

**2017 HOUSE AGRICULTURE**

**HB 1282**

# 2017 HOUSE STANDING COMMITTEE MINUTES

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

HB1282  
2/9/2017  
Job #28128

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to the limitations on commodity groups

## Minutes:

Attachments 1-15

## Representative Brandenburg, Sponsor: (Attachments 1-4)

This bill is what the Attorney General's opinion has been six times in code except for one item. What has changed in this bill is on page 2, item 6 "Upon the recommendation of the agriculture commissioner" is added. (Attachment 1)

(Attachment 2a) Explained the eight questions.  
(Attachment 2b) Amendment for Question 6

Councils cannot lobby but can take care of the money.

(Attachment 3a) Commodity groups are State agencies. Referenced in Question 8 of Attachment 2a.

(15:00)

**Representative Schreiber-Beck:** In checking online I am reading from a document prepared by the North Dakota Legislative Council staff for the Legislative Audit and Fiscal Review Committee. (Attachment 3b) It is dated May 2010. You are referencing an earlier letter from 2002. It already exists.

**Representative Brandenburg:** I think the Agriculture Commissioner's office could reply to that. They deal with the boards.

**Representative Schreiber-Beck:** This is a newer document. Can you go through page 2 of the bill, line 6 and provide some situations under item a?

**Representative Brandenburg:** The Pea and Lentil people would be an example. You have a private organization, Northern Pulse Growers, they are writing the grant for the Pea and Lentil people which is a State agency. Then it goes to procurement which is Office of

Management and Budget and gets approval. Then it goes back to the Northern Pulse Growers. It should be the state agency, the council, should be writing the grant which should then go to procurement and then be approved and then sent out to the Grower's Association. Now law permits this to happen. We have issues with the State of Montana is preparing to sue the State of North Dakota because the Pea and Lentil Council hasn't paid their checkoff fees.

Same with the Corn Growers. The executive director of the Corn Council is writing the grants and sending it to procurement at OMB and they in turn send it to the executive director of the Corn Growers which is the same person.

**Representative Schreiber-Beck:** Line 14, item d?

**Representative Brandenburg:** If you contract with somebody that would personally gain.

Refers to Attachment 4a. Skytrain and Agrebon are an investment that was set up by the Corn Growers in which they used the membership list. There could be a conflict of personal gain involved with this. That membership list belongs to the State of North Dakota. That list was used to solicit membership of the Corn Growers for investments in Skytrain and Agrebon. It involved Angel Funds, etc. With the agriculture economy that we have now, what if a farmer invested goes bankrupt, are checkoff dollars used to pay the losses?

**Representative Howe:** You talk about the list. Is that a council list or a grower list?

**Representative Brandenburg:** Grower list. Members are growers.

**Representative Howe:** The changes that you propose in this bill, if the growers had a separate list, could the growers give out that list?

**Representative Brandenburg:** The growers are part of the organization. I don't care what they do. The problem was that the council and the growers both approved it.

**Representative Howe:** But the growers could have the same list as the council?

**Representative Brandenburg:** Yes. The growers can give it out but the council cannot.

**Representative Hogan:** On your proposed amendment for 5% of the checkoff dollars, why are just two organizations listed?

**Representative Brandenburg:** They are doing it right. Some groups have two executive directors.

**Representative Hogan:** If this is good for one group, should we have boundaries for all groups?

**Representative Brandenburg:** That is a discussion that should happen.

Refers to Attachment 4b. Bill Patrie was giving advice to the Corn Council/Growers at the request of the organizations to try to work through this. There were some members on the board that saw there were some problems. The concern was that federal and state law have been violated.

**Representative Howe:** The email says a breach of operating procedures. Was there a lawsuit?

**Representative Brandenburg:** The Corn Council and the State Auditor's office gave advice that the Corn Growers need to repay the Corn Council \$975,000. To this date I don't think it has been repaid. It was dealing with a fertilizer plant.

(31:00)

**Larry Kinev, IBAND (Independent Beef Association of North Dakota):** Everything previously presented is confusing. Oversight accountability is not liked by various checkoffs. It won't hurt any of them.

When I talked to the State Auditor, every commission goes through an audit which is to balance the books. There is no oversight of how the money is spent. How about a performance audit?

**Opposition:**

**Dale Ihry, Executive Director, North Dakota Corn Council and Corn Growers:**

(Attachments 5)

In 2016 there were 3.3 million acres planted in the state so the checkoff was around \$3.3 million. The \$900,000 debt from Growers to Council was brought up in an audit a few years back and went to the Attorney General's office. The decision was that there is no money that needs to be sent back.

What is the definition of "conflict of interest"? It is in the eye of the beholder. Clarity would be great.

Item 6, the ability to fire a board member with cause. What is cause?

We went to Soybeans and Wheat to do a blueprint. Monies do transfer from council to growers legally by contract for services rendered. We hold separate meetings. Not every commodity group has two separate directors. You have a list of board members. (pages 4 & 5) The Corn Council has seven board members. The Corn Growers have 17 voting members. As of yesterday they have 18. Together we have 25 total board members. You have oversight over the seven Council members.

We follow state law when using money. The council approves funds if there are contracts in place for services provided that the growers do. If there are funds that go over to the growers that is for advertising. I can't just write out a grant and send it off to anybody. It has to be for promotion, education, research. The growers have their own funds. They make money on membership and sponsorships.

**Representative Headland:** Do you have issues with #6 on page 2. It is vague. Representative Brandenburg is speaking to the Governor's ability to remove someone from the state side. The Governor has that authority already?

**Dale Ihry:** We don't know. We don't think he can.

**Representative Headland:** Would you object if the Governor has that ability today if we cleaned up the language. The Governor may not follow the commodity groups. The Agriculture Commissioner does follow and is able to give advice. If we cleaned it up to specify the intent, would that be acceptable?

**Dale Ihry:** If this passes, clean up should be done. Unless there is another statutory requirement set forth in the Century Code.

**Representative Headland:** We have to find out.

**Representative Hogan:** Has there been a major disagreement between the council and the growers?

**Dale Ihry:** Since November of 2015 I have not had one battle with staff or board.

**Representative Hogan:** Do you feel like you work for two bosses? Who would you be responsible to if there was a conflict?

**Dale Ihry:** I do work for two bosses. We have to follow the state law.

**Representative Hogan:** If there was a performance issue, who has firing authority? Are you a state employee?

**Dale Ihry:** The three employees are state employees. I supervise the remaining two in the office. I can be hired and fired by the board at any time. I do performance evaluations on the employees we have in the office.

**Representative Hogan:** You have to follow the regulation of state employees. It seems like a messy structure.

**Dale Ihry:** We have a check list of changes we made. We are trying to make things right.

**Representative Howe:** The Brandenburg amendment, Section 2, pertains to the Corn Growers and the 5% allowed. Where do you sit with that? Is 5% enough for the promotion of corn?

**Dale Ihry:** I haven't seen the amendment? With the agreements there are monies that move around of about \$200,000. If our checkoff adds up to \$3 million, 5% of that is \$150,000. We think we are doing business alright. If it says "may" rather than "shall" then there is latitude.

**Representative Howe:** Reads amendment.

The operational activities would be for the executive director and staff?

**Dale Ihry:** I would think so.

**Vice Chair Trottier:** Sometimes this is a political correctness issue that only deals with one or two issues. Is this something that should be settled in a court of law because it only pertains to one or two?

**Dale Ihry:** We don't see a conflict.

**Representative Howe:** You represent corn farmers across the state. Have you heard from upset growers?

**Dale Ihry:** I have not received one letter. Our refund percentages are down. We will be having a new partnership with soybean.

**Scott German, North Dakota Corn Council Chairman:** This bill provides uncertainty due to the proposed language affecting councils and our operations. North Dakota Corn Council was established by the legislature in 1991. We use checkoff funds to market, develop, research, promote, and educate to enhance the value of corn.

What is the definition of "conflict of interest"?

What is the definition of "cause for the removal of a director"?

(1:01)

**Carson Klosterman, North Dakota Corn Growers Association President:** I have been on the board for seven years. Our membership is up 25% to over 1500 members. Corn production is also up. This year saw a record 158 bushels per acre. We must be doing something right. We have made a lot of changes in the last year and a half.

**Bart Schott, North Dakota Corn Council:** Standing in opposition to the bill.

**Clark Price, member of North Dakota Corn Growers Association and past member of North Dakota Beef Commission:** We are trying to fix something that is not broke. Audits do look at whether it is done right. To the amendments, with the 5%, aren't we wasting our money. Today the money has to be contracted. There has to be a reason to spend the money before you get the money.

**Chairman Dennis Johnson:** The amendment says "may expend up to 5%."

**Representative Magrum:** How much extra checkoff goes for administrative fee?

**Clark Price:** The extra dollar in the Beef checkoff, true administrative costs are about 4%

**Representative Magrum:** That extra dollar, does that go to the national level beef promotion.

**Clark Price:** There are some monies sent to national. We contract with different contractors depending on what the commission believes is worthy.

**Representative Magrum:** The better use, is it advertising?

**Clark Price:** The law is defined on what you can spend checkoff dollars for. It is promotion, research, and education. It can go for advertising. You can't do policy.

(1:08)

**David Clough, North Dakota Wheat Commission Chairman:** (Attachment 6)

(1:18)

**Dan Wogsland, North Dakota Grain Growers Association Executive Director:**  
(Attachment 7)

(1:22)

**Russell Doe, U.S. Durum Growers Association Past President:** (Attachment 8)

(1:24)

**Beau Anderson, Northern Pulse Growers Association Former Board Member:**  
(Attachment 9)

We work with growers across the state of North Dakota and Montana. Pulse deals with nonoil producing legumes. That includes peas, lentils, chickpeas, and dry beans. Our relationships go across state lines. What does not cross state lines is checkoff law. When Montana's acres continue to grow they were concerned that most of the processing for pulse crops is in the state of North Dakota. Our law says "grown or sold." Montana's law says "grown or stored." When there is reference to the \$250,000 that Montana may sue North Dakota over, that is a number that we don't know where it came from. We have had an agreement between the two states that if the Montana Pulse Advisory Committee would grant dollars to Northern Pulse Growers for programming in Montana, North Dakota Council would grant Pulse Growers dollars for programming in North Dakota. A reciprocal agreement between the states has created an avenue to transfer checkoff dollars from North Dakota for a Montana producer. Our board has 12 members from North Dakota and Montana.

The amendment that deals with Corn and Pulse Growers needs to be addressed to all.

I take offense to the 5%. Montana has mandated that the 5% goes to the Department of Agriculture to pay for state employees. I don't like that. We have a board. We have employees for a reason.

**Representative Hogan:** Has there been a significant disagreement between your council and your growers group?

**Beau Anderson:** No. We have been in the same room to discuss. We know each job is separate.

**Representative Hogan:** If there was a conflict, is there procedure to resolve it?

**Beau Anderson:** We have a constitution and bylaws to follow.

**Representative Headland:** The \$250,000. Did the Agriculture Commissioner's office have any conflict the way your organization handled it? Is there correspondence to indicate the problem has been fixed?

**Beau Anderson:** That would be a good question for the council. There was a serious breakdown of how the law is between North Dakota and Montana.

(1:32)

**Kevin Haas, North Dakota Dry Pea & Lentil Council Past Chairman:** (Attachment 10)  
Representative Brandenburg indicated there are problems between Corn and Pea and Lentil. We are not in any kind of lawsuit with Montana about checkoff dollars. There was discussion. There was a mechanism to resolve it back in 2014. Montana would not provide a name and address to prove the dollars. We could not account for it in an audit and could not send dollars back. In 2015 we were able to get them to agree to the current reciprocal agreement. There never was a lawsuit.

The amendments involve only two groups. If it is good for one, it should be good for all. In Section 3 the council may spend up to 5% of the amount raised by the assessments to pay for the operational activities of the Northern Pulse Growers Association.

How we handle checkoff dollars? We solicit with the state through the website for people who want to contract for funds. We follow the laws that we are supposed to. Procurement writes the contracts. We don't write our own contracts. We also contract for administrative services. The only people that apply for that are NPGA. We do that for \$25,000 per year to administer our whole program for checkoff dollars. We have to approve what they do. We volunteer for the board but are a state employee.

**Byron Lannoye, Pulse USA:** (Attachment 11)

Montana growers are looking at how we do business in this state.

We went from 30,000 acres to over 2 million acres.

I am assuming this bill would require another staff member at the state.

**Kevin Regan, North Dakota Dry Bean Council:** This bill is a solution to a problem that doesn't exist.

**Mike Appert, Vice Chairman of North Dakota Soybean Council:** (Attachment 12)

We have a model for how the commodity groups should operate. Our audits are very clean. Our checkoff is ½ of 1% of the value of soybeans. That money is spent for research, market development, education, and communication. Our budget is about \$2.1 million for research, \$1.1 million for market development, \$1 million for education and communication.



**Neutral:**

(1:54)

**Tom Bodine, North Dakota Department of Agriculture Deputy:** (Attachment 13)

**Representative Schreiber-Beck:** Who asked for you to be involved?

**Tom Bodine:** The Attorney General's office.

**Representative Headland:** Are they out of compliance with procurement?

**Tom Bodine:** One option is to add a layer to help with procurement. We offer the council our existing staff to help them with the process.

The other option is the council can do it. The councils have the ability to hire someone to assist them. In this case there is no staff person hired to assist the council. They contract out the administration.

**Chairman Dennis Johnson:** Where are we sitting with Montana and the checkoff?

**Tom Bodine:** Montana did question how they are split between the two states. There was an agreement worked out. Montana is under the duties of the agriculture commissioner. In North Dakota the commissioner wants no role overseeing the councils.

**Representative Headland:** Statute 44-11 which is removal by the Governor. It looks like they do have the ability to remove anyone who is a custodian of public money which is what checkoff dollars would be. If we found ourselves in a situation, you would be advising the Governor already?

**Tom Bodine:** Any citizen can bring a petition to the state to remove a person who is not appropriate with state dollars. The commissioner has to have a relationship with the commodity councils.

(2:03)

**Sherry Neas, Office of Management and Budget, Director of State Procurement Office:** (Attachment 14)

Has oversight for the executive branch. The bill is well intended. Concerns about the language of the bill. It is nice to have a bill that supports procurement.

Page 1, lines 7-9 addresses the authority of the Agriculture Commissioner.  
Line 10 is the responsibility of the Agriculture Commissioner to call an annual meeting.

Page 2, line 2 creates a new subsection that state commodity groups are subject to state procurement laws, rules, guidelines. We agree with the sponsors of the bill.  
There is existing law and Attorney General's opinions that commodity groups are executive branch. The existing procurement laws are in a different chapter of law.

Maybe we need to clarify the state procurement laws. The bill is stating what we know to be true.

Subsection 5 lists activities that commodity groups may not do. It needs to be amended to include language of what they cannot do. It is not an all-inclusive list of what commodity groups may do. There are issues in Subsection 4 that are not procurement issues.

Some ag. commodities groups do not have full time employees.

5b & c relates to the ability to delegate duties.

5d existing laws relating to conflict of interest.

OMB will offer services to draft an amendment.

A grant is funding a request. The mission is in keeping with the mission of the organization but it is not a procurement of goods or services. State procurement laws do not address grants.

OMB doesn't review all contracts by state agencies. Jamie Bostyan is the officer assigned to agriculture.

**Representative Schreiber-Beck:** Are there existing problems that OMB has had with the commodity groups?

**Sherry Neas:** There have been issues and we have worked through them.

**Shannon Berndt, Executive Director Northern Pulse Growers, Administrator for North Dakota Dry Pea and Lentil Council:** Because we have such a small office, the council works directly with the procurement office.

**Chairman Dennis Johnson** created a subcommittee  
Representative Schreiber-Beck  
Representative Howe  
Representative Hogan

**Chairman Dennis Johnson:** Closed the hearing.

**Kenny Graner, Morton County Rancher:** Provided written testimony but did not present.  
(Attachment 15)

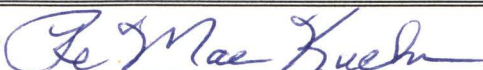
# 2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1282  
2/10/2017  
Job #28242

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to the limitations on commodity groups

## Minutes:

Attachment 1

**Representative Schreiber-Beck, Chair:** Subcommittee meeting called to order at 2:15 p.m. in the Peace Garden Room.

## Members present:

- Representative Schreiber-Beck, Chair
- Representative Howe
- Representative Hogan

## Others present:

- Representative Dennis Johnson
- Representative Tracy Boe

## Discussion:

**Representative Schreiber-Beck:** The Agriculture Committee intern will send letters to the Office of Management and Budget, the Corn Council, and the Pea & Lentil Council to gather information. They will be asked to have the answers returned by noon on Tuesday, February 14, 2017 (Attachment 1)

**Representative Howe:** These questions came up between a conversation with the Agriculture Commissioner and Representative Hogan and Representative Schreiber-Beck.

**Representative Schreiber-Beck:** Closed the meeting at 2:30 p.m.

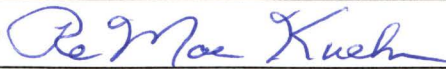
# 2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1282  
2/14/2017  
Job #28375

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to the limitations on commodity groups

## Minutes:

Attachments 1-5

**Representative Schreiber-Beck, Chair:** Subcommittee meeting called to order at 4:00 p.m. in the Peace Garden Room.

## Members present:

- Representative Schreiber-Beck, Chair
- Representative Howe
- Representative Hogan

## Others present:

- Representative Dennis Johnson
- Members of commodity groups

## Discussion:

**Representative Schreiber-Beck:** There is a tremendous amount of information. We are speaking with the Agriculture Department, OMB and, procurement. We sent questions out to two agriculture groups and procurement.

We are aiming towards some sort of a firewall between the commodity groups and the associations. We need to look at how the dollars are used.

The point of whether the Agriculture Commissioner should be making recommendations to the Governor for board members to be removed—we have not reached a consensus.

We want to make sure there are no gray areas in the procurement process.

We are looking at records for the Pea & Lentil Council because of the situation with Montana. We are looking for information from the Attorney General's office.

We will start with the questions that we sent out. We are not the only state having issues. We have to determine where our trust level is to some of the responses we are receiving.

**Representative Hogan:** We'll start with the Pea and Lentil and Corn groups. When we look at the role of the councils vs. the commodity groups, we asked for tables of organization. I thought it was interesting to look at the table with the corn group.

How do you wear two hats?

As I looked at the Table of Organization which is Attachment 3 from corn, it is interesting with the issue of the role of the executive director still looks like it has two bosses.

**Dale Ihry, Executive Director for North Dakota Corn Council and North Dakota Corn Growers:** (Attachment 1) The executive director works with the council according to the statute that requires us to manage the checkoff money promoting corn, education, research, etc. See flow chart attachment 1, pages 15 and 16. We passed an audit in 2016. There is no mention of any mishandling of funds. We partner with the Soybean Council.

I work with the North Dakota Corn Growers board as well. They sit as an advisory to the council. My role with the Corn Grower Board is to help them get organized to set them up with information and background on promoting corn and lobbying. I help them prepare documents but they are the ones that go out and do that.

They meet separate days. If there is a funding recommendation from the grower side, the council considers it as a recommendation. The growers also make their own funding decisions with the money they have separate from the council with the exception of contracts that have been approved by the Attorney General for soybeans and wheat. I don't believe there are any financial issues as to how we have handled the money.

The job description was approved in 2005 for the director to be a director of both growers and council.

**Representative Hogan:** We are not saying that you did anything wrong. We are looking at structure so there is not a conflict of interest.

**Representative Hogan:** Who does your annual performance appraisal? Are both groups involved in that?

**Dale Ihry:** There is an executive team that consists of the chairman and vice chairman of the council and the president of the growers. My performance appraisal is in the packet.

**Representative Hogan:** If there were disputes between the groups, do you see the council as your primary employer?

**Dale Ihry:** They are equal employers.

**Representative Hogan:** Are you a state employee?

**Dale Ihry:** Yes.

**Representative Hogan:** How do you see complying with the state requirements as a state employee?

**Dale Ihry:** I simply assumed that when I applied, the position was approved and was legal to do. I didn't think that when I took the job that being an employee for the state and working both sides was an issue. I have since learned that some believe it is.

**Representative Hogan:** When you wear both hats, as the council you are responsible for procuring services. One of those you procure for is the Grower's Association.

**Dale Ihry:** The council doesn't buy anything for the Grower's Association. The growers have their own accountant. All of the accounting for growers comes out of the tax group we hired several months ago. We don't write checks out of the corn council office for the growers.

**Representative Hogan:** Do funds go from the council to the growers?

**Dale Ihry:** Funds that go from council to growers are only those under contract approved for advertising and participation and education. The same contracts that the Soybean Council and Soybean Growers use.

**Representative Hogan:** When the decisions are made, are you involved in those decisions or are those made by the council members?

**Dale Ihry:** They are made by council first. I don't have authority to approve funding.

**Representative Hogan:** What are the boundaries? It appears that the Soybean Council has a standard protocol.

**Dale Ihry:** We are moving toward that.

**Representative Hogan:** Should we just outline what those core standards should look like?

**Dale Ihry:** Would that be applicable to every commodity organization? Some only have one director on the grower's side.

**Representative Hogan:** We have talked about doing it by size. Some groups have no staff or resources.

**Dale Ihry:** So size is determined on the number of acres and the value of crop that corn has today. What if corn goes bad?

**Representative Howe:** What we are moving towards doesn't address the bill. It is just an idea about the size. It wouldn't be in this bill. It may be turned into a study.

**Representative Hogan:** We asked for the staffing levels which are different. Some are state employees and some are not.

**Dale Ihry:** If there are allegations of what we are doing is illegal, that is concerning.

**Representative Schreiber-Beck:** That is not what we are looking at. We are just looking at how we can resolve some of the issues.

**Representative Hogan:** Are you where you want to be now?

**Dale Ihry:** We are still evolving and trying to line up with other organizations.

**Representative Hogan:** Have you felt a conflict of interest between the groups?

**Dale Ihry:** No. We have developed a funding chart that shows who makes a decision on an issue.

**Representative Hogan:** You have proactively done that. That would be an example if we had a core standard. We would want all groups to have that.

(26:00)

**Kevin Haas, Chair of Pea and Lentil Council:** The council was formed in 1997. It is made of five individuals selected by other growers.

**Representative Hogan:** You are not state employees but your council is authorized by state law. You have five council members with no staff.

**Kevin Haas:** Correct.

**Representative Hogan:** Who does your agendas?

**Kevin Haas:** We contract out our administration through OMB just like when we contract out grants. Anyone on the approved list can bid for that contract and go through procurement.

**Representative Hogan:** How many different contracts do you have?

**Kevin Haas:** This year we had two contracts.

**Representative Hogan:** Were they through the growers' association?

**Kevin Haas:** One was through the growers' association and one was through the U.S. Dry Pea and Lentil Association.

**Representative Hogan:** So then your council is working with two subgroups. Do either of those groups have employees and do they provide support to the council?

**Kevin Haas:** Both organizations have employees. Northern Pulse Growers is our admin. contracted organization. They keep track of our finances. They organize the meetings. Everything is approved by us. It is nothing they do on their own. We as a council meet and determine meeting dates, quarterly reports.

Our contract was written by our assistant States Attorney and was approved by OMB. There has been some misinformation out there that Northern Pulse Growers wrote the contracts. The perceived conflict of interest is cleaned up

**Representative Hogan:** Is the service of an assistant states' attorney offered to all of the councils?

**Matt Sagsveen, Assistant Attorney General:** The Attorney General's office provides legal services to all state entities. It includes all the commodity boards and councils. I represent the Dry Pea and Lentil Council on their contractual matters.

**Representative Hogan:** Do you see a differences between the councils?

**Matt Sagsveen:** I only represent the Dry Pea and Lentil Council. There is another assistant attorney general that represents the other councils. It is to advise with contractual relationships or meeting issues.

**Representative Hogan:** If there was a potential conflict of interest, would you have a role in that situation?

**Matt Sagsveen:** My role would be to advise my client.

**Representative Schreiber-Beck:** How long have you been with the Dry Pea and Lentil Council?

**Matt Sagsveen:** I started representing them last summer.

**Representative Hogan:** Do you think most of the councils know how to use you?

**Matt Sagsveen:** It is my assumption that all of the boards and commissions know that the Attorney General provides legal services.

**Representative Hogan:** We wouldn't know that by what is written in law.

**Matt Sagsveen:** There have been numerous Attorney General opinions that have addressed the status of commodity groups and their existence as state agencies. The consensus of the opinions is that they are state entities.

**Representative Hogan:** Back to peas and lentils. Tell us about your second contract.

**Kevin Haas:** That is a grant contract. It is the same for the U.S. Dry Pea and Lentil Association. They mirror each other. The U.S. handles more of the national and governmental affairs and international marketing rather than our local North Dakota association which focuses on local research and domestic marketing. It is what will put more dollars in a farmer's pocket. Anyone can come in and ask for grants as long as you meet the qualifications. We don't get that many proposals.



**Representative Hogan:** Compared to soybeans and wheat you are relatively small. Has your council ever talked about when and if you need staff?

**Kevin Haas:** Through all these years it has been working well. The organization and acres have grown.

**Representative Hogan:** As you grow, could there be a structure that would be helpful?

**Kevin Haas:** We are open to any ideas.

**Representative Schreiber-Beck:** The Northern Pulse Growers Association awarded over a million, \$25,000 administration contract, \$982,000 in programing?

**Kevin Haas:** The admin. contract is a separate contract within this contract. It is a different duty that they perform. The other monies awarded in a grant are broken down between four different sections: domestic marketing, research, government affairs, and education.

**Representative Schreiber-Beck:** The association would award the grant versus the council?

**Kevin Haas:** The council awarded the grants for everything.

(42:25)

**Matt Sagsveen:** If you look at the most recent service contract, one of the key components is a sentence that says "Subject to the state's approval."

**Representative Hogan:** Explain the Montana situation.

**Kevin Haas:** North Dakota has gone from growing very little pulse acreage to a lot. Montana has a lot of potential. The processor facilities were in North Dakota. Our code reads the assessment is collected where it is purchased at and not where it is grown. The growers can ask for it back. As Montana acreage has grown this becomes a bigger issue. We signed a reciprocal agreement in 2011 with Montana that the money would go back and forth between states. Montana couldn't say what that assessment was. North Dakota was not sending money back because we couldn't.

In 2014 we revoked the reciprocal agreement because it wasn't working. In 2015 we put into place a new agreement. It has been alright since. There are rumors they were going to sue North Dakota. We as a North Dakota council took a high road.

**Representative Hogan:** Do we have a current reciprocal agreement?

**Kevin Haas:** Yes.

**Representative Hogan:** We have a payment mechanism so all the money has been paid. How much money did it end up being? Was there a dispute because of the difference in how you assess?

**Kevin Haas:** There never was a dispute about dollars not collected.

**Representative Hogan:** In the new reciprocal agreement, it was an agreement starting at that point in time. So you never went back. Montana hasn't asked you to look back.

**Kevin Haas:** No.

**Representative Schreiber-Beck:** What was the role of the Agriculture Department in this scenario?

**Kevin Haas:** We worked mostly with the States Attorney. The Department of Agriculture was only involved with the conflict of interest between the growers' organization and the council.

**Representative Schreiber-Beck:** Which attorney?

**Kevin Haas:** Dutch Bialke

**Representative Schreiber-Beck:** What to do to prevent this situation? This legislative body has zero control because it is not money from the legislature. How do we put something together and make sure it happens? We have to rely on the councils and their agreements.

**Kevin Haas:** The reciprocal agreement is a separate issue from the firewall.

**Representative Hogan:** I am hearing you say the system works.

**Kevin Haas:** It does. The proof is in our history.

**Representative Howe:** We have an email from Cort Jensen, Chief Attorney Montana Department of Agriculture that they have no plans to sue North Dakota checkoff program. (Attachment 2) Where did the talks go with the Agriculture Department about a conflict of interest?

**Kevin Haas:** They offered up two solutions. Refers to Attachment 3, pages 4 and 5.

1. Hire a full time state employee to conduct the business and administration of the council. Currently we are contracted with the Northern Pulse Growers Association to do our administration for \$25,000 per year. We do not have to have an office. We don't have telephone lines. We are maximizing the growers' dollars.
2. North Dakota Department of Agriculture employees temporarily conduct limited administrative duties as necessary and conduct procurement process on behalf of the council. OMB Procurement is already doing that for us. How does temporarily give us any kind of security.

We consulted the Attorney General's office. We made modifications to our grant contracts.

**Representative Hogan:** When they identified a potential conflict of interest, you modified the contracts to be more clear?

**Kevin Haas:** Yes. They were little things.

**Representative Hogan:** Little things lead to patterns. You think that by modifying your contract relationships you've addressed those potential problems?

**Kevin Haas:** From a legal standpoint, yes.

**Matt Sagsveen:** We will work with OMB to identify solutions.

**Representative Hogan:** Are there things we as policy makers can do to make that clearer?

The roles on the conflicts of interest and your role in that.

**Matt Sagsveen:** It is not something to do as a legislature as it is to encourage OMB to add clarifying language to their administrative rules.

**Representative Hogan:** The Department of Agriculture section may be a place to reference the key players.

**Matt Sagsveen:** The procurement rules and laws are the bible.

(1:01)

**Doug Goehring, North Dakota Agriculture Commissioner**

**Representative Schreiber-Beck:** How do you see the issue with Montana?

**Doug Goehring:** Going back three years, I received a letter from the Director of Agriculture from Montana about not receiving any of the assessments for pulse crops. They were looking at enforcing Montana law in North Dakota. I called Shannon Berndt and she shared her concerns about Montana not being able to account for where their production was, how they were keeping track of assessments. I called the Director of Agriculture in Montana and told him it is unacceptable in the way they are approaching it. If you are asking for something from North Dakota, you have to have a system in place where the production can be tracked.

I asked him to not send another letter demanding payment from our companies. The proper group is the Pea and Lentil Council. They did move forward. In five to seven months, they got a system put in place.

I was contacted later that they still haven't been paid. Even as of a couple weeks ago I still had a conversation with the deputy director from Montana wondering if this is going to be resolved.

As to the agreement and letter sent to the Pea and Lentil Council, they were working with the Attorney General's office concerning what was a conflict of interest. The Attorney General's office provides counsel and advice. It is up to the entity to take that advice and deal with it. They asked us if there was a way to assist. We weren't charging anything for it. We suggested to do temporary services to give them time to get set up and established. We are not trying to take charge of the commodity councils.

Things have gotten better. The legislature needs to determine what kind of clarification goes into law.

**Representative Howe:** Why are there two stories?

**Doug Goehring:** Two weeks ago I met with the deputy director in Washington, DC. They still want to know about assessments they believe are owed to them.

**Representative Howe:** How did that conversation end?

**Doug Goehring:** I asked what they had recovered. They said they have received quite a bit. It takes time working under a new structure. I have not visited with the Pea and Lentil Council.

**Representative Hogan:** Kevin did acknowledge that the retroactive pay didn't get addressed. The current payments are in place. The time from the beginning of the dispute until the new agreement was not addressed. Is that what Montana is talking about?

**Doug Goehring:** That may be the issue. When they did come up with a new system to track and monitor, it took a while.

**Representative Hogan:** We are looking for a structure to make sure we have the right players addressing issues as they emerge. Are there ways in Century Code or in procurement to change that would be helpful?

**Doug Goehring:** It is already in statute. We may need to clarify in procurement. Every place else in government has accountability. Not so with councils

**Representative Hogan:** We are concerned about all the commodity groups getting a black eye because of one act.

**Doug Goehring:** There is so much information. We need to move forward with clarification. Without the commodity councils we would not be exporting as much as we do.

**Representative Howe:** When you speak to Montana, please reference email from Cort Jensen. (Attachment 2) He says Montana Department of Agriculture has no plans to sue a North Dakota checkoff program. The matter was resolved. Dated February 10, 2017.

**Doug Goehring:** I will ask about that.

**Representative Schreiber-Beck:** Reads from letter Attachment 4. That provides a statement that there was a conflict of interest. Has this been totally resolved?

**Doug Goehring:** I can't answer this. When they chose to not take our temporary services, there was nothing more we can do. If they still operate that way, that is up the Attorney General on how to clarify that.

**Matt Sagsveen:** At the time Mr. Bialke may have determined he could not provide legal advice to the Pulse Growers Association because they were the contractor. He was trying to draw a line between providing legal advice only to the council and not the association.

**Representative Schreiber-Beck:** Is there a conflict that still exists between the association and the council?

**Matt Sagsveen:** What has happened from November 2015 to June, I took over legal services and worked with OMB. We worked out a contract that complied with all rules and laws of the state of North Dakota.

**Sherry Neas, Office of Management and Budget:** If it is procurement related, let's put it into procurement laws and rules.

I do agree with what Matt said. There are things we can do in rules to expound the definition. If additional definitions are needed, with regard to what executive branch means and which executive branch entities are subject, I would prefer that to also be in procurement.

**Representative Schreiber-Beck:** As these boards and councils change, there needs to be some training.

**Sherry Neas:** OMB has been planning a project to reach out to the regulatory boards and agencies. All agencies are clients of OMB. We provide procurement services at no charge.

**Representative Howe:** You mentioned you are pleased with the way wheat is operated. What works for them and could that cross over to other commodities?

**Sherry Neas:** Wheat is different because it has very specific language in its law. Wheat is doing the same notices that other commodity groups talk about. It would seem logical that all groups have to figure out what the relationship is.

**Representative Hogan:** What is the role between Human Resource Management and the state employees? You gave a list of the employees. (Attachment 5)

Did you visit with Human Resource Management?

**Sherry Neas:** We didn't visit about what state employment means. Agriculture commodity groups are not the only entities that do not have full time employees.

**Representative Hogan:** That is unclear.

**Sherry Neas:** We will have to have more conversations with legal counsel. If you don't have full time employees, that you have contracted with an agent.

**Jeff Enger, North Dakota Corn Growers:** We are accountable to our growers. Our farm pays from \$7,000 to \$12,000 per year in checkoff.

**Neal Fisher, Administrator North Dakota Wheat Commission**

**Representative Howe:** What can we do to have all the commodity groups follow? Wheat has its own section of law. Could that cross over to other commodity groups? What is your format?

**Neal Fisher:** We have 1½ cents checkoff on every bushel. 94% is our acceptance rate. Our law put in 2 mills. A revenue from an average crop of \$4.5 million gives about \$450,000 to \$500,000 from what is sold per year. That is set aside for the grower associations. The Grain Growers and the Durum Growers are the two entities that have been contracted with. There is a breakout on the basis of production. There is a contract that says what the Board of Directors of the North Dakota Wheat Commission wishes for them to participate in. The remaining checkoff stays with the commission and is used in wheat research. Of that budget about \$1.5 million goes to research at NDSU.

They also have membership money and sponsorship money.

In the market development side, the field gets narrow. There is money in the USDA budget in foreign agriculture service that can be matched.

The firewall is legislated.

**Representative Hogan:** Your structure is in code. What do you think of the idea of having an interim study so we have a plan to work for everybody?

**Neal Fisher:** There is merit in that. I worry about a one size fits all.

**Representative Hogan:** You have a lot of credibility. Your boundaries are well defined.

**Neal Fisher:** They are.

**Carson Klosterman, President of North Dakota Corn Growers:** HB 1282 was brought forward with rumors and false allegations. We have self-policed ourselves.

**Scott German, Corn farmer that pays checkoff and Council Chair:** We feel we do have oversight from our producers. They pay the checkoff. If we don't spend that money appropriately, a producer can ask for a refund. In 2 ½ years I didn't get a phone call from a producer saying they didn't like how it is operating.

Issues from the past have been addressed. The council has the money. The growers are an advisory committee.

(1:47)

**Eric Bartsch, Director of Food Ingredients for AGT Foods:** We are a processor for pulse crops based out of Bismarck, Minot, and Williston. I am the former Executive Director of the North Dakota Pea and Lentil Association and Council from 2000 to 2007.

When I started our checkoff budget was \$30,000. The council had just been started in 1997.

The council contributed the money to pay for a staff person to do pesticide trials. \$1,000 was a lot of money out of the budget for NDSU to approve Spartan for peas. The association had private dollars, we had growers contribute extra dollars. The two groups came together to promote the industry. There was always a contract between the two groups. We went from 60,000 acres to over a million acres. The budget went from \$30,000 to half a million. I always felt the firewall was there.

The United Nations just declared 2016 the International Year of the Pulse. That was a joint effort between the state councils, the state associations, the U.S. Dry Pea and Lentil Council.

It is always the growers' decision on how to spend the money. Our company alone has invested over \$125 million in infrastructure in North Dakota just for pulse crops. Those are private dollars coming in from out of country.

Things are going well so we have to be careful how we impact the way associations and councils are functioning.

(1:51)

**Doug Goehring:** I struck a nerve on the accountability issue. The corn growers adopted what the soybean council does. Soybeans are a federal checkoff. They are audited and overseen by USDA. Council money, which is tax money, is growers' money. Once it is authorized by the legislature, it is tax money. If any place else in government was structured like this, there would be no oversight. When there is a problem, all you have is the Attorney General working with them or the Agriculture Commissioner. They can take it or leave it. The calls I get from past members of corn and others are because there was no way to fix it.

**Representative Howe:** Would you have telephone calls or emails? We would like to hear the problems from the growers.

**Doug Goehring:** I have received calls and conversations. We are trying to move forward. When someone shows me on a piece of paper, it is a document. If you call me with a concern, I pass it on to the council. I knew what the sentiments were with the legislature and the corn growers. In January when we met, I was just trying to help. If I throw out a bunch of records, it will put everyone in an uncomfortable position.

**Representative Howe:** If you feel you have some of that information, we would like to see it as a subcommittee. If you have documented emails or letters in your department we would like to see those.

**Doug Goehring:** If I had something to give, I would. There is a reason I don't take information. I would rather deal with it and let people save face, fix it, and move forward.

**Dale Ihry, North Dakota Corn:** In my federal career when I would get a complaint from a farmer, I would call up the county office employee and try to get it fixed. I don't sense I am getting that from people that are hearing this. Could we get more information? We are trying to move forward but there is always something bad hanging out there.

**Scott Rising, North Dakota Soybean Growers Association:** I understand conflict of interest and separation of duties. The councils are in the research, market development, communication, and education lane. The growers' contracts are at competitive rates. I believe it is working. Soybean is partnering with corn with their yearly event.

There is plenty of accountability. Those serving on the council are elected and will not be reelected if their people don't like what they are doing.

**Representative Hogan:** Would there be an advantage to doing a study on the procurement and the role of the Attorney General? From what I'm hearing the bigger organizations have an infrastructure. If we had the framework, it would be a tool for new people serving.

**Scott Rising:** The Soybean Council doesn't have any question about the procurement requirements. I assume they get trained by OMB. I don't know what you would study.

**Representative Howe:** Maybe a study would show that you do solid work.

**Chris Westergard, Farms and lives in Montana:** I live 65 miles northwest of Williston. We fit in with the geography of Divide County and Williams County. We get a lot of NDSU's research. The growers in Montana like the finished product. We feel you have something good going on in North Dakota.

**Kevin Haas, North Dakota Pea and Lentil Council:** The payments have been made to Montana. This committee is on the right track.

**Representative Schreiber-Beck:** Closed the meeting at 6:10 p.m.



# 2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1282  
2/16/2017  
Job #28471

Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to the limitations on commodity groups

## Minutes:

Attachment 1

**Representative Schreiber-Beck, Chair:** Subcommittee meeting called to order at 3:11 p.m. in the Peace Garden Room.

## Members present:

- Representative Schreiber-Beck, Chair
- Representative Howe
- Representative Hogan

## Others present:

- Representative Dennis Johnson
- Joel Gilbertson, North Dakota Corn Growers and Soybean Growers
- Julie Ellingson, North Dakota Stockmen's Association

## Discussion:

**Representative Schreiber-Beck:** We've reviewed the amendments 17.0668.01003 (Attachment 1) and after reviewing the study components we have determined that a period should be placed after "groups" on the fourth line from the end. Then begin a new sentence "The study may review the structure of commodity groups in other states."

**Representative Howe:** Joel the copy you saw last night involved three sections. We've reduced that to two sections. The copy you saw took out Section 1 with the procurement. That we will try to achieve with the Senate Bill.

**Representative Hogan:** Moved the amendment 17.0668.01003 with the modifications at the bottom.

**Representative Howe:** Seconded the motion.

**Voice vote** was taken and all three members were in favor.

**Representative Schreiber-Beck:** Adjourned at 3:15.

# 2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1282—Committee work  
2/17/2017  
Job #28510

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to the limitations on commodity groups

## Minutes:

Attachment 1

**Chairman Dennis Johnson:** Receive report from subcommittee.

**Representative Schreiber-Beck, Subcommittee Chair:** Amendment 170668.01004 (Attachment 1)

It is a hoghouse amendment. The original bill is gone. In its place are two items.

Section 1, reports to legislative management from the commodity groups. This is a one-time report that will be expected before January 1, 2018. There are seven items listed that the report should contain.

Section 2, is the Legislative Management study regarding the commodity groups. They will take the information from the reports that will be provided by the commodity groups along with input from the involved parties. The study may review the structure of commodity groups in other states. We have learned there are issues regarding commodity groups in other states as well.

Through Office of Management and Budget and procurement there will be changes in forms especially grants and general procurement. We have had input from the Attorney General's office that there will be a best practices provided for councils of this type. We do know that they fall under the state so that is part of the legislature's responsibility.

**Representative Satrom:** How do the audits fit into this?

**Representative Schreiber-Beck:** The auditors know that the councils are a state entity. They basically do a financial audit. The study will put that together better.

**Representative Skroch:** Is there a fiscal note?

**Representative Schreiber-Beck:** There is no fiscal note needed.

**Representative Howe:** The rest of the committee is probably wondering where the commodity groups sit on this. We were in constant communication with them. There is trepidation with the study portion. They are more comfortable with this form than the first one presented.

**Chairman Dennis Johnson:** Are there any comments from the commodities?

**Jeff Enger, North Dakota Corn:** We do have concerns and will take it back to our staff.

**Chairman Dennis Johnson:** You have the second half to fine tune this bill.

**Representative Oliver:** Moved to adopt the amendment 17.0668.01004

**Representative Skroch:** Seconded the motion.

**Voice Vote taken.** Motion Passed.

**Representative Skroch:** Moved Do Pass as amended.

**Representative Satrom:** Seconded the motion.

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

**Do Pass as amended** carries.

**Representative Howe** will carry the bill.

2/17/17  
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1282

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for reports to the legislative management; and to provide for a legislative management study regarding agricultural commodity groups.

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

**SECTION 1. REPORTS TO THE LEGISLATIVE MANAGEMENT - COMMODITY GROUPS.** Before January 1, 2018, each commodity group shall report to the legislative management regarding the organizational structure and operations of the commodity group. Each report must include a description of:

1. The structure and staff of the organization and how the commodity group performs its responsibilities. The description must include the use of classified and unclassified state employees, temporary employees, contractors, paid and unpaid labor by the group, and hiring practices.
2. The major challenges currently facing the commodity group, including organizational structure challenges.
3. Any administrative rules, policies, procedures, guidelines, manuals, or other directives developed by the commodity group to implement statutes and govern group operations.
4. The relationship between the board and the producer organizations, including any commercial business endeavors.
5. The process used to determine the use of monies raised by or appropriated to the commodity group.
6. Contracts entered by the commodity group, including the procurement of goods and services, partnership agreements, grants, and sponsorships.
7. Historical commodity group fiscal year cash flow and revenue trends.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - COMMODITY GROUPS.** During the 2017-18 interim, the legislative management shall consider studying commodity groups. The study must include a review of the commodity group reports under section 2 of this Act and the legislative history of each commodity group. The study must include receipt of input from the commodity groups, growers' associations, agriculture commissioner, attorney general's office, and the office of management and budget. The study must include a review of attorney general opinions related to commodity groups. The study may include a review of the structure of commodity groups in other states. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1282**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: #17.0668.01003

**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. Hogan    Seconded By Rep. Howe

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman Wayne Trottier			Rep. Kathy Hogan	X	
Rep. Jake Blum					
Rep. Craig Headland					
Rep. Michael Howe	X				
Rep. Dwight Kiefert					
Rep. Jeffery Magrum					
Rep. Aaron McWilliams					
Rep. Bill Oliver					
Rep. Bernie Satrom					
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch					

**Total**    **Yes** 3    **No** 0

**Absent** \_\_\_\_\_

Floor Assignment Rep. \_\_\_\_\_

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

On amendment #17.0668.01003----  
 Also place period at end of 4<sup>th</sup> line from the bottom after the word "groups."  
 Then begin new sentence "The study may review the structure of commodity groups in other states."

Date: 2/17/2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1282**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 12.0668.01004

**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. Oliver    Seconded By Rep. Skroch

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman Wayne Trottier			Rep. Kathy Hogan		
Rep. Jake Blum					
Rep. Craig Headland					
Rep. Michael Howe					
Rep. Dwight Kiefert					
Rep. Jeffery Magrum					
Rep. Aaron McWilliams					
Rep. Bill Oliver					
Rep. Bernie Satrom					
Rep. Cynthia Schreiber Beck					
Rep. Kathy Skroch					

*Voice Vote  
Motion passed*

**Total**    **Yes** \_\_\_\_\_ **No** \_\_\_\_\_

**Absent** \_\_\_\_\_

Floor Assignment Rep. \_\_\_\_\_

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

Date: 2/17/2017

Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1282**

House Agriculture Committee

Subcommittee

Amendment LC# or Description: 17.0668.01004

**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. Skroch    Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman Wayne Trottier	X		Rep. Kathy Hogan	X	
Rep. Jake Blum	X				
Rep. Craig Headland	X				
Rep. Michael Howe	X				
Rep. Dwight Kiefert	X				
Rep. Jeffery Magrum	X				
Rep. Aaron McWilliams	X				
Rep. Bill Oliver	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				

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

**Absent**    0

Floor Assignment    Rep. Howe

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



**REPORT OF STANDING COMMITTEE**

**HB 1282: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1282 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for reports to the legislative management; and to provide for a legislative management study regarding agricultural commodity groups.

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

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Renumber accordingly

**2017 SENATE AGRICULTURE**

**HB 1282**

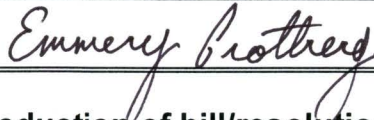
# 2017 SENATE STANDING COMMITTEE MINUTES

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

HB 1282  
3/9/2017  
Job # 28971

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to the limitations on commodity groups

## Minutes:

Attachments: #1 - 20

(1:00 – 10:30) **Representative Brandenburg, District 28:** Introduced HB 1282. He provided a copy of the original version of HB 1282 and amendments (See Attachment #1a & 1b), an explanation of HB 1282 (See Attachment #2), Skytrain fund management (See Attachment #3), correspondence about state and federal violations (See Attachment #4), Attorney General Opinion (See Attachment #5), and Corn Utilization Council Audit Report (See Attachment #6), Contract Review, Attorney General (See Attachment #7). Representative Brandenburg said one of the issues was the two conflicting Attorney General opinions. He said the Corn Utilization Council engaged in commerce which is prohibited to state agencies. Representative Brandenburg said the \$300,000 with the EERC that was never exercised because the Attorney General advised not to sign it.

**Senator Piepkorn:** Could you provide a normal introduction of the bill?

**Representative Brandenburg:** I am trying to show why the study is important. There is a situation here where they have exceeded their authority and the auditor gave a recommendation (See Attachments #6) and we have two attorney general opinions (See Attachments #5 & #7) that says they exceeded their authority. This bill is here because you have \$925,000 that was used for Northern Corn Development for research and it exceeded that and went into commerce. That \$925,000 was used and the patent rights were supposed to go to the Corn Council and the study of the fertilizer technology came out around \$300 - \$400 a ton.

(14:30) **Chairman Luick:** Where did those patent rights end up?

(15:00 – 19:50) **Representative Brandenburg:** Provided the committee with the information (See Attachment #8). He said the council was advised to send out a letter that there be no recourse and they are not responsible for any losses incurred by Northern Corn Development

or Skytrain which they did not do. He said the commodity groups need proper oversight to make sure illegal activity doesn't happen.

**Chairman Luick:** In your opinion, what type of oversight should the legislature have over commodity groups?

**Representative Brandenburg:** I believe if we had two executive directors for each group, this activity would have never gone where it went. You have one director trying to keep peace between two organizations and if you had two executive directors it would alleviate some of these problems.

**Senator Klein:** What should our oversight be? I don't think we are going to mandate the groups to have two directors since we are already debating in the legislature whether we are micromanaging. I don't think the study is going to show us anything unless we are going to give them rules on who they can hire. We lay out the rules and if they don't follow them, then they are liable.

**Representative Brandenburg:** That reminds me of 15 years ago when we were dealing with the Wheat Commission and the Grain Growers and now, the current director works for the council and the growers but he can't lobby since the councils and state agencies cannot lobby.

**Senator Klein:** We didn't tell the Wheat Commission who to hire. Are you suggesting we as the legislature tell the groups who they can hire?

**Representative Brandenburg:** We weren't apart of the hiring but I do remember being a part of some of the discussions to hire him.

**Senator Osland:** In your opinion, do you feel the grower associations are agencies?

**Representative Brandenburg:** You might want to have legislative council explain that because the councils are state agencies and they are to act in the manner of state agencies. If you look at the auditor's report and the Attorney General's opinions, you will see that they have rules and guidelines they have to follow like any other state agency. The growers can do whatever they want but when the growers and councils have meetings together, they lose the appropriate separation.

**Senator Osland:** The check-off dollars go to whom?

**Representative Brandenburg:** The check-off dollars come from the elevators and are paid into the council. The council gets the money; the growers do not get the money.

**Senator Osland:** What funds does the council receive from the government?

**Representative Brandenburg:** The legislature is in charge of the money and we give our authority to the council to spend that money wisely. This money is not theirs but it belongs to the state legislature and the state legislature is in charge of setting up the councils to give direction on how to utilize that money.

**Senator Osland:** Where do the growers get their money?

**Representative Brandenburg:** The growers go to the council and request a grant process and through the grant process, they put together a plan. They can engage in research, promotion, and other activities but they cannot engage in commerce. When they have engaged in commerce, they have violated state law.

**Senator Osland:** The dollars that go to the growers is at the better-judgment fiduciary capacity of whom?

**Representative Brandenburg:** The two executive directors.

**Senator Osland:** Are the research dollars spent by the growers or the council?

**Representative Brandenburg:** It can be a combination of both. This is exactly why we should have two executive directors because you have the executive director requesting the grant from the growers and then you have the executive director from the council granting the request for the growers from the council. It has to be approved through procurement at OMB. OMB through the procurement process is trying to do the best job they can but they don't always know exactly what is going on. The Attorney General gives guidance to the council but not the growers. You need checks and balances which is when you run into a problem if you only have one person as the director of both the council and the growers.

**Senator Osland:** Are these rules all in the century code?

**Representative Brandenburg:** Yes, and legislative council could present this to you and quantify what I just said.

**Senator Myrdal:** You mentioned checks and balances and I read over some of those checks and balances and they are already in place. The rules and regulations are in place but I seem to hear that the enforcement may be lacking but I'm not sure I see a remedy in the outcome of this study as much as I see a reaction, is that fair?

**Representative Brandenburg:** We have two different Attorney General opinions and the auditor's office asking for another Attorney General opinion. The Attorney General gave them the authority to spend the money but only for research and the problem is they exceeded research and went into commerce after the fact. The auditor's office is saying they exceeded their authority by using this money for commerce and the Attorney General agreed. Representative Brandenburg handed out a memorandum from Charles Carvell, Assistant Attorney General (See Attachment #9).

(38:15) **Senator Osland:** In your opinion, is the century code sufficient?

**Representative Brandenburg:** What may have been right in the century code twenty years ago, may not work today.

**Senator Klein:** Are you a member of the corn group and do you go to meetings and voice your concerns?

**Representative Brandenburg:** We have had meetings with the corn growers and the corn council in the past year and we had discussions on how to fix things and make things right. We are at the point where we have everything corrected except for instituting two executive directors.

**Senator Klein:** Could you have introduced one bill this session to fix that instead of getting all the commodity groups involved?

**Representative Brandenburg:** I did start with one group and I did tell all the other groups they are not affected and they don't need to be here. I did tell them the only ones with a problem are the corn council and the pea and lentil group but everyone else is doing what they are supposed to do. The groups took it upon themselves to come because there are rumors that we are trying to take their authority away. The pea and lentil groups have been fixing their problems. At this point, the corn growers want to fight and I don't want a lawsuit two sessions from now going after the check-off dollars I paid and I want the money used for right things.

When I first brought this to the house agriculture committee, they thought I was crazy but when you start investigating the issue, we do have a problem but it doesn't make my happy to bring this bill forward.

**Senator Osland:** Have the corn issues been resolved?

**Representative Brandenburg:** No.

(45:00 – 58:20) **Dale Ihry, ND Corn Utilization Council:** Testified in Opposition to HB 1282 (See Attachment #10).

Mr. Ihry went over his exhibits (See Attachment #11).

(58:24) **Chairman Luick:** Are there moneys floating out there that have not been paid?

(58:30 – 1:03:20) **Dale Ihry:** That is not correct. We have reached out to everyone that it has been alleged that we owe money too and no one is asking for money from us. If we owe money, they are asking for it.

Mr. Ihry went over his exhibit 5 (See Attachment #11) and continued with his other exhibits (See Attachment #11).

(1:03:30) **Senator Piepkorn:** I believe there is no money owed but what did you learn from the \$925,000 spent on research?

**Dale Ihry:** The moneys were provided to Northern Corn Development and from that point, the council is out of the decision making. My understanding is that Northern Corn Development worked with EERC and other folks to try to develop a nitrogen plant that still hasn't been built in Grand Forks. There is a lot of research funding I have looked at that do not always go anywhere.

**Senator Piepkorn:** So the research money can be spend on researching business opportunities, it is not necessarily genetics, productivity, or new uses for corn?

**Dale Ihry:** Research funds can be used for all that. Research funds can be used to enhance corn production. It can be research for genetics, insects, diseases, new uses, livestock, etc. As long as it is a corn or corn related product or byproduct, it is legal to invest in those research items. Again, the caveat is that you cannot give money to a private industry to make money with. The Council has to give money to a research institution or group that is nonprofit that will not make money from it.

We continue to hear threats that there are more stuff coming and we would like that to end.

(1:07:50 – 1:10:45) **Kevin Skunes, Chairman, Northern Agriculture Development Corporation:** Testified in Opposition to HB 1282. Representative Brandenburg said at the beginning of his testimony that Skytrain and Agrebon were part of Northern Corn Development. At no time, was Skytrain or Agrebon ever any part of Northern Corn Development Corporation and our minutes will prove that and I can produce those if need be. I would like to confirm what Mr. Ihry said about the membership list. I was in the room and the Council had nothing to do with asking for the growers membership list and it never left the office.

The investment from the Corn Council to Northern Corn Development Corporation of \$925,000 which Mr. Ihry mistakenly said was used to do research at the EERC. At that time, we had abandoned the research at EERC which had hydrogen fertilizer being made in a different way. It was not going to be cost effective and the responsibility of the ND Corn Growers and Corn Council were too advance corn growing in ND which means new uses for our corn or helping the bottom line of ND corn growers. Part of that would be a stable supply of nitrogen fertilizer. Through the Council, Northern Corn Development then funded research and licensed our information (our intellectual property) to Northern Plains Nitrogen. We used that money to study business plans to see if it was feasible to have a nitrogen fertilizer plant in ND. Northern Plains Nitrogen is still going; they are looking for funding and trying to get their plant built in Grand Forks.

**Senator Piepkorn:** I remember when EERC was working on this and I understand that is the nature of research. Just because you charge the EERC with coming up with this doesn't necessarily mean the research will work.

**Kevin Skunes:** The reason EERC was looking at a way to make nitrogen fertilizer was because the Haber-Bosch is a very expensive plant to build and upkeep. They thought the new research they were doing (which never panned out) would be a lot cheaper and they were hoping the manufacturing process would be cheaper and they were hoping the actual process would be cheaper which was proven wrong.

(1:13:00 – 1:15:50) **Jason Rayner, Vice Chairman, ND Corn Utilization Board:** Testified in Opposition to HB 1282 (See Attachment #12).

(1:16:00 – 1:17:50) **Randy Melvin, Vice President, ND Corn Growers:** Testified in Opposition to HB 1282 (See Attachment #13).

**Senator Piepkorn:** You state that this proposed report may lead to changes that are detrimental. Can you give an example of a change or two that could be detrimental to what you have been doing?

**Randy Melvin:** We are concerned about what a study may bring up. We would appreciate the opportunity to make changes in our organization rather than it coming from the top down.

(1:19:00 – 1:22:54) **Clark Price, Corn Producer, Hensler:** Testified in Opposition to HB 1282 (See Attachment #14).

(1:23:00 – 1:34:40) **David Clough, Chairman, ND Wheat Commission:** Testified in Opposition to HB 1282. Said they were originally mentioned in the bill so they came to testify. (See Attachment #15).

(1:34:50 – 1:35:40) **Kevin Hass, Chairman, Pea & Lentil:** Testified in Opposition to HB 1282 (See Attachment #16).

(1:36:00) **Senator Klein:** Can you respond to the accusations against you earlier? What have you done wrong and what have you done to fix it?

**Kevin Hass:** There were some struggles in the early years of the council after it was formed in 1997 since there were very few assessment dollars. As there were more acres, there were more check-off dollars. Montana started growing some and in 2011, there was a reciprocal agreement that was signed with Montana where these check-off dollars would wind up. As that started to develop and acres started to increase, there has to be a check and balance that makes sure when a refund is asked for, it's legitimate. Part of the way to ensure it is legitimate is to have the growers address, name, settlement sheet from the elevator, etc. so we know there are no refunds being paid out. Montana didn't have a system in place where they could verify that with ND to prove what that was so we worked with them over the years to get it right by they never bright their system. In 2014, the council came together and annulled that agreement because there was never anything they could do and follow. During those years, the popularity of the Pulse crops continued to increase in Montana and Montana wanted their money. We were never keeping their money; we were just doing what century code told us to do. We worked with Montana on their agreement and in the summer of 2015, we reached a point where what we agreed on was acceptable. During that time, there was a lot of posturing going on in the states and Montana had threatened lawsuits and there was media that we had kept Montana grower's money but we as a council in ND took a high road and the reciprocal agreement was signed and the money has been flipped back and forth between the state and the payments are made on a quarterly basis.

**Chairman Luick:** How many dollars are we talking about?

**Kevin Hass:** \$200,000. I think we got on the radar because the ND council is small and when we started, we contracted with our growers group to do our administration and they did what we told them to do but they never did our business for us but the person who did our business for us.

We didn't always assume that the growers group would do that administration for us, we always through procurement and put that contract out there so it has never been a conflict



because that opportunity is available for anyone to come and ask to do that administration for us. As a council, we would look at anyone who applied for the contract to do our administration but no one ever did that except for our grower's groups. If you think about it, they know what the grower's needs are. Anyway, we were accused of not having a firewall and that we had a conflict of interest. The prior Attorney General thought we had a conflict of interest but we asked for a second opinion. We use procurement to write our contracts and make sure we are doing that and then we run it past our Assistants State's Attorney to make sure it is ok. There is never a point when our growers group that does our administration has ever had a say in anything, they do what we ask them to do. As a council, we are in charge of spending producer's money.

It was said here that it is the legislature's money and maybe it is technically but in my mind it is the producer's money you oversee. Our thought as a council is that we could hire some permanent staff to do that administration for us but is that in the best interest of our growers when we feel that that money is being spent as efficiently as we can. We spend \$25,000 a year for administration which is very reasonable. It may be possible for someone to do something wrong but we are audited by the state and I think HB 1282 duplicates many things and will force us to spend more money. The current version of HB 1282 is better than the original but we are already doing what is being talked about.

**Senator Klein:** You covered all the concerns alleged against you?

**Kevin Hass:** There are allegations that there is still a lawsuit out there but we have emails saying that there is no lawsuit but there are none. We want the allegations to go away because it is hurting our industry.

**Senator Klein:** The other side is that the generally small organizations that stuff can become a problem but once again, you are audited like every other commodity group. We have set rules for you but nevertheless, we established the same rules for you as everyone else and the fact the government gives you the authority to levy the tax

**Kevin Hass:** I haven't seen an issue and the issue with Montana has been resolved as far as I know and if it is not, why is our assistant state's attorney is not hearing something about it?

(1:49:30 – 1:52:05) **Shannon Berndt, Executive Director, Northern Pulse Growers:** Provided Testimony from Jerry Schillinger, President, Northern Pulse Growers Association (See Attachment #17) and read an email from Benjamin Thomas, Agriculture Director, MT Department of Agriculture to Senator Mike Lang, MT memo dated February 11<sup>th</sup>, 2017 from Court Jensen, Chief Attorney, Montana Department of Agriculture stating that no Montana state entity did not, is not, and has no plans to sue a ND check-off program. There were some disagreements over how check-off dollars from Pulse crops that were grown in one state and delivered would be handled but the matter was resolved a year and a half ago with an agreement between the two pulse check-off committees.

(1:52:30 – 1:55:40) **John Weinand, President, ND Grain Growers Association:** Testified in Opposition to HB 1282 (See Attachment #18).

(1:56:30 – 2:00:30) **Craig Olson, President, ND Soybean Growers Association:** Testified in Opposition to HB 1282 (See Attachment #19) and presented Mr. Taylor's Testimony (See Attachment #20).

**Senator Myrdal:** I want to commend you for your comment that grassroots need to be directed from the bottom up. I think we are in the room with the strongest innovative industries in the nation.

**Chairman Luick:** Adjourned the hearing on HB 1282.

# 2017 SENATE STANDING COMMITTEE MINUTES

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

HB 1282  
3/9/2017  
Job # 28983

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Emmey Broberg*

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

Relating to the limitations on commodity groups

## Minutes:

Attachments: #1 – 10

Chairman Luick: Reopened the hearing on HB 1282.

(0:30 – 1:50) **Kevin Skunes, First Vice President, National Corn Growers Association:** You asked a question during our break about how the company Agrebon licensed the technology that was at EERC at the University of ND. I know the ND Corn Council did contract for research for the nitrogen fertilizer; when we found that it was not going to be profitable, we told them we would not continue with that research. The Agrebon company asked if they could license the technology and the EERC at UND licensed the technology to Agrebon for a monetary value which is how they got the license. The ND Corn Utilization Council did have the first right of refusal to that technology since we funded the research.

(1:55 – 4:10) **Scott Nelson, ND Oilseed Council:** Testified in Opposition to HB 1282 (See Attachment #1).

(4:20 – 6:50) **Mark Martinson, U.S. Durum Growers Association:** Testified in Opposition to HB 1282 (See Attachment #2).

(6:58 – 8:55) **Grady Thorsgard, Northwood ND:** Testified in Opposition to HB 1282 (See Attachment #3).

(9:00 – 18:00) **Paul Belzer, Cando, ND:** Testified in Opposition to HB 1282. I am a past chairman of the ND Corn Utilization Council and I believe HB 1282 grows and increases the administrative cost to the check-off funds and it is unnecessary and it takes away our limited resources from the mission. The mission of our council is to grow a healthy profitable business climate for the northern corn industry. We made several changes at the council over the last several years and I think they are all positive. We always post public notice before our meetings and they are open to the public and that wasn't always the case when I first started.

Mr. Belzer informed the committee about the procedure for meetings and funding.

(18:10 – 20:30) **Mike Clemens, Wimbledon, ND:** Testified in Opposition to HB 1282. I am the director on the Skytrain investment company which is a management company that manages the leading edge investments in ND that add value to the ethanol industry in ND. We are looking for ways to lower our carbon score and utilization of better coal products coming out of the plants using distillers grain or the ethanol itself into a better market. Our largest investment so far has been in the Midwest Agriculture Energy Ethanol project. For the record, Northern Plains Nitrogen, Northern Plains Development, ND Corn Council, and ND Corn Growers has nothing to do with Skytrain. Our company was thrown under the bus with everyone and our company doesn't appreciate that.

(20:35 – 21:20) **Barry Colemon, Executive Director, Canola Growers Association:** Testified in Opposition to HB 1282 (See Attachment #4).

(21:45 – 24:25) **Terry Weckerly, former Director, ND Grain Growers Association:** Testified in Opposition to HB 1282. We are good stewards of our money and we do the fiduciary budget well and to require two executive directors would be an unnecessary use of dollars as our budget gets smaller. There are many other states that have one executive director for their commission and growers.

(24:36) **Jack Formo, Farmer, Litchville, ND:** Testified in Opposition to HB 1382. Who is going to pay for this study and what is the cost?

**Chairman Luick:** If this passes, legislative assembly would come up with the dollars to do the study and I do not know the cost.

**Jack Formo:** Expressed some of his concerns about the bill with the committee.

(29:00 – 32:30) **Doug Goehring, ND Agriculture Commissioner:** Testified Neutral on HB 1282 (See Attachment #5).

**Chairman Luick:** Could you provide us more information?

**Doug Goehring:** If you have questions, I will try to answer them the best I can. I can tell you that working with attorneys that have asked me to help and assist because there are some compliance issues that need to be addressed and they have asked me to put forth options and make recommendations. I wanted avoid having the agriculture community have a black eye and have things like this come out. Some of this work has been going on for two and a half years and hopefully in the end I will be able to say a lot of progress has been made and I commend those who have made strides to make it happen. I know there is a dilemma and I don't know how to fix it. I know what applies to state agencies and trying to make it apply to councils will be difficult. I know you are in a tough position and I know the attorneys working on this are trying to figure out how they are going to move forward.

**Chairman Luick:** Said that he believed this was a problem that could be resolved and thanked the Agriculture Commissioner for his efforts.

Opposition Testimony submitted from the **Mark Seastrand, ND Barley Council** (See Attachment #6); **Bryon Lannoye, Pulse USA** (See Attachment #7); **Richard Mickelson, ND Dry Pea and Lentil Council** (See Attachment #8); **Mike Axness, President, AmeriFlax** (See Attachment #9). Informational testimony from **Erin O'Leary, EERC** (See Attachment #10).

**Chairman Luick:** Closed the hearing on HB 1282.

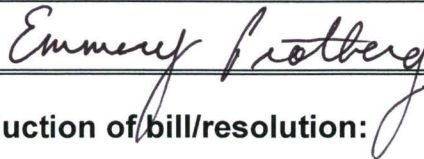
# 2017 SENATE STANDING COMMITTEE MINUTES

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

HB 1282  
3/16/2017  
Job # 29310

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to the limitations on commodity groups

**Minutes:**

**Chairman Luick:** Opened the discussion on HB 1282.

**Senator Myrdal:** Moved Do Not Pass on HB 1282.

**Senator Klein:** Seconded the motion.

**Senator Klein:** The commodity groups were very able to address each one of the concerns that the sponsor had not only verbally but documented. Section 4 of the code deals with commodity groups and it lays out a full line of rules. These are quasi government entities and are under that direction. They are subject to those audits and I don't see a need for this. I think we are doing that which is why I support a Do Not Pass.

**Senator Piepkorn:** I wasn't impressed with how the bill sponsor presented the bill.

**Chairman Luick:** I believe the intention of the sponsor was amiable and he brought to our attention something that perhaps needed to be brought up. Now we are at the position we are at, I think we can move on.

**A Roll Call Vote Was Taken: 5 yeas, 0 nays, 1 absent.**

**Motion carried.**

**Senator Myrdal will carry the bill to the floor.**

Date: 3/16  
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1282

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 Sen. Myrdal Seconded By Sen. Klein

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland					

Total Yes 5 No 0

Absent 1

Floor Assignment Sen. Myrdal

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

**REPORT OF STANDING COMMITTEE**

**HB 1282, as engrossed: Agriculture Committee (Sen. Luick, Chairman) recommends  
DO NOT PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).**  
Engrossed HB 1282 was placed on the Fourteenth order on the calendar.



**2017 TESTIMONY**

**HB 1282**



2/9/17

Sixty-fifth  
Legislative Assembly  
of North Dakota

HOUSE BILL NO. 1282

Introduced by

Representatives Brandenburg, Kempenich, Pollert

1 A BILL for an Act to amend and reenact section 4-01-26 of the North Dakota Century Code,  
2 relating to limitations on commodity groups.

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

4 **SECTION 1. AMENDMENT.** Section 4-01-26 of the North Dakota Century Code is amended  
5 and reenacted as follows:

6 **4-01-26. Commodity groups - Agriculture commissioner - Meetings - State agencies.**

- 7 1. The agriculture commissioner may participate, as a nonvoting member, in any regular
- 8 or special meeting of a commodity group, including any executive session held by a
- 9 commodity group.
- 10 2. Annually, the agriculture commissioner shall call a meeting of representatives from
- 11 each commodity group for the purpose of engaging in collaborative efforts to promote
- 12 and market agricultural commodities.
- 13 3. For purposes of this section, "commodity group" means the:
  - 14 a. North Dakota barley council;
  - 15 b. North Dakota beef commission;
  - 16 c. North Dakota beekeepers association;
  - 17 d. North Dakota corn utilization council;
  - 18 e. North Dakota dairy promotion commission;
  - 19 f. North Dakota dry bean council;
  - 20 g. North Dakota dry pea and lentil council;
  - 21 h. North Dakota oilseed council;
  - 22 i. North Dakota potato council;
  - 23 j. North Dakota soybean council;
  - 24 k. North Dakota turkey federation; and

- 1 I. North Dakota wheat commission.
- 2 4. A commodity group is an executive branch state agency and must comply with all
- 3 state procurement laws and rules and office of management and budget guidelines
- 4 applicable to executive branch state agencies and institutions.
- 5 5. A commodity group may not: Add Line →
- 6 a. Contract with any person to perform any activity that is so intimately related to the
- 7 public interest as to mandate performance by a state officer or employee,
- 8 including the procurement or the expenditure of funds, or any activity that
- 9 requires the exercise of discretion in applying the authority of the state or the use
- 10 of judgment in making a decision for or otherwise binding the state;
- 11 b. Delegate the duty to determine the uses for which moneys raised by or
- 12 appropriated to the commodity group are expended;
- 13 c. Engage in a commercial business enterprise; or
- 14 d. Contract with or employ any person that has a potential or actual conflict of
- 15 interest.
- 16 6. Upon the recommendation of the agriculture commissioner, the governor may remove
- 17 a member of a commodity group for cause.

2a

2/9/17

HB 1282

1

Question that governor, upon recommendation of agriculture commissioner, may remove a commission member/council member for cause (section would potentially impact a commodity producer population, most of whom have the statutory authority to elect all or most its own board members):

In statute, members of councils are specifically referred to as council "members"

Council/Board/Commission memberships are statutorily-created state positions, and accordingly, the legislature that created the positions also has the absolute authority to determine removal criteria for these positions – commodity group officers/officials are not constitutional state officers (numerous statutes allow governor to simply remove a statutory state official "for cause." -- this proposed provision in this bill also pragmatically allows for agriculture commissioner input because these are agriculture-orientated commodity councils)

This said, removal of a member by the governor still may require a due process hearing before decision to remove/retain; as a practical matter, hearing would probably be organized/conducted by agriculture commissioner (hearing would entail a procedure which gives the charged official information as to the nature of the charges, and hearing with an opportunity to cross-examine the witnesses appearing against the charged official and to offer testimony in the charged official's own behalf) *State ex rel. Joos v. Guy*, 125 NW2d 468 (N.D. 1963)

Commodity group members are not elected by all the voters of the state, but rather by an exclusive election held by their respective commodity producers

- Most members are "elected", but some members are appointed by governor (Beef Commission; 2/3 of Oilseed Council; 2/5 of Dairy Promotion Commission; 1/7 of Wheat Commission)

2

Question that the language in this statute may affect or impact other regulatory boards and commissions in other titles

This law appears only in the Ag Title (4.1) of the NDCC and specifically is entirely inclusive of commodity boards – there is no reasonable concern about a broader interpretation of the law

3

Question that that "conflict of interest" is not defined by statute and would already be covered by existing OMB rules (NDAC 4-12-04-04)

Explicitly again prohibiting "conflict of interest" simply reaffirms existing law and explicitly clarifies that certain existing constructs/structured contracts by some commodity groups are inappropriate

1

④ Question that if this does not pass, commodity boards will now be empowered/emboldened to do whatever they wish, regardless of state procurement laws and rules

This is a very valid question. If bill does not pass, commodity groups may argue that they are not state agencies, that they are not subject to state procurement laws/rules, etc.

⑤ Question of who is going to interpret subsection a. and make the call about whether the "activity is so intimately related to the public interest as to mandate performance by a state officer or employee."

This definition refers to anything involving policy and discretion that is the responsibility of the state official/board such as contracting, expenditure of funds, policy, etc. – these duties/responsibilities should rightly remain the responsibility and duty of the commodity group members as state officers – these duties and responsibilities should not be contracted away to a contractor (who has differing duties/responsibilities – specifically duties/responsibilities not to the state, but only to the contractor). This is procurement/contracting 101 -- no brain surgery here... In other words, for examples, do not out-source/contract out/abdicate to a contractor the commodity group's responsibility/duty to contract; don't delegate to contractor authority/discretion to expend public funds, etc.

⑥ Question that paragraph 5 might be viewed as an exclusive list of prohibitions – that commodity groups could perform a particular activity if not specifically excluded.

This is a valid question -- may be easily remedied by an amendment to the beginning of paragraph 5, something to the effect of:

Amendment → "A commodity group may not: carry out any activity that contravenes state procurement laws and rules and office of management and budget guidelines, including:"

- (in this case, as written, "including" means: "including, but not limited to..."; this amendment would ensure that the prohibition list is viewed as examples and is not exclusive)

⑦ Question that, in para 5.a. the language "including the procurement or the expenditure of funds" may apply to only to "obtaining and expending funds" and not contracting

This is a valid question – may be easily remedied by an amendment, specifically the deletion of the word "the" -- the applicable part of the provision would then read:

"including the procurement or the expenditure of funds"

8  
Question that HB 1282 arbitrarily mandates that commodity groups are "state agencies" (some commodity groups continue to have differing views on whether these groups are state agencies and accordingly subject to state agency procurement laws/rules)

The issue of whether **commodity groups are state agencies** has been raised several times in the past, and AG opinions consistently conclude that agricultural commodity councils/commissions are state agencies. See e.g., NDAG Ltr to Vogel, Sep. 16, 1991/North Dakota State Potato Council; Att'y Gen Op 75-161, Jul. 22, 1975/North Dakota Beef Commission; Att'y Gen Op 97-L-7, Jan. 16, 1997/North Dakota Oilseed Council; Att'y Gen Op 2002-L-63, Oct. 25, 2002/North Dakota Wheat Commission; Att'y Gen Ltr to ND Dairy Promotion Commission, February 20, 1975/North Dakota Dairy Promotion Commission). See generally also Att'y Gen Ltr to William D. Drummand, Dec. 20, 1993/North Dakota Barley Council; North Dakota State Fair Association (2011, L-08)(statutorily created group is a state agency).

These above attorney general legal conclusions, that agricultural commodity commissions/councils are state agencies, are generally based upon the following:

- 1) Commodity groups are established/created by individual state law chapters (not created pursuant to a law authorizing/permitting their creation); for examples, commodity groups:
  - a. are afforded privileges/given responsibilities that would not be afforded/given to a private agency;
  - b. must deposit funds with the State Treasurer;
  - c. membership determined by statute;
  - d. compensation of group members set by statute;
  - e. meeting requirements are set by statute;
  - f. procedures for filling vacancies are set by statute; and,
  - g. titles/numbers of officers are set by statute; and
- 2) The commodity groups, by statute, have state taxing authority (the groups have special funds, not to be used as part of the general fund, but the funds are still public money as opposed to private money).

Additionally, OMB views these commodity groups as state agencies. For example, the procurement website lists the Barley Council, Beef Commission, Corn Utilization Council, Dairy Products Promotion Commission, Dry Bean Council, Dry Pea & Lentil Council, Oilseed Council, Potato Council, Soybean Council.

26  
2/9/17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1282

Page 1, line 1, after "to" insert "create and enact a new section to chapter 4.1-04 and a new section to chapter 4.1-07 of the North Dakota Century Code, relating to the use of assessment money by the corn utilization council and the dry pea and lentil council; and to"

Page 2, line 13, remove "or"

Page 2, line 15, replace the underscored period with "; or"

- e. Carry out any activity that contravenes state procurement laws, rules, or office of management and budget guidelines."

Page 2, after line 17, insert:

**SECTION 2.** A new section to chapter 4.1-04 of the North Dakota Century Code is created and enacted as follows:

**Contract with trade associations.**

The council may expend up to five percent of the amount raised by the assessment provided for in section 4.1-04-10 to pay for the operational activities of the North Dakota corn growers association related to corn policy issues, corn production, promotion, and sales.

**SECTION 3.** A new section to chapter 4.1-07 of the North Dakota Century Code is created and enacted as follows:

**Contract with trade associations.**

The council may expend up to five percent of the amount raised by the assessment provided for in section 4.1-07-12 to pay for the operational activities of the northern pulse growers association related to dry pea and lentil policy issues, production, promotion, and sales."

Renumber accordingly

(3)<sup>a</sup>

2/9/17  
HB 1282

LETTER OPINION  
2002-L-63

October 25, 2002

Honorable Merle Boucher  
State Representative  
PO Box 7  
Rolette, ND 58366-0007

Dear Representative Boucher:

Thank you for your letter inquiring about the legality of the North Dakota Wheat Commission using wheat checkoff monies for the purpose of lobbying. The one cent per bushel wheat checkoff is authorized by N.D.C.C. § 4-28-07. See also N.D.A.C. ch. 91-02-01. The wheat checkoff is the Wheat Commission's sole source of funding. Letter from Neal Fisher, Administrator, North Dakota Wheat Commission to John Fox, Assistant Attorney General (Aug. 27, 2002) (Fisher Letter). Any producer may request a refund of the wheat checkoff. N.D.C.C. § 4-28-07(2). The Wheat Commission may use up to twenty percent of the checkoff monies "to support the commission's involvement in trade issues throughout the world." N.D.C.C. § 4-28-07(4).

The North Dakota Wheat Commission was established "for the purpose and with the objective of stabilizing and improving the agricultural economy of the state." N.D.C.C. § 4-28-01. The powers and duties of the Wheat Commission are very broad. 1959 N.D. Op. Att'y Gen. 26. Those powers and duties are set out in N.D.C.C. § 4-28-06 and include the power and authority:

1. To foster and promote programs aimed at increasing the sale, utilization, and development of wheat, both at home and abroad.
2. To publish and disseminate reliable information on the value of wheat and wheat products for any purpose for which they are valuable and useful to both processor and consumer.
3. To search for and promote new uses of wheat and wheat products.



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4. To contract and cooperate with any person, firm, corporation, limited liability company, or association, or with any local, state, or federal department or agency for executing or carrying on a program or programs of research, education, and publicity.

....

10. To exercise all express and implied rights, powers, and authority that may be necessary to perform and carry out the expressed purposes of this chapter and all of the purposes reasonably implied incidentally thereto or lawfully connected therewith and to adopt, rescind, modify, and amend all necessary and proper orders, resolutions, rules, and regulations for the procedure and exercise of its powers and the performance of its duties.

Id.

The "intent and purpose of [chapter 4-28 is] that the commission shall promote, aid, and develop the orderly marketing and processing of North Dakota wheat." N.D.C.C. § 4-28-01.

Lobbying generally is defined as a "group of private persons engaged in trying to influence legislators, esp. in favor of a special interest"; to "try to influence legislators to pass (legislation)"; and to "try to influence (an official) to take a desired action." The American Heritage Dictionary 738 (2d coll. ed. 1991). The provisions of state law regulating legislative lobbying describe a lobbyist as someone who:

- a. Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state.
- b. Attempts to influence decisions made by the legislative council or by an interim committee of the legislative council.

N.D.C.C. § 54-05.1-02(1)(a) and (b).

However, the law specifically exempts an "employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in that person's official capacity." N.D.C.C. § 54-05.1-02(2)(c). The Wheat Commission is a state agency subject to the regulatory statutes pertaining to state agencies. 1959 N.D. Op. Att'y Gen. 18.

While a federal statute generally prohibits the use of federal money to lobby a member of Congress, the prohibition does not expressly apply to non-federal funds. 18 U.S.C. § 1913. Although a state statute does prohibit the use of state property or services for political purposes, the term "political purpose" is defined to mean "any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, political committee, political party, or any other person but does not include activities undertaken in the performance of a duty of state or political subdivision office." N.D.C.C. § 16.1-10-02(2)(a) (emphasis added).

This letter will discuss two types of lobbying activities that may involve the expenditure of checkoff funds. The first is lobbying activities carried on directly by the Wheat Commission or its employees. The second is lobbying activities carried on by other wheat organizations which have contracts with the Wheat Commission. According to information provided by the North Dakota Wheat Commission, its board members and staff are frequently asked to testify at hearings before congressional committees and government agencies involved in the trade area. The Commission also has had contact with government agencies and members of Congress in seeking investigations related to trade disputes. Fisher Letter (Aug. 27, 2002). The Commission noted that it has carefully avoided lobbying on certain issues such as the producer support aspects of federal farm policy, especially where farm program payment levels to individual producers are involved. Id.<sup>1</sup>

To the extent Wheat Commission board members or staff are acting in their official capacity in carrying out the broad powers and duties they have under N.D.C.C. ch. 4-28 to foster and promote the sale, utilization, and development of wheat by contacting legislators or other government officials and by testifying before legislative bodies, it is my opinion that such activities would be lawful.

Section 4-28-08, N.D.C.C., provides that "[a]ll money in the state wheat commission fund is appropriated on a continuing basis to the commission for carrying out the purposes of this chapter." Since, as pointed out above, checkoff funds are the sole source of funds for the Wheat Commission, it would likewise be lawful for Wheat Commission board members and staff to expend checkoff funds when carrying out their powers and responsibilities, including lobbying; however, they are not authorized to expend more than twenty percent

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<sup>1</sup> The Wheat Commission provided a copy of a March 24, 1961, policy statement reciting, in part, that the "commission shall in no way enter into the research, the formulation, or modification of legislation having to do with state or national policy as regards domestic production controls and pricing. The commission may, however, call to the attention of producers, producer organizations, agencies of the government, and others concerned, recommending changes when necessary in matters which are of an administrative nature that affect the marketing of wheat or wheat products."

of the checkoff monies to support the Commission's involvement in trade issues.<sup>2</sup> N.D.C.C. § 4-28-07(4).

Wheat Commission board members and staff not only engage in wheat promotion and lobbying activities, but also enter into agreements with other wheat organizations for a number of purposes, including research, information dissemination, trade promotion, etc. The Wheat Commission provided this office with several contracts it has with other organizations, and also follow-up reports from those organizations detailing their work and accomplishments on behalf of the Wheat Commission and other affiliates. Some of these wheat organizations also engage in lobbying activities which presumably are supported, at least in part, by the wheat checkoff funds paid to them by the Wheat Commission. Presumably, such contracts are being entered into under the authority of N.D.C.C. § 4-28-06 to foster and promote programs aimed at increasing the sale, utilization, and development of wheat, to disseminate reliable information about wheat and wheat products, to promote new uses of wheat, and to contract and cooperate with other organizations or governments for executing or carrying on programs of research, education, and publicity. Id.

According to the North Dakota Wheat Commission,<sup>3</sup> two of the contracts with wheat organizations, U.S. Wheat Associates (USW) and Wheat Export Trade Education Committee (WETEC), focus on the goals of market development and expanded exports. These two agreements are each only one page in length and neither specifically refers to legislative lobbying. However, the WETEC agreement does mention distributing research information and data to decision-makers involved in formulating policies. The USW annual report for the year 2001 mentions providing testimony to a congressional panel relating to a proposed "Asia-U.S. Free Trade Area" and testimony to Congress urging the end of trade sanctions against certain countries such as Iran, Cuba, and North Korea.

The Wheat Commission also supplied copies of contracts with the National Association of Wheat Growers (NAWG), the North Dakota Grain Growers Association (NDGGA), and the U.S. Durum Growers Association (USDGA). These agreements likewise do not explicitly provide for legislative lobbying activities by these organizations on behalf of the Wheat

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<sup>2</sup> Two examples of the North Dakota Wheat Commission using funds to lobby on behalf of trade issues are contained in the Commission's annual report for fiscal year 1999-2000. The report mentioned the role of the North Dakota Wheat Commission in campaigning on Capitol Hill to pass a bill in 2000 to permanently normalize trade relations with China in order to increase trade and reduce transportation costs. The report also noted that the Commission would work with national wheat organizations to encourage Congress to revisit the issue of trade restrictions with Cuba and to end the embargo on Cuba.

<sup>3</sup> Fisher Letter.

Commission.<sup>4</sup> However, the follow-up reports to the Wheat Commission from these organizations do indicate participation in lobbying activities. The NAWG's Fiscal Year-end Activity Report (June 14, 2002) details the following: NAWG has a two-person government affairs department with legislative specialists; NAWG officers and board members have traveled to Washington to lobby regarding the farm bill (e.g., "NAWG representatives made well over 60 visits to Congressional offices on the Farm Bill in the first five months of 2002" and "NAWG also developed a line of communication with both the House and Senate agricultural staffs, receiving important information as the farm bill developed as well as through the negotiations of the Conference Committee."); and NAWG officials have worked with congressional officers on disaster assistance, transportation issues, intellectual property issues, trade policy, water rights, pesticide harmonization, etc. Id.

The agreement between the North Dakota Wheat Commission and NDGGA mentions assistance in obtaining funding from government sources for wheat research and programs, and communication aimed at educating government agencies and policymakers about producer needs regarding crop insurance. The North Dakota Grain Growers Association 2001-2002 Annual Report to the North Dakota Wheat Commission on North Dakota Grain Grower Activities lists meetings in Washington regarding restoration of funding cuts for the USDA-ARS Red River Valley Agricultural Research Center in Fargo and discussions with Senator Dorgan and his staff on pending federal legislation. It also recites that the NDGGA made "dozens of trips to Washington to see to it that the North Dakota wheat producer was treated fairly in the new farm bill" and that "NDGGA traveled to Washington, D.C. numerous times during this past fiscal year to meet with congressional staff." Id.

Finally, the Memorandum of Agreement Between the North Dakota Wheat Commission and U.S. Durum Growers Association (2001) recites that USDGA is to support activities, including programs and communications, aimed at educating government agencies and policymakers of producer needs regarding crop insurance. The U.S. Durum Growers Association 2001-2002 Outline mentioned that it was part of the lobbying effort for the recently passed farm bill with two trips to Washington, D.C.

In your letter you note that there has been a difference of opinion over the years as to whether the use of wheat checkoff monies for lobbying is lawful. Although I have determined that direct lobbying activities by the Wheat Commission board members or employees who are acting in their official capacity in carrying out their powers and duties under N.D.C.C. §4-28-06 constitute lawful activities, a further question is raised when

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<sup>4</sup> The agreements do, however, allude to representing their affiliates on such matters as trade issues, research, crop protection, environmental regulation, education of government officials, and the like.

wheat checkoff monies are paid to organizations pursuant to contracts and which may be used, in part, to engage in lobbying efforts.

A similar issue was addressed in a letter issued by this office in 1993. See Letter to William Drummond (Dec. 20, 1993). In that letter the question was raised whether the North Dakota Barley Council could give money to the U.S. Feed Grains Council (whose membership consisted of agri-businesses, state checkoff groups such as the North Dakota Barley Council, producer associations, and organizations such as the Farm Bureau). The U.S. Feed Grains Council used its funds to disseminate information but did not make political contributions to candidates. Id. It had been determined by the Internal Revenue Service that the group's activities constituted lobbying for tax purposes. Id. The letter concluded that "[i]f U.S. Feed Grains Council is a group lobbying for the promotion of barley, the North Dakota Barley Council may have the statutory authority to contract with the lobbying group." It is instructive that the North Dakota Barley Council had the same basic statutory authority (N.D.C.C. § 4-10.4-07(1)) as the North Dakota Wheat Commission has in N.D.C.C. § 4-28-06(4).

In 1994 N.D. Op. Att'y Gen. L-49, the question was raised whether the Garrison Diversion Conservancy District, a governmental entity, could lawfully join the Greater North Dakota Association (GNDA), a private organization which, among other things, supported the Garrison Diversion Unit at legislative interim committee meetings. The Garrison Diversion Conservancy District had the authority to promote the construction, maintenance, and operation of the Garrison Diversion Unit, as well as the authority to contract with a private association to disseminate information to promote the Garrison Diversion Unit. Id. The opinion concluded that "[w]hether the GNDA actually promotes the construction, maintenance, or operation of the Garrison Diversion Unit is a question of fact for the [Garrison Diversion Conservancy] District, not this office, to determine. Consequently, it is my opinion that the District does not have the express or implied authority under N.D.C.C. ch. 61-24 to join the GNDA and pay membership fees except to the extent that the District determines the GNDA promotes the construction, maintenance, or operation of the Garrison Diversion Unit." Id.

Likewise, in the present case, it is up to the North Dakota Wheat Commission to determine, as a factual matter, whether its contracts with various wheat-related organizations and the lobbying activities of those organizations promote the sale, utilization, and development of wheat within the meaning of N.D.C.C. § 4-28-06. If it is determined by the North Dakota Wheat Commission that the lobbying activities of these contracting organizations fulfill the Commission's statutory purposes and that these contracting organizations otherwise comply with applicable laws regulating lobbying activities, then the use of checkoff monies for such statutory-related purposes is, in my opinion, lawful. If any of the wheat producers subject to the checkoff disagree with the

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North Dakota Wheat Commission's determination, such producers are able to seek a refund of the checkoff levy in the manner provided in N.D.C.C. § 4-28-07(2).

Sincerely,

Wayne Stenehjem  
Attorney General

jff/vkk

May 2010

36  
HB 1282  
2/9/17

## STATE LIABILITY FOR BOARDS, COMMISSIONS, AND COMMODITY GROUPS

This memorandum addresses the issue of whether the state is financially liable for the debts of a board; commission; or other entity, such as a commodity group. As a related issue, this memorandum addresses whether any statutory restrictions exist which would prohibit a board, commission, or commodity group from maintaining a deficit fund balance. This term "commodity group," as defined in North Dakota Century Code Section 4-01-26, includes the following entities: North Dakota Barley Council, North Dakota Beef Commission, North Dakota Beekeepers Association, North Dakota Corn Utilization Council, North Dakota Dairy Promotion Commission, North Dakota Dry Bean Council, North Dakota Dry Pea and Lentil Council, North Dakota Oilseed Council, North Dakota Potato Council, North Dakota Soybean Council, North Dakota Turkey Federation, and North Dakota Wheat Commission.

### LIABILITY OF BOARD, COMMISSION, OR COMMODITY GROUP

In September 1994 the North Dakota Supreme Court abolished the doctrine of sovereign immunity in a 4-to-1 decision. In *Bulman v. Hulstrand Constr. Co. and the State of North Dakota*, 521 N.W.2d 632 (N.D. 1994), the Supreme Court held that Article I, Section 9, of the Constitution of North Dakota "does not bestow exclusive authority upon the legislature to waive or modify sovereign immunity of the State from tort liability and does not preclude this Court from abolishing that common-law doctrine." Although the court abolished sovereign immunity, the court indicated that its decision should not be interpreted to import tort liability for the exercise of discretionary acts, including legislative and quasi-legislative acts and judicial and quasi-judicial acts.

In 1995 the Legislative Assembly enacted legislation, codified as Chapter 32-12.2, which provided for the procedures, limits, and exclusions for bringing claims against the state for personal injury or property damage. Under Section 32-12.2-01(7), "state" is defined to include "an agency, authority, **board**, body, branch, bureau, **commission**, committee, **council**, department, division, industry, institution, instrumentality, and office of the state." (emphasis supplied) Section 32-12.2-01(2) defines "injury" as "personal injury, death, or property damage" and Section 32-12.2-01(5) provides that "property damage" includes "injury to or destruction of tangible or intangible property."

Based upon the definition of "state" contained in Chapter 32-12.2, a board, commission, or an entity that is included in the definition of commodity group is considered "state" and, therefore, participates in and

is covered by the risk management fund. Pursuant to Chapter 32-12.2, the state would defend and be liable for up to \$250,000 per person and \$1 million for any number of claims arising from any single occurrence in an action against a state entity for an injury proximately caused by the alleged negligence, wrongful act, or omission.

While Chapter 32-12.2 deals with the state's liability with respect to personal injury or property damage, this chapter is relevant in the discussion of the state's liability for the debts of a board, commission, or commodity group. Some of the factors used by courts in determining whether an entity is a state entity for purposes of tort liability or immunity include whether the entity functions statewide, whether the entity does the state's work, whether the entity was created by an Act of the legislature, and whether the entity receives legislative appropriations. The same criteria may be used when determining whether a board, commission, or commodity group is considered to be a state entity for purposes of liability for other civil actions, including breach of contract. The boards, commissions, and commodity groups, which are included in the definition of "state" in Section 32-12.2-01(7), generally appear to meet this criteria. It would appear, therefore, that if a board, commission, or similar entity is considered to be "state" for purposes of liability, the state may be liable for the debts of such an entity.

### DEFICIT FUND BALANCE OF BOARD, COMMISSION, OR COMMODITY GROUP

While there is no specific constitutional or statutory provision prohibiting a board, commission, or other state entity, such as a commodity group, from maintaining a deficit fund balance, there are several theories that may be applicable.

### Powers of Commodity Groups

Titles 4 and 4.1 contain statutes relating to power, duties, and limitations of the various councils, commissions, associations, and federations that are statutorily referred to as commodity groups. Any powers granted to commodity groups contained in these titles exist by virtue of a legislative grant of those powers. The North Dakota Supreme Court has reviewed the extent of the authority of various legislatively created entities, including cities and school boards. In *Ebach v. Ralston*, 469 N.W.2d 801, 804 (N.D. 1991), the court held that cities are creatures of statute and possess only those powers and authorities granted by statute or necessarily implied from an express statutory grant. The court, regarding school boards, has held that public schools

of the state are under legislative control and that school boards have no powers except those conferred by statute (*Seher v. Woodlawn School Dist. No. 26*, 59 N.W.2d 805 (N.D. 1953)); that school boards may exercise only those powers as are expressly or impliedly granted by statute (*Fargo Educ. Ass'n v. Fargo Pub. School Dist. No. 1*, 291 N.W.2d 267 (N.D. 1980)); and that, in defining the powers of school officers, the rule of strict construction applies, and any doubt as to the existence or extent of those powers must be resolved against the school board (*Batty v. Board of Education of City of Williston*, 269 N.W. 49 (N.D. 1936)).

Based upon the court's analysis of legislatively created entities, a commodity group is a creature of statute and may exercise only those powers expressly or impliedly granted by statute. While several of the statutes contained in Titles 4 and 4.1 expressly grant to a member or commissioner of a commodity group the authority to spend the funds collected and appropriated by a continuing appropriation, none of the commodity groups contained in Title 4 or 4.1 has been granted the authority to overspend or maintain a deficit balance. Because the powers of the commodity groups do not include the express or implied authority to maintain a deficit fund balance, it may be concluded that a commodity group does not have the authority to do so.

### **Constitutional and Statutory Prohibitions on Indebtedness**

#### **Constitutional Prohibition**

Article X, Section 13, of the Constitution of North Dakota, which deals with debt of the state, provides:

The state may issue or guarantee the payment of bonds, provided that all bonds in excess of two million dollars shall be secured by first mortgage upon real estate in amounts not to exceed sixty-five percent of its value; or upon real and personal property of state-owned utilities, enterprises, or industries, in amounts not exceeding its value, and provided further, that the state shall not issue or guarantee bonds upon property of state-owned utilities, enterprises, or industries in excess of ten million dollars.

**No further indebtedness shall be incurred by the state unless evidenced by a bond issue, which shall be authorized by law for certain purposes, to be clearly defined.** Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semiannually, and the principal within thirty years from the date of the issue of such bonds and shall specially appropriate the proceeds of such tax, or of such other provisions to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been

paid. No debt in excess of the limit named herein shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war or to provide for the public defense in case of threatened hostilities. (emphasis supplied)

The North Dakota Supreme Court has addressed the indebtedness provision contained in Section 13 and has held that if a debt is backed by the state it must comply with the constitutional debt limitation of this section. *State ex rel. Lesmeister v. Olson*, 354 N.W.2d 690, 696 (N.D. 1984). The court, however, has made two exceptions, known as the "current expenses" exception and the "special fund" exception, to this general rule.

With regard to the "current expenses" exception, the court has stated that "[t]he term 'indebtedness,' as used in [Article X, Section 15] of our constitution as amended, means the amount of debts less collectible taxes and other funds." *Jones v. Brightwood Independent School District No. 1*, 247 N.W. 884, 887 (N.D. 1933). The court also has concluded that "'debt' and 'indebtedness' as used in [Article X, Section 15] refer to pecuniary obligations imposed by contract, except obligations to be satisfied out of current revenue." *Haugland v. City of Bismarck*, 429 N.W.2d 449, 455-56 (N.D. 1988). Using the court's rationale in these cases, debt incurred by a board, commission, or commodity group which is payable within the biennium is exempt from the constitutional debt limitation under the "current expenses" exception.

With regard to the state debt limit and the "special fund" exception, the court has concluded that a financial obligation which is "secured by and payable exclusively from revenues to be realized from public property acquired with the proceeds of the obligations or assessments on private property benefited by the special improvements" is exempt from the debt limitation of Article X, Section 13. *State ex rel. Lesmeister v. Olson*, 354 N.W.2d 690, 695 (N.D. 1984) (citing *Marks v. City of Mandan*, 296 N.W. 39 at 47 (N.D. 1941)). Based upon the "special fund" exception, if the deficit fund balance of a board, commission, commodity group, or other entity met the criteria of the "special fund" exception, the deficit may be considered an exception to the indebtedness provision in Section 13.

#### **Statutory Prohibition**

Chapter 54-16, which provides for the establishment, powers, and duties of the Emergency Commission, contains a provision that deals with the debt of a state officer. Section 54-16-03 provides that "[a] state officer may not expend, or agree or contract to expend, any amount in excess of the sum appropriated for that expenditure, and may not expend an amount appropriated for any specific purpose or fund or for any other purpose without prior approval in the form of a transfer approval or expenditure authorization as provided in this chapter."



This section provides that any debt or deficit created by a state officer in violation of this section is void. Under Section 54-16-00.1, "state officer" is defined as "an elected or appointed officer, board, commission, director, or employee of the state having the authority to transfer or expend any money appropriated by the legislative assembly."

Section 54-16-03.1 provides that when an emergency exists, a state officer may present to the Emergency Commission "an itemized petition requesting approval to transfer money and spending authority between funds or line items pursuant to section 54-16-04; accept and expend federal funds pursuant to section 54-16-04.1; accept and expend state contingency funds pursuant to section 54-16-09; accept and expend other funds pursuant to section 54-16-04.2; or recommend full-time equivalent positions pursuant to section 54-16-04.3." Section 54-16-04 gives the Emergency Commission the authority to order money or spending authority transferred from one fund or line item to another fund or line item belonging to or appropriated for the same

institution or board or the same state enterprise, to order a transfer of spending authority from the state contingencies appropriation, or, in an extremity, to authorize money to be drawn from the state treasury to meet the emergency until the Legislative Assembly can make an appropriation available.

### **SUMMARY**

A board, commission, or other entity, such as a commodity group, for the purposes of liability, is a state entity that participates in and is covered by the state's risk management fund. The state would defend and be liable for a claim against a board, commission, or commodity group for an injury proximately caused by the alleged negligence, wrongful act, or omission of the board, commission, or commodity group. Because boards, commissions, and commodity groups are treated as state entities for purposes of tort liability, it is likely that the liability for the debt of such an entity would also lie with the state.



4a  
2/9/17  
HB 1282

MIDWEST ENERGY GROUP

Helping Harvest Your Carbon Crop

AGREBON  
REAL FERTILIZER



c2renew

Dear Investor,

We are conducting a series of meetings to highlight the opportunity to invest in a group of unique companies in North Dakota. The meetings will be held in Southeast North Dakota per the following schedule:

Tuesday, March 27, 2012	Jamestown Civic Center	7:00 PM to 9:30 PM
Wednesday, March 28, 2012	Valley City Eagles Club	7:00 PM to 9:30 PM
Thursday, March 29, 2012	Fargo Holiday Inn	7:00 PM to 9:30 PM
Tuesday, April 3, 2012	Wahpeton at Prantes	7:00 PM to 9:30 PM
Wednesday, April 4, 2012	Jamestown Civic Center	7:00 PM to 9:30 PM
Thursday, April 5, 2012	Fargo Holiday Inn	9:30 AM to 5:00 PM

The purpose of these meetings is to introduce you to two agriculture based funds that intend to focus on the future of the corn industry in North Dakota. Among other things, these funds are designed to provide financing to companies that have designed new "bolt-on" technologies to ethanol plants. You have already invested in the science of these companies through your "check-off" research dollars. Now is the time for you to see how those dollars have been deployed and provide a means for you to invest in these technologies, if you desire. Under federal securities regulations, we can present this investment opportunity personally to our friends, family and business acquaintances.

High N-ergy Angel Fund, LLC and Leading Edge Angel Fund, LLC has chosen to focus on companies that soon will be or are past the research stage and are ready for deployment at ag processing sites. Please take a moment and read through the document entitled, "Investing in North Dakota Agriculture".

We hope that you can attend these important meetings. Coffee and dessert will be served.

Sincerely,

Wallie Hardie and Dan Olson  
SKYTRAIN Fund Management, LLC

# Investing in North Dakota Agriculture

Why should I consider participating in these funds?

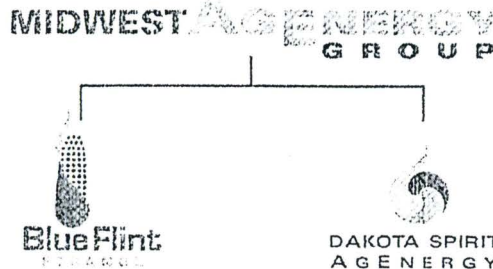
1. *I am concerned my corn market may head south if ethanol plants struggle to stay profitable.* North American Protein has developed a new technology that turns thin stillage waste into a high value feed ingredient. At the same time the process supercharges the water going back into the plant, resulting in more efficient production of ethanol.
2. *I am concerned about high fertilizer prices.* You will own a fertilizer company (AGREBON) that makes low cost, environmentally friendly fertilizer products using waste streams from ethanol plants.
3. *I would like to invest in ethanol but wonder if the train has left the station.* Midwest Ag Energy is a company conceived by Great River Energy and involves the combination of an existing profitable ethanol plant (Blue Flint) with a new, state-of-the-art corn and cellulosic ethanol plant in Spiritwood, North Dakota (Dakota Spirit).
4. *Corn Fructose Sweetener is getting some bad press. I would like to turn that around.* Dynamic Food Ingredients is a company that uses corn starch to make low calorie, highly functional sweeteners. The potential market for high value sweeteners, such as DFI's products, is huge.
5. *I would like to find ways to add value to my crop residue.* C2Renew Corporation develops bio-composite compounds, using agricultural biomass, which is used as a plastic alternative in numerous applications like corn head snouts and spray booms.
6. *I am concerned my nitrogen fertilizer is leaching away too soon.* AGREBON intends to develop controlled release characteristics for its urea, to ensure enough nitrogen will be available when the corn plant needs it.
7. *I wonder if it is a good idea to invest in new companies.* North Dakota is offering big incentives for you to invest in start-up companies in the state because of the need to create a diversified, innovation-based economy here. You can receive up to 45% tax credits on the amount you invest (subject to various limits) if you participate through an Angel Fund. Also, by owning a bundle of companies through an Angel Fund your risk is reduced.
8. *I don't want to dip into my working capital to participate in this deal.* The Bank of North Dakota's Ag PACE program for farmers and the Invest program for non-farmers allows you to put up farmland or other assets up as collateral and borrow the money needed for about one percent interest, and the process is not cumbersome.
9. *What is the big picture?* The ethanol plants in the state have expressed great interest in these companies. By stepping up to the plate NOW and helping our plants adopt novel technologies we can make North Dakota the GOLD STANDARD of the ethanol industry.
10. *What is our edge?* We believe the only sustainable competitive advantage is the ability to LEARN faster than our competitors. The FUND structure allows the managers to facilitate genuine "mind share" among the six companies, allowing them to discover insights and industry knowledge not attainable individually,

*This document is not an offering of any security. The statements in this document are qualified by reference to the Private Placement Memorandum and its exhibits and schedules. There can be no assurances that the Funds will invest in any of the companies mentioned in this document. Any such investments are subject to additional investigation of the companies and the negotiation of acceptable terms, including price. The Funds may invest in additional companies that are not described in this document.*

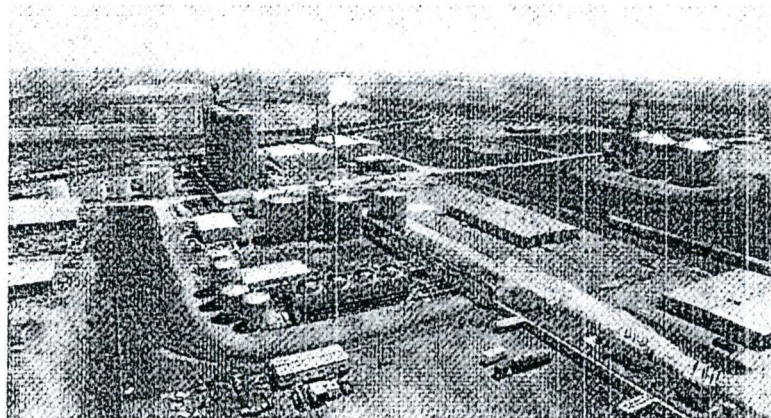
# MIDWEST AG ENERGY GROUP

**Midwest AgEnergy Group** is an upper Midwest renewable biofuels enterprise which owns Blue Flint Ethanol, LLC, an existing biorefinery, and Dakota Spirit AgEnergy, LLC, a new hybrid biorefinery.

Midwest AgEnergy Group and a consortium of key stakeholders are working together to develop and build Dakota Spirit AgEnergy adjacent to Spiritwood Station combined heat and power plant near Spiritwood, ND. A hybrid biorefinery would combine the mature technology and economies of scale of a conventional dry mill ethanol plant, Phase I, with the emerging technology of cellulosic ethanol production, Phase II.



Great River Energy is the lead developer for this enterprise along with key stakeholders including Jamestown Stutsman Development Corporation, Blue Flint Ethanol, North Dakota Department of Commerce, North Dakota Farmers Union, Inbicon, PowerStock, Karges-Faulconbridge Engineers and McGough Construction.



Blue Flint Ethanol near Underwood, ND. A sister biorefinery, Dakota Spirit AgEnergy, will be co-located next to Great River Energy's Spiritwood Station near Spiritwood, ND.

**Blue Flint Ethanol**, the biorefinery co-located next to the Coal Creek Station power plant near Underwood, ND commenced operation in 2007. It is the first co-located, directly integrated biorefinery in the world producing 60 million gallons per year (MGY) of ethanol, distillers grains and corn oil. In 2010, grain drying and storage services were built in partnership with Coal Creek Drying & Storage. The location is a key factor in making Blue Flint Ethanol one of the most cost-effective, energy-efficient, environmentally friendly plants in the country due to its purchase of steam for operation. Blue Flint Ethanol uses state-of-the-art technology to exceed the high standards set by the EPA. The plant is a zero discharge facility, producing no solid or liquid waste.

Performing profitably and competitively, Blue Flint Ethanol has proven successful approaches which will be replicated at the new Dakota Spirit AgEnergy biorefinery:

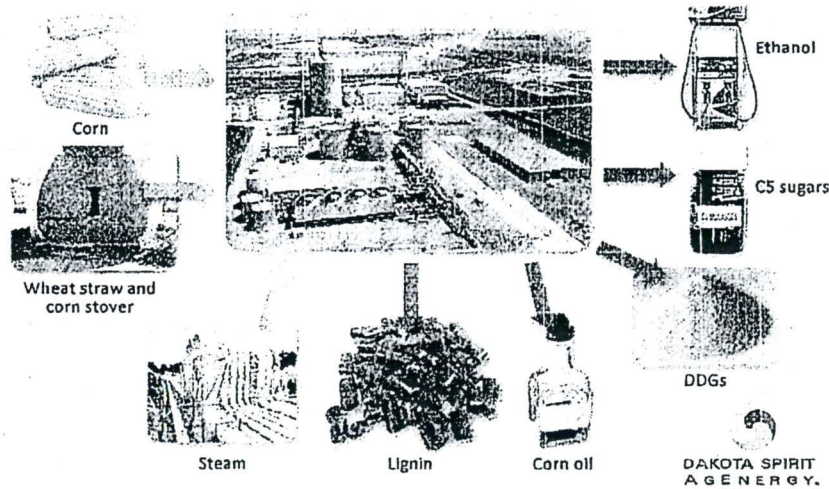
- Blue Flint is a combined heat and power (CHP) design, purchasing steam from Coal Creek Station and avoiding original plant capital for a natural gas boiler and the ongoing costs of purchasing natural gas.
- Blue Flint has diversified its top line to become a biorefinery by adding corn oil separation and an E85 blending station.
- Blue Flint serves premium markets by achieving Low Carbon designation for its ethanol.



**DAKOTA SPIRIT  
AGENERGY**

**Dakota Spirit AgEnergy** is the growth hybrid biorefinery to be co-located next to the Spiritwood Station power plant near Spiritwood, ND. Dakota Spirit AgEnergy Phase I will initially be a 65 MGY ethanol biorefinery. Innovative design improvements, corn oil separation and grain drying and storage will be implemented during construction. Dakota Spirit AgEnergy Phase II is a "bolt-on" facility to produce 10 MGY cellulosic ethanol based on enzymatic hydrolysis technology developed by Inbicon in Denmark. This future investment option creates a hybrid biorefinery fed by crop residuals (corn stover and wheat straw) and produces additional marketable products (cellulosic ethanol, C5 sugars and lignin green fuel.)

Dakota Spirit AgEnergy Phase II



**About the biorefinery**

	Phase I	Phase II
<b>Feedstock</b>	Corn – 23 million bushels	Wheat straw – 96,000 tons/year Corn Stover – 96,000 tons/year
<b>Products</b>	Ethanol – 65 MGY DDGs – 173,000 tons/year Corn Oil – 5,400 tons/year	Ethanol – 10 MGY C5 sugars – 75,000 tons/year Lignin – 68,000 tons/year

**Economic development impacts**

- 36 production jobs in the Phase I Dry Mill Ethanol Plant
- 6 production jobs for the Phase II Cellulosic Ethanol Plant
- Seasonal and part time jobs to harvest and transport the crop residues
- 175 construction and trades jobs

**Timeframe**

- 2012** Phase I Engineering, Finance and Construction
- 2013** Phase I Construction, Start Up and Commissioning
- 2014** Phase II Evaluation, engineering & financing
- 2015** Phase II Start up & Commissioning

Greg Ridderbusch	Midwest AgEnergy Group	gridderbusch@grenergy.com	763.445.5301
Sandra Broekema	Dakota Spirit AgEnergy	sbroekema@DakotaSpiritAgEnergy.com	763.445.5304
Al Christianson	Great River Energy	achristianson@grenergy.com	701.442.7664

**OVERVIEW**

- AGREBON is developing a modular, small-scale nitrogen fertilizer plant that will produce approximately 20 tons per day of ammonia or 35 tons per day of urea.
- AGREBON has an exclusive license for its proprietary technology from the Energy and Environmental Research Center of the University of North Dakota (EERC), and the technology development has been funded by PepsiCo.
- Additional IP is being developed to provide technical and market advantages focused on the integration of the system, small-scale ammonia and urea reactors and urea production.

**MILESTONES**

- EERC has completed the preliminary design phase for the technology. Most of the plant's unit operations will use off-the-shelf components that are available from various manufacturers. Certain processes will require down-sizing of existing equipment.
- Completion of basic engineering and a bid-ready design package for the ammonia plant and urea module, including preliminary piping and instrument diagrams, is scheduled for the spring of 2012. Selection of equipment vendors and final engineering will follow.
- Commencement of construction of the first plant is currently scheduled for the summer of 2012. AGREBON projects the construction of 26 plants over the next 5 years.

**KEY POINTS**

- **distributed deployment** in farming communities, thereby greatly reducing nitrogen fertilizer price volatility and transportation costs;
- **renewable inputs**, such as landfill or industrial lagoon biogas, offering a reduction in supply chain carbon for major multi-national food and beverage industry companies like PepsiCo that are aggressively pursuing corporate sustainability goals; and
- **co-location with corn ethanol plants**, where waste products can be used to produce methane as a renewable input for nitrogen fertilizer production, thereby *lowering the carbon footprint of both the ethanol plant and the fertilizer.*
- **customized outputs**, controlled release urea designed for localized growing conditions.

**BOTTOM LINE<sup>1</sup>**

- Based on Discounted Cash Flow of the financial projections at a 20% discount rate, the current value of AGREBON would be \$30 million.
- Assuming a pre-money valuation of \$30 million and a year 5-sale value of \$180 million, 6X return.
- Capture fertilizer manufacturing margins, decrease price volatility, decrease logistics cost
- Local ownership, local control of projects

Justin Eisenach, CEO  
Scott Dyer, CSO  
Ken Witt, CLO

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303-525-3954  
970-215-3161  
303-883-3285

<sup>1</sup> The above projections are based on Agrebbon management's current estimates and assumptions. Although such assumptions are based on best estimates, some assumptions will inevitably not materialize and unanticipated events and circumstances may occur. As such, the projections will vary from estimates and assumptions and these variations may be material and adverse.

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## ADVANCED NUTRIENT SYSTEMS

### OVERVIEW

- Advanced Nutrient Systems is developing techniques for controlled release of urea nitrogen into the corn plant. The goal is maximum yield, effective usage, and minimal environmental impact.
- Advanced Nutrient Systems is developing coating systems for delayed release of urea into the digestive stream of livestock.

### MILESTONES

- Advanced Nutrient Systems will conduct research throughout 2012 with the intent to provide commercial products by the spring of 2013.

### KEYPOINTS

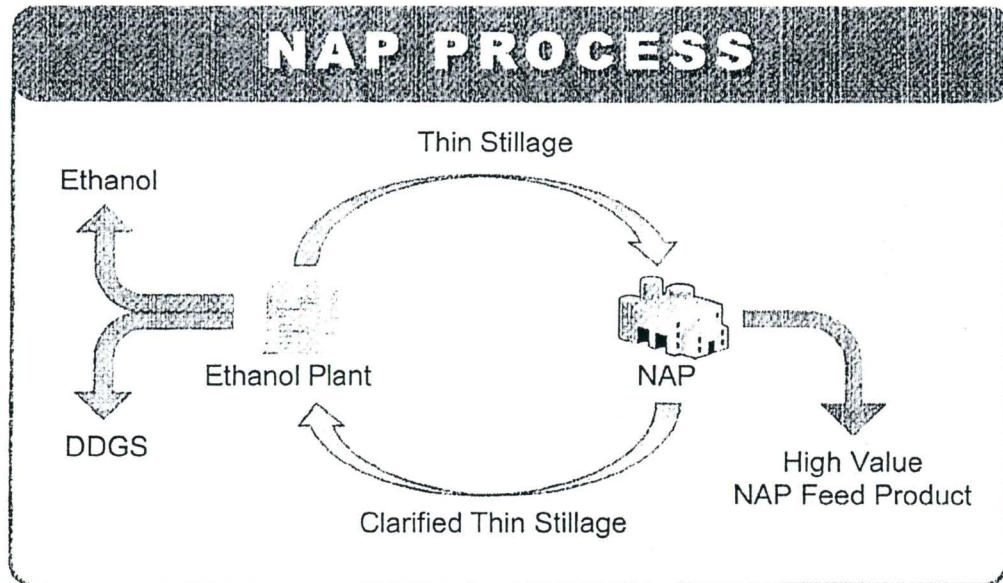
- The corn industry must advance these types of technologies to deal with public perception that fertilizers are over used and are potentially harmful to the environment.
- Broad based market demand for this technology in both horticulture and feed stocks.
- Waste streams from some of the fund companies will allow advanced science to be applied to phosphorus and micronutrient applications.

### BOTTOM LINE

- The fertilizers developed by these fund companies will not participate in the commodity space. Instead they will be considered differentiated products for highly targeted markets which carry a significant premium.



North American Protein (NAP) is an established company focused on implementing patent pending waste solution technologies aimed at converting low value waste streams into higher value products. NAP currently has developed a proven technology capable of capitalizing on opportunities within the grain to ethanol industry.



NAP's patent pending waste solution technology utilizes a well understood science, fungal fermentation, to generate high value animal feed using low cost waste streams (**Thin Stillage**) as the feedstock. A fungi is introduced to the Thin Stillage under controlled environmental conditions. Over a short period of time the fungi consumes the undesirable solids and chemicals present in the Thin Stillage, resulting in an increase it's "body weight" by over 250x in less than 48 hours. The fungal mass is easily separable from the now **Clarified Thin Stillage**. Once separated, the fungal mass is dried and ground, the resulting product is a high value animal feed ingredient.

The **Clarified Thin Stillage** is recycled back to the ethanol plant for use in ethanol production. The use of **Clarified Thin Stillage** improves the efficiency of the ethanol plant's operations, resulting in a projected increase in ethanol yield of 3-5% and substantially increasing plant profitability. This efficiency factor is a direct result of the changes the fungi make in the process of turning the **Thin Stillage** into **Clarified Thin Stillage**.



## Business Model

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### Alpha Plant

NAP seeks capital to install the Alpha plant to demonstrate the efficacy of the technology and its positive impact on an ethanol plant. The Alpha plant will provide access as well as operating data helping to prove the increased efficiency gained through the introduction of the NAP process. Operating data from the Alpha plant is expected to allow NAP to expand thereafter by 5 plants annually.

### Sales and Marketing

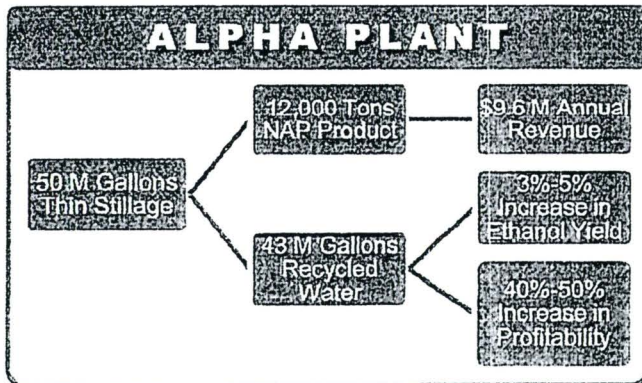
NAP has entered into a sales and marketing agreement with Value Added Science & Technologies, LLC (VAST) whose industry leadership will allow for rapid penetration into the animal nutrition market. The use of *Aspergillus oryzae* in animal feeds is pre-approved by all regulatory agencies. Initial application of the products will be aimed at domestic swine diets, but will be expanded globally across numerous species' diets. Additionally, VAST will build on preliminary studies which suggest the product is effective as a high value nutraceutical. Similar products in the marketplace sell for \$2,000-\$8,000 / ton.

### IP Protection

NAP has filed a provisional patent application covering the use of the technology as a means to improve ethanol yields and to generate a product for high value use in animal feeds. Additionally, proprietary trade secrets and operating parameters are closely held within founder level ownership, and are therefore corporate assets. NAP believes we have significant first mover status commensurate with projected business growth plans. Additional patents are planned.

### Strategic Partners

- ❖ Harris Mechanical: Extensive design build experience across multiple industries
- ❖ US Water Services: Industry leader in wastewater treatment, services over half the ethanol industry
- ❖ VAST: Leader in animal health and wellness products and services



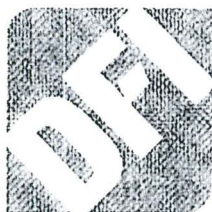
### Community Impact

- ❖ 25 new production jobs
- ❖ Increased stability of ethanol plant
- ❖ Increased demand for corn at the plant
- ❖ 150+ Construction jobs

### Development Timeline

- Q2 - 2012 Break ground on "Alpha" production facility.
- Q1 - 2013 Conclude construction of "Alpha" production facility
- Q2 - 2013 Start up and commissioning  
Begin product sales  
Begin technology roll out marketing
- Q2 - 2014 Break ground on production facility 2-5
- Q1 - 2015 Commissioning and start up of facilities 2-5

Name: _____ Title: _____ Phone: _____	<a href="mailto:jbwicking@northamericanprotein.com">jbwicking@northamericanprotein.com</a> <a href="mailto:kpetersen@northamericanprotein.com">kpetersen@northamericanprotein.com</a> <a href="mailto:tcassel@northamericanprotein.com">tcassel@northamericanprotein.com</a>	Date: _____ Time: _____ Location: _____
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## **Company Overview**

Dynamic Food Ingredients Corporation (DFI) is a high-tech agribusiness company, with patented technology for the production of two high-value natural sweeteners. Both erythritol and xylitol are important ingredients in the natural foods sector and health sectors; however, their application is severely constrained due to raw materials and processing costs. DFI uses patented "green" electrochemistry to replace harsh chemicals and days-long processes to transform corn-based raw materials in very efficient conversions. DFI has proven the technology and is currently building a pilot plant in order to gather all the data required for a full scale manufacturing facility to produce tens of thousands of tons per year. Moreover, DFI will leverage its expertise in electrochemistry for the production of other bio-renewable materials as well as energy storage solutions.

## **Company Process**

DFI employs patented electrochemical technology. Electrochemistry uses electricity to apply work to raw materials. DFI uses proprietary equipment for its electrochemical processes, but standard corn sweetener processing equipment for the bulk of its production technology.

## **Business Model Summary**

DFI's business model is founded on the full-scale industrialization of their processes for the production of erythritol and xylitol. Current efforts are focused constructing an erythritol plant that will produce tens of thousands of tons, to meet the current demand for the product, which is currently not met. Independent technology consultants S K Patil & Associates reviewed DFI's technology concluding that it was "a unique opportunity...sweetener landscape-changing event" and that it is a "paradigm shift in the specialty polyols manufacturing worldwide."

## **Patent Information**

In addition to several patents pending, DFI has been granted patents throughout the world for its first two core patents:

James N. BeMiller, Jonathan A. Stapley. Process for the production of xylitol. US 7,598,374.

Jonathan A. Stapley, J. David Genders, Daniel M. Atherton, Peter M. Kendall. Methods for the electrolytic production of erythrose or erythritol. US 7,955,489.

## **Alpha Installation**

DFI is currently identifying sites for the industrial scale manufacturing facility and finalizing the details for construction and costs through the pilotization process.

## **Management Team Bios**

DFI is managed by committed members including the Company's President and Chief Executive Officer, Paul Magnotto, the Chief Technology Officer, Dr. Jonathan Stapley, and the Board Chairman, former US Secretary of Agriculture and North Dakota Governor Edward Schafer.

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2/9/17  
HB 1282

**From:** Bill Patrie [<mailto:bill@cedc.coop>]  
**Sent:** Saturday, March 31, 2012 10:15 AM  
**To:** 'Darin Anderson'; 'Kevin Skunes'; 'Tom Lilja'  
**Cc:** 'Becky L. Bowen'; 'bstockman@bis.midco.net'  
**Subject:** FW: Corn Related Document

Gentlemen,

Please take some time to read through this document. I believe a serious breach of operating procedures for NDCUC and NDCGA, and perhaps federal and state law has occurred. The companies mentioned by name and logo may well have a cause of action against your organizations. I recommend you seek legal council and design a strategy for informing the companies listed in this document that this action was not authorized by your organizations. Because the solicitation occurred by mail, there may be federal statutes that apply and your attorney would best advise you as to who else you may need to notify.

I think it best that any communication between you and Wallie occur only after you have had a chance to talk with council. This document was received by Neil Doty by mail, however there were other materials available for distribution at the meetings referenced. Your attorney can advise you as to whether or not you may wish to get copies of those materials as well. We were previously informed that PepsiCo had not allowed it name to be used in conjunction with Agrebon. Agrebon would be responsible for that violation.

Bill Patrie  
Executive Director  
Common Enterprise Development Corporation  
400 W. Main St. PO Box 1076  
Mandan, ND 58554-7076  
701-663-3886  
cell 701-391-3799

**From:** Neil Doty [<mailto:neild@ncdoty.com>]  
**Sent:** Friday, March 30, 2012 10:50 AM  
**To:** 'Tom Lilja'  
**Cc:** 'Bill Patrie'; 'Becky Bowen'  
**Subject:** Corn Related Document

Tom:

I received the attached document by mail. Since the document references companies that have received funding by the North Dakota Corn Council, I am forwarding this document to you for your records.

Best regards,

Neil Doty

Neil C. Doty, Ph.D.

1

**N.C. Doty & Associates, LLC**

2427 Victoria Rose Drive S.

Fargo, ND 58104-6824

Phone: 701-297-7500

Fax: 701-232-4107

Cell: 701-238-6169

E-mail: [neild@ncdoty.com](mailto:neild@ncdoty.com)

Cc: Bill Patrie and Becky Bowen, CEDC

5  
2/9/17

Testimony of HB 1282 – Limitations on Commodity Groups

Dale Ihry, on behalf of the North Dakota Corn Utilization Council

Good Morning Chairman Johnson and members of the House Agricultural Committee. For the record my name is Dale Ihry. I am the Executive Director of the ND Corn Utilization Council (NDCUC) and the ND Corn Growers (NDCGA) with the office located in Fargo, ND. My testimony is for educational purposes on the bill related to questions that the NDCUC has, based on this legislation. *We are opposed.*

The NDCUC board, as stated in statute, sits 7 board members in 7 districts in the state. The NDCUC staff consists of myself and two other employees.

The NDCUC board's responsibility is to manage the corn checkoff funds which is set at a value based level of  $\frac{1}{4}$  of 1% of the value of the bushel of corn sold at a market in ND. This amounts to roughly \$1 / acre of corn harvested and sold in ND.

I was hired by the NDCUC and NDCGA in the fall of 2015. I was new to the commodity organization world, however did spend over 30 years in federal government, working in part with farmers and commodity organizations.

Shortly after I started we reached to nearly every commodity group in North Dakota, most of them in this room, to ask about their operations, with checkoff and grower organizations. In addition, in January of 2016, some of our board members, from both of the NDCUC and NDCGA boards, met with and were provided direction from, some legislative leaders in the state, along with Commissioner Goehring. They provided direction and a blueprint to make changes. Our group did ask "for some time" to make suggested changes – as the organizations have been in existence for over 25 years.

After reviewing operations of several commodity groups, it was decided to use ND Soybean Council and Growers and the ND Wheat Commission and the ND Grain Growers, as two commodity groups to draw direction and information from. They have been great partners in this process.

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The results of the changes made since November of 2015 is that NDCUC received a clean audit, based the review of operations under the current staff.

The NDCUC works with many state, regional, and national organizations that range from research institutions to nonprofit organizations. Examples include working relationships with the NDCGA and other councils and grower associations; working with and providing financial support to the National Corn Growers Association, the US Grains Council, to name a few.

The question about this legislative proposal are: could there be unintended consequences with these changes? For example, what is the definition or examples of "conflict of interest" stated in item 5 d? And what is the definition of or examples of "with cause" in item 6?

In closing, the NDCUC board and staff, are doing our best to ensure the corn checkoff funds are used as stated in law – that is to help our North Dakota corn farmers find positive results in their fields, at their market place and in their bottom line.

Thank you and I would be happy to answer any questions.

**NDCUC and NDCGA  
FUNDING DECISION CHART  
(December 2016)**

Research/Mini-Grant/Sponsorship – Who Can Approve	NDCUC	NDCGA
Request for Political Donation	No	Yes
Request for Sponsoring an Ag Event – FFA, 4-H, Commodity or Livestock Event, etc.	Yes	Yes
Request for Funds to use for policy/legislative work	No	Yes
Request for Research funds for Corn – New Productions	Yes	Yes
Request for Research funds for Corn – Production, Diseases	Yes	Yes
Request from “One” Private Sector company – to buy down (coupon) ethanol. (This must be offered to all ethanol retailers.)	No	Yes
Request to Sponsor a Meal at a non-Ag function:	No	Yes
Request to Sponsor a Meal at a non-Ag function, however the promotion of corn and/or corn products is offered.	Yes	Yes
Request to for funds for ND Legislative Function	No	Yes.
Request for Contract to Lobby – Federal or State Issues	No	Yes
Request for memberships to NCGA are paid for by NDCUC or NDCGA	No	Yes
Request from Private Sector for Corn related research. (Educational in nature are acceptable, they must submit proposal to Council. If the project is something the Council initiates, an RFP must be used. Council cannot fund value added or feasibility studies from private companies.)	No	Yes



**ND Commodity Groups  
Board Size Comparison  
January 2017**

<b>Commodity</b>	<b>Council 1/</b>	<b>Grower 2/</b>	<b>Total</b>
<b>Corn 3/</b>	<b>7</b>	<b>17</b>	<b>24</b>
<b>Soybeans</b>	<b>12</b>	<b>14</b>	<b>26</b>
<b>Wheat/Barley</b>	<b>12</b>	<b>11</b>	<b>23</b>
<b>Beef/Stockmans</b>	<b>9</b>	<b>24</b>	<b>33</b>
<b>Dry Beans</b>	<b>6</b>	<b>15</b>	<b>21</b>
<b>Canola /Sunflower/ Oilseeds</b>	<b>9</b>	<b>11</b>	<b>20</b>

- 1/Based on Statute**
- 2/Determined by Association**
- 3/Voting members.**





**ND Commodity Groups  
Board Size Comparison  
February 2017**

<b>Commodity</b>	<b>Council 1/</b>	<b>Grower 2/</b>	<b>Total</b>
<b>Corn</b>	<b>7</b>	<b>17</b>	<b>24</b>
<b>Soybeans</b>	<b>12</b>	<b>14</b>	<b>26</b>
<b>Wheat Commission and NDGGA</b>	<b>7</b>	<b>11</b>	<b>18</b>
<b>Barley Council 3/</b>	<b>5</b>	<b>0</b>	<b>5</b>
<b>Beef Commission and ND Stockmen</b>	<b>9</b>	<b>27</b>	<b>36</b>
<b>Dry Beans – ND / MN Councils and Northarvest Bean Growers</b>	<b>6/5</b>	<b>9</b>	<b>20</b>
<b>Canola /Sunflower/ Oilseeds</b>	<b>9</b>	<b>11</b>	<b>20</b>

**1/Based on Statute**

**2/Determined by Association**

**3/ Barley Council Contracts with NDGAA**

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Testimony of NDWC Chair, David Clough, HB1282, February 9, 2017

Good morning, Mr. Chairman and members of the House Agriculture Committee.

My name is David Clough. I am Chair of the North Dakota Wheat Commission.

I am here today to share some concerns regarding House Bill 1282. In doing so, I would like to provide some additional information regarding the Wheat Commission's membership, structure, and governance; and to illustrate how well that structure and governance model has served the producers and the state of North Dakota over the years. Provisions of this bill could potentially threaten the substantial contributions commodity groups are delivering on behalf of producers and the entire state economy. Some of this information may also apply to other commodity groups that may also wish to share comments regarding House Bill 1282 today.

The Board of Commissioners or directors of the North Dakota Wheat Commission's six production-weighted Districts are elected by their "active wheat producer" peers, as directed in state statute. The first step is to be nominated and elected at the county level, and subsequently in the respective district. Commission members serve four-year terms and are eligible to serve second and third (four year) terms if re-elected again, at county and district levels. No Commission member may serve more than three (3) terms in total.

A seventh Commissioner is appointed by the governor from a list of three (3) nominees, presented to the Governor following a thorough vetting process, with extensive involvement by producer and stakeholder entities representing the broader interests of agriculture in the State of North Dakota. Board members have regular, structured contact with their county representatives to communicate progress on issues and programs, and to ensure the activities and issue management strategies of the Commission are meeting the expectations of its constituent base.

The North Dakota Wheat Commission was created by state statute in 1959, the first such commodity organization in North Dakota. The Wheat Commission has for nearly 60 years been regarded as a producer-driven organization made up of active wheat producers. The Commission is primarily known for its development

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of and active involvement in successful Foreign Market Development Programs, Wheat Research Initiatives, Domestic Market Promotion, Producer and Customer Education and Outreach Programs for the primary benefit of the more than 15,000 wheat producers in North Dakota.

Successful execution of effective core programs, accompanied by good governance and accountability have resulted in (producer/stakeholder) approval and acceptance ratings of nearly 94 percent. Commission programs and operations are funded entirely by a 1.5 cent per bushel checkoff on wheat sold in North Dakota. All wheat checkoff funds are held in the Wheat Commission specific account at the State Treasurer's Office, and all transactions and contracts are approved and processed by the North Dakota Office of Management and Budget.

The Wheat Commission (and other state commodity groups) make biennial progress and financial reports to legislative leadership early in each legislative session, and have regular audits conducted by the State Auditor's Office prior to each legislative session. This ensures that producer funded, producer driven commodity organizations, like the Wheat Commission, operate in the manner directed by the enabling legislation, and expected by the producers who provide (all of) the funding through their individual checkoff contributions.

Wheat is the largest agricultural enterprise in the state's largest industry (Agriculture) and has long been identified as a prominent contributor to the overall economy and well-being of the state of North Dakota, agriculturally or otherwise.

Today we know the state of North Dakota has a more diversified economy and a much more diversified agriculture than was the case even a decade or so ago. Likewise, additional commodity organizations have been established accordingly, each with appropriately individual, commodity specific missions and programs, and each making its own distinct contribution to the economy. This is the diversity in the state's largest industry that has been sought for generations. More importantly, a great deal has been accomplished in the process: by the special and individual attention devoted to each commodity.

In the case of wheat: average (per acre) yields have doubled and production and management practices have advanced greatly. Impressive economic gains have also been accomplished through improved genetics, disease resistance, product functionality, end-use quality, customer satisfaction, and substantial growth in sales volume and value in key markets, worldwide.

Many of our offshore markets have become dedicated, repeat customers gained through active deployment of export market development and technical servicing programs which differentiate our high quality wheats from those of more "generic" US or global origins, ultimately generating premium prices for our producers and premium product performance for our customers.

The wheat classes produced in North Dakota and our region are differentiated from the rest under a unique form of "Product Branding". The "brand" is based on end use performance features that customers want, and pay premium prices for those specific performance features.

World wheat prices are suffering under a glut of medium quality, generic wheat. But for much of the current marketing season, local prices for hard red spring wheat have been as much as \$2.00 per bushel higher than the price of other, more generic wheats in the US, from the Black Sea region, or other global competitors.

(This is what Microsoft, Google, and others do to separate themselves from the competition!)

These local price premiums for premium quality, combined with recent Back to Back record yields have made a significant, positive difference in the economy of the state of North Dakota and the region. Similar advancements in the greater diversity of crops available to North Dakota producers should also be noted as a result of deliberate and measured programs and actions by North Dakota producers, commodity leaders, and their partners.

Most of the accomplishments in North Dakota agriculture involve very productive partnership arrangements. For example, each year important contracts are approved with US Wheat Associates; the wheat research and extension team at North Dakota State University; state, regional and national grower associations;

the Northern Crops Institute; Wheat Marketing Center; Wheat Foods Council; National Pasta Association and others. North Dakota producer representatives often play very important roles in the elected leadership of national industry organizations and national committees.

The Wheat Commission's partnership contract with US Wheat Associates involves membership with 18 other state wheat commissions and councils. This joint effort leverages additional Federal funding through contracts with USDA's Foreign Agriculture Service to support 15 strategically located regional overseas offices.

Right there, with boots on the ground every day, professional USW staff provide technical support to quality conscious foreign customers; delivered in the form of wheat utilization education, procurement, logistics, and contract specification assistance for flour millers and other wheat importing customers in over 100 countries. These business relationships coupled with development of sound domestic and trade policies foster additional market growth and repeat business in key global markets. In Taiwan and in the Philippines, two of our top ten customers, our market shares today stand at nearly 90 percent, a 50-year business relationship and still growing.

Another measure, or perhaps a proxy for effectiveness, is the reputation the North Dakota wheat Industry has gained over the years with peer states across the country. Whether in the research field, the export market development arena, or wheat end-use quality, North Dakota wheat and North Dakota agricultural research, production, marketing, promotion and policy pursuits are all held in very high regard by partner organizations nationwide.

As the Chair of the North Dakota Wheat Commission, I am extremely proud of the Commission, its members, its programs and those of our partner organizations. North Dakota commodity groups and their elected members are enthusiastic and responsible volunteer supporters of North Dakota's largest industry and generator of new wealth. Given the current state of local, national and international affairs, the continued progress and momentum of North Dakota agriculture and the individual investment of time, talent, and resources by these producers and their organizations may be more important now than ever before.

A few weeks ago, with a great deal of enthusiasm the Commission and other commodity groups shared highlights of that important information with this committee and your colleagues on the Senate Agriculture Committee. That same enthusiasm will be critically important in maintaining and expanding the progress that has been gained. We will be faced with great opportunities and yet daunting challenges in crafting effective future wheat research and export market development programs; negotiating critical New Farm Bill provisions; and successfully navigating an increasingly complex and competitive global trade environment. All are extremely important to the future vitality and viability of our state's largest industry. The North Dakota Wheat Commission fully supports these time tested programs that ultimately result in significant contributions to the economy, and help ensure continued opportunity and economic security for our state and nation.

However, we are concerned by the potential for loss of momentum and progress, which may result from misinterpretation or unintended consequences of this bill (HB1282).

Thank you.

If you have any questions I will try to answer them.



Your voice for wheat and barley. [www.ndgga.com](http://www.ndgga.com)

**North Dakota Grain Growers Association**  
**Testimony on HB 1282**  
**House Agriculture Committee**  
**February 9, 2017**

Chairman Johnson, members of the House Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). Through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council NDGGA engages in domestic policy issues on behalf of North Dakota wheat and barley farmers on the state and national levels. NDGGA appears before you today in opposition to HB 1282.

Partnerships are the lifeblood of commodity groups and their activities. In NDGGA's case those partnerships include but are not exclusive to the North Dakota Wheat Commission, the North Dakota Barley Council and NDSU on the state level and the National Association of Wheat Growers and National Barley Growers Association on the national level. NDGGA also works with other farm organizations on the state and national levels to serve North Dakota wheat and barley farmers as well as North Dakota agriculture in the best manner possible. Ultimately, just as you do, it is serving our constituents, the North Dakota farmers, that is the mission for our Association. NDGGA constantly strives to improve those partnerships; that is why our Association has concerns with HB 1282.

Specifically NDGGA is concerned with page 2 lines 5-10 of the bill; the language in the measure, in our opinion, is confusing and could be interpreted in a manner that is counter-productive to the partnership building process. NDGGA is also concerned about the lack of definitions of "actual conflict of interest" on page 2 lines 14 and 15 and "cause" on page 2 line 17. While it would be our understanding that the legislation is designed to clarify procedures for commodity groups it would seem that HB 1282 "muddies the waters" more than clarifies procedure. Our concern is such actions could inhibit or possibly prevent the partnership opportunities which benefit North Dakota farmers.

*NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.*

We get it! The overall message put forth in HB 1282 is clear to the North Dakota Grain Growers Association; take care of business or the Legislature will. The message of HB 1282, from the NDGGA perspective, has been received loud and clear. While the message of the legislation is clear the language in the bill is not; therefore, Chairman Johnson, members of the House Agriculture Committee, the North Dakota Grain Growers Association respectfully requests a Do Not Pass on HB 1282.





# U.S. Durum Growers Association

PROMOTING THE PRODUCTION AND MARKETING OF DURUM AND SEMOLINA

P.O. Box 1091 • Bismarck, ND 58502 • (701) 214-3203  
office@durumgrowers.com • www.durumgrowers.com

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2/9/17

## Testimony of Russell Doe USDGA Past President In Opposition to HB 1282

Chairman Johnson and members of the House Agriculture Committee:

My name is Russell Doe, and I farm near Reeder. I am here today as the past president of the U.S. Durum Growers Association (USDGA) in opposition to HB 1282, as we are unclear on the intent of the bill and how it may directly impact the commodity councils, as well as affiliated grower organizations, such as the U.S. Durum Growers Association.

USDGA has represented the nation's durum growers for more than 60 years. Today, we represent more than 150 grower and industry members from 10 states with North Dakota producing 60 percent of the nation's durum.

Our organization is concerned with the lack of clarity on the intent of the bill and, in turn, the potential impact to not only the commodity councils, but also the grower groups that work closely with the councils to promote and advocate for their respective crops. USDGA has a strong working relationship with the North Dakota Wheat Commission, which it has been under contract with since 2005 to provide domestic public policy services. We are unsure what impact this bill will have on that long-term relationship.

As growers, we also feel there currently are adequate checks and balances in place through the commodity councils. The current system puts growers in charge of grower dollars. Directors are elected by their peers in a competitive election process, and each grower has the option to refund should it disagree with the actions of the respective council.

For these reasons, USDGA would encourage a Do Not Pass recommendation on HB 1282.

**Testimony of Beau Anderson**  
**House Bill 1282**  
**House Agriculture Committee**  
**Peace Garden Room**  
**February 9, 2017**

Good morning Chairman Johnson and members of the Agriculture Committee. For the record, I am Beau Anderson, producer from Williston ND. I am here to testify in opposition to HB1282. I recently completed nine years on the Northern Pulse Growers Association board of directors and I currently serve as Vice Chairman of the USA Dry Pea & Lentil Council.

Our industry has seen a tremendous amount of growth over the past several years. New market opportunities have provided pulse producers with a profit in this difficult agriculture climate. Our industry had record production last year and current forecasts project a possible 35% increase in 2017. The pulse industry is relatively small as is the amount of money available to accomplish the goals of the industry. We are very fortunate and grateful that our producers support the organizations through their check off dollars. Given that their check off is voluntary and refundable, I attribute their strong support to the fact they believe the industry is accomplishing their goals and priorities.

The Northern Pulse Growers Association and USA Dry Pea & Lentil Council have contracted with the North Dakota Dry Pea & Lentil Council since it began. The two organizations have the expertise and direct connection to the growers that have made the industry the success it is today.

These relationships and collaborations took years to achieve. While each organization has its own board and Council members, they share in the decision making by actively participating in committee work both on a state and national level. As I producer, I feel confident knowing that I have a say in what projects and activities are funded with my check off funds.

Changing this dynamic will make it difficult for producers to stay connected to something that took almost 20 years to build. It will make it more difficult finding members willing to contribute their time to boards and commission if they feel expressing their views may result in removal.

I urge you to consider the strong support that the ND agriculture industry receives from its producers. This relationship is something that is not always seen in other States. I would urge you to vote a do not pass on HB1282.

Thank you. I would be happy to answer any questions you may have.

Testimony of Kevin Haas  
House Bill 1282  
House Agriculture Committee  
Peace Garden Room  
February 9, 2017

Good morning Chairman Johnson and members of the House Agriculture Committee. For the record, my name is Kevin Haas and I am outgoing Chair of the ND Dry Pea & Lentil Council. I am here to today to voice my opposition as a pulse producer and pulse processor to HB1282.

I have served on the ND Dry Pea & Lentil Council for the maximum term limit of nine years. I, as others on the ND Dry Pea & Lentil Council, were elected by fellow producers to carry out the responsibilities of collecting and allocating pulse check off dollars on their behalf. The ND Dry Pea & Lentil Council has done so since the inception of the check off in 1997.

The ND Dry Pea & Lentil Council currently contracts with the USA Dry Pea & Lentil Council and the Northern Pulse Growers Association to promote pulse production through education, domestic and international marketing and research. The ND Dry Pea & Lentil Council also contracts its administration of day to day activities. Since 1997, this administration of day to day duties as well as the other program areas have gone through the procurement with the State procurement staff acting as the procurement officer on behalf of the ND Dry Pea & Lentil Council. In addition, the ND Dry Pea & Lentil Council has received counsel/contract services from five prior Assistant Attorney Generals. Each State Audit which has been conducted to date without incident or suggested changes.

The ND Dry Pea & Lentil Council members serve on both the USA Dry Pea & Lentil Council and Northern Pulse Growers Association committees on education, marketing and research to ensure that funds are expended on projects and activities on behalf of producers. As an example, one of our Council members spends an entire week reviewing research proposals with producers from across the industry to determine funding awards. These decisions are based on producer priorities indicated by surveys and feedback received from grower meetings.

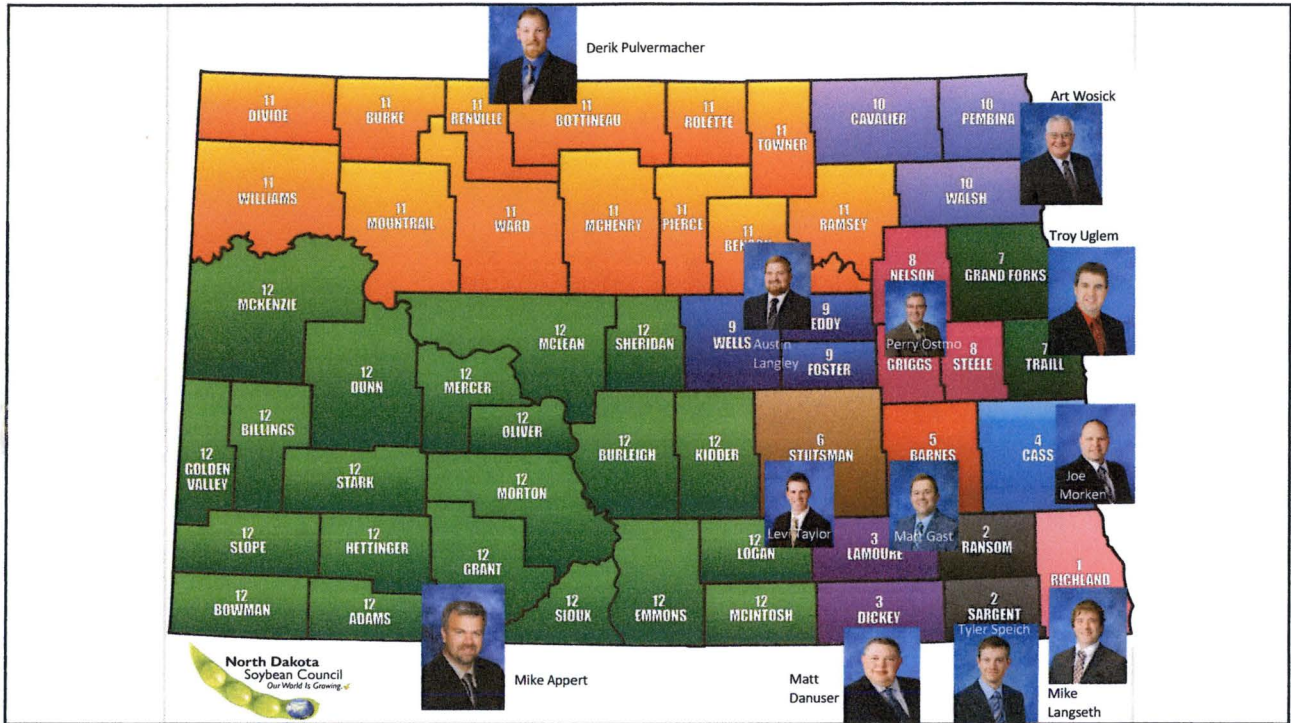
The pulse industry through collaborative efforts of the ND Dry Pea & Lentil Council, USA Dry Pea & Lentil Council and the Northern Pulse Growers Association has had tremendous success over the past several years. Record acres were planted across the U.S. with the region currently accounting for more than 80% of total U.S. production. Marketing opportunities have continued to expand as pulses are being used for more and more products domestically and internationally.

I would urge you all to consider how this industry has flourished over the past several years due in large part to the synergy of these organizations for the past twenty years. I would encourage a do not pass on HB1282 as it would substantially change this relationship and potentially the ability to find members willing to serve on commodity boards. Thank you. I would be happy to answer any questions you may have.

Addressing HB #1282  
02/09/2017

Byron Lannoye  
General Manager  
Pulse USA Inc.  
Bismarck ND 58504

My name is Byron Lannoye and I have been involved with the ND dry pea and lentil industry either as a grower or a business owner for approximately 20 years. In 2006 I retired from farming and I was hired as GM of Pulse USA Inc., a pulse crop seed company based out of Bismarck ND. As a pulse crop grower, I took a chance and started growing dry field peas in the mid to late 1990's. There was approximately 30,000 acres of dry field peas being grown in ND in that time frame and I honestly had no idea where I was going to sell my field pea production. In 1999 I joined the ND Dry Pea and Lentil Association (NDDPLA) as a board member and eventually I was elected President of the NDDPLA until my retirement from the board in 2006. Within that time period we worked diligently to get pulse crops entered into government farm programs and we worked very closely with USDA Risk Management Agency to provide crop insurance for pulse crop growers. During the time that I was President of NDDPLA we were rapidly outgrowing the staff of the management agency that we had contracted to take care of the NDDPLA and the North Dakota Dry Pea and Lentil Council (NDDPLC) business/finances/checkoffs. We could see it was necessary to have dedicated staff members and our own office to handle all of the affairs of the NDDPLA and the NDDPLC in an efficient and timely manner. In 2005 - 2006 we opened the NDDPLA office on Burnt Boat Drive in Bismarck staffed with two of our own full time employees. Those first two employees are solely responsible for the growth of the organization that is now known as the Northern Pulse Growers Association (NPGA). The NPGA was formed in 2006 to provide not only ND pulse growers with an association, it also included MT pulse growers in the group. Today we have the NPGA, the NDDPLC and the Montana Pulse Advisory Committee (MPAC) working as one unified group. The pulse acreages of ND and MT have grown to be a combined planted acreage of over 2,000,000 acres in 2016 under the guidance and efforts of the NPGA. Remember the 30,000 acre number I mentioned when I started growing pulse crops? That number was close to the entire acreage of pulse crops in ND and MT at the time! The NPGA has also been responsible for the increased number of pulse crop processors within the state of ND and MT. When I look back to the 1990's when I didn't know where to sell my production to the number of processor's we have operating within ND now, I think it safe to say the NPGA has done an excellent job. I furthermore find it hard to understand why we would want to change the way the NPGA and the NDDPLC operate when they have grown ND pulse acreages to approx. 900,000 planted acres in 2016. These organizations were put together by and for growers with complete oversight by the great State of ND and the existing system has worked well since its inception. In conclusion I am very proud of the pulse crop industry and growers in ND. I am equally as proud of the NPGA employees that have diligently provided the segway for all factions of this industry to flourish. I think it's safe to say that this is an enormous success story for the State of North Dakota!



## North Dakota Soybean Council

Checkoff Investments



Research

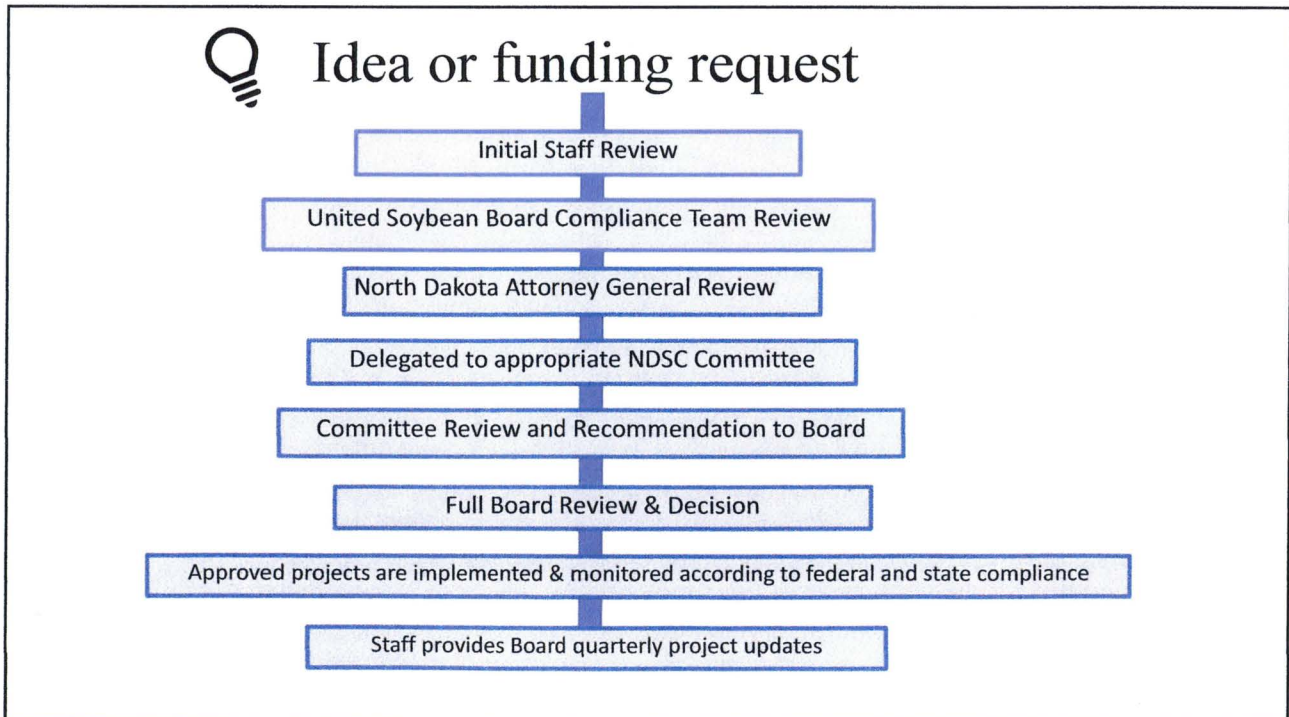
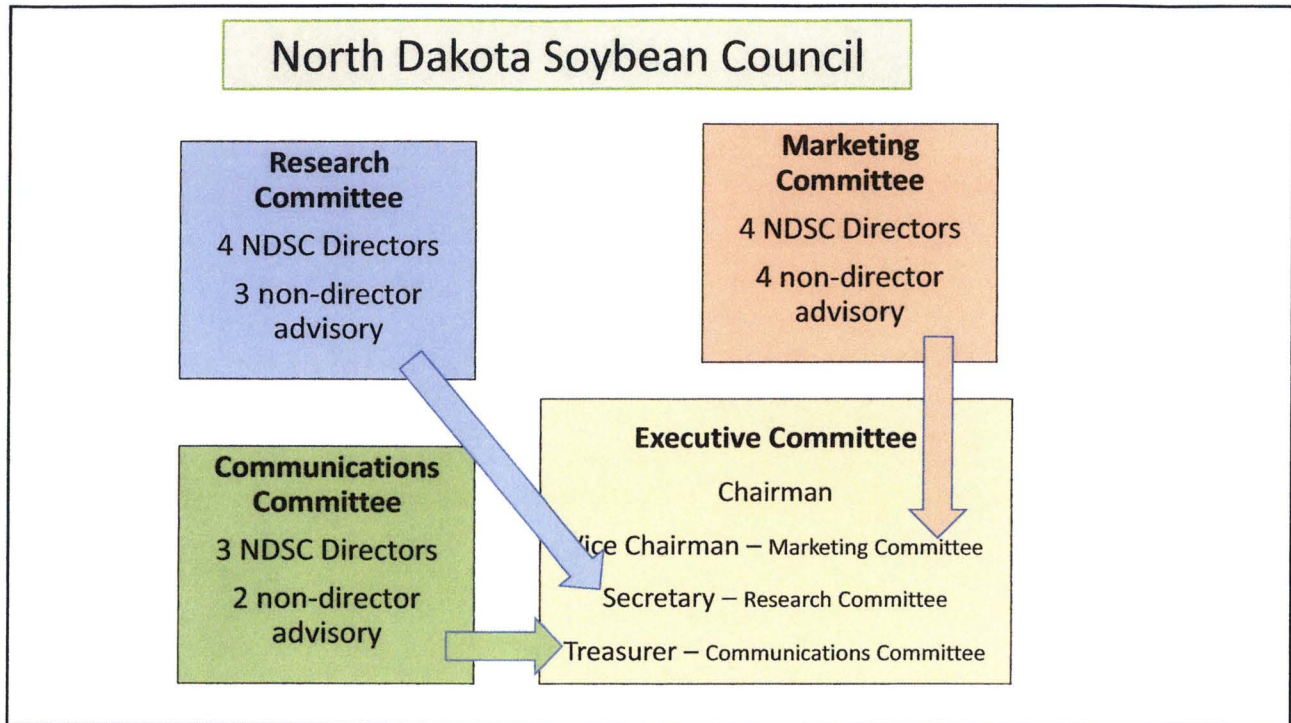
Market Development

Education & Communications

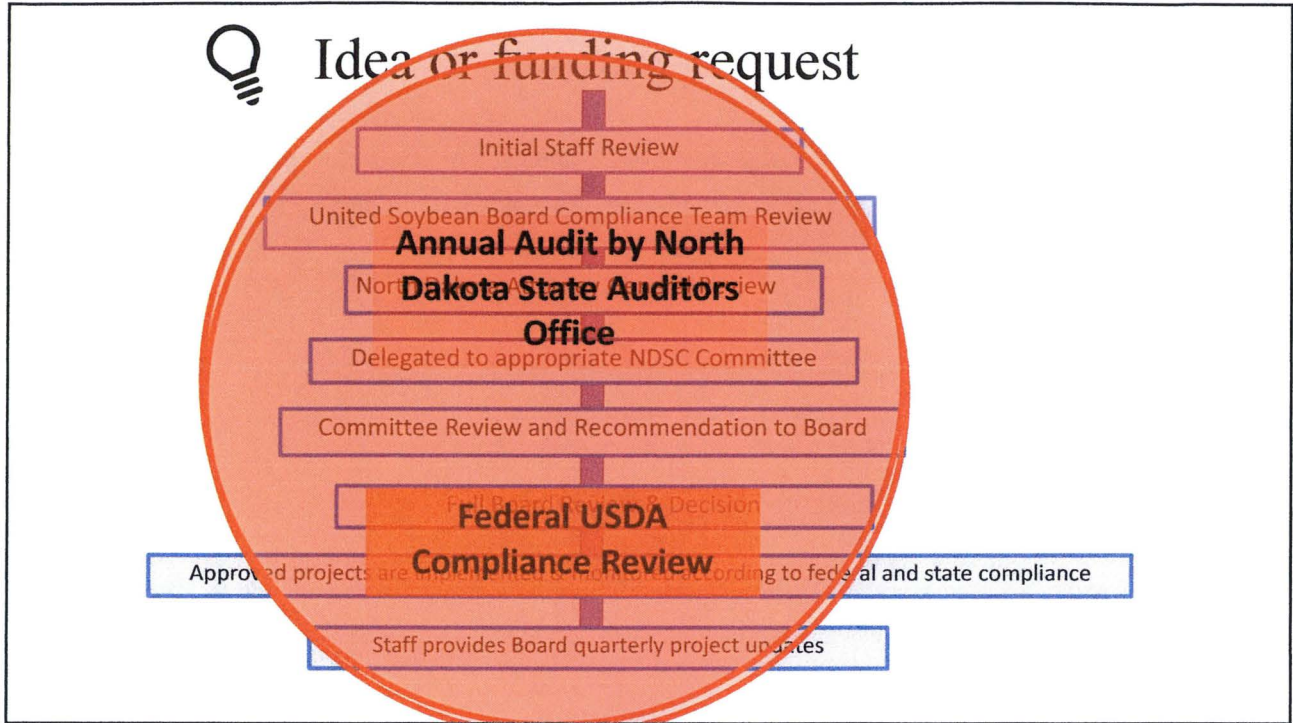


**Mission:**

**Effectively invest and leverage N.D. soybean checkoff resources to maximize the benefits of N.D. soy to soybean producers.**







Thank You.

COMMISSIONER  
DOUG



13  
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 Tom Bodine  
Deputy Agriculture Commissioner  
House Bill 1282  
House Agriculture Committee  
Peace Garden  
February 9, 2017

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Chairman Johnson and members of the House Agriculture Committee, I am Deputy Agriculture Commissioner Tom Bodine, and I am here representing Agriculture Commissioner Doug Goehring. I am here to provide information in a neutral position to House Bill 1282.

First and foremost, I'd like to say that the Commissioner greatly values and supports North Dakota's Commodity Councils, and would like to thank them for their service and the work they have done to move agriculture forward in the state.

Recently the Department was asked to provide temporary assistance to the North Dakota Dry Pea and Lentil Council to improve their procurement practices. We provided them with two options that would have brought them into compliance with state procurement laws and rules. After the council reviewed the options we provided, they choose not to accept or implement either of the two possible solutions.

Chairman Johnson, thank you for your time and I'd be happy to answer any questions.

House Bill 1282

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2/9/17

House Agriculture Committee  
Chairman Dennis Johnson

Chairman Johnson and members of the House Agriculture committee, my name is Sherry Neas, Director of Central Services in the Office of Management and Budget.

OMB respects the need to "stay in our own lane." This bill amends Agricultural law to incorporate requirements related to state procurement laws, rules, and guidelines. Under existing state laws, OMB has oversight of procurement for the executive branch of government, excluding institutions under the jurisdiction of the State Board of Higher Education. Therefore, OMB is a stakeholder in this bill.

OMB has visited with Rep. Brandenburg regarding this bill, and we do feel that the bill is well-intended. However, OMB cannot support the bill as written.

In examining this bill, it is important to consider the law being amended, so we can consider the bill in the context of the law being amended.

This bill amends the Title 4 Agriculture, Chapter 4-01 Agriculture Commissioner, and the section within that chapter entitled "Commodity groups-Agriculture commissioner-meetings.

(Page 1, lines 7-9) **Subsection 1** of the existing law addresses the authority of the Ag Commissioner to participate in meetings of commodity groups.

(Page 1, lines 10-12) **Subsection 2** of the existing law addresses the responsibility of the Ag Commissioner to call an annual meeting of all commodity groups for the "purpose of engaging in collaborative efforts to promote and market agricultural commodities."

(Page 1, beginning on line 13) **Subsection 3** of the existing law identifies twelve "commodity groups."

Now, let's examine how this bill amends that section of law.

(Page 2, lines 2-4) This bill creates a new subsection that states that agricultural commodity groups are executive branch agencies and are subject to state procurement laws, rules and OMB guidelines.

OMB would like to point out that this bill is not creating a new requirement. Existing procurement laws in 54-44.4 require governmental entities in the executive branch of government to be subject to state procurement laws, rules, and OMB guidelines. Purchasing laws and OMB guidelines does use the term "agencies and institutions" repeatedly; however, the intent is not to exclude boards and commissions. Procurement laws define "purchasing agency" as a "**government entity** in the executive branch of state government."

Certainly, OMB would not object to a law that "echoes" the existing state procurement law requirements. OMB is concerned that if new law is needed to make Ag Commodity groups applicable to state procurement laws, that could raise a question about the applicability of existing procurement laws to the many other types of executive branch boards and commissions.

OMB already views Ag Commodity Groups as state agencies. Attorney General opinions have concluded that agricultural commodity groups are state agencies. So, the bill is stating what is already known to be

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true. If there is a question regarding whether or not commodity groups are within the executive branch perhaps subsection 3 of the existing law could be amended (Page 1, line 13). "For the purposes of this section, "commodity group" means the following government entities in the executive branch of government:"

Looking at the proposed new subsection, OMB would urge the committee to consider whether it is appropriate to include a new subsection on Commodity Group procurement requirements in the existing section of law related to meetings between Commodity Groups and the Agriculture Commissioner.

Page 2, beginning on line 5. The newly created subsection 5 of the bill creates a list of activities a commodity group may not do. This section would need to be amended to include language such as "activities including the following". This amendment would make it clear that the list is not an all-inclusive list of things an Ag Commodity Group may not do. OMB would be glad to provide the Chairman and Committee with a more detailed explanation.

OMB is concerned with the broad language used for subsection 5 (a).

Page 2, line 6-9. "Contracts with any person to perform any activity that is so intimately related to the public interest as to mandate performance by a state officer or employee, including the procurement or expenditure of funds, or any activity that requires the exercise of discretion in applying the authority of the state or the use of judgement in making a decision for or otherwise binding the state."

OMB agrees there are some duties that a government agency cannot delegate to a contractor. However, this language is so broad that it is unclear what activities Ag Commodity Groups can and cannot have a contractor perform. The section is specific with regard to "procurement or expenditure of funds."

There are some Ag Commodity groups that do not have full time employees. This is not unique to Ag Commodity groups. Several regulatory boards and commissions do not have employees, and contract with board management companies to perform the daily functions of the board. In fact, OMB State Procurement has a contract for board management services.

The new subsections b-c are not related to procurement.

Under the new subsection d. Ag Commodity groups may not "contract with or employ any person that has a potential or actual conflict of interest." Existing state laws in Title 12.1 and State Procurement Rules address conflict of interest. So, if Ag Commodity Groups are subject to state procurement, they are also subject to those conflict of interest laws and rules. OMB's concern is that those laws and rules generally relate to public servants with a financial or pecuniary interest. The language of the bill and those procurement rules will not help define what the relationship should be between Ag Commodity groups and other Ag organizations.

There are real issues this bill seeks to address. If it is the desire of the Committee, OMB would offer its services to help coordinate with the various stakeholders to draft an amendment to this bill.

Sherry Neas, OMB Central Services Division, 701-328-1726 or Cell: 701-426-2841

Memo To: Rep. Brandenburg  
From: Sherry Neas, Director OMB Central Services  
Date: February 3, 2017  
Subject: Proposed Amendment to House Bill No. 1282

Thank you for the opportunity to review the proposed amendment to HB 1292. OMB reviewed the legislation with our legal counsel, Dave Schaibley of the Office of the Attorney General, who made the following recommendation:

*As it reads now, paragraph #5 lists things commodities groups may not do. When a law lists things a person may not do, and it is a finite list, that generally means that the restricted persons are allowed to do any of the things that are not included in the list. Because my guess is that there are other things a commodities group 'may not do,' it seems important to clarify that the list created by paragraph #5's (a) through (d) is not an exhaustive list of the things they should refrain from doing. One way to do that is to precede the list with a sentence that uses the word "included"—because "included" means "included, but not limited to."*

*I don't know the best way to do that for this Bill because I am not sure how to categorize #5(a)-(d) and am not sure about the drafter's intent. Some ideas to consider would be, at Page 2, line 5, after "A commodity group may not" insert something like:*

- *"carry out activities including:"*
- *"carry out activities that contravene the public trust, including the following:"*
- *"carry out activities that violate public policy, including the following:"*

*Those are all quite vague, but they move this language down the path of helping to ensure that the commodities groups are not being given the authority to do almost anything else, as long as it is not listed in #5 (or prohibited by other laws).*

Please feel free to contact Sherry Neas at 701-328-1726 or 701-426-2841 regarding this suggestion.

cc: Pam Sharp, OMB Director

Kenny Graner Testimony

Chairman Johnson and Members of the Committee. For the record, my name is Kenny Graner and I farm and ranch in Morton County.

I am here today testifying in **favor of House Bill 1282**. As a grain and cattle producer, I have concerns with the accountability of the money that I am paying into the grain and beef checkoff programs. Although I am not as familiar with all the various grain checkoffs, I have knowledge on the Beef Checkoff.

Passing this Bill will help bring responsible efficiencies to our checkoff programs. Our State Beef Council has always supported the Federation of State Beef Councils. The Federation of State Beef Council is a division of the National Cattlemens Beef Association (NCBA).

The Federation revenue represents over 82 percent of the NCBA's total funding! This is where my concerns come in. The NCBA does NOT represent my interest in the cattle industry. 2011 was the last year the NCBA filed a complete on-line financial statement for the producers to view. After reviewing that statement, it was clear that 50 percent of our investment in the Federation is ear tagged for administrative expenses. I'm not sure why they are now so secretive of this information!! Furthermore, these investments are used to "buy seats" on the Federation Board. Yes, you heard me correctly.....you have to "buy" a seat on the board in order to have your voice heard. This is called a "pay to play" investment. North Dakota cannot compete with states like Texas, Kansas, and Nebraska. They not only raise more cattle but they also have a very large feeding industry which increases their checkoff revenue as they pay the dollar every time a beef is sold.

This legislation would direct our Beef Council to end this type of spending. On the other hand, it will give North Dakota producers the opportunity to invest in national promotion campaigns or projects.

In the Northeastern United States, there are 5 states without beef councils—Maine, Rhode Island, New Hampshire, Connecticut, and Massachusetts. We could use our North Dakota checkoff dollars and invest in running promotional beef ads to increase demand for beef. The Cattlemens Beef Board (CBB) has several pre-recorded messages ready to go. There isn't any restrictions for any Qualified State Beef Councils from advertising outside their own state borders.

When local producers are able to direct the spending of our own checkoff into a highly populated market area using a nationally produced message, it is a win-win situation. We will be able to promote beef and we will not be subjecting ourselves to unnecessary administrative expenses. This is a more cost effective use of the Checkoff dollars without the overhead expenses as it is used solely for the promotion or education of the nutritional value of beef.

#1

HB 1282

2/10/17

February 10, 2017

Office of Management and Budget

To whom it may concern:

The House Agriculture subcommittee on House Bill 1282 requests your reply to the questions listed below. The subcommittee would like these answers no later than twelve o'clock noon on Tuesday, February 14, 2017, as the subcommittee would like the chance to review the answers prior to presenting to the House Agriculture committee on February 16. The subcommittee welcomes the opportunity to discuss these questions with you during a subcommittee meeting prior to February 16. Additionally, please be prepared to present these answers to the House Agriculture committee on February 16. Your prompt attention to this matter is sincerely appreciated.

1. Is it true that the contractor, Northern Pulse Growers Association, prepared and submitted to OMB the alternate procurement (AP) request for OMB approval? Did OMB then approve the request submitted by a non-state official?
2. If number 1 is true, is that in compliance with the procurement law and rules? If not, why or how can it be in compliance?
3. How many years has this particular process been going on (5 years, 10 years, 15 years)?
4. To your knowledge has this contract ever been bid competitively or has it always been under the AP process?
5. Could you explain the AP process?
6. Isn't it supposed to be an exception, not the rule? Is there a specific reason as to why the bidding doesn't have to be open?
7. Explain the AP process in relation to number 1; why was it approved repeatedly and why was it never subject to the open bid process?
8. Are you aware that the contractor that submitted the AP request is also an appointed official of the Dry Pea and Lentil Council?
9. In your view is this a conflict of interest? If not, why?
10. Do you believe a contractor can also be an official of the organization to which the contractor is contracted to?
11. How can a person be both an appointed official and an executive director of the contractor? Are there not divided loyalties?
12. Regarding these topics, on what has the AG's office advised you?
13. Have you sought legal advice bey of the AG's office?
14. If yes to number 13, why? Are you not provided legal counsel through the AG's office? Is that a good use of state resources?
15. Could you explain what was in this contract and was it an outsource of the council's duties and responsibilities?
16. Can a council outsource its duties and responsibilities to a contractor? Specifically, those of policy and discretion of expenditure of funds involving procurements and those involving inherently government activities?
17. Isn't this the responsibility of the publicly appointed elected council?
18. Did the Department of Ag offer you assistance to help you improve your procurement process?
19. If yes to number 18, why didn't you accept the offer of assistance?

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20. How were you able to determine the fair price for the contract without open competition and a bidding process?



February 10, 2017

Corn Council

To whom it may concern:

The House Agriculture subcommittee on House Bill 1282 requests your reply to the questions listed below. The subcommittee would like these answers no later than twelve o'clock noon on Tuesday, February 14, 2017, as the subcommittee would like the chance to review the answers prior to presenting to the House Agriculture committee on February 16. The subcommittee welcomes the opportunity to discuss these questions with you during a subcommittee meeting prior to February 16. Additionally, please be prepared to present these answers to the House Agriculture committee on February 16. Your prompt attention to this matter is sincerely appreciated.

1. Please explain in detail the scope of the duties of the executive director of the corn utilization council?
2. Is the executive director also the executive director of the nonprofit organization, the corn growers association? Please provide the following information:
  - a. The current job description for both organizations
  - b. A table of organization that outlines how supervision is provided of the Director and the roles of both groups
  - c. Copies of performance reviews
  - d. Any board minutes that describe these roles/responsibilities and relationships
3. Is there not an inherent conflict of interest associated with a state employee (FTE) being required to perform duties and responsibilities for the corn growers, a non-state entity?
4. Are there other vendors able to provide this service?

February 10, 2017

The Pea and Lentil Council

To whom it may concern:

The House Agriculture subcommittee on House Bill 1282 requests your reply to the questions and document requests listed below. The subcommittee would like these answers and documents no later than twelve o'clock noon on Tuesday, February 14, 2017, as the subcommittee would like the chance to review the answers prior to presenting to the House Agriculture committee on February 16. The subcommittee welcomes the opportunity to discuss these questions and documents with you during a subcommittee meeting prior to February 16. Additionally, please be prepared to present these answers to the House Agriculture committee on February 16. Your prompt attention to this matter is sincerely appreciated.

In follow up to our hearing on HB 1282, it would be very helpful if we could receive documentation on the following areas regarding the payment situation between the Pea and Lentil Council and Montana. Please provide a copy of the following documents:

- a. Correspondence between ND and Montana over the last four years
- b. Meeting minutes that discussed this issue
- c. Memorandums of agreements between North Dakota and Montana
- d. A List of all payments that have been made to Montana under the agreement
- e. Any outstanding financial responsibilities ND may still have

In addition, we are concerned about the overall relationships between the Council and the Growers Association. Please provide copies of the following information:

- a. All procurement documents that you have used in the last four years
- b. All purchase of service agreements for the last four years
- c. All contracts or memorandums of agreement between the council and the growers association

It appears that you have an employee who works with both groups. Please provide the following information:

- a. The current job description for both organizations
- b. A table of organization that outlines how supervision is provided of the Director and the roles of both groups
- c. Copies of performance reviews
- d. Any board minutes that describe these roles/responsibilities and relationships.

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**NDLA, H AGR - Kuehn, ReMae**

#1  
2/14/17

HB 1282

**From:** Dale Ihry <dale@ndcorn.org>  
**Sent:** Tuesday, February 14, 2017 11:11 AM  
**To:** NDLA, Intern 08 - Pathroff, Dennis; germanfarms@hotmail.com  
**Cc:** Schreiber-Beck, Cynthia; Hogan, Kathy L.; Howe, Michael C.; Johnson, Dennis E.; NDLA, H AGR - Kuehn, ReMae  
**Subject:** RE: HB 1282 - House Agriculture Subcommittee Questions  
**Attachments:** SKonica Cop17021202260.pdf

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Dear House Agriculture Subcommittee,

Attached are answers and documents per your letter of February 10, 2017. Scott German, Chairman of NDCUC, Carson Klosterman, President of NDCGA, Jeff Enger of NDCGA and I will be attending the meeting at 4:00 p.m. We look forward to answering questions applicable to our operations.

Thanks,

**Dale Ihry**

Executive Director  
North Dakota Corn Utilization Council  
North Dakota Corn Growers Association  
1411 32<sup>nd</sup> St. S. Ste. #2  
Fargo, ND 58103  
Office: 701.364.2250/Cell: 701.371.3766  
dale@ndcorn.org

**From:** NDLA, Intern 08 - Pathroff, Dennis [mailto:intern8@nd.gov]  
**Sent:** Friday, February 10, 2017 3:31 PM  
**To:** Dale Ihry <dale@ndcorn.org>; germanfarms@hotmail.com  
**Cc:** Schreiber-Beck, Cynthia <cschreiberbeck@nd.gov>; Hogan, Kathy L. <khogan@nd.gov>; Howe, Michael C. <mchowe@nd.gov>; Johnson, Dennis E. <djohnson@nd.gov>; NDLA, H AGR - Kuehn, ReMae <hagr@nd.gov>  
**Subject:** HB 1282 - House Agriculture Subcommittee Questions

Hi Dale and Scott,

Per the request of the House Agriculture subcommittee on HB 1282, please find the attached letter. I will keep you informed as to when the subcommittee plans to meet next week. Additionally, please feel free to forward this letter to anyone on the corn council or corn growers. Please let me know if you have any questions.

Thank you,

Dennis Pathroff  
House agriculture legal intern

February 10, 2017

Corn Council

To whom it may concern:

The House Agriculture subcommittee on House Bill 1282 requests your reply to the questions listed below. The subcommittee would like these answers no later than twelve o'clock noon on Tuesday, February 14, 2017, as the subcommittee would like the chance to review the answers prior to presenting to the House Agriculture committee on February 16. The subcommittee welcomes the opportunity to discuss these questions with you during a subcommittee meeting prior to February 16. Additionally, please be prepared to present these answers to the House Agriculture committee on February 16. Your prompt attention to this matter is sincerely appreciated.

**1. Please explain in detail the scope of the duties of the executive director of the corn utilization council?**

ANS: According to the Job ID 30033961 that was posted in August of 2015 (Attachment 1) for the Executive Director, for which I applied for and was hired, the following "Summary of Work" was identified on the posting:

Summary of Work: Manage the staff and activities of the ND Corn Growers Association and the ND Corn Utilization Council. Responsibilities for the creation of the new market development initiatives with agribusiness and universities related to the strategic plan. Responsibilities of this position include: Corn Promotion Administration; Membership; Program Development; Internal Administration; Fiscal Responsibilities; Public Relations; Policy and Property Management.

**2. Is the executive director also the executive director of the nonprofit organization, the corn grower's association?**

ANS: Yes – see response above, and job description Attachment 2.

Please provide the following information:

**a. The current job description for both organizations.**

ANS: See attached (Attachment 2) job description includes being both the NDCUC and NDCGA Executive Director, which has been in existence since 2005, based on the Position Description Date: July 1, 2005.

**b. A table of organization that outlines how supervision is provided of the Director and the roles of both groups.**

ANS: See the attached document. (Attachment 3)

**c. Copies of performance reviews**

ANS: See attached rating which was completed in July of 2016. (Attachment 4)

**d. Any board minutes that describe these roles/responsibilities and relationships.**

ANS: Minutes are not available that describe the request. Attached are excerpts from the policy manual for NDCUC and NDCGA. (Attachment 5)

**3. Is there not an inherent conflict of interest associated with a state employee (FTE) being required to perform duties and responsibilities for the corn growers, a non-state entity?**

ANS: Since the job description and role of the Executive Director was last identified/established in 2005, it appears appropriate to assume that the State has previously approved a sole Executive Director of both NDCUC and NDCGA. In reviewing the last several State Audits, no conflicts have been found of the Executive Director serving both organizations. Each audit clearly indicates the Executive Director as serving both the NDCUC and NDCGA operations.

**4. Are there other vendors able to provide this service?**

ANS: Yes, I assume so.

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Job Description

Attachment 1

Previous in List

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Job Details

Job ID 3003961

Date Closed 08/23/2015

Job Title Executive Director

Location Fargo, ND

Regular/Temporary Regular

Full/Part Time Full-Time

Salary Range From 85000.00/

Salary Range To 115000.00 /



North Dakota Corn Council

Salary Range: \$85,000 - \$115,000/year + benefits

This is a non-classified appointed position and reports to Boards of Directors.

Summary of Work

Manage the staff and activities of the ND Corn Growers Association (NDCGA) and the ND Corn Utilization Council (NDCUC). Responsible for the creation of new market development initiatives with agribusiness and universities relating to strategic plan.

Responsibilities include:

- Corn Promotion Administration
- Membership
- Program Development
- Internal Administration
- Fiscal Responsibilities
- Public Relations
- Policy
- Property Management

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Signed In as Dale | Sign Out

Job Offers

View Offer	Job Title	Job ID	Status	Location	Offer Date	Expiration Date
View Offer	Executive Director	3003961	Accepted	Fargo, ND	10/09/2015	10/19/2015

Attachment 1

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Notifications

Subject	Received	Delete
You have a conditional job offer: Executive Director (Job ID 3003961)	10/09/2015 9:05AM	

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Dale Ihry <dale.ihry@gmail.com>

**Job Offer**

1 message

*Attachment 1*

**kwassim@nd.gov** <kwassim@nd.gov>  
To: dale.ihry@gmail.com

Fri, Oct 9, 2015 at 9:05 AM

Dear Dale Ihry,

Congratulations! We are delighted to extend to you a conditional offer of employment for the following position.

Job Opening ID: 3003961 Executive Director

The details of your job offer can be viewed by selecting the following URL:

<http://www.nd.gov/hrms/jobs/announcements.asp>

You will be required to log in with the user ID and password on the Careers site. Follow the instructions in the job offer to accept or reject the job offer online. This job offer will expire on 2015-10-19

If you are a current state employee, you will need to log into PeopleSoft to accept the job offer.

If you need assistance with your job offer, please contact your recruiter directly.

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*5*

**Date:** 9/9/2015

**From:** Wassim, Kim M. [kwassim@nd.gov]  
**Sent:** Wednesday, September 09, 2015 3:03 PM  
ihrydb@cableone.net  
**Subject:** Interview - Corn Council Executive Director  
**Importance:** High  
**Attachments:** Corn Exec Dir Pos Desc 2015.doc

Attachment 2

Dale,

Your interview for the ND Corn Council Executive Director position will be Friday, September 11, 2015 at 12 p.m. at the Corn Council office in Fargo, ND, 1411 – 32<sup>nd</sup> Street South #2 (south end of the building). The interview panel will be comprised of 3 board members. I will be participating from Bismarck via conference call.

Attached is a copy of the job description.

We would like you to make a presentation no more than 10 minutes in length on the following topic: How would you convince consumers and the EPA that 15 % ethanol blend is safe for the environment and good for corn producers and consumers?

Please contact me if you have any questions. We look forward to meeting with you on Friday, September 11<sup>th</sup>.

**Kim Riedlinger Wassim, PHR**  
**Human Resource Officer**  
State of North Dakota  
Human Resource Management Services  
600 E Blvd Ave Dept 113  
Bismarck, ND 58505-0120  
(701)328-4737  
[kwassim@nd.gov](mailto:kwassim@nd.gov)

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Approved July 05 by Personnel Committee and Council  
Reviewed by Board July 2015

### Position Description

**Title of Position:** Executive Director      **Reports to:** NDCGA/NDCUC Boards of Directors  
**Date:** July 1, 2005  
**Department:** ND Corn Utilization #614

**POSITION'S GENERAL PURPOSE:** Under contract, serves as manager of the ND Corn Growers Association (NDCGA) and manager of the ND Corn Utilization Council (NDCUC). Supervises and manages the staff required to carry out the activities of the NDCGA and the NDCUC. Responsible for the creation of new market development initiatives with agribusiness and universities relating to strategic plan.

### RESPONSIBILITIES:

#### 1. Corn Promotion Administration

- A. Manage the NDCUC marketing program.
- B. Develop procedures and implement the corn marketing program in ND, including the collection and disbursement of funds.
- C. Act as fiduciary agent of the NDCUC in collecting of corn promotion dollars.
- D. Maintain frequent contact in person, by telephone, and by mail with farm organizations, commodity groups, and corn growers in order to maintain support for the corn promotion programs and build strong working relationships.
- E. Supervise the implementation of various corn promotion program procedures with government agencies.
- F. Supervise staff in answering elevator and producer inquiries on the corn promotion program and procedures by letter and/or telephone.
- G. Perform other related duties as assigned.

#### 2. Membership

- A. Supervise preparation of and write periodical communication to members of the NDCGA
- B. Responsible for building and maintaining the membership in the NDCGA, oversee the promotion of service programs, and develop information and public relations programs.
- C. Act as fiduciary agent of the NDCGA in collecting of membership dues and funds; also the receipting, remitting and accounting.

#### 3. Program Development

- A. Supervise NDCGA and NDCUC efforts in developing leadership.
- B. Serve as manager and work closely with board of directors of NDCGA and NDCUC to schedule board and other meetings, develop agendas and in plan programs.
- C. Prepare an Executive Director's report for board meetings.
- D. Develop recommendations for establishing and maintaining a strategic and long-range plan.

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- E. Coordinate efforts with other states and National staff to develop mutually beneficial programs.
- F. Make industry contacts to secure funding support for programs.
- G. Further develop existing programs and improve ways to inform producers about funded projects and organizational activities.
- H. Provide the Board of Directors with timely reviews of status of programs and activities.
- I. Provide leadership to the Action Teams with:
  - 1. Goals
  - 2. Position description for chairpersons
  - 3. Agendas
  - 4. Budget and financial report
  - 5. Documentation and commentary on proposed and ongoing projects
  - 6. Progress reports on projects
  - 7. Evaluation of projects: in house or contracted out
  - 8. Maintain files on the above

#### 4. Internal Administration

- A. Supervise communication with university representatives, industry, and private individuals interested in submitting projects for funding, sharing ideas and developing projects and programs beneficial to corn producers.
- B. Set goals with staff.
- ~~C.~~ Review staff and make recommendations on salary adjustments to the Personnel Committee.
- D. Responsible for hiring and termination of staff, when approved by the board.
- E. Supervise overall staff responsibilities and suggests additional training where needed.
- F. Conduct staff meetings for exchange of information on activities, scheduling of correspondence, travel commitments, and setting priorities.
- G. Consult with legal counsel when necessary on matters concerning board projects and operations.
- H. Review board and committee meeting minutes prior to distribution.
- I. Prepare and/or supervise reports as required by regulatory agencies.
- J. Research and develop policies and procedures that create timely and efficient office workflow
- K. Establish uniform correspondence procedures and style practices to be used by office staff.
- L. Formulate procedures for systematic retention, protection, retrieval, transfer, and disposal of records, both paper and electronic.

#### 5. Fiscal Responsibilities

- A. Develop budgets for NDCGA/NDCUC board approval in consultation with the Executive Committee.
- B. Develop and supervise the implementation of organization fiscal policies and procedures, and recommend changes, as necessary.

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- C. Supervise development of, approve, and review financial statements, invoices, membership reports and other board reports on a monthly basis and prior to each board meeting.
- D. Supervise and implement auditor recommendations approved by the board of directors.
- E. Sign checks in accordance with policy as set by board of directors.
- F. Prepare and/or supervise reports as required by regulatory agencies.
- G. Perform all other duties as requested by Executive Committee.

#### **6. Public Relations**

- A. Establish and maintain effective working relationships between the NDCGA/NDCUC and other commodity groups, related agribusiness, educational, and informational organizations.
- B. Attend meetings of National associated organizations to monitor and report back activities and programs as time and budget permits.
- C. Supervise the implementation of specific National programs and activities on a state level.
- D. Maintain frequent contacts in person, by telephone, and by mail with agri-industry representatives in order to keep abreast of developments in the corn industry.
- E. Represent the organization on various ag-related boards to show support for agriculture in total and to maintain good will.
- F. Notify board members by letter or telephone as to meetings that the NDCUC or NDCGA may be involved in.
- G. Conduct interviews with media on projects, programs and activities of organizations.
- H. Give speeches to ag-related and non-ag related groups about the organizations; projects funded by the organizations and policy issues affecting the corn industry and its products.

#### **7. Policy**

- A. Coordinate NDCGA's policies with agricultural organizations and works to enact NDCGA's policies.
- B. Responsible for legislative policy development and advocacy oversight.
- C. Direct the development of methods to give opportunity for input into resolutions from county associations and members.
- D. Coordinate the appointment of delegates to NCGA's Annual meeting.
- E. Direct communications with state government, the Congress and associated Agencies.
- F. Supervise the gathering of information on legislative and regulatory issues and makes appropriate recommendations for action to the Public Policy Action Team.
- G. Attend meetings of farm groups to coordinate efforts on issues of mutual interest.
- H. Coordinate efforts with NCGA on National policy issues

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### 8. Property Management

- A. Evaluate use of space and facilities for office flow and function.
- B. Manage vendors, maintenance and functions of telecommunications, computers, computer network wiring, lighting, and other factors.
- C. Plan budgets and schedule facility modifications including cost estimates, bid sheets, layouts, and contracts.

#### CONTACTS:

Staff personnel in execution of routine duties	Government officials -- State and Federal
NDCGA/NDCUC Board Members	Lobbyists
Members and/or Producers	Extension Service Personnel
Staff of National associated groups	Federal/State Government Agencies
Staff in other states	University leadership and researchers
Elevators	State Commodity Groups
Farm Media: Reporters, Editors	Farm Organizations
Agri-Industry	Foreign Visitors
Private industry professionals: Attorneys,	U.S. Congressional Staffers
Insurance Agents, CPA's, Bankers	State FSA office staff
County and Regional Economic Development	USDA Officials
Directors	Chambers of Commerce

#### SUPERVISORY DUTIES:

Staff personnel to include:

Administrative Assistant

#### EQUIPMENT:

Telephone, Fax, VCR/TV  
Computer, LCD Projector  
Copier

#### EDUCATION and/or EXPERIENCE

Requires a bachelor's degree and 2 years of agriculture related work experience OR associate degree and 4 years of agriculture related work experience.

#### Skill and Competency Set for NDCUC./NDCGA Executive Director

##### Language Skills

Ability to read, analyze, and interpret common scientific and technical journals, financial reports, and legal documents. Ability to respond to common inquiries or complaints from customers, regulatory agencies, or members of the business community. Ability to write speeches and articles for publication that conform to the prescribed style and format. Ability to effectively present information to top management, public groups, and/or boards of directors.

##### Mathematical Skills

Ability to calculate figures and amounts such as discounts, interest, commissions, proportions, percentages, area, circumference, and volume. Ability to apply concepts of basic algebra and geometry.

These skills should be adapted to understanding of business financials.

##### Reasoning Ability

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Ability to define problems, collect data, establish facts, and draw valid conclusions.  
Ability to interpret an extensive variety of technical instructions in mathematical or diagram form and deal with several abstract and concrete variables.

**Computer Skills:**

To perform this job successfully, an individual should have knowledge of Internet and Word Processing software (Microsoft Word preferred), Excel and Powerpoint.

**Physical Demands**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is regularly required to talk or hear. The employee frequently is required to sit and use hands to finger, handle, or feel. The employee is occasionally required to stand, walk, and reach with hands and arms. The employee must occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision, and ability to adjust focus.

**Work Environment**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

**COMPETENCIES**

To provide the best possible service for the Association, below a list of characteristics and traits desired in our employees. When present, they create synergy, improved overall effectiveness and make working here more enjoyable. It is assumed that trust will be developed among the staff through mutual honesty and dependability.

**Member Services**

This employee is responsible for remembering that all times the North Dakota Corn Growers Association is here to provide service to the membership and that the ND Corn Utilization Council is here to carry out the directives of the state statute. To perform this successfully, an individual must be ready to serve the membership and their interests in a timely, courteous and professional manner, remembering the organizational Mission Statement and Goals.

**Intellectual**

**Analytical** - Synthesizes complex or diverse information; Collects and researches data; Uses intuition and experience to complement data; Designs work flows and procedures.

**Design** - Generates creative solutions; Translates concepts and information into images; Uses feedback to modify designs; Applies design principles; Demonstrates attention to detail.

**Problem Solving** - Identifies and resolves problems in a timely manner; Gathers and analyzes information skillfully; Develops alternative solutions; Works well in-group problem solving situations; Uses reason even when dealing with emotional topics.

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**Project Management** - Develops project plans; Coordinates projects; Communicates changes and progress; Completes projects on time and budget; Manages project team activities.

**Interpersonal**

**Customer Service** - Manages difficult or emotional customer situations; Responds promptly to customer needs; Solicits customer feedback to improve service; Responds to requests for service and assistance; Meets commitments.

**Interpersonal Skills** - Focuses on solving conflict, not blaming; Maintains confidentiality; Listens, first to understand others, without interrupting; Keeps emotions under control; Remains open to others' ideas and tries new things. Trusts others and strives to be trustworthy.

**Oral Communication** - Speaks clearly and persuasively in positive or negative situations; Listens and gets clarification; Responds well to questions; Demonstrates group presentation skills; Participates in meetings.

**Written Communication** - Writes clearly and informatively; Edits work for spelling and grammar; Varies writing style to meet needs; Presents numerical data effectively; Able to read and interpret written information. Shares with others and asks for ideas. Has someone else proofread his/her written communication.

**Teamwork** - Balances team and individual responsibilities; Exhibits objectivity and openness to others' views; Gives and welcomes feedback; Contributes to building a positive team spirit; Puts success of team above own interests; Able to build morale and group commitments to goals and objectives; Supports everyone's efforts to succeed.

**Leadership**

**Visionary Leadership** - Displays passion and optimism; Inspires respect and trust; Mobilizes others to fulfill the vision; Provides vision and inspiration to peers and subordinates.

**Change Management** - Develops workable implementation plans; Communicates changes effectively; Builds commitment and overcomes resistance; Prepares and supports those affected by change; Monitors transition and evaluates results.

**Delegation** - Delegates work assignments; Matches the responsibility to the person; Gives authority to work independently; Sets expectations and deadlines and monitors delegated activities; Provides recognition for results.

**Leadership** - Exhibits confidence in self and others through his/her example and behaviors; Inspires and motivates others to perform well; Effectively influences actions and opinions of others; Accepts feedback from others; Gives appropriate recognition to others.

**Managing People** - Includes staff in planning, decision-making, facilitating and process improvement; Takes responsibility for subordinates' activities; Makes self available to staff; Provides regular performance feedback; Develops subordinates' skills and encourages growth; Solicits and applies customer feedback (internal and external); Fosters quality focus in others; Improves processes, products and services.; Continually works to improve

**Supervisory skills.**

**Quality Management** - Looks for ways to improve and promote quality; Demonstrates accuracy and thoroughness.

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### Organization

**Business Acumen** - Understands non-profit business implications of decisions; Displays orientation to profitability; Demonstrates knowledge of the market and rural economic development and the relationship to other organizations; Aligns work with strategic goals.

**Cost Consciousness** - Works within approved budget; Develops and implements cost saving measures; demonstrates prudent use of organizational resources.

**Diversity** - Shows respect and sensitivity for cultural differences; Educates others on the value of diversity; Promotes a harassment-free environment; Builds a diverse workforce.

**Ethics** - Treats people with respect; Keeps commitments; Inspires the trust of others through personal example; Works with integrity and ethically; Upholds the organizational values.

**Organizational Support** - Follows policies and procedures; Completes administrative tasks correctly and on time; Supports organization's goals and values; Benefits organization through outside activities; Supports, encourages and respects diversity.

**Strategic Thinking** - Develops strategies to achieve organizational goals; Understands organization's strengths & weaknesses; Analysis and assessment of internal and external appropriate information; Identifies external threats and opportunities; Adapts strategy to changing conditions.

### Self-Management

**Judgment** - Displays willingness to make decisions; Exhibits sound and accurate judgment; Supports and explains reasoning for decisions; Involves appropriate people in decision-making process; Makes timely decisions.

**Motivation** - Sets and achieves challenging goals; Demonstrates persistence and overcomes obstacles; Measures self against standard of excellence; Takes calculated risks to accomplish goals.

**Planning/Organizing** - Prioritizes and plans work activities; Uses time efficiently; Plans for additional resources; Sets goals and objectives; Coordinates schedule with other people and their tasks; Develops realistic action plans.

**Professionalism** - Approaches others in a tactful manner; Reacts well under pressure; Treats others with respect and consideration regardless of their status or position; Accepts responsibility for own actions; Follows through on commitments.

**Quality** - Demonstrates accuracy and thoroughness; Looks for ways to improve and promote quality; Applies feedback to improve performance; Monitors own work to ensure quality. Has others proofread materials before distribution.

**Quantity** - Meets productivity standards; Completes work in timely manner; Strives to increase productivity; Works productively and effectively.

**Safety and Security** - Observes safety and security procedures; Determines appropriate action beyond guidelines; Reports potentially unsafe conditions; Uses equipment and materials properly.

**Adaptability** - Adapts to changes in the work environment; Manages competing demands; Changes approach or method to best fit the situation; Able to deal with frequent change, delays, or unexpected events.

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Reviewed by Board July 2015

**Attendance/Punctuality** - Is consistently at work and on time; Ensures work responsibilities are covered when absent; Arrives at meetings and appointments on time. Keeps supervisor and other informed as to his/her whereabouts in a sharing/caring manner.

**Dependability** - Follows instructions, responds to management direction; Takes responsibility for own actions; Keeps commitments; Commits to whatever hours of work are necessary to reach goals.; Completes tasks on time or notifies appropriate person with an alternate plan.

**Initiative** - Volunteers readily; Undertakes self-development activities; Seeks increased responsibilities; Takes independent actions with calculated risks; Looks for and capitalizes on opportunities; Asks for and offers help as needed.

**Innovation** - Displays and shares original thinking and creativity; Meets challenges with resourcefulness; Generates suggestions for improving work; Develops and shares innovative approaches and ideas; Presents ideas and information in a manner that gets others' attention.

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**Figure 1: Funds Flow Diagram**

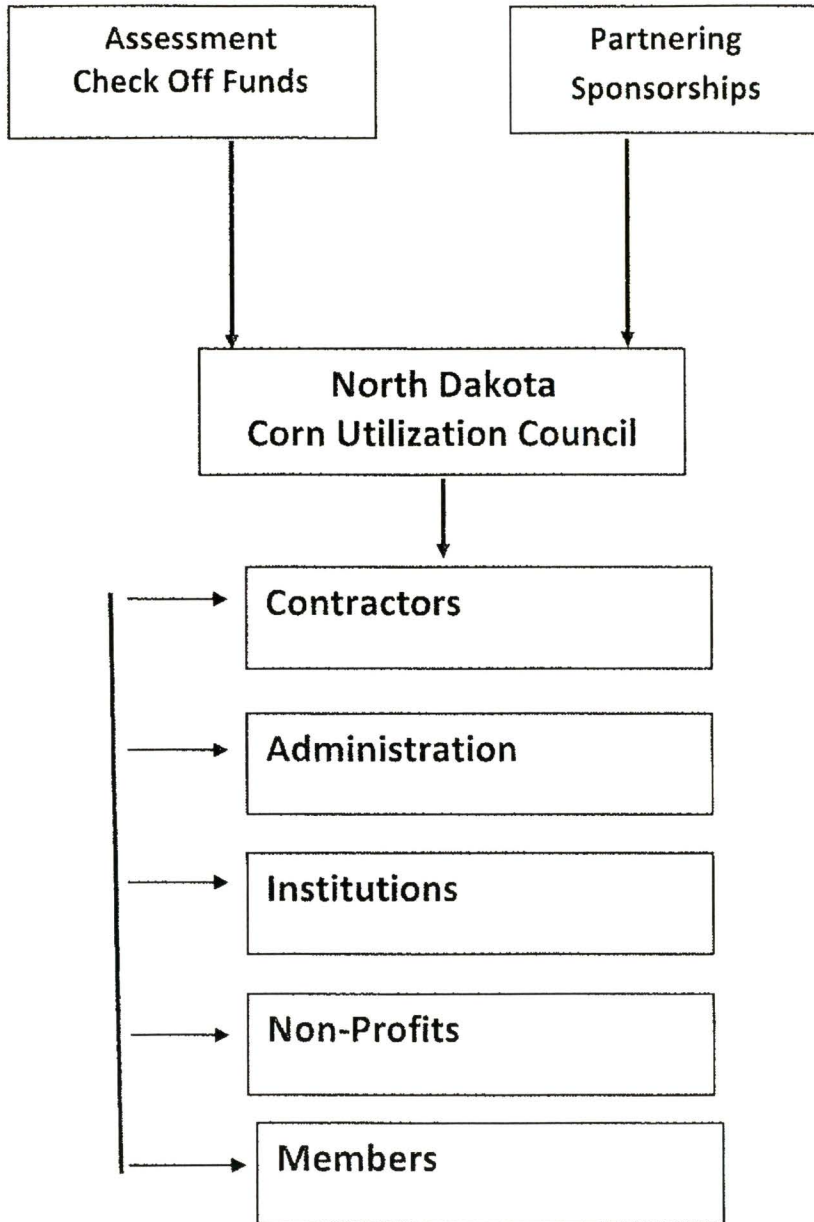
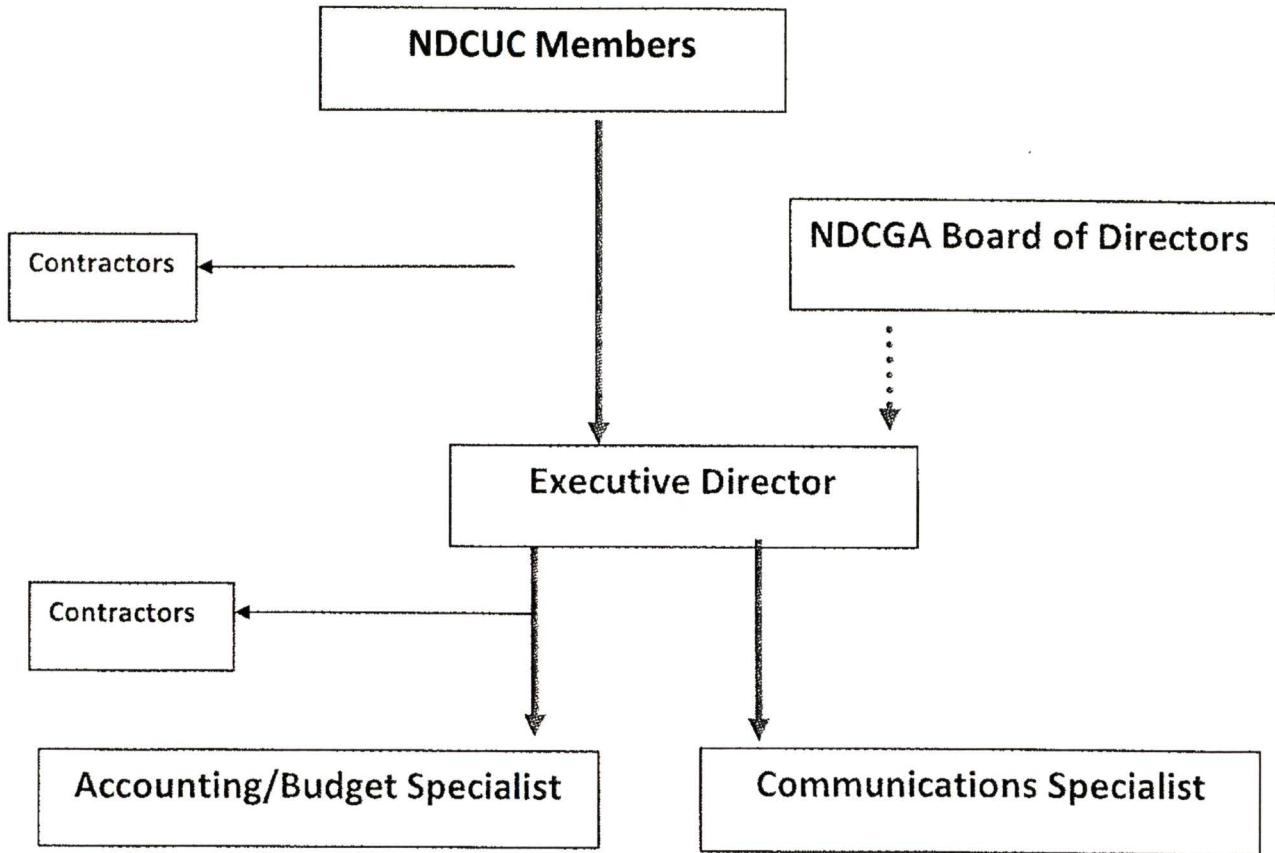


Figure 2: North Dakota Corn Organizational Chart



ND Corn Utilization Council Committees

Attach 3

**WHO:**

The NDCUC Executive Committee consists of the Chair, Vice-Chair and Treasurer.

**WHAT:** The purpose of this committee is to:

- 1) Make recommendations to the full board regarding policy, budget and personnel;
- 2) Transact business that needs immediate attention between board meetings;
- 3) Provide a preliminary review of information and make decisions as to what should come before a full board or be referred to action teams;
- 4) Meet with the Executive Committee of the NDCGA to coordinate information;
- 5) Recommend candidate to the NCGA Action Teams ND Corn Board.

Approved 3/17/04

March 2004

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**ND Corn Growers Association Executive Committee**

**WHO:**

The NDCGA Executive Committee consists of the President, Vice-President and Treasurer.

**WHAT:**

The purpose of this committee is to:

1. Make recommendations to the full board regarding policy, budget and personnel.
2. Transact business that needs immediate attention between board meetings
3. Provide a preliminary review of information and make decisions as to what should come before the full board or be referred to action teams.
4. Meet with the Executive Committee of the ND Corn Utilization Council to coordinate information.
5. Recommend candidates to NCGA for Action Teams and Corn Board

Approved: 3/17/04

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**ND Corn Growers Association Nominating Committee:**

Attach 3

**WHO:**

The NDCGA Nominating Committee consists of:  
A 3-5 directors appointed by the President.

It is recommended that the outgoing director be involved in the nominating process.

**WHAT:**

The purpose of the committee is to:

1. Determine at the Summer Board meeting the director openings to be filled at the Annual Meeting.
2. Work with the outgoing director to find a replacement.
3. Report their recommendations to the full board at the Fall Board meeting.

Approved 3/17/04

March 2004

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**Personnel Committee  
North Dakota Corn Utilization Council  
ND Corn Growers Association**

Part 1. Personnel Committee: Chair and Vice Chair of the ND Corn Utilization Council and President of the ND Corn Growers Association

Part 2. Chain of Command – see organizational chart in Employee Manual

Part 3. Performance Reviews and Compensation

- a. The Personnel Committee will conduct a performance review of the Executive Director 6 weeks before the board meeting at which time the Personnel Committee will make recommendations to the full Board regarding the Executive Director's performance and compensation. The Board of Directors will vote on the Personnel Committee's recommendations.
- b. The Executive Director will conduct performance reviews of the Executive Assistant and Budget Specialist on their one-year employment anniversaries. The Executive Director will make recommendations to the Personnel Committee the Budget Specialist's and Executive Assistant's performance and compensation. The NDCUC Board of Directors will vote on the Personnel Committee's recommendations for the Budget Specialist position. The NDCGA Board of Directors will vote on the Personnel Committee's recommendations for the Executive Assistant's position.

Part 4. Grievance Procedure: See the Employee Manual

Approved by BOD: 7/7/05

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Employee Name       Dale IHRY        
 Performance Review Date       7-13-16      

*Final Appraisal 2016* *ll*

**Executive Director**

<b>Corn Promotion Administration</b>	Rate 1-10 (1 lowest, 10 highest)	Comments <i>Attached 4</i>
Manages/implements marketing program; develops procedures for marketing programs	10	
Acts as fiduciary agent for corn promotion dollars; maintains contacts and relationships with related organizations and government agencies	9	
Performs other assigned duties	10	
<b>Membership</b>		
Supervises communication to members; Solicits feedback to improve service	10	
Builds/maintains membership; oversees promotion of service programs; develops information and public relations programs	9	
Oversees collection of membership dues and accounts for such funds	8	
<b>Program Development</b>		
Supervises NDCGA and NDCUC leadership development; gathers and analyzes information skillfully; willing to try new ideas	9	
Works with Boards of Directors to schedule meetings, develop agendas, plan programs; prepares Exec. Dir. reports for Board meetings;	10	
Oversees strategic and long-range plan; Communicates with NCGA, other states and entities to develop mutually beneficial programs or projects	10	
Expands existing programs, informs producers about projects and organizational activities	9	
Makes industry contacts to secure funding for programs; provides timely reviews of progress; provides leadership to Action Teams	8	
Consults legal counsel on projects when necessary	9	
<b>Internal Administration</b>		
Sets goals with staff; conducts staff meetings; suggests training when needed	10	
Supervises staff; conducts reviews, makes salary recommendations; hires or terminates staff upon Board approval.	10	

Employee Name Dale Ihry  
 Performance Review Date 7/18/11

Attach 4

**Executive Director**

<b>Internal Administration (c'tinued)</b>	<b>Rate 1-10 (1 lowest, 10 highest)</b>	<b>Comments</b>
Reviews and distributes meeting minutes; supervises reports required by regulatory agencies	10	
Develops policies and procedures maximize office efficiency; establishes procedures and practices to be used by office staff	10	
Responds promptly to needs; maintains integrity; demonstrates effective leadership skills	10	
Identifies and resolve conflicts in a timely manner	9	
<b>Fiscal Responsibilities</b>		
Consults with Executive Committee to develop budgets; oversees implementation of fiscal policies and procedures;	10	
Supervises and reviews monthly reports prior to Board meetings; performs other financial duties requested by the Executive Committee	9	
Implements auditor recommendations and signs checks approved by Board of Directors; prepares or supervises regulatory agency reports	10	
<b>Property Management</b>		
Evaluates use of space and facilities for office flow and function; manages vendors to maintain telecommunications, computers, computer network wiring, lighting, and other factors	10	
Plans budgets and schedules facility modifications including cost estimates, bid sheets, layouts, and contracts	10	
<b>Public Relations</b>		
Maintain effective working relationships between NDCGA/NDCUC and other related entities; maintains confidentiality	10	
Attends meetings of national organizations and supervises national programs/activities on the state level	10	
Maintains contact with ag-industry representatives; keeps current on new developments; represents the organization on ag-related boards	9	
Notifies Board members of all meetings that involve NDCUC or NDCGA	10	

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Employee Name DALE JARY  
 Performance Review Date 7-17/16

*Final Copy*  
*FY 16 Appraisal*

**Executive Director**

<b>Public Relations (c'tinued)</b>	<b>Rate 1-10 (1 lowest, 10 highest)</b>	<b>Comments</b> <i>Attach 4</i>
Conducts interviews; delivers informative presentations about products and projects; speaks clearly and persuasively in any situation.	10	
Meets commitments; works well in group problem solving situations; uses reason when dealing with emotional topics	10	
<b>Policy</b>		
Coordinates NDCGA's policies with agricultural organizations and work to enact those policies	10	
Develops legislative policy and advocacy oversight; provides opportunities for input into resolutions from county associations and members	9	
Coordinates appointment of delegates to NCGA's Annual meeting	10	
Communicates with state government, Congress and associated agencies; collects information on legislative and regulatory issues; makes recommendations to the Public Policy Action Team	9	
Attends meetings of farm group; coordinates efforts on mutual issues; coordinates efforts with NCGA on National policy issues	10	
<b>Employee Performance &amp; Attitude in the Workplace</b>		
Cooperates Positively as Team Member	10	
Seeks & Incorporates the Ideas of Others	10	
Works Effectively Under Pressure	10	
Effectively Adapts to Change	10	
Works Beyond Normal Expectations When Workload or Deadlines require	10	
Demonstrates Effective Listening Skills	10	
Keeps Others Informed including Superiors, Coworkers and Members	10	

*Pg 3*

Employee Name DALE IHN  
Performance Review Date 7/13/16

Executive Director

Attach 4

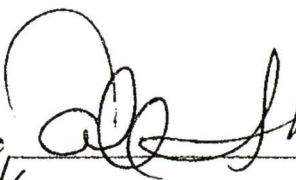
Overall Personnel Committee Comments: DALE HAS MADE OFFICE ENVIRONMENT A FUN NON-HOSTILE PLACE TO WORK. HE WORKS GREAT WITH OTHER OFFICE STAFF. HE HAS BROUGHT ORGANIZATION TO THE OFFICE LIKE WE HAVEN'T HAD IN YEARS.

DALE WORKS WELL WITH ALL BOARD MEMBERS, ALLOWING BOARD MEMBERS TO BE INVOLVED AS THEY WISH.

HE HAS WORKED EXTREMELY WELL WITH NCGA STAFF & DIRECTORS FROM OTHER STATES.

I SEE NO CONTENTIOUS ISSUE WITH ANY STAFF OR BOARD MEMBERS.

HE IS DOING A GREAT JOB.

Employee Signature 

Date 7/13/16

Committee Member Signature 

Date 7-13/16

Pg 4



Attach 5

## North Dakota Corn Utilization Council A North Dakota State Organization

Congratulations on your election to serve as a Member of the North Dakota Corn Utilization Council (NDCUC).

Please take a few minutes to thoroughly read the North Dakota Century Code Chapter 4.1-04 Corn Utilization Council. This can be found in Appendix I of this manual. The Chapter is a concise description of your duties and powers. You and your fellow Members on the Council are responsible for the determination of how significant sums of corn check off assessments are utilized for the benefit of North Dakota corn growers, which also benefits all of North Dakota's citizens.

### ND Century Code Chapter 4.1-04 Summary

- ✓ There are seven (7) Corn Council Districts that each elect a Member
- ✓ Members must be North Dakota corn growers who have not asked for a corn check off assessment refund in the previous year
- ✓ Members cannot serve more than two (2) – four (4) year consecutive terms
- ✓ Annual Council meetings are required and quarterly meetings are customarily held
- ✓ Council Members receive a daily compensation plus reimbursements for expenses
- ✓ Corn assessment is at the rate of one-quarter of one percent (0.0025%) of the value of a bushel of corn
- ✓ All assessment moneys shall be forwarded to the state treasurer for deposit in the corn fund
- ✓ Council administers assessment collections and refunds

**The NDCUC is a North Dakota state entity and Council Members are bound by policies, rules, and regulations that apply to state elected, appointed, and employed personnel.**

Please read the North Dakota state Conflict of Interest Chapter in Appendix II. A signature to this Conflict of Interest Policy must be completed by each manually.

### Council Powers:

1. Expend moneys collected for administration (Figure 1)
2. Employ, bond, and compensate necessary personnel (Figure 2)
3. Accept gifts, grants, and donations of money, property, and services
4. Contract with any person for any purpose related to this Chapter, including research, education, publicity, promotion, and transportation
5. Sue and be sued
6. Do all things necessary and proper to enforce and administer this Chapter

Attach 5

## Council Duties:

1. Determine the uses for which any moneys raised under this Chapter may be expended. Uses may include the funding of research, education programs, and market development efforts, participation in programs under the auspices of other state, regional, national, and international promotion groups. Council shall approve all expenditures made pursuant to this Chapter.
2. Develop and disseminate information regarding the purpose of the corn assessment and ways in which corn assessment benefits corn producers.

## Council Policies

- Council Chairperson is elected annually
- Council directs the NDCUC Executive Director and Staff
- Executive Director and Staff are state employees
- Council may contract with consultants and advisors as needed
- Council may conduct Strategic Planning every five years (modified July 2016)
- NDCGA is the designated advisory board of the NDCUC
- NDCUC Members will be reimbursed expenses and receive a Council determined stipend for their time.
- Each Council Member participates with NDCGA Directors on Action Team Committees
- Council conducts its activities according to applicable North Dakota Laws and Regulations
- NDCUC Fiscal Year ends on June 30 of each year
- NDCUC elects a President, Vice President, Secretary/Treasurer for one (1) year terms
- Personnel Committee consists of Chairperson of NDCUC, Vice Chairperson of NDCUC, and President of NDCGA. Personnel Committee primarily reviews the performance and compensation of the NDCUC Executive Director
- All NDCUC Members shall annually sign a NDCUC Conflict of Interest Form

## Council Resources

ND Corn Office: 1411 32<sup>nd</sup> Street South, Fargo, ND 58103, [www.ndcorn.org](http://www.ndcorn.org)

ND Corn Executive Director and Staff located at the ND Corn Office

National Corn Growers Association, Chesterfield, MO, [www.ncga.org](http://www.ncga.org)

North Dakota Century Code, <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Pg 2

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Attach 5

## North Dakota Corn Growers Association

A North Dakota Non-Profit Organization

Congratulations on your election to serve as a Director of the North Dakota Corn Growers Association (NDCGA).

Please take a few minutes to thoroughly read the NDCGA Bylaws. These can be found in Appendix I on page 6 of this manual. The bylaws are a concise description of your duties and powers. You and your fellow Directors in the Association are responsible for advising the North Dakota Corn Utilization Council on the expenditure of corn check off assessments, which are utilized for the benefit of North Dakota corn growers, thereby also benefiting all of North Dakota's citizens.

### North Dakota Corn Growers Association Description

NDCGA is a North Dakota Nonprofit Corporation under North Dakota Century Code Chapter 10-24. The North Dakota Corn Utilization Council has a close working relationship with the North Dakota Corn Growers Association (NDCGA). The NDCGA by-laws are shown in Appendix I. The NDCGA organization is summarized as follows:

#### Purpose

- Provide advisory services to the NDCUC
- To create and influence public policy
- To develop and implement communications and marketing of corn-related information
- Promote and develop new and expanded markets for corn and corn products
- Organize and assist local corn grower organizations
- Sponsor research on corn production, utilization, and marketing
- Enhance the livelihood of the North Dakota corn producer
- Build membership in the Association

#### Organization

- NDCGA Office is co-located with the North Dakota Corn Utilization Council
- Two (2) classes of NDCGA membership
  - Regular – producer of corn
  - Associate – interested in and in support of the NDCGA
- Members automatically are listed as members of the National Corn Growers Association (NCGA)
- The membership elects twenty one (21) directors to its Board of Directors
  - Three (3) regular members elected at large from any Corn Council district in the state
  - Two (2) regular members elected from each of the seven (7) Corn Council districts
  - Four (4) industry (associate) directors appointed by the Board of Directors
- Regular Directors serve four (4) year terms for a maximum of two (2) consecutive terms
- Industry Directors serve one (1) year terms

Pg 5

25

- Board of Directors elect a President, Vice President, Secretary/Treasurer for one (1) year terms
- NDCGA Fiscal Year ends on June 30 of each year
- NDCUC Executive Director and staff contract with NDCGA to provide services (Figure 1)
- NDCGA may contract with other consultants and advisors as needed
- NDCGA can generate funds from the NDCUC for membership and public policy activities (Figure 2)
- NDCGA can generate funds through corporate sponsors, fund raising, grants, and donations
- NDCGA dues for regular and associate members are \$35/year or \$85/three years
- NDCGA sends \$25 of single year dues payments to the National Corn Growers Association
- NDCGA sends \$50 of three year dues payments to the National Corn Growers Association
- All NDCGA Members shall annually sign a NDCUC Conflict of Interest Form Appendix II

## Action Teams

- Action Team Committees have been formed to advise NDCUC
- Action Team Committees have at least one NDCUC Member and two (2) or more NDCGA Directors
- Action Team Committee participants serve for one (1) year terms
- Action Team Committees are authorized to expend up to \$50,000 per funding project
- Board of Directors appoint a Chairman of each committee

### I. *Policy Team + Executive Director*

- Legislation – Federal, State, County
- Organizational Affiliate Support
- National Corn Growers Assn
- U.S. Grains Council
- Ethanol Promotion Groups
- Farm Industry Infrastructure Support
- Commodity Export Industry Support
- University Systems Relations

### II. *Corn Production/Water/Stewardship/Conservation Team + Operations and Research Manager*

All Agronomic and Supporting Sciences Research Up Through Harvest

### III. *Corn Products/Biofuels/Co products Team + Operations and Research Manager*

All Technologies and Supporting Sciences Research On Corn Utilization

### IV. *Ethanol/Livestock/Poultry/Aquaculture Production Team + Operations and Research Manager*

All Technologies and Supporting Sciences Research To Advance Ethanol Production and Animal Feeding Utilizing Corn Kernels, Stover, and Ethanol By-Products

### V. *Grower Association Services + Public Information Specialist*

Corn Promotion/Public Education and Outreach/Event Productions

#2  
2/14/17  
HB 1282

**From:** Kim Murray  
**Sent:** Saturday, February 11, 2017 11:58 AM  
**To:** Richard Mickelson; Beau Anderson  
**Cc:** Shannon Berndt; TimMcGreevy'sAssistant; Tim\_McGreevy  
**Subject:** Fwd: Montana Agricultural Lawsuit

Hello all,  
I talked to Cort, yesterday, after speaking with Beau and Dick, and he sent me this. He also said I am free to share it. As I see it, the growers of ND and MT need to be together more than ever. If there is anything else I can do, let me know.  
Kim Murray

Begin forwarded message:

**From:** "Jensen, Cort" <[cojensen@mt.gov](mailto:cojensen@mt.gov)>  
**Subject:** Montana Agricultural Lawsuit  
**Date:** February 10, 2017 at 2:08:41 PM MST  
**To:** "[cat65e@yahoo.com](mailto:cat65e@yahoo.com)" <[cat65e@yahoo.com](mailto:cat65e@yahoo.com)>  
**Cc:** "Coccoli, Zach" <[Z.Coccoli@mt.gov](mailto:Z.Coccoli@mt.gov)>, "Clark, Christy" <[CClark@mt.gov](mailto:CClark@mt.gov)>

?Montana Department of Agriculture (nor any other Montana State entity) did not, is not, and has no plans to sue a North Dakota check off program. There was a some disagreements over how check-off dollars from pulse crops that were grown in one state and delivered to the other state would be handled, but the matter was resolved with an agreement between the two pulse check-off committees.

Cort Jensen, SAAG

Chief Attorney Montana Department of Agriculture.

**Shannon Berndt**

#3  
2/14/17

HB 1282

**From:** cjandco <cjandco@mycfrw.net>  
**Sent:** Thursday, May 26, 2016 11:44 AM  
**To:** Shannon Berndt  
**Subject:** Fwd: NDDPLC Option-Proposal to Resolve Conflict of Interest  
**Attachments:** DPLC Revision #2 to Option 1.docx; ATT00001..htm

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Sent from my iPhone

Begin forwarded message:

**From:** "Bialke, Joseph" <jbialke@nd.gov>  
**Date:** May 24, 2016 at 3:19:04 PM MDT  
**To:** "cjandco@mycfrw.net" <cjandco@mycfrw.net>  
**Cc:** "Goehring, Doug C." <goehring@nd.gov>, Kevin Haas <kevin\_haas@daktel.com>, "Bodine, Thomas H." <tbodine@nd.gov>, "Bostyan, Jamie T." <jbostyan@nd.gov>  
**Subject:** NDDPLC Option-Proposal to Resolve Conflict of Interest

Cal

I hope this email finds you well. Attached is the final version of the option-proposal to resolve the current conflict of interest issue between the NDDPLC and the NPGA.

< The attached option-proposal has been coordinated with both the ND Dept of Agriculture and ND Procurement. >

I've reviewed the attached option-proposal and, in my view, it is legally sufficient. When the option-proposal is fully implemented, I believe that the conflict of interest issue would be resolved.

Please let me know if you have any questions or if I can be of further assistance.

All the best,

Dutch

J.P. "Dutch" Bialke  
Assistant Attorney General  
500 North 9th Street  
Bismarck, ND 58501-4509  
Direct: (701) 328-3646  
[jbialke@nd.gov](mailto:jbialke@nd.gov)

1  
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May 24, 2016

Revised

## Dry Pea & Lentil Council Option

Council – North Dakota Dry Pea & Lentil Council (State Agency)  
Association – Northern Pulse Growers Association (Contractor)

### Issue:

- Conflict of interest exists with current contractor (Association) and must be resolved

### Potential Course of Action:

Council hires an Administrator/Office Manager (full-time/part-time State employee) – State employee may not concurrently also be Contractor (Association) employee, or be an Association member. Hiring of Council full-time/part-time employee would resolve or substantially mitigate current existing conflict of interest in relation to the current Contractor (Association).

Administrator/Office Manager (State employee) would perform, at a minimum, the following duties:

- All administrative support for Council including:
  - Providing daily organizational management (answering phone during business hours, maintaining the office and files, and handling correspondence necessary in carrying on the business of the Council)
  - Providing financial management including preparing monthly, quarterly, and annual reports and budgets, developing fiscal policies and procedures, and recommending changes as approved by the Council
  - Manage the acceptance of gifts, grants, and donations of money, property, and services
  - Implementing auditor recommendations approved by the Council
  - Working with OMB to issue checks as approved by Council.
  - Preparing annual CAFR Closing Packages
  - Processing First Purchaser Certificates
  - Collecting check-off assessments and issuing refunds
  - Developing and preparing meeting agendas, minutes, and material for Council meetings
  - Consulting with legal counsel on matters concerning Council operations and projects
  - Representing the Council in meetings, presentations, and other public events
  - Advising and assisting the Council in determining expenditures (budget) such as the funding of research, education programs, and market development efforts
  - Responding to Open Records requests
  - Drafting goals, directives, and guidelines for research proposals
  - Handling correspondence necessary in carrying on the business of the Council
  - Managing and overseeing grants and other expenditures approved by the Council

Treasurers Office

Contractor?

already  
being  
done

- Coordinating with the United States Dry Pea and Lentil Council
- Drafting, processing, managing, and overseeing contracts and grants entered into between the Council, Contractors, and Grantees
- Conducting procurement processing with possible assistance from State Procurement Office for Council contracts relating to:
  - Conducting research and education programs
  - Conducting domestic and foreign market development programs
  - Conducting promotion and advertising
- Providing other duties as deemed necessary by the Council



May 9, 2016

Original

## Dry Pea & Lentil Council Options

Council – North Dakota Dry Pea & Lentil Council (State Agency)  
Association – Northern Pulse Growers Association (Contractor)

### Issue:

- Conflict of interest existing with current contractor (Association) must be resolved

### Two Potential Courses of Action (in order of priority):

**Option 1. Council hires a full or part-time employee to serve as executive director (State employee) – State employee may not concurrently also be Contractor (Association) employee. Hiring of Council full or part-time employee would resolve or substantially mitigate current conflict of interest in relation to the current Contractor (Association) situation.**

Council Executive Director (State employee) would perform, at a minimum, the following duties:

- All administrative support for Council including:
  - Providing daily organizational management (answering phone during business hours and maintaining the office and files)
  - Providing financial management including preparing monthly, quarterly, and annual reports and budgets, developing fiscal policies and procedures, and recommending changes as approved by the Council
  - Implementing auditor recommendations approved by the Council
  - Signing checks in accordance with policy set by the Council
  - Collecting check-off assessments and issuing refunds
  - Organizing Council meetings and preparing minutes
  - Consulting with legal counsel on matters concerning Council operations and projects
  - Communicating with university and industry representatives and private individuals interested in sharing ideas and developing programs to benefit dry pea and lentil growers
  - Handling correspondence necessary in carrying on the business of the Council
  - Conducting procurement processing with possible assistance from State Procurement Office for Council contracts relating to:
    - Conducting foreign market development programs
    - Conducting promotion and advertising
    - Drafting goals, directives, and guidelines for research proposals
  - Providing other duties as deemed necessary by the Council

**Option 2. Council hires part-time employee or contractor.**

- Limited administrative support for Council including:

- Providing daily organizational management (answering phone during business hours and maintaining the office and files)
- Providing financial management including preparing monthly, quarterly, and annual reports and budgets, developing fiscal policies and procedures, and recommending changes as approved by the Council
- Implementing auditor recommendations approved by the Council
- Signing checks in accordance with policy set by the Council
- Collecting check-off assessments and issuing refunds
- Organizing Council meetings and preparing minutes

**(In conjunction with Option 2)**

**NDDA employees temporarily conduct limited administrative duties, as necessary; and conduct procurement process on behalf of the Council.**

- Limited administrative support for Council including:
  - Consulting with legal counsel on matters concerning Council operations and projects
  - Communicating with university and industry representatives and private individuals interested in sharing ideas and developing programs to benefit dry pea and lentil growers
  - Conducting procurement processing with possible assistance from State Procurement Office for Council contracts relating to:
    - Conducting foreign market development programs
    - Conducting promotion and advertising
    - Drafting goals, directives, and guidelines for research proposals



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
**OFFICE OF ATTORNEY GENERAL**  
STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226  
www.ag.nd.gov

#4  
2/14/17  
HB 1282

**NATURAL RESOURCES**  
500 NORTH 9<sup>TH</sup> STREET  
BISMARCK, ND 58501-4509  
(701) 328-3640 FAX (701) 328-4300

November 25, 2015

Mark Schmidt  
President  
Northern Pulse Growers Association  
1710 Burnt Boat Drive  
Bismarck, ND 58505-0130

Re: Letter relating to North Dakota Dry Pea and Lentil Council contract with Northern Pulse Growers Association

Dear President Schmidt:

Thank you for your correspondence dated November 16, 2015, attached to this letter.

I am reviewing the matters you have raised in your letter. However, I am unable to reply to your questions.

As an Assistant Attorney General for the State of North Dakota, I am prohibited by law from providing legal advice, interpretation, opinions, or representation to the public, including contractors of state agencies.

Thank you for your understanding.

Sincerely,

J.P. "Dutch" Bialke  
Assistant Attorney General

Enclosure

cc:

Cal Hoff, NDCPLC Chairman  
Kevin Haas, NDDPLC Vice Chairman  
Matt Sagsveen, Chief, Natural Resources Division

1



Northern  
Pulse Growers  
Association

November 16, 2015

J.P. "Dutch" Bialke  
ND Attorney General's Office  
600 E. Boulevard Ave.  
Dept. 125  
Bismarck, ND 58505

Dear Mr. Bialke:

It has come to our attention that you may have raised certain legal issues regarding the Northern Pulse Growers Association ("NPGA") staff administering ND Dry Pea & Lentil Council ("NDDPLC" or "State") functions. As you are aware, the NDDPLC has entered into a contract with the NPGA to carry out the NDDPLC statutory functions through June 30, 2016. This contract relationship has been renewed and been in existence for many years. One of the contract provisions requires the NPGA to:

- f. *Perform additional duties outlined by the STATE. These duties include, but are not limited to, collecting assessments and processing refunds in accordance with N.D.C.C. ch. 4.1-07, records management of STATE documents i.e. check-off collection, accounting records of financial transactions, incoming and outgoing correspondence as directed by the STATE. CONTRACTOR will provide basic office support, including but not limited to, answering telephone calls, responding to information requests, filing, typing and mailing. CONTRACTOR will maintain financial accounts and document all transactions and provide the STATE with basic financial reports. CONTRACTOR will coordinate meetings, send meeting notices and prepare agendas in accordance with North Dakota open meetings law. CONTRACTOR will publish and distribute STATE correspondence as directed. CONTRACTOR will provide executive staff for consultation on the business of the STATE and will assist the STATE with matters relating to or affecting the public relations activities of its governing body and the products it represents. CONTRACTOR will dedicate appropriate staff to accomplish the business of the STATE. CONTRACTOR will provide office machines and equipment to carry out the duties requested of CONTRACTOR by the STATE. Long distance charges, postage, and extraordinary incidentals will be billed to the STATE. All other incidentals required for day-to-day office activity are included in the contract fee. Of the total compensation under this contract, CONTRACTOR agrees to expend no more than \$25,000 for these services.*

Because this agreement was drafted by the State, and has been in use for a number of years, we are obviously concerned when the Attorney General's office raises concerns about the contract. However, to fully understand your concerns, I would request that you provide me with a written explanation of your concerns so these matters can be addressed promptly. Specifically, I would like to know if the contract raises concerns on its face, or as it is being carried out by the NPGA. Please understand that

J.P. "Dutch" Bialke  
ND Attorney General's Office  
November 16, 2015  
Page 2 of 2

the NPGA has employed staff and incurred costs in order to fulfill our contractual obligations to the NDDPLC. It is only reasonable to expect that we would be informed by the State if services we were providing at the State's request, and on the State's own contract terms, were contrary to law.

It has been suggested to us, based upon your apparent advice to the NDDPLC, that the NPGA may need to immediately cease performing activities related to assessment collections and refunds. We have a contractual obligation to perform assessment collection and refunds, and may be in breach of our agreement with the State if we fail to do so. Because the assessment collection activity is ongoing, the NPGA would appreciate your Office's immediate attention to this matter.

I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Schmidt", with a long horizontal flourish extending to the right.

Mark Schmidt, NPGA President

cc: Cal Hoff, NDDPLC Chairman  
Kevin Haas, NDDPLC Vice Chairman  
NPGA Executive Committee

#5  
2/14/17  
HB 1282

## Commodity Group Staffing

Barley Council – Has 1 Executive Director, unclassified state employee who is appointed by board & 0 classified state employees

Beef Commission – Has 1 Executive Director, unclassified state employee who is appointed by board & 2 classified state employees

Beekeepers Association – no state employees

Corn Utilization Council – Has 1 Executive Director, unclassified state employee who is appointed by board & 2 classified state employees

Dairy Promotion Commission – no state employees

Dry Bean Council – no state employees

Dry Pea and Lentil Council – no state employees

Oilseed Council – Has 1 PT employee, unclassified state employee who is appointed by board

Potato Council – no state employees

Soybean Council - Has 1 Executive Director, unclassified state employee who is appointed by board & 5 classified state employees

Turkey Federation – no state employees

Wheat Commission - Has 1 Executive Director, unclassified state employee who is appointed by board & 1 Deputy, unclassified state employee who is appointed by the Exec. Director & 3 classified state employees

The above information was gathered by Christy Schafer, State Procurement Office in consultation with Kim Wassim, Human Resource Management.

Dear Subcommittee considering HB1282:

I apologize for my absence, but matters on the farm are preventing my travel to Bismarck today.

Over the nine years I was a board member for the NPGA, I was amazed at the level of professionalism exhibited by our staff. For more than 20 years, the staff has successfully, and without conflict, contracted with the ND Dry Pea and Lentil Council to handle day to day activities. The NPGA staff continues to keep accurate records of all check off dollars, and business that comes with it, for a mere \$25,000. A fraction of what other states pay in administrative costs.

These employees, according to contracts drawn up by the ND Attorney General's office, are not state employees and can be let go at any time for any mistakes or wrong doing. These conditions create an environment that promotes professionalism and efficiencies that are more difficult to obtain with multiple administrations. Both boards are filled with volunteer producers elected by their peers. Both boards hold separate meetings, at different times of year, and have zero board members that share seats on the other board. At no time as a board member, did I feel that my vote was swayed by the opinion or information expressed by our director.

The check off dollars raised come from producers who voluntarily give. This pool of money is available for research, marketing, and promotion of peas and lentils. When Rep. Brandenburg introduced this bill in committee, he made a very disturbing statement. He stated that "these dollars belong to the legislature," and it was up to them to make sure the money is handled properly. That is not true! This money is generated by farmers through the council who have final spending authority over the funds as allowed by ND Century Code. Any deviation from this process will be perceived as a tax, and a mass refunding by farmers would ensue. Meaning, there will be no money for anyone, and an industry that has drastically improved the landscape of Western North Dakota would be destroyed!

The issue between MT and ND, as it refers to check off dollars crossing stateline has been dealt with. As you will see, from documentation provided, a reciprocal agreement was drafted and signed by both states. This document also states that there is no looking back to retrieve funding believed to have been collected, only looking forward to future funds. Also, an email from Cort Scheer, legal council for the MT Department of Agriculture, stating that there is no intention of a law suit over these funds. I will also forward this correspondence. Rep. Brandenburg stated in his testimony of a pending lawsuit between two states over mismanaged check off dollars, once again, not true.

The process in place between the NDDPLC and the NPGA, has been conducted under the eye of the ND AG's office and the Department of Agriculture since it's inception. The way business was conducted has never before been an issue and is not broken. If it isn't broken, let's not try and invent a way to try and fix it. I would be more than happy to answer any further questions, or find someone to answer a question for you. Thank you for your time and attention. I urge a do not pass recommendation for HB1282.

Thank you

Sincerely,

Beau Anderson  
Former Chairman of the NPGA  
Vice Chair USA Dry Pea and Lentil Council

**From:** "Bialke, Joseph" <[jbialke@nd.gov](mailto:jbialke@nd.gov)>  
**Date:** February 14, 2017 at 12:41:48 PM CST  
**To:** "NDLA, Intern 08 - Pathroff, Dennis" <[intern8@nd.gov](mailto:intern8@nd.gov)>  
**Cc:** "Schreiber-Beck, Cynthia" <[cschreiberbeck@nd.gov](mailto:cschreiberbeck@nd.gov)>  
**Subject: RE: More research on pea and lentil council**

Dennis

Thank you for your email. This morning, I conducted a comprehensive search of my email archives. I believe that I have identified numerous records that may be responsive to your below request.

I am currently reviewing the retrieved records in relation to what, if any, records may be attorney work product and accordingly currently exempt from disclosure. Attorney work product is exempt from disclosure if such disclosure "would have an adverse fiscal effect on the conduct or settlement of other pending or reasonably predictable civil or criminal litigation or adversarial administrative proceedings;" or the attorney work product "reflects mental impressions, opinions, conclusions, or legal theories regarding potential liability of a public entity."

In anticipation of prospective litigation, the Montana Department of Agriculture issued the ND Dry Pea and Lentil Council a litigation hold notification requiring the Council to preserve all of its records in relation to the ND-MT pulse trade. The litigation hold letter, dated Aug 13, 2015, is attached. It is my understanding that this legal matter between North Dakota and Montana is unresolved, and accordingly remains subject to potential future litigation. As a result, I must review all the records I have retrieved and compiled, in order to identify any records that may be attorney work product and currently not subject to disclosure.

My schedule this afternoon does not allow me to review the retrieved records and provide any releasable records to you by 4:00 p.m. today. I will review the retrieved records as expeditiously as possible. This said, would it be ok if I provide you the releasable requested records by close of business tomorrow?

Many thanks and I look forward to hearing from you.

All the best,

Dutch

J.P. "Dutch" Bialke  
Assistant Attorney General  
500 North 9th Street  
Bismarck, ND 58501-4509  
Direct: (701) 328-3646  
[jbialke@nd.gov](mailto:jbialke@nd.gov)





Steve Bullock  
Governor

302 N Roberts, PO Box 200291  
Helena, Montana 59620-0291

Ron de Yong  
Director

406.444.3144 • Fax: 406.444.5409 • agr@mt.gov • www.agr.mt.gov

J.P. "Dutch" Bialke  
Assistant Attorney General  
500 North 9th Street  
Bismarck, ND 58501-4509

RE: North Dakota/Montana Pulse Assessments

13 August 2015

Dear Mr. Bialke

I am writing to you because you have represented the North Dakota Dry Pea and Lentil Council (NDDPLC) with respect to the former reciprocal agreement in place from September 2011 to April 2014. If you are no longer assigned to that case, please forward this communication to the appropriate person.

Despite our best efforts to negotiate an agreeable reciprocal agreement, the NDDPLC has chosen instead to support and encourage double assessments. Unfortunately this means that the Department must continue to pursue Montana checkoff dollars that were collected by North Dakota first purchasers. The NDDPLC has a statutory obligation to keep records of the source of all dry peas and lentils received, sold, or shipped in North Dakota. N.D.C.C. § 4-1-07-12. We suspect that these records exist, and will be pertinent to any future civil action.

Please remind the NDDPLC and its staff of their duty to preserve information, records, documents, tangible things, etc., related to the former reciprocal agreement, the recently rejected reciprocal agreement, and any other matter related to the pulse trade between Montana and North Dakota.

I look forward to working with you to quickly resolve these pulse-related disputes.

Best Regards

A handwritten signature in black ink, appearing to read 'Benjamin C. Tiller', is written over a horizontal line.

Benjamin C. Tiller, Esq.

#1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1282

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for reports to the legislative management; and to provide for a legislative management study regarding agricultural commodity groups.

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

**SECTION 1. REPORTS TO THE LEGISLATIVE MANAGEMENT - COMMODITY GROUPS.** Before January 1, 2018, each commodity group shall report to the legislative management regarding the organizational structure and operations of the commodity group. Each report must include a description of:

1. The structure and staff of the organization and how the commodity group performs its responsibilities. The description must include the use of classified and unclassified state employees, temporary employees, contractors, paid and unpaid labor by the group, and hiring practices;
2. The major challenges currently facing the commodity group, including organizational structure challenges;
3. Any administrative rules, policies, procedures, guidelines, manuals, or other directives developed by the commodity group to implement statutes and govern group operations;
4. The relationship between the board and the producer organizations, including any commercial business endeavors;
5. The process used to determine the use of monies raised by or appropriated to the commodity group;
6. Contracts entered by the commodity group, including the procurement of goods and services, partnership agreements, grants, and sponsorships; and
7. Historical commodity group fiscal year cash flow and revenue trends.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - COMMODITY GROUPS.** During the 2017-18 interim, the legislative management shall consider studying commodity groups. The study must include a review of the commodity group reports under section 2 of this Act and the legislative history of each commodity group. The study must include input from the commodity groups, growers' associations, agriculture commissioner, attorney general's office, and the office of management and budget. The study must review attorney general opinions related to commodity groups and the structure of commodity groups in other states. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

1  
2/17/17

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Renumber accordingly



17.0668.01000

Sixty-fifth  
Legislative Assembly  
of North Dakota

HOUSE BILL NO. 1282

Introduced by

Representatives Brandenburg, Kempenich, Pollert

1 A BILL for an Act to amend and reenact section 4-01-26 of the North Dakota Century Code,  
2 relating to limitations on commodity groups.

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

4 **SECTION 1. AMENDMENT.** Section 4-01-26 of the North Dakota Century Code is amended  
5 and reenacted as follows:

6 **4-01-26. Commodity groups - Agriculture commissioner - Meetings - State agencies.**

- 7 1. The agriculture commissioner may participate, as a nonvoting member, in any regular
- 8 or special meeting of a commodity group, including any executive session held by a
- 9 commodity group.
- 10 2. Annually, the agriculture commissioner shall call a meeting of representatives from
- 11 each commodity group for the purpose of engaging in collaborative efforts to promote
- 12 and market agricultural commodities.
- 13 3. For purposes of this section, "commodity group" means the:
  - 14 a. North Dakota barley council;
  - 15 b. North Dakota beef commission;
  - 16 c. North Dakota beekeepers association;
  - 17 d. North Dakota corn utilization council;
  - 18 e. North Dakota dairy promotion commission;
  - 19 f. North Dakota dry bean council;
  - 20 g. North Dakota dry pea and lentil council;
  - 21 h. North Dakota oilseed council;
  - 22 i. North Dakota potato council;
  - 23 j. North Dakota soybean council;
  - 24 k. North Dakota turkey federation; and

- 1 I. North Dakota wheat commission.
- 2 4. A commodity group is an executive branch state agency and must comply with all
- 3 state procurement laws and rules and office of management and budget guidelines
- 4 applicable to executive branch state agencies and institutions.
- 5 5. A commodity group may not: Add Line →
- 6 a. Contract with any person to perform any activity that is so intimately related to the
- 7 public interest as to mandate performance by a state officer or employee,
- 8 including the procurement or the expenditure of funds, or any activity that
- 9 requires the exercise of discretion in applying the authority of the state or the use
- 10 of judgment in making a decision for or otherwise binding the state;
- 11 b. Delegate the duty to determine the uses for which moneys raised by or
- 12 appropriated to the commodity group are expended;
- 13 c. Engage in a commercial business enterprise; or
- 14 d. Contract with or employ any person that has a potential or actual conflict of
- 15 interest.
- 16 6. Upon the recommendation of the agriculture commissioner, the governor may remove
- 17 a member of a commodity group for cause.

17.0668.01002  
Title.

Prepared by the Legislative Council staff for  
Representative Brandenburg  
February 8, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1282

Page 1, line 1, after "to" insert "create and enact a new section to chapter 4.1-04 and a new section to chapter 4.1-07 of the North Dakota Century Code, relating to the use of assessment money by the corn utilization council and the dry pea and lentil council; and to"

Page 2, line 13, remove "or"

Page 2, line 15, replace the underscored period with "; or

e. Carry out any activity that contravenes state procurement laws, rules, or office of management and budget guidelines."

Page 2, after line 17, insert:

"**SECTION 2.** A new section to chapter 4.1-04 of the North Dakota Century Code is created and enacted as follows:

**Contract with trade associations.**

The council may expend up to five percent of the amount raised by the assessment provided for in section 4.1-04-10 to pay for the operational activities of the North Dakota corn growers association related to corn policy issues, corn production, promotion, and sales.

**SECTION 3.** A new section to chapter 4.1-07 of the North Dakota Century Code is created and enacted as follows:

**Contract with trade associations.**

The council may expend up to five percent of the amount raised by the assessment provided for in section 4.1-07-12 to pay for the operational activities of the northern pulse growers association related to dry pea and lentil policy issues, production, promotion, and sales."

Renumber accordingly

2

HB 1282

1

Question that governor, upon recommendation of agriculture commissioner, may remove a commission member/council member for cause (section would potentially impact a commodity producer population, most of whom have the statutory authority to elect all or most its own board members):

In statute, members of councils are specifically referred to as council "members"

Council/Board/Commission memberships are statutorily-created state positions, and accordingly, the legislature that created the positions also has the absolute authority to determine removal criteria for these positions – commodity group officers/officials are not constitutional state officers (numerous statutes allow governor to simply remove a statutory state official "for cause." -- this proposed provision in this bill also pragmatically allows for agriculture commissioner input because these are agriculture-orientated commodity councils)

This said, removal of a member by the governor still may require a due process hearing before decision to remove/retain; as a practical matter, hearing would probably be organized/conducted by agriculture commissioner (hearing would entail a procedure which gives the charged official information as to the nature of the charges, and hearing with an opportunity to cross-examine the witnesses appearing against the charged official and to offer testimony in the charged official's own behalf) *State ex rel. Joos v. Guy*, 125 NW2d 468 (N.D. 1963)

Commodity group members are not elected by all the voters of the state, but rather by an exclusive election held by their respective commodity producers

- Most members are "elected", but some members are appointed by governor (Beef Commission; 2/3 of Oilseed Council; 2/5 of Dairy Promotion Commission; 1/7 of Wheat Commission)

2

Question that the language in this statute may affect or impact other regulatory boards and commissions in other titles

This law appears only in the Ag Title (4.1) of the NDCC and specifically is entirely inclusive of commodity boards – there is no reasonable concern about a broader interpretation of the law

3

Question that that "conflict of interest" is not defined by statute and would already be covered by existing OMB rules (NDAC 4-12-04-04)

Explicitly again prohibiting "conflict of interest" simply reaffirms existing law and explicitly clarifies that certain existing constructs/structured contracts by some commodity groups are inappropriate



4

Question that if this does not pass, commodity boards will now be empowered/emboldened to do whatever they wish, regardless of state procurement laws and rules

This is a very valid question. If bill does not pass, commodity groups may argue that they are not state agencies, that they are not subject to state procurement laws/rules, etc.

5

Question of who is going to interpret subsection a. and make the call about whether the "activity is so intimately related to the public interest as to mandate performance by a state officer or employee."

This definition refers to anything involving policy and discretion that is the responsibility of the state official/board such as contracting, expenditure of funds, policy, etc. – these duties/responsibilities should rightly remain the responsibility and duty of the commodity group members as state officers – these duties and responsibilities should not be contracted away to a contractor (who has differing duties/responsibilities – specifically duties/responsibilities not to the state, but only to the contractor). This is procurement/contracting 101 -- no brain surgery here... In other words, for examples, do not out-source/contract out/abdicate to a contractor the commodity group's responsibility/duty to contract; don't delegate to contractor authority/discretion to expend public funds, etc.

6

Question that paragraph 5 might be viewed as an exclusive list of prohibitions – that commodity groups could perform a particular activity if not specifically excluded.

This is a valid question -- may be easily remedied by an amendment to the beginning of paragraph 5, something to the effect of:

Amendment →

"A commodity group may not: carry out any activity that contravenes state procurement laws and rules and office of management and budget guidelines, including:"

- *(in this case, as written, "including" means: "including, but not limited to..."; this amendment would ensure that the prohibition list is viewed as examples and is not exclusive)*

7

Question that, in para 5.a. the language "including the procurement or the expenditure of funds" may apply to only to "obtaining and expending funds" and not contracting

This is a valid question – may be easily remedied by an amendment, specifically the deletion of the word "the" -- the applicable part of the provision would then read:

"including ~~the~~ procurement or the expenditure of funds"

§

Question that HB 1282 arbitrarily mandates that commodity groups are "state agencies" (some commodity groups continue to have differing views on whether these groups are state agencies and accordingly subject to state agency procurement laws/rules)

The issue of whether commodity groups are state agencies has been raised several times in the past, and AG opinions consistently conclude that agricultural commodity councils/commissions are state agencies. See e.g., NDAG Ltr to Vogel, Sep. 16, 1991/North Dakota State Potato Council; Att'y Gen Op 75-161, Jul. 22, 1975/North Dakota Beef Commission; Att'y Gen Op 97-L-7, Jan. 16, 1997/North Dakota Oilseed Council; Att'y Gen Op 2002-L-63, Oct. 25, 2002/North Dakota Wheat Commission; Att'y Gen Ltr to ND Dairy Promotion Commission, February 20, 1975/North Dakota Dairy Promotion Commission). See generally also Att'y Gen Ltr to William D. Drummand, Dec. 20, 1993/North Dakota Barley Council; North Dakota State Fair Association (2011, L-08)(statutorily created group is a state agency).

These above attorney general legal conclusions, that agricultural commodity commissions/councils are state agencies, are generally based upon the following:

- 1) Commodity groups are established/created by individual state law chapters (not created pursuant to a law authorizing/permitting their creation); for examples, commodity groups:
  - a. are afforded privileges/given responsibilities that would not be afforded/given to a private agency;
  - b. must deposit funds with the State Treasurer;
  - c. membership determined by statute;
  - d. compensation of group members set by statute;
  - e. meeting requirements are set by statute;
  - f. procedures for filling vacancies are set by statute; and,
  - g. titles/numbers of officers are set by statute; and
  
- 2) The commodity groups, by statute, have state taxing authority (the groups have special funds, not to be used as part of the general fund, but the funds are still public money as opposed to private money).

Additionally, OMB views these commodity groups as state agencies. For example, the procurement website lists the Barley Council, Beef Commission, Corn Utilization Council, Dairy Products Promotion Commission, Dry Bean Council, Dry Pea & Lentil Council, Oilseed Council, Potato Council, Soybean Council.

3

HB 1282 3/4

#3  
pg. 1

SKYTRAIN



Fund Management, LLC

MIDWEST ~~AGREBON~~  
GROUP

Helping Harvest Your Carbon Crop

**AGREBON**  
REAL FERTILIZER



c2review

Dear Investor,

We are conducting a series of meetings to highlight the opportunity to invest in a group of unique companies in North Dakota. The meetings will be held in Southeast North Dakota per the following schedule:

Tuesday, March 27, 2012	Jamestown Civic Center	7:00 PM to 9:30 PM
Wednesday, March 28, 2012	Valley City Eagles Club	7:00 PM to 9:30 PM
Thursday, March 29, 2012	Fargo Holiday Inn	7:00 PM to 9:30 PM
Tuesday, April 3, 2012	Wahpeton at Prantes	7:00 PM to 9:30 PM
Wednesday, April 4, 2012	Jamestown Civic Center	7:00 PM to 9:30 PM
Thursday, April 5, 2012	Fargo Holiday Inn	9:30 AM to 5:00 PM

The purpose of these meetings is to introduce you to two agriculture based funds that intend to focus on the future of the corn industry in North Dakota. Among other things, these funds are designed to provide financing to companies that have designed new "bolt-on" technologies to ethanol plants. You have already invested in the science of these companies through your "check-off" research dollars. Now is the time for you to see how those dollars have been deployed and provide a means for you to invest in these technologies, if you desire. Under federal securities regulations, we can present this investment opportunity personally to our friends, family and business acquaintances.

High N-ergy Angel Fund, LLC and Leading Edge Angel Fund, LLC has chosen to focus on companies that soon will be or are past the research stage and are ready for deployment at ag processing sites. Please take a moment and read through the document entitled, "Investing in North Dakota Agriculture".

We hope that you can attend these important meetings. Coffee and dessert will be served.

Sincerely,

Wallie Hardie and Dan Olson  
SKYTRAIN Fund Management, LLC

# Investing in North Dakota Agriculture

Why should I consider participating in these funds?

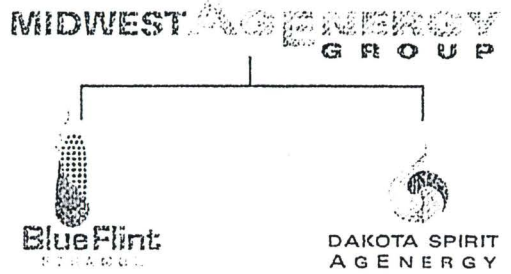
1. *I am concerned my corn market may head south if ethanol plants struggle to stay profitable.* North American Protein has developed a new technology that turns thin stillage waste into a high value feed ingredient. At the same time the process supercharges the water going back into the plant, resulting in more efficient production of ethanol.
2. *I am concerned about high fertilizer prices.* You will own a fertilizer company (AGREBON) that makes low cost, environmentally friendly fertilizer products using waste streams from ethanol plants.
3. *I would like to invest in ethanol but wonder if the train has left the station.* Midwest Ag Energy is a company conceived by Great River Energy and involves the combination of an existing profitable ethanol plant (Blue Flint) with a new, state-of-the-art corn and cellulosic ethanol plant in Spiritwood, North Dakota (Dakota Spirit).
4. *Corn Fructose Sweetener is getting some bad press. I would like to turn that around.* Dynamic Food Ingredients is a company that uses corn starch to make low calorie, highly functional sweeteners. The potential market for high value sweeteners, such as DFI's products, is huge.
5. *I would like to find ways to add value to my crop residue.* C2Renew Corporation develops bio-composite compounds, using agricultural biomass, which is used as a plastic alternative in numerous applications like corn head snouts and spray booms.
6. *I am concerned my nitrogen fertilizer is leaching away too soon.* AGREBON intends to develop controlled release characteristics for its urea, to ensure enough nitrogen will be available when the corn plant needs it.
7. *I wonder if it is a good idea to invest in new companies.* North Dakota is offering big incentives for you to invest in start-up companies in the state because of the need to create a diversified, innovation-based economy here. You can receive up to 45% tax credits on the amount you invest (subject to various limits) if you participate through an Angel Fund. Also, by owning a bundle of companies through an Angel Fund your risk is reduced.
8. *I don't want to dip into my working capital to participate in this deal.* The Bank of North Dakota's Ag PACE program for farmers and the Invest program for non-farmers allows you to put up farmland or other assets up as collateral and borrow the money needed for about one percent interest, and the process is not cumbersome.
9. *What is the big picture?* The ethanol plants in the state have expressed great interest in these companies. By stepping up to the plate NOW and helping our plants adopt novel technologies we can make North Dakota the GOLD STANDARD of the ethanol industry.
10. *What is our edge?* We believe the only sustainable competitive advantage is the ability to LEARN faster than our competitors. The FUND structure allows the managers to facilitate genuine "mind share" among the six companies, allowing them to discover insights and industry knowledge not attainable individually.

*This document is not an offering of any security. The statements in this document are qualified by reference to the Private Placement Memorandum and its exhibits and schedules. There can be no assurances that the Funds will invest in any of the companies mentioned in this document. Any such investments are subject to additional investigation of the companies and the negotiation of acceptable terms, including price. The Funds may invest in additional companies that are not described in this document.*

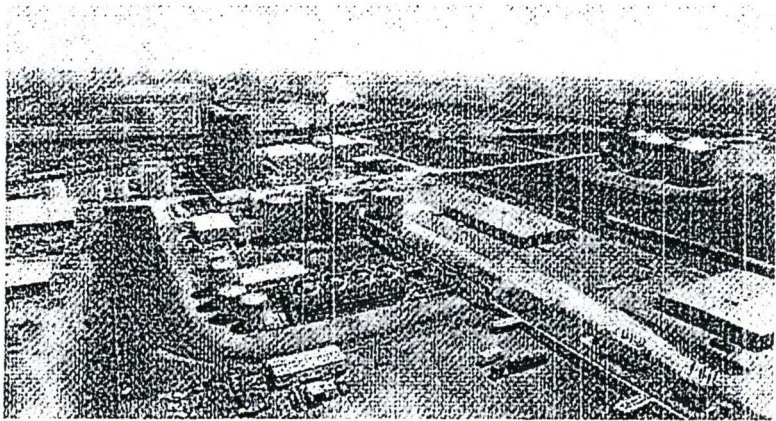
# MIDWEST AG ENERGY GROUP

**Midwest AgEnergy Group** is an upper Midwest renewable biofuels enterprise which owns Blue Flint Ethanol, LLC, an existing biorefinery, and Dakota Spirit AgEnergy, LLC, a new hybrid biorefinery.

Midwest AgEnergy Group and a consortium of key stakeholders are working together to develop and build Dakota Spirit AgEnergy adjacent to Spiritwood Station combined heat and power plant near Spiritwood, ND. A hybrid biorefinery would combine the mature technology and economies of scale of a conventional dry mill ethanol plant, Phase I, with the emerging technology of cellulosic ethanol production, Phase II.



Great River Energy is the lead developer for this enterprise along with key stakeholders including Jamestown Stutsman Development Corporation, Blue Flint Ethanol, North Dakota Department of Commerce, North Dakota Farmers Union, Inbicon, PowerStock, Karges-Falconbridge Engineers and McGough Construction.



Blue Flint Ethanol near Underwood, ND. A sister biorefinery, Dakota Spirit AgEnergy, will be co-located next to Great River Energy's Spiritwood Station near Spiritwood, ND.

**Blue Flint Ethanol**, the biorefinery co-located next to the Coal Creek Station power plant near Underwood, ND commenced operation in 2007. It is the first co-located, directly integrated biorefinery in the world producing 60 million gallons per year (MGY) of ethanol, distillers grains and corn oil. In 2010, grain drying and storage services were built in partnership with Coal Creek Drying & Storage. The location is a key factor in making Blue Flint Ethanol one of the most cost-effective, energy-efficient, environmentally friendly plants in the country due to its purchase of steam for operation. Blue Flint Ethanol uses state-of-the-art technology to exceed the high standards set by the EPA. The plant is a zero discharge facility, producing no solid or liquid waste.

Performing profitably and competitively, Blue Flint Ethanol has proven successful approaches which will be replicated at the new Dakota Spirit AgEnergy biorefinery:

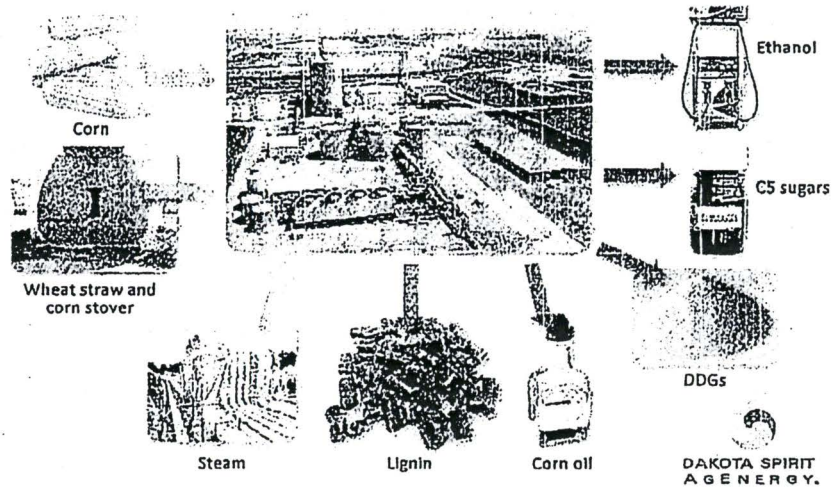
- Blue Flint is a combined heat and power (CHP) design, purchasing steam from Coal Creek Station and avoiding original plant capital for a natural gas boiler and the ongoing costs of purchasing natural gas.
- Blue Flint has diversified its top line to become a biorefinery by adding corn oil separation and an E85 blending station.
- Blue Flint serves premium markets by achieving Low Carbon designation for its ethanol.



**DAKOTA SPIRIT  
AGENERGY**

**Dakota Spirit AgEnergy** is the growth hybrid biorefinery to be co-located next to the Spiritwood Station power plant near Spiritwood, ND. Dakota Spirit AgEnergy Phase I will initially be a 65 MGY ethanol biorefinery. Innovative design improvements, corn oil separation and grain drying and storage will be implemented during construction. Dakota Spirit AgEnergy Phase II is a "bolt-on" facility to produce 10 MGY cellulosic ethanol based on enzymatic hydrolysis technology developed by Inbicon in Denmark. This future investment option creates a hybrid biorefinery fed by crop residuals (corn stover and wheat straw) and produces additional marketable products (cellulosic ethanol, C5 sugars and lignin green fuel.)

**Dakota Spirit AgEnergy Phase II**



**About the biorefinery**

	Phase I	Phase II
<b>Feedstock</b>	Corn – 23 million bushels	Wheat straw – 96,000 tons/year Corn Stover – 96,000 tons/year
<b>Products</b>	Ethanol – 65 MGY DDGs – 173,000 tons/year Corn Oil – 5,400 tons/year	Ethanol – 10 MGY C5 sugars – 75,000 tons/year Lignin – 68,000 tons/year

**Economic development impacts**

- ⊙ 36 production jobs in the Phase I Dry Mill Ethanol Plant
- ⊙ 6 production jobs for the Phase II Cellulosic Ethanol Plant
- ⊙ Seasonal and part time jobs to harvest and transport the crop residues
- ⊙ 175 construction and trades jobs

**Timeframe**

- 2012** Phase I Engineering, Finance and Construction
- 2013** Phase I Construction, Start Up and Commissioning
- 2014** Phase II Evaluation, engineering & financing
- 2015** Phase II Start up & Commissioning

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Sandra Broekema	Dakota Spirit AgEnergy	sbroekema@DakotaSpiritAgEnergy.com	763.445.5304
Al Christianson	Great River Energy	achristianson@grenergy.com	701.442.7664

Improving the sustainability of corn production in North Dakota

**C** VIEW

- AGREBON is developing a modular, small-scale nitrogen fertilizer plant that will produce approximately 20 tons per day of ammonia or 35 tons per day of urea.
- X • AGREBON has an exclusive license for its proprietary technology from the Energy and Environmental Research Center of the University of North Dakota (EERC), and the technology development has been funded by PepsiCo.
- Additional IP is being developed to provide technical and market advantages focused on the integration of the system, small-scale ammonia and urea reactors and urea production.

MILESTONES

- EERC has completed the preliminary design phase for the technology. Most of the plant's unit operations will use off-the-shelf components that are available from various manufacturers. Certain processes will require down-sizing of existing equipment.
- Completion of basic engineering and a bid-ready design package for the ammonia plant and urea module, including preliminary piping and instrument diagrams, is scheduled for the spring of 2012. Selection of equipment vendors and final engineering will follow.
- Commencement of construction of the first plant is currently scheduled for the summer of 2012. AGREBON projects the construction of 26 plants over the next 5 years.

KEY POINTS

- **distributed deployment** in farming communities, thereby greatly reducing nitrogen fertilizer price volatility and transportation costs;
- **renewable inputs**, such as landfill or industrial lagoon biogas, offering a reduction in supply chain carbon for major multi-national food and beverage industry companies like PepsiCo that are aggressively pursuing corporate sustainability goals; and
- **co-location with corn ethanol plants**, where waste products can be used to produce methane as a renewable input for nitrogen fertilizer production, thereby lowering the carbon footprint of both the ethanol plant and the fertilizer.
- **customized outputs**, controlled release urea designed for localized growing conditions.

BOTTOM LINE<sup>1</sup>

- Based on Discounted Cash Flow of the financial projections at a 20% discount rate, the current value of AGREBON would be \$30 million.
- Assuming a pre-money valuation of \$30 million and a year 5-sale value of \$180 million, 6X return.
- Capture fertilizer manufacturing margins, decrease price volatility, decrease logistics cost
- Local ownership, local control of projects

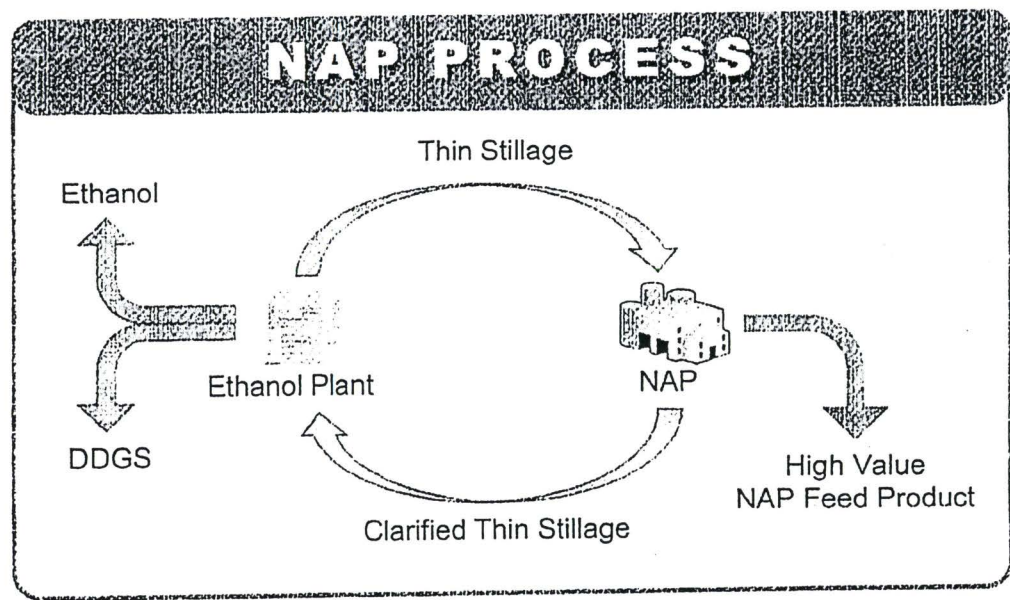
<b>Justin Eisenach, CEO</b>	<a href="mailto:justin@agreb企业.com">justin@agreb企业.com</a>	303-525-3954
<b>Scott Dyer, CSO</b>	<a href="mailto:scott@agreb企业.com">scott@agreb企业.com</a>	970-215-3161
<b>Ken Witt, CLO</b>	<a href="mailto:ken@agreb企业.com">ken@agreb企业.com</a>	303-883-3285

<sup>1</sup> The above projections are based on Agreb企业 management's current estimates and assumptions. Although such assumptions are based on best estimates, some assumptions will inevitably not materialize and unanticipated events and circumstances may occur. As such, the projections will vary from estimates and assumptions and these variations may be material and adverse.



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North American Protein (NAP) is an established company focused on implementing patent pending waste solution technologies aimed at converting low value waste streams into higher value products. NAP currently has developed a proven technology capable of capitalizing on opportunities within the grain to ethanol industry.



NAP's patent pending waste solution technology utilizes a well understood science, fungal fermentation, to generate high value animal feed using low cost waste streams (Thin Stillage) as the feedstock. A fungi is introduced to the Thin Stillage under controlled environmental conditions. Over a short period of time the fungi consumes the undesirable solids and chemicals present in the Thin Stillage, resulting in an increase it's "body weight" by over 250x in less than 48 hours. The fungal mass is easily separable from the now *Clarified Thin Stillage*. Once separated, the fungal mass is dried and ground, the resulting product is a high value animal feed ingredient.

The *Clarified Thin Stillage* is recycled back to the ethanol plant for use in ethanol production. The use of *Clarified Thin Stillage* improves the efficiency of the ethanol plant's operations, resulting in a projected increase in ethanol yield of 3-5% and substantially increasing plant profitability. This efficiency factor is a direct result of the changes the fungi make in the process of turning the Thin Stillage into *Clarified Thin Stillage*.



## Business Model

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### Alpha Plant

NAP seeks capital to install the Alpha plant to demonstrate the efficacy of the technology and its positive impact on an ethanol plant. The Alpha plant will provide access as well as operating data helping to prove the increased efficiency gained through the introduction of the NAP process. Operating data from the Alpha plant is expected to allow NAP to expand thereafter by 5 plants annually.

### Sales and Marketing

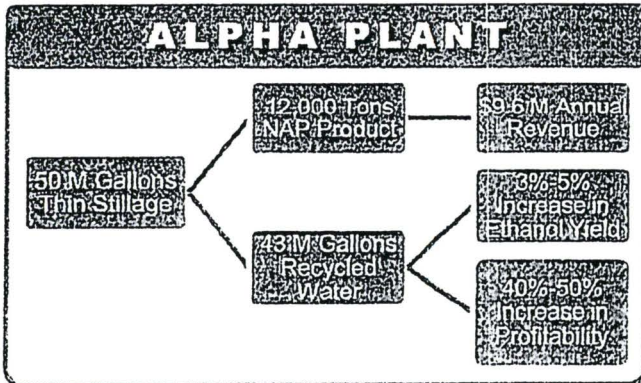
NAP has entered into a sales and marketing agreement with Value Added Science & Technologies, LLC (VAST) whose industry leadership will allow for rapid penetration into the animal nutrition market. The use of *Aspergillus oryzae* in animal feeds is pre-approved by all regulatory agencies. Initial application of the products will be aimed at domestic swine diets, but will be expanded globally across numerous species' diets. Additionally, VAST will build on preliminary studies which suggest the product is effective as a high value nutraceutical. Similar products in the marketplace sell for \$2,000-\$8,000 / ton.

### IP Protection

NAP has filed a provisional patent application covering the use of the technology as a means to improve ethanol yields and to generate a product for high value use in animal feeds. Additionally, proprietary trade secrets and operating parameters are closely held within founder level ownership, and are therefore corporate assets. NAP believes we have significant first mover status commensurate with projected business growth plans. Additional patents are planned.

### Strategic Partners

- ❖ Harris Mechanical: Extensive design build experience across multiple industries
- ❖ US Water Services: Industry leader in wastewater treatment, services over half the ethanol industry
- ❖ VAST: Leader in animal health and wellness products and services



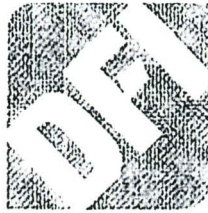
### Community Impact

- ❖ 25 new production jobs
- ❖ Increased stability of ethanol plant
- ❖ Increased demand for corn at the plant
- ❖ 150+ Construction jobs

### Development Timeline

- Q2 – 2012 Break ground on "Alpha" production facility.
- Q1 – 2013 Conclude construction of "Alpha" production facility
- Q2 – 2013 Start up and commissioning  
Begin product sales  
Begin technology roll out marketing
- Q2 – 2014 Break ground on production facility 2-5
- Q1 – 2015 Commissioning and start up of facilities 2-5

Contact: 254-321-1234 Email: <a href="mailto:ibwicking@northamericanprotein.com">ibwicking@northamericanprotein.com</a> <a href="mailto:kpetersen@northamericanprotein.com">kpetersen@northamericanprotein.com</a> <a href="mailto:tcassel@northamericanprotein.com">tcassel@northamericanprotein.com</a>	1000 North American Protein 1000 North American Protein 1000 North American Protein
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## Company Overview

Dynamic Food Ingredients Corporation (DFI) is a high-tech agribusiness company, with patented technology for the production of two high-value natural sweeteners. Both erythritol and xylitol are important ingredients in the natural foods sector and health sectors; however, their application is severely constrained due to raw materials and processing costs. DFI uses patented "green" electrochemistry to replace harsh chemicals and days-long processes to transform corn-based raw materials in very efficient conversions. DFI has proven the technology and is currently building a pilot plant in order to gather all the data required for a full scale manufacturing facility to produce tens of thousands of tons per year. Moreover, DFI will leverage its expertise in electrochemistry for the production of other bio-renewable materials as well as energy storage solutions.

## Company Process

DFI employs patented electrochemical technology. Electrochemistry uses electricity to apply work to raw materials. DFI uses proprietary equipment for its electrochemical processes, but standard corn sweetener processing equipment for the bulk of its production technology.

## Business Model Summary

DFI's business model is founded on the full-scale industrialization of their processes for the production of erythritol and xylitol. Current efforts are focused constructing an erythritol plant that will produce tens of thousands of tons, to meet the current demand for the product, which is currently not met. Independent technology consultants S K Patil & Associates reviewed DFI's technology concluding that it was "a unique opportunity...sweetener landscape-changing event" and that it is a "paradigm shift in the specialty polyols manufacturing worldwide."

## Patent Information

In addition to several patents pending, DFI has been granted patents throughout the world for its first two core patents:

James N. BeMiller, Jonathan A. Stapley. Process for the production of xylitol. US 7,598,374.

Jonathan A. Stapley, J. David Genders, Daniel M. Atherton, Peter M. Kendall. Methods for the electrolytic production of erythrose or erythritol. US 7,955,489.

## Alpha Installation

DFI is currently identifying sites for the industrial scale manufacturing facility and finalizing the details for construction and costs through the pilotization process.

## Management Team Bios

DFI is managed by committed members including the Company's President and Chief Executive Officer, Paul Magnotto, the Chief Technology Officer, Dr. Jonathan Stapley, and the Board Chairman, former US Secretary of Agriculture and North Dakota Governor Edward Schafer.

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HB 1282 3/9 #4

**From:** Bill Patrie [<mailto:bill@cedc.coop>]  
**Sent:** Saturday, March 31, 2012 10:15 AM  
**To:** 'Darin Anderson'; 'Kevin Skunes'; 'Tom Lilja'  
**Cc:** 'Becky L. Bowen'; 'bstockman@bis.midco.net'  
**Subject:** FW: Corn Related Document

Gentlemen,

Please take some time to read through this document. I believe a serious breach of operating procedures for NDCUC and NDCGA, and perhaps federal and state law has occurred. The companies mentioned by name and logo may well have a cause of action against your organizations. I recommend you seek legal council and design a strategy for informing the companies listed in this document that this action was not authorized by your organizations. Because the solicitation occurred by mail, there may be federal statutes that apply and your attorney would best advise you as to who else you may need to notify.

I think it best that any communication between you and Wallie occur only after you have had a chance to talk with council. This document was received by Neil Doty by mail, however there were other materials available for distribution at the meetings referenced. Your attorney can advise you as to whether or not you may wish to get copies of those materials as well. We were previously informed that PepsiCo had not allowed it name to be used in conjunction with Agrebon. Agrebon would be responsible for that violation.

Bill Patrie  
Executive Director  
Common Enterprise Development Corporation  
400 W. Main St. PO Box 1076  
Mandan, ND 58554-7076  
701-663-3886  
cell 701-391-3799

**From:** Neil Doty [<mailto:neild@ncdoty.com>]  
**Sent:** Friday, March 30, 2012 10:50 AM  
**To:** 'Tom Lilja'  
**Cc:** 'Bill Patrie'; 'Becky Bowen'  
**Subject:** Corn Related Document

Tom:

I received the attached document by mail. Since the document references companies that have received funding by the North Dakota Corn Council, I am forwarding this document to you for your records.

Best regards,

Neil Doty

Neil C. Doty, Ph.D.

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#5 pg. 1

LETTER OPINION  
2002-L-63

October 25, 2002

Honorable Merle Boucher  
State Representative  
PO Box 7  
Rolette, ND 58366-0007

Dear Representative Boucher:

Thank you for your letter inquiring about the legality of the North Dakota Wheat Commission using wheat checkoff monies for the purpose of lobbying. The one cent per bushel wheat checkoff is authorized by N.D.C.C. § 4-28-07. See also N.D.A.C. ch. 91-02-01. The wheat checkoff is the Wheat Commission's sole source of funding. Letter from Neal Fisher, Administrator, North Dakota Wheat Commission to John Fox, Assistant Attorney General (Aug. 27, 2002) (Fisher Letter). Any producer may request a refund of the wheat checkoff. N.D.C.C. § 4-28-07(2). The Wheat Commission may use up to twenty percent of the checkoff monies "to support the commission's involvement in trade issues throughout the world." N.D.C.C. § 4-28-07(4).

The North Dakota Wheat Commission was established "for the purpose and with the objective of stabilizing and improving the agricultural economy of the state." N.D.C.C. § 4-28-01. The powers and duties of the Wheat Commission are very broad. 1959 N.D. Op. Att'y Gen. 26. Those powers and duties are set out in N.D.C.C. § 4-28-06 and include the power and authority:

1. To foster and promote programs aimed at increasing the sale, utilization, and development of wheat, both at home and abroad.
2. To publish and disseminate reliable information on the value of wheat and wheat products for any purpose for which they are valuable and useful to both processor and consumer.
3. To search for and promote new uses of wheat and wheat products.

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October 25, 2002  
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- 4. To contract and cooperate with any person, firm, corporation, limited liability company, or association, or with any local, state, or federal department or agency for executing or carrying on a program or programs of research, education, and publicity.

....

- 10. To exercise all express and implied rights, powers, and authority that may be necessary to perform and carry out the expressed purposes of this chapter and all of the purposes reasonably implied incidentally thereto or lawfully connected therewith and to adopt, rescind, modify, and amend all necessary and proper orders, resolutions, rules, and regulations for the procedure and exercise of its powers and the performance of its duties.

Id.

The "intent and purpose of [chapter 4-28 is] that the commission shall promote, aid, and develop the orderly marketing and processing of North Dakota wheat." N.D.C.C. § 4-28-01.

Lobbying generally is defined as a "group of private persons engaged in trying to influence legislators, esp. in favor of a special interest"; to "try to influence legislators to pass (legislation)"; and to "try to influence (an official) to take a desired action." The American Heritage Dictionary 738 (2d coll. ed. 1991). The provisions of state law regulating legislative lobbying describe a lobbyist as someone who:

- a. Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state.
- b. Attempts to influence decisions made by the legislative council or by an interim committee of the legislative council.

N.D.C.C. § 54-05.1-02(1)(a) and (b).

However, the law specifically exempts an "employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in that person's official capacity." N.D.C.C. § 54-05.1-02(2)(c). The Wheat Commission is a state agency subject to the regulatory statutes pertaining to state agencies. 1959 N.D. Op. Att'y Gen. 18.

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While a federal statute generally prohibits the use of federal money to lobby a member of Congress, the prohibition does not expressly apply to non-federal funds. 18 U.S.C. § 1913. Although a state statute does prohibit the use of state property or services for political purposes, the term "political purpose" is defined to mean "any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, political committee, political party, or any other person but does not include activities undertaken in the performance of a duty of state or political subdivision office." N.D.C.C. § 16.1-10-02(2)(a) (emphasis added).

This letter will discuss two types of lobbying activities that may involve the expenditure of checkoff funds. The first is lobbying activities carried on directly by the Wheat Commission or its employees. The second is lobbying activities carried on by other wheat organizations which have contracts with the Wheat Commission. According to information provided by the North Dakota Wheat Commission, its board members and staff are frequently asked to testify at hearings before congressional committees and government agencies involved in the trade area. The Commission also has had contact with government agencies and members of Congress in seeking investigations related to trade disputes. Fisher Letter (Aug. 27, 2002). The Commission noted that it has carefully avoided lobbying on certain issues such as the producer support aspects of federal farm policy, especially where farm program payment levels to individual producers are involved. Id.<sup>1</sup>

To the extent Wheat Commission board members or staff are acting in their official capacity in carrying out the broad powers and duties they have under N.D.C.C. ch. 4-28 to foster and promote the sale, utilization, and development of wheat by contacting legislators or other government officials and by testifying before legislative bodies, it is my opinion that such activities would be lawful.

Section 4-28-08, N.D.C.C., provides that "[a]ll money in the state wheat commission fund is appropriated on a continuing basis to the commission for carrying out the purposes of this chapter." Since, as pointed out above, checkoff funds are the sole source of funds for the Wheat Commission, it would likewise be lawful for Wheat Commission board members and staff to expend checkoff funds when carrying out their powers and responsibilities, including lobbying; however, they are not authorized to expend more than twenty percent

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<sup>1</sup> The Wheat Commission provided a copy of a March 24, 1961, policy statement reciting, in part, that the "commission shall in no way enter into the research, the formulation, or modification of legislation having to do with state or national policy as regards domestic production controls and pricing. The commission may, however, call to the attention of producers, producer organizations, agencies of the government, and others concerned, recommending changes when necessary in matters which are of an administrative nature that affect the marketing of wheat or wheat products."

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of the checkoff monies to support the Commission's involvement in trade issues.<sup>2</sup>  
N.D.C.C. § 4-28-07(4).

Wheat Commission board members and staff not only engage in wheat promotion and lobbying activities, but also enter into agreements with other wheat organizations for a number of purposes, including research, information dissemination, trade promotion, etc. The Wheat Commission provided this office with several contracts it has with other organizations, and also follow-up reports from those organizations detailing their work and accomplishments on behalf of the Wheat Commission and other affiliates. Some of these wheat organizations also engage in lobbying activities which presumably are supported, at least in part, by the wheat checkoff funds paid to them by the Wheat Commission. Presumably, such contracts are being entered into under the authority of N.D.C.C. § 4-28-06 to foster and promote programs aimed at increasing the sale, utilization, and development of wheat, to disseminate reliable information about wheat and wheat products, to promote new uses of wheat, and to contract and cooperate with other organizations or governments for executing or carrying on programs of research, education, and publicity. Id.

According to the North Dakota Wheat Commission,<sup>3</sup> two of the contracts with wheat organizations, U.S. Wheat Associates (USW) and Wheat Export Trade Education Committee (WETEC), focus on the goals of market development and expanded exports. These two agreements are each only one page in length and neither specifically refers to legislative lobbying. However, the WETEC agreement does mention distributing research information and data to decision-makers involved in formulating policies. The USW annual report for the year 2001 mentions providing testimony to a congressional panel relating to a proposed "Asia-U.S. Free Trade Area" and testimony to Congress urging the end of trade sanctions against certain countries such as Iran, Cuba, and North Korea.

The Wheat Commission also supplied copies of contracts with the National Association of Wheat Growers (NAWG), the North Dakota Grain Growers Association (NDGGA), and the U.S. Durum Growers Association (USDGA). These agreements likewise do not explicitly provide for legislative lobbying activities by these organizations on behalf of the Wheat

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<sup>2</sup> Two examples of the North Dakota Wheat Commission using funds to lobby on behalf of trade issues are contained in the Commission's annual report for fiscal year 1999-2000. The report mentioned the role of the North Dakota Wheat Commission in campaigning on Capitol Hill to pass a bill in 2000 to permanently normalize trade relations with China in order to increase trade and reduce transportation costs. The report also noted that the Commission would work with national wheat organizations to encourage Congress to revisit the issue of trade restrictions with Cuba and to end the embargo on Cuba.

<sup>3</sup> Fisher Letter.

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Commission.<sup>4</sup> However, the follow-up reports to the Wheat Commission from these organizations do indicate participation in lobbying activities. The NAWG's Fiscal Year-end Activity Report (June 14, 2002) details the following: NAWG has a two-person government affairs department with legislative specialists; NAWG officers and board members have traveled to Washington to lobby regarding the farm bill (e.g., "NAWG representatives made well over 60 visits to Congressional offices on the Farm Bill in the first five months of 2002" and "NAWG also developed a line of communication with both the House and Senate agricultural staffs, receiving important information as the farm bill developed as well as through the negotiations of the Conference Committee."); and NAWG officials have worked with congressional officers on disaster assistance, transportation issues, intellectual property issues, trade policy, water rights, pesticide harmonization, etc. Id.

The agreement between the North Dakota Wheat Commission and NDGGA mentions assistance in obtaining funding from government sources for wheat research and programs, and communication aimed at educating government agencies and policymakers about producer needs regarding crop insurance. The North Dakota Grain Growers Association 2001-2002 Annual Report to the North Dakota Wheat Commission on North Dakota Grain Grower Activities lists meetings in Washington regarding restoration of funding cuts for the USDA-ARS Red River Valley Agricultural Research Center in Fargo and discussions with Senator Dorgan and his staff on pending federal legislation. It also recites that the NDGGA made "dozens of trips to Washington to see to it that the North Dakota wheat producer was treated fairly in the new farm bill" and that "NDGGA traveled to Washington, D.C. numerous times during this past fiscal year to meet with congressional staff." Id.

Finally, the Memorandum of Agreement Between the North Dakota Wheat Commission and U.S. Durum Growers Association (2001) recites that USDGA is to support activities, including programs and communications, aimed at educating government agencies and policymakers of producer needs regarding crop insurance. The U.S. Durum Growers Association 2001-2002 Outline mentioned that it was part of the lobbying effort for the recently passed farm bill with two trips to Washington, D.C.

In your letter you note that there has been a difference of opinion over the years as to whether the use of wheat checkoff monies for lobbying is lawful. Although I have determined that direct lobbying activities by the Wheat Commission board members or employees who are acting in their official capacity in carrying out their powers and duties under N.D.C.C. §4-28-06 constitute lawful activities, a further question is raised when

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<sup>4</sup> The agreements do, however, allude to representing their affiliates on such matters as trade issues, research, crop protection, environmental regulation, education of government officials, and the like.



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October 25, 2002  
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wheat checkoff monies are paid to organizations pursuant to contracts and which may be used, in part, to engage in lobbying efforts.

A similar issue was addressed in a letter issued by this office in 1993. See Letter to William Drummond (Dec. 20, 1993). In that letter the question was raised whether the North Dakota Barley Council could give money to the U.S. Feed Grains Council (whose membership consisted of agri-businesses, state checkoff groups such as the North Dakota Barley Council, producer associations, and organizations such as the Farm Bureau). The U.S. Feed Grains Council used its funds to disseminate information but did not make political contributions to candidates. Id. It had been determined by the Internal Revenue Service that the group's activities constituted lobbying for tax purposes. Id. The letter concluded that "[i]f U.S. Feed Grains Council is a group lobbying for the promotion of barley, the North Dakota Barley Council may have the statutory authority to contract with the lobbying group." It is instructive that the North Dakota Barley Council had the same basic statutory authority (N.D.C.C. § 4-10.4-07(1)) as the North Dakota Wheat Commission has in N.D.C.C. § 4-28-06(4).

In 1994 N.D. Op. Att'y Gen. L-49, the question was raised whether the Garrison Diversion Conservancy District, a governmental entity, could lawfully join the Greater North Dakota Association (GNDA), a private organization which, among other things, supported the Garrison Diversion Unit at legislative interim committee meetings. The Garrison Diversion Conservancy District had the authority to promote the construction, maintenance, and operation of the Garrison Diversion Unit, as well as the authority to contract with a private association to disseminate information to promote the Garrison Diversion Unit. Id. The opinion concluded that "[w]hether the GNDA actually promotes the construction, maintenance, or operation of the Garrison Diversion Unit is a question of fact for the [Garrison Diversion Conservancy] District, not this office, to determine. Consequently, it is my opinion that the District does not have the express or implied authority under N.D.C.C. ch. 61-24 to join the GNDA and pay membership fees except to the extent that the District determines the GNDA promotes the construction, maintenance, or operation of the Garrison Diversion Unit." Id.

Likewise, in the present case, it is up to the North Dakota Wheat Commission to determine, as a factual matter, whether its contracts with various wheat-related organizations and the lobbying activities of those organizations promote the sale, utilization, and development of wheat within the meaning of N.D.C.C. § 4-28-06. If it is determined by the North Dakota Wheat Commission that the lobbying activities of these contracting organizations fulfill the Commission's statutory purposes and that these contracting organizations otherwise comply with applicable laws regulating lobbying activities, then the use of checkoff monies for such statutory-related purposes is, in my opinion, lawful. If any of the wheat producers subject to the checkoff disagree with the

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North Dakota Wheat Commission's determination, such producers are able to seek a refund of the checkoff levy in the manner provided in N.D.C.C. § 4-28-07(2).

Sincerely,

Wayne Stenehjem  
Attorney General

jff/vkk

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pg. 1

Client Code 614

NORTH DAKOTA  
CORN UTILIZATION COUNCIL  
FARGO, NORTH DAKOTA

**Audit Report**

For the Two-Year Period Ended  
June 30, 2012

ROBERT R. PETERSON  
STATE AUDITOR

Office of the State Auditor  
Division of State Audit

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COMMITTEE MEMBERS

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*Senator Terry M. Wanzek – Vice Chairman*

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*Lonny B. Winrich*  
*Dwight Wrangham*

Senators

*Randel Christmann*  
*Joan Heckaman*  
*Jerry Klein*  
*Judy Lee*

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## *Independent Auditor's Report*

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Honorable Jack Dalrymple, Governor

Members of the Legislative Assembly

Members of the North Dakota Corn Utilization Council

Tom Lilja, North Dakota Corn Utilization Executive Director

We have audited the special-purpose statement of revenues and expenditures of the North Dakota Corn Utilization Council for the two-year period ended June 30, 2012. The special-purpose financial statement is the responsibility of the North Dakota Corn Utilization Council's management. Our responsibility is to express an opinion on the special-purpose financial statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the special-purpose financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the special-purpose financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall special-purpose financial statement presentation. We believe our audit provides a reasonable basis for our opinions.

As discussed in Note 1, the special-purpose financial statement of the North Dakota Corn Utilization Council is intended to present the revenues and expenditures of only that portion of the governmental activities of the state of North Dakota that is attributable to the transactions of the North Dakota Corn Utilization Council. They do not purport to, and do not, present fairly the financial position of the state of North Dakota in conformity with accounting principles generally accepted in the United States of America.

The accompanying special-purpose financial statement is prepared to provide state decision makers, including the Senate and House Agriculture Committees, with a comprehensive overview of the North Dakota Corn Utilization Council's operations in accordance with NDCC section 4-24-10. The revenues and expenditures are reported as discussed in the first note to the special-purpose financial statement. The special-purpose financial statement is not intended to be a presentation in conformity with generally accepted accounting principles.

In our opinion, the special-purpose financial statement referred to above presents fairly, in all material respects, the revenues and expenditures of the North Dakota Corn Utilization Council for the two-year period ended June 30, 2012, in conformity with the basis of accounting described in Note 1 to the special-purpose financial statement.

In accordance with *Government Auditing Standards*, we have also issued our report dated November 15, 2012 on our consideration of the North Dakota Corn Utilization Council's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

This report is intended solely for the information of the Governor, North Dakota Corn Utilization Council, Legislative Audit and Fiscal Review Committee, Senate and House Agriculture Committees, and management of the North Dakota Corn Utilization Council and is not intended to be and should not be used by anyone other than these specified parties.



Robert R. Peterson  
State Auditor

November 15, 2012

***Independent Auditor's Report on Internal Control Over  
Financial Reporting and on Compliance and Other Matters  
Based on an Audit of a Special-Purpose Financial Statement  
Performed in Accordance with Government Auditing Standards***

---

Honorable Jack Dalrymple, Governor

Members of the Legislative Assembly

Members of the North Dakota Corn Utilization Council

Tom Lilja, North Dakota Corn Utilization Council Executive Director

We have audited the special-purpose financial statement of the governmental activities of the North Dakota Corn Utilization Council as of and for the two-year period ended June 30, 2012 and have issued our report thereon dated November 15, 2012. Our report was modified to indicate the statement of revenue and expenditures was prepared in accordance with NDCC section 4-24-10 and is not intended to be a presentation in conformity with generally accepted accounting principles. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

**Internal Control Over Financial Reporting**

Management of the North Dakota Corn Utilization Council is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered the North Dakota Corn Utilization Council's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the North Dakota Corn Utilization Council's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the North Dakota Corn Utilization Council's internal control over financial reporting.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the North Dakota Corn Utilization Council's financial statement will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.



**Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the North Dakota Corn Utilization Council's special-purpose financial statement is free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of special-purpose financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed an instance of noncompliance or other matters that is required to be reported under *Government Auditing Standards* and which is described in the accompanying schedule of Findings, Recommendations, and Management Responses as Finding 12-1.

We noted certain matters that we reported to management of the North Dakota Corn Utilization Council in a letter dated November 15, 2012.

This report is intended solely for the information and use of the North Dakota Corn Utilization Council, Legislative Audit and Fiscal Review Committee, and members of the North Dakota Legislative Assembly, and is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.



Robert R. Peterson  
State Auditor

November 15, 2012

## *Special-Purpose Financial Statement*

### Comparative Statement of Revenues and Expenditures

<u>Revenues:</u>	<u>June 30, 2012</u>	<u>June 30, 2011</u>
Corn Assessments (net of refunds of \$146,635 and \$77,909)	\$ 3,339,077	\$ 2,908,856
Interest & Investment Earnings	9,320	9,229
Miscellaneous General Revenue		81
<b>Total Revenues</b>	<u>\$ 3,348,397</u>	<u>\$ 2,918,166</u>
<u>Expenditures:</u>		
Grants to State Colleges	\$ 855,388	\$ 486,769
Grants to Associations	486,000	521,600
Miscellaneous Grants	373,939	624,068
Travel	176,197	152,095
Salaries and Benefits	164,367	158,069
Operating Fees and Services	157,554	173,593
Conference Expenses	87,385	79,588
Dues and Memberships	63,800	39,080
Professional Development	25,645	1,500
Printing	22,586	13,826
IT Contractual Services and Repairs	22,550	9,918
Rentals/Leases - Bldg./Land	20,392	20,266
Fees - Professional Services	14,764	41,663
Miscellaneous Supplies	9,119	11,229
Office Supplies	6,426	6,080
Postage	6,100	12,651
IT-Communications	6,031	3,999
IT Equip under \$5,000	3,194	1,420
Repairs	3,136	5,900
Rentals/Leases - Equip & Other	3,026	
Bldg., Grounds, Vehicle Supply	2,049	4,879
Utilities	1,571	1,363
IT Software/Supplies	1,058	140
Supply/Material-Professional	825	1,594
Insurance	628	794
IT - Data Processing	20	
<b>Total Expenditures</b>	<u>\$ 2,513,751</u>	<u>\$ 2,372,083</u>
<b>Revenue Over Expenditures</b>	<u>\$ 834,646</u>	<u>\$ 546,083</u>

See Notes to the Special-Purpose Financial Statement

## Notes to the Special-Purpose Financial Statement

### NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The responsibility for the special-purpose financial statement, the internal control structure and compliance with laws and regulations belongs to the management of the North Dakota Corn Utilization Council (Council). A summary of the significant accounting policies follows:

#### A. Reporting Entity

For financial reporting purposes, the Council includes all funds, programs, and other activities over which it is financially accountable. The Council does not have any component units as defined by the Government Accounting Standards Board. The Council is part of the state of North Dakota as a reporting entity.

The Council was established with the authority to contract and cooperate with any person for market maintenance and expansion, utilization research, transportation, and education; accept donations of funds, property, services or other assistance from any source; and provide educational and informational materials. This is accomplished through the levying of an assessment on all varieties of corn grown in the state, except sweet corn and popcorn, sold to a designated handler. The amount of the levy is one-quarter of one percent of the value of a bushel.

The Council has a close working relationship with the North Dakota Corn Growers Association (Association). This relationship is further explained in Note 2 to the financial statements. The special-purpose financial statement includes only activities of the Council, which is one department that has one division. The Council is responsible for and is funded under a continuing appropriation and receives no funding from the State Legislature.

#### B. Reporting Structure

The special-purpose financial statement includes all activities of the reporting entity as defined above. These activities are funded from fund 270, the Corn Council Fund. The comparative statement of revenues and expenditures is a combined statement to give the users an overview of the agency's activity.

#### C. Basis of Presentation

Revenues and expenditures on the statement of revenues and expenditures are principally reported on the modified accrual basis of accounting which is generally accepted accounting principles (GAAP) for governmental fund types. Because of the unique nature of North Dakota's accounting system and its appropriation laws, there are at times differences between the way expenditures are appropriated and GAAP. These differences are discussed below.

Under the modified accrual basis of accounting revenues are recognized when susceptible to accrual (i.e. measurable and available). Measurable means the amount can be determined, available means due and collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period. Revenues are considered available if they are collected within a year after fiscal year end. Expenditures are recorded when goods or

services are received. Exceptions include: principal and interest expenditures which are recorded when due; compensated absences which are recorded when paid; and claims and judgments.

As stated above, there can be differences between revenues and expenditures reported on the state accounting system and budget basis and those reported by the Office of Management and Budget in the state's CAFR in accordance with GAAP. Basically there are two types of differences: accounting and statutory.

Accounting differences can include:

- A. Revenue reported on the statement of revenues and expenditures can differ from GAAP revenues because certain receivables are accrued for GAAP purposes while they were not recorded as revenue on the state's accounting system when they are received after the apply back period.
- B. Certain transfers are sometimes recorded as revenues and expenditures on the state's accounting system.
- C. Expenditures recorded on the state's accounting system do not report expenditures relating to capital lease and other financing arrangements.

Statutory differences can occur because of the North Dakota Century Code section 54-44.1-11. This section requires the Office of Management and Budget to cancel most unexpended appropriations 30 days after the end of each biennial period. Certain GAAP expenditures are not recorded as budgetary expenditures because the agency does not have the ability to pay the expenditures within 30 days after the end of the biennium. These are relatively rare occurrences, and when significant, will be clearly disclosed.

D. Other GAAP Reporting Differences

GAAP financial statements would include a balance sheet by fund type and account group. Revenues, expenditures, and expenses would also be reported by fund type. In addition, a statement of cash flows would have to be prepared for proprietary fund type activities. GAAP financial statements would also provide more complete note disclosures. This type of information is available in the state's comprehensive annual financial report and the Office of Management and Budget's combining statements by department.

For this report, revenues and expenditures are reported on a departmental basis to give an overview of the Council's operations. All revenue and expenditures are included regardless of the nature of the activities.

**NOTE 2 – RELATED PARTIES**

The Council contracts with the Association, a related organization through similar control and management for promotional activities which included a purchase of a pick-up truck for advertising for the Association and administrative services. The Council and the Association have an agreed upon a policy in which the Association's Board of Directors will be the designated advisory board of the Council.

The Executive Director of the Council is also the Executive Director of the Association. The Association employs one administrative assistant who shares her time between the Council and the Association. The Council reimburses the Association for their portion of the salary per the contract.

For fiscal year 2012, the Council paid \$58,707 for administrative services and \$40,000 for the promotional advertising for the pick-up truck purchase. For fiscal year 2011, the Council paid \$47,785 for administrative services.

The Northern Corn Development Corporation (Corporation) is a related party of the ND Corn Utilization Council. The Northern Corn Development Corporation, a non-profit, was formed for the purpose of the business planning stage for nitrogen fertilizer plant within the tri-state area. The steering committee is made up of corn growers and the address of the non-profit is the Council's office and the registered agent is the Executive Director of the Council. The Corporation was formed by members of the Council and Association. No transactions were paid to the Corporation during fiscal year 2012 and 2011, but in fiscal year 2013 a \$925,000 payment was made which is disclosed in Note 4.

#### **NOTE 3 – OTHER SIGNIFICANT ITEMS**

The Council has cash and investment reserves of \$3,940,723 and \$3,018,524 at June 30, 2012 and 2011, respectively. Based on the average monthly expenditures for fiscal year 2012 and 2011, this amount represents approximately 19 and 15 months of expenditures, respectively.

#### **NOTE 4 – SUBSEQUENT EVENTS**

The Council paid Northern Corn Development Corporation, a non-profit, which was set-up to explore the feasibility of starting up a nitrogen plant in Western North Dakota \$925,000 in fiscal year 2013 for business planning.

## *Supplementary Information*

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### **Responses to LAFRC Audit Questions**

*The Legislative Audit and Fiscal Review Committee (LAFRC) requests that certain items be addressed by auditors performing audits of state agencies.*

1. *What type of opinion was issued on the financial statements?*

Unqualified.

2. *Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?*

Other than our finding addressing "Northern Corn Development Corporation" (page 11), the North Dakota Corn Utilization Council was in compliance with significant statutes, laws, rules, and regulations under which it was created and is functioning.

3. *Was internal control adequate and functioning effectively?*

Yes.

4. *Were there any indications of lack of efficiency in financial operations and management of the agency?*

No.

5. *Has action been taken on findings and recommendations included in prior audit reports?*

There were no recommendations in the prior audit report.

6. *Was a management letter issued? If so, provide a summary below, including any recommendations and the management responses.*

Yes. The Governance Communication on page 12 of this report contains two informal recommendations related to the approval of purchase card expenditures and conflict of interest statements.

## LAFRC Audit Communications

1. *Identify any significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.*

There were no significant changes in accounting policies; no management conflicts of interest, contingent liabilities or significant unusual transactions were noted.

2. *Identify any significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditor's conclusions regarding the reasonableness of those estimates.*

None noted.

3. *Identify any significant audit adjustments.*

None.

4. *Identify any disagreements with management, whether or not resolved to the auditor's satisfaction relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.*

None.

5. *Identify any serious difficulties encountered in performing the audit.*

None.

6. *Identify any major issues discussed with management prior to retention.*

This is not applicable for audits conducted by the Office of the State Auditor.

7. *Identify any management consultations with other accountants about auditing and accounting matters.*

None.

8. *Identify any high-risk information technology systems critical to operations based on the auditor's overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by the auditors are directly related to the operations of an information technology system.*

ConnectND Finance and Human Resource Management System (HRMS) are the most high-risk information technology systems critical to the North Dakota Client.

## Findings, Recommendations, and Management Response

### NORTHERN CORN DEVELOPMENT CORPORATION (Finding 12-1)

In fiscal year 2009, the Corn Council formed the Northern Corn Development Corporation, a nonprofit, because of positive results of Council funded feasibility studies that the Corn Council look into the possibility of using corn to develop nitrogen in western North Dakota. The corporation was formed to look at the business planning aspect of this area.

According to the Secretary of State's website, the corporation's principal office is the same as the Council and the registered agent is the Executive Director of the Council. The Council paid the Corporation \$925,000 in fiscal year 2013 for start-up costs for consultants, accounting, and legal for business planning.

Based on our review of the North Dakota Century Code (NDCC) and an Attorney General's opinion related to similar actions by the Oilseed Council, we question whether the Council has the statutory authority to establish the nonprofit corporation and expend monies to provide start-up costs to the corporation.

NDCC 4.1-04-09 states that the Council's duties are to use the money raised under this chapter to fund research, education programs, and market development efforts.

Attorney General Letter Opinion 97-L-7 stated that the Oilseed Council could not provide funds to the American Renewable Oil Association for a grower-owned oilseed processing and marketing business because the funds were to be used for start-up costs to fund the development of the business including legal and accounting assistance, developing the business plan and structure and adopt by-laws.

#### **Recommendation:**

We recommend the Corn Utilization Council:

- Obtain an Attorney General's opinion regarding the statutory authority of the Council's establishment and funding of the Northern Corn Development Corporation.
- Recover the \$925,000 from Northern Corn Development Corporation unless the Attorney General's office rules the action is within the Council's statutory authority.

#### **North Dakota Corn Utilization Council Response:**

*The North Dakota Corn Utilization Council sought an opinion from the Attorney General as to whether the Council has the authority to "assign" the technology to the non-profit corporation and to contract with that corporation to "commercialize" the technology. Tom Lilja, Executive Director of the North Dakota Corn Utilization Council received a letter regarding the scope of the Corn Council Authority on September 21, 2011, from Charles Carvell, Assistant Attorney General.*



We believe the contract with Northern Corn Development Corporation is consistent with the guidance provided in the Carvell letter. Specifically NDCUC is relying on the implied powers of the Council to make use of the results of funded research to establish new markets or to increase the market value of corn. Carvell states that while the North Dakota Corn Utilization Council cannot fund a private business entity or operate one itself to commercialize a technology; it clearly has the authority to contract with an entity to capture the value of intellectual property acquired through research contracts and to place the technology in use for the benefit of corn growers.

Carvell notes that the Council has the power to "contract with any person for any purpose related to this chapter including research, education, publicity, promotion, and transportation." Consistent with that authority, NDCUC is contracting with Northern Corn Development Corporation for research related to the manufacture of fertilizer from renewable sources of hydrogen which may provide a marketing benefit to farmers who grow corn using that fertilizer. Northern Corn Development Corporation is also receiving similar contracts from other commodity organizations in support of this research including the South Dakota Corn Council, the Minnesota Corn Utilization and Promotion Council, the North Dakota Soybean Council, and the Canola Growers of Manitoba. These organizations are each funding this research project consistent with their statutory authority. The North Dakota Agricultural Products Utilization Commission has also funded this research project under statutory authority to encourage the use of commodities produced in North Dakota.

The North Dakota Corn Utilization Council recognizes the limit of its authority consistent with Opinion 97-L-7 (Oilseed Council) and, through its contract with Northern Corn Development Corporation, prohibits the use of any of these research dollars for the exclusive benefit of a private company. The Council will allow Northern Corn Development Corporation to transfer the acquired intellectual property to a private entity that will commercialize that technology. The Council understands that the terms of that transfer may require review by the Attorney General, as noted in the Carvell letter. We request the recession of Finding 12-1.

*Auditors concluding remarks:*

We reviewed the letter sent to the Attorney General's office requesting an opinion that the Corn Council is referencing above. The opinion request was whether or not the Corn Council had the authority to assign intellectual property or commercialization rights it may acquire in the course of funded research projects to a not-for-profit development corporation. The request does not address whether or not the Council has the statutory authority to establish or fund the Northern Corn Development Corporation as our recommendation states.

## Governance Communication

November 15, 2012

To: The North Dakota Corn Utilization Council  
The Legislative Audit and Fiscal Review Committee

We have audited the special-purpose financial statement of the North Dakota Corn Utilization Council for the two-year period ended June 30, 2012, and have issued our report thereon dated November 15, 2012. Professional standards require that we provide you with the following information related to our audit.

### Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the North Dakota Corn Utilization Council are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the two-year period. We noted no transactions entered into by the governmental unit during the two-year period for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

### Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

### Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. There were no known or likely misstatements that we needed to report to management.

### Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

### Management Representations

We have requested certain representations from management that are included in the management representation letter dated November 15, 2012.

### Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

### Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention. It should be noted that the retention of the State Auditor is a matter of state law and is not under the control of the North Dakota Corn Utilization Council.

The following presents our informal recommendations.

#### PURCHASE CARDS

The Executive Director has a purchase card; however, we noted the expenditures are not being properly approved by someone other than the Executive Director each month.

OMB Policy 300 – Purchasing Card – states the supervisor should sign the cardholder's statement certifying that the purchases were made for the use of state business and appropriate rules and regulations were followed.

#### Recommendation:

We recommend the Corn Utilization Council chairman review and document approval of the Executive Director's monthly purchase card expenditures.

#### *North Dakota Corn Utilization Council Response:*

*The North Dakota Corn Utilization Council agrees. The Chairman of the Council approves the Executive Director's monthly expense statements. The Council Chairman will additionally approve the monthly purchase card expenditures of the Executive Director.*

#### CONFLICT OF INTEREST STATEMENTS

The Corn Council's Ethics and Understanding policy section four discusses awarding no contracts or funding that will cause the question or raise a conflict of interest with any council or staff member. However, we noted that neither the council nor the staff are completing conflict of interest statements on a yearly basis that identify what the potential conflict of interests may be to the Council.

Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control - Integrated Framework states management must continually demonstrate, through words and actions, a commitment to high ethical standards. A written code of conduct and conflict of interest statements are an important part of a system of internal control to foster a strong ethical climate and shared values and teamwork in pursuit of entity's objectives.

Recommendation:

We recommend the Corn Council modify the Ethics and Understanding policy to include all Council members and employees annually:

1. Complete a conflict of interest statement; and
2. Acknowledge they have read and understand the policy.

*North Dakota Corn Utilization Council Response:*

*The North Dakota Corn Utilization Council agrees. NDCUC is undertaking a strategic planning session in December of 2012 and conflict of interest statements will be included and acknowledged by both the board and staff.*

This information is intended solely for the use of the North Dakota Corn Utilization Council and management of the North Dakota Corn Utilization Council and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,



Robyn Hoffmann, CPA  
Auditor In-Charge

You may obtain audit reports on the internet at:

[www.nd.gov/auditor/](http://www.nd.gov/auditor/)

or by contacting the  
Division of State Audit

Office of the State Auditor  
600 East Boulevard Avenue – Department 117  
Bismarck, ND 58505-0060

(701) 328-2241

## Memorandum

**To:** Tom Lilja, Exe. Dir., N.D. Corn Utilization Council  
**From:** Charles Carvell, Assistant Attorney General  
**Re:** Contract Review  
**Date:** September 21, 2011

You asked that I review a draft *Exclusive Patent and Know-How License Agreement* between the Northern Corn Development Corporation and the Energy & Environment Center Foundation ("EERC"). My initial response to your request was that I could not review the *Agreement* because neither the Corporation nor EERC is a state agency that I represent. To this you said that the Corn Council may consider a similar kind of arrangement with EERC and before the Council gets too far down that road it might be a good idea to determine whether this is the kind of contract the Corn Council has authority to enter, and thus, you again asked that I review the *Agreement*, substituting in that review "Corn Council" where the references to "Northern Corn Development Corporation" appear.

In general, the Council's authority under its governing statutes is to promote and expand the use of corn and corn products. Thus, any agreement the Council enters needs to be consistent with this legislative objective. (A fuller explanation of the Council's statutory powers is in a memo I issued to you on the same date as this memo.)

The *Exclusive Patent and Know-How License Agreement* contains "Whereas" clauses stating that EERC owns "certain intellectual property" that it wants "developed and commercialized," and that the Corn Council "commit[s] itself to a thorough, vigorous, and diligent program of exploiting the intellectual property" for "public utilization." To provide for this, under Section 2.1 of the *Agreement* EERC licenses the intellectual property to the Corn Council. (The *Agreement* uses a number of terms similar to "intellectual property," such as "licensed products," "licensed processes," "know-how," and "technical information." I will collectively refer to these as the "Product.")

The Corn Council's essential duties under the *Agreement* are set forth in Article 3. The Council is required to "use commercially reasonable efforts . . . to develop" the Product and to "introduce" it "into the commercial market." Sec. 3.1. Further, the Council must "initiate engineering, procurement, and construction" of a 30-kw pilot plant that would be used to make nitrogen fertilizer. Sec. 3.1(A). The pilot plant is to "collect data for a commercial plant design." Sec. 3.1(C). The plant is also, as I understand it, to be used to "optimize" the "Electrochemical Process for the Preparation of Nitrogen Fertilizer." Sec. 3.1(C).

The pilot plant must be in operation by December 31, 2013, Sec. 3.1(B) and one year after that the Corn Council is obligated to "start the commercial phase," which involves building "a commercial-sized plant," or perhaps buying one. Sec. 3.1(D). At any rate, the Council must be operating "such commercial plant no later than June 30, 2016."

Sec. 3.1(E). Furthermore, the Council is required to get the Product into the marketplace for sale. *E.g.*, Secs. 4.4, 5.1.

Article 4 of the *Agreement* largely deals with the Corn Council's obligation to make payments to EERC, beginning with an initial \$25,000 payment followed by \$50,000 when the Council completes the pilot plant and then \$100,000 when it starts the "commercial phase." Secs. 4.1, 4.2, 4.3. And it must issue shares to EERC. Sec. 4.1. Also, the Council must pay EERC royalties on "net sales." Secs. 4.4, 4.5.

Section 6.2 requires that the Corn Council "provide patent protection," and Section 6.3 requires that the Council pay EERC's "fees and costs, including attorney fees, relating to the filing, prosecution, and maintenance" of certain patent rights.

By any measure, this *Agreement* is a sophisticated and complex business transaction. It would impose significant commercial and financial obligations on the Corn Council.

In establishing a corn promotion agency, I doubt that the legislature contemplated the Council designing, constructing, and operating industrial plants; issuing stock; accepting substantial financial obligations; and entering into the commercial marketplace in the same manner as do private enterprises. There is nothing in Chapter 4.1-04, or its legislative history, that would authorize the Corn Council to enter this *Agreement*. It seems more than a little beyond promoting corn and corn products.

Even if the Corn Council had the authority to enter a "commercialization" agreement, it still might not be able to agree to particular terms in such an agreement. For example, in the *Agreement* under review, I doubt the propriety of the Council, or any state agency, agreeing to pay, as Section 6.3 requires, an unknown amount of future "fees and costs, including attorney fees" that EERC might incur "relating to the filing, prosecution, and maintenance" of patent rights. And the indemnification provision of Section 8.2 is probably beyond the authority of most agencies. The agreement in Section 3.1(C) to enter a future "contract with the EERC for additional support" is exceptionally vague. The commitment under Section 3.1 to spend large amounts of money years down the road is questionable; even on routine leases under which state agencies lease building space there is a clause stating that if the legislature doesn't appropriate sufficient funds for the lease the agency can back out of it.

In sum, there are specific provisions in the *Agreement* that might be problematic for any state agency. More fundamentally, however, this *Agreement* is not one that the legislature empowered the Corn Council to enter.

North Dakota Corn Utilization Council (NDCUC) funded research at EERC to evaluate new methods of producing farm fertilizer (NH<sub>3</sub> / NH<sub>4</sub>). Current process (Haber-Bosch) is over 100 years old. Started 2006/2007 with this funding. As part of the research patents were filed that gave NDCUC the right to license the technology. EERC held the process patents.

NDCUC contracted with Bill Patrie to further guide the project (2009). Mr. Patrie recommended an overall evaluation of the cost/feasibility analysis. Haber / Bosh was roughly \$290 - \$400 per ton at the time based on natural gas prices at the time. Farmers were being charged \$700 to \$800 per ton so they knew they were being ripped off. Mr. Patrie recommended a 3<sup>rd</sup> party to extrapolate data.

Mr. Patrie also recommended that joint research with other corn states and commodity groups in ND should be looked into. Northern Corn Development Corporation was started as a 501C 5 to serve as a not for profit development fund if the patents or other projects came into commercialization stages.

NDSU Agribusiness Dept. feasibility study concluded that the process NDCUC had the patents on would cost between \$1,100 to \$1,300 per ton. The bench type research at EERC was producing 2 watts of fertilizer (very small amount) at the time.

In December 2011 board meeting, Wallie Hardie wanted the NDCUC to assign him the right to license this technology. The NDCUC said NO and reserved the right to license. (It is in the board minutes)

In February 2012 Wallie Hardie presented a signed \$300,000 contract (signed by Mr. Hardie) with the EERC with the right to assign technology license. This was against the December NDCUC minutes and a material misrepresentation of NDCUC decision. Mr. Hardie was mis representing himself as the head of Northern Corn Dev. Corp. As of early 2012, NDCUC had not even been assigned a federal tax ID number.

At the March 2012 NDCUC / ND Corn Growers Association (NDCGA) joint board meeting, Mr. Hardie and Mr. Mike Clemens presented a motion for the NDCGA to provide membership lists for farmers to invest in SkyTrain investment fund. SkyTrain fund listed a number of research projects funded by NDCUC and the company Agrebon. The NDCGA board approved giving Mr. Hardie and Mr. Clemens the membership lists to solicit private investment. Mr. Jon Strinden is listed as the attorney that filed the SkyTrain offering circular.

In late March 2012 executive director Tom Lilja received a number of concerned calls from researchers that were being pushed into having their research / start up companies included in the SkyTrain fund against their wishes/judgement. They were being bullied by Mr. Hardie.

In April 2012, Mr. Lilja received an offering circular that listed SkyTrain fund and Agrebon. The offering circular referenced "disruptive technology" for the production of NH<sub>3</sub> fertilizer. At the end of the document it stated that we will use existing technology for the production of NH<sub>3</sub> fertilizer. Knowingly publishing an offering circular by not publishing known costs (\$1,100-\$1,300) was a material misrepresentation of the facts.

Mr. Charles Carvelle with the AG's office advised Mr. Lilja not to pay the \$300,000 bill as the NDCUC did not authorize it. He further advised Mr. Lilja to make the signature go away as to avoid future liabilities for the NDCUC.



It was determined later that the EERC did license the technology to Agrebon (the patent numbers were identical). Agrebon & Wallie Hardie committed securities fraud as the feasibility study showed that you could not produce NH<sub>3</sub> for \$400 per ton but rather \$1,100 to \$1,300 per ton.

The NDCGA releasing the membership list for a private investment offering circular exposed themselves to civil liability if that investment should fail.

The NDCUC failed to publish the cost data of \$1,100 to \$1,300 per ton NH<sub>3</sub> production. They further failed to stop the NDCGA from participating in this type of private investment. The NDCUC did not stop the NDCGA and individual NDCGA board members. Going along to get along makes the NDCUC civilly culpable as well.

### Memorandum

**To:** Tom Lilja, Exe. Dir., N.D. Corn Utilization Council  
**From:** Charles Carvell, Assistant Attorney General  
**Re:** Scope of Corn Council Authority  
**Date:** September 21, 2011

**Introduction.** You ask two questions about the scope of the Corn Utilization Council's authority to put to use a discovery made through a Council-funded research project. The discovery concerns renewable electrolytic nitrogen fertilizer production technology—an alternative way of producing nitrogen needed for fertilizer. The technology could, I understand, lead to growing corn in a manner that makes corn more attractive for certain markets, and could even open new markets for corn. To evaluate the technology the Council is considering a relationship with a non-profit corporation. In particular, you ask if the Corn Council has the authority to "assign" the technology to the non-profit corporation and to contract with that corporation to "commercialize" the technology.

While below is a separate analysis of the authority to assign and the authority to commercialize, I will start with points applicable to each question.

**The Corn Council's Statutory Powers.** As a state agency the Corn Council has only the powers given it by the legislature, as well as those powers necessarily implied from an express grant of authority.<sup>1</sup> For an implied power to exist there must be a direct correlation between the express and the implied power.<sup>2</sup>

The broadest expression of Corn Council authority is in subsections 4 and 6 of N.D.C.C. § 4.1-04-08. Under subsection 4, the Council has the power to "[c]ontract with any person for any purpose related to this chapter including research, education, publicity, promotion, and transportation." This is broad contracting authority, but not unlimited because the contracting power it authorizes is tied to a "purpose related to this chapter." Subsection 6 states that the Council may "[d]o all things necessary and proper to enforce and administer this chapter." While also broad, this isn't an unlimited grant of authority because it too is tied to implementing "this chapter."

Unfortunately, the legislature did not with clarity set forth in Chapter 4.1-04 the purposes for which it established the Corn Council. Had it done so, understanding the scope of Subsections 4 and 6 would be easier. Without clear statutory guidance on the chapter's purposes, we must resort to secondary tools of interpretation.

<sup>1</sup> E.g., *First Bank of Buffalo v. Conrad*, 350 N.W.2d 580, 584-85 (N.D. 1984).

<sup>2</sup> E.g., 2004 N.D. Op. Atty. Gen. 04-L-08; 1996 N.D. Op. Atty. Gen. 96-L-6, at 2.

One source is legislative history, that is, statements made and documents submitted in the lawmaking process. The Corn Council's governing chapter was first enacted in 1991.<sup>3</sup> It was codified in Chapter 4-10.6, which was repealed in 2009.<sup>4</sup> The chapter was repealed along with all other chapters governing commodity agencies, such as the Wheat Commission, Barley Council, Soybean Council, and Beef Commission. The repeal was the culmination of legislative work begun when the 2007 Legislature initiated a study of agriculture-related laws "for the purpose of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear . . . and rearranging provisions in a logical order."<sup>5</sup> This work was to be a "technical rewrite" and "not intended to make any 'changes' to existing law."<sup>6</sup>

Work by the Legislative Council resulted in a bill considered by the 2009 Legislature. The bill repealed all chapters governing commodity agencies.<sup>7</sup> It also enacted new chapters for each of those agencies.<sup>8</sup> The new chapters did not intend to make substantive changes to the former laws but rather sought to make the laws clearer, more orderly, and consistent with one another.<sup>9</sup>

In light of this background, the 1991 legislative history of the Corn Council's original governing chapter remains relevant in understanding the purposes for which the Council was established.

A sponsor of the 1991 legislation stated that the bill's purpose was to find "new uses" and create "new demands" for corn and corn products.<sup>10</sup> A supporter of the bill stated that corn assessment funds would be used for "consumer education and market development."<sup>11</sup> The N.D. Corn Growers Association stated that "it isn't enough to grow the corn – we have to market it,"<sup>12</sup> and that "we want to promote our product."<sup>13</sup> The Association also presented two written submissions in which it identified four overriding purposes for the legislation: maintain and develop corn markets, provide for "utilization

<sup>3</sup> N.D. 1991 Sess. L. ch. 63.

<sup>4</sup> N.D. 2009 Sess. L. ch. 80, § 18.

<sup>5</sup> N.D. 2007 Sess. L. ch. 475.

<sup>6</sup> Test. by Sen. T. Flakoll on S.B. 2139 before the Sen. Ag. Comm. (Jan. 18, 2007) and House Ag. Comm. (Mar. 2, 2007).

<sup>7</sup> N.D. 2009 Sess. L. ch. 80, § 18.

<sup>8</sup> *Id.* at §§ 2-13.

<sup>9</sup> Test. by Anita Thomas, Legis. Council, on H.B. 1025 before the House Ag. Comm. (Jan. 8, 2009).

<sup>10</sup> Test. by Rep. Nowatski on S.B. 2282 before the Sen. Ag. Comm. (Jan. 17, 1991).

<sup>11</sup> *Id.* at Test. by J. Moench, N.D. Farmers Union.

<sup>12</sup> Test. by Robert Thompson, N.D. Corn Growers on S.B. 2282 before the Sen. Approp. Comm. (Feb. 8, 1991).

<sup>13</sup> Test. by Robert Thompson, N.D. Corn Growers on S.B. 2282 before the Sen. Ag. Comm. (Mar. 8, 1991).

research," "develop new uses for corn," and "provide for more efficient marketing."<sup>14</sup> Thus, the legislature's general vision for the Corn Council was that its work would involve promoting and expanding the use of corn and corn products.

**Corn Council Authority to Enter "Commercialization" Contracts.** You ask whether the Council, in carrying out these purposes, can contract to commercialize the recently discovered nitrogen fertilizer production technology. You also provided me with a draft commercialization agreement to consider along with the general question about entering commercialization contracts.

There is uncertainty in exactly what "commercialize" means and entails. While a commercialization contract might be structured consistent with the Council's statutory purposes, the contract could stray from the kind of functions the legislature intended the Council to perform. It is one thing to directly promote corn but quite another to become involved in an enterprise that explores the commercial potential of producing nitrogen fertilizer and then goes on to develop that potential and engage in selling the product in the marketplace. Becoming a player in industry, a merchant in the private economy, may not be a role contemplated by the legislature.

While it is difficult in the abstract to state with certainty whether the Corn Council has authority to enter a commercialization contract, the draft agreement you provided me does exceed the Council's statutory authority. That agreement—which is discussed in a memo accompanying this one—contemplates many features of private enterprise. It involves designing industrial plants, and building and then operating them. It involves perfecting the nitrogen fertilizer production technology and then taking that technology to the marketplace and engaging in competition there. The technological, engineering, construction, manufacturing, financial, marketing, and competitive activities contemplated by the contract will bring the kind of scrutiny to Council action that I doubt it could withstand.<sup>15</sup>

**Corn Council Authority to "Assign" Technology.** You ask whether the Corn Council has the authority to "assign" the nitrogen fertilizer production technology. It doesn't have express authority to do so, but, as noted above, agencies have not only express but also implied powers.

The Corn Council's ownership of intellectual property acquired through Council-funded research necessarily includes authority to make practical use of that property. As

<sup>14</sup> Test. by Wallie Hardie, Pres., N.D. Corn Growers, on S.B. 2282 before the Sen. Ag. Comm. (Jan. 17, 1991), and before the Sen. Approp. Comm. (Feb. 8, 1991); see also N.D.C.C. § 4.1-04-09(1) (stating that uses to which the Council can put its funds "include . . . research . . . and market development").

<sup>15</sup> In 2002 the Council's assigned Assistant Attorney General stated that the Council lacked authority to buy stock and thereby own an interest in an ethanol plant. Letter from Asst. Att'y Gen. Paul C. Germolus to Jocie Iszler, Exe. Dir. N.D. Oilseed Council (Aug. 2, 2002).

discussed, the Council has uncertain "commercialization" authority. Consequently, it may be that the Council's only practical way to realize value from the intellectual property it holds is to sell, assign, license, or otherwise convey that property in return for something of value. Giving it away to a third party could violate the state constitution's "gift clause," which prohibits giving away state assets. N.D. Const. art. \_\_, § \_\_. If the Council cannot obtain value for the fruits of its research—and research is an express Council power, N.D.C.C. § 4.1-04-08(4)—then its discoveries may be useless, a consequence the legislature probably did not intend. In fact, a rationale for the rule that agencies have implied powers is the inability of the legislature to foresee all the needs, issues, and problems an agency may encounter in carrying out its duties.<sup>16</sup>

Therefore, it is necessarily implied that the legislature intended that the Council be able to do something constructive with discoveries made through Council-funded research. The ability to sell or assign or license would not be merely useful or convenient for the Council but rather such actions are needed to effectuate the Council's express powers.<sup>17</sup>

**Conclusion.** While there isn't a statute that expressly gives the Corn Council the power to assign or commercialize, that doesn't end the analysis. The Council does have broad powers to contract and to promote corn. While the authority to enter a commercialization contract depends on the contract's term, my opinion is that the Council's authority to enter a commercialization venture involving nitrogen fertilizer production technology is more problematic than certain, and should that venture involve the kind of draft agreement you provided me, then the Council will exceed its authority. As for the Council's authority to assign technology, this also rests, ultimately, on examining the terms of the assignment, an assignment however—or some other arrangement by which the Council gains value from its technology, short of engaging in commerce—is likely within the Council's implied powers:

<sup>16</sup> E.g., *Morgan v. Planning Dep't*, 86 P.3d 082, 993 (Hawaii 2004); *BP American Prod. Co. v. Dep't of Rev.*, 130 P.3d 438, 467 (Wyo. 2006).

<sup>17</sup> See *Spies Realty Co. v. State Dep't of Soc. Servs.*, 321 N.W.2d 924, 926 (S.D. 1982), (quoting *Appl. of Kohlman*, 263 N.W.2d 674, 678 (S.D. 1978) (agency has the reasonably implied and reasonable necessary powers "to effectuate the express powers granted to, or duties imposed upon, it.")). Once it is concluded that an agency has a power, exercising that power is left largely to the agency's reasonable discretion. 2002 N.D. Op. Atty. Gen. 02-L-21, at 2; 1997 N.D. Op. Atty. Gen. 97-08, at 2 (county has "a wide range of implied powers to determine an appropriate contract amount"); 1995 N.D. Op. Atty. Gen. 95-L-243, at 2; see also *Meyer v. City of Dickinson*, 451 N.W.2d 113, 115 (N.D. 1990); *Haugland v. City of Bismarck*, 429 N.W.2d 449, 453-54 (N.D. 1988).

**Testimony of HB 1282 – Limitations on Commodity Groups**

**Dale Ihry, on behalf of the North Dakota Corn Utilization Council**

Good Morning Chairman Luick and members of the Senate Agricultural Committee. For the record my name is Dale Ihry. I am the Executive Director of the ND Corn Utilization Council (NDCUC) and the ND Corn Growers (NDCGA) with the office located in Fargo, ND. My testimony is to provide education on NDCUC operations and reasons for the not supporting HB 1282.

The NDCUC board, as stated in statute, sits 7 board members in 7 districts in the state. The NDCUC staff consists of myself and two other employees.

The NDCUC board’s responsibility is to manage the corn checkoff funds which is set at a value based level of ¼ of 1% of the value of the bushel of corn sold at a market in ND. This amounts to roughly \$1 / acre of corn harvested and sold in ND.

I was hired by the NDCUC and NDCGA in the fall of 2015. I was new to the commodity organization world, however did spend over 30 years in federal government, working in part with farmers and commodity organizations.

Shortly after I started we reached out to nearly every commodity group in North Dakota, most of them in this room, to ask about their operations, with checkoff and grower organizations. In addition, in January of 2016, some of our board members, from both of the NDCUC and NDCGA boards, met with and were provided direction from, some legislative leaders in the state, along with Commissioner Goehring. They provided direction and a blueprint to make changes. Our group did ask “for some time” to make suggested changes – as the organizations have been in existence for over 25 years.

After reviewing operations of several commodity groups, it was decided to use ND Soybean Council and Growers and the ND Wheat Commission and the ND Grain Growers, as two commodity groups to draw direction and information from. They have been great partners in this process. This has allowed the NDCUC and NDCGA to enter into working contracts for advertising, newsletters and education, similar to contracts used by the Soybean, Wheat and Grower groups.

The results of the changes made since November of 2015 is that NDCUC received a clean 2016 audit, as reported to you on January 6, 2017, based the review of

operations under the current staff. Further, none of the previous three audits have identified issues with operations of NDCUC or its close working partner NDCGA.

The NDCUC works with many state, regional, and national organizations that range from research institutions to nonprofit organizations. Examples include working relationships with the NDCGA and other councils and grower associations; working with and providing financial support to the National Corn Growers Association, the US Grains Council, to name a few.

The following are points that we would make regarding HB 1282 as amended:

- HB 1282 requires all commodity groups to report to the Legislative Management Committee by January 1, 2018.
- HB 1282 also requires a Legislative Study be performed of all commodity groups in the 2017 – 2019 Interim.
- If passed, all of the same issues we are discussing in 2017, could certainly be rehashed in 2019.
- The report and study are both repetitive in that already each commodity group is required to be audited every two years and is required to report to the combined House and Senate Ag Committees at the start of the legislative assembly.
  - o The Commodity Group report for this session was made on January 6<sup>th</sup> by all commodity groups; with minimal issues or questions asked by legislative attendees; corn was not asked any questions.
- Commodity group management is provided by the commodity board, executive director and staff.
- Oversight of operations falls under State agency rules and regulations related to procurement; personnel requirements; legal opinions.
- If issues arise with the board or a member of the board or staff, the commodity group has access to the ND Attorney General's Office; the Human Resource Office; and the Auditors office.

In closing, the NDCUC board and staff, are doing our best to ensure the corn checkoff funds are used as stated in law – that is to help our North Dakota corn farmers find positive results in their fields, at their market place and in their bottom line.

Thank you and I would be happy to answer any questions.



Date: March 9, 2017

To: Senate Ag Committee

From: ND Corn Utilization Council

Subject: Response to Allegations towards NDCUC and NDCGA

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This is in response to allegations towards the NDCUC and NDCGA.

**Board Size at Corn is Too Large:**

The board of the NDCUC sits at 7 members per statute; the board of the NDCGA sits at 18 voting members. These boards are similar in size or below the total number of board numbers of comparable valued commodity groups in the state.

**Executive Director of NDCUC also works for NDCGA:**

The Executive Director job description has been the same since 2005 at NDCUC and NDCGA and was the same as the one for which was offered to Dale Ihry in 2015. In addition, the role of Executive Director is laid out in each of the past several audits. Most recently in the 2016 Audit, page 5 and Item Note 2. Lastly there are no financial risks identified as the Executive Director is not making significant or new funding decisions by self for either organization.

**NDCUC and NDCGA does not have a separation of duties:**

The NDCUC is the board that has all responsibilities of the checkoff funding. The NDCGA's role is as an advisory board to the NDCUC. The function of the two boards is much like every other commodity group's grower organization and its relationship with its checkoff organization in the State. To assist in decision making NDCUC asked the ND Attorney General's office for opinion on various scenarios in funding decision. The decision making chart is attached for review.

**2015 Request for Audit of NDCUC:**

On July 15, 2015, NDCUC Chairman Scott German requested a full and complete audit of the NDCUC and NDCGA operations to ensure proper functioning of the operations and to prepare for rehiring of staff. The Auditor's Office response was that an Audit in the fall of 2016 would suffice.



**2012 Audit Finding Related to NDCUC \$925,000 funding to Northern Corn Development Corp:**

The 2012 Audit raises concern about the funding provided by NDCUC of \$925,000 to the Northern Corn Development Corporation (NCDC). (See page 11 of the 2012 Audit).

The Audit recommended that NDCUC seek ND AG opinion on the statutory authority of the NDCUC establish and fund the NCDC. A recommendation was also made for NDCUC to seek a refund of \$925,000 from NCDC.

On April 26, 2013, a memo was submitted by NDCUC to ND AG requesting a clear and concise ruling on the Auditor finding and allegation that NDCUC established and funded NCDC.

A response was provided by the ND AG on July 4, 2013, stating that the information provided does not indicate that that NDCUC had established the NCDC and further, that the funding of \$925,000 to NCDC was for research, thus not refundable.

On July 30, 2013, the NDCUC board was sent a memo from Tom Lilja, Executive Director of NDCUC, indicating the 2012 Auditor finding had been clarified by ND Attorney General's opinion and that the 2012 Audit finding that NDCUC had created NCDC is considered closed.

Funding of the NCDC by NDCUC and other partners (APUC, ND Soybean Council, SD Corn Council, MN Corn Council, Manitoba Canola Growers) was published in the 2012 NDCUC Annual Report.

**NDCUC responsible for an outstanding bill at EERC of \$300,000:**

The NDCUC approved prior research projects with EERC over the years. The contracting and procurement process is run through UND. No records at the NDCUC office indicated a debt is owed EERC. This is further followed up in recent correspondence with the EERC related to previous working relationship of alleged debt. As indicated in the attached response from the EERC, the NDCUC does not have an outstanding debt with EERC.

**NDCGA allowed Grower Membership listing released for Investment Recruitment:**

The NDCGA membership listing and ability to release names was discussed at the March 21, 2012, NDCGA meeting (minutes attached). A discussion by the board was held about providing the NDCGA member listing (this is not an NDCUC membership list) for the purpose of inviting producers to meetings hosted by the SkyTrain Fund Manager. The final conclusion of the board was that the entire name and address membership listing would not be provided. Some board members did indicate the name and city (not address) of individuals who they personally knew who might be interested in attending the meeting.

**Attachments:**

- ND Commodity Group Board Sizes.
- Job Description of NDCUC and NDCGA Executive Director
- Funding Decision Chart
- Request for Audit by NDCUC Chairman German – July 15, 2015
- 2012 Audit Findings and Closure of \$925,000 of funding NDCUC and NCDC.
- 2012 Annual Report and funding to NCDC of \$925,000.
- NDCUC and EERC Debt of \$300,000.
- NDCGA Minutes – Grower Listing



AHACH #1

**ND Commodity Groups  
Board Size Comparison  
February 2017**

Commodity	Council 1/	Grower 2/	Total
Corn	7	17	24
Soybeans	12	14	26
Wheat Commission and NDGGA	7	11	18
Barley Council 3/	5	0	5
Beef Commission and ND Stockmen	9	27	36
Dry Beans – ND / MN Councils and Northarvest Bean Growers	6/5	9	20
Canola /Sunflower/ Oilseeds	9	11	20

1/Based on Statute

2/Determined by Association

3/ Barley Council Contracts with NDGAA

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Dale Ihry

**From:** Wassim, Kim M. [kwassim@nd.gov]  
**Sent:** Wednesday, September 09, 2015 3:03 PM  
ihrydb@cableone.net  
**Subject:** Interview - Corn Council Executive Director  
**Importance:** High  
**Attachments:** Corn Exec Dir Pos Desc 2015.doc

· ATTACH #2

Dale,

Your interview for the ND Corn Council Executive Director position will be Friday, September 11, 2015 at 12 p.m. at the Corn Council office in Fargo, ND, 1411 – 32<sup>nd</sup> Street South #2 (south end of the building). The interview panel will be comprised of 3 board members. I will be participating from Bismarck via conference call.

Attached is a copy of the job description.

We would like you to make a presentation no more than 10 minutes in length on the following topic: How would you convince consumers and the EPA that 15 % ethanol blend is safe for the environment and good for corn producers and consumers?

Please contact me if you have any questions. We look forward to meeting with you on Friday, September 11<sup>th</sup>.

**Kim Riedlinger Wassim, PHR**  
**Human Resource Officer**  
State of North Dakota  
Human Resource Management Services  
600 E Blvd Ave Dept 113  
Bismarck, ND 58505-0120  
(701)328-4737  
[kwassim@nd.gov](mailto:kwassim@nd.gov)

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**Position Description**

**Title of Position:** Executive Director      **Reports to:** NDCGA/NDCUC Boards of Directors  
**Date:** July 1, 2005  
**Department:** ND Corn Utilization #614

**POSITION'S GENERAL PURPOSE:** Under contract, serves as manager of the ND Corn Growers Association (NDCGA) and manager of the ND Corn Utilization Council (NDCUC). Supervises and manages the staff required to carry out the activities of the NDCGA and the NDCUC. Responsible for the creation of new market development initiatives with agribusiness and universities relating to strategic plan.

**RESPONSIBILITIES:**

**1. Corn Promotion Administration**

- A. Manage the NDCUC marketing program.
- B. Develop procedures and implement the corn marketing program in ND, including the collection and disbursement of funds.
- C. Act as fiduciary agent of the NDCUC in collecting of corn promotion dollars.
- D. Maintain frequent contact in person, by telephone, and by mail with farm organizations, commodity groups, and corn growers in order to maintain support for the corn promotion programs and build strong working relationships.
- E. Supervise the implementation of various corn promotion program procedures with government agencies.
- F. Supervise staff in answering elevator and producer inquiries on the corn promotion program and procedures by letter and/or telephone.
- G. Perform other related duties as assigned.

**2. Membership**

- A. Supervise preparation of and write periodical communication to members of the NDCGA
- B. Responsible for building and maintaining the membership in the NDCGA, oversee the promotion of service programs, and develop information and public relations programs.
- C. Act as fiduciary agent of the NDCGA in collecting of membership dues and funds; also the receipting, remitting and accounting.

**3. Program Development**

- A. Supervise NDCGA and NDCUC efforts in developing leadership.
- B. Serve as manager and work closely with board of directors of NDCGA and NDCUC to schedule board and other meetings, develop agendas and in plan programs.
- C. Prepare an Executive Director's report for board meetings.
- D. Develop recommendations for establishing and maintaining a strategic and long-range plan.

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- E. Coordinate efforts with other states and National staff to develop mutually beneficial programs.
- F. Make industry contacts to secure funding support for programs.
- G. Further develop existing programs and improve ways to inform producers about funded projects and organizational activities.
- H. Provide the Board of Directors with timely reviews of status of programs and activities.
- I. Provide leadership to the Action Teams with:
  1. Goals
  2. Position description for chairpersons
  3. Agendas
  4. Budget and financial report
  5. Documentation and commentary on proposed and ongoing projects
  6. Progress reports on projects
  7. Evaluation of projects: in house or contracted out
  8. Maintain files on the above

#### 4. Internal Administration

- A. Supervise communication with university representatives, industry, and private individuals interested in submitting projects for funding, sharing ideas and developing projects and programs beneficial to corn producers.
- B. Set goals with staff.
- C. Review staff and make recommendations on salary adjustments to the Personnel Committee.
- D. Responsible for hiring and termination of staff, when approved by the board.
- E. Supervise overall staff responsibilities and suggests additional training where needed.
- F. Conduct staff meetings for exchange of information on activities, scheduling of correspondence, travel commitments, and setting priorities.
- G. Consult with legal counsel when necessary on matters concerning board projects and operations.
- H. Review board and committee meeting minutes prior to distribution.
- I. Prepare and/or supervise reports as required by regulatory agencies.
- J. Research and develop policies and procedures that create timely and efficient office workflow
- K. Establish uniform correspondence procedures and style practices to be used by office staff.
- L. Formulate procedures for systematic retention, protection, retrieval, transfer, and disposal of records, both paper and electronic.

#### 5. Fiscal Responsibilities

- A. Develop budgets for NDCGA/NDCUC board approval in consultation with the Executive Committee.
- B. Develop and supervise the implementation of organization fiscal policies and procedures, and recommend changes, as necessary.

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- C. Supervise development of, approve, and review financial statements, invoices, membership reports and other board reports on a monthly basis and prior to each board meeting.
- D. Supervise and implement auditor recommendations approved by the board of directors.
- E. Sign checks in accordance with policy as set by board of directors.
- F. Prepare and/or supervise reports as required by regulatory agencies.
- G. Perform all other duties as requested by Executive Committee.

#### 6. Public Relations

- A. Establish and maintain effective working relationships between the NDCGA/NDCUC and other commodity groups, related agribusiness, educational, and informational organizations.
- B. Attend meetings of National associated organizations to monitor and report back activities and programs as time and budget permits.
- C. Supervise the implementation of specific National programs and activities on a state level.
- D. Maintain frequent contacts in person, by telephone, and by mail with agri-industry representatives in order to keep abreast of developments in the corn industry.
- E. Represent the organization on various ag-related boards to show support for agriculture in total and to maintain good will.
- F. Notify board members by letter or telephone as to meetings that the NDCUC or NDCGA may be involved in.
- G. Conduct interviews with media on projects, programs and activities of organizations.
- H. Give speeches to ag-related and non-ag related groups about the organizations; projects funded by the organizations and policy issues affecting the corn industry and its products.

#### 7. Policy

- A. Coordinate NDCGA's policies with agricultural organizations and works to enact NDCGA's policies.
- B. Responsible for legislative policy development and advocacy oversight.
- C. Direct the development of methods to give opportunity for input into resolutions from county associations and members.
- D. Coordinate the appointment of delegates to NCGA's Annual meeting.
- E. Direct communications with state government, the Congress and associated Agencies.
- F. Supervise the gathering of information on legislative and regulatory issues and makes appropriate recommendations for action to the Public Policy Action Team.
- G. Attend meetings of farm groups to coordinate efforts on issues of mutual interest.
- H. Coordinate efforts with NCGA on National policy issues

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**8. Property Management**

- A. Evaluate use of space and facilities for office flow and function.
- B. Manage vendors, maintenance and functions of telecommunications, computers, computer network wiring, lighting, and other factors.
- C. Plan budgets and schedule facility modifications including cost estimates, bid sheets, layouts, and contracts.

**CONTACTS:**

Staff personnel in execution of routine duties	Government officials – State and Federal
NDCGA/NDCUC Board Members	Lobbyists
Members and/or Producers	Extension Service Personnel
Staff of National associated groups	Federal/State Government Agencies
Staff in other states	University leadership and researchers
Elevators	State Commodity Groups
Farm Media: Reporters, Editors	Farm Organizations
Agri-Industry	Foreign Visitors
Private industry professionals: Attorneys,	U.S. Congressional Staffers
Insurance Agents, CPA's, Bankers	State FSA office staff
County and Regional Economic Development	USDA Officials
Directors	Chambers of Commerce

**SUPERVISORY DUTIES:**

Staff personnel to include:  
  
    Administrative Assistant

**EQUIPMENT:**

Telephone, Fax, VCR/TV  
Computer, LCD Projector  
Copier

**EDUCATION and/or EXPERIENCE**

Requires a bachelor's degree and 2 years of agriculture related work experience OR associate degree and 4 years of agriculture related work experience.

**Skill and Competency Set for NDCUC./NDCGA Executive Director**

**Language Skills**

Ability to read, analyze, and interpret common scientific and technical journals, financial reports, and legal documents. Ability to respond to common inquiries or complaints from customers, regulatory agencies, or members of the business community. Ability to write speeches and articles for publication that conform to the prescribed style and format. Ability to effectively present information to top management, public groups, and/or boards of directors.

**Mathematical Skills**

Ability to calculate figures and amounts such as discounts, interest, commissions, proportions, percentages, area, circumference, and volume. Ability to apply concepts of basic algebra and geometry.

These skills should be adapted to understanding of business financials.

**Reasoning Ability**

AS

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Ability to define problems, collect data, establish facts, and draw valid conclusions.  
Ability to interpret an extensive variety of technical instructions in mathematical or diagram form and deal with several abstract and concrete variables.

**Computer Skills:**

To perform this job successfully, an individual should have knowledge of Internet and Word Processing software (Microsoft Word preferred), Excel and Powerpoint.

**Physical Demands**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is regularly required to talk or hear. The employee frequently is required to sit and use hands to finger, handle, or feel. The employee is occasionally required to stand, walk, and reach with hands and arms. The employee must occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision, and ability to adjust focus.

**Work Environment**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

**COMPETENCIES**

To provide the best possible service for the Association, below a list of characteristics and traits desired in our employees. When present, they create synergy, improved overall effectiveness and make working here more enjoyable. It is assumed that trust will be developed among the staff through mutual honesty and dependability.

**Member Services**

This employee is responsible for remembering that all times the North Dakota Corn Growers Association is here to provide service to the membership and that the ND Corn Utilization Council is here to carry out the directives of the state statute. To perform this successfully, an individual must be ready to serve the membership and their interests in a timely, courteous and professional manner, remembering the organizational Mission Statement and Goals.

**Intellectual**

**Analytical** - Synthesizes complex or diverse information; Collects and researches data; Uses intuition and experience to complement data; Designs work flows and procedures.

**Design** - Generates creative solutions; Translates concepts and information into images; Uses feedback to modify designs; Applies design principles; Demonstrates attention to detail.

**Problem Solving** - Identifies and resolves problems in a timely manner; Gathers and analyzes information skillfully; Develops alternative solutions; Works well in-group problem solving situations; Uses reason even when dealing with emotional topics.

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**Project Management** - Develops project plans; Coordinates projects; Communicates changes and progress; Completes projects on time and budget; Manages project team activities.

### Interpersonal

**Customer Service** - Manages difficult or emotional customer situations; Responds promptly to customer needs; Solicits customer feedback to improve service; Responds to requests for service and assistance; Meets commitments.

**Interpersonal Skills** - Focuses on solving conflict, not blaming; Maintains confidentiality; Listens, first to understand others, without interrupting; Keeps emotions under control; Remains open to others' ideas and tries new things. Trusts others and strives to be trustworthy.

**Oral Communication** - Speaks clearly and persuasively in positive or negative situations; Listens and gets clarification; Responds well to questions; Demonstrates group presentation skills; Participates in meetings.

**Written Communication** - Writes clearly and informatively; Edits work for spelling and grammar; Varies writing style to meet needs; Presents numerical data effectively; Able to read and interpret written information. Shares with others and asks for ideas. Has someone else proofread his/her written communication.

**Teamwork** - Balances team and individual responsibilities; Exhibits objectivity and openness to others' views; Gives and welcomes feedback; Contributes to building a positive team spirit; Puts success of team above own interests; Able to build morale and group commitments to goals and objectives; Supports everyone's efforts to succeed.

### Leadership

**Visionary Leadership** - Displays passion and optimism; Inspires respect and trust; Mobilizes others to fulfill the vision; Provides vision and inspiration to peers and subordinates.

**Change Management** - Develops workable implementation plans; Communicates changes effectively; Builds commitment and overcomes resistance; Prepares and supports those affected by change; Monitors transition and evaluates results.

**Delegation** - Delegates work assignments; Matches the responsibility to the person; Gives authority to work independently; Sets expectations and deadlines and monitors delegated activities; Provides recognition for results.

**Leadership** - Exhibits confidence in self and others through his/her example and behaviors; Inspires and motivates others to perform well; Effectively influences actions and opinions of others; Accepts feedback from others; Gives appropriate recognition to others.

**Managing People** - Includes staff in planning, decision-making, facilitating and process improvement; Takes responsibility for subordinates' activities; Makes self available to staff; Provides regular performance feedback; Develops subordinates' skills and encourages growth; Solicits and applies customer feedback (internal and external); Fosters quality focus in others; Improves processes, products and services.; Continually works to improve

### Supervisory skills.

**Quality Management** - Looks for ways to improve and promote quality; Demonstrates accuracy and thoroughness.

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**Organization**

**Business Acumen** - Understands non-profit business implications of decisions; Displays orientation to profitability; Demonstrates knowledge of the market and rural economic development and the relationship to other organizations; Aligns work with strategic goals.

**Cost Consciousness** - Works within approved budget; Develops and implements cost saving measures; demonstrates prudent use of organizational resources.

**Diversity** - Shows respect and sensitivity for cultural differences; Educates others on the value of diversity; Promotes a harassment-free environment; Builds a diverse workforce.

**Ethics** - Treats people with respect; Keeps commitments; Inspires the trust of others through personal example; Works with integrity and ethically; Upholds the organizational values.

**Organizational Support** - Follows policies and procedures; Completes administrative tasks correctly and on time; Supports organization's goals and values; Benefits organization through outside activities; Supports, encourages and respects diversity.

**Strategic Thinking** - Develops strategies to achieve organizational goals; Understands organization's strengths & weaknesses; Analysis and assessment of internal and external appropriate information; Identifies external threats and opportunities; Adapts strategy to changing conditions.

**Self-Management**

**Judgment** - Displays willingness to make decisions; Exhibits sound and accurate judgment; Supports and explains reasoning for decisions; Involves appropriate people in decision-making process; Makes timely decisions.

**Motivation** - Sets and achieves challenging goals; Demonstrates persistence and overcomes obstacles; Measures self against standard of excellence; Takes calculated risks to accomplish goals.

**Planning/Organizing** - Prioritizes and plans work activities; Uses time efficiently; Plans for additional resources; Sets goals and objectives; Coordinates schedule with other people and their tasks; Develops realistic action plans.

**Professionalism** - Approaches others in a tactful manner; Reacts well under pressure; Treats others with respect and consideration regardless of their status or position; Accepts responsibility for own actions; Follows through on commitments.

**Quality** - Demonstrates accuracy and thoroughness; Looks for ways to improve and promote quality; Applies feedback to improve performance; Monitors own work to ensure quality. Has others proofread materials before distribution.

**Quantity** - Meets productivity standards; Completes work in timely manner; Strives to increase productivity; Works productively and effectively.

**Safety and Security** - Observes safety and security procedures; Determines appropriate action beyond guidelines; Reports potentially unsafe conditions; Uses equipment and materials properly.

**Adaptability** - Adapts to changes in the work environment; Manages competing demands; Changes approach or method to best fit the situation; Able to deal with frequent change, delays, or unexpected events.

collected within a year after fiscal year end. Expenditures are recorded when goods or services are received. Exceptions include: principal and interest expenditures, which are recorded when due; and compensated absences, which are recorded when paid.

D. GAAP Reporting Differences

GAAP financial statements would include a balance sheet. GAAP financial statements would also provide additional note disclosures.

**NOTE 2 – RELATED PARTIES**

The Council contracts with the Association, a related organization, through similar control and management for promotional activities; the Executive Director of the Council is also the Executive Director of the Association. The Council and the Association have agreed upon a policy in which the Association's Board of Directors will be the designated advisory board of the Council. For fiscal years 2016 and 2015, the Council paid \$50,000 each year and for the promotional advertising on the Association's pick-up truck, respectively. In addition, the Council paid the Association \$75,000 in fiscal year 2016, for advertising in a newsletter.

As noted in Note 1, the Council is an agency of the state of North Dakota; as such, other agencies of the state are related parties. This includes North Dakota State University (NDSU) and Northern Crops Institute (NCI). For fiscal years 2016 and 2015, the Council made payments to NDSU for corn research project contracts of \$853,130 and \$794,277, respectively. For fiscal year 2015, the Council made payments to NCI for a grant for \$12,000.

The Council also has a particularly close working relationship with the US Grains Council (USGC). For fiscal years 2016 and 2015, the Council paid \$156,000 each year for promotional marketing and development contracts.

**NOTE 3 – OTHER SIGNIFICANT ITEMS**

The Council has cash and investment reserves of \$3,601,962 and \$3,718,575 at June 30, 2016 and June 30, 2015, respectively. Based on the average monthly expenditures for fiscal year 2016 and 2015, this amount represents approximately 15 months of expenditures for each fiscal year.

Approved July 05 by Personnel Committee and Council  
Reviewed by Board July 2015

**Attendance/Punctuality** - Is consistently at work and on time; Ensures work responsibilities are covered when absent; Arrives at meetings and appointments on time. Keeps supervisor and other informed as to his/her whereabouts in a sharing/caring manner.

**Dependability** - Follows instructions, responds to management direction; Takes responsibility for own actions; Keeps commitments; Commits to what ever hours of work are necessary to reach goals.; Completes tasks on time or notifies appropriate person with an alternate plan.

**Initiative** - Volunteers readily; Undertakes self-development activities; Seeks increased responsibilities; Takes independent actions with calculated risks; Looks for and capitalizes on opportunities; Asks for and offers help as needed.

**Innovation** - Displays and shares original thinking and creativity; Meets challenges with resourcefulness; Generates suggestions for improving work; Develops and shares innovative approaches and ideas; Presents ideas and information in a manner that gets others' attention.



HB 1282 3/4 #11 pg. 14

Attach 2.5

**NDCUC and NDCGA  
FUNDING DECISION CHART  
(December 2016)**

Research/Mini-Grant/Sponsorship – Who Can Approve	NDCUC	NDCGA
Request for Political Donation	No	Yes
Request for Sponsoring an Ag Event – FFA, 4-H, Commodity or Livestock Event, etc.	Yes	Yes
Request for Funds to use for policy/legislative work	No	Yes
Request for Research funds for Corn – New Productions	Yes	Yes
Request for Research funds for Corn – Production, Diseases	Yes	Yes
Request from “One” Private Sector company – to buy down (coupon) ethanol. (This must be offered to all ethanol retailers.)	No	Yes
Request to Sponsor a Meal at a non-Ag function	No	Yes
Request to Sponsor a Meal at a non-Ag function, however the promotion of corn and/or corn products is offered.	Yes	Yes
Request to for funds for ND Legislative Function	No	Yes.
Request for Contract to Lobby – Federal or State Issues	No	Yes
Request for memberships to NCGA are paid for by NDCUC or NDCGA	No	Yes
Request from Private Sector for Corn related research. (Educational in nature are acceptable, they must submit proposal to Council. If the project is something the Council initiates, an RFP must be used. Council cannot fund value added or feasibility studies from private companies.)	No	Yes

pg 1

Dale Ihry

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**From:** Scott <germanfarms@hotmail.com>  
**Sent:** Tuesday, February 14, 2017 9:25 AM  
**To:** Dale Ihry  
**Subject:** Fwd: Audit Information

ATTACH #3

Sent from my iPhone

Begin forwarded message:

**From:** Scott <[germanfarms@hotmail.com](mailto:germanfarms@hotmail.com)>  
**Date:** July 15, 2015 at 3:42:48 PM CDT  
**To:** carson klostrum <[carsonk@rrt.net](mailto:carsonk@rrt.net)>  
**Subject:** Fwd: Audit Information

----- Forwarded message -----

**From:** "Wahl, Jason M." <[jwahl@nd.gov](mailto:jwahl@nd.gov)>  
**Date:** Jul 15, 2015 4:13 PM  
**Subject:** Audit Information  
**To:** "[germanfarms@hotmail.com](mailto:germanfarms@hotmail.com)" <[germanfarms@hotmail.com](mailto:germanfarms@hotmail.com)>  
**Cc:** "Hoffmann, Robyn L." <[rhoffman@nd.gov](mailto:rhoffman@nd.gov)>

Hello Scott.

As we discussed, our office does conduct the Corn Council audit once every two years. Your next audit would be started in the Fall of 2016. Robyn Hoffmann in our Fargo office can be contacted to discuss the audit or answer questions you may have. Her number is 239-7291.

If you have further questions or would like to discuss any issues further, please feel free to contact Robyn or myself.

Jason M. Wahl, CPA  
Audit Manager  
Office of the State Auditor  
600 E Blvd Ave – Dept. 117  
Bismarck, ND 58505  
328-2594

291



ATTACH # 4  
Final Response to  
2012 Audit  
NACUC fund  
to NEDC.

**MEMO**

**Date:** July 30, 2013

**To:** North Dakota Corn Utilization Council Board of Directors

**From:** Tom Lilja, Executive Director

**RE:** Attorney General Opinion on Northern Corn Development Corporation

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Please see the attached letter that was addressed to Attorney General Wayne Stenehjem dated April 26<sup>th</sup>, 2013. In that letter the North Dakota Corn Council requested an opinion from the Attorney General's office regarding the establishment and funding of Northern Corn Development Corporation.

Also, Please see the attached copy of Ann Schaibley's email dated Friday July 5, 2013. In that email Ms. Schaibley states that the Attorney General's office will not be issuing an opinion on the matter. Ms. Schaibley goes on to state that "from the information reviewed it does not appear that the Corn Council established Northern Corn and it appears the funding provided to Northern Corn was for research." The email also states that this should not be construed as an official opinion from our office.

I am also attaching the formal finding from Robyn Hoffman of the North Dakota State Auditor's Office, who requested the opinion request. This memo will be forwarded to Ms. Hoffman.

We consider this matter closed. Please contact me if you have any questions.

**Tom Lilja**

---

**From:** Schaibley, Ann M. <aschaibley@nd.gov>  
**Sent:** Friday, July 05, 2013 11:05 AM  
**To:** Tom Lilja  
**Subject:** Corn Council Opinion Request

Tom,

Our office reviewed the information you submitted with your request for an opinion. The office will not be issuing an opinion on the matter. From the information reviewed it does not appear that the Corn Council established Northern Corn and it appears the funding provided to Northern Corn was for research. This email should not be construed as an official opinion from our office.

Please feel free to contact me with any questions.

Sincerely,

Ann

Ann M. Schaibley  
Assistant Attorney General  
Office of Attorney General  
Phone-701-328-3646

**Confidentiality Notice:**

This electronic mail transmission is intended for the use of the individual or entity to which it is addressed and may contain confidential information belonging to the sender. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by e-mail and delete the original message.

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April 26, 2013

Mr. Wayne Stenehjem  
State Capitol  
600 E. Boulevard Avenue  
Bismarck, ND 58505

Dear Mr. Stenehjem,

The North Dakota Corn Utilization Council (Council) has been advised by Robyn Hoffman of the State Auditor's office to seek your opinion on an issue raised during our summer of 2012 audit.

In November of 2012, Ms. Hoffman formally recommended that we seek your opinion as to "...the statutory authority of the Council's establishment and funding of the Northern Corn Development Corporation." (State Auditor's finding and recommendation is attached as Exhibit 1).

Please allow me to explain our understanding of the basis for the formal recommendation from Ms. Hoffman and the reasons the Council believes it acted within its authority, and in accordance with advice from our then Assistant Attorney General, Charles Carvell.

### Background

This issue arose in light of the Council's efforts to assist North Dakota corn growers with two major problems they face related to nitrogen fertilizer used in corn production. First, the majority of nitrogen fertilizer used by corn producers in North Dakota is produced abroad and shipped to the United States, primarily through ports in the Gulf of Mexico. Unless the supply arrives and is available to farmers in North Dakota at the right time of year, its ability to promote corn growth is diminished. Despite efforts to promote a stable source of nitrogen fertilizer for North Dakota farmers, too much of the supply chain lies outside the control of the farmers. The North Dakota farmers are often the last to receive their supply of nitrogen fertilizer, and this far too often results in less than optimal conditions for application. This "source" issue has been a long standing problem for North Dakota's corn growers.

The second major problem is the cost of the nitrogen fertilizer. Corn growers are the number one consumer of nitrogen fertilizer and with increasing prices, their profits are jeopardized by those costs. If a commodity is not cost effective, farmers choose not to grow it and the Council's mission is jeopardized. Corn growers have looked for ways to save on these

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costs. The Council has assisted the corn growers in grappling with these questions for years including pouring hundreds of thousands of dollars into research for feasible production of lower cost nitrogen fertilizer. The Council's funding of research for nitrogen fertilizer options has never been questioned in the past.

At the July 2011 meeting the Council requested that NDSU study the economic and technical feasibility of producing nitrogen fertilizer with the flare gas from the oil fields. APUC also contributed to funding this research. The initial results were very positive.

The Council focused our research dollars on taking the basic research information we received from NDSU, that flare gas could be used to economically produce nitrogen fertilizer for our producers, and determining whether the information could be used to resolve any of the problems we set out to solve: whether we could stabilize the source of nitrogen fertilizer for our producers and whether we could reduce their cost for nitrogen fertilizer.

Understanding, at a very basic level, that the production of less expensive nitrogen fertilizer in the state was a positive move, but much more research would need to be done to determine if it would be feasible. And if the production plant was feasible, what sort of accounting and legal structure would best protect the price of nitrogen fertilizer for the North Dakota farmer. The extent of the research necessary was massive. No individual or small group of farmers would be able to take on such a broad research project.

We wanted to determine if a plant in North Dakota was feasible and what sort of accounting and business structure it would most effectively serve our purposes of transferring the reliability and cost savings on to the individual North Dakota grower. We chose Northern Corn to complete the research because we wanted to make sure our growers benefited from the results of the research.

The Council entered two contracts with Northern Corn. The first request for research funding of \$25,000.00 came from Northern Corn in January of 2012 for "Renewable Nitrogen Fertilizer". (See FY 2013 Request for Research & Educational Proposals, Exhibit 2). The research was aimed at "determining the feasibility of increasing the value of corn produced with such a nitrogen fertilizer and/or stabilizing or reducing the cost." (Exhibit 2, Page 1). The minutes from the February 1, 2012 Research Grading meeting show that the "Renewable Nitrogen Fertilizer" project was considered along with many other research proposals. (See Meeting Minutes from February 1, 2012, Exhibit 3). The committee discussed the proposals and ranked them. The Renewable Nitrogen Fertilizer project received a cumulative point total of 8.2. The minutes reflect that a motion was made and passed to fund all projects that received a ranking of 5 and higher. We have attached the contract for the first amount funded to Northern Corn. (See Contract dated July 11, 2012, Exhibit 4).

The second request for funding by Northern Corn was considered a supplemental request. Northern Corn requested \$150,000 in March of 2012. As described in the "Supplemental Request Narrative" Northern Corn requested additional funds to hire a third party neutral reviews of the NDSU research and to conduct further research. The additional research would be to confirm which legal and accounting structure would best achieve our end goal of reducing the cost of nitrogen fertilizer for farmers.

The third request for funding by Northern Corn was again considered a supplemental request. The research completed with the funds granted in March of 2012 concluded that there was a legal and accounting structure that would support a plant that would be farmer owned and would result in lower cost and more stable supply of nitrogen fertilizer for North Dakota corn growers. This last request from Northern Corn was for \$750,000. The request came at the July 2012 Board of Directors Meeting. Without repeating the minutes, (attached as Exhibit 5), it was clear to the Council that the project had momentum and that additional funding was necessary to hire lawyers and accountants to determine whether the project could get through a business planning stage. Additionally the Council wanted Northern Corn to determine what off take products might be available and feasible in light of the project.

The funds were approved and provided to Northern Corn's fiscal agent, Lake Agassiz Regional Council. No one at the Council had anything to do with the funds after they were transferred to the fiscal agent.

The Council was not alone in funding Northern Corn. Northern Corn also received funding from APUC, Minnesota Corn Research and Promotion Council, South Dakota Corn Utilization Council and Manitoba Canola Growers Association for this stage of the research.

The auditor suggests that if the Council acted outside of its statutory authority, then they should seek the return of the funds given to Northern Corn through the three grants. It is our understanding from Northern Corn that the research has been completed and the funding has long since been spent on the research the Council agreed to support.

#### **Auditor's Question**

The issue the auditor is requesting us to resolve through an Attorney General Opinion is whether the Council had statutory authority to establish and fund Northern Corn.

#### **Authority of the Council**

The Council was created by statute. NDCC 4.1-04(8) sets forth the Council's powers as follows. The Council may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
4. Contract with any person for any purpose related to this chapter, including research, education, publicity, promotion, and transportation;
5. Sue and be sued; and
6. Do all things necessary and proper to enforce and administer this chapter.

The chapter does not expound upon "purpose related to the chapter." The duties of the Council are set out in the next section of the code, NDCC 4.1-04(9):

1. The Council shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs,

and market development efforts, as well as participation in programs under the auspices of other state, regional, national, and international promotion groups.

2. The Council shall develop and disseminate information regarding the purpose of the corn assessment and ways in which the assessment benefits corn producers.<sup>1</sup>

In addition to the statutory authority provisions, the auditor points to the Attorney General's Letter Opinion from 1997 (97-L-7) to support her conclusion that the Council acted without authority when it funded the Northern Corn research project. That opinion was issued in response to a request from the Oilseed Council to provide funds to the American Renewable Oil Association (AROA) for a grower-owned oilseed processing and marketing business. The Attorney General found that the request made by AROA were for funds to start the business. As a result, the Attorney General found that the Oilseed Council, whose statutory authority is similar to the Corn Council's authority, could not provide such funding.

In March of 2011, when the Council believed that a different research project might result in a research result that could be sold, the Council requested the Attorney General's opinion as to whether it could assign intellectual property or commercialization rights to a not for profit development corporation and whether it could contract with the not for profit to commercialize the intellectual property for the Council. At that point we were interested in a specific contract to support the building of a plant utilizing the research EERC was about to finalize. Because our request related to a specific contract, the Attorney General declined to issue an opinion. Instead, we were directed to our Assistant Attorney General, Charles Carvell, for legal advice.

Mr. Carvell provided the Council with two memorandums in September of 2011. The first dealt with the specific contract the Council was considering. Mr. Carvell instructed the Council that if we were to enter the contract the Council would likely exceed its statutory authority because the contract included the actual building of a physical plant and entering into the competitive market. Mr. Carvell did not believe that the purposes of the statute were broad enough to cover such activities.

The second memo dealt with our question about assigning intellectual property to a non-profit organization for commercialization. While the memo's focus is on the assignment of the property, Mr. Carvell also included information and guidance to the Council about what could be done with the results of the research funded by the Council.

In regard to commercialization, Mr. Carvell stated, "It is one thing to directly promote corn but quite another to become involved in an enterprise that explores the commercial potential of producing nitrogen fertilizer and then goes on to develop that potential and engage in selling the product in the market place. Becoming a player in industry, a merchant in the private economy, may not be a role contemplated by the legislature." He continues, "[t]hat

<sup>1</sup> Mr. Carvell lays out the legislative history for the two sections of the code in his memorandum of September 21, 2011.

agreement...contemplates many features of private enterprise. It involves designing industrial plants, and building and then operating them."

In regard to assigning technology, Mr. Carvell states, "[t]he Corn Council's ownership of intellectual property acquired through Council-funded research necessarily includes authority to make practical use of the property." Further, "it is necessarily implied that the legislature intended that the Council be able to do something constructive with discoveries made through Council-funded research. The ability to sell or assign or license would not be merely useful or convenient for the Council but rather such actions are needed to effectuate the Council's express powers."

**Council's Response to Auditor's Questions**

As we advised the auditor, the Council did not "establish" Northern Corn. Northern Corn was incorporated in 2009 under NDCC 10-33. (See Articles of Incorporation, Exhibit 6). No funds were provided from the Council to Northern Corn for start-up costs or any other establishment purposes. The Council did not give research funds to Northern Corn until 2011, two years after the non-profit was established.

When faced with the question of whether or not to fund Northern Corn, the Council had clear advice that if Northern Corn meant to start a business of its own, then based upon the Oilseed opinion, the Council could not fund the project. If Northern Corn meant to take the information to commercialization through the building of plants and entering into commerce, then according to Mr. Carvell's memorandum, the Council would not be able to assist.

However, Northern Corn did neither of those things. Northern Corn's proposal and work was to research how the Council could "do something" with the information gathered from the NDSU research, how the information would be best used and in what format the information would best serve the growers in North Dakota. The Council took guidance from both the Oilseed opinion and Mr. Carvell's opinions in determining our authority to fund the research proposals made by Northern Corn.

The Council looks forward to hearing your response to the questions posed. I am available to answer any questions you may have about the request.

Sincerely,

*Tom Vilja*  
Tom Vilja  
Executive Director

## Findings, Recommendations, and Management Response

### NORTHERN CORN DEVELOPMENT CORPORATION (Finding 12-1)

In fiscal year 2009, the Corn Council formed the Northern Corn Development Corporation, a nonprofit, because of positive results of Council funded feasibility studies that the Corn Council look into the possibility of using corn to develop nitrogen in western North Dakota. The corporation was formed to look at the business planning aspect of this area.

According to the Secretary of State's website, the corporation's principal office is the same as the Council and the registered agent is the Executive Director of the Council. The Council paid the Corporation \$925,000 in fiscal year 2013 for start-up costs for consultants, accounting, and legal for business planning.

Based on our review of the North Dakota Century Code (NDCC) and an Attorney General's opinion related to similar actions by the Oilseed Council, we question whether the Council has the statutory authority to establish the nonprofit corporation and expend monies to provide start-up costs to the corporation.

NDCC 4.1-04-09 states that the Council's duties are to use the money raised under this chapter to fund research, education programs, and market development efforts.

Attorney General Letter Opinion 97-L-7 stated that the Oilseed Council could not provide funds to the American Renewable Oil Association for a grower-owned oilseed processing and marketing business because the funds were to be used for start-up costs to fund the development of the business including legal and accounting assistance, developing the business plan and structure and adopt by-laws.

#### **Recommendation:**

We recommend the Corn Utilization Council:

- Obtain an Attorney General's opinion regarding the statutory authority of the Council's establishment and funding of the Northern Corn Development Corporation.
- Recover the \$925,000 from Northern Corn Development Corporation unless the Attorney General's office rules the action is within the Council's statutory authority.

#### **North Dakota Corn Utilization Council Response:**

*The North Dakota Corn Utilization Council sought an opinion from the Attorney General as to whether the Council has the authority to "assign" the technology to the non-profit corporation and to contract with that corporation to "commercialize" the technology. Tom Lilja, Executive Director of the North Dakota Corn Utilization Council received a letter regarding the scope of the Corn Council Authority on September 21, 2011, from Charles Carvell, Assistant Attorney General.*

We believe the contract with Northern Corn Development Corporation is consistent with the guidance provided in the Carvell letter. Specifically NDCUC is relying on the implied powers of the Council to make use of the results of funded research to establish new markets or to increase the market value of corn. Carvell states that while the North Dakota Corn Utilization Council cannot fund a private business entity or operate one itself to commercialize a technology; it clearly has the authority to contract with an entity to capture the value of intellectual property acquired through research contracts and to place the technology in use for the benefit of corn growers.

Carvell notes that the Council has the power to "contract with any person for any purpose related to this chapter including research, education, publicity, promotion, and transportation." Consistent with that authority, NDCUC is contracting with Northern Corn Development Corporation for research related to the manufacture of fertilizer from renewable sources of hydrogen which may provide a marketing benefit to farmers who grow corn using that fertilizer. Northern Corn Development Corporation is also receiving similar contracts from other commodity organizations in support of this research including the South Dakota Corn Council, the Minnesota Corn Utilization and Promotion Council, the North Dakota Soybean Council, and the Canola Growers of Manitoba. These organizations are each funding this research project consistent with their statutory authority. The North Dakota Agricultural Products Utilization Commission has also funded this research project under statutory authority to encourage the use of commodities produced in North Dakota.

The North Dakota Corn Utilization Council recognizes the limit of its authority consistent with Opinion 97-L-7 (Oilseed Council) and, through its contract with Northern Corn Development Corporation, prohibits the use of any of these research dollars for the exclusive benefit of a private company. The Council will allow Northern Corn Development Corporation to transfer the acquired intellectual property to a private entity that will commercialize that technology. The Council understands that the terms of that transfer may require review by the Attorney General, as noted in the Carvell letter. We request the recession of Finding 12-1.

*Auditors concluding remarks:*

We reviewed the letter sent to the Attorney General's office requesting an opinion that the Corn Council is referencing above. The opinion request was whether or not the Corn Council had the authority to assign intellectual property or commercialization rights it may acquire in the course of funded research projects to a not-for-profit development corporation. The request does not address whether or not the Council has the statutory authority to establish or fund the Northern Corn Development Corporation as our recommendation states.

Memorandum

To: Tom Lilja, Exe. Dir., N.D. Corn Utilization Council  
From: Charles Carvell, Assistant Attorney General  
Re: Scope of Corn Council Authority  
Date: September 21, 2011

**Introduction.** You ask two questions about the scope of the Corn Utilization Council's authority to put to use a discovery made through a Council-funded research project. The discovery concerns renewable electrolytic nitrogen fertilizer production technology—an alternative way of producing nitrogen needed for fertilizer. The technology could, I understand, lead to growing corn in a manner that makes corn more attractive for certain markets, and could even open new markets for corn. To evaluate the technology the Council is considering a relationship with a non-profit corporation. In particular, you ask if the Corn Council has the authority to "assign" the technology to the non-profit corporation and to contract with that corporation to "commercialize" the technology.

While below is a separate analysis of the authority to assign and the authority to commercialize, I will start with points applicable to each question.

**The Corn Council's Statutory Powers.** As a state agency the Corn Council has only the powers given it by the legislature, as well as those powers necessarily implied from an express grant of authority.<sup>1</sup> For an implied power to exist there must be a direct correlation between the express and the implied power.<sup>2</sup>

The broadest expression of Corn Council authority is in subsections 4 and 6 of N.D.C.C. § 4.1-04-08. Under subsection 4, the Council has the power to "[c]ontract with any person for any purpose related to this chapter including research, education, publicity, promotion, and transportation." This is broad contracting authority, but not unlimited because the contracting power it authorizes is tied to a "purpose related to this chapter." Subsection 6 states that the Council may "[d]o all things necessary and proper to enforce and administer this chapter." While also broad, this isn't an unlimited grant of authority because it too is tied to implementing "this chapter."

Unfortunately, the legislature did not with clarity set forth in Chapter 4.1-04 the purposes for which it established the Corn Council. Had it done so, understanding the scope of Subsections 4 and 6 would be easier. Without clear statutory guidance on the chapter's purposes, we must resort to secondary tools of interpretation.

<sup>1</sup> E.g., *First Bank of Buffalo v. Conrad*, 350 N.W.2d 580, 584-85 (N.D. 1984).

<sup>2</sup> E.g., 2004 N.D. Op. Atty. Gen. 04-L-08; 1996 N.D. Op. Atty. Gen. 96-L-6, at 2.

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One source is legislative history, that is, statements made and documents submitted in the lawmaking process. The Corn Council's governing chapter was first enacted in 1991.<sup>3</sup> It was codified in Chapter 4-10.6, which was repealed in 2009.<sup>4</sup> The chapter was repealed along with all other chapters governing commodity agencies, such as the Wheat Commission, Barley Council, Soybean Council, and Beef Commission. The repeal was the culmination of legislative work begun when the 2007 Legislature initiated a study of agriculture-related laws "for the purpose of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear . . . and rearranging provisions in a logical order."<sup>5</sup> This work was to be a "technical rewrite" and "not intended to make any 'changes' to existing law."<sup>6</sup>

Work by the Legislative Council resulted in a bill considered by the 2009 Legislature. The bill repealed all chapters governing commodity agencies.<sup>7</sup> It also enacted new chapters for each of those agencies.<sup>8</sup> The new chapters did not intend to make substantive changes to the former laws but rather sought to make the laws clearer, more orderly, and consistent with one another.<sup>9</sup>

In light of this background, the 1991 legislative history of the Corn Council's original governing chapter remains relevant in understanding the purposes for which the Council was established.

A sponsor of the 1991 legislation stated that the bill's purpose was to find "new uses" and create "new demands" for corn and corn products.<sup>10</sup> A supporter of the bill stated that corn assessment funds would be used for "consumer education and market development."<sup>11</sup> The N.D. Corn Growers Association stated that "it isn't enough to grow the corn – we have to market it,"<sup>12</sup> and that "we want to promote our product."<sup>13</sup> The Association also presented two written submissions in which it identified four overriding purposes for the legislation: maintain and develop corn markets, provide for "utilization

<sup>3</sup> N.D. 1991 Sess. L. ch. 63.

<sup>4</sup> N.D. 2009 Sess. L. ch. 80, § 18.

<sup>5</sup> N.D. 2007 Sess. L. ch. 475.

<sup>6</sup> Test. by Sen. T. Flakoll on S.B. 2139 before the Sen. Ag. Comm. (Jan. 18, 2007) and House Ag. Comm. (Mar. 2, 2007).

<sup>7</sup> N.D. 2009 Sess. L. ch. 80, § 18.

<sup>8</sup> *Id.* at §§ 2-13.

<sup>9</sup> Test. by Anita Thomas, Legis. Council, on H.B. 1025 before the House Ag. Comm. (Jan. 8, 2009).

<sup>10</sup> Test. by Rep. Nowatski on S.B. 2282 before the Sen. Ag. Comm. (Jan. 17, 1991).

<sup>11</sup> *Id.* at Test. by J. Moench, N.D. Farmers Union.

<sup>12</sup> Test. by Robert Thompson, N.D. Corn Growers on S.B. 2282 before the Sen. Approp. Comm. (Feb. 8, 1991).

<sup>13</sup> Test. by Robert Thompson, N.D. Corn Growers on S.B. 2282 before the Sen. Ag. Comm. (Mar. 8, 1991).

research," "develop new uses for corn," and "provide for more efficient marketing."<sup>14</sup> Thus, the legislature's general vision for the Corn Council was that its work would involve promoting and expanding the use of corn and corn products.

**Corn Council Authority to Enter "Commercialization" Contracts.** You ask whether the Council, in carrying out these purposes, can contract to commercialize the recently discovered nitrogen fertilizer production technology. You also provided me with a draft commercialization agreement to consider along with the general question about entering commercialization contracts.

There is uncertainty in exactly what "commercialize" means and entails. While a commercialization contract might be structured consistent with the Council's statutory purposes, the contract could stray from the kind of functions the legislature intended the Council to perform. It is one thing to directly promote corn but quite another to become involved in an enterprise that explores the commercial potential of producing nitrogen fertilizer and then goes on to develop that potential and engage in selling the product in the marketplace. Becoming a player in industry, a merchant in the private economy, may not be a role contemplated by the legislature.

While it is difficult in the abstract to state with certainty whether the Corn Council has authority to enter a commercialization contract, the draft agreement you provided me does exceed the Council's statutory authority. That agreement—which is discussed in a memo accompanying this one—contemplates many features of private enterprise. It involves designing industrial plants, and building and then operating them. It involves perfecting the nitrogen fertilizer production technology and then taking that technology to the marketplace and engaging in competition there. The technological, engineering, construction, manufacturing, financial, marketing, and competitive activities contemplated by the contract will bring the kind of scrutiny to Council action that I doubt it could withstand.<sup>15</sup>

**Corn Council Authority to "Assign" Technology.** You ask whether the Corn Council has the authority to "assign" the nitrogen fertilizer production technology. It doesn't have express authority to do so, but, as noted above, agencies have not only express but also implied powers.

The Corn Council's ownership of intellectual property acquired through Council-funded research necessarily includes authority to make practical use of that property. As

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<sup>14</sup> Test. by Wallie Hardie, Pres., N.D. Corn Growers, on S.B. 2282 before the Sen. Ag. Comm. (Jan. 17, 1991), and before the Sen. Approp. Comm. (Feb. 8, 1991); see also N.D.C.C. § 4.1-04-09(1) (stating that uses to which the Council can put its funds "include . . . research . . . and market development").

<sup>15</sup> In 2002 the Council's assigned Assistant Attorney General stated that the Council lacked authority to buy stock and thereby own an interest in an ethanol plant. Letter from Asst. Att'y Gen. Paul C. Germolus to Jocie Iszler, Exe. Dir. N.D. Oilseed Council (Aug. 2, 2002).

discussed, the Council has uncertain "commercialization" authority. Consequently, it may be that the Council's only practical way to realize value from the intellectual property it holds is to sell, assign, license, or otherwise convey that property in return for something of value. Giving it away to a third party could violate the state constitution's "gift clause," which prohibits giving away state assets. N.D. Const. art. \_\_, § \_\_. If the Council cannot obtain value for the fruits of its research—and research is an express Council power, N.D.C.C. § 4.1-04-08(4)—then its discoveries may be useless, a consequence the legislature probably did not intend. In fact, a rationale for the rule that agencies have implied powers is the inability of the legislature to foresee all the needs, issues, and problems an agency may encounter in carrying out its duties.<sup>16</sup>

Therefore, it is necessarily implied that the legislature intended that the Council be able to do something constructive with discoveries made through Council-funded research. The ability to sell or assign or license would not be merely useful or convenient for the Council but rather such actions are needed to effectuate the Council's express powers.<sup>17</sup>

**Conclusion.** While there isn't a statute that expressly gives the Corn Council the power to assign or commercialize, that doesn't end the analysis. The Council does have broad powers to contract and to promote corn. While the authority to enter a commercialization contract depends on the contract's term, my opinion is that the Council's authority to enter a commercialization venture involving nitrogen fertilizer production technology is more problematic than certain, and should that venture involve the kind of draft agreement you provided me, then the Council will exceed its authority. As for the Council's authority to assign technology, this also rests, ultimately, on examining the terms of the assignment, an assignment however—or some other arrangement by which the Council gains value from its technology, short of engaging in commerce—is likely within the Council's implied powers.

<sup>16</sup> E.g., *Morgan v. Planning Dep't*, 86 P.3d 082, 993 (Hawaii 2004); *BP American Prod. Co. v. Dep't of Rev.*, 130 P.3d 438, 467 (Wyo. 2006).

<sup>17</sup> See *Spies Realty Co. v. State Dep't of Soc. Servs.*, 321 N.W.2d 924, 926 (S.D. 1982), (quoting *Appl. of Kohlman*, 263 N.W.2d 674, 678 (S.D. 1978) (agency has the reasonably implied and reasonable necessary powers "to effectuate the express powers granted to, or duties imposed upon, it.")). Once it is concluded that an agency has a power, exercising that power is left largely to the agency's reasonable discretion. 2002 N.D. Op. Atty. Gen. 02-L-21, at 2; 1997 N.D. Op. Atty. Gen. 97-08, at 2 (county has "a wide range of implied powers to determine an appropriate contract amount"); 1995 N.D. Op. Att'y Gen. 95-L-243, at 2; see also *Meyer v. City of Dickinson*, 451 N.W.2d 113, 115 (N.D. 1990); *Haugland v. City of Bismarck*, 429 N.W.2d 449, 453-54 (N.D. 1988).

suggesting fairly intense inter-market competitive rivalry. One of the products of the growth in ethanol manufacturing is the sharp increase in production of DDGs, and associated with this is the shipments of these co-products. These results show that DDG production in ND has increased from 860 MMT to 1139 MMT over the period 2009/10 to 2012/13. Exports of DDGs from the United States have grown from less than 1 mmt in 2000 to 8-9 mmt in recent years. The dominant port areas are the US Gulf followed by the PNW port areas, the latter appearing to be growing in share. The dominant importers are China, Mexico, Canada, South Korea and Vietnam. This includes the very rapid growth in exports to China, Mexico and Canada. Of

particular importance to North Dakota corn growers are the export growth and size for China and Canada, each of which are tributary to DDGs produced in North Dakota.

**Next Steps:** There are two major next steps for this project. One is to develop a spatial competitive model to analyze the competitiveness of corn and DDGs produced in North Dakota vs. competing regions. Work is about one-half done on this objective. The second is to develop more detailed analysis of costs and markets for DDG shipments from North Dakota.

## RESEARCHING RENEWABLE NITROGEN

The North Dakota Corn Utilization Council has been aggressively researching solutions for the fertilizer needs of North Dakota corn growers. Three challenges to farmers have included volatile fertilizer prices, threaten shortages during critical periods, and consumer concern over carbon dioxide from fossil fuels used to make it.

The North Dakota Corn Utilization Council entered into research agreements with the Energy and Environment Research Center, located on the Campus of the University of North Dakota at Grand Forks. NDCUC supported the applications for patents on the technology being developed in hopes that it might be possible to build small plants that could manufacture fertilizer close to where it would be used. The Minnesota Corn Research and Promotion Council joined NDCUC in these efforts. It was the hope of these corn councils that fertilizer made under this technology could qualify as renewable. Minnesota continues to experiment with using wind as the source of electricity to separate hydrogen from water.

Careful review of promising technologies led to the conclusion that at this point, none of those technologies were economically viable. The research committee shifted its focus to ask two new questions: "Can natural gas currently being flared in the Bakken oil field be collected and used as the hydrogen source for making fertilizer?" and "is it economically feasible to do so?" To answer these questions, NDCUC entered into a partnership with North Dakota State University at Fargo, North Dakota. North Dakota State University received a grant from the North Dakota Agricultural Products Utilization Commission to complete this study and NDCUC provided the matching dollars.

The study concluded that a separate flare gas collection system at this stage of oil field development is not required, since that gas will eventually be collected and refined by existing commercial companies. The study also showed that using conventional fertilizer manufacturing processes, a plant using natural gas from the Bakken could be among the low cost producers in the world.

Realizing that this opportunity for farmers to own such a plant was a very narrow window of time, the NDCUC authorized funding for the required planning effort and formed a coalition with Keystone Agricultural Producers (the largest farm organization in Manitoba) the Minnesota Corn Research and Promotion Council, the South Dakota Corn Council, and funding for this planning effort is being coordinated through the Northern Corn Development Corporation (NCDC) formed in 2009. NCDC sought and received a planning grant from the North Dakota Agricultural Products Utilization Commission. NCDC is a non profit development corporation governed by a board of directors that represent the contributing organizations. The Lake Agassiz Regional Development Corporation of Fargo, ND is serving as the fiscal agent. NCDC will enter into an agreement with Northern Plains Nitrogen, LLP, (NPNLLP) for business planning and market research work. In exchange for financial support from NCDC for business planning costs such as consultants, accounting, legal and market research, NPNLLP agrees to refund those costs to NCDC should its seed capital campaign be successful. Total contributions received to date by Northern Corn Development Corporation include:

North Dakota Corn Utilization Council	\$925,000
North Dakota Agricultural Products Utilization Commission	\$100,000
Keystone Agricultural Producers (Manitoba Canola Growers)	\$25,000
Minnesota Corn Utilization and Promotion Council	\$25,000
South Dakota Corn Council	\$25,000
North Dakota Soybean Council	\$25,000
<b>Total</b>	<b>\$1,125,000</b>

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The mission of Northern Plains Nitrogen is to create a profitable investment opportunity to finance, construct and operate a nitrogen-based fertilizer plant in the Northern Plains that will utilize the increasing natural gas output in North Dakota, provide a reliable regional supply of fertilizer, and enable farmer-investors to hedge input costs and reduce dependence on imported fertilizer.

Consultants engaged in this effort to date have included:

- Don Pottinger, Pottinger Consulting, Eden Prairie, Minnesota, market research, industry relationships
- Larry Mackie, Mackie International, Long Bow Lake, Ontario, technical feasibility and engineering
- Eugene Setka, France Financial Consulting, Calgary, Alberta, finance and natural gas procurement
- Patrick Kautzman, Eide Bailly, Fargo, ND accounting and tax and business planning
- David Swanson, Dorsey and Whitney, Minneapolis, MN legal, securities, tax
- Bill Patrie, Common Enterprise Development Corporation, Mandan, ND, Organizational development, equity formation
- David Ripplinger, Thein Maung, Greg McKee, David Saxowsky, Cole Gustafson (deceased), NDSU Department of Agricultural Economics, Fargo, ND, feasibility study.

The planning process has been led by Darin Anderson of Valley City, North Dakota, president of the North Dakota Corn Growers Association. A 17 member steering committee of academic, industry and farmer leaders has served to guide the project. Anderson has accepted a leadership role on the board of managers for Northern Plains Nitrogen LLP. NPN will seek to find industry partners in manufacturing and in distribution and hopes to offer a second round of permanent equity financing in the fall of 2013.

## HOW MUCH STOVER CAN BE REMOVED BEFORE SOIL PRODUCTIVITY IS COMPROMISED?

PI: Joel Ransom, in conjunction with Walt Albus (a similar study using no-till at Oakes, and Blaine Schatz, a similar study using strip tillage at Carrington).

Location: Prosper, Cass County

There is interest nationally in using corn stover as a feedstock for producing ethanol. Corn stover, in most cases, is the cellulose source most readily available in sufficient quantities to allow for collection and transport to an ethanol plant. The selling of corn stover could be very attractive to producers with adequate price incentives. However, the impact of residue removal on the depletion of soil organic matter and soil conservation are unknown. Before we commit to using corn stover as a feedstock for cellulosic ethanol, we need to know the environmental and economic impacts and long term cost of such action.

The goal of this research is to determine how much corn residue can be removed before sustainable corn production is impacted in a location where residues are tilled into the soil. This project establishes a third location in this research. This is the first year of the project, so no actual treatment comparisons can be made. The experiment consists of a factorial combination of rotation (continuous corn and corn following soybeans) and corn stover removal (0, 33, 66, and 100% removed after grain harvest). The treatments are similar to those used at Oakes and Carrington, though at the Prosper site, residues are incorporated into the soil, whereas, no-till and strip till is used at Oakes and Carrington, respectively. The extra location allows for the more rapid development of a database that addresses this important topic.

When considering the low amount of rainfall received during the 2012 growing season, yields were quite high (more than 200 bu/acre)(Table 1). The amount of residue removed varied from 0 to approximately 9,000 lbs/acre depending on the treatment. Macronutrients removed with the stover were in excess of 85 lbs/acre of N, 25 lbs/acre of phosphorous and 100 lbs/acre of potassium. Soil samples were taken in order to establish a baseline of soil health parameters. Changes in these parameters will be monitored annually.

Rotation	Proportion removed	Yield	Amount removed	N removed	P <sub>2</sub> O <sub>5</sub> removed	K <sub>2</sub> O removed
	%	bu/ac	lb/ac	lb/ac	lb/ac	lb/ac
Corn on Corn	0	216.7	0	0	0.0	0
Corn on Corn	33	207.4	2823	28.2	8.3	35.3
Corn on Corn	66	213.1	5560	55.6	16.4	69.5
Corn on Corn	100	220.9	9420	94.2	27.8	117.8
				0		
Corn then Soybean	0	200.8	0	0	0.0	0.0
Corn then Soybean	33	200.4	2963	29.6	8.7	37.0
Corn then Soybean	66	208.4	5360	53.6	15.8	67.0
Corn then Soybean	100	208.2	8607	86.1	25.4	107.6

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**Dale Ihry**

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**From:** O'Leary, Erin M. <eoleary@undeerc.org>  
**Sent:** Tuesday, February 28, 2017 8:04 AM  
**To:** Dale Ihry  
**Cc:** Jean Henning; 'germanfarms@hotmail.com'; Aulich, Ted; Skean, Diane  
**Subject:** Request to Clarify Previous Agreements

ATTACH #6

Mr. Ihry,

The North Dakota Corn Utilization Council has no outstanding debts with the Energy & Environmental Research Center (EERC) at this time nor has it had any in the past.

The EERC and the North Dakota Corn Utilization Council have partnered on two research agreements, both of which were fully paid, in advance, by the North Dakota Corn Utilization Council.

We have greatly valued your partnership with the EERC and look forward to working with you in the future.

Sincerely,

Erin O'Leary

**Erin M. O'Leary, CFO**  
EERC | University of North Dakota  
15 N 23rd St Stop 9018 | Grand Forks, ND 58202-9018  
O: (701) 777-5250 | C: (701) 739-6497  
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**Dale Ihry**

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**From:** Dale Ihry  
**Sent:** Monday, February 27, 2017 12:04 PM  
**To:** 'taulich@undeerc.org'  
**Cc:** Jean Henning; 'Scott German'  
**Subject:** Request To Clarify Previous Agreements - EERC and North Dakota Corn Utilization Council

Mr. Ted Aulich,

Thanks again for taking the time to visit today. It was great to hear your statement that your group had a valued working relationship with the North Dakota Corn Utilization Council (NDCUC) over the past several years. My understanding from the current board is they have similar recollection. As I indicated on the telephone, our entire staff at NDCUC been employed for two or fewer years and the records remaining for researching previous agreements are a bit thin.

The purpose of this email, and a follow-up to our telephone discussion, is to request a response from your organization regarding any outstanding debt that NDCUC has with the EERC for past working agreements or contracts. The reason for this request is that the NDCUC has been alleged of having an outstanding debt with EERC. We cannot find any evidence of such a debt and would like to verify such.

We appreciate any and all information you can provide regarding this request. If you or any one in your organization have questions related to this email, feel free to contact me at 701-371-3766.

The best,

**Dale Ihry**  
Executive Director  
North Dakota Corn Utilization Council  
North Dakota Corn Growers Association  
1411 32<sup>nd</sup> St. S. Ste. #2  
Fargo, ND 58103  
Office: 701.364.2250/Cell: 701.371.3766  
dale@ndcorn.org

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# MARCH 21, 2012 Minutes <sup>ATTACH #7</sup>

There was a brief discussion on whether or not garnering support from North Dakota Farmers Union (NDFU) might be possible. This will be researched. Tom Haahr placed a call to a NDFU representative and was told that at their upcoming meeting they will likely oppose supporting this fund.

Additionally, Mike reported that the NCGA Washington, DC staff and James Callan are on track with the progress of the Farm Bill and its particulars.

Mike briefly mentioned elevator insolvency and how Fargo attorney Lowell Bottrell is involved in an indemnity fund. He also reviewed a situation with RMA and a PP case that went to arbitration. The case has been resolved and all companies are now on the same page and specifics are in writing when it comes to prevent plant details.

## Research:

Wallie Hardie reported that in the 1935 six technologies came together to make the British Dakota airplane. He reported that with Midwest AgEnergy going into Spiritwood that numerous projects that the board has funded can be incorporated. Such companies include North American Protein using back set water to speed up the fermentation process; Agrebon, which uses anerobic digesters to make NH<sub>3</sub> and advanced cooling to produce urea prills; Advanced Nutrient Systems which produces Copper, Zinc, Manganese and micronutrients; Dynamic Food Ingredients (DFI) which uses electrolysis to produce corn sugar; C2Renew which makes plastics out of DDG's. Wallie stated that 2 angel funds have been created. HiEnergy which consists of Agrebon and Advanced Nutrient Systems and Leading Edge which consist of North American Protein, DFI and C2Renew.

He noted that Dynamic Food Ingredients is finishing up their scale up research. They will likely be coming back to the Corn Council for additional funding for FY 2014. They want to locate at the Spiritwood site, possibly. He went on to share that Chad Ulven's work in biocomposites is ready to go and they could use \$350,000 right now. Wallie indicated that Jim Carlson is creating two angel funds and Wallie reviewed these investment opportunities.

Wallie walked through the 45% tax credit with \$150,000 and the 7 year tax credit. He also mentioned the 4% interest buy down with the Ag Pace Program.

**Growers:** Motion was made for the North Dakota Corn Growers to support the opportunity for the North Dakota Corn Growers to evaluate investing in various ethanol-related companies through the angel fund process. Motion seconded. Motion carried.

The possible use of ND Corn Growers member listing for names of potential investors and individuals to invite to various informational investment meetings was held.

**Growers:** Motion was made to allow board members to indicate knowledge of corn growers to be invited to meetings hosted by Sky Train Fund Manager by writing their name next to the individuals. Motion seconded. Motion carried. The list will include the individual's name and city.

## Grower Services:

Jerome Freeberg reported for this team. He indicated that Leslie will be retiring after this term from his Director At Large position on the Corn Growers board. Howard Olson's served his four 1-year term limit. Jerome indicated they will be looking for an individual to fill Howard's seat as well as the additional vacant Industry Director seat.

The board recognized Leslie Roach's years of service on the board with applause and words of appreciation.

**Growers:** Motion was made for Larry Hoffmann to fill the upcoming vacant Director At Large Seat. Motion seconded. Motion carried.

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**Jason Rayner – Talking Points for NDCUC:**

Good Morning Chairman Luick and committee members. My name is Jason Rayner. I am a farmer from Finley, North Dakota in Steele County. I raise corn and soybeans in my farming operation along with my wife. I currently serve as the Vice Chairman for the North Dakota Corn Utilization Council. I am testifying for a do not support of the bill.

HB 1282, as amended, is a bill that provides repetitive review of Council board operations that seem to already have taken place on the biennial review of Audits, last completed on January 6, 2017. The NDCUC 2016 Audit was found to be clear based on review of the NDCUC operations under current management and employees. Further, in looking back at past audits, many of the allegations that have been made towards our operations have not been identified in those audits or if identified have been cleared after consult with appropriate authorities. Lastly, if this bill passes and the reporting and studying is completed we believe we will be going through this same process in two years.

NDCUC, was established by you in 1991, to use Corn Checkoff funds to focus on market development, research, promotion and education to enhance the value of corn farmers in the state. The Council works with several state, regional and national organizations meet the requirement currently set forth in statute.

The working relationships with these other organizations to enhance corn production in the state and find new markets has allowed the growth of corn from 600,000 acres in 1992 to over 3.0 million acres in 2016; it allowed corn farmers in ND to have record yields of 158 bu/acre and record production of 500 million bushels.

The NDCUC would ask to continue work on our mission of enhancing the corn farmers of North Dakota bottom line by working on partnerships and efforts that related to market development and promotions, education and research.

The uncertainties of changed operations following reporting and study, may cause more issues and unintended consequences down the road related to partnerships and current working agreements.

Thank you for your time, do you have any questions?



### **Randy Melvin – Talking Points for NDCGA:**

Good Morning Chairman Luick and committee members. My name is Randy Melvin. I am a farmer from Buffalo, North Dakota in Cass County. I raise corn and dry beans in my farming operation along with farther and brother. I currently serve as the Vice President for the North Dakota Corn Growers Association and serve on the National Corn Growers Association's Risk Management Action Team. I am testifying for a do not support of the bill.

As a Growers Association, we are the grassroots organization for corn growers and work on farm policy, regulation, state and federal legislation and leadership and education programs. We believe we have seen great value in the way we have worked with the NDCUC over the years in growing the corn industry in the state.

We are also proud to inform you that regardless of what you have heard from some, our organization is in good standing with membership and partners. We have recently increased our membership in the State to over 1500 members. We also had a record crowd attend our annual meeting in February. We see positive movement in the industry as it relates to growth in grain production, ethanol production and uses. We are also working with NDCUC and other partners to help grow the livestock sector of the state through an alliance of commodity and livestock groups. We hope our efforts will be seen in our ability to educate the public and communities in the value of livestock to our State and communities.

Our concern with HB 1282, as amended, is that the proposed report and study may lead to changes that are detrimental in all of the positives that we have made in our industry and partnerships. We along with the other commodity organizations believe that positive steps have been taken in the past several years of commodity organization work. Changing for the sake of changing, seems counterproductive to our recent positive growth.

Like the NDCUC, the Corn Grower organization would ask to continue work on our mission of enhancing the corn farmers of North Dakota bottom line by working on partnerships and our targeted areas of education and grassroots efforts and not be hindered by unnecessary and duplicative reports.

Thank you for your time, do you have any questions?

Senate Ag Committee Hearing  
March 9, 2017

House Bill 1282

Chairman Luick, Vice Chair Myrdal and members of the Senate Ag Committee. My name is Clark Price from Hensler. I'm a beef producer and corn grower and appear here today as a producer committed to the success of my checkoff programs. I have served on these checkoff boards and am proud of the successes we have had at the state and national level with research, promotion and education programs to further our industries.

House Bill 1282 has me very concerned on several levels. Producers fund every one of the commodity groups addressed in this bill. Producers also proudly oversee these programs, the budgets and the direction of every commodity group and commodity programs. We come to the boards of these commodity groups in various manners, but whether we are elected by producers or nominated by stakeholders in our industry and then appointed by the governor, every person is uniquely qualified and vetted in one way or another.

I think it's important for this committee to understand that every commodity group, be they livestock or grain, are as unique as the products they are in existence to promote and market. For three commodity groups in this room – beef, dairy and soybeans – they not only operate under state laws, but under federal acts as well.

And if accountability is the concern, I know for a fact that the Beef Commission must answer to several different levels of oversight. They are required by federal law to go through an ANNUAL AUDIT which is conducted by the State of North Dakota, rather than a biennial audit required in our state. These audits cover all aspects of ND state rules, regulations and procedures as well as federal requirements. They also have periodic national reviews conducted by the

Cattlemen's Beef Board to make sure their house is in order. Producer board members also meet with the auditors and review these audits and reports through their Beef Commission Audit Committee.

We are also excited about the opportunity to come and report to this committee and your House counterpart at the beginning of every legislative session as another level of accountability and oversight. If you read your binder from that hearing, you know the legislative history of each commodity group, you know their board structure, you know the audit findings of every group, have seen their current and future program plans and industry outlooks, and you have their financial reports. You also all had every opportunity to ask every commodity group any and all questions you or your constituents might have had during that hearing. This oversight responsibility of the House and Senate Ag Committees began with the 1995 legislative session and has been in place for 22 years now and I think every commodity group would agree that this is a great process.

If there are questions about the structure of some of our commodity groups, again let me give you some examples of how beef councils around the country operate. Of the 44 state beef councils in business, 29 operate like our ND Beef Commission with only one purpose and that being to manage the state beef checkoff program. But the remaining 15 operate as what we refer to in the beef industry as a "two-hat" organization. That means they have one staff and one exec that split their time and are responsible for both their beef checkoff program and their cattle association membership organization. These organizations are structured such that they meet all the federal requirements of USDA and the Cattlemen's Beef Board.

Committee members, I see nothing in this bill that is necessary with the blanket approach this bill takes for our Ag commodity groups. The number of staff members for these groups is

extremely small, ranging from only a part time person to maybe 5 for the largest group, averaging less than 2 people. The questions asked in this bill have already been answered for the most part. And I'm sure if there are specific questions for one group or another, you will find staff and board members more than willing to discuss and resolve concerns without another law or a study.

Thank you for listening.

Testimony of NDWC Chair, David Clough, HB1282, March 9, 2017

Good morning, Mr. Chairman and members of the Senate Agriculture Committee.

My name is David Clough. I am Chair of the North Dakota Wheat Commission.

I am here today to share some concerns regarding House Bill 1282. In doing so, I would like to provide some additional information regarding the Wheat Commission's membership, structure, and governance; and to illustrate how well that structure and governance model has served the producers and the state of North Dakota over the years. Provisions of this bill could potentially threaten the substantial contributions commodity groups are delivering on behalf of producers and the entire state economy. Some of the information provided in my testimony today may also apply to other commodity groups which may also wish to share comments regarding House Bill 1282 today.

This bill in its current form includes a report to Legislative Management, which appears to be redundant at best, given the considerable legislative reporting that already exists. Current audit reports, detailed reporting on priorities, programs, progress, and past, present, and future budgets, are included in detailed reports compiled for, and summarily presented to the Agriculture Committees each session. There will be non-recoverable costs in time and resources associated with preparing these legislative management reports for each of the organizations listed in the bill. A second feature of the bill, the legislative study provision, appears equally redundant, costly and time consuming for the commodity groups themselves, in addition to the administrative time and legislative costs associated with such an undertaking, involving a dozen or more commodity commissions and councils.

The Board of Commissioners or directors of the North Dakota Wheat Commission's six production-weighted Districts are elected by their "active wheat producer" peers, as directed in state statute. The first step is to be nominated and elected at the county level, and subsequently in the respective district. Commission members serve four-year terms and are eligible to serve second and third (four year) terms if re-elected again, at county and district levels. No Commission member may serve more than three (3) terms in total.

A seventh Commissioner is appointed by the governor from a list of three (3) nominees, presented to the Governor following a thorough vetting process, with extensive involvement by producer and stakeholder entities representing the broader interests of agriculture in the State of North Dakota. Board members have regular, structured contact with their county representatives to communicate progress on issues and programs, and to ensure the activities and issue management strategies of the Commission are meeting the expectations of its constituent base.

The North Dakota Wheat Commission was created by state statute in 1959, the first such commodity organization in North Dakota. The Wheat Commission has for nearly 60 years been regarded as a producer-driven organization made up of active wheat producers. The Commission is primarily known for its development of and active involvement in successful Foreign Market Development Programs, Wheat Research Initiatives, Domestic Market Promotion, Producer and Customer Education and Outreach Programs for the primary benefit of the more than 15,000 wheat producers in North Dakota.

Successful execution of effective core programs, accompanied by good governance and accountability have resulted in (producer/stakeholder) approval and acceptance ratings of nearly 94 percent. Commission programs and operations are funded entirely by a 1.5 cent per bushel checkoff on wheat sold in North Dakota. All wheat producer funds generated by the checkoff are held in the Wheat Commission specific account at the State Treasurer's Office, and all transactions and contracts are approved and processed by the North Dakota Office of Management and Budget. These producer dollars are the only source of funding for the Wheat Commission and its programs. No state general fund monies are involved.

The Wheat Commission (and other state commodity groups) make biennial progress and financial reports to legislative leadership early in each legislative session, and have regular audits conducted by the State Auditor's Office prior to each legislative session. This ensures that producer funded, producer driven commodity organizations, like the Wheat Commission, operate in the manner

directed by the enabling legislation, and expected by the producers who provide (all of) the funding through their individual checkoff contributions.

Wheat is the largest agricultural enterprise in the state's largest industry (Agriculture) and has long been identified as a prominent contributor to the overall economy and well-being of the state of North Dakota, agriculturally or otherwise.

Today we know the state of North Dakota has a more diversified economy and a much more diversified agriculture than was the case even a decade or so ago. Likewise, additional commodity organizations have been established accordingly, each with appropriately individual, commodity specific missions and programs, and each making its own distinct contribution to the economy. This is the diversity in the state's largest industry that has been sought for generations. More importantly, a great deal has been accomplished in the process: by the special and individual attention devoted to each commodity.

In the case of wheat: average (per acre) yields have doubled and production and management practices have advanced greatly. Impressive economic gains have also been accomplished through improved genetics, disease resistance, product functionality, end-use quality, customer satisfaction, and substantial growth in sales volume and value in key markets, worldwide.

Many of our offshore markets have become dedicated, repeat customers gained through active deployment of export market development and technical servicing programs which differentiate our high quality wheats from those of more "generic" US or global origins, ultimately generating premium prices for our producers and premium product performance for our customers.

The wheat classes produced in North Dakota and our region are differentiated from the rest under a unique form of "Product Branding". The "brand" is based on end use performance features that customers want, and pay premium prices for those specific performance features.

World wheat prices are suffering under a glut of medium quality, generic wheat. But for much of the current marketing season, local prices for hard red spring wheat have been as much as \$2.00 per bushel higher than the price of other,



more generic wheats in the US, from the Black Sea region, or other global competitors.

(This is what Microsoft, Google, and others do to separate themselves from the competition!)

These local price premiums for premium quality, combined with recent Back to Back record yields have made a significant, positive difference in the economy of the state of North Dakota and the region. Similar advancements in the greater diversity of crops available to North Dakota producers should also be noted as a result of deliberate and measured programs and actions by North Dakota producers, commodity leaders, and their partners.

Most of the accomplishments in North Dakota agriculture involve very productive partnership arrangements. For example, each year important contracts are approved with US Wheat Associates; the wheat research and extension team at North Dakota State University; state, regional and national grower associations; The Northern Crops Institute; Wheat Marketing Center; Wheat Foods Council; National Pasta Association and others. North Dakota producer representatives often play very important roles in the elected leadership of national industry organizations and national committees.

The Wheat Commission's partnership contract with US Wheat Associates involves membership with 18 other state wheat commissions and councils. This joint effort leverages additional Federal funding through contracts with USDA's Foreign Agriculture Service to support 15 strategically located regional overseas offices.

Right there, with boots on the ground every day, professional USW staff provide technical support to quality conscious foreign customers; delivered in the form of wheat utilization education, procurement, logistics, and contract specification assistance for flour millers and other wheat importing customers in over 100 countries. These business relationships coupled with development of sound domestic and trade policies foster additional market growth and repeat business in key global markets. In Taiwan and in the Philippines, two of our top ten customers, our market shares today stand at nearly 90 percent, a 50-year business relationship and still growing.

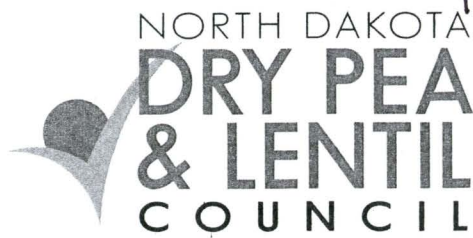
Another measure, or perhaps a proxy for effectiveness, is the reputation the North Dakota wheat Industry has gained over the years with peer states across the country. Whether in the research field, the export market development arena, or wheat end-use quality, North Dakota wheat and North Dakota agricultural research, production, marketing, promotion and policy pursuits are all held in very high regard by partner organizations nationwide.

As the Chair of the North Dakota Wheat Commission, I am extremely proud of the Commission, its members, its programs and those of our partner organizations. North Dakota commodity groups and their elected members are enthusiastic and responsible volunteer supporters of North Dakota's largest industry and generator of new wealth. Given the current state of local, national and international affairs, the continued progress and momentum of North Dakota agriculture and the individual investment of time, talent, and resources by these producers and their organizations may be more important now than ever before.

A few weeks ago, with a great deal of enthusiasm the Commission and other commodity groups shared highlights of that important information with this committee and your colleagues on the House Agriculture Committee. That same enthusiasm will be critically important in maintaining and expanding the progress that has been gained. We will be faced with great opportunities and yet daunting challenges in crafting effective future wheat research and export market development programs; negotiating critical New Farm Bill provisions; and successfully navigating an increasingly complex and competitive global trade environment. All are extremely important to the future vitality and viability of our state's largest industry. The North Dakota Wheat Commission fully supports these time tested programs that ultimately result in significant contributions to the economy, and help ensure continued opportunity and economic security for our state and nation.

However, we are concerned by the potential for loss of momentum and progress, which may result from misinterpretation or unintended consequences of this bill (HB1282).

Thank you. If you have any questions I will try to answer them.



HB 1282 3/4

#16  
pg. 1

**Testimony of Kevin Haas  
House Bill 1282  
Senate Agriculture Committee  
March 9, 2017**

Good morning Chairman Luick and members of the Senate Agriculture Committee. For the record, my name is Kevin Haas and I am outgoing Chair of the ND Dry Pea & Lentil Council. I am here today to voice my opposition as a pulse producer and pulse processor to HB1282.

I have served on the ND Dry Pea & Lentil Council for the maximum term limit of nine years. I, as others on the ND Dry Pea & Lentil Council were elected by fellow producers to carry out the responsibilities of collecting and allocating pulse check off dollars on their behalf. The ND Dry Pea & Lentil Council has done so since the inception of the check off in 1997.

The ND Dry Pea & Lentil Council currently contracts with the USA Dry Pea & Lentil Council and the Northern Pulse Growers Association to promote pulse production through education, domestic and international marketing and research. The ND Dry Pea & Lentil Council also contracts its administration of day to day activities. Since 1997, this administration of day to day duties as well as the other program areas have gone through the procurement with the State procurement staff acting as the procurement officer on behalf of the ND Dry Pea & Lentil Council. In addition, the ND Dry Pea & Lentil Council has received counsel/contract services from five prior Assistant Attorney Generals. Each State Audit which has been conducted to date without incident or suggested changes. The audit in conjunction with an

overview of all North Dakota pulse check off funded projects is presented to the Senate and House Agriculture Committee at the beginning of each session.

The ND Dry Pea & Lentil Council members serve on both the USA Dry Pea & Lentil Council and Northern Pulse Growers Association committees on education, marketing and research to ensure that funds are expended on projects and activities on behalf of producers. As an example, one of our Council members spends an entire week reviewing research proposals with producers from across the industry to determine funding awards. These decisions are based on producer priorities indicated by surveys and feedback received from grower meetings.

The pulse industry through collaborative efforts of the ND Dry Pea & Lentil Council, USA Dry Pea & Lentil Council and the Northern Pulse Growers Association has had tremendous success over the past several years. Record acres were planted across the U.S. with the region currently accounting for more than 80% of total U.S. production. Marketing opportunities have continued to expand as pulses are being used for more and more products domestically and internationally.

I would urge you all to consider how the pulse industry and ND agriculture have become national leaders due in large part to the synergy between growers' organizations, Councils and Commissions. I encourage you to oppose HB1282 as it duplicates efforts already in place by commodity groups. Thank you. I would be happy to answer any questions you may have.

**Shannon Berndt**

---

**From:** j8960 <j8960@midrivers.com>  
**Sent:** Wednesday, March 8, 2017 11:06 PM  
**To:** Shannon Berndt; Chad Anderson; Chad Doheny; Chris Westergard; Mark Hardy; Mark Schmidt; Matthew McCabe; Paul Berntson; Sam Arnson; Todd Wagner; Aaron Holter; Brad Hertel; Chet Hill; Eric Bartsch; John Raisler (john.l.raisler@dupont.com); Mary Burrows  
**Subject:** RE: NPGA Testimony In Opposition to HB1282

Mr. Chairman, members of the committee: My name is Jerry Schillinger, I Farm in Mccone County, Montana and am fortunate to be the President of the Northern PulseGrowers Association, a joint Montana, North Dakota growers organization. We have enjoyed a mutually beneficial relationship for over ten years since our North Dakota neighbors invited us to join them.

During that time I've come to appreciate the simple, effective way the NDDPLC has been able to administer their check off. By contrast, in Montana, we have struggled under the political pressure of the Montana Dept of Ag, especially in recent years. I would urge you to resist the current efforts to fix a system that has enjoyed outstanding success for years.

We in Montana are now trying to make statutory changes to our check off system to more closely emulate yours.

Please kill HB 1282.

Thank you for your consideration.



Your voice for wheat and barley. [www.ndgga.com](http://www.ndgga.com)

**North Dakota Grain Growers Association  
Testimony on HB 1282  
Senate Agriculture Committee  
March 9, 2017**

Chairman Luick, members of the Senate Agriculture Committee, for the record my name is John Weinand. I farm with my family in Hazen, North Dakota and I am also President of the North Dakota Grain Growers Association. The North Dakota Grain Growers Association, through its contracts with the North Dakota Wheat Commission and the North Dakota Barley Council work on domestic policy issues on behalf of North Dakota's wheat and barley farmers. I appear before you today to oppose HB 1282.

Partnerships are the lifeblood of commodity groups and their activities. In NDGGA's case those partnerships include but are not exclusive to the North Dakota Wheat Commission, the North Dakota Barley Council and NDSU on the state level and the National Association of Wheat Growers and National Barley Growers Association on the national level. NDGGA also works with other farm organizations on the state and national levels to serve North Dakota wheat and barley farmers as well as North Dakota agriculture in the best manner possible. Ultimately, just as you do, it is serving our constituents, the North Dakota farmers, that is the mission for our Association. NDGGA constantly strives to improve those partnerships; that is why our Association is opposed to HB 1282.

I just returned from the annual meeting of the National Association of Wheat Growers and I am proud that our fellow wheat states look to North Dakota as the "Gold Standard" of commodity group operations. These other states envy how our North Dakota commodity groups put their checkoff dollars to work on behalf of North Dakota farmers on a state, national and international levels. This is a testament to how our commodity organizations operate and how our work is viewed by others around us. In light of this it is hard for me and for the North Dakota Grain Growers Association to see the need for this bill.

*NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.*

NDGGA is confused as to what the purpose is for HB 1282? Is it here because of a perceived lack of reporting? Commodity organizations already report to the Joint Senate and House Agriculture Committees every legislative session; these are the Ag experts of the North Dakota Legislature. Additionally the structure of Ag commodity groups results in the scrutiny of group activities on the local level through County Representatives who help to oversee the actions of the Councils and Commissions.

Is it lack of recourse? There are at least 12 different statutes in code today that allow for recourse should someone feel that a checkoff group isn't operating properly.

Most importantly the farmers and ranchers themselves have the final say in group activities; for 365 days per year they have the option to vote on commodity group activities through the checkoff refund system. I think it's says a lot that North Dakota checkoff groups have over a 90 percent checkoff retention; this speaks volumes regarding their approval by the people directly impacted by commodity group activities.

In NDGGA's view, legislation impacting commodity organizations in this state should enhance partnership opportunities and not detract from the organizations' missions. This would not be the case with HB 1282. The bill contains redundant reporting requirements and would study what is already in place. This, to NDGGA, would be a waste of both the legislature's and the commodity group's time and money.

Therefore, Chairman Luick, members of the Senate Agriculture Committee, NDGGA would respectfully request the Committee give HB 1282 a Do Not Pass recommendation and would hope the Senate would concur.

Good morning Chairman Luick and Senate Agricultural Committee members. I'm Craig Olson, President of the North Dakota Soybean Growers Association; a Colfax area farmer and rancher.

I want to take a minute and thank you all for your willingness to serve North Dakota's citizens, contributing both your time and talent to make our state a better place to live and farm in.

The North Dakota Soybean Growers Association is opposed to House Bill 1282. The bill proposes to spend tens of thousands of taxpayer funds looking into commodity group operations, while creating significant administrative workloads for commodity groups over the next biennium for what purpose?

The Soybean Growers were formed by farmers when there was far fewer soybean acres than today. The Growers at that time identified a need for soybean growers to explore research and marketing options for the benefit of their industry. Ultimately those efforts lead to the formation of the Soybean Council. In the early years the Council and Growers shared an executive director, but a few years ago the Growers elected to hire their own executive director and legislative director.

Both organizations are thriving today. The Council uses check-off funds for research, market development, education and communication activities to increase soybean grower awareness of opportunities and challenges they face every day.

The Soybean Growers Association's role is to monitor local, state and federal public policy proposals and actions looking for issues that impact agriculture, particularly our soybean community. We act on those opportunities and challenges to improve policy decisions for soybean farmers across the spectrum.

Soybeans have grown to a \$2 billion industry in North Dakota. We are excited about our first soybean processor coming to North Dakota and



locating at Spiritwood. We look to the day when additional soybean processing will root itself in North Dakota as well.

While the two soybean organizations started as a single organization, they have not shared a single mission. Our respective farmer populated and lead boards share the similar hopes and dreams for our industry, but stay focused on their own roles.

Each organization is open to input from any soybean farmer. The Soybean Council scrutinizes Grower Association requests for contractual funding opportunities exactly as it does for its non-Grower requests. The Soybean Growers Association treats policy inputs from soybean growers that serve on the Soybean Council exactly as those that do not.

Every member of the Soybean Council and the Soybean Growers guiding bodies are elected. Soybean growers that want to fill those roles, or do not like what a board is doing, can choose to run for either board. We are elected just like you.

Our recommendation is for this committee to give HB1282 a "Do Not Pass" recommendation and use those tens of thousands of dollars in the Agricultural Product Utilization Commission's budget to fund looks at additional agricultural value-added opportunities to benefit the farmers, ranchers and other citizens of North Dakota.

Thank You for your time and attention. I'll be happy to answer your questions that I can.

Thank You,  
Craig Olson  
NDSGA President  
[craig.olson@ndsoygrowers.com](mailto:craig.olson@ndsoygrowers.com)  
Cell 701.640.4002

**Presentation before the North Dakota Senate Ag Committee  
Thursday, March 9, 2017**

Good Morning Chairman Luick, committee members and guests...

My name is Levi Taylor. I am a Director on the North Dakota Soybean Council Board and a soybean farmer from Ypsilanti. On behalf of the 10,000 soybean producers in our state, I am pleased to visit with you this morning about the North Dakota Soybean Council and some of the exciting programs we have underway.

The soybean industry in North Dakota is a phenomenal success story. In 1985, there were only 500,000 acres of soybeans planted – primarily in the Red River Valley. In 2016, USDA is projecting North Dakota to have planted six million acres of soybeans across the state – for a record 246 million bushels – with a record yield of 41 bushels/acre. The direct value of our soybean crop to North Dakota's farmers exceeded \$2 billion. Another outstanding year!

North Dakota ranks fourth in the nation for planted and harvested and number eight in overall soybean production. Cass County maintains its status as the number one soybean producing county in the United States. We are the number two exporter of whole soybeans in the nation.

The North Dakota Soybean Council is funded exclusively by the soybean checkoff when producers sell their crop to a first purchaser, like a grain elevator for example. The checkoff collected is ½ of one percent of the

value of the sale. These funds are remitted quarterly to the Soybean Council and invested in four primary categories: 1) Research, 2) Domestic and International Marketing, 3) Producer Education and 4) Consumer Awareness.

Annual collections total approximately \$8.6 million. One half of this amount stays with the Soybean Council and the other half is remitted to the United Soybean Board, which invests in similar programs at a national level.

While the Council is a state agency and operates under the authority granted in the state statute, it does not receive any state appropriations. The Council also operates under the authority of the U.S. Department of Agriculture. We are audited annually by the State of North Dakota and I am pleased to report that our audits are very clean. This past year, USDA conducted a five-year compliance review of the Council to ensure all our business operations are compliant with the Soybean Act and Order. I am excited to report that the results of this review were highly favorable.

Our board of directors remains committed to balancing the need to invest farmer checkoff dollars in projects that will bring direct value to ND soybean producers while operating within state and federal statute and regulations.

Let me share with you the basic process we utilize to achieve compliance with both state and federal provisions. The process is initiated with receipt of a funding request, regardless of its nature (the process below is sequential):

- The request is under goes an initial staff review for applicability to the Soybean Council's area of responsibility.
- The request is then taken up with the United Soybean Board's Compliance Review Team for funding eligibility.
- The North Dakota Attorney General's office reviews the request.
- The request is delegated to the appropriate Soybean Council Committee (Research, Market Development, Education & Communications) for their consideration and board recommendation (very similar to the process used by the legislature).
- Then it under goes review by the full Soybean Council's Board and is either approved, denied or returned to the those that propose the project for additional work and resubmission.

Approved projects are get continuous staff oversight and the assigned Soybean Council Committee is provided quarterly progress reports. All funded programs are subject to both state and federal audit review.

As you may have heard, the Minnesota Soybean Processors have announced their intention to build a \$240 million soybean processing plant on a 150-acre site in Spiritwood. The plant will process 125,000 bushels/day into soybean meal, refined soybean oil and biodiesel. The processing facility adds an important local market for soybean farmers while expanding value-added employment opportunities, products and much more to central North Dakota.

The Council has partnered with the North Dakota Beef Commission, the North Dakota Pork Council and the North Dakota Dairy Coalition to educate farmers, our urban and rural neighbors and key influencers about the importance of livestock production in their state. We are partnering with North Dakota livestock groups, Department of Agriculture and fellow commodity groups to establish a North Dakota Livestock Coalition to support and enhance animal agriculture development and production in North Dakota.

The Council's research investments include a partnership with the State Board of Agricultural Research and Education (SBARE) on projects working to provide solutions to challenges such as weed management, soil health, water quality and management while educating soybean farmers on their value to sustainable production practices. The Council has invested another \$2 million in a variety of research activities related to those just mentioned. We have a long history of conducting important research within our state and beyond in partnership with other-state soybean organizations.

This past year, along with fellow commodity groups partnered with conservation organizations in our state to fund farm bill specialists working in county Natural Resources Conservation Services offices promoting, coordinating and implementing voluntary Farm Bill conservation programs. The North Dakota's Soil Conservation Association oversees the coalitions work on behalf of the coalition while hundreds of our farmers are being served.

The Council organizes and sponsors numerous producer education programs throughout the year including: The Northern Soybean Expo; Best of the Best in Soybean and Wheat Production; Getting it Right in Soybean Production; Soybean Success Seminars; annual Commodity Trading Seminars; and our annual See for Yourself program.

The Council is also focused on creating an international preference for soybeans grown in this region by developing and maintaining relationships with our overseas customers and educating them about the quality, reliability and sustainability of our commodity. Currently, most North Dakota soybeans leave our state for overseas markets, primarily in Southeast Asia with China being our number one customer. We strive to ensure that our soybeans always have an end user. The Council has made significant inroads toward achieving this goal by sponsoring trade missions to such destinations as China, Mexico, Costa Rica, Columbia, Myanmar, Sri Lanka, Bangladesh and India and Southeast Asia. We also participate and sponsor “reverse trade missions” where our customers come here to meet us, building trusting relationships and confidence in our products.

Connecting and developing relationships with consumers is another Council initiative. Despite our continued efforts to communicate with and educate consumers about our sustainable farming practices and the fact that most farms are owned and operated by families, many misconceptions still exist about how our food is grown, by whom. The Council continues to support the CommonGround program that targets key influencers, facilitating the transfer of factual information to other community members.

While our industry continues to evolve, and increase in complexity, we are optimistic about the future. Sticking to the fundamentals of good governance, prudent checkoff investments and keeping our eyes focused on what matters the most, the Council is ready and able to capitalize on opportunities in 2017 and beyond!

On behalf of the North Dakota Soybean Council, thank you for your support of agriculture and for your service to the State of North Dakota.

Mr. Chairman, members of the Senate Agriculture Committee, For the record my name is Scott Nelson I am a producer from Lakota ND and I serve on the North Dakota Oilseed Council.

I am here today to testify in opposition to HB 1282.

The ND oilseed council consists of a part time office position and 14 volunteer board members which are elected from their ND peers to represent the grower's interests and make wise decisions to benefit each respective crop.

The North Dakota Oilseed Council has reported to a joint session of the House and Senate Agriculture Committees regarding our financials and program efforts for the current biennium and plans for the upcoming biennium. These reports have included our audit report from the State Auditor's Office, annual reports, written updates and time for questions from the Agriculture Committee members.

With this accountability measure in place and being a state agency, the Council follows prescribed practices. It seems unnecessary, redundant and costly to have additional reports, reviews, procedures, and government costs involved in this process.

There is no "one size fits all" approach. Each commodity is as unique as the products they are in existence to promote, market, research and educate consumers and producers about. Let us continue to do the best job we can at promoting our commodities for the benefit of our North Dakota Oilseed Producers.

The North Dakota Oilseed Council does not support HB 1282 in its original form nor the amended version as passed by the House of Representatives. We respectfully ask the Senate Agriculture Committee to give HB 1282 a do not pass recommendation.

Thank you for the opportunity to speak with you today.



# U.S. Durum Growers Association

PROMOTING THE PRODUCTION AND MARKETING OF DURUM AND SEMOLINA

P.O. Box 1091 • Bismarck, ND 58502 • (701) 214-3203  
office@durumgrowers.com • www.durumgrowers.com

## Testimony of Mark Martinson USDGA President In Opposition to HB 1282

Chairman Luick and members of the Senate Agriculture Committee:

My name is Mark Martinson, and I farm near Rolette, N.D. I am here today as the president of the U.S. Durum Growers Association (USDGA) in opposition to HB 1282, as we see the reporting requirement and allowance of a study as redundant and unnecessary.

USDGA has represented the nation's durum growers for more than 60 years. Today, we represent more than 150 grower and industry members from 10 states with North Dakota producing 60 percent of the nation's durum.

Our organization sees the portion of this bill that requires a report to Legislative Management as redundant given that each commodity councils currently reports to both the Senate and House Agriculture Committees each legislative session. These reports provide an extensive overview to the Legislature of each group's activities and include state audit reports. Given the reporting mechanisms currently in place, USDGA sees the study as unnecessary as well.

In addition to being redundant, this bill puts unnecessary burden on the resources of the state's commodity councils. These are resources that could better be used promoting and developing markets for our state's agricultural commodities.

As growers, we also feel there currently are adequate checks and balances in place through the commodity councils. The current system puts growers in charge of grower dollars. Directors are elected by their peers in a competitive election process, and each grower has the option to refund should it disagree with the actions of the respective council.

For these reasons, USDGA would encourage a Do Not Pass recommendation on HB 1282.

Name: Grady Thorsgard

Residence: Northwood ND

I am opposed to House Bill 1282 Brandenburg Commodity Group Limitations.

Presented to: Senate Agriculture Committee, Chair Larry Luick

1977 ND dry bean growers with the support of the ND Legislative Council drafted language that ultimately led to the establishment of a grower self-imposed tax with a refund provision. Legislative policy stated: The production, development, marketing, and promotion of dry beans in this state is important to the general welfare of the people of North Dakota.

The required goals of the legislation required or demanded the establishment of the ND Dry Bean Council. This act was not to limit or abrogate in any way the rights, powers duties, functions of the Commissioner of Agriculture or any other agency of the state.

Beginning 1977 the ND state auditor, state treasurer, office of management and budget, attorney general and department of agriculture have provided an immense amount of guidance to the ND Dry Bean Council over the past 40 years.

As a current member of the North Dakota Dry Bean Council, I do not approve of the state spending additional time and resources and of the ND Dry Bean Council to determine the organizational structure and operations of the commodity groups.

HB 1282

3/9

#4



125 Slate Drive Suite #4  
Bismarck, ND 58503  
Tel: 701.223.4124  
Fax: 701.223.4130  
northerncanola.com

March 9, 2017

Senator Larry Luick  
Chairman, Senate Agriculture Committee  
State Capitol  
600 East Boulevard  
Bismarck, ND 58505-0360

Dear Senator Luick:

The Northern Canola Growers Association is one of the oilseed groups that has worked in conjunction with the ND Oilseed Council for nearly 20 years. In that time, canola has increased in acreage and value to where it is now the 4<sup>th</sup> largest crop in the state and is projected to hit record acres, record processing, and record consumption this year.

With the accountability measures in place that have been discussed here today, the Northern Canola Growers feels this bill is will create unnecessary and redundant costs for the Oilseed Council and all other commodity groups in the state. We feel the system of checks and balances is working just fine.

For these reasons the Northern Canola Growers Association does not support HB 1282 in its original form nor the amended version as passed by the House. We respectfully ask the Senate Agriculture Committee to give HB 1282 a do not pass recommendation.

Sincerely,

A handwritten signature in black ink that reads "Barry Coleman".

Barry Coleman  
Executive Director



HB 1282 3/9 #5

COMMISSIONER  
DOUG GOEHRING



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 Agriculture Commissioner**

**Doug Goehring**

**House Bill 1282**

**Senate Agriculture Committee**

**Pioneer Room**

**March 9, 2017**

Chairman Luick and members of the Senate agriculture committee, I am Agriculture Commissioner Doug Goehring. Thank you for the opportunity to appear before the committee today. I am here testifying in a neutral position on HB 1282, which requires reports to legislative management and a study regarding the organizational structure and operations of the commodity groups.

I have served on a State Commodity Council, National Council and AG organizations representing various commodities and general farm policy. I can tell you that there's much value in what they provide to Agriculture. For example our check off councils and commissions provide funds for research, marketing, promotion and education. Our ag associations and organizations advocate, lobby and work on policy that impacts our farmers and ranchers by directly interfacing with lawmakers, political subdivisions, state and federal agencies. I want to thank and commend our councils, commissions, associations and organizations for all the fine work that they do, they have had a profound affect and positive impact on agricultural production and policy in this state and across our nation.

After questions had been raised privately and publicly about the structure and operations of two commodity councils. I was asked by the Attorney General's office and others to help if there are compliance issues. I can tell you that there has been a great deal of work done. The Corn Council for example, identified areas where they could make changes and eliminate future scrutiny, I can attest they have come a long way to changing how they do business. I commend them for that. The Pea and Lentil Council has addressed a few issues and signed agreements to eliminate any pending litigation. I am pleased that is resolved.

What I find most disappointing and unfortunate is that some have characterized this as a power grab. That I or my department want to take over the councils. That is the furthest from the truth! I have a great deal of appreciation for the organizations and councils that I have served on, but above all of that, the relationship I have with the industry. I take my role seriously, I represent all of agriculture, our producers and citizens, and I am humbled honored by that.

Thank you Chairman Luick and committee members for the opportunity to appear before you today. I would stand for any questions you may have.

**North Dakota Barley Council**  
**Testimony on HB 1282**  
**Senate Agriculture Committee**  
**March 9, 2017**

Chairman Luick, members of the Senate Agriculture Committee, for the record my name is Mark Seastrand; I am a family farmer from Sheyenne, North Dakota and I am also a Council Member of the North Dakota Barley Council. I appear before you today in opposition to HB 1282.

In the opinion of the North Dakota Barley Council HB 1282 is an unnecessary piece of legislation as the requirements of the bill duplicate what is already in place. Each legislative session all of North Dakota's commodity groups report to the Joint Senate and House Agriculture Committees; these are the legislative committees in charge of agricultural issues in the state. Adding another layer of reporting is both redundant and unnecessary. Additionally all North Dakota commodity groups are audited by the State Auditor every two years; the auditors review commodity group policy and procedure manuals, contracts, accounting procedures, and organizational structure. Further commodity groups follow OMB accounting procedures as well as HRMS personnel procedures.

I would like to point out that commodity groups are quasi-state agencies because they do not receive general fund appropriations; they are self-funded by the growers. Additionally North Dakota commodity groups, soybeans excepted, are self-regulated as growers can refund their checkoff if they are in disagreement with the organizations. The North Dakota Barley Council is proud to report that we have a 2.5 percent refund rate thus indicating a 97.5 percent approval rating from our barley growers.

In closing it is the opinion of the North Dakota Barley Council that HB 1282 is duplicative in nature and serves no positive purpose for North Dakota growers. Both the reporting and study provisions of the bill are a waste of legislative and commodity group's time and resources; resources that can be better allocated by both. Therefore the North Dakota Barley Council would respectfully request that you give HB 1282 a Do Not Pass recommendation.

3-9-2017

HB 1282

Honorable Chairman,

My name is Byron Lannoye and I am here representing the dry pea and lentil industry in ND.

Once again I stand before you asking why the state would like to funnel the grower checkoff money into the Department of Agriculture first and then distribute the funds. There has been no violation recorded, there is no proof of any wrong doing and this organization has done a textbook job of handling the money and expending the money to help the growers and strengthen our industry. This is a voluntary checkoff that has been taken care of by the NDDPLC, NPGA and also reviewed by the State each and every year since the inception of the organization. HB 1282 simply makes no sense to me and I would like to hear an explanation why this bill is being considered from someone with facts rather than misinformation that has been passed along over and over to all of you. The truth is available for all to see and I believe most of the people in this room have seen the real facts or heard facts that dispute the reason this bill was brought forward. I ask all of you to look at this bill very carefully because it is certainly a step in the wrong direction that will have many implications. I would like to point out one more time that this is a grower organization and it is overseen by growers. These growers are the very same growers that have in the past cast their votes for each one of you to do the right thing for them. I plead with you to base your decision on the facts not hearsay.

Byron Lannoye, General Manager  
Pulse USA Inc.  
2002 Northern Plains Drive  
Bismarck, ND 58504  
701.530.0734 Office  
701.220.6994 Cell  
701.530.1826 Fax  
[byron@pulseusa.com](mailto:byron@pulseusa.com)  
[www.pulseusa.com](http://www.pulseusa.com)

March 8, 2017

HB1282

Dear Senate Ag Committee,

My name is Richard Mickelson and I am a ND farmer who has served on the ND Dry Pea and Lentil Council for almost 8 years. I regret that I cannot be at the Committee meeting on HB1282.

I am concerned about the negative effects HB 1282 will have on commodity groups such as ours. I believe it would, at least, triple our administrative budget. This is not a wise use of Farmers VOLUNTARY check off dollars. Currently this money is being spent on things such as research, product development and marketing. These dollars have helped develop a large industry which is expanding and building new facilities in ND to process a profitable crop for the farmers of ND. There are other parts of HB1282 that could encumber and raise costs for our council.

We have legal contracts with groups and have voting members who sit on the boards and committees to oversee the use of our producer money. Research invests in things like variety and yield trials and projects as complicated as sequencing the dry pea genome, so plant breeders may extract beneficial genes for new varieties. I think this bill would lower the efficiency of the way we invest our producer voluntary check off dollars and make it almost impossible to participate in some of these important projects.

The sponsors of this bill or the Ag Commissioner, have never contacted me, or to my knowledge, any member of our commodity group for any information or to verify any facts. I have attached an email which I obtained through Kim Murray, a member of the Montana Pulse Advisory Committee, from Cort Jensen, the Chief Attorney Montana Dept. of Agriculture, to dispel one of the misstatements made.

It is my hope that HB1282 will be defeated in the Senate.

Sincerely,



Richard Mickelson  
Rolla, ND

**From:** Kim Murray  
**Sent:** Saturday, February 11, 2017 11:58 AM  
**To:** Richard Mickelson; Beau Anderson  
**Cc:** Shannon Berndt; TimMcGreevy'sAssistant; Tim\_McGreevy  
**Subject:** Fwd: Montana Agricultural Lawsuit

Hello all,

I talked to Cort, yesterday, after speaking with Beau and Dick, and he sent me this. He also said I am free to share it. As I see it, the growers of ND and MT need to be together more than ever. If there is anything else I can do, let me know.

Kim Murray

Begin forwarded message:

**From:** "Jensen, Cort" <[cojensen@mt.gov](mailto:cojensen@mt.gov)>  
**Subject:** Montana Agricultural Lawsuit  
**Date:** February 10, 2017 at 2:08:41 PM MST  
**To:** "[cat65e@yahoo.com](mailto:cat65e@yahoo.com)" <[cat65e@yahoo.com](mailto:cat65e@yahoo.com)>  
**Cc:** "Coccoli, Zach" <[Z.Coccoli@mt.gov](mailto:Z.Coccoli@mt.gov)>, "Clark, Christy" <[CCClark@mt.gov](mailto:CCClark@mt.gov)>

?Montana Department of Agriculture (nor any other Montana State entity) did not, is not, and has no plans to sue a North Dakota check off program. There was a some disagreements over how check-off dollars from pulse crops that were grown in one state and delivered to the other state would be handled, but the matter was resolved with an agreement between the two pulse check-off committees.

Cort Jensen, SAAG

Chief Attorney Montana Department of Agriculture.





125 Slate Drive Suite #4  
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www.ameriflax.com

March 9, 2017

Senator Larry Luick  
Chairman, Senate Agriculture Committee  
State Capitol  
600 East Boulevard  
Bismarck, ND 58505-0360

Dear Senator Luick:

AmeriFlax represents the flax producers of this region and has worked in conjunction with the ND Oilseed Council for nearly 20 years. Our organization opposes House Bill 1282.

With the accountability measures in place that have been discussed here today, AmeriFlax feels this bill will create unnecessary and redundant costs for the Oilseed Council and all other commodity groups in the state. We feel the system of checks and balances is working just fine.

For these reasons AmeriFlax does not support HB 1282 in its original form nor the amended version as passed by the House. We respectfully ask the Senate Agriculture Committee to give HB 1282 a do not pass recommendation.

Sincerely

Mike Axness  
President  
AmeriFlax



HB 1282 3/9

#10



**Subject** Fwd: Request to Clarify Previous Agreements

**Sender** Dale Ihry <dale@ndcorn.org>

**Recipient(s)** germanfarms@hotmail.com <germanfarms@hotmail.com>, Randy Melvin <rmelfarm@yahoo.com>, Paul Belzer <psbelz@yahoo.com>, kskunes@polarcomm.com <kskunes@polarcomm.com>, Jeff Enger <jvkenger@drtnet.net>, Jean Henning <jean@ndcorn.org>, Clark Price <pioneer@westriv.com>, Carson Klosterman <carsonk@rrt.net>, Barton Schott <bartonschott1@gmail.com>

**Date** Feb 28, 2017

EERC response - - no issues with NDCUC. We will add this response to the purported issue that ND Corn has with EERC.

Dale Ihry

Sent from my iPad

Begin forwarded message:

**From:** "O'Leary, Erin M." <eoleary@undeerc.org>

**Date:** February 28, 2017 at 8:04:16 AM CST

**To:** "dale@ndcorn.org" <dale@ndcorn.org>

**Cc:** "jean@ndcorn.org" <jean@ndcorn.org>, "germanfarms@hotmail.com" <germanfarms@hotmail.com>, "Aulich, Ted" <taulich@undeerc.org>, "Skean, Diane" <dskean@undeerc.org>

**Subject:** Request to Clarify Previous Agreements

Mr. Ihry,

The North Dakota Corn Utilization Council has no outstanding debts with the Energy & Environmental Research Center (EERC) at this time nor has it had any in the past.

The EERC and the North Dakota Corn Utilization Council have partnered on two research agreements, both of which were fully paid, in advance, by the North Dakota Corn Utilization Council.

We have greatly valued your partnership with the EERC and look forward to working with you in the future.

Sincerely,

Erin O'Leary

**Erin M. O'Leary**, CFO

EERC | University of North Dakota

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