

2017 SENATE AGRICULTURE

SB 2262

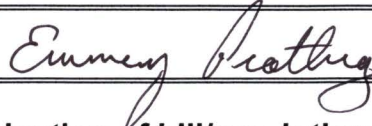
2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2262
1/27/2017
Job # 27518

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Attachments: #1-6

Chairman Luick opened the hearing on SB 2262.

Senator Wanzek, District 29: Introduced SB 2262. This bill is preempting cities, counties, or townships from regulating the usage of registration of fertilizer. I am not aware that this is a problem in ND but it was brought to my attention that it is becoming a problem in other states. This is similar to what we have done in other cases with usage of herbicides and choices farmers make. The intention of this bill is to make sure regulations are uniform across the state. To regulate something of this size and complexity would require the full resources of the state.

If the bill is encroaching on zoning, that is not my intention. If it does, we will have correct it but I do not believe the language will cause an issue.

(3:58) **Eric Delzer, Fertilizer Program Director, ND Department of Agriculture:** Testified in Support of SB 2262 (See Attachment #1).

(7:45) **Chairman Luick:** Will there be a problem with cities who have home rule charter?

Eric Delzer: I think there could be a conflict there if they have already passed something. As I read this bill, it will preempt that so they could not place restrictions on fertilizer above what the state does.

Senator Klein: Where are we at in the nitrogen litigation?

Eric Delzer: As far as I know, that is in litigation and there haven't been any ruling on it thus far. The nature of the lawsuit was that the Des Moines Water Works in Des Moines, Iowa were having to spend so much tax payer money to clean the drinking water coming in because of the excess nutrients and they believe that all of the tiling drainage upstream and

some of the water districts is the cause for all the pollutants in it so they had sued the water districts for allowing all that discharge into the river. I believe this case is going to set a precedent for things to come in the future. Water quality and nutrients is a big issue across the country. In ND, we have seen some issues with the nutrient loading in some of our surface water but we don't have some of the issues other states have right now. The environmentalist groups in Florida are targeting the fertilizer industry and they are not looking at other contributors to the nutrient load. Our argument is that we need to look at everything and not just point the finger at agriculture.

Senator Klein: With the Iowa case, is there evidence that there are other causes or is it still too early to tell?

Eric Delzer: I am not familiar enough with the particulars of where that case is at but I do believe they are looking at all areas in their defense but I do not know if they have been identified yet.

Senator Larsen: Would it be favorable to put a study in this bill so the EERC could look at saturation beds and outlets of some of these area tiling projects and do monitoring and build the science up to see what we are capturing and see how we can utilize the nutrients after the beds are saturated?

Eric Delzer: We would not be opposed to that if an amendment to that effect came in. Obviously the more research we can do gives us a more defensible position. I think NDSU has done some study on that in the past but I also believe it is being looked into quite a bit by the Health Department; they are working to set nutrient criteria as well as how we are going to mitigate nutrient loading in surface water around ND.

Committee Discussion: Senator Larsen and Eric Delzer discussed current studies and methods of preventing leaching and capturing nutrients to reapply to the field.

(15:55) **Joel Gilbertson, Biotechnology Innovation Organization:** Testified in Support of SB 2262 (See Attachment #2).

(17:00) **Committee Discussion:** Senator Piepkorn asked about the technology that used infrared technology to measure where specific fertilizers are needed. Mr. Gilbertson talked about recent developments in the technology.

(18:50) **Gary Knutson, ND Agricultural Association:** Testified in Support of SB 2262. Mr. Knutson talked about potential problems there could be if fertilizer requirements were different from county to county.

(19:28) **Mark Trostle, Crop Production Services (CPS):** Testified in Support of SB 2262 (See Attachment #3).

(23:45) **Chairman Luick:** Can you give an example of what went wrong in some of the other states?

Mark Trostle: The best example is Florida which has more than 40 regulations pending. Mr. Trostle provided the committee with the 2016 status of pesticide, fertilizer, and seed preemption laws (See Attachment #6).

(25:30) **Dan Wogsland, ND Grain Growers Association:** Testified in Support of SB 2262 (See Attachment #4).

Pete Hannibet, ND Farm Bureau: Testified in Support of SB 2262.

The Committee was provided with neutral testimony from Larry Severson (See Attachment #5).

(27:40) **Committee Discussion:** Senator Larsen asked if anyone knew of any soil health restoration projects. Chairman Luick said the Department of Agriculture is working on some restoration projects and the ombudsman program is working well.

Chairman Luick: Closed the hearing on SB 2262.

Senator Klein Moved Do Pass on SB 2262.

Senator Myrdal Seconded.

Committee Discussion: Senator Klein said the bill would help preempt any problems. Senator Myrdal concurred and said farmers who farm in multiple counties would have difficulties if they had to deal with different environmental regulations in each county.

A Roll Call Vote Was Taken: 6 Yeas, 0 Nays, 0 Absent.

Motion Carried.

Senator Myrdal will carry the bill to the floor.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2262**

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. Klein Seconded By Sen. Myrdal

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

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Myrdal

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

REPORT OF STANDING COMMITTEE

SB 2262: Agriculture Committee (Sen. Luick, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2262 was placed on the
Eleventh order on the calendar.

2017 HOUSE AGRICULTURE

SB 2262

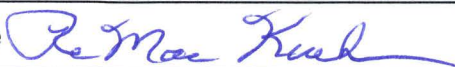
2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2262
3/2/2017
Job #28610

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to fertilizer regulation by cities, counties, or townships.

Minutes:

Attachment 1

Senator Wanzek, Sponsor: This bill preempts local political subdivisions from regulating the registration, distribution, sale, handling of fertilizer. It is getting to be a problem in urban populations. We want consistency and uniformity for our farmers in managing the fertility of their land. Many farmers farm in more than one county.

Representative Satrom: Does this impact anhydrous transportation?

Senator Wanzek: We don't have a big issue. It is not the intent to regulate zoning as to where anhydrous facilities are located. It is about the regulations of usage and sales and distribution.

Representative Skroch: Line 8, "enforce existing ordinances." If there was a violation, who would enforce any regulations?

Senator Wanzek: It will come from the state. If a township passes an ordinance, they don't have the resources to do the research and have the background on fertility.

Representative Skroch: Current restrictions are randomly enforced now?

Senator Wanzek: No. This bill is not going to change much. We did something similar for seed and herbicide, so the laws are the same and regulated by the state.

Eric Delzer, Fertilizer Program Director, North Dakota Department of Agriculture:
(Attachment 1)

(13:10)

Representative Hogan: Have any other cities looked at regulating the storage of anhydrous? This is a very broad bill.

Eric Delzer: We do have regulations in our anhydrous ammonia law. You cannot build an anhydrous facility within city limits unless you have approval from the city.

Many facilities are still in town and were grandfathered in from when the law changed in 1985. This would not affect them. The intent of this doesn't have anything to do with transportation. We would support an amendment regarding transportation through cities with anhydrous ammonia. Many towns already have local zoning ordinances. There are only certain streets where you can pull or park anhydrous tanks. The state does not regulate that.

Representative Hogan: The language "may not enact new or enforce existing regulations." Are we jeopardizing the transportation regulations with this broad language?

Eric Delzer: It could possibly.

Representative Skroch: Wouldn't transportation of anhydrous be controlled through the HAZMAT under the Department of Transportation? They would be taking care of the safe transport.

Eric Delzer: That is correct. The transport of anhydrous ammonia is covered under federal DOT law. This bill would not change existing regulation on transportation of anhydrous ammonia.

(18:20)

Darrell Scheresky, Enerbase Agronomy Manager, Washburn: My concern as a retailer: I will sell fertilizer to highway crews and homeowners along lake shores. My fear is if a group of homeowners on a lake have an algae bloom, they could as an association want to limit the use of phosphorus. Much of the runoff into the lake comes from septic tanks and the use of their own fertilizers. I don't think a retailer needs to monitor that.

A homeowners' group could stop the use of phosphorus; but farmers need it for crops. Phosphorus is the nutrient that promotes root growth. Crop residue also creates phosphorus. This bill is about the use of fertilizer.

Chairman Dennis Johnson: The reason for the bill is so we don't have a patchwork of laws. Would we create something that would stop the city from having a designated route? As cities grow, they may need to reroute the tanks.

Darrell Scheresky: We don't want to do something that will alienate the town against us.

Julie Ellingson, North Dakota Stockmen's Association: In support. We support science-based regulations. This bill assures that the appropriate entities would be making the decisions. Consistent application of rules across the state has merit for producers.

Opposition: None

Chairman Dennis Johnson: Closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2262—Committee work
3/9/2017
Job #28974

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to fertilizer regulation by cities, counties, or townships.

Minutes:

Attachment 1

Chairman Dennis Johnson: There are amendments.

Eric Delzer, Fertilizer Program Director, North Dakota Department of Agriculture:
(Attachment #1)

Representative Schreiber-Beck: We are looking at page 40 of SB 2027, they talk about anhydrous ammonia safety rules and that they are propagated through the Department of Agriculture. Can we get a copy of those rules?

Eric Delzer: Go to North Dakota Administrative Code, Title 7-12.

Representative Schreiber-Beck: Does that cross over with the Department of Health?

Eric Delzer: That is in Agriculture Department code. 19-20.1 is the fertilizer law under the Department of Agriculture.

Representative Headland: Why are we removing “application, inspection, transportation, or disposal”?

Eric Delzer: The League of Cities had concerns as well as the concerns raised by Representative Hogan. The transportation side was an issue because we didn't want to preempt any cities that have local ordinances. Disposal of fertilizer is regulated by the Department of Health. After speaking with them, we felt it was alright to take that out. The disposal issues, the city should have input when it is in a landfill. The “application and inspection” is causing concern for the League of Cities because currently they are licensing commercial residential fertilizer applicators. If they see one driving with a leaky tank or spreading out into the street, they want to be able to stop them.

For the intent of this bill to keep uniform regulation on registration, labeling, and distribution which is already regulated by the State Department of Agriculture, we felt the amendments kept the intent but still gives the cities some leniency to cover their concerns.

Representative Headland: This is broader than just cities. We can't have townships regulating how we apply fertilizer. I can't support that. "Application" has to stay in the bill.

Chairman Dennis Johnson: The sponsor of the bill was comfortable with the amendments. Application is now covered by the Agriculture Department.

Representative McWilliams: Looking at the amendment, if we insert the word "or" on page 1, line 9 and then remove "application, inspection, transportation, or disposal" it doesn't sound right.

Jessie Pfaff, North Dakota Department of Agriculture: I believe the "or" was supposed to go after "handling."

Representative Howe: Are we saying the application in this portion is duplicative somewhere else. The bill sponsor said he farms in different counties and has different regulations for application.

Chairman Dennis Johnson: We are assured that the state does have control over that.

Representative Headland: The state takes care of the application out in the country in all other political subdivisions aside from the cities?

Eric Delzer: The department has no regulation on the application of fertilizer in the state. There is no regulation regarding the application in any local political subdivisions. We thought "application" is more specific. We left the word "use" in. "Use" is encompassing and we felt "use" of fertilizer would cover "application" of fertilizer.

Representative Headland: He just made the case as to why "application" has to stay in there. We deal with grey areas of legislation all the time. We know how things can be interpreted differently. Application is specific to how we apply fertilizer. I can't vote for the bill without it in.

Eric Delzer: The department would be comfortable with leaving "application" in the bill.

Representative Satrom: How about transportation? Does that have a potential danger?

Chairman Dennis Johnson: I don't see a problem. They have their ordinances where they can go on truck routes around cities.

Representative McWilliams: Moved to adopt the amendment without the word “application” and moving “or” to be after the word “use.”

Representative Skroch: Seconded the motion.

Voice vote taken. Motion for amendments passed.

Representative McWilliams: Moved Do Pass as amended.

Representative Skroch: Seconded the motion.

A Roll Call vote was taken: Yes 12, No 0, Absent 2.

Do Pass as amended carries.

Representative Skroch will carry the bill.


2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2262—Committee Work
3/17/2017
Job #29403

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to fertilizer regulation by cities, counties, or townships.

Minutes:

Attachment 1

Chairman Dennis Johnson: If we can get an explanation of why we need the amendments.

Amendments (Attachment 1)

Bill Wocken, North Dakota League of Cities: As we looked at the bill, the fire chiefs came to me and explained the unintended consequences it might have for fire codes.

The fire chiefs were concerned the passage of this bill might muddy the water with respect to the fire codes. They brought to our attention the West Texas disaster with a fertilizer explosion. They knew the intent was not to change the fire codes, but the bill may have an unanticipated consequence. We talked with the manufacturers, industry, and Representative Johnson. We came up with an amendment that says, "This does not preempt or otherwise limit the authority of a city, county, or township to adopt and enforce fire codes or hazardous waste disposal restrictions."

According to the manufacturers, they said this is done in other states. This language is almost word for word from Kansas legislation. It has stood the test of time. The attempt is to make sure we don't have a fire code for storage of fertilizer that is compromised.

Chairman Dennis Johnson: We checked with the sponsor, Senator Wanzek, and he didn't have an issue with the amendment.

Representative Oliver: Moved to reconsider the committee's actions

Representative McWilliams: Seconded the motion

Voice Vote taken. Motion passed.

Representative Headland: Moved to adopt the amendment #17.0744.01003.

Representative Schreiber-Beck: Seconded the motion

Voice Vote taken. Motion passed.

Representative Satrom: Moved Do Pass as amended.

Representative McWilliams: Seconded the motion.

A Roll Call vote was taken: Yes 11, No 1, Absent 2.

Do Pass as amended carries.

Representative Skroch will carry the bill.

3/9/17 DP

17.0744.01002
Title.02000

Adopted by the Agriculture Committee

March 9, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2262

Page 1, line 7, remove the fourth underscored comma

Page 1, line 8, remove "or enforce existing."

Page 1, line 9, after the fourth underscored comma insert "or"

Page 1, line 9, remove ", inspection, transportation, or disposal"

Renumber accordingly

3/17/17 D/J

PROPOSED AMENDMENTS TO SENATE BILL NO. 2262

In addition to the amendments adopted by the House as printed on pages 933 and 934 of the House Journal, Senate Bill No. 2262 is further amended as follows:

Page 1, line 9, after the underscored period insert "This section does not pre-empt or otherwise limit the authority of a city, county, or township to adopt and enforce fire codes or hazardous waste disposal restrictions."

Renumber accordingly

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2262**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 17.0744.01002

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. McWilliams 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:

**Removes "application" from proposed amendment
Moves "or" after "use" on line 9**

Date: 3/17/2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2262**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
 - Do Pass Do Not Pass Without Committee Recommendation
 - As Amended Rerefer to Appropriations
 - Place on Consent Calendar
- Other Actions:** Reconsider _____

Motion Made By Rep. Oliver Seconded By Rep. McWilliams

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: 3/17/2017

Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2262**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 17.0744.01003

Recommendation

- Adopt Amendment
 - Do Pass Do Not Pass Without Committee Recommendation
 - As Amended Rerefer to Appropriations
 - Place on Consent Calendar
- Other Actions:** Reconsider _____

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

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					

Vote Passed

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

Absent _____

Floor Assignment Rep.

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

Date: 3/17/2017

Roll Call Vote #: 3

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2262**

House **Agriculture** Committee _____

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Satrom Seconded By Rep. McWilliams

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	AB				
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	AB				

Total **Yes** 11 **No** 1

Absent 2

Floor Assignment Rep. Skroch

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

REPORT OF STANDING COMMITTEE

SB 2262: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2262 was placed on the Sixth order on the calendar.

Page 1, line 7, remove the fourth underscored comma

Page 1, line 8, remove "or enforce existing."

Page 1, line 9, after the fourth underscored comma insert "or"

Page 1, line 9, remove ", inspection, transportation, or disposal"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2262: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). SB 2262 was placed on the Sixth order on the calendar.

In addition to the amendments adopted by the House as printed on pages 933 and 934 of the House Journal, Senate Bill No. 2262 is further amended as follows:

Page 1, line 9, after the underscored period insert "This section does not pre-empt or otherwise limit the authority of a city, county, or township to adopt and enforce fire codes or hazardous waste disposal restrictions."

Renumber accordingly

2017 TESTIMONY

SB 2262

#1

COMMISSIONER
DOUG GOEHRING



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**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL
600 E. BOULEVARD AVE. - DEPT. 602
BISMARCK, ND 58505-0020

**Testimony of Eric Delzer
Fertilizer Program Director
Senate Bill 2262
Senate Agriculture Committee
Roosevelt Park Room
January 27, 2017**

Chairman Luick and members of the Senate Agriculture Committee, my name is Eric Delzer, Fertilizer Program Director for the North Dakota Department of Agriculture (NDDA), and I am representing Agriculture Commissioner Doug Goehring. I am here today in support of Senate Bill 2262.

NDDA feels this bill is necessary based on what we have seen transpire recently in many other states and regions across the country. Surface water impairment has been a big issue in recent years and many bodies of water across the country have been experiencing algae blooms that have been fueled by excess nutrients in water. As a result, there has been an unfair attack on the fertilizer industry, and it has been in many cases blamed as the sole cause of this nutrient loading, when in fact there are many contributors to this process.

Many states, counties, cities, townships, and even homeowners associations have enacted laws or rules restricting the sale and use of fertilizer. These restrictions have been arbitrarily placed on the fertilizer industry as a kneejerk reaction based on fear, and were not developed using sound science. Many areas around the country now have restrictions on what type of fertilizer can be

sold as well as restrictions on how much can be applied. Some political subdivisions in residential areas have gone so far as to outlaw the use of fertilizer all together. The nitrogen, phosphorus, and potassium available in fertilizer are essential to maintaining healthy crops, gardens and turf around the state.

The most common restrictions are on the use of phosphorus, however recent studies have shown that the passage of phosphorus restricting laws have actually increased pollution to surface waters in those areas. By restricting the use of phosphorus in soils that are lacking it, the turf grass in areas that were studied became thin, patchy, and very unhealthy. Homeowners and businesses tried to compensate by adding more nitrogen, but plants can only use so much nitrogen. Excess nitrogen in the soil profile is highly susceptible to leaching into ground water as it has a negative charge and will go down through the soil profile into the water table and travel laterally into surface water. Excess nitrogen in drinking water can also cause severe health effects as it limits the bloods ability to carry oxygen through the body. Infants are extremely vulnerable to this condition known as blue baby syndrome.

The thin, patchy, unhealthy turf monitored was also found to be more prone to run off and erosion which also directly impacts surface water. Phosphorus is bound to soil particles and the washing away of soil and sediment into surface water directly increases the phosphorus load.

In many areas they are beginning to see that the restrictions put in place are not helping but are actually contributing to the problem. This bill is necessary to ensure that any change in regulation of the sale and use of fertilizer in North Dakota takes place at the state level with a fair and transparent process. This will ensure that the merits of any new proposed restrictions on

fertilizer can be thoroughly debated to ensure that they are truly necessary and based on sound science.

Chairman Luick and committee members, thank you for your consideration of SB 2262. I would be happy to answer any questions you may have.

#2

1/27/17



January 25, 2017

Statement of Support for North Dakota Senate Bill 2262, A BILL for an Act to create and enact a new section to chapter 19-20.1 of the North Dakota Century Code, relating to fertilizer regulation by cities, counties, or townships.

North Dakota has long preempted local governments from regulating agricultural inputs such as seeds and pesticides. SB 2262 simply expands the application of that policy to fertilizer. Moreover, as National Association of State Departments of Agriculture policy states:

"Fertilizer regulation must be based on sound scientific and agronomic principles. Fertilizer quality, labeling, and application are most appropriately regulated at the State level, rather than the federal level.....Additionally, fertilizers should not be regulated by political subdivisions of a State due to the scientific expertise required. States should implement legislation to this effect."

Accordingly, BIO urges members of the Senate Agriculture Committee to vote "yes" on SB 2262.

The Biotechnology Innovation Organization is the world's largest trade association representing biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnology products.

January 27, 2017

RE: Testimony for *North Dakota Senate Bill 2262. Preemption – Prohibition*

My name is **Mark Trostle** and I am employed by Crop Production Services (CPS) as the Director, Global Registrations & Regulatory Affairs, and we are a member of the North Dakota Agricultural Association (NDAA) and the Lawn & Horticultural Products Work Group (LHPWG). *I want to thank Chairman Luick and Vice Chairman Myrdal, and all the members of the Senate Agricultural Committee for the opportunity to speak to you today about Senate Bill 2262.*

On behalf of CPS, NDAA and the LHPWG and their member companies, we are pleased to offer our support for the fertilizer preemption language in Senate Bill 2262:

Matt Glessner, Division Manager at CPS Mapleton, ND was scheduled to present this testimony of support but, due to a scheduling conflict he requested I present our CPS support to ND SB 2262. Today, CPS in North Dakota has over 90 employees located in twelve retail locations. These locations are in Bismarck; Cavalier; Devils Lake; Dickinson; Grace City; Grafton; Grand Forks; Jamestown; Minot; Wahpeton; West Fargo and Williston.

At Crop Production Services (CPS), we are focused on one thing and one thing only – providing our customers with the products and services they need to grow the best crop possible. We do this farm by farm and one customer at a time leveraging our global experience. With over 3,000 agronomists and field experts we bring together high quality, innovative products, technologies and agronomic experience from over 1,500 facilities on three continents. As the world’s largest agricultural retailer, our experience and total product offering help growers around the world maximize yield and return on investment.

LHPWG member companies manufacture more than 75 percent of domestically produced conventional specialty fertilizers utilized in the United States and on the shelves in North America, including consumer household, lawn and garden, golf course and other professional turf and lawn care.

The LHPWG operates under the auspices of the Consumer Specialty Products Association (CSPA) and provides a unified voice for companies engaged in the specialty fertilizer market. Established in 2013, the LHPWG serves as a resource to all government entities engaged in regulating the specialty fertilizer marketplace. CSPA represents companies engaged in the manufacture, formulation, distribution and sale of consumer products.

Current Issue

As of today, only **24 states** have passed fertilizer preemption legislation; which explicitly prohibits counties, cities, towns or other local entities from regulating the registration, packaging, labeling, sale, storage, distribution, use and application of fertilizers. Several environmental groups are mounting campaigns urging local governments to restrict or ban the labeling, sale, storage, distribution, use and application of fertilizers and pesticides within their borders.

The North Dakota Department of Agriculture should be vested with the ability to regulate the use of nutrients within North Dakota. Local governments do not have the scientific expertise available to determine the appropriate role nutrients play in soil fertility.

Allowing local regulation of fertilizer within North Dakota will violate the interstate commerce clause and has the potential to disrupt the uniform flow of commerce. Absent state-level regulation of fertilizer, such local restrictions would create an unnecessary and difficult to comply with patchwork of fertilizer regulation within the state. For example, there are currently 67 counties and/or municipalities in Florida with local fertilizer ordinances. These local ordinances are disrupting commerce in Florida, and professional landscapers have been ticketed for transporting fertilizer over county lines.

Local fertilizer ordinances if enacted in North Dakota could impact the use of fertilizer on farms. We would like to avoid this situation, so we support fertilizer preemption legislation; **we support Senate Bill 2262.**

The National Association of State Departments of Agriculture (NASDA) supports passing fertilizer preemption legislation. They have a policy statement that was updated in 2016.

“7.9 Fertilizer Regulation and Use....

- Fertilizer quality, labeling, and application are most appropriately regulated at the State level, rather than the federal level. Additionally, fertilizers should not be regulated by political subdivisions of a State due to the scientific expertise required. States should implement legislation to this effect....”

We believe NASDA would support passing Senate Bill 2262.

The Association of American Plant Food Control Officials (AAPFCO) supports fertilizer preemption legislation. AAPFCO maintains a Uniform State Fertilizer Bill that serves as a template for all the states. It states...

“Section 3. Local Legislation - Prohibition

No political subdivision shall regulate the registration, packaging, labeling, sale, storage, distribution, use and application of fertilizers; and, in addition, no political subdivision shall adopt or continue in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use or application of fertilizers.

We believe AAPFCO would support passing Senate Bill 2262

We strongly support passing Senate Bill 2262. Thank you for your consideration of our testimony today.

Sincerely,

Mark R. Trostle



Your voice for wheat and barley. www.ndgga.com

**North Dakota Grain Growers Association
Testimony on SB 2262
Senate Agriculture Committee
January 27, 2017**

Chairman Luick, members of the Senate 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 the state and national levels on behalf of North Dakota wheat and barley farmers. NDGGA appears before you today in support of SB 2262.

SB 2262 is aimed at possible over regulatory efforts by North Dakota political subdivisions regarding fertilizer in the state could have a very negative impact on North Dakota agriculture. In North Dakota the North Dakota Department of Agriculture has oversight regarding fertilizer regulations in the state; they employ experts in the field to make sure North Dakota fertilizer regulations are followed. Everyone wants clean water, soil health and a clean environment; that said increased regulatory burden by North Dakota political subdivisions on a major agricultural input could be very detrimental to Ag production and Ag management.

Chairman Luick, members of the Senate Agriculture Committee, SB 2262 is preventative medicine; with this in mind the North Dakota Grain Growers Association requests your Do Pass recommendation on SB 2262.

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.

Neutral SB 2262

Senate Agriculture Committee

January 27, 2017

Good morning Chairman Luick and Committee members.

I am Larry Syverson from Mayville, I am the Chairman of the Board of Supervisors for Roseville Township in Traill County and I am also the Executive Secretary of the North Dakota Township Officers Association. NDTOA represents the 5,600 Township Officers that serve in more than 1,100 dues paying member townships.

NDTOA does not take a position on SB 2262.

2016 Status of Pesticide / Fertilizer / Seed Preemption Laws

#6

SB 2262

1/27/17

<u>States & DC</u>	<u>[43] Pesticide</u>	<u>[24] Fertilizer</u>	<u>Seed</u>
Alabama	Yes	<u>No</u>	
Alaska	<u>No</u>	<u>No</u>	
Arizona	Yes	<u>No</u>	
Arkansas	Yes	Yes	
California	Yes	<u>No</u>	
Colorado	Yes	Yes	
Connecticut	Yes	Yes	
Delaware	Yes	<u>No</u>	
District of Columbia	<u>No</u>	<u>No</u>	
Florida	Yes	<u>No</u>	
Georgia	Yes	Yes	
Hawaii	<u>No</u>	<u>No</u>	
Idaho	Yes	Yes	
Illinois	Yes	<u>No</u>	
Indiana	Yes	Yes	
Iowa	Yes	Yes	
Kansas	Yes	Yes	
Kentucky	Yes	Yes	
Louisiana	Yes	Yes	
Maine	<u>No</u>	<u>No</u>	
Maryland	<u>No</u>	<u>No</u>	
Massachusetts	Yes	Yes ¹	
Michigan	Yes	<u>No</u>	
Minnesota	Yes	<u>No</u>	
Mississippi	Yes	Yes	
Missouri	Yes	<u>No</u>	

Montana	Yes	Yes
Nebraska	Yes	Yes
New Hampshire	Yes	<u>No</u>
New Mexico	Yes	<u>No</u>
New Jersey	Yes ¹	<u>No</u>
New York	Yes	<u>No</u>
Nevada	<u>No</u>	<u>No</u>
North Carolina	Yes	Yes ¹
North Dakota	Yes	<u>No</u>
Ohio	Yes	Yes
Oklahoma	Yes	Yes
Oregon	Yes	<u>No</u>
Pennsylvania	Yes	<u>No</u>
Rhode Island	Yes	<u>No</u>
South Carolina	Yes	Yes
South Dakota	Yes	Yes
Tennessee	Yes	Yes
Texas	Yes	Yes
Utah	<u>No</u>	<u>No</u>
Vermont	<u>No</u>	<u>No</u>
Virginia	Yes	Yes
Washington	Yes ²	<u>No</u>
West Virginia	Yes	Yes
Wisconsin	Yes	<u>No</u>
Wyoming	Yes	Yes

Notes

- 1 Local ordinances in existence in Massachusetts prior to July 31, 2012, shall remain enforceable by that city or town.
Local ordinances must be submitted for approval to the New Jersey Department of Environment
Local ordinances must be submitted for approval to the North Carolina Department of Environment and Natural Resources
- 2 Local ordinances must go to the Washington Office of the Attorney General for interpretation and approval.
Generally, use restricted ordinances are not approved.

1

COMMISSIONER
DOUG GOEHRING



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**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL
600 E. BOULEVARD AVE. - DEPT. 602
BISMARCK, ND 58505-0020

**Testimony of Eric Delzer
Fertilizer Program Director
Senate Bill 2262
House Agriculture Committee
Peace Garden Room
March 2, 2017**

Chairman Johnson and members of the House Agriculture Committee, my name is Eric Delzer, Fertilizer Program Director for the North Dakota Department of Agriculture (NDDA), and I am representing Agriculture Commissioner Doug Goehring. I am here today in support of Senate Bill 2262.

NDDA feels this bill is necessary based on what we have seen transpire recently in many other states and regions across the country. Surface water impairment has been a big issue in recent years and many bodies of water across the country have been experiencing algae blooms that have been fueled by excess nutrients in water. As a result, there has been an unfair attack on the fertilizer industry, and it has been in many cases blamed as the sole cause of this nutrient loading, when in fact there are many contributors to this process.

Many states, counties, cities, townships, and even homeowners associations have enacted laws or rules restricting the sale and use of fertilizer. These restrictions have been arbitrarily placed on the fertilizer industry as a kneejerk reaction based on fear, and were not developed using sound science. Many areas around the country now have restrictions on what type of fertilizer can be

sold as well as restrictions on how much can be applied. Some political subdivisions in residential areas have gone so far as to outlaw the use of fertilizer all together. The nitrogen, phosphorus, and potassium available in fertilizer are essential to maintaining healthy crops, gardens and turf around the state.

The most common restrictions are on the use of phosphorus, however recent studies have shown that the passage of phosphorus restricting laws have actually increased pollution to surface waters in those areas. By restricting the use of phosphorus in soils that are lacking it, the turf grass in areas that were studied became thin, patchy, and very unhealthy. Homeowners and businesses tried to compensate by adding more nitrogen, but plants can only use so much nitrogen. Excess nitrogen in the soil profile is highly susceptible to leaching into ground water as it has a negative charge and will go down through the soil profile into the water table and travel laterally into surface water. Excess nitrogen in drinking water can also cause severe health effects as it limits the bloods ability to carry oxygen through the body. Infants are extremely vulnerable to this condition known as blue baby syndrome.

The thin, patchy, unhealthy turf monitored was also found to be more prone to run off and erosion which also directly impacts surface water. Phosphorus is bound to soil particles and the washing away of soil and sediment into surface water directly increases the phosphorus load.

In many areas they are beginning to see that the restrictions put in place are not helping but are actually contributing to the problem. This bill is necessary to ensure that any change in regulation of the sale and use of fertilizer in North Dakota takes place at the state level with a fair and transparent process. This will ensure that the merits of any new proposed restrictions on

fertilizer can be thoroughly debated to ensure that they are truly necessary and based on sound science.

Chairman Johnson and committee members, thank you for your consideration of SB 2262. I would be happy to answer any questions you may have.

#1

Bill LC# 17.0744.01000

Prepared by Legislative Intern 8

March 9, 2017

PROPOSED AMENDMENT TO SENATE BILL NO. 2262

Page 1, line 8, remove "or enforce existing,"

Page 1, line 9, after "handling," insert "or"

Page 1, line 9, remove ", application, inspection, transportation, or disposal"

Renumber accordingly

17.0744.01003
Title.

Prepared by the Legislative Council staff for
Representative D. Johnson
March 15, 2017

#1
3/17/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2262

In addition to the amendments adopted by the House as printed on pages 933 and 934 of the House Journal, Senate Bill No. 2262 is further amended as follows:

Page 1, line 9, after the underscored period insert "This section does not pre-empt or otherwise limit the authority of a city, county, or township to adopt and enforce fire codes or hazardous waste disposal restrictions."

Renumber accordingly