful. That doesn't mean it is impossible, but I think it clearly is much more difficult going it alone and having to secure all of the funding necessary, plus hire all of the additional expertise that is needed, rather than being able to form an entity and bring those type of assets and people into the business in a shared ownership arrangement.

That is just my thoughts.

Good luck.

Bruce

Bruce Gibbens

Gibbens Law Office

P.O. Box 708

Cando, ND 58324-0708





SB 2351

Senate Agriculture Committee

February 13, 2015

#14  
SB 2351  
2/13/15  
p.1

Chairman Miller and members of the Senate Agriculture Committee,

My name is Mark Watne. I am the president of the North Dakota Farmers Union. Our organization stands in strong opposition to SB 2351. We believe this bill is unwarranted, and we see this as a fundamental change to North Dakota's system of family agriculture, which is the foundation of our state's economy, society and future. We believe agriculture is best left in the hands of individual entrepreneurs, who own the land and animals. NDFU has advocated for policies that ensure that ownership, operation and management of a farm or ranch is held within the family who makes a livelihood from that land and lives in or near the community that land is adjacent.

This bill is being promoted as the only solution to stop the decline in dairies. We disagree. SD has been the example to justify this change. Our research, which was provided to you on Wednesday, shows that the number of dairy farms in South Dakota has declined at a similar rate as North Dakota, dropping from 1404 in 1997 to 260 in 2014. South Dakota changed their corporate farming law in 2008 and it did not stop this decline. According to the 2012 Ag census, there are 51 corporations in SD; 49 of them are family corporations and these are allowable in ND. South Dakota has done some additional work to stimulate growth in their state, including a county siting program. We need to have a conversation about the causes of the declines and be creative in finding solutions.

The sponsors of SB 2351 say this bill is necessary to give producers needed access to investment capital and credit in order to expand, or diversify. Access to credit is not what's standing in the way of agricultural profitability. There are plenty of lending institutions across this state that can finance agricultural operations. What's standing in the way of agricultural profitability in dairy farming is low commodity process and high production costs. Current law already provides channels for investment in agriculture—the very thing this bill claims to do. Through legal tools such as partnerships, loans, and family corporations, individuals can already invest in agriculture in North Dakota and they don't need to form a corporation to do so.

What this bill is really about is the ownership of assets and land. Who in North Dakota do we want to own our land and animals? Corporations or family farmers and ranchers?

SB 2351 guarantees farmers and ranchers will have to compete against corporations to buy, rent or even access land. Opening up our corporation farming law does not guarantee greater profits for farmers and ranchers. It does not guarantee more good jobs. It does not guarantee greater patronage or economic returns for rural main street businesses. Why? Because non-family corporations are focused on stockholder profits. If a greater return on investment can be realized

for stockholders through volume discounts on commodities for feed and inputs outside the state, corporations will do so.

Mr. Chairman and committee members, there is no compelling argument to pass SB 2351.

North Dakota's corporate farming law cannot single-handedly guarantee the existence of healthy, independent family farmers and ranchers. What it currently does guarantee is a level playing field that requires all Ag participants to be liable for their actions and responsible to communities. And I believe that the vast majority of farmers and ranchers in this state do not support legislation to weaken this law.

Sound public policy in North Dakota builds family farm agriculture. We believe it would be much more productive to lead a conversation that includes all stakeholders, to explore all possible solutions to this issue. This is an approach that we believe would unite the agricultural community, instead of dividing it.

We ask for the committee to give a do not pass to SB 2351. I will stand for any questions.

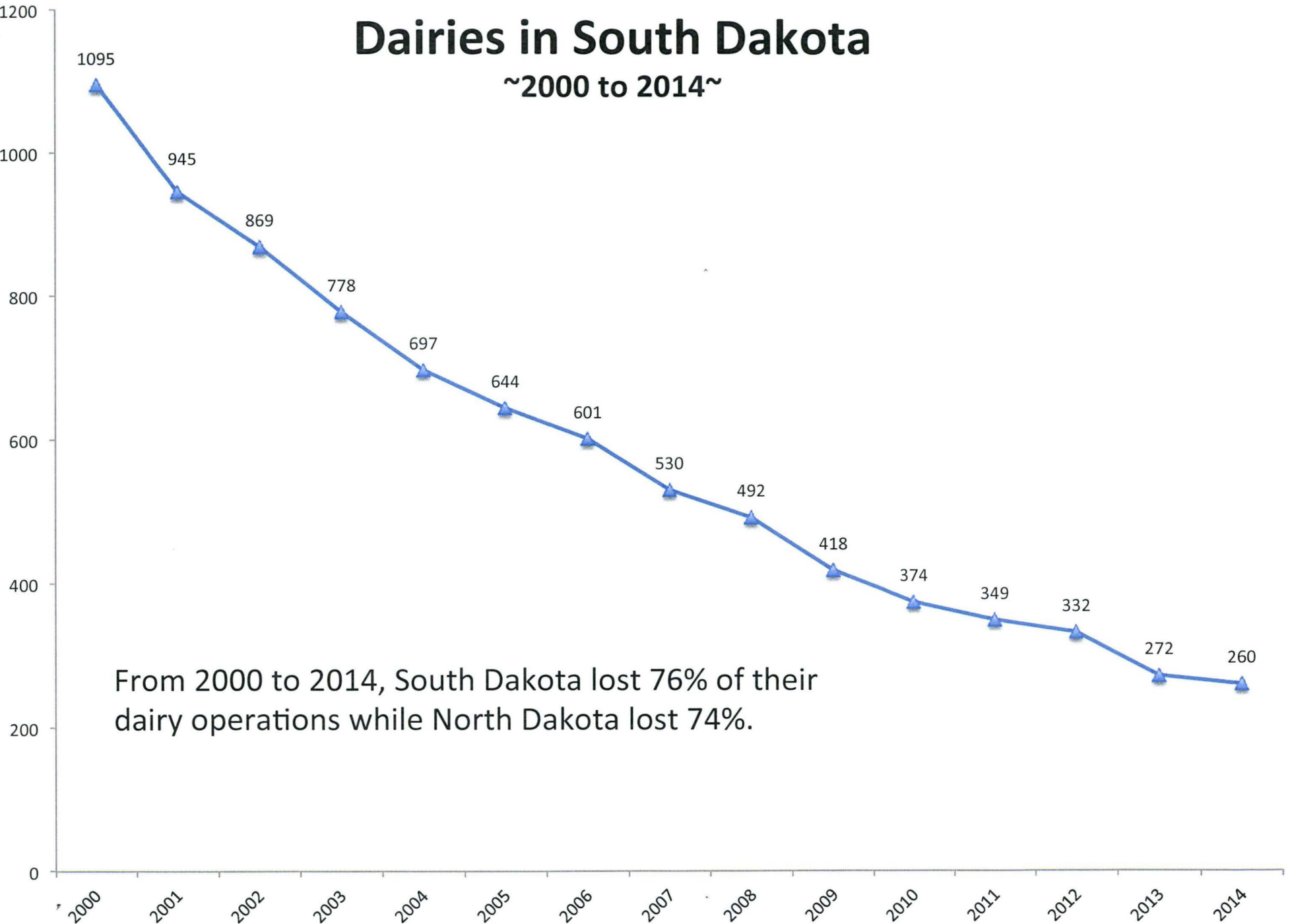


P. 3

# Dairies in South Dakota

~2000 to 2014~

Number of Dairies



From 2000 to 2014, South Dakota lost 76% of their dairy operations while North Dakota lost 74%.



Testimony of Justin Sherlock  
Before the North Dakota State Senate Standing Committee on Agriculture

February 13, 2015

Chairman Miller and members of the Committee. My name is Justin Sherlock and I'm here to oppose SB 2351. I am a young beginning farmer from Dazey, North Dakota, a small town located northwest of Valley City in Barnes County. The ground I farm is also spread out in southwestern Griggs county and northeastern Stutsman county. First and foremost, I am a proud North Dakotan, having grown up here my entire life and having attended North Dakota State University (NDSU) in Fargo where I majored in Agribusiness. All my life I have spoken confidently and proudly of our state to anyone and everyone whenever I had the opportunity. I tell you these things about myself not to brag or boast or to bore you to sleep this morning, but to show you that agriculture and where I come from have always and will continue to be two of the most important things in my life, and that I have and will continue to do what I can to help support agricultural and the family farmers that make our state such a great place to grow up, operate a farm and raise a family.

With that in mind, I am here today to speak about this bill. I am here as a beginning farmer who is just getting on his feet. My operation is a young operation. My father was one of the success stories in agriculture where a new producer made his start and became successful. He worked for a larger farmer in my home area for over a decade and put his all into doing the best job possible. In turn, just over a decade ago, that farmer allowed my father the opportunity to rent some land from him and farm a few acres of his own. From there, he was able to find some additional acres to rent, and combined with the several good years agriculture experienced in the past decade he was able to purchase some farmland and get a decent line of machinery. Today I rent some of the land he farmed from my mother and a few other landlords, and I operate using the machinery he had purchased. I cannot describe how truly blessed I feel to now have that chance to farm. Growing up, I did not think I would have the opportunity to farm as there wasn't room for me in our operation with my father just getting started himself. However, my start in farming did come about how I would have liked or had chosen for it to occur but instead came about with the unexpected loss of my father a few years ago. I'm working hard to continue our operation and carry on what he started. I even have the hope that someday I will be able to pass our family's farm on to yet another generation so they can farm and be good stewards of the land in their time as well.

In order to continue farming however, I need to maintain my present farm size or possibly even grow in the coming years. The cost of machinery and labor, combined with the shrinking margins over the past few years because of increased input cost, lower commodity prices and significant farmland rental rate increases has made it difficult to support a family and earn a living from our operation as we head into 2015 and beyond. Should this bill be passed, I truly feel it would only add to the challenges producers are facing and hurt our state's family farming operations.

As a young and beginning producer, I do not have the capital reserves and equity to take on other more established farmers or private investors who are looking to purchase or rent additional farmland. I do hope to purchase some land myself someday, and I have built that into my business goals for the future, however, if this bill is passed it will invite outside capital to come in and compete directly



with me for farmland. I truly believe that allowing corporations and out of state investors or companies to purchase farmland will be a significant detriment to myself and other young producers throughout the state. Our ability to purchase farmland and continue our own operations will be impacted, as we would now have to compete with entities and individuals who likely view land strictly as an investment or asset, and only view it for its monetary value or ability to generate a certain rate of return per year. To me, land is what I work hard, sweat and bleed for. While we often assign a dollar value to land, for most agricultural producers and even for those individuals who may not farm anymore or for those who grew up on the farm, land is much more than just an asset. Land is a part of a family's legacy, something we can be proud of and that we wish to protect and preserve for future generations to come.

While I believe the authors of this bill mean for it to be well intentioned; helping support the shrinking dairy industry within the state for example, I do not feel that this is the best course of action to achieve a positive outcome for those sectors of the agricultural economy. If protecting and fostering growth in certain key sectors of the agricultural economy is one of the primary objectives, then perhaps a better alternative would be to use resources already within North Dakota, such as the Bank of North Dakota (BND). The Bank of North Dakota has been successfully used in the past and present to invest in key priority areas for our states future. A few examples include supporting higher education through affordable college loans to North Dakota students, funding feedlot expansions, irrigation, and land improvement projects such as loans for the installation of drainage tile, etc.

When we already have such an amazing investment mechanism and partner in place, I call into question the need for this bill that would allow corporate and out of state investment when we can likely meet the needs with our own in-state resources. If an entity operating a farm or proposing to start a farming operation can make a good enough business plan and proposal to convince a company or out of state investor to spend money here in North Dakota, there is absolutely no reason that that same business proposal could not be presented to BND for loans to start or grow an operation. What would make an investor or business from outside of North Dakota be willing to stake their capital here that BND would not? If the argument is that there are sticking points to BND funding such projects, then perhaps the Agricultural Department should put some additional focus and effort into working with BND and the Governor's office to develop a plan to address those issues and allow investment in the key priority areas this bill pertains to. Simply opening the floodgates to corporate investment is not the solution. Our North Dakota owned and operated family farming operations have proven themselves to be successful time and time again and will continue to do so.

Thank you for the opportunity to speak today. Again, I urge you to not pass SB 2351. I can try to answer any questions you may have.

SB 2351 Testimony.

Good morning, Chairman Miller and members of the Senate Agriculture Committee. For the record my name is Larry Kinev, board chairman of the Independent Beef Association of North Dakota. I stand opposed to Senate Bill 2351. IBAND has a standing policy opposing corporate farming legislation.

We see the alarming decline in swine and dairy operations in North Dakota. That decline is in large part attributed to concentration in the swine industry, and loss of processing facilities in the dairy industry. It is doubtful that amending our corporate farming law will bring back swine processing or guarantee that an aging dairy processing facility faced with costly regulatory upgrades will remain in operation.

Our family farms and limited liability partnerships have served our state very well. While we recognize the tremendous amount of capital required to start and operate these ventures, we point out the fact that these costs are not unique to these segments of the North Dakota agricultural industry. All sectors of North Dakota Agriculture require large amounts of funding to establish and operate. We would hope that our state owned bank would perhaps focus its attention on family enterprises who would inject dollars into our local economy rather than invite participation of outside corporations who would take their profits to boardrooms beyond our borders.

TESTIMONY TO ND SENATE AGRICULTURE COMMITTEE

February 13, 2015

Members of the Senate Agriculture Committee

Sen. Bill 2351 is one of the most ill-conceived proposals in recent history. The sponsors have made the claim that to amend our anti-corporate farming laws will result in resurgence in the dairy and hog industries. This claim is made upon the flawed premise that it will attract investment capital and thereby revitalizing those industries. No evidence exists to support this assertion.

What is most troubling of the apparent disregard for the very reasons that the anti-corporate law exists in the first place. It is intended to prevent that European system of the landed gentry and a serf class, which by the way is one of the reasons for the founding of our great Nation in the first place. The passage of time can never negate those facts and to claim that this proposal is in tune with our modern America and to bring North Dakota agriculture into the "21<sup>st</sup> Century" is at best absurd.

It is indeed strange that those who have sponsored this Bill seem unaware that both the dairy and hog industries floundered many years ago. The demise of these highly efficient operations has but one singular cause----**A PRICE FAR TOO LOW TO BE PROFITABLE.**

Both of these industries as well as the rest of production agriculture will prosper with a price structure that allows well run businesses to be profitable. No amount of investment capital can provide profits. Only a price can do that. One could ask just why unprofitable businesses would ever attract investment capital.

- Here is some current data available (Source:USDA/NASS).
- The cash price for milk in January of 2015 was \$20.09 per cwt.
- The parity price for milk in this period was \$54.30 per cwt.
- Creating a deficiency of \$30 per cwt. for every drop of milk produced
- The cash price for milk in Jan. of 1980 was \$12.35 per cwt.
- The parity price for that period was \$17.40 per cwt.

- In the past 35 years, the price decline per year as a percentage of parity amounts to \$1.00 per cwt. per annum.

First, this lack of adequate cash flow was the direct cause of the decline in dairy farms in North Dakota. The decline in the income derived from that production could never get to Main St. No amount of investment capital could ever replace a price that was adequate to sustain both the farms producing the milk or the communities that relied on that income. As you can plainly see, these facts have a domino effect---business, schools, the tax base in decline and the list goes on.

If you look at the results of a further industrialization of agriculture in other states, the consequences are self-evident. Dairies, hog facilities and feedlots staffed mostly with cheap foreign labor, the further demise of the rural communities that are surrounded by these operations, potential environmental problems, and a further erosion of independent businesses both on the farm and off, with a natural tie to the community.

Decades ago, our legislators had the wisdom and foresight to envision the harmful effects of absentee ownership of our second greatest resource-----THE LAND-----just behind our greatest resource----- OUR PEOPLE.

Today, we are faced with a similar situation in the oil patch. An artificial price decline will have a devastating impact on our state and not only in state revenues but more importantly the impact on the general economy as well as the immediate ill effects in the Bakken. If oil falls to the parity equivalent of wheat, it will drop to \$22 per barrel. A corporatized agriculture will have a negative impact on our state.

My opposition is not born of nostalgia. It is born of the observation that corporate agriculture is detrimental to communities and society in general. You in this body are charged with the responsibility of carefully managing our State for the benefit of all of our citizens. If one only considers the economic aspects, it is obvious that a modification to the present anti-corporate farming law will have no benefits whatsoever---business type or structure does not determine either the profitability or viability of any business.

Thank you

Tom Asbridge

Bismarck, ND 701-222-3621



TESTIMONY in OPPOSITION to SB 2351

My name is Charles Linderman. I have farmed near Carrington ND for 40 years. I have a master's degree in agricultural engineering from NDSU. I am a registered professional engineer, retired. I have worked for the USDA Agricultural Research Service, the NDSU Extension Service, and as a private consultant. My area of specialty is livestock waste management. I have long been supportive of dairy farms.

I looked at the maps furnished by the Agriculture Commissioner showing ND dairy locations in 2003 and 2014. All nine existing dairies in my area (Foster, Eddy, and Wells Counties) had disappeared during that time. I am sure the explanation is that the owners of these small dairies retired and had no one to take their place. We do not have a livestock culture among many of the younger generation of farmers.

I have attended a couple livestock development workshops sponsored by the ND Agriculture Department and NDSU Extension. Dairy always came to the top of the various livestock species when it comes to benefits to the community and the rest of agriculture. I thought that bringing some dairies to my community would provide markets for feed crops and good paying jobs. Therefore, I took part with a small group of local farmers and economic development people looking into the possibilities of bringing dairies to our community. We were given the impression that our distance from milk processors was our biggest challenge. Since then, a dairy farm family from Canada did relocate to just east of Carrington and they appear to be operating successfully.

SB 2351 does not address any of the basic reasons why the dairy industry in ND is declining. If dairy prospects for profit are good, someone will find a way to do it. Otherwise, it will not happen. There are many ways in existing law to structure a livestock operation in ND. Certain family owned corporations are legal if one of the members is active in and living on or near the operation. A cooperative could be formed. Of course, a private family or partnership can be used. Again, if profit is available, a way to structure it will be found.

Please do not open our ND farmlands to outside corporate ownership. I know from personal experience that the biggest challenge to a beginning farmer is competition for available land. We should not pit outside corporations against our local farmers and particularly beginning farmers. SB 2351 will hurt local farmers without providing any real fix for the decline in our dairy numbers.

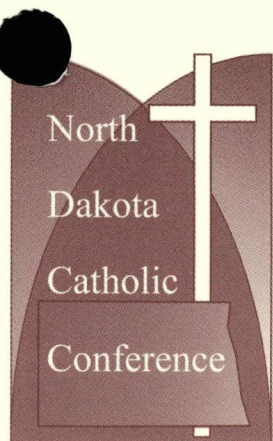
**To:** Senate Agriculture Committee  
**From:** Christopher T. Dodson, Executive Director  
**Subject:** SB 2351 - Investor-Owned Farms  
**Date:** February 13, 2015

The North Dakota Catholic Conference opposes SB 2351. This position is not new. North Dakota's Catholic bishops, like bishops around the country, have for decades appealed for laws that preserve and maintain farm ownership and control in the hands of local family farmers. In fact, seventy-six years ago Catholic bishops of the United States, led by Fargo Bishop Aloisius Muench — the only bishop from North Dakota to be named a Cardinal — warned that investor ownership of farms would threaten families, communities, and our obligations as stewards of creation.<sup>1</sup>

Some could argue that agriculture has changed since 1939, and they would be right. But who we are as human persons and what farming is to us as humans has not changed. That is why this is a religious issue. It is a religious issue, because it is a moral issue. It is a moral issue, because it is a human issue. It is a human issue because, as Pope Francis stated just two weeks ago, farming is “characteristically and fundamentally human.”<sup>2</sup>

Indeed, Pope Francis' recent address on the vocation of agriculture is enlightening in that it illustrates precisely why investor-ownership of farms is so risky. Pope Francis explains that the relationship a farmer has with the land is “familiar.” The Italian word he used was “familiare,” which means not “familiar” as in “well known,” but “of family.” This is important to understand. Outside investors cannot be like family. Only human persons can relate “like family.” Only human persons are capable of entering into a covenant with creation.

The Pope went on to remind us that because farming is such a uniquely human vocation, how we engage in agriculture and how we treat farmers affects who



*Representing the Diocese of Fargo  
and the Diocese of Bismarck*

Christopher T. Dodson  
Executive Director and  
General Counsel

we are as humanity. Senate Bill 2351 is not just about a small segment of the agricultural community. It is a radical upending of the foundation of our state's most widespread and permeating activity. Disrespecting the "familiar" relationship that should exist between the human farmer and farming will affect us all. If we truly believe that North Dakota is such a great place to live, why would we take that risk?

We realize that some segments of agriculture are facing difficult times and we need to respond. North Dakota farmers, however, have always faced difficult challenges. Nevertheless, we have always found creative solutions without sacrificing our way of life and without succumbing to the temptation to reduce agriculture a mere economic activity. In North Dakota, we have done -- and can do -- better.

Jesus asked, "What does it profit a man if he gain the world and lose his soul?" We must ask, "What does it profit our state if we gain some investors in agriculture but lose the soul of agriculture?"

We respectfully ask for a Do Not Pass recommendation on Senate Bill 2351.

<sup>1</sup> National Catholic Rural Life Conference, Manifesto on Rural Life (Milwaukee, WI: Bruce Publishing Company, 1939).

<sup>2</sup> Address of His Holiness Pope Francis to Representatives of the Italian National Confederation of Independent Farmers [Coldiretti], January 31, 2015; [http://w2.vatican.va/content/francesco/en/speeches/2015/january/documents/papa-francesco\\_20150131\\_coldiretti.html](http://w2.vatican.va/content/francesco/en/speeches/2015/january/documents/papa-francesco_20150131_coldiretti.html)



February 17, 2015

#1  
2/19/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2351

Page 1, line 13, remove "or"

Page 1, line 16, after "acres" insert: "; or

3. Domestic corporations and limited liability companies owning and operating a livestock feedlot, provided the land owned or leased for that purpose does not exceed six hundred and forty acres"

Renumber accordingly



#1  
/ Testimony on SB 2351

Senator Terry Wanzek

House Agriculture Committee

3/5/2015

Good morning Chairman Johnson and House Agriculture Committee members. My name is Terry Wanzek, State Senator from district 29.

In my many years in the legislature, there is an issue, now and then, that is very difficult to address and/or discuss. Many times these issues bring out strong conviction, passion, and emotion. While they are difficult to deal with and it would be easier to ignore and just leave them alone, that would be irresponsible as a state legislator. We are charged with addressing problems facing our state and seeking solutions. We are expected to deal with the tough issues, not just the easy ones!

This is one of those bills. Will it be the answer? I believe it could be. Only time will tell. But we cannot afford to ignore and do nothing about this issue. If it should not work, as I see it, we would be no worse off for trying. We have tried many other approaches to deal with this problem over the years, and they obviously are not working. This bill's proposal has been implemented in other surrounding states and seems to be working. This bill would be very similar to the current law in SD. It patterns the SD law. (Agweek article)

This bill is an attempt to help the dying Dairy industry and our declining Swine Industry in this state by opening the door, just a little bit, to allow capital investment into these two specific agriculture enterprises. This is accomplished in SB 2351 by exempting Dairy and Swine operations from our anti-corporate farming law. However, the bill would restrict dairy and swine operations to a total of 640 acres of farmland, owned or leased. SD law is unlimited in acres owned or leased.

There are 9 states with anti-corporate farming laws. In other words 41 states have no anti-corporate farming laws. Yet USDA says 93% of all farms in the US today are family owned and operated. Three states, Nebraska, South Dakota and Iowa's laws were ruled unconstitutional recently under the dormant

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commerce clause. Kansas totally repealed its anti-corporate farming law in 2012. All of these other states allow livestock exemptions, of one kind or another, except for our law (ND).

These farming industries, dairy and swine, have been on a steady decline over the past years in our state, especially the dairy industry. ND Dairy production fell by 41.5% from 2002 to 2013, from 585 million lbs.(2002) to 320 million lbs.(2014). ND Dairy cow numbers went down 60% from 40,000 (2002) to 16000 (2014). Dairy production in 1990 was 1.1 billion lbs. and 85000 milk cows. If you look back to the 30's to 40's we had over 500,000 dairy cows in ND and over 2 billion lbs. of milk. At one time ND led the nation in the production of cream! Today we are down to 90 dairy farms with a number of those likely to quit within the year. In 2002 we had over 350 dairy farms. We already have ND dairy processors importing milk. These processing plants will be in jeopardy of closing if there is no milk production in ND. I hope we are not too late!

In comparison, SD has increased, over the past 13 years, from 86,000 dairy cows in 2002 to 97,000 cows in 2014. 7000 head were just added in last 6 years since SD passed their corporate farming exemption for dairy. Another 24000 head are permitted to enter into SD in 2015. SD Dairy production went from 1.29 billion lbs. of milk in 2002 to 2.02 billion lbs. of milk in 2013, an increase of 730 million. SD's annual production increase alone is more than double what ND produces currently in total annual milk production. All this information is from NASS (National Ag Statistical Service of the USDA).

I believe our farm producers need access to the same business tools that other state's farmers have to be competitive. I believe this measure can make a difference. Not many family farmers want to take on the risk and labor commitment alone, nor do they have the personal capital it requires, to develop such an enterprise like a current dairy farm. I believe capital generation is a barrier to development. They need more opportunity to access equity capital, not just debt capital. Today a 1600 head dairy farm demands anywhere from \$7 to \$10 million in investment to construct. A hog facility is between \$14-16 million with annual operating expenses of \$5-\$6 million.

Some say this will bring "out of state" investment into our state. Is that a bad thing? That could happen, but I also see this as an opportunity for our state's farmers and other community citizens to build from within, to expand on an existing dairy for instance. Case in point, this could be my cousin, who happens

to be one of the remaining 90 dairy farms. He is adding robots to milk cows and may be interested in expanding his herd but can't swing it alone. He has mentioned he may be interested in seeking equity partners. He does not need more debt; he needs someone willing to take on some of the risk with him.

If we do nothing to enhance our milk production in ND, we will lose our dairy industry and our processors. Our fellow ND citizens will continue to consume dairy products that will be shipped in from SD or MN or another state at a higher cost and ironically, most likely produced on an out of state corporate dairy farm! One way or another, ND citizens will be supporting corporate dairies. I prefer to support dairies vested within our own state.

Mr. Chairman and House Ag committee members, I would like to share with you that I am a fourth generation family farmer. My Great Grandparents, both maternal and paternal, were some of the first farmers to cultivate land in Stutsman County in the 1880's. We have a 5<sup>th</sup> generation of Wanzeks' currently starting their careers and preparing to take over our family farm, and hopefully the 6<sup>th</sup> generation, our grandchildren, will have that opportunity too.

Our ancestors followed a Catholic priest to ND and started a mission church and have been instrumental in building our Catholic Church, our community and our farm in its current location. So, I get it when it comes to supporting and protecting our family farms and community way of life. I share that value with those who oppose this bill. There is no one in this legislature more invested in ND family farming than myself. But farming still comes down to the fact that it is a business. It is a business that has to be financially successful to stay within our family.

As much as some of us would like things to be the way they were in the good old days, a family farm on every section raising crops and a few milk cows, a few beef cattle, a few hogs, a few sheep and chickens, it is not reality today! Our farms have changed but I contend they are still mostly operated by families. Again USDA says 93% of all our farms in the US today are family owned and operated even though only 9 states have anti-corporate farm laws and 41 don't.

So, I, as a family farmer in ND, personally do not feel my/our way of life will be threatened by this measure. This will not create any serious competition threat for our land. There is much more risk in competition for my land from our neighbors than there is in this bill. This can help and will assist our family

farmers by presenting more opportunities. It will diversify our ag economy. It will provide balance between grain and animal production. These dairy and swine operations will need to contract with our local farmers to grow the feed for the cows and receive the manure, a very high quality organic fertilizer. It would benefit the corn, soybean, feed, implement, etc. industries by providing additional demand for feed, equipment, supplies, electricity, etc. I could go on. Just a small increase in demand for corn or feedstock could create at least \$millions increase in agricultural income. These livestock farms are value added agriculture operations.

The ND Century Code will continue to protect our family farmers by keeping the land in the hands of family farmers. That is where the true power lies, allowing only our family farmers to control the land through ownership or leasing. Our strong anti-corporate farming law will still be there, in ND Century Code. As our state coat of arms motto reads "Strength from the Soil", our family farmers gain their strength from the soil! We are still keeping the soil in control of family farmers.

There will be some here today who will tell you that this won't work. If that is true, what is their worry? We will be no worse off than we currently are. Then the same folks will say this is going to result in the whole state owned by corporations. If that is true we will have a lot of dairy farms and swine farms, because that is the only way they could own that much land. It can't be both. It will not open the flood gates. Most of our farms will continue to be family farms, as they are today, because our law remains. But hopefully there will be a few new dairy and swine operations developed to restore our once proud livestock enterprises.

I would also encourage those who will oppose this effort, and I respectfully recognize that is their right, to offer their solution to this problem. To sum up my position on this issue, "doing nothing is not an option"! The question should be "Do you want to save our dairy and swine industries or doesn't it matter"? Thank you and I will try to answer any questions.



## North Dakota Dairy Industry: By the Numbers

1/15/2015

Two largest dairy producing counties in North Dakota: Emmons and Morton

### \*Dairy Production:

- **North Dakota dairy production fell** from 585 million lbs. (2002) to a low of 342 million lbs. (2013)
  - 41.5% decrease
  - Still falling
  - Since 2007, **lost** 102 million pounds of production
    - 23.0% decrease
- **South Dakota dairy production steadily increased** from 1.4 million lbs. (2002) to 2.0 million lbs. (2012)
  - 53.8% increase
  - Since 2007, added 3.3 billion pounds of milk production
    - 22% increase

### \*Dairy Headcount:

- **North Dakota:** Down from 40,000 (2002) to 16,000 (2014)
  - 60.0% decrease
- **South Dakota:** ~~Down~~ <sup>INCREASE</sup> from 96,000 (2002) to 128,800 (2014) <sup>86,000</sup>
  - 10% increase
  - Increased 7,000 head just six years after passing corporate farming reform
    - From 90,000 in 2008 to 97,000 in 2014
  - 25,000 head **already permitted** to enter the state in 2015

### Costs to construct a dairy facility:

- Minimum herd size recommendation: 1600 head
- Cost: \$,4800-\$5,900/cow; \$7.68 - \$9.44 million total

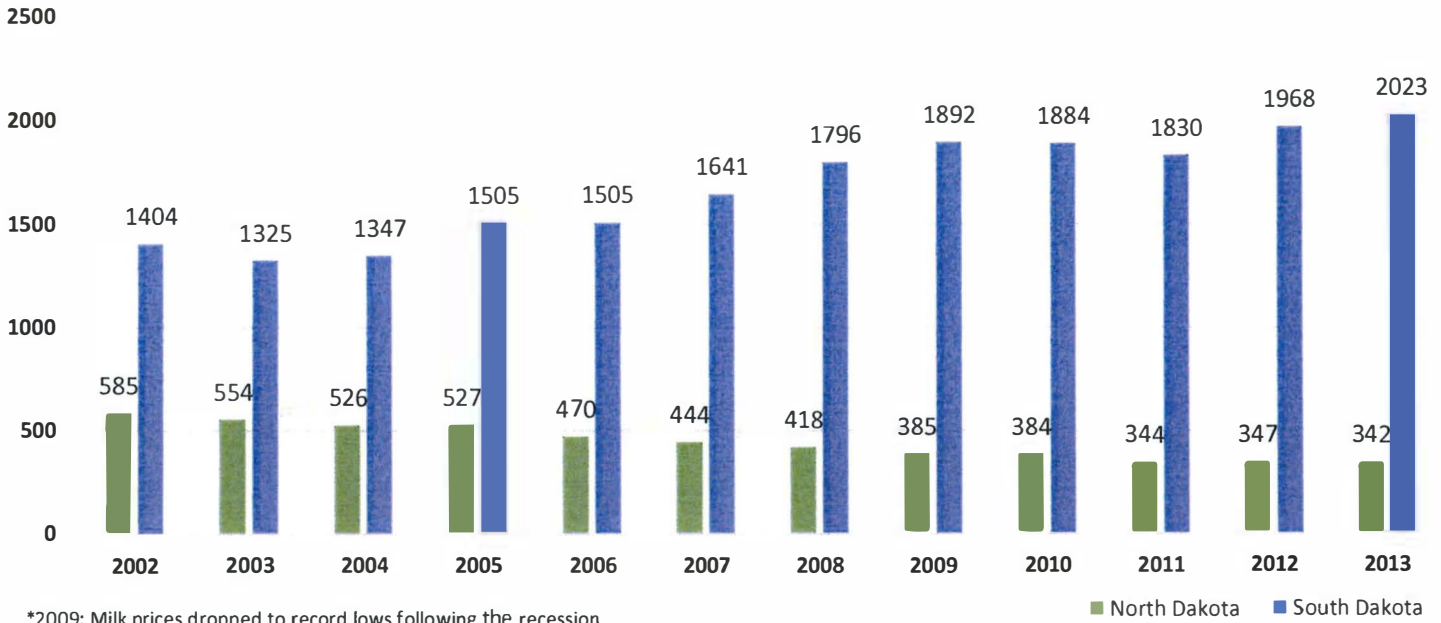
### Smaller dairy operations:

- Can utilize robotic milkers effectively
- Robotic milkers cost approximately \$250,000
- One robot milks 55-60 cows/day

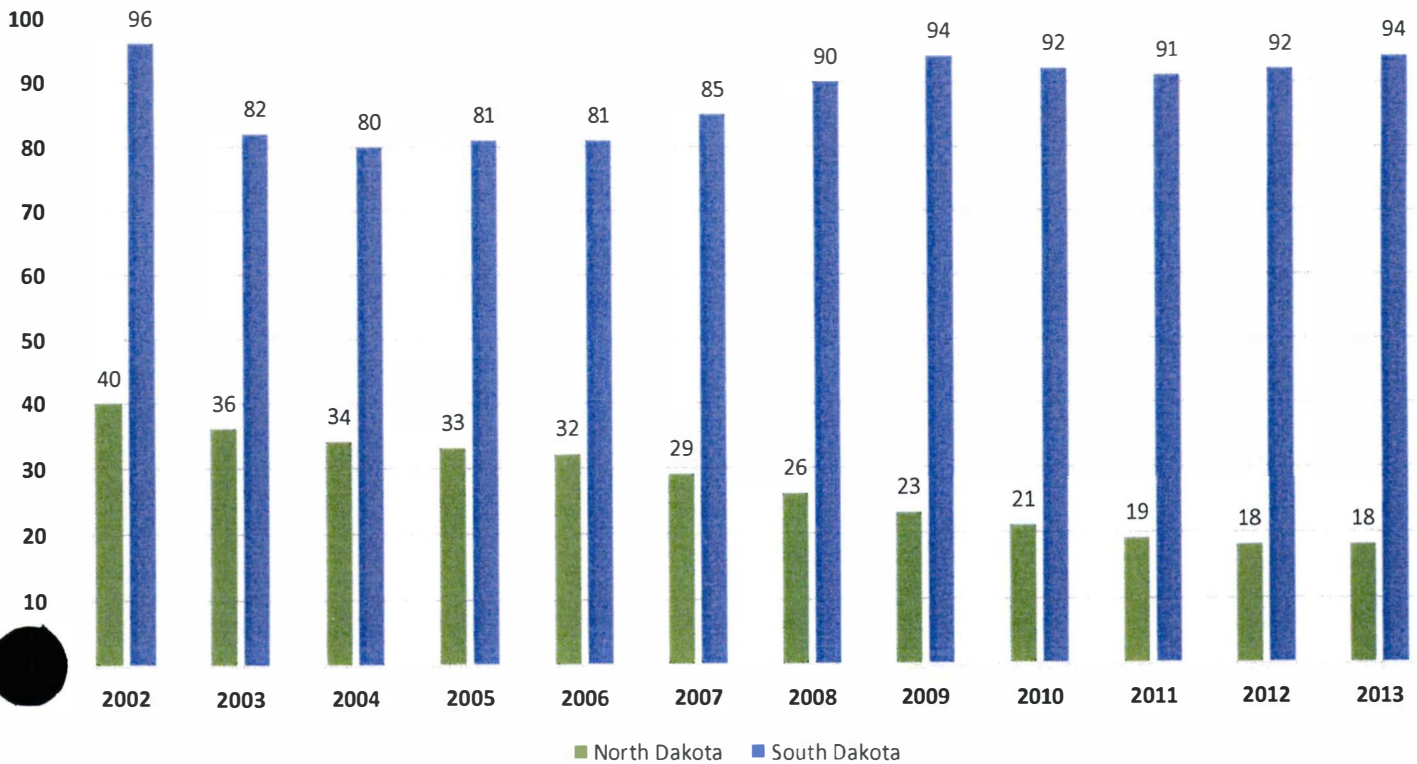
### Processors:

- Currently there are two large-scale, fluid milk processors in the state:
  - Dean's Foods, Bismarck
  - Kemps/Cass-Clay, Fargo
- Dry, specialty cheese plant in Polluck, SD heavily supplied by North Dakota milk
- As milk production in North Dakota continues to fall, the likelihood of losing a dairy processor greatly increases.

## North Dakota vs. South Dakota Milk Production (Million Pounds)



## North Dakota vs. South Dakota Dairy Cow Headcount (Thousand)



## State Non-Corporate Farming Laws

1/26/2015

Eight states have laws that prohibit or limit corporate farming—Kansas completely repealed their law in 2012.

- **South Dakota, including exemptions for:**

- Certain breeding stock, products and facilities
- Certain greenhouse operations
- Facilities for feeding poultry or producing meat or eggs
- Dairy on agricultural lands
- Banks and trust companies—Purchase of agricultural land through pooled investment fund
- Land owned by a corporations as of July 1, 1974
- Encumbrance taken for security exempt
- Gifts to nonprofit corporations exempt
- Farms, for scientific, medical, research, or experimental purposes exempt if sale of products incidental
- Raising breeding stock for resale exempt—nurseries and seed farms
- Livestock feeding
- Family farm and authorized corporations
  - Family farm—majority of stock held by family members

- **North Dakota**

- No exemptions

- **Oklahoma, including exemptions for:**

- Exemptions limited to domestic corporations
- Engages in research and or/feeding arrangements concerned with the feeding of livestock or poultry, but only to the extent of such research and/or feeding arrangements or such livestock or poultry operations
- Engages in operations concerned with the production and raising of livestock or poultry for sale or use as breeding stock
- Swine operations, including only directly related operations, such as facilities for the production of breeding stock, feed mills, processing facilities, and providing supervisory, technical and other assistance to any other persons performing such services on behalf of the corporation
- Engages in poultry operations, including only directly related operations, such as operating hatcheries, facilities for the production of breeding stock, feed mills, processing facilities, and providing supervisory, technical and other assistance to any other persons performing such services on behalf of the corporation to the extent of such operations in this state by the corporation on the effective date of this act
- Engages in forestry
- Non-profits
- Presently engages in fluid milk processing

- **Iowa, including exemptions for:**

- Authorized farm corporation
  - Stockholders do not exceed 25, are all natural persons or acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations
- Land owned by nonprofit corporations
- Land owned by municipal corporations
- Agricultural land held for research or experimental purposes

- **Minnesota, including exemptions for:**

- Authorized farm corporations
  - No more than five shareholders, who are natural persons and obtain specific amounts of their receipts from agriculture, actively engaged
- Authorized livestock farm corporation
  - Engaged in production of livestock other than dairy
  - All shareholders are natural persons, family farm trusts, or family
  - Revenue does not exceed 20% of gross receipts
  - Does not own more than 1500 acres of agricultural land

- Religious farms
- **Wisconsin, including exemptions for:**
  - Owned by a corporation on June 5, 1974
  - Acquired to meet pollution control requirements
  - Engaged primarily in research, breeding operations or the production of any crop primarily for seed
- **Nebraska, including exemptions for:**
  - Family Farm corporations
  - Non-profit corporations
  - Indian tribal corporations
  - Held by a corporation to meet the requirements of pollution control regulations
  - Raising poultry
  - Alfalfa production
  - Growing seed, nursery plants, or sod
  - Mineral rights on agricultural land
  - Custom spraying, fertilizing, or harvesting
- **Missouri, including exemptions for:**
  - Authorized farm corporation: all shareholders are natural persons and it must receive two-thirds or more of its total net income from farming
    - Family farm corporation includes corporations created for the purpose of farming,
    - At least one-half of the voting stock is held by and at least one-half of the stockholders are members of a family related to each other within the third degree of consanguinity,
    - At least one stockholder must be actively operating a farm
- **Kansas**
  - Completely repealed in 2012.

The United States Court of Appeals for the Eighth Circuit has struck down the Nebraska, South Dakota and Iowa laws on the dormant commerce clause.



## Drop in dairy discouraging



JANUARY 18, 2015 7:15 AM • BY JESSICA HOLDMAN

A drop in the number of North Dakota dairy farms -- from 350 in 2000 to 91 today -- has led to scrutiny of a state law that allows only family members to form farming corporations.

While the rule protects family-owned enterprises from corporate entities, farm numbers have dropped so low that the viability of milk-processing facilities in the state has become endangered, according to Doug Goehring, the state's commissioner of agriculture.

Some producers say they would like to follow South Dakota's lead to allow corporate farming in an effort to lure more dairy operators into the state.

"Our dairy industry is hurting terribly," Goehring said.

As a result, Goehring proposed to allow exceptions to North Dakota's non-corporate farming law in dairies, swine operations and feedlots to a full room of legislators during the first week of the legislative session.

"If the legislature wants to take this up and the ag community wants to push it, then I would think it probably would happen (this session)," said Goehring, adding producers need to own the issue in order to facilitate the change.

In 2000, there were about 49,000 dairy cows. Now, there are about 16,000 dairy cattle, according to Goehring. For swine operations, the headcount has decreased from 18,500 pigs in 2000 to 13,900. Beef cattle numbers have remained more stable, and a new slaughter plant scheduled to come online in Aberdeen, S.D., next year has more ranchers interested in starting feedlots.

"Dairy has probably been the one that has been the most hurt and in more dire need. We just continue to see declines," said Goehring, adding that out-of-state producers see benefits to moving their operations to North Dakota, but they would need to incorporate to make it financially feasible.

Jerry Messer, who raises dairy cattle on Beaver Creek Ranch in Richardton, said, when South Dakota tweaked its laws to allow multiple dairy investors instead of just one family, the state became successful at recruiting dairies.

### Five ramifications

A vibrant dairy industry also benefits corn growers by allowing them to diversify and make more money, according to Messer.

"In North Dakota, corn goes to two places: It either goes to the ethanol plants or on a train to

another market," said Goehring, adding that grain farmers want another option for their grain. "For every 3,300 bushels of feed that is consumed by a cow or pig, that means one less rail car going out of the state."

## Importing milk

A milk processing facility in central North Dakota has been operating at a 600-cow-a-day deficit, forcing it to import milk into the state.

"When operations have to start doing that, plants start closing doors," Goehring said. "We don't have enough cows in central North Dakota anymore."

Goehring gave the example of a 25-partner outfit along the border. Farmers partnered with a dairy operation, providing feed while the one family operated the dairy. The dairy wasn't in competition with the farmers for land because it was content to allow others to grow feed while it did what it does best – manage the animals.

"I think it's those type of structures that seem appealing and seem to be working," Goehring said.

Kenton Holle, of Northern Lights Dairy of Mandan, agreed there is room for expansion of the industry.

"I think that there's a real possibility in North Dakota to see some livestock industries expand," said Holle, adding the adoption of current laws governing corporate farming would help.

Holle said he did not know of any dairy processing plants importing out-of-state milk. He said he thinks milk produced in the state now is adequate to keep them running.

"I think that's the key to it right there," Holle said of partnerships between dairies and farmers growing feed crops. If a law change were to be proposed, he says there should be a clause prohibiting large producers from buying up large amounts of land to plant their feed.

## Investment dollars

Producers need the ability to pool resources because dairy operations cost so much, according to Goehring, who said an operation often needs to be milking 600 to 800 cows to break even and a 1,600-head dairy operation takes several million dollars to start.

"Most farmers don't have that kind of money sitting around," he said, and many banks won't lend it to a single investor.

"Because our state has been primarily grain production ... lenders are not very familiar with animal agriculture. It's hard for them to understand the ebbs and flows that exist in the livestock industry, and they have more apprehension about lending," he said.

Messer, who is chairman of the Midwest Dairy Association and a member of the North Dakota Dairy Promotion Commission, said, with much of its new oil wealth, North Dakota is in a good position to recruit more dairies.

He suggested creating an investment fund for those with oil royalties who want to support North Dakota agriculture. He said the investors would get tax write-offs and the fund would supplement the programs offered by the Bank of North Dakota for starting and growing farmers.

# Repealing corporate farming laws

3 ● Ben Speidel • Daily News newsmonitor@midconetwork.com | Posted: Wednesday, February 4, 2015 3:00 pm

To compensate for the decline in both dairy and swine production, the North Dakota Legislature is looking into repealing its corporate farming laws.

Both industries have shown significant declines the past 10 years. Legislators say without intervention, swine and dairy production may disappear from the North Dakota plains. If the current law is amended, it would only allow corporate farming in the swine and dairy industries.

North Dakota has had anti-corporate farming laws on the state books since 1932. Until 1981, all corporations were prohibited from farming within the state until the Legislature amended its law to prohibit corporations from owning or leasing land used for farming or ranching.

Sen. Larry Luick, R-District 25, supports repealing the corporate farming laws, as long as there are limits. He said the trend among corporate farms is to buy valuable farmland and squeeze out local farmers. The Legislature is looking to limit the amount of land that can be purchased to only the property on which the facility will be located, Luick said.

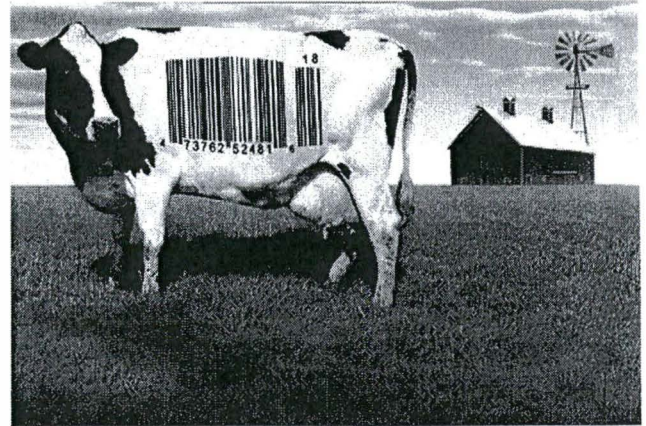
Allowing limited corporate farming by itself should not be a deterrent, Luick said, since many N.D. farmers already have formed corporations. Corporations themselves are more about tax structures and to limit liability.

He said there are large dairies in other states interested in locating to North Dakota, but only if they have the protection of a corporation.

The Legislature has looked at amending its corporate farming law during the past three sessions. Luick said he thinks this is the year it will be amended to allow corporate dairy and swine farms.

The past 10 years have shown significant decreases in swine and dairy production within the state as there are fewer head of hogs and 20,000 fewer head of dairy cows.

North Dakota had 467 dairy producers in 2003. That number dropped to 91 dairy producers in 2013. Since then, Luick said, two more dairies have closed and two more are on the brink of closure, to leave North



## Repealing corporate farming laws

To compensate for the decline in both dairy and swine production, the North Dakota Legislature is looking into repealing its corporate farming laws.



Dakota with about 87 dairy producers.

North Dakota is importing milk. We've never had to do that before," Luick said.

Luick was raised on a beef and hog farm, and said his neighbor operated a dairy. He understands the work involved in keeping a dairy operation running. "Kids are not wanting to pick up a dairy business. The physical demands and commitment isn't there to milk twice a day," he added.

To compound the issue, processors themselves are looking at pulling out of the state because there aren't enough materials to stay operational.

Testimony was heard in the Senate Agriculture Committee that shifts are being cut at two dairy processing plants, Cass Clay in Fargo and Dean Foods in Bismarck, since milk production is down.

Dairy farming in the United States is undergoing dramatic changes, driven by both supply and demand factors, according to a report by the Economic Research Service with the U.S. Department of Agriculture. The number of dairy farms with fewer than 200 cows is shrinking rapidly while very large operations, with 1,000 to 30,000 cows on one site account for rapidly growing shares of production.

Dairy production continues to increase in South Dakota and Minnesota, according to monthly numbers released Jan. 22 by the National Agricultural Statistics Service, an arm of USDA. So far, North Dakota doesn't produce enough milk to be included in the report. South Dakota produced 183 million pounds of milk in December, 6.4 percent more than the same month a year ago, while Minnesota produced 784 million pounds, up from 766 million pounds in the same period a year earlier.

There are two Grade A dairies in Richland County. Luick said repealing the corporate farm ownership among dairy and swine operations should benefit local dairies.

Luick said he sees many benefits to corporate farming, such as better utilizing corn for feed, alfalfa, soybean meal and other ethanol plant byproducts. "It is another market for grain raised in a specific area. We are shipping way too much soybean and grain out of this state. We should focus on adding value to that product and utilize it here in our state," he added.



## Anti-corporate exemptions proposed for dairy, swine

JANUARY 26, 2015 5:00 PM • BY JESSICA HOLDMAN

As the dairy industry continues to shrink in North Dakota, lawmakers are looking to save it by allowing operators to incorporate.

Sen. Terry Wanzek, R-Jamestown, introduced a bill Monday that would exempt certain dairies and swine operations from the state's anti-corporate farming law.

Wanzek, a fourth-generation family farmer, said the bill would follow South Dakota's lead by tweaking the 80-year-old law. Under the legislation, operations with no more than 640 leased or owned acres would be allowed to incorporate under the exemption.

"Our goal is to provide complementary operations where farmers can maintain their land and corporations manage the animals and operations," Wanzek said in a statement. "The sheer start-up costs alone for a hog or dairy operation make it cost-prohibitive without more access to capital."

The bill also would benefit the corn and soybean industries by providing additional demand for feed, Wanzek said.

"A small increase in demand for corn or feedstock could create at least \$100 million in increased agricultural income," said Bart Schott, a North Dakota Corn Growers Board member and former National Corn Growers Association president.

Dairy production has dropped 42 percent in the past 10 years, and swine operations are on a similar decline.

"Doing nothing is not an option," Wanzek said. "We have to do something to save these industries in our state."

## Dairies looking for ways to rebound

JANUARY 21, 2015 3:30 AM

Dairy farming always has been a demanding business. It requires early morning milking followed by another round of milking late in the afternoon.

And it's hard to take a break — you can't let the cows wait a day.

North Dakota hasn't ranked among the top dairy states, in fact, the state's dairy numbers are falling. In a Sunday story, reporter Jessica Holdman noted that the number of dairy farms has slipped from 350 in 2000 to 91 today.

This has prompted a search for solutions. One idea being considered is changing the state law that allows only family members to form farming corporations.

Agriculture Commissioner Doug Goehring warns that the future of milk-processing facilities in the state are at stake. He's urging producers to take the lead in seeking changes.

He's suggested exceptions to North Dakota's non-corporate farming law for dairies, swine operations and feedlots.

"If the Legislature wants to take this up and the ag community wants to push it, then I would think it probably would happen (this session)," he said.

South Dakota has made changes to allow corporate farming in an effort to lure more dairy operators into the state.

Goehring thinks out-of-state producers would move their operations to North Dakota if they could incorporate to make it financially feasible.

He also said producers need to be able to pool their resources because dairy operations are expensive.

Jerry Messer, who raises dairy cattle on Beaver Creek Ranch in Richardton, told the Tribune when South Dakota tweaked its laws to allow multiple dairy investors instead of just one family, the state saw success at recruiting dairies.

A slaughter plant scheduled to begin operating in Aberdeen, S.D., next year already has ranchers interested in starting feedlots.

Giving new life to dairy farms, feedlots and swine operations can have trickle down benefits. It provides more customers for corn producers and allows them to diversify. Also, if the corn is sold locally the producers don't have to rely as much on rail service. If we produce more milk it will reduce milk imports.

The proposals have merit and it's up to producers to get the Legislature's approval. Goehring thinks legislators will approve but he's made it clear that producers will have to lead the way.

If the decision is made to pursue changes in the law, everyone should realize this could just be the beginning. Once the law is modified, it's likely to draw more attention.

This would be a good time to review the entire law and see if fits the needs of North Dakota in 2015.

It's up to the producers to make the next move.

## **North Dakota Swine Industry: By the Numbers**

**1/15/2015**

**Two largest swine producing counties in North Dakota:** Grand Forks and Towner

### **\*Swine Production** (thousand pounds):

- **North Dakota swine production fell** from 6.7 million lbs. (2003) to a 5.2 million lbs. (2013)
  - 22.4% decrease
  - Still falling
- **South Dakota swine production steadily increased** from 604.4 million lbs. (2003) to 702.3 million lbs. (2013)
  - 16.2% increase

### **\*Swine Headcount:**

- **North Dakota:** Down from 150,000 (2003) to 135,000 (2013)
  - 10% decrease
- **South Dakota:** Down from 1.3 million (2003) to 1.2 million (2013)
  - 7.7% decrease
  - Proposing bill to add swine exemption this year

### **Costs to construct a swine facility:**

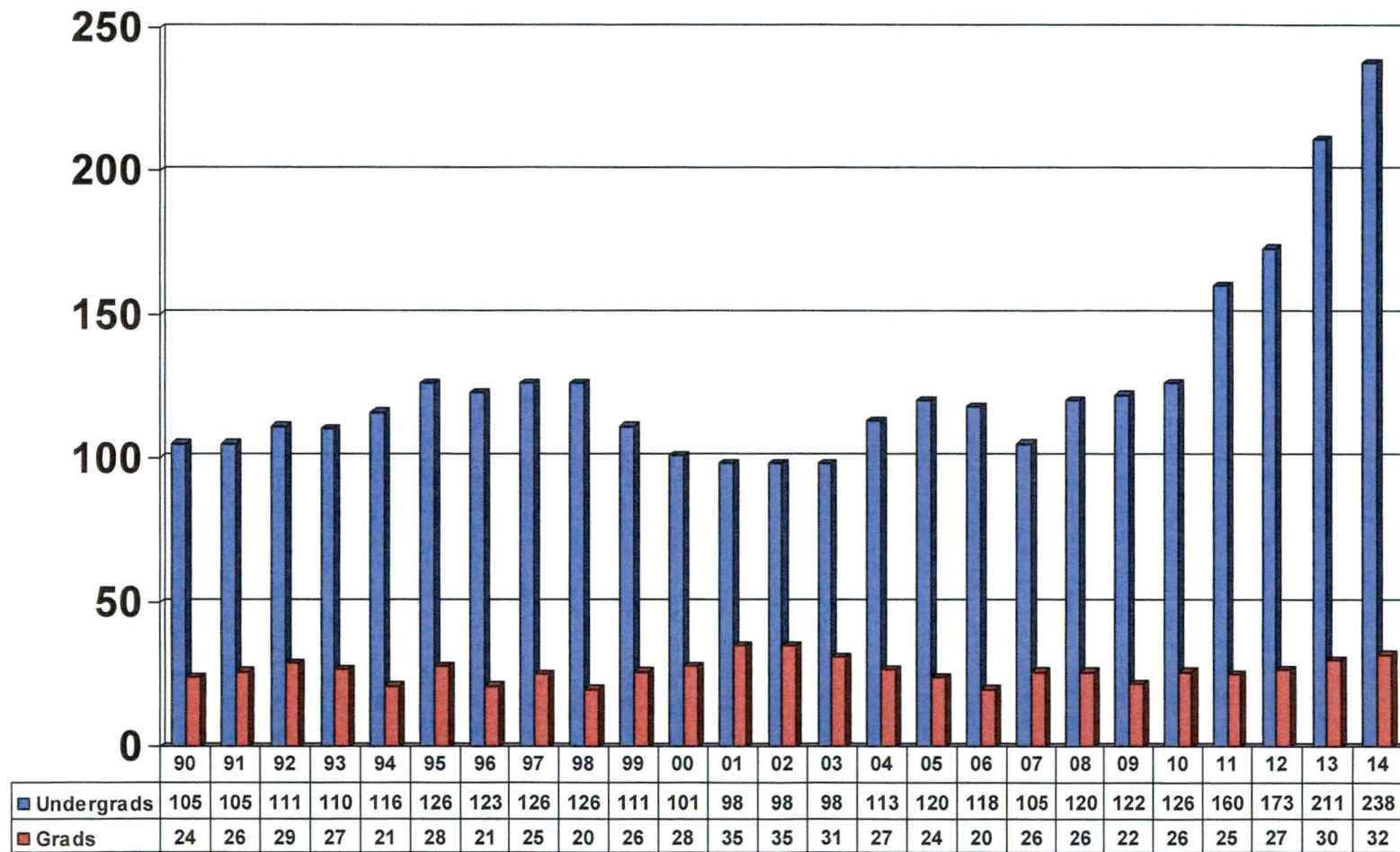
- **5,400 head farrowing unit start-up cost:** \$16 million
  - Structure: \$12 million
  - Animals, feed, labor: \$4 million
- **Annual Operating Expenses:** \$5-6 million

### **Feedstuffs used in 5,400 head farrowing operation** (annually)

- Corn: 150,000 bushels
- Soybean Meal: 750 tons
- DDGs: 2,500 tons
- Minerals, Vitamins & Minor Grains: 250 tons



# NDSU Animal Science

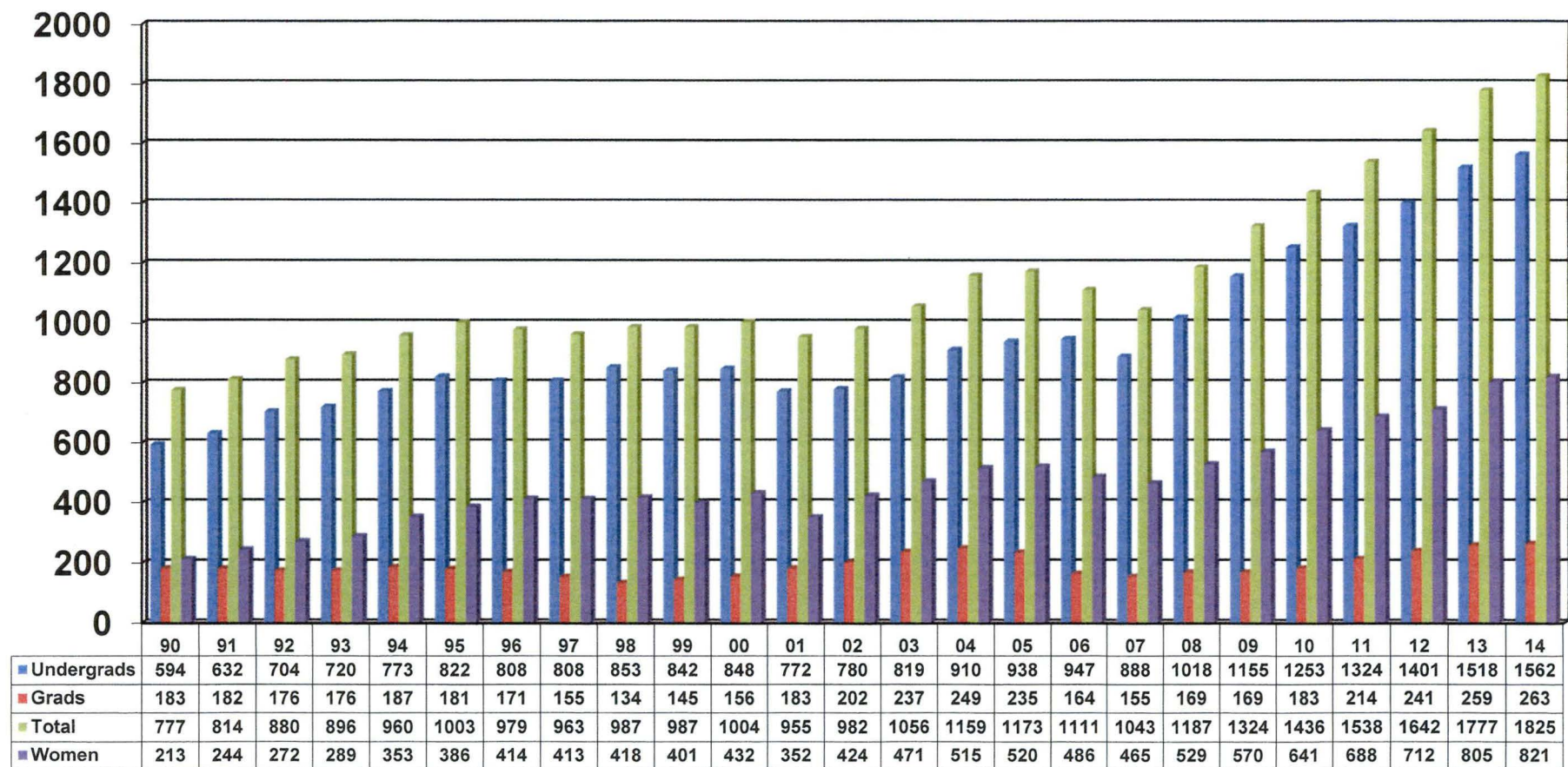


NDSU College of Agriculture, Food Systems, and Natural Resources

September 2014

# NDSU Undergraduate & Graduate Enrollment

## College of Agriculture, Food Systems & Natural Resources



Please note: Interdisciplinary programs transferred to Graduate School for Fall Semester 2006.

NDSU College of Agriculture, Food Systems, and Natural Resources

September 2014



**Dairy Cow Headcount - IL, IN, IA, KS, MI, MN, NE, ND, SD, WI**  
**Source: National Agricultural Statistics Service, [www.nass.usda.gov](http://www.nass.usda.gov)**

YEAR	ILLINOIS	INDIANA	IOWA	KANSAS	MICHIGAN	MINNESOTA	NEBRASKA	NORTH DAKOTA	SOUTH DAKOTA	WISCONSIN
2013	97,000	176,000	208,000	134,000	380,000	464,000	54,000	18,000	94,000	1,271,000
2012	98,000	175,000	205,000	126,000	375,000	465,000	56,000	18,000	92,000	1,270,000
2011	98,000	172,000	204,000	123,000	366,000	468,000	57,000	19,000	91,000	1,265,000
2010	100,000	170,000	210,000	119,000	358,000	470,000	59,000	21,000	92,000	1,262,000
2009	102,000	168,000	214,000	118,000	355,000	469,000	61,000	23,000	94,000	1,257,000
2008	102,000	167,000	213,000	117,000	350,000	464,000	58,000	26,000	90,000	1,252,000
2007	103,000	166,000	213,000	110,000	335,000	460,000	59,000	29,000	85,000	1,247,000
2006	103,000	165,000	205,000	112,000	320,000	450,000	61,000	32,000	81,000	1,243,000
2005	104,000	156,000	195,000	111,000	312,000	453,000	60,000	33,000	81,000	1,236,000
2004	107,000	151,000	193,000	113,000	303,000	463,000	61,000	34,000	80,000	1,241,000
2003	111,000	149,000	201,000	111,000	302,000	473,000	64,000	35,000	82,000	1,256,000
2002	115,000	151,000	209,000	107,000	301,000	487,000	67,000	40,000	86,000	1,271,000
2001	116,000	153,000	210,000	93,000	303,000	510,000	72,000	46,000	89,000	1,292,000
2000	120,000	146,000	215,000	91,000	300,000	534,000	76,000	48,000	95,000	1,344,000
1995	151,000	144,000	251,000	82,000	326,000	592,000	74,000	64,000	118,000	1,490,000
1990	174,000	156,000	280,000	99,000	340,000	710,000	97,000	85,000	140,000	1,731,000
1985	227,000	192,000	352,000	109,000	394,000	913,000	109,000	101,000	162,000	1,876,000
1980	233,000	201,000	368,000	123,000	395,000	862,000	121,000	93,000	159,000	1,815,000
1975	243,000	215,000	401,000	142,000	411,000	884,000	152,000	115,000	174,000	1,812,000
1970	297,000	237,000	497,000	188,000	433,000	949,000	174,000	137,000	183,000	1,814,000
1965	422,000	330,000	718,000	247,000	585,000	1,232,000	255,000	223,000	226,000	2,075,000
1960	570,000	426,000	851,000	332,000	641,000	1,265,000	327,000	277,000	248,000	2,150,000
1955	788,000	579,000	1,022,000	468,000	809,000	1,378,000	428,000	368,000	302,000	2,302,000
1950	925,000	693,000	1,124,000	560,000	863,000	1,349,000	462,000	375,000	333,000	2,160,000
1945	1,111,000	803,000	1,343,000	723,000	985,000	1,660,000	575,000	495,000	440,000	2,360,000
1940	1,061,000	738,000	1,383,000	708,000	908,000	1,632,000	605,000	484,000	456,000	2,165,000
1935	1,136,000	770,000	1,455,000	831,000	860,000	1,630,000	686,000	542,000	501,000	2,030,000
1930	1,000,000	688,000	1,323,000	757,000	778,000	1,524,000	642,000	521,000	532,000	1,973,000



**Milk Production (Pounds) - IL, IN, IA, KS, MI, MN, NE, ND, SD, WI**  
**Source: National Agricultural Statistics Service, [www.nass.usda.gov](http://www.nass.usda.gov)**

YEAR	ILLINOIS	INDIANA	IOWA	KANSAS	MICHIGAN	MINNESOTA	NEBRASKA	NORTH DAKOTA	SOUTH DAKOTA	WISCONSIN
2013	1,879,000,000	3,830,000,000	4,606,000,000	2,932,000,000	9,164,000,000	9,140,000,000	1,165,000,000	342,000,000	2,023,000,000	27,572,000,000
2012	1,868,000,000	3,752,000,000	4,513,000,000	2,732,000,000	8,991,000,000	9,073,000,000	1,186,000,000	347,000,000	1,968,000,000	27,224,000,000
2011	1,814,000,000	3,553,000,000	4,323,000,000	2,585,000,000	8,478,000,000	8,890,000,000	1,173,000,000	345,000,000	1,873,000,000	26,058,000,000
2010	1,840,000,000	3,416,000,000	4,342,000,000	2,497,000,000	8,333,000,000	9,102,000,000	1,168,000,000	384,000,000	1,884,000,000	26,035,000,000
2009	1,862,000,000	3,383,000,000	4,301,000,000	2,488,000,000	7,968,000,000	9,019,000,000	1,198,000,000	387,000,000	1,892,000,000	25,239,000,000
2008	1,862,000,000	3,287,000,000	4,236,000,000	2,415,000,000	7,763,000,000	8,782,000,000	1,083,000,000	418,000,000	1,796,000,000	24,472,000,000
2007	1,917,000,000	3,371,000,000	4,278,000,000	2,187,000,000	7,625,000,000	8,656,000,000	1,075,000,000	444,000,000	1,641,000,000	24,080,000,000
2006	1,983,000,000	3,277,000,000	4,126,000,000	2,345,000,000	7,115,000,000	8,369,000,000	1,118,000,000	470,000,000	1,505,000,000	23,398,000,000
2005	1,958,000,000	3,166,000,000	4,025,000,000	2,276,000,000	6,750,000,000	8,195,000,000	1,077,000,000	468,000,000	1,437,000,000	22,866,000,000
2004	1,978,000,000	3,027,000,000	3,851,000,000	2,216,000,000	6,330,000,000	8,102,000,000	1,049,000,000	465,000,000	1,347,000,000	22,085,000,000
2003	2,047,000,000	2,939,000,000	3,810,000,000	2,130,000,000	6,375,000,000	8,258,000,000	1,129,000,000	500,000,000	1,330,000,000	22,266,000,000
2002	2,051,000,000	2,658,000,000	3,804,000,000	2,030,000,000	6,120,000,000	8,458,000,000	1,167,000,000	593,000,000	1,289,000,000	22,074,000,000
2001	2,020,000,000	2,567,000,000	3,785,000,000	1,610,000,000	5,870,000,000	8,812,000,000	1,166,000,000	644,000,000	1,370,000,000	22,199,000,000
2000	2,094,000,000	2,419,000,000	3,934,000,000	1,540,000,000	5,705,000,000	9,493,000,000	1,255,000,000	686,000,000	1,474,000,000	23,259,000,000
1995	2,399,000,000	2,214,000,000	4,047,000,000	1,180,000,000	5,565,000,000	9,409,000,000	1,095,000,000	838,000,000	1,581,000,000	22,942,000,000
1990	2,559,000,000	2,276,000,000	4,233,000,000	1,245,000,000	5,234,000,000	10,030,000,000	1,345,000,000	1,073,000,000	1,716,000,000	24,187,000,000
1985	2,721,000,000	2,358,000,000	4,058,000,000	1,285,000,000	5,568,000,000	10,835,000,000	1,340,000,000	1,120,000,000	1,744,000,000	24,700,000,000
1980	2,540,000,000	2,210,000,000	3,994,000,000	1,330,000,000	4,970,000,000	9,535,000,000	1,315,000,000	939,000,000	1,669,000,000	22,380,000,000
1975	2,446,000,000	2,210,000,000	3,893,000,000	1,392,000,000	4,411,000,000	8,946,000,000	1,431,000,000	917,000,000	1,556,000,000	18,900,000,000
1970	2,850,000,000	2,382,000,000	4,670,000,000	1,740,000,000	4,602,000,000	9,636,000,000	1,566,000,000	1,065,000,000	1,578,000,000	18,435,000,000
1965	3,844,000,000	2,954,000,000	5,945,000,000	1,749,000,000	5,528,000,000	10,731,000,000	1,821,000,000	1,467,000,000	1,580,000,000	18,841,000,000
1960	4,229,000,000	3,178,000,000	5,940,000,000	1,922,000,000	5,173,000,000	10,272,000,000	2,008,000,000	1,731,000,000	1,463,000,000	17,780,000,000
1955	5,027,000,000	3,845,000,000	5,958,000,000	2,354,000,000	5,396,000,000	8,833,000,000	2,298,000,000	1,785,000,000	1,368,000,000	16,482,000,000
1950	5,208,000,000	3,708,000,000	6,171,000,000	2,548,000,000	5,420,000,000	8,067,000,000	2,250,000,000	1,699,000,000	1,402,000,000	14,796,000,000
1945	5,777,000,000	3,814,000,000	6,702,000,000	2,943,000,000	5,506,000,000	8,599,000,000	2,501,000,000	1,970,000,000	1,650,000,000	14,939,000,000
1940	5,188,000,000	3,225,000,000	6,611,000,000	2,860,000,000	4,949,000,000	8,405,000,000	2,589,000,000	2,081,000,000	1,746,000,000	12,665,000,000
1935	4,873,000,000	3,049,000,000	6,009,000,000	3,075,000,000	4,257,000,000	7,384,000,000	2,689,000,000	1,951,000,000	1,603,000,000	10,921,000,000
1930	4,650,000,000	2,931,000,000	5,927,000,000	3,058,000,000	4,014,000,000	7,590,000,000	2,806,000,000	2,136,000,000	2,197,000,000	11,207,000,000



**Swine Headcount - IL, IN, IA, KS, MI, NE, ND, SD, WI**  
**Source: National Agricultural Statistics Service, [www.nass.usda.gov](http://www.nass.usda.gov)**

YEAR	ILLINOIS	INDIANA	IOWA	KANSAS	MICHIGAN	MINNESOTA	NEBRASKA	NORTH DAKOTA	SOUTH DAKOTA	WISCONSIN
2014	4,600,000	3,600,000	20,900,000	1,800,000	1,100,000	7,850,000	3,100,000	139,000	1,250,000	300,000
2013	4,550,000	3,650,000	20,200,000	1,750,000	1,060,000	7,800,000	3,050,000	135,000	1,200,000	295,000
2012	4,600,000	3,800,000	20,600,000	1,900,000	1,090,000	7,650,000	3,000,000	135,000	1,190,000	320,000
2011	4,650,000	3,800,000	20,000,000	1,890,000	1,050,000	7,800,000	3,100,000	149,000	1,390,000	340,000
2010	4,350,000	3,650,000	19,100,000	1,800,000	1,040,000	7,700,000	3,150,000	143,000	1,290,000	330,000
2009	4,250,000	3,600,000	18,900,000	1,800,000	1,080,000	7,200,000	3,050,000	155,000	1,180,000	350,000
2008	4,350,000	3,550,000	19,900,000	1,740,000	1,030,000	7,500,000	3,350,000	151,000	1,280,000	360,000
2007	4,350,000	3,700,000	19,400,000	1,880,000	1,030,000	7,700,000	3,350,000	182,000	1,460,000	440,000
2006	4,200,000	3,350,000	17,300,000	1,860,000	990,000	6,900,000	3,050,000	169,000	1,270,000	450,000
2005	4,000,000	3,250,000	16,600,000	1,800,000	960,000	6,600,000	2,900,000	157,000	1,430,000	430,000
2004	4,100,000	3,200,000	16,300,000	1,720,000	950,000	6,500,000	2,850,000	164,000	1,280,000	430,000
2003	4,000,000	3,100,000	15,900,000	1,660,000	950,000	6,500,000	2,900,000	150,000	1,280,000	480,000
2002	4,150,000	3,250,000	15,500,000	1,530,000	870,000	6,100,000	3,000,000	144,000	1,330,000	520,000
2001	4,250,000	3,200,000	15,400,000	1,570,000	960,000	5,800,000	2,900,000	154,000	1,290,000	540,000
2000	4,150,000	3,350,000	15,100,000	1,520,000	950,000	5,800,000	3,050,000	185,000	1,320,000	610,000
1995	4,800,000	4,000,000	13,500,000	1,300,000	1,100,000	4,950,000	4,050,000	280,000	1,450,000	880,000
1990	5,700,000	4,400,000	13,800,000	1,500,000	1,250,000	4,500,000	4,300,000	265,000	1,770,000	1,200,000
1985	5,400,000	4,150,000	13,500,000	1,520,000	1,190,000	4,100,000	3,900,000	285,000	1,610,000	1,250,000
1980	6,600,000	4,600,000	16,100,000	1,900,000	830,000	5,100,000	3,900,000	265,000	1,860,000	1,680,000
1975	5,600,000	3,900,000	12,600,000	1,650,000	700,000	3,000,000	2,700,000	350,000	1,400,000	1,150,000
1970	7,630,000	5,129,000	16,110,000	2,202,000	870,000	3,752,000	3,691,000	408,000	2,009,000	1,932,000
1965	6,618,000	3,944,000	12,857,000	1,242,000	652,000	2,856,000	2,761,000	290,000	1,493,000	1,476,000
1960	7,096,000	4,850,000	12,433,000	1,142,000	741,000	3,522,000	2,527,000	248,000	1,315,000	1,786,000
1955	6,348,000	4,610,000	11,602,000	929,000	783,000	3,637,000	2,423,000	421,000	1,494,000	1,865,000
1950	6,536,000	4,701,000	12,639,000	1,504,000	902,000	3,735,000	2,999,000	401,000	1,543,000	1,854,000
1945	6,337,000	4,157,000	11,494,000	1,470,000	949,000	4,082,000	3,168,000	621,000	1,997,000	1,866,000
1940	5,232,000	3,938,000	9,048,000	1,276,000	977,000	3,402,000	1,813,000	441,000	1,103,000	1,729,000
1935	3,860,000	2,942,000	7,250,000	1,248,000	620,000	2,242,000	2,238,000	345,000	855,000	1,340,000
1930	4,415,000	2,637,000	10,509,000	2,487,000	542,000	3,665,000	4,820,000	766,000	3,000,000	1,536,000

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**Swine Production (Pounds) - IL, IN, IA, KS, MI, NE, ND, SD, WI**  
**Source: National Agricultural Statistics Service, [www.nass.usda.gov](http://www.nass.usda.gov)**

YEAR	ILLINOIS	INDIANA	IOWA	KANSAS	MICHIGAN	MINNESOTA	NEBRASKA	NORTH DAKOTA	SOUTH DAKOTA	WISCONSIN
2013	2,020,410,000	1,648,744,000	10,660,075,000	901,099,000	571,196,000	3,909,753,000	1,176,722,000	51,642,000	702,313,000	169,479,000
2012	1,962,779,000	1,753,128,000	10,345,144,000	907,366,000	548,754,000	3,938,732,000	1,239,968,000	53,480,000	790,048,000	166,642,000
2011	1,867,443,000	1,736,994,000	9,789,483,000	924,568,000	615,658,000	3,675,511,000	1,328,259,000	67,433,000	773,741,000	174,266,000
2010	1,915,998,000	1,753,822,000	9,211,017,000	877,774,000	619,869,000	3,685,752,000	1,348,289,000	59,469,000	734,825,000	174,125,000
2009	1,825,859,000	1,726,612,000	9,614,705,000	910,834,000	600,484,000	3,651,800,000	1,351,209,000	60,908,000	667,493,000	190,076,000
2008	1,698,057,000	1,726,027,000	9,405,442,000	866,318,000	572,559,000	3,765,589,000	1,376,728,000	52,741,000	736,454,000	201,129,000
2007	1,513,202,000	1,607,328,000	8,444,429,000	874,765,000	549,965,000	3,540,381,000	1,437,629,000	51,345,000	686,072,000	217,526,000
2006	1,523,074,000	1,484,896,000	8,021,396,000	799,949,000	482,308,000	3,327,429,000	1,412,340,000	62,401,000	721,462,000	219,648,000
2005	1,614,032,000	1,485,217,000	7,741,072,000	779,315,000	471,420,000	3,238,914,000	1,363,224,000	65,065,000	644,221,000	213,519,000
2004	1,732,642,000	1,424,664,000	7,195,120,000	754,837,000	488,241,000	3,107,935,000	1,374,997,000	66,665,000	622,884,000	207,084,000
2003	1,827,857,000	1,568,223,000	6,797,817,000	681,291,000	478,077,000	3,016,013,000	1,427,503,000	62,985,000	611,406,000	238,925,000
2002	1,811,346,000	1,466,485,000	6,701,425,000	656,466,000	499,504,000	2,785,923,000	1,508,053,000	79,018,000	608,553,000	230,983,000
2001	1,826,191,000	1,445,711,000	6,400,094,000	644,674,000	491,070,000	2,773,774,000	1,450,821,000	92,042,000	612,385,000	279,636,000
2000	1,744,572,000	1,391,956,000	6,478,938,000	687,493,000	464,577,000	2,514,895,000	1,491,368,000	100,229,000	580,611,000	264,092,000
1995	2,184,541,000	1,753,240,000	5,681,967,000	587,225,000	446,182,000	2,013,666,000	1,705,401,000	110,119,000	701,314,000	436,632,000
1990	2,224,798,000	1,665,960,000	5,394,390,000	629,510,000	480,809,000	1,714,484,000	1,623,580,000	87,885,000	753,185,000	459,914,000

**Cattle on Feed (Total Head) - IL, IN, IA, KS, MI, MN, NE, ND, SD, WI**  
**Source: National Agricultural Statistics Service, [www.nass.usda.gov](http://www.nass.usda.gov)**

YEAR	ILLINOIS	INDIANA	IOWA	KANSAS	MICHIGAN	MINNESOTA	NEBRASKA	NORTH DAKOTA	SOUTH DAKOTA	WISCONSIN
2013	250,000	82,000	1,270,000	2,240,000	155,000	385,000	2,550,000	51,000	410,000	260,000
2012	240,000	100,000	1,300,000	2,370,000	150,000	340,000	2,650,000	60,000	380,000	270,000
2011	240,000	125,000	1,380,000	2,400,000	170,000	340,000	2,550,000	60,000	410,000	280,000
2010	250,000	120,000	1,360,000	2,370,000	170,000	310,000	2,500,000	90,000	400,000	260,000
2009	240,000	115,000	1,300,000	2,370,000	165,000	300,000	2,500,000	70,000	390,000	260,000
2008	170,000	110,000	1,350,000	2,630,000	170,000	325,000	2,700,000	70,000	400,000	250,000
2007	215,000	110,000	1,250,000	2,620,000	175,000	285,000	2,700,000	60,000	420,000	240,000
2006	205,000	115,000	1,180,000	2,550,000	190,000	290,000	2,600,000	60,000	400,000	230,000
2005	210,000	125,000	1,100,000	2,460,000	190,000	290,000	2,470,000	60,000	400,000	225,000
2004	200,000	105,000	1,050,000	2,480,000	210,000	310,000	2,450,000	65,000	375,000	210,000
2003	215,000	115,000	1,090,000	2,240,000	180,000	300,000	2,300,000	70,000	395,000	200,000
2002	225,000	115,000	1,020,000	2,530,000	190,000	285,000	2,400,000	62,000	370,000	200,000
2001	225,000	110,000	1,050,000	2,450,000	190,000	290,000	2,550,000	65,000	385,000	180,000
2000	240,000	130,000	1,100,000	2,370,000	200,000	285,000	2,450,000	70,000	360,000	190,000
1995	280,000	200,000	910,000	2,040,000	210,000	300,000	1,940,000	100,000	340,000	150,000
1990	310,000	235,000	980,000	1,595,000	220,000	300,000	2,060,000	40,000	260,000	120,000
1985	540,000	260,000	880,000	1,530,000	165,000	370,000	1,880,000	38,000	355,000	120,000
1980	460,000	250,000	1,390,000	1,270,000	165,000	390,000	1,680,000	39,000	350,000	112,000
1975	500,000	250,000	1,200,000	920,000	200,000	380,000	1,160,000	36,000	345,000	135,000
1970	755,000	349,000	2,213,000	892,000	210,000	589,000	1,477,000	63,000	361,000	146,000
1965	791,000	272,000	1,850,000	451,000	178,000	506,000	1,027,000	136,000	322,000	137,000

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## Model livestock state



Walt Bones of Parker, S.D., is a former South Dakota agriculture secretary who championed the push to attract more dairy into the state. Here, he feeds cattle on the family farm Jan. 28.

South Dakota's thriving dairy industry sets example for North Dakota

**By Mikkel Pates**  
Agweek Staff Writer

**PARKER, S.D.** — South Dakota's steady growth in livestock development in the past decade has come with some changes in corporate structures, but also sheer capitalistic desire and intense political support.

One of the state's key figures in recent years has been Walt Bones III of Parker, S.D., who served as South Dakota agriculture secretary for two years in Gov. Dennis Daugaard's administration. Bones, who went home to the farm in April 2013, is an outspoken champion of dairy and livestock development for the state and is a representation of its success and adaptability.

"I think it's an integral part of the agriculture community," Bones says.

South Dakota has amended its anti-corporate farming law several times. The most important amendments exempted poultry and egg operations and livestock feeding farms in 2004, and dairy farms in 2008, Bones says. The state has seen 3 to 5 percent annual increases in hog numbers. Dairy has gone up 25,000 cows in expansions and new operations in the past two years.

**DAIRIES:** See Page 11



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IN NEXT WEEK'S ISSUE: SMALL-MARKET CROPS DRAWING MORE INTEREST

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## DAIRIES

Continued from Page 1

The beef side is harder to track. Local zoning boards have denied some proposed feedlot projects.

In North Dakota, Agriculture Commissioner Doug Goehring and certain Republican agriculture leaders have proposed loosening the state's anti-corporate farming law to attract corporate dairy and swine enterprises to the state, buying or leasing up to 640 acres. The measure aims to get the state in step with its neighbors to the east and south.

But anti-corporate legislation is only one factor in a picture with many parts.

### 'Political energy'

South Dakota has gotten a lot of dairy ink in the past several years, but Minnesota is historically a dairy powerhouse. Minnesota operates 3,400 dairies and ranks third or fourth among states in dairy farm numbers — more than the Dakotas and Iowa combined. The state is also No. 1 in turkeys and No. 3 in hogs.

Jim Salfer, a University of Minnesota Extension dairy specialist at St. Cloud, says his state is open to dairy development, but the political emphasis is much more on growing the state's current industry than attracting outside dairies to move there. State and industry officials met in the first week of February to discuss the direction to take.

Minnesota is "pretty restrictive" in its corporate farming laws, Salfer says. Some areas of the state, such as Morris, in Stephens County, have grown their dairy herd numbers and cow numbers. Other potential areas such as southwest Minnesota don't grow much in numbers, in part because farmers are making profits in cropping.

"There is a pocket of dairy around Pipestone," Salfer says, but it takes the right combination of people to recognize the economic and soil health benefits of diversification.

Looking across the border, Salfer sees South Dakota being aggressive at attracting

dairies of all kinds to feed a growing processing industry.

North Dakota has been less forward, but has many natural advantages for dairy — open land, relatively few people, plentiful, affordable feed; distiller's grain, sugar beets, potatoes and other byproducts.

Salfer dismisses any suggestion that cold weather is a problem.

"Cows are affected more by heat stress," Salfer says. "People get affected by the cold."

An important issue is how a state views itself.

"Does the culture of the state want to be a dairy, beef or cash crop state?" Salfer says. "There needs to be political energy around what's going to happen — hopefully more than lip service."

### Corporate question

Bones says the corporate form can be a helpful tool for certain kinds of livestock enterprises.

"Why should we limit farmers and ranchers to operate with business structures that other entities can use? It's easier for estate planning and liability," he says.

The Bones family is an example of using various governance structures. The farm headquarters, 12 miles west of Sioux Falls, is famous for its livestock enterprises. The

family came to the region in 1879 and is most famous for purebred Hereford cattle, a business that was strong in the 1930s to the mid-1980s.

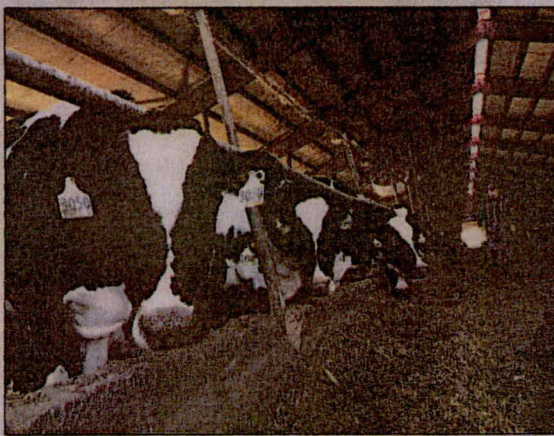
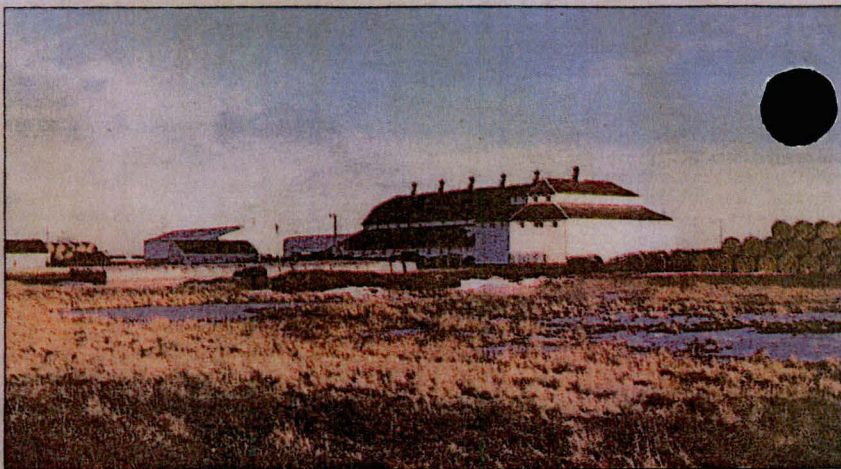
Bones Hereford Ranch is the land and facilities-owning entity, with nine shareholders, including Walt's mother, Winnie. The Bones family formed Hexad Farms, a partnership that leases land and facilities. The active farmers include Walt and his two brothers, three nephews and a brother-in-law.

The Bones family raise corn, soybeans and beef cattle and are part owners of Turner County Dairy, an operation started in 1999 that milks 2,000 head three times a day in two locations. Bones Feedyard has been in the custom cattle feeding business since 1984.



Bones

## COVER STORY



▲ Bones Hereford Ranch, a family-owned land and farm facilities company, leases land to the Bones family's Hexad Farms entity. The farm dates to 1879 and involves an elongated octagonal sale barn that seats 2,000 people.

◀ The Bones Hereford Ranch does not hold barn sales anymore, but its shareholders are part-owners of Turner County Dairy, a 2,000-head operation started in 1999. The Bones feedlots do background preparation and breeding for dairy cows headed for barns like these.

Feedlot employees background-feed and breed heifers for the dairy. The family operates Bones Elevator, with 1 million bushels of storage in two locations. Hexad farms is a partner in JBH Farms, which dries, stores and handles grain, and in Forage Partners LLP, which owns forage harvesting machinery on behalf of founding members of the dairy.

"We're pretty diversified," Bones says.

### Sustainable growth

South Dakota has permits for about 18,000 to 20,000 dairy cows on the books for completion in the next year and a half, says Roger Scheibe of Brookings, director of industry outreach for Midwest Dairy Association.

The state has had grown by

about 25,000 or 30,000 cows, but there have been dairies going out of business so the current population is about 85,000 to 88,000 cows. The industry hopes to bring in another 100,000 dairy cows, largely in the Interstate 29 corridor, along the eastern end of the state.

"It's pretty aggressive, but in the past 25 years, we've had 300,000 to 350,000 cows in the state," Scheibe says. "We've had the cows before, but not producing as much milk as the new operators."

"It only makes sense that Minnesota, North Dakota, South Dakota, Iowa and Nebraska should be implementing programs to protect and grow" the industry, Scheibe says.

He says Bismarck should be a growth area for feeding population centers to the west.

Southeast North Dakota would also be a prime spot.

Bones got politically involved 15 years ago when Davisco Foods announced it would expand in Lake Norden, S.D., with a cheese plant. Bones traveled the eastern part of the state with then-Secretary of Agriculture Larry Gabriel, who was promoting the industry in the early 1990s.

Bones served as agriculture secretary from 2011 to 2013, a time when the Department of Agriculture was working to draw 45,000 cows to attract and develop the Bel Brands USA cheese plant in Brookings.

While anxious for dairy development, the governor's office wanted to focus on local control — not state directives — for locating dairy sites.

DAIRIES: See Page 12



## DAIRIES

Continued from Page 11

"In South Dakota, we hold our livestock people to a much higher standard," Bones says. "The hardest part of the environmental approval process is with the local zoning. Instead of an approval of three out of five zoning board members, a livestock operation requires a four-in-five super majority to approve."

Bones says rural South Dakota needs livestock.

### Need for livestock

South Dakota State University, whose strong dairy science department has helped attract dairy production and processing, conducted an economic analysis in 2010 that found dairy cows generate about \$14,000 of annual impact. Models from Wisconsin and Minnesota put the figure higher at \$25,000.

Todd Kays, a regional northeast South Dakota economic developer in Watertown, S.D., started an analysis that showed where 40-acre dairy development was possible in considering the half-mile to 1-mile setbacks from residences, churches and aquifers, as well as distance from rural water lines, three-phase electrical power and roads.

Grant County, S.D., held 106 of the sites. From the 106 original sites, the



▲ Hexad Farms of Parker, S.D., custom-feeds cattle but no longer is in the purebred business. The farm has an abundant supply of distillers grains, corn and other feedstuffs vital to the operation.

developers selected 16 prime sites and boiled it down to two or three. Out of 66 counties in South Dakota, 40 have requested a similar county site analysis, for which the Department of Agriculture offers funding.

Bones has heard the critics who

worry that nonagricultural corporations come in and get into livestock.

"I don't see a lot of nonagricultural investment in livestock," he says. "All of the facilities where you have Pipestone (Minn.) Vet systems or someone managing a lot of swine farms, those

are all owned by hog farmers and have chosen to have them professionally managed."

South Dakota has seen some proposed large operations being turned down by a super-majority of the zoning officials — a beef feeding plan in the Miller, S.D., area, for example — but those have been family farming corporations, Bones says.

In his own backyard, Bones says the Sonstegard Foods family in Sioux Falls is looking at sites to build a large egg-laying operation north of Parker, for \$90 million. It would consume some 6 million bushels of corn and create 100 jobs, producing eggs and processing them. The project will go through public hearings in the next couple of months. Despite reactions, required setbacks and other conditions are established, and the zoning board can only decide if the project meets the rules.

Bones says the local egg and poultry issue is emotional and emblematic of the struggle.

"If it meets our zoning requirements, I am in favor of it," he says.

Agriculture is the only industry investing in communities and rural areas, Bones emphasizes.

"People just don't get it: Citibank is not going to invest \$9 million here. Sanford is not going to build a \$90 million hospital. Agriculture is the only industry investing in our rural towns."

### FROM THE HILL

## Pro-GMO labeling senators plan amendment

Sponsors confident of success

By Jerry Hagstrom  
Special to Agweek

Senators who favor the labeling of foods with genetically modified ingredients hope to use the amendment process to pass a labeling measure in the Senate, Sen. Richard Blumenthal, D-Conn., said Feb. 12.

Blumenthal said the amendment process would offer an opportunity for the Senate to consider the bill as he and Sen. Barbara Boxer, D-Calif., and Rep. Peter DeFazio, D-Ore., announced the reintroduction of their bill — the Genetically Engineered Food Right-to-Know Act — that would direct the Food and Drug Administration to require food manufacturers to label foods containing genetically modified ingredients.

Asked by a reporter what chance the bill had in a Republican-run Congress,

Blumenthal said people should "think of the A word — amendment" and the Republican leadership's commitment to allowing amendments to be offered.

DeFazio noted that he and Sen. Patrick Leahy, D-Vt., had used the amendment process in 1990 to get the federal organic labeling law enacted. That effort succeeded "against all odds," DeFazio said, even though the Democratic leadership was opposed to it.

"We need to set off a wave so that people know this is coming" and can tell their senators and representatives that they support the measure, Boxer said.

Boxer noted that when she first introduced a GMO labeling bill 15 years ago, she had no co-sponsors; now, she has 13. Boxer also noted that she succeeded in her campaign to enact the dolphin-safe tuna labeling bill and that it has saved "tens of thousands" of dolphins.

"Information is power," Boxer said. "When we arm consumers with the facts, they make the decisions."

She also said FDA already requires labels for 3,000 products because of ingredients, additives and processes.

Boxer also noted that Monsanto, an agrichemical and agricultural biotechnology corporation headquartered in Missouri, has supported labeling in the United Kingdom but opposes it in the U.S.

Blumenthal said labeling "is a moral duty and it ought to be a legal duty. Nothing is more fundamental than the genetic makeup of ingredients in food."

The senators said the issue is the consumer's right to know, rather than the safety of food.

But Tom Colicchio, a chef who is part of the Just Label It campaign, said genetically modified seeds allow companies to sell more herbicides that 'show up in the food supply and in the milk of breast-feeding mothers.'

The National Black Farmers Association also said it supports consumer labeling of genetically modified foods.

Association President John Boyd said, "While NBFA does not object to

farmers growing GMO crops per se, we are aware of the increased use of toxic weed killers associated with herbicide-tolerant GMO crops. As farmers, NFBA members know firsthand that consumers are demanding more information about the food they feed their families — not less."

Boyd made the statement in a letter to Rep. G.K. Butterfield, D-N.C., a co-sponsor with Rep. Mike Pompeo, R-Kan., of a competing GMO labeling bill supported by food companies and the biotech industry.

Boxer said the bill would create national rather than state labeling, which she prefers.

Claire Parker, a spokesperson for the Coalition for Safe Affordable Food, which represents the food and biotech companies, said in a news release the Boxer/DeFazio bill "does not create a national labeling standard and would only exacerbate the labeling conundrum by adding a federal mandate and penalties, combined with a patchwork of state laws and regulations."



Mr. President and members of the Senate.

Our dairy industry is in decline. Our swine industry needs support. The bill before you is the vehicle we need to build these industries. 2351 provides an exemption in the Corporate Limited liability company farming section of code to allow a non-family owned Corporate or LLC model to engage in Dairy or Swine production.

Currently we are limited to a related 15 member structure to the 3<sup>rd</sup> degree of Kinship or roughly 1<sup>st</sup> cousins to operate in a Corporate or Limited Liability Company. Chapter 10 Section 6.1 is the Corporate Farming section. Adding to subsection 12.1. This subsection describes who is allowed to engage in farming under a corporate or LLC model.

With the passage of SB 2351 we will retain all the provisions and protections we currently have when a Corporation may acquire farmland.

When a corporation or LLC acquires a piece of farmland through lease or sale greater than twenty acres they must file with the attorney general:

1. The name of the company
2. The agent
3. The acreage and location
4. The date and method of acquisition

Each year, as is normal with other corporations and LLCs, these companies will be required to file with the Secretary of State, in a similar fashion to the requirements of the Attorney General but in a broader more detailed manner.

Each year the Attorney General is to conduct a random compliance check of at least 5 percent of Corporations that organize under this chapter.

Corporations or LLCs that hold farmland in ownership or lease that are not engaged in farming must divest the holding within 3 years.

Under this bill the Corporation or LLC must place a dairy or Swine operation on the land owned or lease. They cannot simply buy land to support another operation.

The bill limits a Corporation or LLC to one section of land to own or lease.

Mr. President, I am confident in the solid function of this bill. I believe it properly complements the current law and does not create issues of discrimination that in other states have shown to be a violation of the dormant commerce clause. That clause prohibits the obstruction of interstate commerce based on discrimination of state of origin. Our current proposal does not discriminate in that manner as it allows all Domestic Corporations or LLCs to engage in the practice of Dairy or Swine.

I, Mr. President, desire animal agriculture to flourish in North Dakota. It benefits not only those engaged directly in the business, but all farmers that produce feedstock. We need more livestock in North Dakota. This is good for economic development.



**CHAPTER 10-06.1**  
**CORPORATE OR LIMITED LIABILITY COMPANY FARMING**

#26  
Senator Miller  
3/5/15

**10-06.1-01. Definitions.**

For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It does not include production of timber or forest products, nor does it include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
2. "Farming or ranching corporation" means a farm or ranch corporation, joint-stock company, or association which, at all times, complies with the requirements of this chapter.
3. "Farming or ranching limited liability company" means a farm or ranch limited liability company which, at all times, complies with the requirements of this chapter.
4. "Nonprofit organization" means an organization or trust that has tax-exempt status under at least one of the following sections of the Internal Revenue Code:
  - a. An organization that was in existence on December 31, 1984, and that is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals under section 501(c)(3), or is a domestic fraternal organization under section 501(c)(10).
  - b. A charitable, religious, educational, or scientific organization classified as either a private foundation or as a public charity having status as an organization described in section 509(a)(1) or (3).
  - c. A trust described in section 4947 for which a deduction is allowable under section 170.

**10-06.1-02. Farming or ranching by corporations and limited liability companies prohibited.**

All corporations and limited liability companies, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. A corporation or a limited liability company may be a partner in a partnership that is in the business of farming or ranching only if that corporation or limited liability company complies with this chapter.

**10-06.1-03. Retention of mineral interests prohibited.**

For land and minerals acquired after July 1, 1985, any corporation or limited liability company that acquires mineral interests through foreclosure or in lieu of foreclosure which were not specifically valued at the time the security interest in the minerals was acquired, and which is prohibited from owning or leasing land used in farming or ranching, is prohibited from retaining mineral interests in land used for farming or ranching when the corporation or limited liability company divests itself of the land, and the mineral interests must be passed with the surface estate of the land when the corporation or limited liability company divests itself of the land under this chapter.

**10-06.1-04. Conversion of corporations.**

A business corporation organized under chapter 10-19.1 may convert to a farming or ranching corporation by adopting an amendment to its articles of incorporation which specifies that the corporation elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15. A farming or ranching corporation may convert to a business corporation by adopting an amendment to its articles of incorporation. The

amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of the date of the amendment, which is required under section 10-06.1-17, and the manner in which the corporation has divested itself of its owned or leased land holdings and its business of farming or ranching.

**10-06.1-05. Conversion of limited liability company.**

A domestic business limited liability company organized under chapter 10-32 may convert to a farming or ranching limited liability company by adopting an amendment to its articles of organization which specifies that the limited liability company elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15. A farming or ranching limited liability company may convert to a domestic business limited liability company by adopting an amendment to its articles of organization. The amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of the date of the amendment, which is required under section 10-06.1-17 and the manner in which the limited liability company has divested itself of its owned or leased land holdings and its business of farming or ranching.

**10-06.1-06. Surface coal mining - Exception.**

A corporation or limited liability company not engaged in the business of farming or ranching may own or lease lands used for farming or ranching, when the business of such a corporation or limited liability company is the conducting of surface coal mining operations or related energy conversion, and when the owning or leasing of lands used for farming or ranching is reasonably necessary in the conduct of the business of surface coal mining or related energy conversion. When the necessity for owning or leasing of lands used for farming or ranching no longer exists, the exception provided in this section ceases and the corporation or limited liability company owning or leasing such lands is subject to this chapter.

**10-06.1-07. Industrial and business purpose exception.**

A corporation or limited liability company that is not engaged in the business of farming or ranching may own or lease land used for farming or ranching when the land is necessary for residential or commercial development; the siting of buildings, plants, facilities, industrial parks, or similar business or industrial purposes of the corporation or limited liability company; or for uses supportive of or ancillary to adjacent nonagricultural land for the benefit of both land parcels. The farmland or ranchland while not being immediately used for any purpose of the corporation or limited liability company must be available to be leased by persons who farm or ranch as sole proprietorships or partnerships, or by corporations or limited liability companies allowed to engage in farming or ranching under section 10-06.1-12.

**10-06.1-08. Cooperative corporations allowed to engage in the business of farming or ranching - Requirements.**

This chapter does not prohibit cooperative corporations, seventy-five percent of whose members or shareholders are actual farmers or ranchers residing on farms or ranches or depending principally on farming or ranching for their livelihood, from acquiring real estate and engaging in cooperative farming or ranching.

**10-06.1-09. Certain nonprofit organizations or trusts may own or lease land - Certain nonprofit organizations may continue farming or ranching - Restriction on acquisition and ownership of land.**

1. A nonprofit organization or a trust for the benefit of an individual or a class of individuals related within the degrees of kinship specified in subsection 2 of section 10-06.1-12 may own or lease farmland or ranchland if that land is leased to a person who farms or ranches the land as a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.

2. To the extent farming or ranching is essential to a nonprofit organization's charitable purposes, a nonprofit organization actively engaged in the business of farming or ranching in this state on January 1, 1983, may continue to engage in the business of farming or ranching without interruption after January 1, 1983.
3. A nonprofit organization that owned farmland or ranchland for the preservation of unique historical, archaeological, or environmental land before January 1, 1983, may continue ownership of that land without interruption after January 1, 1983. An organization that is holding land for scenic preservation shall either prohibit all hunting, or if any parcel of the land is open to hunting, it must be open to hunting by the general public.

**10-06.1-10. Acquisition of certain farmland or ranchland by certain nonprofit organizations.**

A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law No. 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.
2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:
  - a. The land must be maintained and managed for the purpose of conserving natural area and habitat for biota.
  - b. Any agricultural use of the land is in accordance with the management of the land for conservation and agricultural use, and is by a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.
  - c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.
  - d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.
  - e. The nonprofit organization must make payments in lieu of property taxes on the property, calculated in the same manner as if the property was subject to full assessment and levy of property taxes.
  - f. All property subject to valuation must be assessed for the purpose of making the payments under subdivision e in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year, the county auditor of any county in which property subject to valuation is located shall give written notice to the nonprofit organization and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in the county.
3. Before farmland or ranchland may be purchased by a nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, the agriculture commissioner, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, the president of the North Dakota stockmen's association, and the chairman of the county commission of any county affected by the acquisition, or their designees. The advisory committee shall hold a public hearing with



the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

4. Land acquired in accordance with this section may not be conveyed to the United States or any agency or instrumentality of the United States.
5. On failure to qualify to continue ownership under subsection 2, the land must be disposed of within five years of that failure to qualify.

**10-06.1-11. Required divestiture of agricultural land.**

In addition to the divestiture requirements of sections 10-06.1-10 and 10-06.1-24, a nonprofit corporation that acquires land by gift or devise after December 31, 1984, the ownership of which is not permitted under this chapter, shall divest itself of the land within ten years after the acquisition. For purposes of this section, "ownership" means holding either fee or equitable title, unless fee title is held solely as security for payment of the purchase price, or unless fee title does not carry with it the right to immediate possession of the property. If the corporation fails to divest itself of the land within the required time, the attorney general shall take action under section 10-06.1-24.

**10-06.1-12. Corporation or limited liability company allowed to engage in the business of farming or ranching - Requirements.**

This chapter does not prohibit a domestic corporation or a domestic limited liability company from owning real estate and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapter 10-19.1 or the limited liability company meets all the requirements of chapter 10-32 which are not inconsistent with this chapter. The following requirements also apply:

1. If a corporation, the corporation must not have more than fifteen shareholders. If a limited liability company, the limited liability company must not have more than fifteen members.
2. Each shareholder or member must be related to each of the other shareholders or members within one of the following degrees of kinship or affinity: parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or the spouse of a person so related.
3. Each shareholder or member must be an individual or one of the following:
  - a. A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
  - b. An estate of a decedent who was related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
4. A trust or an estate may not be a shareholder or member if the beneficiaries of the trust or the estate together with the other shareholders or members are more than fifteen in number.
5. Each individual who is a shareholder or member must be a citizen of the United States or a permanent resident alien of the United States.
6. If a corporation, the officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of the corporation's shareholders must be an individual residing on or operating the farm or ranch. If a limited liability company, the governors and managers of the limited liability company must be members who are actively engaged in operating the farm or ranch and at least one of its members must be an individual residing on or operating the farm or ranch.
7. An annual average of at least sixty-five percent of the gross income of the corporation or limited liability company over the previous five years, or for each year of its

- existence, if less than five years, must have been derived from farming or ranching operations.
8. The income of the corporation or limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross income of the corporation or limited liability company.

**10-06.1-13. Applicability of North Dakota Business Corporation Act.**

Chapter 10-19.1 is applicable to farming or ranching corporations, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business corporations except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter 10-19.1.

**10-06.1-14. Applicability of North Dakota limited liability company laws.**

Chapter 10-32, except those sections which pertain to foreign limited liability companies, is applicable to farming or ranching limited liability companies, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business limited liability companies, except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter 10-32.

**10-06.1-15. Initial report - Shareholder and member requirements.**

1. Every farming or ranching corporation or limited liability company shall file an initial report with its articles of incorporation. The report must be signed by the incorporators or organizers and must contain the following:
  - a. The name of the corporation or limited liability company.
  - b. With respect to each shareholder or member:
    - (1) The name and address of each, including the names and addresses and relationships of trusts and estates that own shares or membership interests;
    - (2) The number of shares or membership interests or percentage of shares or membership interests owned by each;
    - (3) The relationship of each;
    - (4) A statement of whether each is a citizen or permanent resident alien of the United States; and
    - (5) A statement of whether each is actively engaged in operating the farm or ranch, whether each resides on the farm or ranch, and whether each depends principally on farming or ranching for a livelihood.
  - c. With respect to management:
    - (1) If a corporation, then the names and addresses of the officers and members of the board of directors; or
    - (2) If a limited liability company, then the names and addresses of the managers and members of the board of governors.
  - d. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching.
2. A corporation or a limited liability company may not commence farming or ranching in this state until the secretary of state has received and filed the articles of incorporation or articles of organization and the initial report required by this section. The corporation or limited liability company shall furnish to the official county newspaper of each county or counties in which any land is owned or leased by the corporation or limited liability company a legal notice reporting the following:
  - a. The name of the corporation or limited liability company and its shareholders or members as listed in the initial report.
  - b. A statement to the effect that the corporation or limited liability company has reported that it owns or leases land used for farming or ranching in the county and that a description of that land is available for inspection at the secretary of state's office.

#### **10-06.1-16. Share and membership interest transfer records.**

Every corporation owning or leasing land used for farming or ranching or engaged in farming or ranching after June 30, 1981, shall keep a record of transfers of shares or transfers of interests in the corporation. Every limited liability company owning or leasing land used for farming or ranching or engaged in farming or ranching shall keep a record of transfers of membership interests in the limited liability company. If a corporation, the corporation's secretary shall cause to be recorded in the record all transfers of shares or transfers of interests among and between the corporation and its respective shareholders or holders of interest. If a limited liability company, the limited liability company's secretary shall cause to be recorded in the record all transfers of membership interests among and between the limited liability company and its respective members. The record must contain at least the following: the names of the transferor and transferee, their relationship, the date of the transfer and, if a corporation, the number of shares or the percentage of interests transferred or, if a limited liability company, the number or percentage of membership interests transferred.

#### **10-06.1-17. Annual report - Contents - Filing requirements.**

Before April sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state an annual report signed as provided in subsection 54 of section 10-19.1-01 if a corporation and subsection 58 of section 10-32-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement. An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.
3. With respect to each corporation:
  - a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
4. With respect to each shareholder or member:
  - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
  - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
  - c. The relationship of each;
  - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
  - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
5. With respect to management:
  - a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
  - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate



- which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.
  8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
  9. A corporation engaged in farming which fails to file an annual report is subject to the penalties provided in section 10-19.1-147 except that the penalties must be calculated from the date of the report required by this section.
  10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties provided in subsections 5 and 6 of section 10-32-149 except that the penalties must be calculated from the date of the report required by this section.

**10-06.1-18. Reports of corporations and limited liability companies not engaged in farming or ranching.**

Any business or nonprofit corporation and any limited liability company not engaged in the business of farming or ranching which owns or leases a tract of land used for farming or ranching which is larger than twenty acres [8.09 hectares] in size shall file with the attorney general, within twelve months of any transaction involving the purchase, sale, or surface leasing of such farmland or ranchland by that corporation or limited liability company, a report containing all of the following information:

1. The name of the corporation or limited liability company and its place of incorporation or organization and, if a nonprofit corporation, a copy of its section 501(c)(3) exemption letter from the internal revenue service.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of the noncommercial registered agent in this state.
3. The acreage [hectarage] and location listed by section, township, range, and county of all such land in the state owned or leased by the corporation or limited liability company and used for farming or ranching.
4. The date and method of acquisition or disposal of such farmland or ranchland.

**10-06.1-19. Exemption from certain disclosure and other requirements for certain organizations.**

Sections 10-06.1-12, 10-06.1-15, 10-06.1-17, and 10-06.1-18 do not apply to nonprofit organizations or to corporations or limited liability companies such as banks, trust companies, or foundations serving in a fiduciary capacity as the personal representative or trustee of an estate or trust for an individual described in subsection 2 of section 10-06.1-12.

**10-06.1-20. Failure to file report - Penalty.**

Every corporation or limited liability company which fails to file any report required under this chapter or willfully files false information on any report required under this chapter is guilty of a class A misdemeanor.

**10-06.1-21. Secretary of state to transmit information of noncompliance.**

If the secretary of state finds from the annual report that the corporation or limited liability company is not in compliance with the requirements of section 10-06.1-12, the secretary of state shall transmit such information to the attorney general and the governor.

**10-06.1-22. Tax commissioner to compare returns and reports.**

Each year the tax commissioner shall select at random at least five percent of the income tax returns filed by corporations or limited liability companies which report on income from farming or ranching operations and shall compare such returns with the annual report required to be filed with the secretary of state by section 10-06.1-17 and shall forward any apparent violations to the attorney general and the governor.

**10-06.1-23. Attorney general to conduct random compliance program.**

Each year the attorney general shall select at random at least five percent of the total number of corporations and limited liability companies authorized by this chapter for requests for information to determine compliance with this chapter. For such purpose, the attorney general may request affidavits, share transfer records, certified copies of marriage licenses, birth certificates, deeds, leases, and such other records and documents necessary to determine compliance.

**10-06.1-24. Enforcement - Penalty.**

1. The recorder shall mail or deliver a copy of every instrument filed or recorded, within thirty days after the instrument is recorded, to the attorney general if the instrument documents evidence of a lease agreement or purchase agreement pursuant to subsection 6 or 7 or if the instrument conveys the title to farmland or ranchland to a corporation or limited liability company. The attorney general shall commence an action in the district court of the county in which the substantial portion of farmland or ranchland used in violation of this chapter is situated if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the recorder of each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this chapter, or that a corporation or limited liability company is conducting the business of farming or ranching in violation of this chapter, the court shall enter an order so declaring. The attorney general shall file any such order for record with the recorder of each county in which any portion of the land is located. Thereafter, the corporation or limited liability company shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of any farming or ranching land owned or leased by it in violation of this chapter, and cease all farming or ranching operations. Except as otherwise provided in subsection 10, any corporation or limited liability company that fails to comply with the court's order is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the secretary of state.
2. The divestment period is deemed to be a covenant running with the title to the land against any corporate or limited liability company grantee, corporate or limited liability company successor, or corporation or limited liability company assignee of the corporation or limited liability company not authorized to do business under this chapter.
3. Any land not divested within the divestment period prescribed must be sold at public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law, including enjoining the corporation or limited liability company from completing performance on the remainder of any leasehold which is in violation of this chapter.
4. Subject to the divestiture requirements of subsections 5, 6, and 7, a domestic or foreign corporation or limited liability company may acquire farmland or ranchland as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.
5. Unless retention of the farmland or ranchland is permitted under subsection 6 or 7, all farmland or ranchland acquired as security for indebtedness, in the collection of debts,

or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter.

6. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from a mortgagor instead of a foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company leases to the prior mortgagor from whom it was acquired, with an option to purchase, and if documents evidencing the lease agreement have been filed with the recorder of each county in which the land is located. A copy of a notice of lease is sufficient evidence. The exemption in this subsection applies for only five years and then only if the property has been appraised in accordance with subsection 8. The annual lease payments required of the tenant may not exceed seven percent of the appraised value.
7. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from the mortgagor instead of foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company contracts for the sale of the land to the prior mortgagor from whom it was acquired, and if documents evidencing the purchase agreement have been filed with the recorder of each county in which the land is located. A copy of a notice of the contract for deed is sufficient evidence. An exemption under this subsection is valid only if an appraisal has been made in accordance with subsection 8, and if it is valid, the exemption is unlimited in duration. The sale price may not exceed the price determined by the appraisers.
8. If an appraisal is required, the appraisal must be made by three independent appraisers, one selected by the corporation or limited liability company, one selected by the prior mortgagor, and the third selected by the first two appraisers.
9. If a corporation or limited liability company holds land pending divestiture, and the holding is not otherwise governed by this section, the land must be leased to persons actually engaged in farming or ranching and a disposal may not be to a corporation or limited liability company unless ownership by that corporation or limited liability company is authorized under this chapter.
10. The civil penalty for a violation of section 10-06.1-10 may not exceed one hundred thousand dollars.
11. Except as provided in subsection 10, any corporation or limited liability company continuing to violate this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the attorney general in accordance with the laws of this state.

#### **10-06.1-25. Private enforcement.**

This chapter may be enforced in the same manner as provided in section 10-06.1-24 by any corporation or limited liability company authorized to engage in farming or ranching by this chapter or any resident of legal age of a county in which the land owned or leased by a corporation or limited liability company in violation of this chapter is located. If such action is successful, all costs of the action must be assessed against the defendant and a reasonable attorney's fee must be allowed the plaintiff. If judgment is rendered for the defendant, such costs and a reasonable attorney's fee for the defendant must be paid by the plaintiff.

#### **10-06.1-26. Protection of minority shareholders.**

If a shareholder owns less than fifty percent of the shares of a farming or ranching corporation doing business under this chapter, and if the terms and conditions for the repurchase of those shares by the corporation or by the other shareholders are not set forth in the bylaws or the instrument which transferred the shares to the shareholder, or are not the subject of a shareholders' agreement or an agreement between that shareholder and the



corporation, then the disposition of such shares must be determined by this section upon the withdrawal of the shareholder. Any shareholder who desires to withdraw from the corporation shall first offer the shares for sale to the remaining shareholders in proportion to the shares owned by them. If not all of the shareholders wish to purchase the shares, any one shareholder may purchase all of the shares of the withdrawing shareholder. If no shareholder desires to purchase the shares of a withdrawing shareholder, then the corporation may purchase the shares. If the corporation chooses not to purchase the shares of the withdrawing shareholder, then the withdrawing shareholder may sell the shares to any other person eligible to be a shareholder. If the withdrawing shareholder is unable to sell the shares to any other person eligible to become a shareholder, then the withdrawing shareholder may bring an action in district court to dissolve the corporation. Upon a finding that the withdrawing shareholder cannot sell the shares at a fair price, the court shall enter an order directing that the corporation itself or any or all of the remaining shareholders pro rata or otherwise shall have twelve months from the date of the court's order to purchase the shares of the withdrawing shareholder at a fair price as determined by the court and that if the shares of the withdrawing shareholder are not completely purchased at said price, the corporation shall be dissolved and the assets of the corporation shall be first used to pay all the liabilities of the corporation with the remaining net assets to be distributed pro rata to the shareholders in proportion to their ownership of shares. For the purpose of this section, a fair price for the shares of the withdrawing shareholder must be determined as though the shares were being valued for federal gift tax purposes under the Internal Revenue Code.

**10-06.1-27. Protection of minority members.**

If a member owns less than fifty percent of the membership interest of a farming or ranching limited liability company doing business under this chapter and if the terms and conditions for the repurchase of that membership interest by the limited liability company or by the other members are not set forth in the bylaws, the instrument that transferred the membership interest to the member, or are not the subject of a member-control agreement or other agreement between that member and the limited liability company, the disposition of the membership interest must be determined by this section upon the withdrawal of the member. Any member who desires to withdraw from the limited liability company shall first offer the membership interest for sale to the remaining members in proportion to the membership interests owned by the remaining members. If not all of the members wish to purchase the membership interest, any one member can purchase all of the membership interest of the withdrawing member. If no member desires to purchase the membership interest of the withdrawing member, the limited liability company may purchase the membership interest. If the limited liability company chooses not to purchase the membership interest of the withdrawing member, the withdrawing member may sell the membership interest to any other person eligible to be a member. If the withdrawing member is unable to sell the membership interest to any other person eligible to become a member, the withdrawing member may bring an action in district court to terminate the limited liability company. Upon a finding that the withdrawing member cannot sell the membership interest at a fair price, the court shall enter an order directing that the limited liability company or any of the remaining members pro rata or otherwise, have twelve months from the date of the court's order to purchase the membership interest of the withdrawing member at a fair price as determined by the court and that if the membership interest of the withdrawing member is not completely purchased at the fair price, the limited liability company must be dissolved and the assets of the limited liability company must be first used to pay all liabilities of the limited liability company with the remaining net assets to be distributed pro rata to the members in proportion to the member's membership interest ownership. For the purpose of this section, a fair price for the membership interest of the withdrawing member must be determined as though the membership interest was being valued for federal gift tax purposes under the Internal Revenue Code.

COMMISSIONER  
DOUG GOEHRING



# 3a  
ndda@nd.gov  
www.nd.gov/ndda

**NORTH DAKOTA  
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 602  
BISMARCK ND 58505-0020

**Testimony of Doug Goehring**  
**Agriculture Commissioner**  
**SB 2351**

**House Agriculture Committee**  
**Brynhild Haugland Room**  
**March 5, 2015**

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Chairman Johnson and members of the House Agriculture Committee, I am Agriculture Commissioner Doug Goehring. I am here today in support of SB 2351, which will add exemptions to NDCC 10-6.1 for dairy, and swine facilities that lease or own less than 640 acres.

After many conversations with producers and reviewing livestock data, I support the proposed changes to NDCC 10-6.1 on the condition that the bill is limited to swine, dairy and beef feedlots. The proposed changes would allow shareholders to invest into livestock entities and provide support for farmers and ranchers starting these capital intensive businesses.

Diversification and sustainability of our livestock industry is critical to its growth, and I believe this bill will help achieve that goal.

The producers of the state have been asking for ways to revitalize their industries. Instead of me telling their stories, I want to allow them time to provide this committee with first-hand information and stories regarding the real state of their industries.

Chairman Miller and committee members, thank you for your time. I urge a do pass on SB 2351. I would be happy to answer any questions you may have.



Handed out by  
Doug Goehring

# 36  
SB 2351  
3/5/15

Walt Bones

Former South Dakota Secretary of Agriculture  
45874 268<sup>th</sup> St.  
Parker, SD 57053

Chairman Johnson and Members of the House Ag Committee:

Livestock have been an integral part of my family's farm since my Great Grandfather homesteaded here in SE South Dakota in 1879. My 3 brothers, brother-in-law and 3 nephews carry on that tradition today with a beef cow herd and beef feedlot. Back in 1997 we were looking for opportunities to grow our business so that we could make room for our 5<sup>th</sup> generation. We thought land prices were way too high to buy a lot more land and the corresponding land rents were also too high we thought (back then!). So we made the decision to try and get more out of every acre we operated rather than to just get more acres. We looked to livestock to accomplish that and settled on spearheading an effort to build a 1500 cow dairy. We were able to get a few neighbors interested but saw that we were going need to attract some outside capital to make that happen. We did, the Turner County Dairy was built and has worked out so well for the farmers that we have since bought out all but two of our outside investors. In round numbers, selling our corn to the dairy has returned us \$100 more per acre than combining the corn and selling it to the local elevator.

We do not have many of these "cooperative" dairies here in SD, but in our case, we would not have been able to accomplish this without the outside capital.

According to our South Dakota State University economist, Dr. Gary Taylor, each dairy cow generates \$14,000 in annual economic activity. Similar modeling has been done in Minnesota and Iowa and the number is well over \$20,000 per cow per year. Well over half of that "activity" stays in the local community, primarily to the local farmers that are raising the feed and getting the organic nutrients returned to their soil.

Our Governor, Dennis Daugaard grew up on a dairy farm and I was fortunate to serve as his first Secretary of Agriculture. We shared a passion for livestock and a vision for the economic well-being of our rural communities. Livestock development was one of our top priorities.

Agriculture is South Dakota's number one industry and agriculture is the only industry that is consistently investing in our rural communities. Fortunately, our Legislators understand that and have witnessed firsthand how encouraging SD agriculture has benefited our state. Therefore, since our Family Farm Act of 1974 was enacted, the law has been amended and all but the swine industry have been exempted. That being said, an Attorney General's opinion has given new life to our swine industry so that it has been able to expand by 5% each of the last 3 years.

A vibrant and expanding livestock industry is critical to the future success of our farmers, ranchers and the communities they live in.

Walt Bones  
45874 268<sup>th</sup> St.  
Parker, SD 57053  
605.940.8371



3/5/15

#4

Mister Chairman, members of the committee;

My name is Craig Jarolimek a Pork Producer from Forest River located in Walsh County. I come before this committee today in support of Senate Bill 2351.

During the Senate hearings and debate, we heard from political leaders, producers of the dairy, swine, beef, corn, soybeans, and other agricultural leaders on the merits of this bill and what it can do to change the direction of the livestock sustainability in ND. Very positive, valid comments were given in favor of this change. There should be no doubt that this bill is critical for North Dakota to attract livestock development, which our State desperately needs.

However, there are still those that question the need for this bill. Why do we need to make changes to the intact law, there has been successful livestock development in ND using LLLP or Family Partnerships/Corp?

Let's talk about this;

I have neighbors and friends in Walsh County that are one of the few independent family farm pork producers left in ND. Tim & Kevin Zikmund own and operate a 600 head sow farrow to finish operation along with a couple thousand acres of corn and pinto beans. They would be here to testify in favor of this bill but Kevin is deeply involved in his church and has a prior commitment. Tim is home making things work while Kevin is away.

What do they have to gain from this bill? Why would they support this change? The opposition of this bill says they should oppose this change because it causes unfair competition, destroys our family way of life, it is not the moral way to farm, and if we were able to do it without this law, they can do it too.

When Kevin and Tim and I discuss this bill, they are quick to point out the need for this change.

Tim & Kevin feel that we or the next generation may want to expand our swine operation. That means building more buildings, dealing with more outside family labor, more capital needed, and risk in marketing. With some creative thinking and planning we could do this in ND under current law. However, we would have a large debt load and be putting our current assets at risk. If we could invest along with others in a larger more efficient farrowing operation we could grow our business for future for family members with limited risk. Reality is under current law we are very limited on the entities we can partner with. Our opportunity of success is increased by partnering with those that have access to capital, have done this before and know what they are doing.

We raise more corn than we can feed. Basis is killing us, making our grain farming less competitive to other regions. If we had more livestock feeding, there would be a local demand for our corn, lowering our basis. It's a win for us. If we can feed more pigs our own corn without adding large capital investments that will help us in the long run.

Infrastructure. Today we are lone wolfs out here. If we need to update a building, or want to add new construction, we have to go outside the state or to Canada to find equipment and contractors.

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We use out of state nutritionists, veterinarians, and other support at a greater cost than our neighbors in SD or MN.

Labor, we struggle with finding labor that is familiar with swine/livestock. More livestock farms mean a larger labor pool of experienced people available to choose from.

As you can see, we see benefits to changing the law rather than as a threat. They are looking beyond their driveway, they are businessmen. This change in the Non Corporate Farming Law is not about those that are successful or those that have been able to make gains with the law we currently have. This bill is about creating opportunity for those that are looking for the opportunity in livestock production and have limited resources. This bill is about bringing resources to ND for all to utilize. This bill is about allowing access to a network of connections creating opportunity for family farms. Lacing up your boots and hard work are still and will always be keys to success, but unless you have knowledge of where to go with those boots on and work smart your successes will be limited.

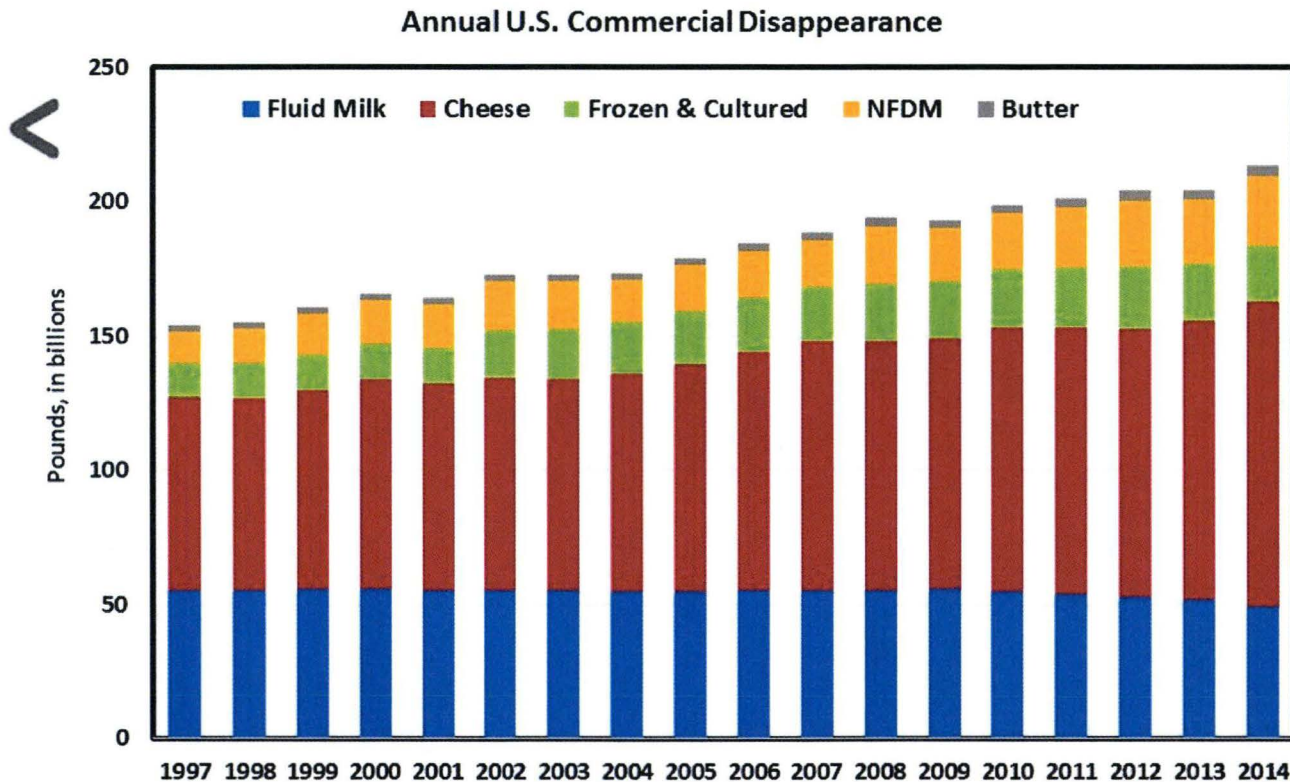
Voting yes on this bill will create opportunity not hinder opportunity, will create opportunity for those currently involved and those that want to be involved in swine and dairy, will level the playing field with our neighbors, and we currently are the only state that does not have this exemption.

There is tremendous opportunity in this state with livestock development. This exemption allows freedom in seeking those opportunities. Voting yes is the right thing to do.

Questions?

## Annual U.S. Commercial Disappearance

As the previous charts indicates, milk is used in a variety of different ways. This charts tracks the five main uses of milk, each color representing the various uses and showing how demand for these products has changed over time. While the trends show rising overall usage of milk products, demand for fluid milk (the blue bar) is slowly declining. Yogurt, which has seen a significant demand increase in recent years, is represented with ice cream in the green bar. Note that the 2014 bar represents numbers year-to-date. (updated 2/23/15)



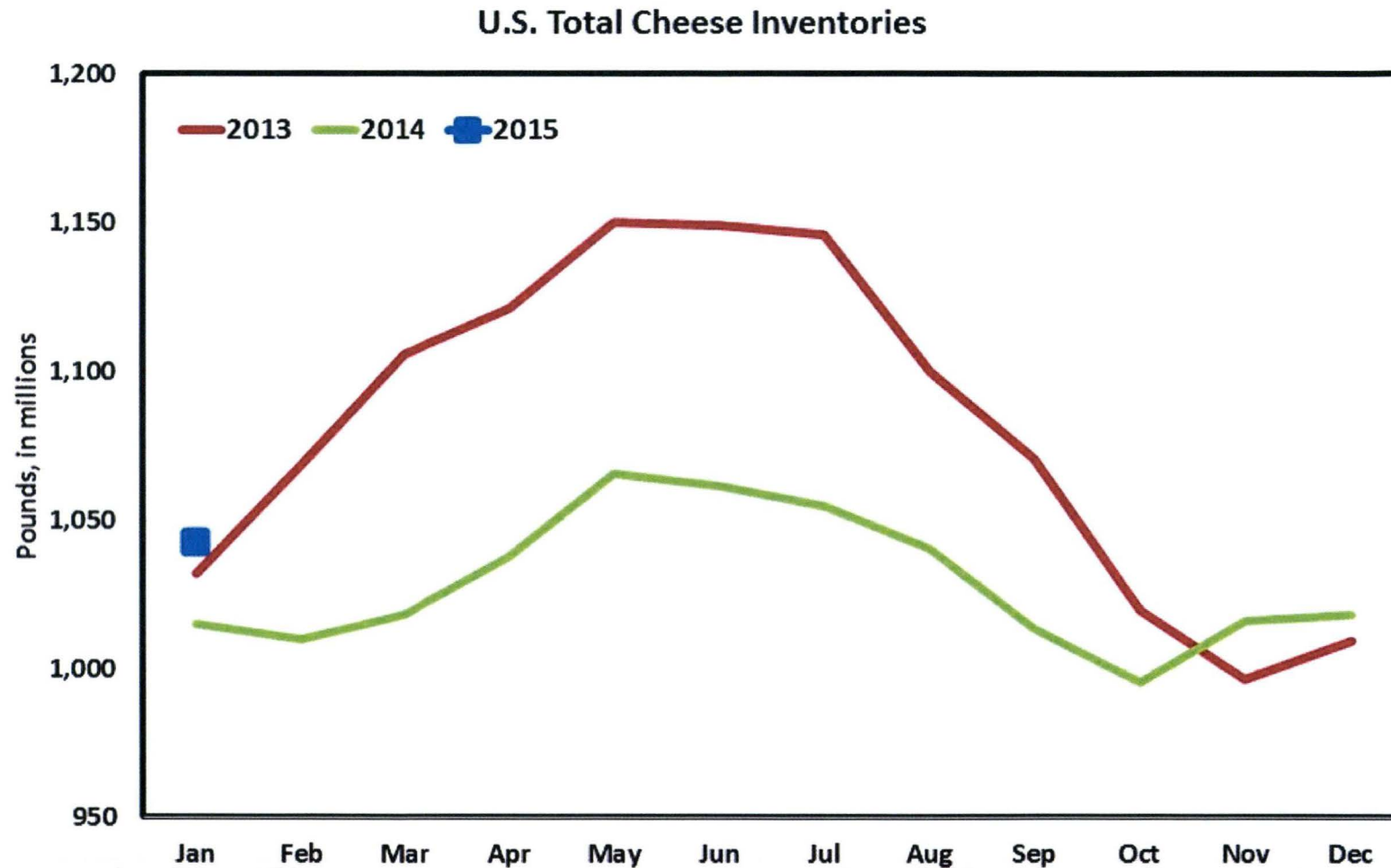
DFA Risk Management

Terry Messer #5  
 3/5/15  
 SB 2351



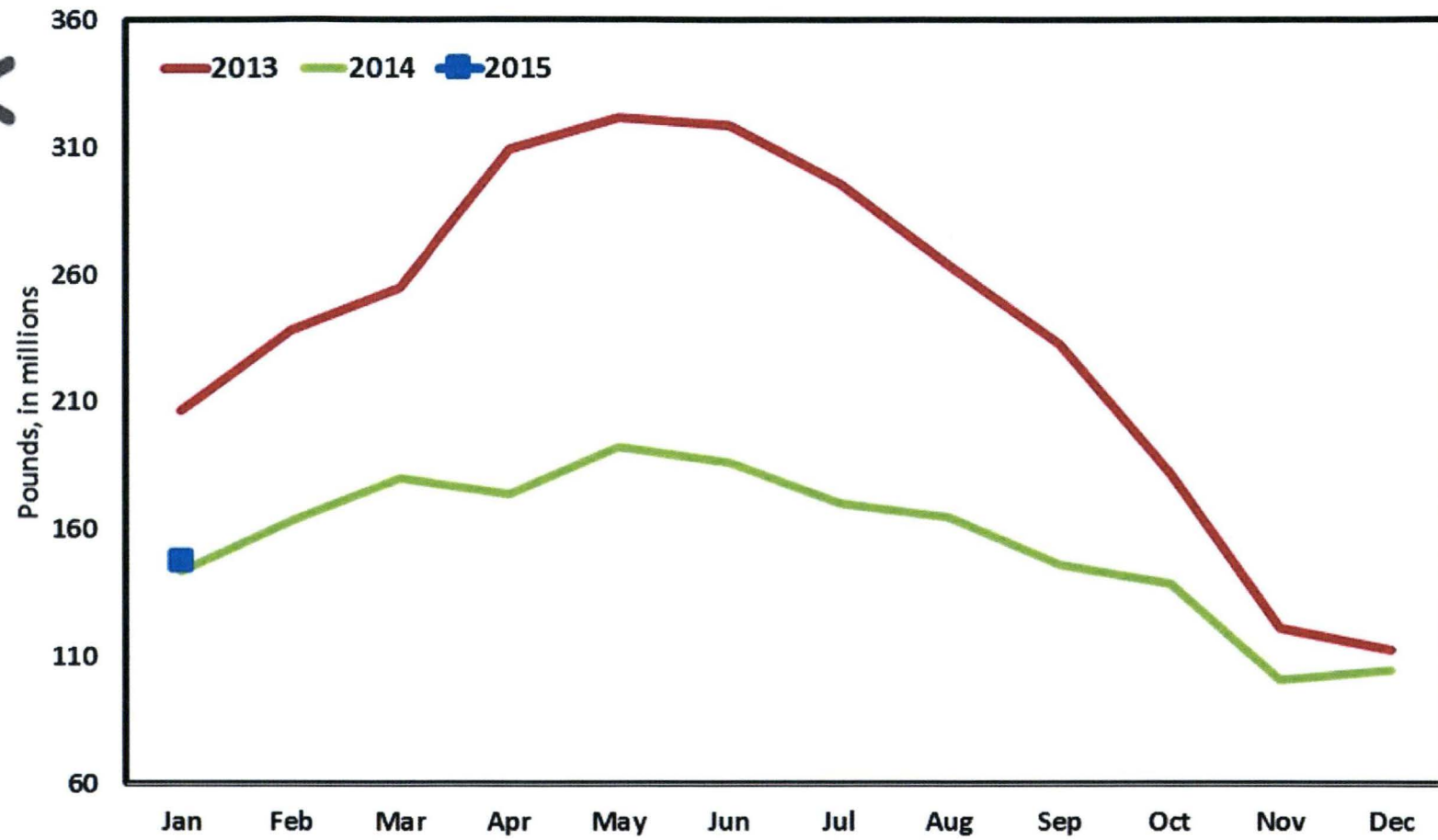
## U.S. Total Cheese Inventories

Inventory levels indicate how much product has already been produced and is now being stored until there is demand for it. Typically, higher levels of inventory indicate lower prices because there is excess supply. This chart tracks U.S. Total Cheese Inventories from 2012-present. (updated 2/23/15)



DFA Risk Management

## U.S. Butter Inventories



DFA Risk Management

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3/5/15

#6  
SB 2351

Good morning Chairman Johnson and members of the House Agriculture Committee. For the record my name is Jeff Enger. I am a 2<sup>nd</sup> generation farmer and livestock producer from Marion, North Dakota. I am former chairman of the North Dakota Ag Coalition and a former chairman of the North Dakota Corn Utilization Council. I also serve on the North Dakota Corn Growers Association Ethanol & Livestock Marketing Committee. The North Dakota Corn Growers Association stands in support of Senate Bill 2351.

My brother, son, nephew and I are active in a 1,000 head Holstein cattle feedlot operation. Currently we get our cattle from Northeast Iowa and sell them finished to Tyson in Sioux City. The current dairy infrastructure is not enough for us to purchase cattle in North Dakota. Barnes County where our farm and feedlot are located is down to 4 functioning dairies. Our cattle buyer follows the calves and health program from birth to 550 lbs. which is when we purchase them to be finished. The care and health program is then transferred to our veterinarian.

You will likely get arguments that by changing this law out of state interests will come in and run small operations like ours out of business. I'm here today to tell you that it is getting harder and harder for our operation to function because so many have already gotten out of the business. This leads to less large animal veterinarian's, less feed suppliers, less sale barns, less students for livestock careers – generally less infrastructure. This change in the law will not impede family farms but it will compliment them. My only concern with making an exemption for our dairy and swine industries is that we may already be too late.

I will not be redundant in my testimony. You have heard from others that we are down to 16,000 dairy cattle in North Dakota. We are now a net importer of milk. This is a critical change in the law that may save the North Dakota dairy industry. A 1,600 head dairy for today's economy of scale has an estimated cost of \$7.7 to \$9.5 million to build. Current single owner family farms do not have the capital, labor resources and man power to compete at this economy of scale. By granting these exemptions in the law you will support the current economy of scale and allow more access to capital for facilities development and operating needs.

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Livestock production is a method of adding value to crops by processing feed through animals. More livestock production increases local markets for corn, soybean meal, distiller's grains and other feeds. Corn production in North Dakota has expanded from 120.7 million bushels in 2004 to 352 million bushels in 2014. Even though the corn industry has experienced tremendous growth in the past ten years, the opposite has occurred in our states dairy and swine industries. Because of this our feed is undervalued in North Dakota due to railroad congestion and distance to terminal markets. Livestock can add real value. In looking at Blue Flint (Underwood) and Tharaldson (Casselton) ethanol plant current bids for the months of February through May basis levels are at -.50 to -.70 per bushel. In looking at neighboring states that have more dairy, swine and livestock production, particularly southwestern Minnesota and southeastern South Dakota, typical ethanol plant bids for the same delivery months are -.23 to -.30 per bushel. Just across the border in Lyons & Sioux counties, Iowa - corn bids are -.05 to -.13. Sioux county, Iowa has an established livestock industry and is a net importer of corn. Think about that for a minute. Another .45 to .57 cents per bushel at current production levels would yield an additional \$158.4 to \$200 million to our economy before multiplier effects. This is due to the grain and the livestock industry competitively bidding to local farms.

Livestock enterprises help mitigate risks of weather, markets and price variability of crops. Intergrated crop and livestock production is more biologically sustainable as livestock manure for fertilizer improves soil health and crop productivity. When we export our corn we are also exporting phosphorous and other vital soil nutrients in unit train loads of grain. Livestock enterprises would serve to retain and recycle these nutrients in state and create a more sustainable agricultural economy for the long term.

Members of the Committee, I would urge a yes vote on Senate Bill 2351 and would be happy to take any questions.

## NORTHERN LIGHTS DAIRY

2165 54TH ST.

MANDAN, ND 58554

701-445-7500

Kenton Holle

701-527-5331

## Testimony in support of SB 2351

March 5, 2015

Good morning, I am Kenton Holle a third generation dairy farmer from south Mandan I am here in support of SB 2351. I am representing our farm and also the ND Assoc of Milk Producers who support this bill.

I have affectionately labeled this bill the "HAM AND CHEESE BILL!"

Eleven years ago My wife Bobby Jo and I relocated our dairy from New Salem to St. Anthony. We were at a pivotal time for our family and our farm. We were at a position where many producers in North Dakota have found themselves in. Working tremendous hours, in facilities that were outdated and even worn out. Upgrades and updates or new barns to milk the same number of cows is not feasible. So it was either expand or get out.

All three of our sons helped us to start our new venture. Currently Bobby Jo and I are in partnership with our son Andrew his wife Jennifer and their 4 children. Our other two sons have chosen careers within other sectors of agriculture.

I only bring up this part of our story to give you a glimpse into the hard choices and decisions that need to be made when a family must decide to stay in or to get out of dairy farming. The same is true no matter what enterprise their farm is in.

I have watched other dairy farm families have to make similar decisions. Some have made the commitment to continue in the business. But unfortunately many have not. I certainly don't hold anything against anyone who had to make the tough decision to get out of the dairy business.

Long hours, worn out facilities and the cost to update or build new are tough odds to overcome. Updates and expansions can easily cost in the hundreds of thousands of dollars and new facilities are in the multi-millions. Coming up with the needed equity is not easy nor is it simple to get the needed financing.

During the discussion in the Senate Ag committee for this bill it was brought out that the major reason for the decline in dairy farm numbers was the lack of a decent price for milk. Certainly having a price for milk above the cost of production is necessary but in 2014 we saw the highest prices for milk in our history and we continue to see producers leave the industry.

I will not deny that we milk cows in some very volatile financial times. I would venture to say that every other agricultural producer could look back over the years and they as well could say they have seen some times of rather poor economic returns.

Price, labor, facilities, and the need for capital are all part of the discussion. Every farmer has the same hurdle, the price we get for what we produce. We use whatever leverage we have to increase our margins and take some of the financial pressure off.

North Dakota agriculture has changed a lot over the decades, every enterprise has seen changes. Our farming practices are different now, the equipment that we use and the role that technology plays is stunning. Our farms range from producers who have chosen to keep their overhead down and farming only what they can take care of while having a job off the farm all the way to the farmers who have expanded to tens of thousands of acres and hundreds of cattle, and taking advantage of the economies of scale.

No matter what the size of the farm may be, family farming is still a way of life. We may struggle at times to pay the bills and keep the bank current. But providing for our families is a top priority.

We embrace the thought of some just starting a tradition in farming while others have a long family tradition of farming.

This bill is focusing on the dairy and swine industry which have seen numbers that continue to decline. Each industry has been holding campaigns to try and bring new life into the country side. Many farmer organizations have stepped forward with their check books and with administrative expertise to help put some momentum behind the efforts. Some success has been achieved but not enough to off set those who have left the business.

The opponents to this bill are probably going to jump all over me for what I am about to say - but - I think we are over thinking this bill. It is really quite simple. This bill would provide another financial tool, another option for a business structure of a livestock facility. A facility that is restricted to 640 acres and to swine and dairy only. All the other methods of business structure are still available, it is not requiring and it is not restricting. This is a system that is being used in other states and has resulted in the growth of the industry.



Not only have other states seen the growth of the dairy and swine but those farmers who are in the vicinity of the operations have benefited from having a market source right next door. In addition they receive the manure from the barns as valuable soil nutrients.

I will use our dairy as an example. We milk 600 cows, when we add in the dry cows and replacement heifers and calves that total gets to be 1,000 head. That takes a lot of corn silage, corn grain, alfalfa hay, soybean meal, canola meal, straw and etc. That is 600 acres of corn for silage and it needs to be within a 4 mile radius to avoid high trucking costs. The corn grain and alfalfa hay comes from a wider area. The total acres we require is over 2,000. We only milk 600 cows, a new dairy built today would need to be over 1500 cows. That is a tremendous marketing opportunity for farmers. The farmer who raises corn for silage only has to plant the crop and spray it. The dairy takes care of it from there, he has no harvest cost, no trucking, no shrink, no dockage and no drying cost

The nutrient analysis of our liquid manure for 2014 that we applied to neighbors land had a value of \$100,000.00.

I understand a new facility can be built using the variety of business models that are approved for farmers. Those benefits that I just mentioned can happen now. But when was the last facility built? I am not aware of any in the last ten years. I am not so naive to say that nothing happened because we had anon corporate farming law. But at the same time was it a factor in someone's choice?

As a dairy farmer I am beginning to feel like a dinosaur, and that is not a comfortable place to be.

If we lose our dairy farms and milk plants the need for milk and other dairy products will not go away with it. We still need milk. That will have to come into our state and how will the consumers react to that? So our consumers will be supporting corporate farming only another state.

Mr Chairman and members of the House Ag Committee we could very well be at a defining moment for the swine and dairy farmers.

I know the passing of a corporate farming bill has a very negative tone to it. But within the restrictions of this bill we have contol.

So what are we to do?

One choice is to do nothing, change nothing and just hope for the best.. That seems to be the answer that some would suggest.

No one else has brought anything else to these industries.

There are indications that farmers from outside of the state are interested incoming to North Dakota but because they have incorporated they are blocked. We can turn them away and miss out on the growth of the industry and agriculture in general.

There is the possibility that this structure could fit our existing farms. A couple months ago I had one of those milestone birthdays and we are looking at all the options as we begin the transition from my wife and myself to Andrew and Jenni . The corporate structure could be a tool we use and also could be a benefit in the future as Andrew's family would look at expansion.

What is the long range plan for the business structure of our North Dakota Family Farms?

Whether this bill passes or fails no one in this room can predict or guarantee what the outcome of that decision will be.

Maybe it wont make a difference one way or the other. Even though some have indicated an interest in coming to North Dakota, no one is sitting at the border waiting for this vote.

We can only use our judgment passed upon the past, looking at our current needs, seeing the results of others. To make a decision that can be an opportunity for someone.

Testimony SB 2351

# 8a  
3/5/15

Mister Chairman, Members of the Committee,

My name is Harvey Hoff. I am a 3<sup>rd</sup> generation dairy farmer. My wife Janal and I have been dairy farming together for 34 years. We consider ourselves a family dairy milking 100 cows with an additional 100 head of youngstock.

I support SB 2351 because it would allow existing and new dairies to expand and grow to meet our states needs for dairy products in our grocery stores and schools.

Our opponents say our industry is failing because of low milk prices paid to our producers, and their solution is to allow a state funded processing plant to be built to bring us another market. Our state currently imports milk to fill our needs. To my testimony I have attached a map that was recently published in Hoard's Dairyman magazine, it is titled '27 States can't meet milk needs'. As you can see, we are one of those states. Building another processing plant sounds good, but first we need to do something to expand current dairies and bring in new dairies. We need more cows and more milk to supply our current processing plants and then plan future processing plants after we have a supportive milk supply.

I support the 640 acre limit because this will bring family run dairies that will concentrate on their animals and allow neighbors to incorporate and grow their feedstuffs and use the animals waste products to help fertilize crops. The more dairies and swine operations we have in the state gives our feed growers another outlet for their products. This 640 acre limit will discourage large business corporations from coming to our state and purchasing large amounts of land. Currently religious organizations are a bigger threat to the family farms because of their power and money to purchase land at very high prices.

If we choose to do nothing our industry will soon be at a very low number of farms. This will put us in a position of possibly only having one processor for the entire state. With no competition this will be bad for our industry with even lower prices for our products and higher freight to get it to the plant. Also quality of our finished products will suffer because of the need of milk from other states, and prices of dairy products will increase because of milk shortages.

The original bill was written in 1932. At that time every farm had a couple of milk cows, chickens, and swine. Living off the land was a lifestyle. Times have changed and now it is time to change this bill.

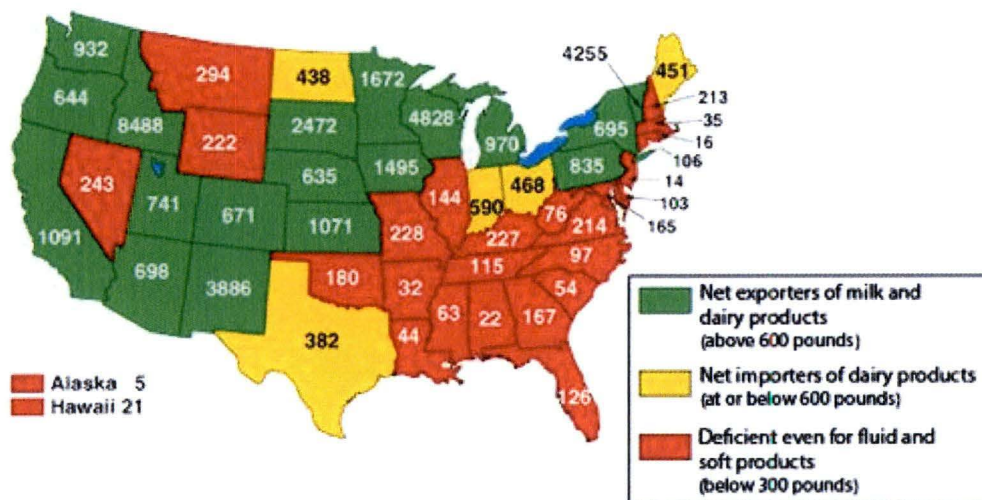
Please pass SB 2351 to help bring back our dairy and swine industry and to balance our agricultural state needs.



# HOARD'S DAIRYMAN

INTEL

## 27 states can't meet fluid milk needs



Handed out by  
Harvey Hoff

#86  
3/5/15

Alan Qual

13407 73<sup>rd</sup> ST SE  
Lisbon, N.D. 58054  
February 12, 2015

Chairman Johnson and Members of the House Ag Committee:

I am a long-time resident of our state and I am writing to support Senate Bill 2351.

I have watched our North Dakota Dairy Industry retract for the past 40 years and we need to make a move that will improve the future expansion and regrowth of our industry in our state. This bill has in place acreage limits that will keep it focused on Dairy and Swine Farms and not impact other ranching and farming enterprises.

This bill will also allow family dairy farms incorporated under the Family Farm Corporation rules to maintain their operations without being forced to dissolve them if relationship rules can no longer be met. This is provided they do not exceed the acreage rules.

The next generation of my family members may face this challenge on our family's dairy farm.

Please consider supporting this legislation and help North Dakota's Dairy Industry get back on track towards a bright future.

Thank you,

Alan Qual

Doug Lemieux

3-5-2015  
SB 2351

#9

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## Bank of North Dakota History

During the early 1900s, North Dakota's economy was based on agriculture. Serious in-state problems prevented cohesive efforts in buying and selling crops and financing farm operations. Grain dealers outside the state suppressed grain prices; farm suppliers increased their prices; and interest rates on farm loans climbed.

By 1919, popular consensus wanted state ownership and control of marketing and credit agencies. Thus, the state legislature established Bank of North Dakota and the North Dakota Mill and Elevator Association.

Bank of North Dakota (BND) was charged with the mission of "promoting agriculture, commerce and industry" in North Dakota. It was never intended for BND to compete with or replace existing banks. Instead, Bank of North Dakota was created to partner with other financial institutions and assist them in meeting the needs of the citizens of North Dakota.



Farming in North Dakota in the early 1900's



Missouri Valley Motor Building 1920 - BND's First Home  
of loans for students and their families wanting to pursue post-secondary education.

In partnership with more than 100 other North Dakota financial institutions, Bank of North Dakota continues to meet and expand its 90-plus year mission to promote the development of agriculture, commerce and industry in North Dakota.

[Bank Charter](#)

BND opened July 28, 1919, with \$2 million of capital. Over the years, our fiscal responsibilities to the state have increased dramatically. Today, the Bank operates with more than \$270 million in capital. The State of North Dakota began using bank profits in 1945 when money was first transferred into the General Fund. Since that time, capital transfers have become the norm to augment state revenues.

Commercial, farm and secondary market real estate programs were established to benefit state residents and the local financial institutions who serve them. BND's federal funds program provides an alternative funding source for banks to access additional capital for consumer loans.

In 1967, Bank of North Dakota made the first federally insured student loan in the nation. The Bank continues to provide a variety



BND Building 2008



Doug Lemieux  
Rolette ND  
701-871-1722

/





# North Dakota Mill

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The Company

## History

### NDM History

The North Dakota Mill and Elevator Association began operating October 22, 1922 as a value-added market for wheat produced in North Dakota. In the early 1900's, the flour mills and grain exchange in Minneapolis were the primary wheat markets for North Dakota farmers and elevators. After freight costs to Minneapolis were deducted from Minneapolis market prices, North Dakota farmers received a low price for their wheat. The North Dakota Mill came into existence to help solve this problem.



The Mill & Elevator

The North Dakota Mill facilities include seven milling units, a terminal elevator and a packing warehouse to prepare bagged products for shipment. All Mill facilities are located in Grand Forks and have been paid for from operating profits.

The Interactive Mill

With seven milling units, the Mill produces and ships 36,000 cwt. of milled products daily. In addition, the Mill ships over 13,500 cwt. of food grade bran and wheat midds daily. The Mill cleans, processes and mills over 80,000 bushels of top quality North Dakota wheat daily. On an annual basis, the Mill adds value to 23 million bushels of spring and durum wheat.

The terminal elevator has a storage capacity for 4.3 million bushels of wheat. The terminal elevator blends, cleans and transfers wheat to the six milling units and provides wheat storage to farmers, country elevators and government agencies.

70% of the Mill's flour and semolina is shipped on bulk rail cars and trucks, 30% of finished products are packaged in 5, 10, 25, 50 and 100 pound bags for shipment via boxcars and trucks. Product is also packed in totes/super sacks for shipment. The Mill also sells a line of bread machine and pancake mixes for the retail trade.

The Mill also has an organic certification for processing organic wheat products.

The North Dakota Mill receives no funds or financial assistance from the State of North Dakota to subsidize the milling operations. Selling value-added milled wheat products to bakery and pasta customers, as well as retail and food service suppliers, generates all operating funds. Over 90% of sales revenues are derived from customers outside the State to create value-added income for the State of North Dakota. The North Dakota Mill supports the local economy with a payroll of \$7 million annually.

The North Dakota Mill and Elevator Association has contributed in excess of 50% of its profits to the North Dakota State General Fund for more than 35 years and continues to be a valuable asset to the State of North Dakota.

The North Dakota Mill and Elevator Association is the only state-owned milling facility in the United States. The North Dakota Mill and Elevator Association has, over the years, worked cooperatively with state agencies in promoting North Dakota and its high quality products by participating with and hosting international trade teams and serving as a resource center for training, research and testing.

The North Dakota Mill and Elevator is currently pursuing new marketing strategies to achieve desired profit levels. The new marketing strategies include increasing branded product sales; targeting bakery customers that prefer superior quality flours with excellent uniformity and purity and aggressive marketing of new products at the retail and food service levels. 9/10/09

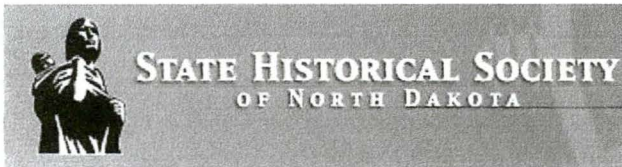
For more information or the name of a distributor call:

1-800-538-7721  
North Dakota Mill & Elevator  
P.O. Box 13078, Grand Forks, ND 58208-3078

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## Summary of North Dakota History - Statehood

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On November 2, 1889, President Benjamin Harrison approved the admission of North Dakota to the Union. The new state was a Republican Party stronghold. The first Governor, John Miller, presided over a turbulent initial legislative session that, among other issues, fought about the question of legalizing lotteries and prohibition.

Political life revealed an insurgent tendency that has continued to the present day. In 1890, the cooperative Farmers Alliance formed an Independent Party to challenge the "McKenzie Gang" that dominated the Republican Party. The Independents fused with the minority Democratic Party in 1892 and captured state government with a platform promising significant reforms. Their efforts, however, were frustrated by political inexperience, and in 1894 the Republican Party regained power. Controlled by conservatives, North Dakota government encouraged investment by establishing liberal banking, regulatory, and taxation policies; to support their policies, conservatives argued that capitalists would not invest in North Dakota unless state government did its part to diminish risk and enhance profits.



Gov. John Miller, 03.17.1890  
State Archives #0079-0004

Though severely criticized by progressives, the strategy did result in some industrial development. Large lignite mines opened near Beulah and Wilton, and local brickworks and flour mills soon dotted the state. The railroad industry, bolstered by completion of both James J. Hill's Great Northern Railway in 1887 and the Soo Line in 1893, built branch lines and fostered new towns. Rail expansion peaked in 1905 when the GN and Soo squared off in a "railway war" in northern North Dakota.

Evidence of development, however, did not quiet the progressive opposition. In their opinion, the state provided too many incentives, and they pointed out that huge profits were being taken from North Dakota, that the distant leadership of rail and commodities companies was often arrogant and unresponsive to the needs of their customers, and that rural people were often taxed out of proportion to their means. Most galling, however, was the frequent evidence that out-of-state corporate interests dominated North Dakota government, using it to further private goals rather than the general welfare of the citizens.



Gov. John Burke, 1908  
State Archives #A2713

By 1905, the swelling chorus of protest caused a political upheaval. Republican progressives united with Democrats to elect John Burke as Governor, and his election commenced a reform era. In the next decade, a series of other movements surfaced. For example, in 1907, a new cooperative movement, the American Society of Equity, came to North Dakota and by 1913 had procreated well over 400 marketing and purchasing locals throughout the state. Among the many new settlers who immigrated during the second Dakota "boom" after 1905 were radicals, and they united into the North Dakota Socialist Party. Both the cooperative and radical movements questioned the preference given to out-of-state corporations, called for fair taxation, and demanded better services from state government. For these movements, the goal was returning control of North Dakota's government and economy to the people, and they were not afraid to demand that state government organize and operate banking,

insurances, and processing businesses in order to bring the benefits of competition, lower costs, and better services to the people.

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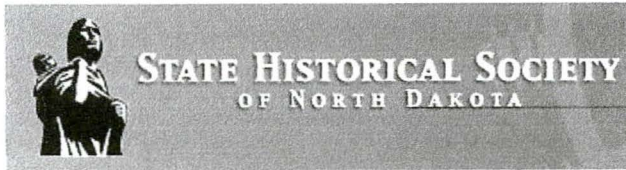
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## Summary of North Dakota History - Nonpartisan League

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These movements procreated the Nonpartisan League, North Dakota's greatest political insurgency. The NPL, born in 1915, united progressives, reformers, and radicals behind a platform that called for many progressive reforms, ranging from improved state services and full suffrage for women to state ownership of banks, mills and elevators, and insurances. Led by A. C. Townley, the NPL used the primary election to take control of the Republican Party in 1916, dominated all state government by 1918, and enacted its program in 1919. Its administration, headed by Governor Lynn J. Frazier, instituted many reforms in state government; among them were re-organization of state services, expansion of educational services, development of health care agencies, and improved regulation of public services and corporations. However, its core program generated fierce opposition fueled by funds from out-of-state corporations; those interests used every means to obstruct the NPL program, including lawsuits and extreme propaganda.



A. C. Townley  
State Archives #A5630



Gov. Lynn J. Frazier  
State Archives #C0279

The anti-NPL movement gained strength during and after World War I. Charging that the NPL's leaders, many of whom were former Socialists, were opponents of American participation in World War I, the anti-NPL forces coalesced in late 1918 into the Independent Voter's Association. Vitriolic political infighting followed. The IVA attacked on many fronts, rapidly sowing disunity within the NPL and splitting the coalition of cooperative groups that had helped support the League. Economic distress caused by the precipitous decline in grain prices after World War I and a drought in western North Dakota helped diminish NPL support. In 1920, the IVA took control of one legislative house and in 1921 forced a recall election that deposed Governor Frazier and other members of the Industrial Commission that governed state-owned industries. The NPL era, one that significantly altered North Dakota government, had ended.

The NPL left an indelible mark on the state. The Bank of North Dakota at Bismarck, opened in 1919, has become a large and powerful economic force; the State Mill and Elevator at Grand Forks, completed in 1922, provided a market for grain and a source of feed and seed; the state hail insurance program benefitted many farmers until its elimination in the 1960s. Perhaps most importantly, the NPL established an insurgent tradition in the state that blurred party lines for four decades, and both the League and the IVA elevated a generation of leaders to power. Each official recalled in 1921, for example, later regained public office.

For North Dakota the 1920s and 1930s proved to be watersheds. An economic Depression, starting with the 1920 collapse of wartime prices for grain, punctured the economic expansion of previous decades. More North Dakota banks closed in 1921 than in any other year; the resulting contraction of credit caused many farm foreclosures. Simultaneously, farm sizes increased, and many farmers mechanized their operations. A dramatic shift to motorized transportation placed greater emphasis on better roads and bridges. As the times changed, new devices entered the state's homes; radio, especially, became commonplace after the first stations went on the air in North Dakota in 1922. Likewise, motion pictures attracted thousands, and many theaters were built in towns across North Dakota. These economic and social factors had by 1930 made North Dakota a different place than a decade earlier. The fire that destroyed the old state capitol building on December 28, 1930, symbolized the end of an era.

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## Overview

A corporation is owned by shareholders, who profit from the company's gains. A partnership is owned by two or more people who divide the business' profits. A sole proprietorship is owned by one person who alone is responsible for losses and reaps profits. A corporation is the most complex form of business and involves the most paperwork and expenses to set up, but it can offer certain rewards that other forms of business do not.

## Liability Protection

The biggest benefit a corporation offers over other business structures is liability protection, according to Entrepreneur.com. Shareholders do not risk losing personal assets because of a company's debts, because corporations are considered separate legal entities from the people who own them. Owners of partnerships and sole proprietorships, on the other hand, are held responsible for all company debts and legal responsibilities, and are subject to losing personal assets if the company goes bankrupt or is caught up in costly legal situations.

**Related Reading:** [Sole Proprietorship & Partnership](#)

## Access to Funds

Corporations can more easily raise funds than other forms of businesses, according to the U.S. Small Business Administration. Corporations can sell stock to raise money for business expenses or cover debts. Sole proprietors and business partners, on the other hand, must try to come up with funds on their own or turn to loans or credit programs to raise money. It takes less time and effort to sell stocks than it does to apply for loans or seek out investors for a business.

## Tax Benefits

Corporations enjoy some tax benefits that sole proprietorships and partnerships do not. Corporations must file taxes separately from the shareholders. Owners of corporations pay taxes on any salaries, bonuses and dividends they earn from the corporation. However, loopholes exist to ease the burden of paying taxes as a corporation and as individual shareholders. A corporation is not required to pay tax on earnings paid as compensation to employees or shareholders, and it can deduct the payments as a business expense. Also, the corporate tax rate is usually lower than the personal income tax rate. The owners of sole proprietorships and partnerships pay income taxes at regular rates on the profits they earn from their companies.

3/5/15  
SB. 2351

#10a

Chairman Johnson, and members of the House Agriculture Committee,

My name is Tamra Heins, I live in New Salem, ND, I am a rancher, hog farmer, business owner, wife and mother. On November 15, 2013 I was named the State Executive Director of the North Dakota Pork Council.

I have been involved in livestock production my entire life, but quite honestly, I didn't know much about the commercial swine industry. I wish everyone could have the crash course I have had and I wish I was a more articulate communicator to explain it to everyone.

According to the National Pork Board's Pork Quick Facts Publication, 98% of pig farms in the United States are family owned. A lot of these family owned businesses are corporations. Many started as a partnership two or three generations ago and have, over time, turned to the corporate business structure for many reasons. Largely, our industry, by nature does have a more corporate base than other ag commodities. I am not here to say that is a good or bad thing, but I am here to say it is a fact.

Because our current century code has not evolved with the way the swine industry does business, we have lost both in state and out of state opportunities for growth. The U.S. swine industry is not going to change how they do business for North Dakota, so to grow the industry we need to make this exemption happen in an effort to grow our industry. I have been told point blank, when your law changes, we will be there. And this is why at the ag commodity meetings held by the Ag Commissioner is November, I brought up the need to look at making an exception to century code for swine enterprises.

All I see is opportunity, with wide open spaces to insure our excellent biosecurity and cheap, abundant feed resources. Our crop genetics and great farmers have allowed the corn and soybean belt to move further west and north and I think they would enjoy the narrowing basis like their South Dakota and Minnesota counterparts.

But yet, with all these positives, in 2014, we ranked 26<sup>th</sup> in hog production. I don't think any other commodity group in this room would be satisfied with that number.

/

If we could expand our livestock production in North Dakota, I believe we would have more opportunities for our youth. We have a great Animal Science program at NDSU, where we have a swine research facility and the largest number of students in swine production class in the nation, yet when they graduate we ask them to go elsewhere to get a job.

Last spring, I taught an Animal Science class at BSC, last week, I had a former student, with a great GPA and excellent work ethic, call me and ask me if I knew of any jobs. She is from the northwest part of the state, her brother already works in the oil patch, and she spent last summer at an Agronomy facility, and that wasn't for her, she wants to work in the livestock business. I wish I could tell her differently, but the fact of the matter is, the jobs in North Dakota are Agronomy jobs, not animal science jobs.

Most people don't know, the headquarters for the North Dakota Pork Council is in New Salem, ND. I guess it is ironic that we are here together, fighting for our industries together. The swine industry is at a critical point, in fact my industry already has felt the loss of a processor, when the facility in Minot closed a few years ago, and we lost many producers around and west of Minot and Bismarck area.

I truly believe that passing this law will provide the opportunity for growth in the swine industry in North Dakota, I don't anticipate building a 40 foot pig, to put on a hill near Salem Sue, but I do believe it is necessary.

In social media, we use the hash tag, #realpigfarming to tell the story of the industry. I hope the committee members will pass Senate Bill 2351 and support #realpigfarming in North Dakota.

Thank you.



Read by  
Tamra Heins

3/5/15

#106  
SB 2351



*North Dakota Pork Council*

Seth Bacon, President

3444 25<sup>th</sup> Ave NE

Larimore, ND 58251

Chairman Johnson and members of the House Agriculture Committee,

My name is Seth Bacon. I am currently the president of the North Dakota Pork Council. Our organization represents a wide variety of hog producers. We have members who raise 4-H and FFA show pigs, niche producers, who direct sell their product, as well as larger commercial farms. On behalf of these producers, our board passed a resolution on February 3, 2015, to support Senate Bill 2351 to allow corporations and LLC's to own and operate swine and dairy farms.

We feel that this will be a major step for promoting the dairy and swine industry in our state and will allow us to be able to compete with our neighboring states for market share. This bill will also bring jobs and economic development to small town North Dakota.

On behalf of the members of the North Dakota Pork Council, we ask you to recommend a do pass for Senate Bill 2351.

Thank You,  
Seth Bacon, President  
North Dakota Pork Council

Read by Jennifer Holle

# 11a  
3/5/15  
SB 2351

To: North Dakota Legislative Committee  
From: Marv Post, President of South Dakota Dairy Producers  
RE: Support of the dairy farms to be exempted from corporate or LLC farming

Good Morning Mr. Chairman and committee members:

My name is Marv Post and I am President of the South Dakota Dairy Producers organization. SDDP was organized five years ago to represent the dairy farm families of SD. Today our membership represents 2/3 of the cows in SD and roughly 75% of the milk produced in SD as well as many other dairy industry associate members. Approximately 30% of the dairies with over 500 cows in South Dakota have non-family investors.

Since 2001 South Dakota has aggressively attempted to grow dairy in SD. Former secretary of Agriculture, Larry Gabriel, started the effort to revitalize our rural communities. At the time the upper Midwest had an out migration of our rural young citizens to the cities. Our cow numbers were falling and our dairy infrastructure could ill afford to be lost.

Dr. Gary Taylor, Economics Department—SDSU, conducted a study of the economic impact of a dairy cow to the economy of South Dakota with approximately \$14,000/cow per year. In 2013, South Dakota had \$1.28 billion economic impact with about 94,000 cows, \$10 million in taxes and 1,838 employees. SD only produces 1% of the nation's milk supply or the equivalent of what Starbucks uses in milk per year. There is a need for more milk to meet a growing world population and to save our dairy infrastructure in the Upper Midwest. Today, SD has 100,000 cows. We have bustling dairy towns like Castlewood, Lake Norden, Elkton, Milbank and Brookings.

There was a study done in ND in about 1998 that identified the number one reason people got out of the dairy business was because of quality of life issues. The same was true in SD. It was also the number one reason people wanted to be in dairy—quality of life—time to spend with family and running their own business. During those twenty years we lost a generation of dairy families.

The desire to start a dairy or maybe have a family member or two come back to the farm is very capital intensive. The dairy farm needs to be either large enough to justify outside labor to address those quality of life issues or it needs to be mechanized with robots. The cost becomes \$10,000 to \$15,000 per cow in overhead.

South Dakota exempts dairy farming from the restriction of having all partners being family members. Approximately 30% of the dairies with over 500 cows in South Dakota have non-family investors. This allows for them to have a distant relative, friend or neighbor crop farmer to go into business with them. It is a lot like it was years ago. Neighbors went together to farm, sharing equipment and harvest work. Today you have a neighbor crop farmer putting in crops for the dairy. Someone else pumps and injects the organic fertilizer into the crop ground.

1

Workers from down the road or in town help with the milking. The local veterinarian has steady work.

Allowing capital infusion of outside individual money in the form of an LLC and or an LLP allows that neighbor crop farmer or anyone to infuse the capital needed to expand that dairy that allows for a better quality of life for all. Most of the time the family is the managing partner or they hire someone who is specifically trained to operate a larger operation to be the manager with ownership shares as an incentive.

A SD study illustrates the economic impact of a 3,000 cow dairy to a local community in SD.

- Total taxes paid in 2014: \$210,000 or \$68/per cow
- Payments made to local vendors: \$1.6M or \$5200/cow
- Gross payroll: \$2.4M or \$766/cow
- Payroll taxed not FICA: \$188,000 or \$60/cow
- Gross average per full time employee: \$52,000 at 62 employees

That is about \$6,100 per cow. Then you have the rest of the economic factors to revitalize some of our local communities. Dairy farmers spend a lot of their money locally.

Respectfully submitted,

Marv Post  
21242 461<sup>st</sup> Ave  
Volga, SD 57071  
605.826.4227



Read by  
Jennifer Holle



**DRUMGOON DAIRY LP**  
**19048 US HWY 81**  
**LAKE NORDEN, SD**  
**57248**  
**TEL: 605 785 2151**

#116  
3/5/15  
SB 2351

Chairman Johnson and Members of the House Ag Committee:

My name is Rodney Elliot and I have been dairy farming since 1982, both in Europe and now in the USA. During the early 2000's I became very frustrated with the lack of opportunity in Europe. Milk quota, fragmented land management, high operating costs, urban encroachment and lack of Government support to production agriculture all led me to look for other places in the world to continue to do what I love to do which is Dairy Farming.

I went to a meeting in Northern Ireland to hear about the dairy industry in South Dakota, I was intrigued with the possibility of running a large scale dairy and using an abundant supply of locally grown, high quality feed to feed my cows. So much so that I decided to visit South Dakota in April 2004.

My expectations were exceeded during the week I spent touring along the I-29 corridor visiting existing dairies, supporting industries, milk processors and local government. I was excited by the availability of land, cattle, labor and a strong milk market. Having already visited other countries throughout Europe with the intention of relocating I could find nowhere else that matched the opportunities I found in South Dakota.

Moving forward 10 years I have grown my dairy farm from 1400 cows to currently 3100 cows, and hope to be milking 4500 cows by fall 2015. I currently raise all my own heifers. We purchase feed from 10 - 12 local crop farmers and grow a small portion of our requirements ourselves. Our feed purchases total \$5,000,000.00 for last year 65% of which is spent in our local county. We currently employ 45 people directly and indirectly support many other local jobs through construction, transportation and repairs.

We brought our children to SD when they were aged 10, 12 and 14 years old, all three graduated from Estelline High School and have gone on to Universities in SD. Our eldest son graduated from Dakota Wesleyan University, Mitchell, our second son will graduate this year from Mount Marty College, Yankton and our daughter has attended SDSU since 2013. We are very involved with our local community through church, school and local volunteering opportunities.

Whilst we chose South Dakota and believe it was the right decision for our family, we see many of the same opportunities in North Dakota and believe strongly that there should be a thriving dairy industry in the state. We would have no hesitation recommending North Dakota to others considering to relocate to the Midwest to dairy farm.

Yours sincerely,

Rodney Elliott

Chairman Johnson and members of the committee, I am Clark Price a fourth generation farmer, rancher, stocker and feedlot operator from the Washburn area. Thank you for the opportunity to appear before you today. I am here today representing myself and my family in support of SB 2351 with an amendment that would add an exemption for feedlots.

Mr. Chairman, you can't choose your family, but under this structure I can choose my business partners. I believe that this structure is vitally important to the feedlot industry in our state. This structure would allow for some of my corn farming friends and neighbors as well as maybe some of my cow/calf producing neighbors and maybe even blue flint ethanol to contribute capital and build a feedlot to finish cattle in our state.

The Corporate structure can and will benefit feedlot owners like myself by shifting the structure under which we do business. The ability to form a corporation with my neighbors would benefit me personally and everyone else in the industry in the following ways.

1. This structure limits personal risk and protects individual assets.  
Corporations can retain earnings until the profits from the company move to the investors in the form of dividends. This allows for more working capital within the company which in return reduces the amount of borrowing needed.
2. Feedlot operations require about 10 pounds of corn/DDGs per pound of beef produced. This structure allows the corn farmer another market for his corn vs the traditional markets we have today such as the local elevator (which goes on the rail for export out of our state) or an ethanol plant.  
This also gives another potential market for our ethanol plants to market DDG's rather than putting it on the rail for export out of our state.
3. The addition of feedlots to the state will also alleviate some of the need for commercial fertilizer needed by the local corn farmers.

I want my family and neighbors to have the ability to be involved in this business. The Cobblestone is trying to build a hotel in Washburn and they are looking for local investors. Once they reach an equity position of 40% they will build the hotel. The question needs to be asked that if we allow this structure to be used on main street in our small towns why am I not allowed to do that same structure to build a feedlot.

Mr. Chairman, we have a state of the art processing facility just south of our border in Aberdeen South Dakota. This facility has the capacity to process 425,000 head of fed cattle annually. I personally believe this business structure is necessary for the producers in our state to be able to compete at a level at least equivalent to our South Dakota and Minnesota neighbors. North Dakota cattle that are fed in North Dakota need to be supplying this facility. We have the cheapest feed supplies in the nation and yet we are not finishing cattle here.

There were 940,000 calves in North Dakota in 2013 but we only had 51,000 head of cattle on feed. In the same year South Dakota had 410,000 cattle on feed: of which 20,000 are in the five counties that border southeast North Dakota.

Chairman Johnson and members of the committee, I would like to urge you to amend SB 2351 to include feedlots and also would like to also express my support of the bill. Lastly I would like to pass out some written testimony from some of my fellow feedlot owners from within the state that couldn't be here today because they are feeding cattle that would like to express their support of this amendment as well as the bill.

I would be happy to answer any questions.





North Dakota

## 2013 Cattle on Feed

North Dakota

51,000



South Dakota

Brown, Campbell, Marshall,  
McPherson, & Roberts  
Counties

20,556

South Dakota

410,000

SB 2351 Clark Price 3/5/15 #126



Factors	Sole Proprietorship	Single Member LLC	C Corporation	S Corporation	Partnership	LLC
Ownership	Owner	Member	Shareholder	Shareholder	Partner	Member
Number of owners	1	1	Unlimited	Up to 75	2+	1+
Examples	Mom & Pop ice cream shop, arts and craft shops, graphic designer, website developer	Any business operated by a single member such as a convenient store, beautician, realtor	Public Corporation, software company, telecommunications, automobile maker	Small business or family business such as a print shop, pizza parlor, construction company	Auto repair shop, bakery, restaurant, beauty salon	Real Estate investment property, restaurant, beauty salon
Limited Liability	Owner has unlimited liability and can lose personal assets	Yes	Yes	Yes	No if General Partnership Yes if Limited Partnership	Yes
Length of Existence	Owner either ceases doing business or dies	Member either ceases doing business or dies	Perpetual	Perpetual	Typically death or withdrawal of a partner dissolves GP	Delaware allows an LLC to have perpetual existence
Operational procedures	Easiest with few legal requirements	Annual reporting required	Annual meetings, filings, and reporting required. Board of directors and officers must be maintained.	Annual meetings, filings, and reporting required. Board of directors and officers must be maintained.	GP's typically have few legal requirements.	Annual reporting required

#12C  
SB 2351  
3/5/15  
Clerk Price

Factors	Sole Proprietorship	Single Member LLC	C Corporation	S Corporation	Partnership	LLC
Management	Owner has complete control of management	Member has complete control of management	Officers manage day to day corporate activity. Directors manage the officers and overall company. Directors are elected and managed by the Shareholders.	Officers manage day to day corporate activity. Directors manage the officers and overall company. Directors are elected and managed by the Shareholders.	Partners have equal management authority unless stated otherwise in the partnership agreement.	Management is outlined in the LLC's Operating Agreement.
Lower audit profile	No	No	No	No	Yes	Yes
Easily select fiscal year end	No	No	Yes	No	No	No
Lower corporate tax rate	No	No	Yes	No	No	No
Start up costs (prices given are Delaware fees as of 8/1/09)	Cost of Business License starting at \$75.00	Formation of business \$90.00. Business License. May be subject to annual LLC/LP tax filing of \$200.00+	Incorporation of business \$89.00+. Business license. Annual franchise filing \$125.00+	Incorporation of business \$89.00+. Business license. Annual franchise filing \$125.00+	Formation of business \$90.00. Business License. Annual LLC/LP tax filing \$200.00+	Formation of business \$90.00. Business License. Annual LLC/LP tax filing \$200.00+
Taxation	Taxed once	Taxed once	Double; both the corporation and the shareholders are taxed	Taxed once	Taxed once	Taxed once
Pass through taxation of income and loss	Yes	Yes	No	Yes	Yes	Yes
Transferability	No. Unless sold to another party.	No. Unless sold to another party.	Shares of stock are easily transferred	Yes. Some IRS regulations on stock ownership.	No	Depends n the operating agreement
Deduct interest on money borrowed to invest as business interest	Yes	Yes	No	Yes	Yes	Yes

Factors	Sole Proprietorship	Single Member LLC	C Corporation	S Corporation	Partnership	LLC
Easily distribute back the owners investment	Yes	Yes	No	Yes	Yes	Yes
Home office deductions	Yes	Yes	No	No	Yes	Yes
Avoid payroll taxes and administration (if no employees except owner)	Yes	Yes	No	No	Yes	Yes
Can avoid FICA taxes by A. Distributions B. Paying children under 18	No Yes	No Yes	No No	Yes No	No No	Maybe No
Subject to: A. AMT B. PHC & AE tax	Yes No	Yes No	Yes Yes	No No	No No	No No
Dissolution	Easiest	Complex. Requires filing cancellation with State.	Most complex. Requires filing dissolution document with State.	Most complex. Requires filing dissolution document with State.	Complex. Requires filing cancellation with State.	Complex. Requires filing cancellation with State.

W



*Handed out by  
Clark Price*

*#122  
SB 2351  
3/5/15*

I am writing in support of the proposed amendment to SB 2351 which would provide for corporate ownership of up to 640 acres for the purposes of owning and operating a beef feedlot. North Dakota stands uniquely positioned to benefit from this provision as the state is a massive producer and exporter of the two inputs that go into cattle feeding – cattle and feed. North Dakota ranchers produced a calf crop of 860,000 head in 2014 of which only an estimated 100,000 were fed to finish weight in the state. The remaining 760,000 or 88% were shipped to other states to be finished. Similarly, North Dakota produced 396 million bushels of corn during the 13/14 crop year with over half of this production being exported out of state and less than 5% of it used for livestock production. This extreme dependence on global logistics not surprisingly has resulted in our state having the lowest corn prices in the country. Similarly, North Dakota produced over 1.1 million tons of distillers grains in 2014 with the vast majority also being exported. Clearly, a goal of more meat production is attractive given this abundance of feed and cattle and it also stands to benefit North Dakota family farmers and ranchers as creating end user demand locally for their products is the only way to improve the competitiveness of our state's agricultural commodities. Lastly, in allowing this, I don't believe the state would be creating a pathway for business operators that don't share our North Dakota values or have an economic interest in the state. Rather, those who seem most likely to engage this amendment would be local North Dakota industry participants seeking to pool resources, spread risk and achieve scale efficiency.

Sincerely,

David Spickler



Chairman Johnson, committee members,

#13  
3/5/15  
SB 2351

My name is Gabe Thompson Jr. I am a cow calf producer and small grain farmer from Antler ND. I would like to share a bit of history of our operation as it relates to this discussion. My grandfather immigrated from Norway around the turn of the century. On 8 quarters of land, he raised 8 children putting 6 thru college and helping two get started in agriculture. My father raised 3 children putting all 3 thru college and provided me an opportunity to start in agriculture but to do so he had to increase the amount of acres he operated on over double what his father did. I am now raising 4 children with the goal of putting them all thru college and providing those that wish, a start in agriculture production as well. To do this I have had to once again double the amount of acres in our operation over what my father farmed and ranched. The fact of the matter is there is a trend line that wishing will not change when it comes to the necessity to develop an increasing economy of scale in agriculture to accomplish what generations before us did and that simply will not change as the population grows and less people wish to be involved particularly in animal agriculture.

There is much talk of the "family farm" relating to this bill. This ideology in reality is tied to a Norman Rockwell trip back to my Grandfathers time that simply is not what current agribusiness is. And agribusiness is exactly what the industry of animal agriculture has become. We are told not to refer to what we do as an industry or a business as consumers do not like those terms, but that is the reality of what livestock production in agriculture has become that we cannot deny.

Every industry and most businesses I patronize as a production livestock agribusiness has been allowed the usage of the tools of management under a corporate structure. They have been allowed the competitive advantages and risk management this structure allows. Many businesses that the consumers that some claim polls say want to protect the "family farm" do business with, is a corporate structure. "Family farms" are allowed the corporate structure.....to a point. And yet family businesses on main street still thrive, family farms still thrive.....it is animal agriculture particularly confinement animal agriculture that is not. This bill allows the legislature to address that by allowing the fiscal and risk management tools of a corporate structure to bring vitality thru investment back to dying livestock industries.

And as was testified to on the Senate side, this IS a tide that would raise all ships. Not just the dairy and swine production industries, but the business on main street rural "USA that supports these operations, farms that grow and provide feed stuffs, as well as the plants that process these products that have disappeared from our communities taking jobs and families with them that leave lasting impacts seen more significantly in rural communities.

In a 60 mile radius of our operation two dairy processing facilities, Winger Cheese and Bridgeman Dairies as well as a swine processing plant Cloverdale have closed. The last dairy left Bottineau County where I live last year. The loss of the diversity of enterprise these businesses and the animal ag production sector brought to these communities makes a significant impact. In rural communities especially where agriculture is the primary business impact, the loss of animal agriculture intensifies the impacts of commodity price swings on the businesses supporting the farming industry that are left behind.

We have an opportunity to change that with this bill. I would strongly encourage the addition of feedlots into the exemptions written into this bill. As a cattle producer I would like our industry to be one of the "ships" that rise with this opportunity to use the tools other industries take for granted. The addition of even a handful of larger feedlots bidding on calves locally will have a positive impact that will benefit the cattle industry in the longer term. While ND has a growing back grounding industry, many of these operations seek to move their calves on elsewhere to finish them. Once again those corporate feedlot operations in ND will provide opportunity not just for cow calf producers but back grounding lots, neighboring farmers and businesses that will be needed as the scale of operations increase.

And all this is being done thru this bill without anyone asking the legislature for monies. No request for the state to provide grants, fund the building of a state owned processing plant, or seek exemptions from regulation or over site. We are merely asking that we as livestock producers that our industries be given the same management opportunities and tools virtually every other business entity in the state is allowed to determine the success of our own future.

I thank you for the opportunity to share these thoughts with the committee and will try to answer any questions.

# 14  
3/5/15

Roger Effertz. I am part of the Effertz Key Ranch incorporated. That has been operating as a family corporation for 20 or more years. I am here today representing myself and my Chairman Johnson and members of the committee my name is family to support SB 2351 with an amendment to add feedlots to the bill.

My family and I have a 20 year relationship with the people in charge of operating the New Angus plant in Aberdeen South Dakota. With that plant expected to begin production this calendar year we as producers of some of the most sought after cattle genetics in the nation need to be supplying this plant. That plant becoming operational is a game changer to livestock producers of this state. My family specifically would like to be able to expand on our family corporation to include people from outside of our family to include maybe another family corporation to build a feedlot. Under our existing entities that are legally available to us today that is not possible. We as producers need this form of business structure to be competitive with our neighboring states.

Let me clarify one thing to this body, we are not talking about the ownership of cattle. We already allow a corporation to own cattle in this state. We have feedlots represented in this room today that are feeding cattle for those corporations today. This bill only allows me to be on the same competitive advantage as those entities.

I see no downside to North Dakota agriculture in allowing me to have the ability to form this business structure.

Chairman Johnson and members of the committee, I would like to thank you for the opportunity to stand before you this morning and express my support of SB 2351 with the feedlot amendment added to the bill.

I would entertain any questions.

Thank You

Roger Effertz

Effertz Key Ranch



Read by  
Andrew Holle

#15  
3/5/15  
SB 2351

Mr. Chairman and members of the committee, my name is Greg Moes and I would like to submit the following reasons that I am an incorporated dairyman.

1. Can transfer ownership without selling property.
2. Easier to keep as a unit if someone wants to leave or retire.
3. Ability to move shares as needed: To sons or maybe even longtime employees
4. Easier to operate for doing business....everything is taken care of in the Corporation and then goes out to individual owners
5. It allows for Tax savings. In order to be profitable, you have more control of everything.
6. With the high cost of business from Land, Buildings, and livestock it is easier to consolidate with other farmers and their assets.

##

#### History of MoDak Dairy, Inc:

The land was homesteaded in 1884 by John and Elizabeth Moes, and their nine children. It was passed down to Guy and Barbara Moes, and their six children. The third generation, Gerald and Eileen Moes had eleven children.

When fourth generation Greg and his wife, Julie, along with his brother, Jim Moes started managing it in 1991 they formed MoDak Dairy, Inc. They had 300 milking cows, and just over 1000 acres of land to farm. In 2008 they built a new dairy barn to house and milk 2000 cows. They raise most of their heifers, and are farming more than 2000 acres to produce feed for the livestock.

The fifth generation, Jacob and Scott Moes (Greg's sons) and Matthew Moes (Jim's son), are working every day to learn how to manage all aspects of the business, they hope to own. Being incorporated will make it easier for the fourth generation to pass it to the fifth generation by transferring shares instead of having to buy out the previous generation as done before.

Sincerely,

Greg Moes  
[greg@modak.net](mailto:greg@modak.net)

Senate Bill 2351 Testimony

Chairman Johnson and members of the House Agriculture Committee:

My name is Mark Watne. I am the president of North Dakota Farmers Union. Our organization stands in strong opposition to SB 2351. We see this bill as a fundamental change to North Dakota's system of family agriculture, which is the foundation of our state's economy, society and future. We believe agriculture is best left in the hands of individual entrepreneurs, who own the land and animals. NDFU has advocated for policies that ensure that ownership, operation and management of a farm or ranch is held within the family who makes a livelihood from that land and lives in or near the community adjacent to that land.

The agricultural community in North Dakota would be far better served in working together to find a creative solution to this issue, rather than take a hurried approach that is likely to see no success. Low prices, distance to market, and the lower consumption of milk are the primary reasons our dairy industry has declined. Understanding this we recently worked with National Farmers Union to add a Dairy provision to the 2014 farm bill allowing for a Dairy Margin Protection Program. When an industry is in trouble due to economic issues, an evaluation of economic factors and the current market situation is necessary. Every project, every industry in North Dakota uses some type of planning process and market analysis to determine a path forward. From a fertilizer plant to serving over 30,000 customers in four restaurants per week in Washington DC Farmers Union has identified a proper market approach and the best avenue for entrance into the marketplace. SB 2351 does the opposite for North Dakota producers. This bill does not guarantee greater profits. It does not guarantee more good jobs. It does not guarantee greater patronage or economic returns for rural main street businesses.

What this bill is really about is the ownership of land. SB 2351 would create an exemption so broad, that it allows corporations to own a section of farmland. That provision alone guarantees farmers and ranchers will have to compete against corporations to buy, rent or even access land. If this bill is truly intended to save declining industries than why is swine included which has shown recent signs of growth.

Now, the importance that North Dakotans want to keep farmland in the hands of family farmer needed to be substantiated. Last week, North Dakota Farmers Union commissioned a poll of North Dakota citizens on their attitudes toward corporate and family farming. By now you've seen those results, but allow me to cite some of those findings. Of those polled, 86 percent said North Dakota's agriculture economy is best left in the hands of farmers and ranchers who own, live and work the land. They also said if they had a chance to vote on Senate Bill 2351, 75 percent would vote no.

1

Mr. Chairman and committee members, there is no compelling argument to pass SB 2351. And I believe that the vast majority of farmers and ranchers in this state do not support legislation to weaken our law. Sound public policy in North Dakota builds family farm agriculture. We believe it would be much more productive to lead a conversation that includes all stakeholders, to explore all possible solutions and market information on this issue. This is an approach that we believe would unite the agricultural community, instead of dividing it.

We ask for the committee to give a "Do Not Pass" recommendation to SB 2351. I will stand for any questions.



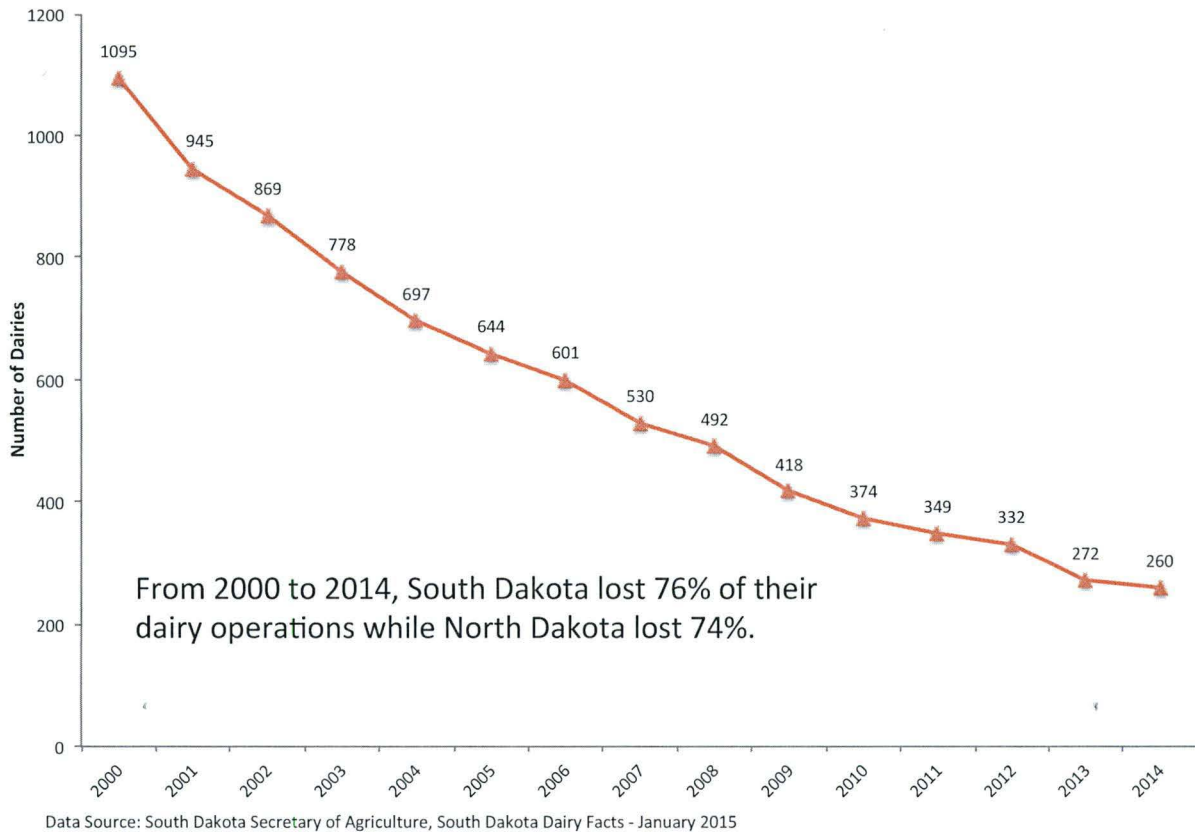
Mark Watne

#166

3/5/15

SB 2351

Figure 1. Dairies in South Dakota



**Figure 2. North Dakota Pig Crop**

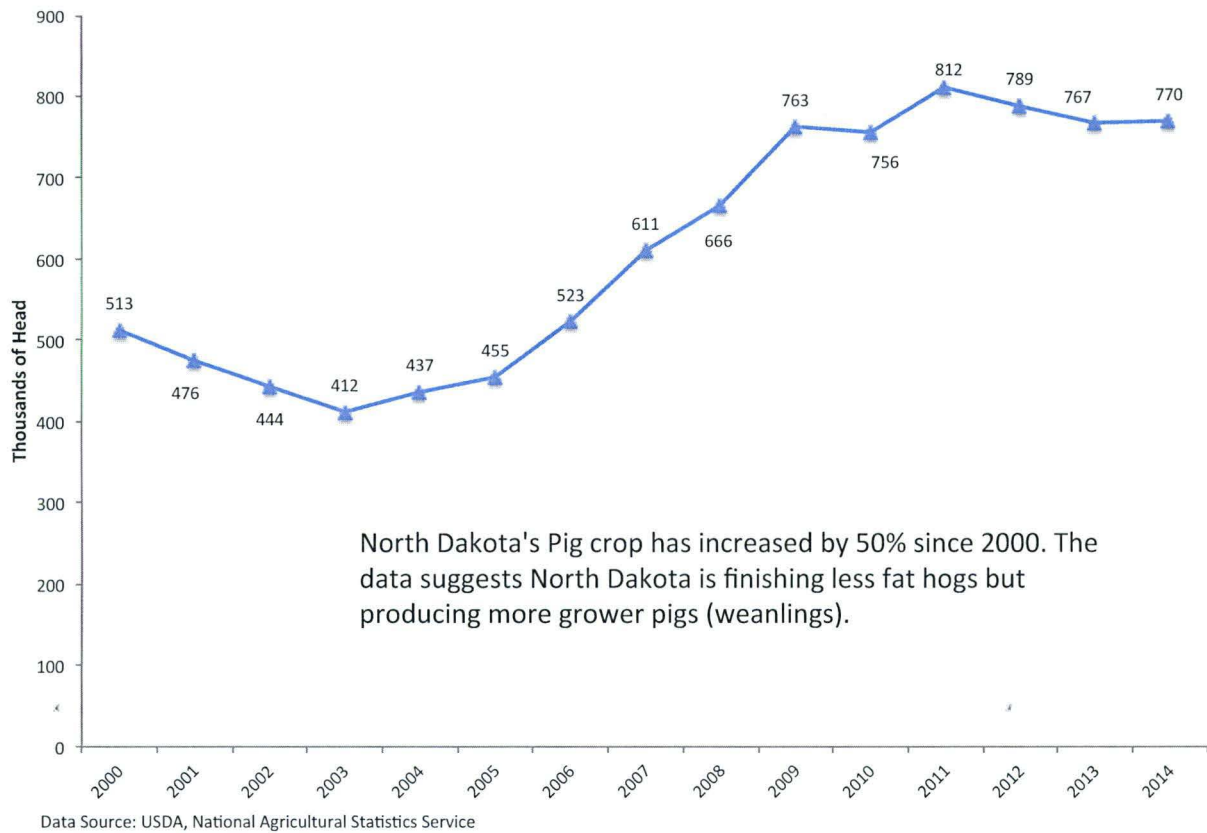
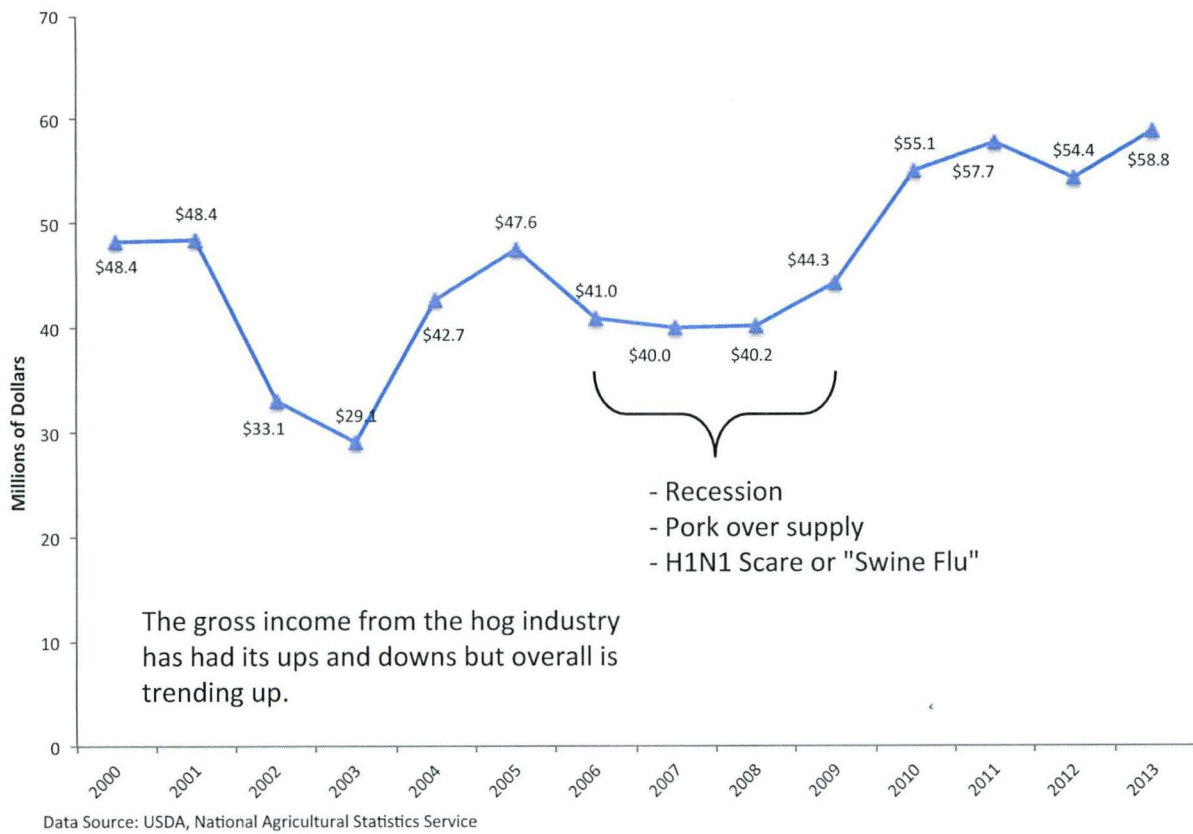


Figure 3. North Dakota Gross Income from Hogs





Raymond Martinson

#17

SB 2351

3/5/15

## "A Farmer's Creed"

*'I believe a man's greatest possession is his dignity and that no calling bestows this more abundantly than farming.*

*I believe that farming, despite its hardships and disappointments, is the most honest and honorable way a man can spend his days on this earth.*

*I believe my children are learning values that will last a lifetime and can be learned in no other way.*

*I believe farming provides education for life and that no other occupation teaches so much about birth, growth and maturity in such a variety of ways.*

*I believe many of the best things in life are indeed free, the splendor of a sunrise, the rapture of wide open spaces, the exhilarating sight of your land greening each spring.*

*I believe true happiness comes from watching your crops ripen in the field, your children grow tall in the sun, your whole family feel the pride that springs from their shared experience.*

*I believe that by my toil I am giving more to the world than I am taking from it, an honor that does not come to all men.*

*I believe my life will be measured ultimately by what I have done for my fellowman, and by this standard I fear no judgment.*

*I believe when a man grows old and sums up his days, he should be able to stand tall and feel pride in the life he's lived.*

*I believe in farming because it makes all this possible.'*





SB 2351

#1  
3/5/15 p.m.

Mr. Chairman and Members of the House Agriculture Committee, my name is Kristi Schlosser Carlson. I represent North Dakota Farmers Union, and I also serve as General Counsel.

For purposes of my testimony today, I've reviewed this bill through my lens as an attorney as though I were explaining it to a client.

Proponents have explained today what they *intend* with this bill – that our state's prohibition on corporate farming or land ownership will not be eroded; that investors will be families; that the bill is just a tweak; that the bill only allows a very small piece of land to be owned by a corporation or limited liability company (LLC); and that the bill only applies to dairies and swine operations.

But the language in the bill doesn't match up. As you probably know, when a court seeks to find legislative intent, it looks first and foremost in the statute's words. A court looks to legislative history – if it considers the history at all – only after it looks at the statutory language.

I thought it might be helpful to walk through this short bill and explain how I, as an attorney, interpret the language. First, though, I'll start with the current statute.

#### **NDCC Chapter 10-06.1 – the Corporate Farming Law**

The corporate farming law prohibits all corporations and LLCs from (1) owning or leasing land used for farming or ranching and (2) "engaging in the business of farming or ranching" – that is, cultivating land for the production of crops or livestock, or raising or producing livestock, poultry, milk or dairy products, fruit or horticultural products.

The prohibition applies "except as otherwise provided in this chapter."

Despite other information you might have read, there are indeed exceptions to this prohibition:

- **Family Farm Corporations or LLCs** may own or lease land and may farm or ranch if:
  - They have 15 or fewer shareholders;
  - Each shareholder is related to each other;
  - The officers and directors are shareholders and are actively engaged in operating the farm or ranch;
  - At least one of the shareholders resides on the farm or ranch;
  - At least 65% of gross income over 5 years is derived from ag operations;
  - No more than 20% of the gross income is from nonfarm rent, dividends, royalties, annuities, and interest.



- **Partnerships:** Individuals can join together in partnerships to farm, and they needn't meet the family farm corporation requirements of kinship.
  - In fact, a specific provision even allows a corporation or LLC to be a partner in a partnership that is in the business of farming or ranching if that corporation or LLC complies with this chapter – which is to say they have to comply with the family farm corporation or LLC requirements I just described.
  - As you know, there are various forms of partnership, all of which have at least one person (a general partner) making management decisions and running the farm, which ensures the decisionmaker's connection to the land, animals and communities. Some forms limit the liability of a "limited partner" to her investment, others limit liability for the "general partner."

Thus, there are significant exemptions in the corporate farming law that allow business entities—corporations, LLCs, partnerships—to farm and to own agricultural land.

- **Other exceptions** to the corporate farming law include:
  - Allowing cooperatives to own land and farm or ranch, if 75% of the members are actual farmers or ranchers living on farms or ranches or depending principally on farming or ranching for their livelihood;
  - Allowing certain nonprofit organizations to acquire farmland for conservation purposes, but only after a commission of ag groups, state agencies, and county commissions reviews the acquisition, and the Governor gives approval;
  - Ownership for industrial, development and business purposes;
  - A contract for ag supplies, harvesting or ag services; and
  - Acquisition as security or in collection of debt or mortgage, if the company divests the land, or leases or sells it back to the farmer.

## SB 2351

I invite you to turn now to the language of the bill:

- The language: "Notwithstanding any other law, prohibitions on the ownership or leasing of land used for farming or ranching by a corporation or a limited liability company and prohibitions on corporations or limited liability companies engaging in the business of farming or ranching do not apply to: [ ] Domestic corporations and limited liability companies owning and operating a dairy...or swine [facility]...."
  - Interpretation: Any corporation or LLC is exempt from the prohibition on land ownership and farming/ranching as long as it includes a dairy or a swine facility in its overall operation. There is no language here limiting a



corporation or LLC to ONLY operating a dairy or swine facility. In other words, as long as a corporation or LLC has a dairy, it can farm anything (including crops or other livestock).

- The language: "...provided the land owned or leased **for that purpose** does not exceed six hundred and forty acres."
  - Interpretation: This 640-acre limitation only applies "for the purpose" of operating the dairy or swine facility. In other words, there is no limitation on the amount that could be owned for any other purpose – which could be to raise crops, other livestock, etc.

Further, there is nothing in this bill that discusses the ownership requirements of an exempted corporation or LLC.

- There is nothing limiting the number of shareholders.
- There is nothing prohibiting a corporation or entity from purchasing land solely as investment. That is, there is nothing ensuring us that an exempted corporation or LLC is primarily focused on farming or ranching and receives the bulk of its return from the farm or ranch.
- None of the requirements applying to a family farm corporation or LLC – those that require the person making farm management decisions to actually farm the land, work the animals, live in that community and answer to future generations – apply to these exempted corporations or LLCs.
- There is nothing here prohibiting a corporation or LLC from creating an affiliate or subsidiary – or 10, 15, etc. subsidiaries – each owning another 640 acres. On this note, I introduce testimony from Charles Carvell prepared on our behalf. He is not here in person, but I still provide you his background. Mr. Carvell is an attorney at Pearce & Durick, prior to which he served 23 years as Director of the Attorney General's Division of Natural Resources & Indian Affairs. His division managed legal matters concerning a number of issues, including oil and gas, state-owned land and minerals, water resources, environmental protection, wildlife, agriculture, federal lands, and corporate farming. During his time with the Attorney General's Office, Charles served as lead counsel for the Oil & Gas Division, Board of University & School Lands, State Water Commission, Game & Fish Department, and Department of Agriculture. As attorney for these agencies, Charles assisted in ensuring compliance with the law regulating water resources, hunting and fishing, the oil and gas industry, and agriculture. I have attached his testimony and also read it now.

Mr. Chairman, the language in the bill is broad and open. I urge you to return to the current statute, which I think meets the intent I've heard proponents articulate.



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CHARLES M. CARVELL

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March 4, 2015

Ms. Kristi Carlson  
N.D. Farmers Union  
General Counsel

*Re: Senate Bill No. 2351 – Evaluation of Acreage Limit*

Dear Ms. Carlson:

You asked me to review the effectiveness of the 640-acre limitation in the bill. If the intention of the sponsors is to limit land ownership by corporations and LLCs, this limitation will not necessarily achieve its intended purpose. It can be avoided, and probably without difficulty.

For example, if the bill becomes law, individuals who want its benefits would not be confined to establishing just one LLC, they could set up several, and even many. And establishing an LLC is simple and inexpensive. Each of the "aligned" LLCs, because they would be deemed under the law as separate and distinct entities even if controlled by the same individuals or having some overlapping owners, would be entitled to buy or lease their own 640 acres. Further, nothing would prohibit "aligned" LLCs from buying or leasing adjoining land. Thus, while it may be anticipated that the law will allow only "islands" of swine and dairy operations, their geographic size could be much larger than anticipated.

It would also be possible for "aligned" LLCs to enter contracts with one another to, in various ways, integrate their operations. So long as the LLCs kept separate books, ensured their contracts were formal and "arms length," and took other steps to ensure the legal independence of the LLCs from one another, state regulators would have difficulty stopping LLCs that integrate their operations.

Sincerely,

CHARLES M. CARVELL

CMC/lr

Tom Asbridge

#2  
3/5/15 p.m.

TESTIMONY TO NORTH DAKOTA HOUSE AGRICULTURE COMMITTEE

Mr. Chairman, members of the Committee, I rise in opposition to SB2351.

"In an economic system where people are fed and tools are developed it seems difficult to argue that investment leads the way." - Charles Walters, Jr.

The sponsors of the Bill would have you believe the preposterous idea that North Dakota dairy and hog producers must have more capital. It defies all logic to make such a statement. And indeed, they and others have presented no testimony to even vaguely support this "theory". I would add here that no such testimony was presented in the Senate either and the Bill was passed out of committee on a straight party line vote. Perhaps House members could inform the public if this issue was decided before the session began and if this is the type of "politics" that you believe North Dakota citizens expect from those whom we elect to lead us?

One small segment of their claims is that this will help reduce "RISK" for farmers. It could be, but what they are really saying is that farmers wish to transfer risk to investors. No testimony was offered as to why investors would entertain such an investment scheme. In addition, they are describing a new way privatize profit and socialize risk. In the end, losses incurred by investors will be borne by the taxpayers. Another example of benefits for the few at the expense on the many. HOW NOBLE!!!!!!

Sen. Wanzek and Commissioner Geohring both testified that the dairy and hog industries were in dire need of help. It is truly amazing to me that they just noticed this. Just where have they been for the past 30 years while every corner of our state was witnessing this massive decline?

Sen. Wanzek and Commissioner Goehring both cited South Dakota as proof that to allow corporate ownership has helped those industries. They cited production numbers but no statements as to profitability. In fact, as South Dakota's dairy cow numbers have increase, a substantial decline in dairy farm numbers has occurred. They both claim that we must save these imperiled industries and corporatization and investment capital will revitalize them. Is it their intent to reduce the number of farms in this State even further? If South Dakota is the model, then indeed, this is exactly what will occur. Are these the results that this Committee, the House and this Administration are seeking? If we now open Pandora's Box, this will most certainly happen. And our Free and Independent Private Enterprise system will be harmed. Absentee ownership is already an issues and it has helped in the demise of North Dakota's small towns. The only cause of this is an under pricing of all farm production since 1952. THE ONLY CAUSE!



It is also interesting to note that virtually all of the commodity groups heartily support this Bill. It should be obvious that these groups are supported by a tax on production---check-off dollars or a production tax. Increased production is their goal. Profitability never seems to be discussed by these groups. They must subscribe to the policy expressed by our NDSU Ag Economists that a "bigger truck" is what is needed. And with no consideration of the equation that controls this, **Production x Price=Income**. It is gross farm income that provides the economy with the first segment of the Trade Turn and even NDSU validates that the Agricultural dollar will turn 7 times in the economy.

In my previous testimony, I quoted some figures. I will restate them here and add some. The Dairy industry is the victim of their complete inability to establish an adequate price for their production. After milk leaves the farm gate, all who touch it make a profit. The Dairy industry operates in a system of oligopsony. Many sellers with a perishable product and a few buyers. Without adequate regulation, the outcome is inevitable.

#### CURRENT RELEVANT DATA

Sources: USDA NASS, ERS (National Agricultural Statistics Service/ Economic Research Service)

- Cash price for milk for January 2015-----\$20.09 per cwt.
- Parity price for milk for January 2015----\$54.30 per cwt.

This translates into an income shortfall of \$30 for every cwt. of milk produced. Those lost dollars can never reach Main Street.

- Cash price for milk for January 1980----- \$12.35 per cwt.
- Parity price for milk for January 1980----- \$17.40 per cwt.

Since 1980, the absence of a proper price has resulted in an economic shortfall to the National Economy of over \$1 trillion. This is the economic impact of milk alone. The cash receipts for agriculture for 2014 were \$400.4 billion which was 37% of parity. The economic shortfall to the Nation was \$700.7 billion. With a trade turn of 7, that means that the nation has incurred \$4.7 trillion of new and unnecessary debt just to make up the difference.

Thus data has been continuously calculated by the National Organization for Raw Materials. (NORM) since 1937.

We are entering into an era of low farm prices. USDA and others have been warning us of this issue for some time as you can see in the report below.

(Bloomberg) -- Declining commodity prices will reduce the 2015 cash profits of U.S. farmers to \$89.4 billion, the third straight decline and the biggest single-year drop since 1931-1932, according to the USDA.

Today, we are faced with a similar situation in the oil patch. An artificial price decline will have a devastating impact on our state and not only in state revenues but more importantly the impact on the general economy as well as the immediate ill effects in the Bakken. If oil falls to the parity equivalent of wheat, it will drop to \$22 per barrel. A corporatized agriculture will have a negative impact on our state.

Decades ago, the people of North Dakota had the wisdom and foresight to envision the harmful effects of absentee ownership of our second greatest resource-----THE LAND-----just behind our greatest resource----- OUR PEOPLE.

Two historical figures seem to be important in this debate. Many of you are graduates of NDSU and will recognize the importance of the John Lee Colter annual award in Agricultural Economics. Next is Math Dahl, former North Dakota Agriculture Commission. Both supported a system whereby agriculture could be profitable. We had such a program from 1942-1952. The most prosperous era in North Dakota history; agriculture lead the way and without any government subsidy.

My opposition is not born of nostalgia. It is born of the observation that corporate agriculture is detrimental to communities and society in general. You in this body are charged with the responsibility of carefully managing our State for the benefit of all of our citizens. If one only considers the economic aspects, it is obvious that a modification to the present anti-corporate farming law will have no benefits whatsoever-----business type or structure does not determine either the profitability or viability of any business.

Perhaps the strongest argument is not the economic one. It truly is a moral issue. Any economic system that ignores the moral component, is leading our State and our Nation down the wrong path.

Thank you

Tom Asbridge

Bismarck, ND 701-222-3621

March 5, 2015



Roger Zatocha, Strum, ND

SB 2351  
3/5/15 p.m.

#3

"I'M STANDING BEFORE YOU AS A DISAPPOINTED CITIZEN AND FARMER"

I STAND IN OPPOSITION TO CHANGING THE ANTI-CORPORATE FARM LAW IN NORTH DAKOTA (HB-2351). I AM NOT OPPOSED TO TRYING TO HELP DAIRY AND SWINE FARMERS. HOWEVER, OPENING UP THE STATE TO CORPORATIONS INS'T GOING TO SOLVE THE PROBLEM. YOU CANNOT BORROW YOURSELF OUT OF DEBT!! YOU NEED GOOD COMMODITY PRICES. ALSO, A GOOD LABOR POOL. WHICH WE DON'T HAVE RIGHT NOW. THE BAKKEN HAS BEEN A MIXED BLESSING. IT HAS CREATED A LOT OF HIGH PAYING JOBS IN WESTERN NORTH DAKOTA. WHICH HAS UTILIZED MOST OF THE AVAILABLE WORK FORCE, PLUS BROUGHT IN WORKERS FROM OUT OF STATE. (WHICH HAS CREATED ITS OWN ADDITIONAL PROBLEMS).

I PERSONNELLY WENT THROUGH SOMEWHAT OF A SIMILAR SITUATION IN THE 70's and 80's. WE HAS THE RUSSIAN WHEAT SALE IN THE EARLY 70's. THE WHEAT MARKET SPIKED AND CAME DOWN BELOW WHAT IT WAS BEFORE IT SPIKED IN ABOUT A YEARS TIME. HOWEVER, INPUTS WENT UP AND STAYED UP FOR 10-12 YEARS (THIS INCLUDED LAND PRICES, FERTILIZER, SEED, FUEL, EQUIPMENT, CHEMICALS, ETC). WHEN LAND PRICES DID DROP THEY DROPPED BELOW WHAT THEY WERE BEFORE THEY JUMPED.

DURING THIS SAME TIME WE HAD BANKS TALK FARMERS INTO GOING <sup>to</sup> FMHA TO GET DIS- EASTER LOANS TO PAY OFF THE BANKS AND PUT FARMERS MORE IN DEBT. (YES THERE WERE LOW INETERST RATES BUT THE FARMER WAS STILL IN MORE DEBT. THERE WAS THIS TWISTED IDEA THAT FARMERS COULD BORROW THEMSELVES OUT OF DEBT). I SEE THE SAME PATTERN HAPPENING AGAIN JUST DIFFERENT VERBAGE. OH YES, LETS NOT FORGET THE DAIRY BUYOUT PROGRAM THAT CAME A LONG A BIT LATER.

WHY ISN'T THE NORTH DAKOTA AG DEPARTMENT WORKING TO PROMOTE DAIRY INSTEAD OF TRYING TO FIND A WAY TO BORROW MORE MONEY. "(LOANS STILL HAVE TO BE PAID BACK)". ALSO WHERE ARE THE DAIRY PROMOTION BOARD AND THE DAIRY ASSOCIATION OR WHATEVER THEY ARE CALLED. I PERSONNELLY HAVE SEEN VERY LITTLE ADVERTIZING PROMOTING DAIRY IN ANY FORM. HOWEVER, I DID SEE ON THE NATIONAL NEWS EARLY ONE MORNING. INTER- VEWING A MOTHER FROM SOME WHERE ON THE EAST COAST SAY SHE DOESN'T LET HER KIDS DRINK COWS MILK. SHE GIVES THEM ALMOND, SOY, OR SOME OTHER FORM OF NONE DAIRY MILK. HER COMMENT WAS, "WHY WOULD ONE MAMMAL DRINK MILK FROM ANOTHER MAMMAL". ALSO, ACCORDING TO SOME STUDY THAT WAS ON THE NATIONAL NEWS, THE AVERAGE MILK CONSUMPTION HAS DROPPED TO ABOUT .8 OF A GLASS PER PERSON, FROM OVER A GLASS A DA- NOT TOO LONG AGO. ("QUITE FRANKLY WE HAVE AN EDUCATION PROBLEM AND IT'S NOT JUST DAIRY"). BUT THAT'S WHAT I'M TALKING ABOUT TODAY.

THERE IS A LARGE DAIRY IN MY COUNTY THAT MADE THE FRONT PAGE OF AG WEEK A FEW YEARS AGO FOR ALL THE WRONG REASONS. FROM LOCAL FARMERS NOT BEING PAID FOR THE FEED THEY SOLD TO THE DAIRY, TO LABOR AND MANAGER ISSUES. I DON'T BELIEVE THAT ANY OF YOU WOULD WANT THIS SITUATION IN YOUR NEIGHBORHOODS. THERE ISN'T MUCH ECONOMIC BENEFIT TO THE LOCAL ECONOMY IN THAT SITUATION.

I HAVE A HOG CONFINEMENT OPERATION JUST TO THE COUNTY NORTH OF ME. ONE OF THE 4 FACILITIES IS JUST A MILE AND A HALF NORTHWEST OF MY FARM. IT'S STARTED UP AND SHUT DOWN (I THINK) AT LEAST 3 TIMES OVER THE PAST 20 PLUS YEARS. THE SHUT DOWNS WERE ALL CAUSED BY SIMPLE ECONOMICS. LOW PORK PRICES THAT THEY WERE GET- TING. WERE BELOW THE COST OF PRODUCTION. I BELIEVE THERE WERE SEVERAL OUTSIDE INVESTORS INVOLVED. I DON'T EVEN KNOW WHAT NAME IT GOES BY ANYMORE.

I HAVE A LOT OF RESPECT FOR THE DAIRY FARMER ESPCIALLY. BECAUSE OF THE BIG PERSONNAL COMMITMENT THEY MAKE. 24/7/365. I GREW UP MILKING COWS AS A KID ON MY FOLKS FARM. I KNOW FIRST HAND THE COMMITMENT THAT'S REQUIRED. GIVE THEN BETTER PRICES SO THEY CAN MAKE A GOOD LIVING. IT'S A PROVEN FACT. "IF A FARMER, DAIRYMAN, RANCHER, HOG PRODUCER, HAS MONEY THEY WILL SPEND IT...

THERE ARE PLENTY OF AVENUES TO BORROW MONEY ALL READY..

THANK YOU FOR YOUR TIME.

Rog



Hi, Thank You for the opportunity to speak to you today. I'm Randy Richards family farmer from Steele County, my farm is located near Hope, North Dakota. I operate a family farm partnership with my son and ex-son-in-law. My Grandfather farmed, my Dad farmed, and someday I hope to have Grandchildren that operate the family farm.

People ask me just where is your farm located, I tell them if you are coming from Fargo, I live just beyond Hope, sometimes I get a smile or a chuckle out of people, sometimes I get a raised eyebrow or two, but that is the physical location of my farm. I say that today because over my forty plus years of farming, sometimes I have felt that no one really cared if my family farm survived or not. I have seen many changes in forty plus yrs. I've seen dairy farms go out of business, I've seen hog farm operations go out of business, I've seen farms go out of business. I've also seen family farm partnerships formed, I've seen family farm corporations formed, I've seen the size of farms grow, all due to the fact that they needed to be profitable, feasible, and sustainable. I've heard it said that we need to open up farming to corporations because they have the tools to do it better than we do as family farmers. I'm here today to suggest to you that the reason we don't have large dairies or large hog operations is because they are not profitable or sustainable, our climate works against us, we don't have the available workforce and our distance from large urban populations that would consume those products. Some people say we don't have the ability to finance those type of operations, that we don't have the access to capital. I would like to tell you that I don't believe that is true. I serve as chairman of the board of LaRinascente Pasta, LLC, a limited liability corporation, which is a durum processing facility that was purchased from a company in New Jersey and moved to Hope, North Dakota, it is owned by thirty shareholders, all local people. I also serve on the Board of Directors of SRS Commodities Limited, a LLC, limited liability corporation which is an edible bean processing company located

in Mayville, N.D., with an additional facility in Falkirk, N.D. this company has 14 shareholders all local people. If there is a business opportunity that looks like it could be profitable, feasible, sustainable and just makes good common sense, we as family farmers and family farm agriculture will find a way as Larry the Cable guy would say "WE'LL GETTER DONE'. I ask you to put some Hope back in Hope, N.D. and show that you care about family farms and that you care about the future of Agriculture in the state of North Dakota. That you send a message to the citizens of this state, to the farmers of this state, and to our grandchildren, that you believe that family farm agriculture is what is right for the future of this State. That we do not, need to open the door to corporation farming in North Dakota. I ask you to vote no, vote do not pass on Senate Bill 2351.

Respectfully,  
*Randy Richards*  
Randy Richards





*Representing the Diocese of Fargo  
and the Diocese of Bismarck*

Christopher T. Dodson  
Executive Director and  
General Counsel

**To:** House Agriculture Committee  
**From:** Christopher T. Dodson, Executive Director  
**Subject:** SB 2351 - Investor-Owned Farms  
**Date:** March 5, 2015 p.m.

The North Dakota Catholic Conference, representing Bishop John Folda of Fargo and Bishop David Kagan of Bismarck, opposes SB 2351. This position is not new. North Dakota's Catholic bishops, like faith leaders here and around the country, have for decades appealed for laws that preserve and maintain farm ownership and control in the hands of local family farmers. In fact, seventy-six years ago Catholic bishops of the United States, led by Fargo Bishop Aloisius Muench — the only bishop from North Dakota to be named a Cardinal — warned that investor ownership of farms would threaten families, communities, and our obligations as stewards of creation.<sup>1</sup>

Some could argue that agriculture has changed since 1939, and they would be right. But who we are as human persons and what farming means to us as humans has not changed. That is why this is a religious issue. It is a religious issue, because it is a moral issue. It is a moral issue, because it is a human issue. It is a human issue because, as Pope Francis stated just a few weeks ago, farming is “characteristically and fundamentally human.”<sup>2</sup>

Indeed, Pope Francis' recent address on the vocation of agriculture is enlightening in that it illustrates precisely why investor-ownership of farms is so risky. Pope Francis explains that the relationship a farmer has with the land is “familiar.” The Italian word he used was “familiare,” which means not “familiar” as in “well known,” but “of family.” This is important to understand. Outside investors cannot be like family. Only human persons can relate “like family.” Only human persons are capable of entering into a covenant with creation. The further we remove the owner/steward from the land, the more we threaten that covenantal relationship intended by our creator.



That is why how we engage in agriculture affects who we are as humanity. Indeed, the position of the bishops is not based not just on church doctrine. It also stems from what they and other bishops have witnessed in states that have repealed or weakened corporate farming laws.

Senate Bill 2351 is not just about a small segment of the agricultural community. It is a radical upending of the foundation of our state's most widespread and permeating activity.

Disrespecting the "familiar" relationship that should exist between the human farmer and farming will affect us all. If we truly believe that North Dakota is such a great place to live, why would we take that risk?

We realize that some segments of agriculture are facing difficult times and we need to respond. Indeed, responding is a moral imperative. We have heard about the appeal of allowing neighbors, fellow farmers, and more family members to invest in dairy and swine operations. But that is not the bill before you. The bill before you does not contain any limits on who or what can own farm land or really how much can be owned by these outside entities.

North Dakota farmers have always faced difficult challenges. Nevertheless, we have always found creative solutions without sacrificing our way of life and without succumbing to the temptation to reduce agriculture a mere economic activity. In North Dakota, we have done -- and can do -- better.

North Dakota's corporate farming law is premised on the recognition that people are more important than profits, communities are more important than corporations, and that just because some things can be done does not mean that they should be done. Changing the law is ultimately a spiritual question. Just as Jesus asked, "What does it profit a man if he gain the world and lose his soul?" we must ask, "What does it profit our state if we gain some agribusiness investors but lose the soul of agriculture?" We respectfully ask for a Do Not Pass recommendation on Senate Bill 2351.

<sup>1</sup> National Catholic Rural Life Conference, Manifesto on Rural Life (Milwaukee, WI: Bruce Publishing Company, 1939).

<sup>2</sup> Address of His Holiness Pope Francis to Representatives of the Italian National Confederation of Independent Farmers [Coldiretti], January 31, 2015; [http://w2.vatican.va/content/francesco/en/speeches/2015/january/documents/papa-francesco\\_20150131\\_coldiretti.html](http://w2.vatican.va/content/francesco/en/speeches/2015/january/documents/papa-francesco_20150131_coldiretti.html)

Testimony of Justin Sherlock  
Before the North Dakota State House Standing Committee on Agriculture

March 5, 2015

p.m.

Chairman Johnson and members of the committee. My name is Justin Sherlock and I'm here to oppose SB 2351. I am a young beginning farmer from Dazey, North Dakota, a small town in Barnes County located northwest of Valley City. The ground I farm is also spread out in southwestern Griggs county and northeastern Stutsman county.

My farming operation is fairly young. My father was one of the success stories in agriculture where a new producer made his start and became successful. He had worked for a larger farmer in my home area for over a decade and put his all into doing the best job possible. In turn, just over a decade ago, that farmer allowed my father the opportunity to rent some land from him and farm a few acres of his own. From there, he was able to find some additional acres to rent, and combined with the several good years agriculture experienced in the past decade he was able to purchase some farmland and get a decent line of machinery. Unfortunately, two years ago he passed away suddenly and unexpectedly.

Today I rent some of the land he farmed from my mother and a few other landlords, and I operate using the machinery he had purchased. I cannot describe how truly blessed I feel to now have that chance to farm. Growing up, I did not think I would have the opportunity to farm as there wasn't room for me in our operation with my father just getting started himself. I'm working hard to continue our operation and carry on what he started. I even have the hope that someday I will be able to pass our family's farm on to yet another generation so they can farm if they choose to and be good stewards of the land in their time as well.

In order to continue farming however, I need to maintain my present farm size or possibly even grow in the coming years. The cost of machinery and labor, combined with the shrinking margins over the past few years because of increased input costs, lower commodity prices and significant farmland rental rate increases has made it difficult to support a family and earn a living from our operation as we head into 2015 and beyond. As a young and beginning producer, I do not yet have the capital reserves and equity to take on other more established farmers or private investors who are looking to purchase or rent the already very limited supply of available farmland. Should this bill be passed, I truly feel it would only add to the challenges our state's young producers are currently facing and hurt our family farms. Young producers' ability to purchase farmland and continue our operations will be impacted, as we would now have to compete with entities and individuals who likely view land strictly as an investment or asset, and only view it for its monetary value or ability to generate a certain rate of return per year. To me, land is something that I work hard, sweat and bleed for. While we often assign a dollar value to land, for most agricultural producers and even for those individuals who may no longer farm or for those who simply grew up on the farm, land is much more than just an asset on the balance sheet. Land is a part our family's legacy, something we can be proud of and that we wish to protect and preserve for future generations to come.



I would like to leave you with those and a few additional thoughts. First, while I do oppose SB2351, if you feel that it should receive a do pass vote, I would ask that you consider amending the bill to include some form of the following restrictions:

1. A corporation that is proposing to build a dairy or swine operation and purchases the maximum amount of land allowed in this bill will not be allowed to purchase any additional land through the use of a subsidiary corporation, parent corporation, LLC, leasing company or any other type of entity it is invested in.
2. After making the purchase of land, a corporation proposing to build a dairy or swine operation must begin construction and become operational within a set amount of time or they will be required to sell the land and any partial or unfinished facilities. The period of time reasonably allowable should be determined by the North Dakota Commissioner of Agriculture after reviewing typical time periods this type of activity requires in other states.

I would like to finish today by stating that I believe this bill represents nothing short of a complete shift in philosophy for our state in regards to agriculture. While I believe the sponsors and supporters of this bill have nothing but the best of intentions, especially considering the proposed limited types of operations this bill pertains to, a yes vote will nonetheless mean that you have voted for a significant change in how we view agriculture within North Dakota. For generations, as a state we have regarded family farming as a fundamental value we hold to be true. We have protected the family farming ideals by codifying those values into our laws. While I understand the need for laws and regulations to adapt and evolve over time, I feel that changing this law represents such a significant shift in a core value that it deserves more consideration and time than is presently being given.

I believe this legislature has a duty and responsibility to examine all possible ways to help support agriculture and save dairy farming in the state, yet I don't think enough facts have been presented to show how allowing corporate farms will succeed in saving our state's dairy industry. South Dakota's success in growing dairy numbers is often cited, but where is the hard data to back up this claim? How many new jobs have been created, what is the volume and value of additional feed being consumed locally, how much value and long-term growth have these corporate operations brought to the state? I believe there should be public forums, ideological debates, economic studies and the like before deciding to simply pursue a shift in our values by making such a striking change in the course of only a month's time.

Thank you for the opportunity to speak today. Again, I urge you to not pass SB 2351. I can try to answer any questions you may have.



# 7a  
3/5/15 p.m.

Testimony on SB 2351

Chairman Johnson and members of the committee:

Thank you for the opportunity to testify today. My name is Jim Teigen, and my wife Rita and I farm near Rugby, working with our son and his young family. Our son Dave is the fourth generation to work our farm, which was started in 1907, and included dairy cows until 1975.

One of the arguments for this change to weaken the corporate farming law is that none of the other proposals to boost dairying and hog production in North Dakota have worked, and this is the only other idea available. A recent editorial concluded that this proposed change "won't do any harm, but in the long run it won't make much difference." While I agree SB 2351 is not a good solution, I want to point out a couple of other news stories in that same publication this past month which point out concerns expressed by residents of other areas which have less restrictive land ownership laws than North Dakota.

One article tells of our neighbors in Saskatchewan considering toughening their rules on buying farmland by investor groups. Saskatchewan's rules, described as some of the strictest in North America, ban the purchase of land by pension funds, but recently made an exemption for the Canada Pension Plan Investment Board, which bought 115,000 acres in 2013. Farmers in Saskatchewan have responded by expressing concerns about those large scale purchases. Their Agriculture Minister promises to review their laws, saying farmers "are not high on the idea of institutional investors competing with them for the purchase of farmland." I suspect that sentiment is common among farmers in North Dakota, too, especially young farmers who are trying to get established.

A second article reported on a large corporate farm in Minnesota starting to clear nearly 12,000 acres of timber land for potato production. That land clearing was stopped by the state, largely because of concerns regarding deep irrigation wells adversely impacting ground water supplies in that community.

Another article that I saw this winter told of a company owned by Harvard University's management firm recently buying 10,000 acres of vineyards and deep water well rights in California wine country – and concerns whether they will drill to make profits rather than protect the water supply amidst the drought that area is experiencing. Similar investments by Harvard include dairies in New Zealand, timber in Argentina, farmland in Africa, and agriculture in Brazil, prompting 39 civil society organizations around the world to write a letter of concern to the Harvard President.

Does that mean that these or all corporations will be bad actors and disregard conservation and stewardship practices? Of course not, but with the size of those investments, the impact of any similar problems will likely be significantly larger than an infraction by a family farm, and more difficult and expensive to mitigate.

One other lesson from these articles is that a 640 acre limit can easily be circumvented by establishing a number of companies under a parent corporation to acquire as many 640 acre units as they wish. Language such as that in SB 2351 which merely removes restrictions for entities like dairy and hogs without including safeguards leave the door open for abuse.

I also disagree with the premise that the change proposed in SB 2351 will simply provide additional capital from some benevolent partner for dairy or hog operations. Prospective investors will not be like a family member helping out a child, a sibling, or a cousin (which are already allowed under present law). Corporate investors will expect substantial return on investment, and likely require some control of the decision-making process. Those operations will be far different than family farms.

It seems apparent that the “simple” proposed change to the present law could result in unintended consequences to our current farm structure, the environment, and our communities. These consequences could be far greater than what the suggested “tweaking” of our current law implies.

I urge you to reject this proposal.

Jim Teigen's son # 76  
SB 2351 3/5/15 p.m.

Mr. Chairman and members of the committee:

As I've listened to the discussion on SB 2351 I've noticed that there is a point of view that has been absent from the debate. That point of view is how the results of last November's election applies to this issue.

There were two questions on the ballot that are very similar to the question before us today. The first was the proposed clean water, parks, and recreation amendment.

We all saw and heard a thousand different advertisements from a hundred different angles but the underlying idea was the same. The ads planted a seed in the voter's mind as to what could be accomplished with the large sum of money that would be invested. Whether the ads featured an Olympic hockey player promising skating rinks in every neighborhood or a grandfather promising that this was the way to ensure that future generations will have good fishing holes, they all claimed that financial investment was the key to conserving North Dakota's resources.

On the other side of the issue was a large coalition of North Dakota based groups that had a far different idea. Their thought was that true, long-term conservation is best entrusted to family agriculturists who are tied to the land in a way that a corporation never could be.

There is no common ground between these two views and the citizens of North Dakota were asked to decide which direction the state will go. The question was this: which is more important to the future of our resources, money or people? After the votes were counted there could be no questioning the results. By an overwhelming margin, nearly 80% of the people wanted local control of the land by the families who tend it as it has always been in our state.



The second measure on the ballot whose idea runs in very close parallel to SB 2351 was the proposed change in pharmacy ownership.

The supporters of expanding corporate ownership claimed economic benefits of corporate efficiency over that of any other structure. With the promise of \$4 prescriptions, the voters were told that the existing law holding back corporations is actually holding us back financially. By changing this law, we would have to give up some local control of our pharmacies but we were assured again and again that the benefits would far outweigh any negative consequences.

Those opposed to expanding corporate ownership had serious doubts. They argued that increasing corporate influence could not and would not provide the benefits that were being advertised and that the loss of local control would make the situation worse, not better. The opponents of the measure claimed that having pharmacies owned by local people who are tied to the community is the best ownership structure for the long term.

Again, the voters were presented with two sides of the issue and were asked to decide which argument was valid and correct for the future of the state. In a landslide vote, 75% of the people chose local control over the promise of corporate efficiency.

When this legislature considers weakening North Dakota's long standing anti-corporate farming law with SB 2351, it would be a grave blunder to ignore the clear message that the voters put forth only four months ago. North Dakotans trust the stewardship of our resources to family-owned agriculture, not monetary interests, and if given the choice between local control or corporate investment, local control is always the priority.



## The Planted Row

If you'd like to voice your opinion on any topics involving agriculture, call Farm Forum Editor Stan Wise at 605-622-2304 or toll-free at 1-800-925-4100, ext. 304. You can also email comments to [farmforum@aberdennnews.com](mailto:farmforum@aberdennnews.com)

Stan Wise, Farm Forum Editor

### Agriculture better off in the hands of families

When my paternal grandfather was a young man, he took a factory job in a town near our family's farm. He was a hard worker, but his supervisor demanded that he do more. So he did more work, and his supervisor demanded that he do even more. So he worked as hard as he possibly could and achieved what his supervisor asked of him. Once again, his supervisor asked him to do even more, but my grandfather was already giving everything he had and couldn't do any more. So, after work one day, he walked up to his supervisor and said, "I've been giving you all I've got, and you keep asking for more. I'm telling you now that I won't be here in the morning."

His supervisor said, "Wait a minute, Wise. Don't go. You're one of the hardest workers I've got. This is just how you have to work people in a factory."

My grandfather replied, "I've been giving you a day's work for a day's pay, and you keep asking for more. I won't be here in the morning." And he wasn't.

Not long after that the manager of the factory showed up at my grandfather's farm and asked him to come back to the factory and offered him a job as a supervisor. My grandfather turned him down and said that he would starve to death on the farm before he would treat people the way the manager would want him to treat the workers

in the factory.

My grandfather was lucky that he had a farm to go home to. The other workers in the factory weren't so lucky, and they couldn't afford to quit their jobs, despite how they were being treated.

His farm was a small one, but through hard work, he grew it. He built a country store to help supplement his income, and when could, he bought land. He retired a successful farmer, and while his farm would be considered small by farmers in the Upper Plains, it was large for the time in northeast Mississippi.

My grandfather had a good life and raised a happy family of six kids - all because he got his start with a small farm. The chances of someone having a similar life story today are dwindling. The USDA National Agricultural Statistics Service released a report last week that says what most in the ag world already know - there are much fewer small farms than there were a year ago and there are more large farms. There are fewer farms overall.

When the number of farms dwindles, more people leave rural communities, and they begin to die off. With high land prices and low prices for corn and soybeans, it's hard for small farmers to compete with the larger, more established farms.

They sell out, the larger farms get bigger, and the populations in rural towns drop.

Imagine how much worse things would be if farmers had to compete not only with each other, but also large corporations. What family-owned farm, even a large one, could compete with the resources of a large corporation for land?

At the time of this writing, the North Dakota Senate has approved a measure that would allow non-family corporations to own farms. The law being considered would limit corporate farms to 640 acres. Once the public gets used to the idea of corporate farming, how long do you think it will be before that acreage is expanded? Three years? Five years?

According to an Associated Press story by James MacPherson, supporters of the bill say it would help save the dairy and swine industry in North Dakota. I'm not sure large, corporate-owned farms would save the industry. I feel pretty certain they would take over the industry. Did the introduction of large department stores save the locally-owned general store retail business?

If this law passes, people like my grandfather who decide to quit their jobs and go back to the farm may find a different kind of factory waiting for them when they get home.

### Farm Forum Poll:

#### What do you think?

Do you think North Dakota should allow non-family corporations to own farms?

- a. Yes  
b. No

There are two ways to reply:

1. Call (605) 622-2385 or 1-800-925-4100, ext. 2385. The voice on the line will ask the question and then you may record your response plus any comments you'd like to make.
2. Go online to [www.farmforum.net](http://www.farmforum.net). Go to the poll and click on your response.

Thank you for letting us know what you think!

Last week's question:

Do you agree with the U.S. Senate bill that would allow banks to extend credit to Cuban buyers?

a. Yes - 25% b. No - 75%

Percentage includes phone calls and Internet postings shown as of 10 a.m. Wednesday.



ALVIN A. JAEGER  
SECRETARY OF STATE

ME PAGE [www.nd.gov/sos](http://www.nd.gov/sos)



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March 5, 2015

*p.m.*

TO: Representative Johnson and Members of the House Agriculture Committee

FR: Clara Jenkins, on behalf of Al Jaeger, Secretary of State

RE: SB 2351 - Relating to the ownership or leasing of farm and ranch land by corporations

While the Secretary of State has a neutral position on this bill, the agency requests that the committee considers amendments that will assist the agency in the processing of the registrations that might be filed under this law. Here is a brief summary of the procedures now followed under current law and the processing challenges that could exist under the bill as currently written.

Under current law, organizations engaged in farming and organized under chapter 10-06.1 of the Century Code are clearly identified in the Secretary of State's database as farming or ranching organizations, which have a reporting requirement with the Secretary of State. This report provides a description of the acreage owned or leased by the organization as well as the names of all of the shareholders or members of the organization. The information related to the shareholders defines the kinship of the shareholders to each other as well as an indication whether those shareholders are citizens or aliens.

Senate bill 2351 would allow a general business corporation created under chapter 10-19.1 of the Century Code or a general business limited liability company (LLC) created under Chapter 10-32 to engage in the operation of a dairy or a facility for swine production. While the bill appears to limit acquisition of land for these specific purposes by domestic corporations and LLCs, this can easily be circumvented by an out-of-state entity creating a domestic corporation or LLC as a wholly owned subsidiary with the out-of state or foreign entity being the shareholder or member of the organization. Under those circumstances, it could mean that an organization created for dairy or swine production could have shareholders or members that are large corporate organizations from another state or another country. This may or may not be the intent of the bill.

Because N.D.C.C. § 10-06.1-23 requires the attorney general to conduct random compliance checks of organizations engaged in farming, the Secretary of State annually supplies the attorney general copies of the annual report of those corporations or LLCs that the attorney general has selected for compliance checks. These organizations are now easily identified in the agency's database and the information is identified and provided. However, that "identifying" feature will not exist for a "true" business corporation or LLC operating a dairy or a facility for swine production without it having a specific identifying factor.

"True" business corporations or business LLCs may file their articles of incorporation or organization by stating they exist for "general business purposes" and also not contain any information relating to land owned or leased. With a general business purpose and a name of the organization that is very general, for example, Ralph Jones, Inc., there would be nothing in the documents filed with the Secretary of State to indicate that the organization is operating a dairy or a facility for swine production. Even if they did, the agency is limited in its ability to "tag" these entities in its database so that they would be easily identified. These organizations will be co-mingled with over 60,738 domestic and foreign corporations and LLCs. Unless their purpose is required by law to be stated in the filing documents submitted for these two types of operations, they could not be identified as being related to a dairy or swine operation when they were submitted.

The Secretary of State will comply with the decision of the legislature, but it does request that it be allowed to review any amendments to the bill to ensure that the agency will be able to fulfill its statutory responsibilities for the administration of this particular bill.



March 6, 2015

#1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2351

Page 1, replace lines 7 through 16 with:

- "1. This chapter does not apply to the ownership or leasing of land used for the operation of a dairy farm by a domestic corporation or a limited liability company and does not prohibit the operation of a dairy farm by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The dairy farm is operational within three years from the date the land is acquired; and
  - c. The dairy farm is permitted as a concentrated animal feeding operation by the state department of health and consists of at least fifty cows.
2. This chapter does not apply to the ownership or leasing of land used for the operation of a swine production facility by a domestic corporation or a limited liability company and does not prohibit the operation of a swine production facility by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The swine production facility is operational within three years from the date the land is acquired; and
  - c. The swine production facility is permitted as a concentrated animal feeding operation by the state department of health and consists of at least five hundred swine.
3. The agriculture commissioner shall by rule develop reporting and monitoring requirements to ensure compliance with this section.
4.
  - a. If the agriculture commissioner determines that a domestic corporation or a limited liability company is not operating within the exceptions provided by this section, the commissioner shall notify the secretary of state and the attorney general.
  - b. A domestic corporation or a limited liability company that is not operating within the exceptions provided by this section is subject to the enforcement provisions of this chapter."

Renumber accordingly

March 6, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2351

Page 1, replace lines 7 through 16 with:

- #2
- "1. This chapter does not apply to the ownership or leasing of land used for the operation of a dairy farm by a domestic corporation or a limited liability company and does not prohibit the operation of a dairy farm by a domestic corporation or a limited liability company provided:
    - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
    - b. The dairy farm is operational within three years from the date the land is acquired; and
    - c. The dairy farm is permitted as a concentrated animal feeding operation by the state department of health and consists of at least fifty cows.
  2. This chapter does not apply to the ownership or leasing of land used for the operation of a swine production facility by a domestic corporation or a limited liability company and does not prohibit the operation of a swine production facility by a domestic corporation or a limited liability company provided:
    - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
    - b. The swine production facility is operational within three years from the date the land is acquired; and
    - c. The swine production facility is permitted as a concentrated animal feeding operation by the state department of health and consists of at least five hundred swine.
  3. This chapter does not apply to the ownership or leasing of land used for the operation of a cattle feedlot by a domestic corporation or a limited liability company and does not prohibit the operation of a cattle feedlot by a domestic corporation or a limited liability company provided:
    - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
    - b. The cattle feedlot is operational within three years from the date the land is acquired; and
    - c. The cattle feedlot is permitted as a concentrated animal feeding operation by the state department of health and consists of at least two hundred fifty cattle.
  4. The agriculture commissioner by rule shall develop reporting and monitoring requirements to ensure compliance with this section.

5.
  - a. If the agriculture commissioner determines that a domestic corporation or a limited liability company is not operating within the exceptions provided by this section, the commissioner shall notify the secretary of state and the attorney general.
  - b. A domestic corporation or a limited liability company that is not operating within the exceptions provided by this section is subject to the enforcement provisions of this chapter."

Renumber accordingly



March 13, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2351

In lieu of the amendments adopted by the House as printed on page 954 of the House Journal,  
Senate Bill No. 2351 is amended as follows:

Page 1, replace lines 7 through 16 with:

- "1. This chapter does not apply to the ownership or leasing of land used for the operation of a dairy farm by a domestic corporation or a limited liability company and does not prohibit the operation of a dairy farm by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The dairy farm is operational within three years from the date the land is acquired; and
  - c. The dairy farm is permitted as an animal feeding operation or as a concentrated animal feeding operation by the state department of health and consists of at least fifty cows.
2. This chapter does not apply to the ownership or leasing of land used for the operation of a swine production facility by a domestic corporation or a limited liability company and does not prohibit the operation of a swine production facility by a domestic corporation or a limited liability company, provided:
  - a. The land owned or leased for the authorized purpose does not exceed six hundred forty acres [258.99 hectares];
  - b. The swine production facility is operational within three years from the date the land is acquired; and
  - c. The swine production facility is permitted as an animal feeding operation or as a concentrated animal feeding operation by the state department of health and consists of at least five hundred swine.
3. The agriculture commissioner shall by rule develop reporting and monitoring requirements to ensure compliance with this section.
4.
  - a. If the agriculture commissioner determines that a domestic corporation or a limited liability company is not operating within the exceptions provided by this section, the commissioner shall notify the secretary of state and the attorney general.
  - b. A domestic corporation or a limited liability company that is not operating within the exceptions provided by this section is subject to the enforcement provisions of this chapter."

Renumber accordingly

ALL LIVESTOCK

SMALL

MEDIUM

LARGE

Animal Feeding Operations  
(AFO's)

Concentrated Animal Feeding Operations  
(CAFO's) - definition

Karl Rockeman

#2

3/13/15

SB 2351