

19.0317.03000

FISCAL NOTE STATEMENT

House Bill or Resolution No. HB 1149

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness
Senior Fiscal Analyst

19.0317.02000

FISCAL NOTE STATEMENT

House Bill or Resolution No. HB 1149

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness
Senior Fiscal Analyst

2019 HOUSE AGRICULTURE

HB 1149

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1149
1/17/2019
Job # 30963

- Subcommittee
 Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to noxious weed certification

Minutes:

Attachments #1-4

Chairman Dennis Johnson, Co-Sponsor: Over the years we did the rewrite to bring the code up to speed. Since then it was brought to our attention that there are some projects where they need a certificate of the gravel pit being certified as weed free of noxious weeds. We don't have anyone in that position to make that certification. This legislation does that.

Merlin Leithold, Executive Secretary of North Dakota Weed Control Association:
(Attachment #1)

(7:40)

Chairman Dennis Johnson: What were the two weeds that were added to the list?

Merlin Leithold: Houndstongue and palmer amaranth.

Samantha Brunner, Plant Industries Division Director: (Attachment #2)

(9:22)

Representative Headland: The property owner is still the one responsible for keeping the weeds under control?

Samantha Brunner: Yes. This would just allow the county to provide a certification.

(10:08)

Derrill Fick, Ward County Weed Control Officer: (Attachment #3)

Representative McWilliams: How many gravel pits would need to be inspected?

Derrill Fick: In Ward County there are 49 pits. There are maybe five different operators. We may only have to do three. Depends on the needs of the contractors.

Representative McWilliams: Is there a need?

Derrill Fick: The official side would be for the owner to market his product. A gravel pit with weeds is not usable for a state or federal contracts that states it has to be weed seed free.

Chairman Dennis Johnson: If weeds are found, how quick can it be cleaned up?

Derrill Fick: If I find noxious weeds, we hire a helicopter, then the chemical needs to work. We do a second inspection. You can scrape a lot of it off, but we would like to see an application also.

Chairman Dennis Johnson: It is more of a visual on top but the seeds could be down below.

Derrill Fick: The certification is guaranteeing that are no visible weeds at the time of inspection.

Chairman Dennis Johnson: Do we need an emergency clause?

Derrill Fick: I would like to see an emergency clause.

Julie Ellingson, North Dakota Stockmen's Association: (Attachment #4)

Opposition: None

Representative Dobervich: Moved to accept the proposed amendments with an emergency clause.

Representative Fisher: Seconded the motion.

Representative Dobervich: Do we also need to add a fee schedule so there is enough money to carry this out?

Jesse Pfaff, North Dakota Department of Agriculture: A fiscal note is not needed. This can be taken care of within the staff time. The fee schedule would be on the county level. We work with the noxious weed boards already. The counties have levies for the weed boards.

A Roll Call vote was taken: Yes 13, No 0, Absent 1.

Motion carries. Amendment is adopted.

Representative Richter: Moved Do Pass as amended.

Representative McWilliams: Seconded the motion.

A Roll Call vote was taken: Yes 13, No 0, Absent 1.

Do Pass as amended carries.

Representative Dobervich will carry the bill.

DA 1/17/19

19.0317.02001
Title.03000

Adopted by the Agriculture Committee

January 17, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1149

Page 1, line 2, after "certification" insert "; and to declare an emergency"

Page 1, line 7, remove "The commissioner, after consulting with the county weed boards, may adopt rules for"

Page 1, remove lines 8 through 10

Page 1, line 11, replace "2. A" with "If requested by any person needing certification, a"

Page 1, line 11, after "certify" insert ", based on standards set by the commissioner after consulting with representatives of county or city weed boards,"

Page 1, line 13, replace "3." with "2."

Page 1, line 13, replace "shall" with "may"

Page 1, line 16, replace "4." with "3."

Page 1, after line 18, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly

Date: 1/17/2019

Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1149**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 19.0317.02001

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. Richter Seconded By Rep. McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo	X	
Vice Chairman Wayne Trottier	AB		Rep. Gretchen Dobervich	X	
Rep. Jake Blum	X				
Rep. Jay Fisher	X				
Rep. Craig Headland	X				
Rep. Dwight Kiefert	X				
Rep. Aaron McWilliams	X				
Rep. David Richter	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				
Rep. Bill Tveit	X				

Total **Yes** 13 **No** 0

Absent 1

Floor Assignment Rep. Dobervich

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

REPORT OF STANDING COMMITTEE

HB 1149: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1149 was placed on the Sixth order on the calendar.

Page 1, line 2, after "certification" insert "; and to declare an emergency"

Page 1, line 7, remove "The commissioner, after consulting with the county weed boards, may adopt rules for"

Page 1, remove lines 8 through 10

Page 1, line 11, replace "2. A" with "If requested by any person needing certification, a"

Page 1, line 11, after "certify" insert ", based on standards set by the commissioner after consulting with representatives of county or city weed boards,"

Page 1, line 13, replace "3." with "2."

Page 1, line 13, replace "shall" with "may"

Page 1, line 16, replace "4." with "3."

Page 1, after line 18, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2019 SENATE AGRICULTURE

HB 1149

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1149
2/28/2019
JOB # 32980

- Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

Relating to noxious weed certification; and to declare an emergency.

Minutes:

Attachments # 1 - 3

Chairman Luick: Opened the hearing on HB 1149. All members were present, except Senator Osland. Representative John was supposed to introduce this bill, but he is busy. Any other testimony in favor?

Merlin Leithold, Executive Secretary of the ND Weed Control Association: Testified in support of HB 1149 and provided Attachment #1.

(3:52) **Chairman Luick:** Why couldn't they do this today?

Merlin Leithold: Exactly. I provided some emails that went back from Cass County Weed Officer to their states attorney. He talks about how it's not in the law, you can't issue that certificate and charge a fee. A lot of counties would charge \$50 and mileage, but they aren't allowed to. We've been working for a couple years to get this put back into law. We did some changes on the House side with language changes. The Department of Agriculture said the commissioner wanted some language changes, so we did that. We also added a declared emergency, so if it passes we can use it this growing season.

Chairman Luick: Would you have the list of the noxious weeds?

Merlin Leithold: I can provide that for you. We just added 2 more this winter.

Chairman Luick: If you can't use Tordon on leafy spurge anymore what do you use?

Merlin Leithold: You can, you just have to have a pesticide certificate either private or commercial.

Chairman Luick: Does Tordon kill it?

Merlin Leithold: It controls it. It will kill it if it's in the first 2 years of growth, because it has minimal root system. It looks like a fine Kochia plant when it's small.

Chairman Luick: Will you please send the list of weeds to the clerk? (That was confirmed.)

Vice Chair Myrdal: There's a lot of gravel pits sitting unused in my district. They are overgrown with weeds. Is there any control or inspection of those? A lot of it is private property.

Merlin Leithold: That falls to the weed board. If it is full of Kochia, then it's overlooked, it isn't noxious. My township had a pile of gravel dug, then last year we found a lot of Kochia. I will spray it down, but you see that a lot. Most of the time it falls to the land owner.

(8:37) Derrill Fick, Ward County Weed Control Officer: Testified in favor of HB 1149 and provided Attachment # 2.

(9:55) Samantha Brunner, Plant Industries Division Director for ND Department of Agriculture (Representing Commissioner Doug Goehring): Testified in Favor of HB 1149 and provided Attachment # 3.

Chairman Luick: When you certify, is there a time frame or you have to maintain a certain cleanliness for a certain time?

Samantha Brunner: We still have to sit down with the Weed Board to determine the best option. There are NAISMA standards mentioned, but they are rewriting them for gravel.

Chairman Luick: In Europe they use flame sterilization for organic growing, just something you may want to keep in back of your mind.

Vice Chair Myrdal: Are there any boundaries you have at all with fees? Is it based on hours, mileage, etc.?

Samantha Brunner: We haven't discussed that yet. We would probably set a maximum fee, some counties won't charge, then they could set their own rate.

Senator Hogan: Do you anticipate this being a policy and not administrative rules?

Samantha Brunner: Yes, we would like to do that.

(12:50) Emmery Mehlhoff, ND Farm Bureau: Testified in support of HB 1149. (No written testimony.) We have members directly involved who have expressed appreciation for what the weed board does, and they believe they should be able to receive compensation for that added value. And have the confidence that the gravel going on our local roads won't be spreading weeds to our fields.

Senate Agriculture Committee

HB 1149

2/28/19

Page 3

Chairman Luick: Further testimony for, against or neutral? If not, I will close the hearing on HB 1149.

Senator Hogan: Moved a Do Pass on HB 1149.

Vice Chair Myrdal: Seconded.

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

Motion Carried.

Senator Larsen will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1149**

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 Hogan Seconded By Myrdal

Senators	Yes	No	Senators	Yes	No
Chairman Luick	✓		Senator Hogan	✓	
Vice Chair Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland <u>absent</u>					

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Larsen

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

REPORT OF STANDING COMMITTEE

HB 1149, as engrossed: Agriculture Committee (Sen. Luick, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1149 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1149



NORTH DAKOTA WEED CONTROL ASSOCIATION

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Web site - www.ndweeds.com

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#1
1/17/19
HB 1149

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Testimony of Merlin Leithold, lobbyist # 183 HB 1149

Good morning, Chairman Johnson and members of the House Agriculture Committee. My name is Merlin Leithold, executive secretary of the ND Weed Control Association. I am here before you this morning to offer our support for HB 1149.

HB 1149 would add a new section to the ND Century Code, enabling county weed boards to charge a fee for issuing a certificate or a compliance letter, after declaring that a pit operator or owner has controlled their 13 state noxious weeds. A certificate does not declare that the product mined is noxious seed free, just that the surface area has the state noxious weeds controlled.

Many Federal, state and county highway departments are requiring mined gravel and other aggregate products to be used from pits, free of noxious weeds. In these cases, the pit operator must provide the compliance letter or certificate with their bid submission, for these projects. The pit operator or owner voluntarily contacts the local weed officer or weed board to have the pit inspected. If live weeds are found, control methods must be taken, a reinspection occurs, and then if it passes the inspection, a compliance letter or certificate can be issued.

There is a growing need in North Dakota for products that are free of noxious weeds. Weed boards are being asked to provide this service, which is above and beyond the normal duties of the weed officer. Without adding this language back into the century code, weed boards cannot provide this service.

In 2009, during the 61st Legislative Assembly, HB 1026 removed the section of law, in then Chapter 63 of the ND Century Code, dealing with forage and gravel inspecting. HB 1026 was the rewrite of the noxious weed law, that moved the law out of Chapter 63, to where it is at today. HB 1270 would have replaced that language with new language, creating a statewide weed free forage and gravel program. Due to major concerns from some opposition, HB 1270 was amended, removing the gravel portion of that bill, leaving weed free forage, a program widely used today. That bill would have also followed the North American Invasive Species Management Association (NAISMA) standards. That means 62 weeds would have to be controlled.

The major concerns at that time on HB 1270, was the fear that it could become a mandatory program. That was not the intent of that bill, and it is truly not the intent of HB 1149.

1

#1
1/12/19
HB1149

HB 1149's language was taken from the original language in Chapter 63 of the old ND Century Code, and updated. I have provided a copy for you of that portion of the old law.

County weed boards had been continuing to issue a certificate and charging a fee for doing so, but in 2017 Cass County found out through their state attorney's office that doing so was in fact illegal. As an association, we asked other counties that were doing so, to stop, until we can get the law changed.

I have attached the correspondence between Cass County Weed Officer Stan Wolf and his state attorney's office on this matter.

Adding this language to the law does not change what county weed boards can currently do concerning pits. We have been and will be able to inspect pits for noxious weeds, forcing control methods and in a worst-case scenario, seek a quarantine from the Ag. Commissioner. HB 1149 would add the right to issue a certificate to only those who request it.

I have attached two letters of support for HB1149, one from the Cass County Highway Department and the other from Mark Sand & Dakota Co., a gravel pit operator, with pits in eastern North Dakota.

I have handed out some amendments we and the Department of Ag. are proposing. The Ag. Commissioner does not want to do rule making. He is wanting to leave it up to individual counties. The weed association is in favor of these changes, and Samantha Bruner, Plant Industries Director with the ND Department of Ag., is here and can also add to the reasoning behind these amendments.

Thank you for your consideration on HB 1149, and I would urge a do pass this for this bill, as amended.

I would be happy to answer any of your questions.

#1
1/17/19
HB1149

From: Wolf, Stanley
Sent: Tuesday, February 21, 2017 4:26 PM
To: Burdick, Birch <BurdickB@casscountynod.gov>
Subject: Weed Board authority to charge fees

Birch,

Question: Does the Weed Board have the authority to charge fees for inspecting gravel pits for noxious weeds.

Background: Many federal, state, and county construction projects are requiring that gravel/borrow products to be sourced from mining operations that have been inspected for noxious and invasive weeds.

I have conducted several gravel pit inspections in recent years for gravel products that are being delivered to Cass County Highway Department. Currently, once I determine that the operation is compliant with no weeds present, I will supply a letter stating that the mining operation has been inspected and found that no noxious or invasive weeds are present. This letter is provided as proof of compliance. I usually inspect the mining operation two or more times during the growing season. I have been charging only for mileage to and from the mining operation.

The North Dakota Department of Agriculture has a program inspecting and certifying hay fields for weed seed free forage. The inspectors are independent agents of the NDDA, some of which are weed officers. The inspectors charge the hay producer for the inspection time, acres and mileage from their home office. The payment is made to the NDDA, the NDDA then pays the inspecting agent. The certified hay is sold as a value enhanced product to people that ride horses within state and national parks that require weed seed free forage within the park.

The Weed Board is wondering if they have the authority to charge a fee for the gravel pit inspections and providing the letter of compliance to the mining operation. Since the mined product could be classed as a value added product and is also required by the contractor we feel that we should be paid for the value added service. The board would like you to look into this and give them your opinion.

Thanks
Stan

From: Nelson, Christopher
Sent: Friday, February 24, 2017 2:14:20 PM
To: Burdick, Birch
Cc: Schmitz Olson, Kara; Wolf, Stanley
Subject: Re: Weed Board authority to charge fees

Stan,

Birch asked me to look into this for you. I am the 3rd year law student that is clerking in the SAO this semester. I'm currently working on a few other files.

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#1
1/12/19
HB 1149

Would answering this question next week work for you? Or do you need an answer sooner?

Christopher Nelson

From: Nelson, Christopher
Sent: Friday, February 24, 2017 4:21:41 PM
To: Burdick, Birch
Cc: Schmitz Olson, Kara; Wolf, Stanley
Subject: Re: Weed Board authority to charge fees

Stan,

Based on my initial research, my findings are that the weed board most likely cannot charge for this. I found that in 1987, the state legislature did pass a law that specifically authorized the weed board to do exactly what you're asking to do. Namely, the ability to charge for your time and travel expenses to visit gravel mines and inspect their weed status. However, the state legislature repealed that law in 2009 and did not replace it. So since it was previously specifically authorized and that specific authority was later revoked, I do not believe that there is a statutory basis to charge for weed inspection at this time.

Next week I will go further into the legislative history to give you a fuller answer.

Christopher Nelson

From: Nelson, Christopher <nelsonc@casscountynynd.gov>
Sent: Wednesday, March 1, 2017 9:20 AM
Subject: Re: Weed Board authority to charge fees
To: Burdick, Birch <burdickb@casscountynynd.gov>
Cc: Wolf, Stanley <wolfs@casscountynynd.gov>, Schmitz Olson, Kara <olsonka@casscountynynd.gov>

Stan,

I went and looked at the legislative history of the House Bill 1026, which removed the authority of the weed board to charge a fee to certify that gravel is weed free. The gravel issue is first brought up on page 28 of the document I've attached. It appears that the legislature thought that the 1987 law was convoluted and confusing and repealed it because of that. They also called for interested parties to propose legislation that would restore the right of weed boards to charge for certifying that gravel is weed free. But since there isn't an express authorization to do so, it appears that that was never done.

I think your best bet would be to work with the Weed Board Association to address this issue in the 2019 session.

Christopher Nelson

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#1
1/14/19
HB 1149

MEMORANDUM

**Highway
Department**

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

January 14, 2019

ND State Legislature
600 East Boulevard Avenue
Bismarck, ND 58505-0360

RE: Support for HB 1149 – Inspection of Gravel Pits for Noxious Weeds

Members of the House Agriculture Committee:

As the Cass County Engineer, I am writing to request your support for HB 1149, Inspection of Gravel Pits for Noxious Weeds. Keeping our gravel supplies weed free is an important step in ensuring noxious weeds are not spread from county to county.

Cass County has required their gravel suppliers to have a letter of compliance before delivering any product. The Cass County Weed Officer and our neighboring County Weed Officers have conducted the inspections and provided the letters of compliance. This County policy has not had any detrimental impact on gravel pit operations or gravel costs.

I strongly encourage you to support HB 1149 and ensure effective inspection of gravel pits to control noxious weeds.

If you have questions, please call Jason Benson at (701) 298-2372.

Sincerely,



Jason Benson, P.E.
Cass County Engineer

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395

#1
1/17/19
HB 1149

MARK SAND & GRAVEL DAKOTA CO.

PO BOX 458
FERGUS FALLS, MN 56538

PHONE: (218) 736-7523
FAX: (218) 736-2647

January 15, 2019

North Dakota House of Representatives
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

RE: House Bill 1149.

Mark Sand & Gravel Dakota Co. has been involved with the county weed inspection program for over 15 years at our sites in Hankinson and Lisbon, North Dakota. We take pride in offering a clean product which is weed free to our local customers and government agencies. We also understand the time and effort that it takes to operate an appropriate weed inspection program. This inspection is outside the normal preview of the local weed officer and weed board, especially for the part-time weed officers. It is hoped that if the weed board can be compensated for the inspection, the process will be completed in a timely manner.

This bill will allow the North Dakota weed officers/weed boards to charge a fee for inspecting and providing a letter of compliance confirming that the inspected gravel pit operation is compliant with the North Dakota Noxious Weed Law, in that there are no uncontrolled noxious weeds present.

Mark Sand & Gravel Dakota Co. graciously offers this letter of support for House Bill 1149 so that this valuable weed inspection program may continue into the future.

Sincerely,



Jeff Hatlewick
Mark Sand & Gravel Co.
Vice President of Administration
218-766-6977 cell

#2

COMMISSIONER
DOUG GOEHRING



ndda@nd.gov
www.nd.gov/ndda

Testimony of Samantha Brunner
Plant Industries Division Director
North Dakota Department of Agriculture
House Bill 1149
House Agriculture Committee
Peace Garden Room
January 17, 2019

Chairman Johnson and members of the House Agriculture Committee, I am Samantha Brunner, the Plant Industries Division Director for the North Dakota Department of Agriculture (NDDA), and I am representing Agriculture Commissioner Doug Goehring. I am here today in support of House Bill 1149 as amended.

Commissioner Goehring is supportive of the county or city Weed boards being able to certify gravel, scoria, topsoil, or sand surface mining operations as not being contaminated with noxious weed seeds. However, he did not want to draft rules for a program which can easily be based on national standards and cooperation between the Department of Agriculture, county and city weed boards. With the provided amendments, the Commissioner can set a reasonable fee schedule for the entire state and can easily work with county and city weed boards to establish agreeable standards.

Chairman Johnson and committee members, thank you for your consideration of HB 1149 as amended. I would be happy to answer any questions you may have.

/

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1149

#2
1/17/19
HB 1149

Page 1, line 7, remove “1. The commissioner, after consulting with the county weed boards, may adopt rules for”

Page 1, line 8, remove “certifying that gravel, scoria, topsoil, or sand surface mining operations are not”

Page 1, line 9, remove “contaminated with noxious weeds. The rules must identify the extent to which noxious”

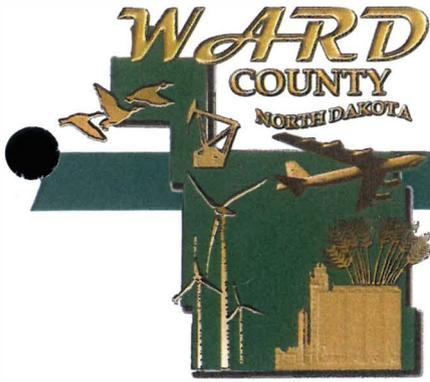
Page 1, line 10, remove “weeds are allowed with certification.”

Page 1, line 11, after “2.” insert “If requested by any person needing certification,”

Page 1, line 11, replace “A” with “a”

Page 1, line 12, after “weeds” insert “based on standards set by the commissioner after consulting with representatives of county or city weed boards.”

Page 1, line 13, replace “shall” with “may”



#3
1/17/19
HB 1149

Ward County Weed Control

P.O. Box 5005 • Minot, ND 58702-5005 • 900 13th St. SE • (701) 852-1970
Fax (701) 838-3801 • E-mail: derrill.fick@wardnd.com

WEED CONTROL

Mr. Chairman and members of the committee, my name is Derrill Fick, I am from Burlington, ND and I am the current noxious Weed Control Officer for the Ward County Weed Control Board. I am in favor of bill 1149. This will allow the inspectors or county designated person doing the inspections the ability to receive compensation from the company or individual requesting the inspection for their time and travel expense involved and also for the time to create and submit the actual certificate. The purpose of these inspections will be to give the owner or lease holder of a surface mining area a certificate that states that currently, at the time of inspection, there are no noxious weeds present and the product being certified may be available for use for any contract that requires a certified product such as on federal, state or county roads.

If we can stop the production of noxious weeds in a mining area then this will benefit each county weed board. This will stop the movement of these noxious weeds from the mining area to the roads which in turn will be less of an expense to the weed boards since we will not have to invest the time and expense for the control of any noxious weeds along these R-O-W's that have been spread from these mining areas.

Again, I am in favor of passing this bill.

Thank you for your time,

Respectfully submitted,

Derrill Fick

Ward County Weed Control Officer

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North Dakota Stockmen's Association

Testimony to the House Agriculture Committee on HB 1149

Jan. 17, 2019

Good morning, Chairman Johnson and House Agriculture Committee members. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association, an 89-year-old beef cattle trade organization representing 3,000 North Dakota cattle-ranching families.

At our past two annual conventions, members have expressed their growing concern over the growing problem of noxious weeds on the North Dakota landscape. Some of the problems are associated with longtime offenders, like Canadian thistle and leafy spurge. A new and maybe bigger challenge, however, is being presented by Palmer amaranth, which was discovered last year in North Dakota and has far greater destructive tendencies and herbicide resistance than other weeds already established here.

Our members passed a resolution calling for greater surveillance and vigilance to combat weeds in our state, as well as enhanced weed control programs funded to a level commensurate with the problem.

The gravel and sand weed-free certification effort appears to match those objectives and, as such, we support the passage of this legislation and encourage your support for any other endeavors that will help us curb weed challenges that impair our land's productivity and profitability.

Thank you for the opportunity to speak to you this morning and for your consideration.



#1
NORTH DAKOTA WEED CONTROL ASSOCIATION

6135 Hwy 49, Elgin, ND 58533

Web site - www.ndweeds.com

E-mail - ndwca@westriv.com

HB 1149
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#1 pg.1

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**Testimony of Merlin Leithold, lobbyist # 183
Engrossed HB 1149**

Good morning, Chairman Luick and members of the Senate Agriculture Committee. My name is Merlin Leithold, executive secretary of the ND Weed Control Association. I am here before you this morning to offer our support for Engrossed HB 1149.

HB 1149 would add a new section to the ND Century Code, enabling county weed boards to charge a fee for issuing a certificate after declaring that a pit operator or owner has controlled their 13 state noxious weeds. A certificate does not declare that the product mined is noxious seed free, just that the surface area has the state noxious weeds controlled.

Many Federal, State and County highway departments are requiring mined gravel and other aggregate products to be used from pits, free of noxious weeds. In these cases, the pit operator must provide the certificate with their bid submission, for these projects. The pit operator or owner voluntarily contacts the local weed officer or weed board to have the pit inspected. If live weeds are found, control methods must be taken, a reinspection occurs, and then if it passes the inspection, a certificate can then be issued.

There is a growing need in North Dakota for products that are free of noxious weeds. Weed boards are being asked to provide this service, which is above and beyond the normal duties of the weed officer. Without adding this language back into the century code, weed boards cannot provide this service.

Just to clarify, even without changing the law, weed boards have and will continue to inspect pits for noxious weeds, under the law, requiring weeds to be controlled, and when failure to do so happens, the end result could be a quarantine requested from the Ag. Commissioner. This bill just adds the ability to issue a certificate for a controlled pit, if requested, and charge a fee for issuing that certificate.

In 2009, during the 61st Legislative Assembly, HB 1026 removed the section of law, in then Chapter 63 of the ND Century Code, dealing with forage and gravel inspecting. HB 1026 was the rewrite of the noxious weed law that moved the law out of Chapter 63, to where it is at today.

Also in 2009, HB 1270 would have replaced that language with new language, creating a statewide weed free forage and gravel program. Due to major concerns from some opposition,

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HB 1270 was amended, in the House, removing the gravel portion of that bill, leaving weed free forage, a program widely used today. That bill follows the North American Invasive Species Management Association (NAISMA) standards. That means 62 weeds have to be controlled.

The major concerns at that time on HB 1270, was the fear that it could become a mandatory program. That was truly not the intent of that bill, and it is definitely not the intent now.

HB 1149's language was taken from the original language in Chapter 63 of the old ND Century Code, and updated. I have provided a copy for you of that portion of the old law. This copy was taken from SB 2280, of the 59th Legislative Assembly, when the noxious weed law was updated.

County weed boards had been continuing to issue a certificate and charging a fee for doing so, but in 2017 Cass County found out, through their states attorney's office, that doing so was in fact illegal. As an association, we asked other counties that were doing so, to stop, until we can get the law changed.

I have attached the correspondence between Cass County Weed Officer Stan Wolf and his states attorney's office on this matter.

Adding this language to the law does not change what county weed boards can currently doing concerning pits. We have been and will be able to inspect pits for noxious weeds, forcing control methods and in a worst-case scenario, seek a quarantine from the Ag. Commissioner. HB 1149 would add the right to issue a certificate to only those who request it.

I have attached two letters of support for HB1149, one from the Cass County Highway Department, who use certified gravel, and the other from Mark Sand & Dakota Co., a gravel pit operator, with pits in eastern North Dakota.

In the House Agriculture Committee, HB 1149 was amended due to some language changes that the Department of Agriculture brought to our attention prior to the hearing. We brought these changes to the committee. We also had the emergency declaration added, so that, if passed into law, weed boards can honor requests from contractors this growing season.

Thank you for your consideration on Engrossed HB 1149, and I hope you favorably consider giving this amended bill a do pass recommendation.

I would be happy to answer any of your questions.

1 **63-01.1-12.2. Noxious weed certification - Gravel and sand pits and hay land.**

2 1. The commissioner, after ~~consultation~~ consulting with the North Dakota state
3 university extension service, may adopt rules for certifying that gravel, scoria, or
4 sand surface mining operations and land producing hay for sale or for resale are
5 not contaminated with noxious weeds. The rules must identify the extent noxious
6 weeds are allowed with certification.

7 2. The county weed board, after ~~consultation~~ consulting with the North Dakota state
8 university extension service, may certify gravel, scoria, or sand surface mining
9 operations and land producing hay for sale or for resale as not contaminated with
10 noxious weeds.

11 3. The commissioner shall adopt a schedule of fees that county weed boards and the
12 North Dakota state university extension service may charge for inspecting, testing,
13 analyzing, and certifying gravel, scoria, or sand surface mining operations and hay
14 land.

15 4. Certification of gravel, scoria, ~~or~~ sand surface mining operations, or hay land is not
16 a warranty of any kind as to the quality of the gravel, sand, or hay produced from
17 an inspected and certified location. The only representation made is that land from
18 which sand and gravel is surface mined or land producing hay for sale or resale
19 has been inspected for noxious weed contamination ~~by noxious weeds~~ under rules
20 adopted by the commissioner.

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From: Wolf, Stanley
Sent: Tuesday, February 21, 2017 4:26 PM
To: Burdick, Birch <BurdickB@casscountynod.gov>
Subject: Weed Board authority to charge fees

Birch,

Question: Does the Weed Board have the authority to charge fees for inspecting gravel pits for noxious weeds.

Background: Many federal, state, and county construction projects are requiring that gravel/borrow products to be sourced from mining operations that have been inspected for noxious and invasive weeds.

I have conducted several gravel pit inspections in recent years for gravel products that are being delivered to Cass County Highway Department. Currently, once I determine that the operation is compliant with no weeds present, I will supply a letter stating that the mining operation has been inspected and found that no noxious or invasive weeds are present. This letter is provided as proof of compliance. I usually inspect the mining operation two or more times during the growing season. I have been charging only for mileage to and from the mining operation.

The North Dakota Department of Agriculture has a program inspecting and certifying hay fields for weed seed free forage. The inspectors are independent agents of the NDDA, some of which are weed officers. The inspectors charge the hay producer for the inspection time, acres and mileage from their home office. The payment is made to the NDDA, the NDDA then pays the inspecting agent. The certified hay is sold as a value enhanced product to people that ride horses within state and national parks that require weed seed free forage within the park.

The Weed Board is wondering if they have the authority to charge a fee for the gravel pit inspections and providing the letter of compliance to the mining operation. Since the mined product could be classed as a value added product and is also required by the contractor we feel that we should be paid for the value added service. The board would like you to look into this and give them your opinion.

Thanks
Stan

From: Nelson, Christopher
Sent: Friday, February 24, 2017 2:14:20 PM
To: Burdick, Birch
Cc: Schmitz Olson, Kara; Wolf, Stanley
Subject: Re: Weed Board authority to charge fees

Stan,

Birch asked me to look into this for you. I am the 3rd year law student that is clerking in the SAO this semester. I'm currently working on a few other files.

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Would answering this question next week work for you? Or do you need an answer sooner?

Christopher Nelson

From: Nelson, Christopher
Sent: Friday, February 24, 2017 4:21:41 PM
To: Burdick, Birch
Cc: Schmitz Olson, Kara; Wolf, Stanley
Subject: Re: Weed Board authority to charge fees

Stan,

Based on my initial research, my findings are that the weed board most likely cannot charge for this. I found that in 1987, the state legislature did pass a law that specifically authorized the weed board to do exactly what you're asking to do. Namely, the ability to charge for your time and travel expenses to visit gravel mines and inspect their weed status. However, the state legislature repealed that law in 2009 and did not replace it. So since it was previously specifically authorized and that specific authority was later revoked, I do not believe that there is a statutory basis to charge for weed inspection at this time.

Next week I will go further into the legislative history to give you a fuller answer.

Christopher Nelson

From: Nelson, Christopher <nelsonc@casscountynd.gov>
Sent: Wednesday, March 1, 2017 9:20 AM
Subject: Re: Weed Board authority to charge fees
To: Burdick, Birch <burdickb@casscountynd.gov>
Cc: Wolf, Stanley <wolfs@casscountynd.gov>, Schmitz Olson, Kara <olsonka@casscountynd.gov>

Stan,

I went and looked at the legislative history of the House Bill 1026, which removed the authority of the weed board to charge a fee to certify that gravel is weed free. The gravel issue is first brought up on page 28 of the document I've attached. It appears that the legislature thought that the 1987 law was convoluted and confusing and repealed it because of that. They also called for interested parties to propose legislation that would restore the right of weed boards to charge for certifying that gravel is weed free. But since there isn't an express authorization to do so, it appears that that was never done.

I think your best bet would be to work with the Weed Board Association to address this issue in the 2019 session.

Christopher Nelson

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CASS COUNTY
GOVERNMENT



MEMORANDUM

**Highway
Department**

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

January 14, 2019

ND State Legislature
600 East Boulevard Avenue
Bismarck, ND 58505-0360

RE: Support for HB 1149 – Inspection of Gravel Pits for Noxious Weeds

Members of the House Agriculture Committee:

As the Cass County Engineer, I am writing to request your support for HB 1149, Inspection of Gravel Pits for Noxious Weeds. Keeping our gravel supplies weed free is an important step in ensuring noxious weeds are not spread from county to county.

Cass County has required their gravel suppliers to have a letter of compliance before delivering any product. The Cass County Weed Officer and our neighboring County Weed Officers have conducted the inspections and provided the letters of compliance. This County policy has not had any detrimental impact on gravel pit operations or gravel costs.

I strongly encourage you to support HB 1149 and ensure effective inspection of gravel pits to control noxious weeds.

If you have questions, please call Jason Benson at (701) 298-2372.

Sincerely,

Jason Benson, P.E.
Cass County Engineer

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395

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MARK SAND & GRAVEL DAKOTA CO.

PO BOX 458
FERGUS FALLS, MN 56538

PHONE: (218) 736-7523
FAX: (218) 736-2647

January 15, 2019

North Dakota State Senate
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

RE: House Bill 1149.

Mark Sand & Gravel Dakota Co. has been involved with the county weed inspection program for over 15 years at our sites in Hankinson and Lisbon, North Dakota. We take pride in offering a clean product which is weed free to our local customers and government agencies. We also understand the time and effort that it takes to operate an appropriate weed inspection program. This inspection is outside the normal preview of the local weed officer and weed board, especially for the part-time weed officers. It is hoped that if the weed board can be compensated for the inspection, the process will be completed in a timely manner.

This bill will allow the North Dakota weed officers/weed boards to charge a fee for inspecting and providing a letter of compliance confirming that the inspected gravel pit operation is compliant with the North Dakota Noxious Weed Law, in that there are no uncontrolled noxious weeds present.

Mark Sand & Gravel Dakota Co. graciously offers this letter of support for House Bill 1149 so that this valuable weed inspection program may continue into the future.

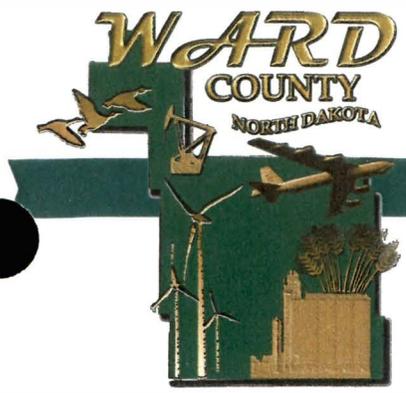
Sincerely,



Jeff Hatlewick
Mark Sand & Gravel Co.
Vice President of Administration
218-766-6977 cell

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Ward County Weed Control

P.O. Box 5005 • Minot, ND 58702-5005 • 900 13th St. SE • (701) 852-1970
Fax (701) 838-3801 • E-mail: derrill.fick@wardnd.com

WEED CONTROL

Mr. Chairman and members of the committee, my name is Derrill Fick, I am from Burlington, ND and I am the current noxious Weed Control Officer for the Ward County Weed Control Board. I am in favor of bill 1149. This will allow the inspectors or county designated person doing the inspections the ability to receive compensation from the company or individual requesting the inspection for their time and travel expense involved and also for the time to create and submit the actual certificate. The purpose of these inspections will be to give the owner or lease holder of a surface mining area a certificate that states that currently, at the time of inspection, there are no noxious weeds present and the product being certified may be available for use for any contract that requires a certified product such as on federal, state or county roads.

If we can stop the production of noxious weeds in a mining area then this will benefit each county weed board. This will stop the movement of these noxious weeds from the mining area to the roads which in turn will be less of an expense to the weed boards since we will not have to invest the time and expense for the control of any noxious weeds along these R-O-W's that have been spread from these mining areas.

Again, I am in favor of passing this bill.

Thank you for your time,

Respectfully submitted,

Derrill Fick

Ward County Weed Control Officer

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COMMISSIONER
DOUG GOEHRING



ndda@nd.gov
www.nd.gov/ndda

**Testimony of Samantha Brunner
Plant Industries Division Director
North Dakota Department of Agriculture
House Bill 1149
Senate Agriculture Committee
Roosevelt Park Room
February 28, 2019**

Chairman Luick and members of the Senate Agriculture Committee, I am Samantha Brunner, the Plant Industries Division Director for the North Dakota Department of Agriculture (NDDA), and I am representing Agriculture Commissioner Doug Goehring. I am here today in support of House Bill 1149.

Commissioner Goehring is supportive of the county or city weed boards being able to certify gravel, scoria, topsoil, or sand surface mining operations as not being contaminated with noxious weed seeds. However, he did not want to draft rules for a program which can easily be based on national standards and cooperation between the Department of Agriculture, county and city weed boards. This bill will allow the Commissioner to set a reasonable fee schedule for the entire state and work with county and city weed boards to establish agreeable standards.

Chairman Luick and committee members, thank you for your consideration of HB 1149. I would be happy to answer any questions you may have.