

2023 SENATE AGRICULTURE AND VETERANS AFFAIRS

SB 2279

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2279
1/26/2023

A BILL for an act relating to the farm structure and improvements property tax exemption; and to provide an effective date
--

9:43 AM Chairman Luick called the committee to order. Senators Hogan, Weston, Weber, Luick, Myrdal and Lemm were present

Discussion Topics:

- Exempt farm structures
- Abandoned commodity structures
- Fiscal impact

9:44 AM Senator Myrdal, State Senator, District 19, introduced the bill, testified in favor, and provided an amendment #17082.

9:51 AM Representative Monson, State Representative, District 19, testified in favor #17105.

9:57 AM Loren Esthad, affected owner, Crystal ND, testified in favor verbally.

10:03 AM Pete Hanebutt, Director of Public Policy, North Dakota Farm Bureau, testified in favor verbally.

10:07 AM Phil Murphy, on behalf of North Dakota Soybean Growers, testified in favor #15745

10:08 AM Bill Wocken, North Dakota League of Cities, testified in opposition #17106

10:13 AM Charles Dendy, Legal Counsel, North Dakota Tax Department – testified neutral verbally.

Additional written testimony:

Dave Moquist, Crystal ND resident, testified in favor #16890

10:22 AM Chairman Luick closed the committee hearing.

David Owen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2279
1/26/2023

A BILL for an Act, relating to the farm structure and improvements property tax exemption

2:46 PM Chairman Luick called the committee work to order. Senators Hogan, Weston, Weber, Luick, Myrdal, and Lemm were present

Discussion Topics:

- Amendment
- Committee action

2:46 PM Senator Myrdal introduced and moved an amendment to SB 2279. #17082

2:48 PM Senator Weber, seconded the amendment.

Roll call vote.

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Motion passed 6-0-0. Adopt Amendment #26.0601.01001

2:49 PM Senator Myrdal moved a second amendment to the bill relating to additional eligible commodities. LC# 26.0601.01002. #26931.

2:49 PM Senator Lemm seconded.

Roll call vote.

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Motion Passed 6-0-0.

2:51 PM Senator Myrdal moved DO PASS AS AMENDED SB 2279.

2:51 PM Senator Weber seconded DO PASS AS AMENDED SB 2279.

2:53 PM Roll Call Vote, DO PASS AS AMENDED SB 2279

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	N
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Motion Passed 5-1-0. DO PASS AS AMENDED SB 2279

Senator Lemm will carry the bill.

2:54 PM Chairman Luick closed the committee work on SB 2279

Brenda Cook, Committee Clerk

PROPOSED AMENDMENTS TO SENATE BILL NO. 2279

Page 2, line 25, remove "To claim the exemption for an agricultural commodity storage structure"

Page 2, remove lines 26 through 28

Page 2, line 29, remove "(6)"

Page 2, line 31, after the fourth underscored comma insert "honey."

Page 3, line 4, after the first underscored comma insert "surviving spouse."

Page 3, line 5, after the first underscored comma insert "great-grandparent, grandchild, great-grandchild."

Page 3, line 5, remove the first "or"

Page 3, line 5, after the fifth underscored comma insert "first-cousin, or second-cousin."

Renumber accordingly

OK

1/26/23

1-26-2023

REPORT OF STANDING COMMITTEE

SB 2279: Agriculture and Veterans Affairs Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2279 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 2, line 25, remove "To claim the exemption for an agricultural commodity storage structure"

Page 2, remove lines 26 through 28

Page 2, line 29, remove "(6)"

Page 2, line 31, after the fourth underscored comma insert "honey."

Page 3, line 4, after the first underscored comma insert "surviving spouse."

Page 3, line 5, after the first underscored comma insert "great-grandparent, grandchild, great-grandchild."

Page 3, line 5, remove the first "or"

Page 3, line 5, after the fifth underscored comma insert "first-cousin, or second-cousin."

Renumber accordingly

2023 HOUSE AGRICULTURE

SB 2279

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

SB 2279
3/16/2023

Relating to the farm structure and improvements property tax exemption; and to provide an effective date.

Chairman Thomas called the meeting to order 8:37 AM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Christy, Finley-DeVillie, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Taxable property
- City growth
- Annexed
- Faze of property
- Specials payable

In Favor:

Senator Janne Myrdal, District 19, Edinburg, ND, testimony #25595, proposed amendment #25596

Pete Hanebutt, ND Farm Bureau (no written testimony)

Brian Vculek, Potato farmer, Oaks, ND, #25597, #25598

Phil Murphy, ND Soybean Growers Association (no written testimony)

Loren Estad, Landowner, Crystal, ND, #25459

Joshua Heuchert, Heuchert Willow Creek Ranch, Josh Heuchert Farms, H & V Farms, Hensel, ND #25470

Opposed:

Bill Wocken, ND League of Cities, #25599

Mikka Willits, Director of Tax Equalization for Pembina County, #25397

Donald Flaherty, Mayor of Ellendale, ND, #25491

Neutral:

Adam Tescher, Assistant Director, School Finance, ND Department of Public Instruction (no written testimony)

Charles Dendy, Legal Counsel, ND Tax Department (no written testimony)

Additional written testimony:

Representative David Monson, District 19, NE ND, #26477

Donavon Johnson, President, Northland Potato Growers Association, #25495, #25493

David Moquist, Landowner, Crystal, ND, #25435

House Agriculture Committee

HB 2279

03/16/2023

Page 2

Chairman Thomas adjourned the meeting 9:16 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

SB 2279
3/31/2023

Relating to the farm structure and improvements property tax exemption; and to provide an effective date.

Chairman Thomas called the meeting to order 9:37 AM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Christy, Finley-DeVillie, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Commodities
- Shifting property tax
- Narrow scope
- Potato warehouses

Representative Headland gave a report on possible repercussions of the proposed tax exemption and will report back on requested information from the Tax Department.

Chairman Thomas adjourned the meeting 9:52 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee Room JW327C, State Capitol

SB 2279
4/6/2023

Relating to the farm structure and improvements property tax exemption; and to provide an effective date.

Chairman Thomas called the meeting to order 10:02 AM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Christy, Finley-DeVile, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Committee work

Charles Dendy, Legal Counsel, ND Tax Department (no written testimony)

Representative Headland moved amendment, #27351
Representative Christy seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVile	Y
Representative Jay Fisher	Y
Representative Craig Headland	Y
Representative Donna Henderson	Y
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	Y
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y

Motion 13-0-0

Representative Christy moved a do pass as amended.
Representative Kiefert seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Craig Headland	Y
Representative Donna Henderson	Y
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	Y
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y

Motion 13-0-0

Representative Headland will carry the bill.

Chairman Thomas adjourned the meeting 10:20 AM

Diane Lillis, Committee Clerk

OK
184
4-6-23

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2279

Page 1, line 1, remove "subdivision a of"

Page 1, line 2, replace "the farm structure and improvements" with "a"

Page 1, line 3, after "exemption" insert "for certain potato storage structures"

Page 1, remove lines 5 through 23

Page 2, remove lines 1 through 30

Page 3, replace lines 1 through 21 with:

"SECTION 1. AMENDMENT. Subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands.
 - (1) This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.
 - (2) "Farm buildings and improvements" includes a greenhouse or other building used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for display and sale of grown horticultural or nursery products is not a farm building or improvement.
 - (3) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement, except a potato storage structure as provided in subdivision b. located on platted land within the corporate limits of a city, any structure or improvement used by a manufacturing facility as defined in section 19-24.1-01, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.
 - (4) The following factors may not be considered in application of the exemption under this subsection:
 - (a) Whether the farmer grows or purchases feed for animals raised on the farm.

DR
274
4-6-23

- (b) Whether animals being raised on the farm are owned by the farmer.
 - (c) Whether the farm's replacement animals are produced on the farm.
 - (d) Whether the farmer is engaged in contract feeding of animals on the farm.
- b. A potato storage structure that is permanently affixed to commercial property, owned by a farmer, and used exclusively for personal use by the owner, a direct relative of the owner, or another farmer. This exemption only applies to a potato storage structure that was originally constructed on agricultural property. For purposes of this subdivision:
- (1) "Direct relative" means a spouse, surviving spouse, child, parent, brother, sister, grandparent, great-grandparent, grandchild, great-grandchild, aunt, uncle, niece, nephew, first cousin, or second cousin, whether by blood, adoption, or marriage.
 - (2) "Personal use" means the use of a structure for postharvest storage and preservation of potatoes produced by the owner of the structure, a direct relative of the owner, or a farmer leasing the storage structure associated with rented land. The term does not include the use of a structure to store or preserve potatoes produced by individuals other than the owner of the structure, a direct relative of the owner, or a farmer leasing the storage structure associated with rented land.
 - (3) "Preserve" means the ordinary handling of potatoes prior to sale and does not include processing that results in a value-added physical or chemical change to the potatoes.
- c. It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
- (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has annual gross income from farming activities which is sixty-six percent or more of annual gross income, including gross income of a spouse if married, during any of the two preceding calendar years.
 - (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, with the exception of marijuana grown under chapter 19-24.1; poultry; livestock; or dairy farming in such products' unmanufactured state and has received annual gross income

from farming activities which is sixty-six percent or more of annual gross income, including gross income of a spouse if married, during any of the two preceding calendar years. For purposes of this paragraph, "farmer" includes a:

DR
374
4-6-23

- (a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the two preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the two preceding calendar years.
 - (b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
 - (c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.
- (3) "Gross income" means gross income as defined under the federal Internal Revenue Code and does not include a gain from the sale or exchange of farm machinery as computed for federal income tax purposes. For purposes of this paragraph, "farm machinery" means all vehicular implements and attachment units designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle that is required to be registered under chapter 57-40.3.
- (4) "Gross income from farming activities" means gross income from farming as defined for purposes of determining if an individual is a farmer eligible to use the special estimated income tax payment rules for farmers under section 6654 of the federal Internal Revenue Code [26 U.S.C. 6654].
- (5) When exemption is claimed under this subdivision for a residence, the occupant of the residence who it is claimed is a farmer shall provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that sixty-six percent or more of the gross income of that

occupant, and spouse if married and both spouses occupy the residence, was, or was not, gross income from farming activities. The individual claiming the exemption also shall provide to the assessor, on a form prescribed by the tax commissioner, the necessary income information to demonstrate eligibility. Any income information provided to the assessor regarding eligibility for an exemption claimed under this subdivision is a confidential record.

DR
4/24
4-6-23

- (6) For purposes of this subsection, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.
- (7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2279, as engrossed: Agriculture Committee (Rep. Thomas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2279 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subdivision a of"

Page 1, line 2, replace "the farm structure and improvements" with "a"

Page 1, line 3, after "exemption" insert "for certain potato storage structures"

Page 1, remove lines 5 through 23

Page 2, remove lines 1 through 30

Page 3, replace lines 1 through 21 with:

"SECTION 1. AMENDMENT. Subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands.
 - (1) This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.
 - (2) "Farm buildings and improvements" includes a greenhouse or other building used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for display and sale of grown horticultural or nursery products is not a farm building or improvement.
 - (3) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement, except a potato storage structure as provided in subdivision b. located on platted land within the corporate limits of a city, any structure or improvement used by a manufacturing facility as defined in section 19-24.1-01, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.
 - (4) The following factors may not be considered in application of the exemption under this subsection:
 - (a) Whether the farmer grows or purchases feed for animals raised on the farm.
 - (b) Whether animals being raised on the farm are owned by the farmer.

- (c) Whether the farm's replacement animals are produced on the farm.
 - (d) Whether the farmer is engaged in contract feeding of animals on the farm.
- b. A potato storage structure that is permanently affixed to commercial property, owned by a farmer, and used exclusively for personal use by the owner, a direct relative of the owner, or another farmer. This exemption only applies to a potato storage structure that was originally constructed on agricultural property. For purposes of this subdivision:
- (1) "Direct relative" means a spouse, surviving spouse, child, parent, brother, sister, grandparent, great-grandparent, grandchild, great-grandchild, aunt, uncle, niece, nephew, first cousin, or second cousin, whether by blood, adoption, or marriage.
 - (2) "Personal use" means the use of a structure for postharvest storage and preservation of potatoes produced by the owner of the structure, a direct relative of the owner, or a farmer leasing the storage structure associated with rented land. The term does not include the use of a structure to store or preserve potatoes produced by individuals other than the owner of the structure, a direct relative of the owner, or a farmer leasing the storage structure associated with rented land.
 - (3) "Preserve" means the ordinary handling of potatoes prior to sale and does not include processing that results in a value-added physical or chemical change to the potatoes.
- c. It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
- (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has annual gross income from farming activities which is sixty-six percent or more of annual gross income, including gross income of a spouse if married, during any of the two preceding calendar years.
 - (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, with the exception of marijuana grown under chapter 19-24.1; poultry; livestock; or dairy farming in such products' unmanufactured state and has received annual gross income from farming activities which is sixty-six percent or more of annual gross income, including gross income of a spouse if married, during any of the two preceding calendar years. For purposes of this paragraph, "farmer" includes a:
 - (a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the two

preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the two preceding calendar years.

- (b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
 - (c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.
- (3) "Gross income" means gross income as defined under the federal Internal Revenue Code and does not include a gain from the sale or exchange of farm machinery as computed for federal income tax purposes. For purposes of this paragraph, "farm machinery" means all vehicular implements and attachment units designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle that is required to be registered under chapter 57-40.3.
 - (4) "Gross income from farming activities" means gross income from farming as defined for purposes of determining if an individual is a farmer eligible to use the special estimated income tax payment rules for farmers under section 6654 of the federal Internal Revenue Code [26 U.S.C. 6654].
 - (5) When exemption is claimed under this subdivision for a residence, the occupant of the residence who it is claimed is a farmer shall provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that sixty-six percent or more of the gross income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, gross income from farming activities. The individual claiming the exemption also shall provide to the assessor, on a form prescribed by the tax commissioner, the necessary income information to demonstrate eligibility. Any income information provided to the assessor regarding eligibility for an exemption claimed under this subdivision is a confidential record.

- (6) For purposes of this subsection, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.
- (7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility."

Renumber accordingly

2023 CONFERENCE COMMITTEE

SB 2279

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2279 Engrossed
4/18/2023
Conference Committee

A bill relating to the farm structure and improvements property tax exemption; and to provide an effective date.
--

9:58 AM Chairman Luick opened the Conference Committee meeting.
Members present: Chairman Luick, Senator Myrdal, Senator Lemm, Representative Thomas, Representative Headland, Representative Christy.
Members absent: None.

Discussion topics:

- Amendments
- Conference committee decision

9:59 AM Committee discussion on Engrossed SB 2279.

10:13 AM Senator Myrdal moved to Accede to House Amendments.

10:14 AM Representative Headland seconded the motion.

Roll call vote: 6-0-0-Motion Passed.

The Senate bill carrier is Senator Lemm.

The House bill carrier is Representative Thomas.

10:16 AM Chairman Luick adjourned the meeting.

Brenda Cook, Committee Clerk

**2023 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2279 as engrossed

Senate Agriculture and Veterans Affairs Committee

Action Taken

- SENATE accede to House Amendments**
- SENATE accede to House Amendments and further amend**
- HOUSE recede from House amendments**
- HOUSE recede from House amendments and amend as follows**

- Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Myrdal Seconded by: Hedland

Senators		4-18		Yes	No	Representatives		4-18		Yes	No
<i>Luick</i>		X		X		<i>Thomas</i>		X		X	
<i>Myrdal</i>		X		X		<i>Headland</i>		X		X	
<i>Lemm</i>		X		X		<i>Christy</i>		X		X	
Total Senate Vote				3		Total Rep. Vote				3	

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Lemm House Carrier Thomas

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2279, as engrossed: Your conference committee (Sens. Luick, Myrdal, Lemm and Reps. Thomas, Headland, Christy) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ pages 1536-1539 and place SB 2279 on the Seventh order.

Engrossed SB 2279 was placed on the Seventh order of business on the calendar.

TESTIMONY

SB 2279

Testimony in favor of 2279 68th session

Chair and Committee, for the record my name is Phil Murphy representing the NDSGA. We favor passage of this bill because it appears to provide an opportunity to save on expenses. Thank you for your consideration.

January 25, 2023

Sen. Larry Luick and Members of the Senate Agriculture and Veteran Affairs Committee
Legislative Assembly of North Dakota

Re: Senate Bill 2279
SUPPORT Letter

Senators Larry Luick and Members

My family has been raising potatoes in the Crystal area for over 70 years. When potatoes were first grown, the only mode of transportation was the railroad. Therefore, all the potato storages were built on or near a railroad for access to transportation. Most of them were on Railroad Lease property out of necessity and were therefore considered commercial property.

As the industry has grown the warehouses have grown in size and most of the lease property has been bought by the farmers. Since the farmers now own their property, they should no longer be considered commercial property. They are storing only their own potatoes and not using the warehouses commercially by using them for storing other people's potatoes.

The storages should be considered part of their larger farm unit because without them they wouldn't be raising potatoes. Therefore, these warehouses should be considered agricultural exempt and should not be taxed commercial.

This needs to be clarified because not all storage in the state is treated equally.

I respectfully request the ND Senate Agriculture and Veteran Affairs Committee votes to **support SB 2279**

Sincerely,

David Moquist
Crystal, ND
701-520-1855

23.0616.01001
Title.

Prepared by the Legislative Council staff for
Senator Myrdal
January 25, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2279

Page 2, line 25, remove "To claim the exemption for an agricultural commodity storage structure"

Page 2, remove lines 26 through 28

Page 2, line 29, remove "(6)"

Renumber accordingly

Testimony on SB2279

Rep. David Monson

District 19

Good morning Chairman Luick and members of the Senate Agriculture Committee. For the record I am Rep. David Monson from District 19 in far northeastern ND which includes all of Pembina County, most of Walsh County, and the eastern portion of Cavalier County.

I'm here to testify in favor of SB2279 which is before you today. I prepared a very similar bill to be introduced on the House side, but somehow I didn't get the button pushed on the bill, so this is the only vehicle we have to fix the problem we have been having in our area dealing with the taxation of personal potato storage facilities. It seems there has been some gray area in how various counties have taxed potato houses, and this bill should clarify it so all entities are able to get a clear message on how the taxes should be levied.

The only differences between SB2279 and my version is that I didn't require step 5 on page 2, the annual filing of an application with the county auditor. I'm not sure this is needed, but I'll leave that up to you to determine. And I didn't name individually each commodity in 6 (a) on the bottom of page 2 and top of page 3. My bill defined, "Agricultural commodities" as including cereal grains, oilseeds, meat, dairy, other soft commodities, and miscellaneous agricultural commodities. Maybe that is too broad, but my thinking was that it could include such things as honey, a huge commodity in ND now, and other new crops we may miss in the list. Again, maybe not worth amending. I actually heard some comments on the House side that my list was too broad in this regard, so maybe this is better left more specific.

One other thing that you may consider could be adding cousins to the list of direct relatives. We had help from Commissioner Kroshus on writing the bills, so he may have better ideas than I do. My bill didn't include cousins either, but I think about the situation I found myself in a few years ago which I think is very common. I was renting a farm from my aunt and uncle who were up in age. They passed away, and the farm was passed on to their kids, my cousins. Thus, I was suddenly renting from my cousins which could have been a problem. You may consider adding cousins to the list if you deem it practical.

Thank you for your time and I'll stand for any questions.

Testimony in Opposition to Senate Bill 2279
January 26, 2023
Senate Agriculture and Veterans' Affairs Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good morning, Mr. Chairman and members of the Senate Agriculture and Veterans' Affairs Committee. For the record. My name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in opposition to Senate Bill 2279.

This bill proposes to add an exemption to property taxation for agricultural commodity storage structures storing specified agricultural products produced by the owner of the warehouse or their direct relatives. These buildings no longer would need to be located on the primary farming tract. They could be anywhere.

The League of Cities has consistently opposed tax exemptions in the past on the grounds that each exemption only increases the tax burden for properties that are not exempt. There are already 43 exemptions enumerated in this section of the Century Code. We do not favor adding another.

For these reasons the North Dakota League of Cities opposes this bill and respectfully requests a Do Not Pass recommendation from the committee. I will be happy to answer any questions you may have of me.

PEMBINA COUNTY
Director of Tax Equalization
301 DAKOTA STREET WEST #4
CAVALIER, NORTH DAKOTA 58220
PHONE (701) 265-4697
mwillits@nd.gov

March 15, 2023

House Agricultural Committee
Representative Paul J. Thomas, Chairman
600 E. Boulevard Ave.
Bismarck, ND 58505

Dear Committee Chair Thomas and Committee members,

My name is Mikka Willits and I am the Director of Tax Equalization for Pembina County. I am writing to request the committee to amend Senate Bill 2279 to a study and review it alongside House Bill 1247 during the upcoming interim.

Currently, properties located within the city limits should be taxable based on NDCC § 57-02-08 and Attorney General Opinions. Improvements located on farm plants on agricultural land are currently exempt unless they have a commercial business tied to their parcel, like seed sales and storage rental.

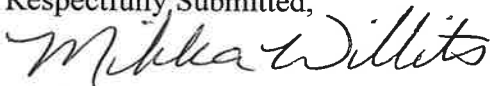
There was a property in question located within the city limits of Crystal. Loren Estad, the owner of this property provided verbal testimony in support of this bill to the Senate Agricultural and Veterans Affairs Committee that misrepresents the history of this property. Pembina County had two litigation cases brought forth regarding this property. The Court had made determination in favor of Pembina County in both cases. I have included the Memorandum Opinion and Order for one of those cases. In the order, a comprehensive history of this parcel is articulated. The issues surrounding the conflict are thoroughly outlined throughout the decision. I would draw your attention to paragraph six (6) on page eleven (11) of fourteen (14).

Improvements either purchased or built within the city limits away from the main farm plant are by choice. It may have been to take advantage of the roads, railways, utilities, infrastructure and opportunities they would not be offered if located on the main farm plant. Many other business opportunities may also present itself when similar types of parcels are located within the same area. Examples may be that of leasing, brokering, transportation, fertilizer and seed sales.

An adoption of SB 2279 as written would decrease the taxable valuations located within our local jurisdictions. Without a supplement for decreased valuations, the financial burden will fall back on the remaining taxpayers. It will also have a detrimental impact on our schools, EMS, fire districts, local jurisdictions and the maintenance of infrastructure. I do not believe this was the intent of the bill at hand.

I strongly urge you to amend SB 2279 into a study so that it can be reviewed along with HB 1247. This review will allow for a comprehensive study of the impact of these proposed changes and help to prevent any unintended consequences that would be harder to remove in the future.

Respectfully Submitted,



Mikka Willits
Pembina County Director of Tax Equalization

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF PEMBINA

NORTHEAST JUDICIAL DISTRICT

Estad Farm Corporation,)
)
 Appellant,)
)
 v.)
)
 Pembina County Board of)
 County Commissioners,)
)
 Appellee.)

File Number 34-2020-CV-79

MEMORANDUM OPINION
AND ORDER

- [1] Estad Farm Corporation (hereinafter "Estad") appeals a decision of the Pembina County Board of County Commissioners (hereinafter "the Board") regarding classification of a potato warehouse for taxation purposes. Estad filed its appeal in April. *Odyssey Doc. 1*. The Board timely answered in May. *Odyssey Doc. 9*. The record was certified in June, and a briefing schedule was entered. *Odyssey Docs. 11 & 55*. The case was assigned to this Court in July. *Odyssey Doc. 59*. The parties stipulated to an extension of briefing deadlines, which the Court accepted. *Odyssey Docs. 61 & 64*. Estad filed its brief. *Odyssey Doc. 65*. The Board filed its brief. *Odyssey Doc. 67*. Estad filed its reply brief. *Odyssey Doc. 75*.
- [2] Oral argument was held utilizing reliable electronic means on September 22, 2020. Attorneys Lawrence DuBois and Terin Riley of Fleming, DuBois & Fleming, Cavalier, ND, were present on behalf of Estad. Howard Swanson, Special Assistant State's Attorney for Pembina County, of Swanson & Warcup in Grand Forks, ND, was present on behalf of the Board.
- [3] The Court has reviewed the briefs filed by the parties, the law cited therein, and the certified record in this case. Based on that review, the Court addresses jurisdiction and the standard of review relating to this appeal as follows:

Jurisdiction & Standard of Review

- [4] This Court has jurisdiction over an appeal of a decision made by the Board regarding classification of property for taxation purposes. *N.D. Const. Art. VI, § 8; N.D.C.C. §§ 57-23-04(3), 11-11-39, 27-05-06 and 28-34-01.*
- [5] The parties have correctly set out the standard of review this Court must utilize when reviewing a decision of the Board. The review is limited to determining whether the Board's decision was arbitrary, capricious or unreasonable, and whether the decision was supported by substantial evidence. *Tibert v. City of Minto*, 2006 ND 189, ¶ 8, 720 N.W.2d 921. The burden is upon Estad to show that the Board acted arbitrarily, capriciously or unreasonably; or to show that there is no substantial evidence to support the decision. *Dahm v. Stark County Board of County Commissioners*, 2013 N.D. 241, ¶ 10, 841 N.W.2d 416.
- [6] A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. *Tibert* at ¶ 8. It is also noted that if the Board failed to correctly interpret and apply the controlling law, failure of this nature is deemed arbitrary, capricious and unreasonable. *Trollwood Village Limited Partnership v. Cass County Board of County Commissioners*, 557 N.W.2d 732, 734 (N.D. 1996).
- [7] When reviewing a case to determine whether a decision is supported by substantial evidence, "substantial evidence" is defined as relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Dahm* at ¶ 10. The possibility of drawing two inconsistent conclusions from the evidence presented to the Board does not mean there was a lack of substantial evidence. *Citizens State Bank of Neche v. Hamilton*, 238 N.W.2d 655 (N.D. 1976); *Bank of Rhame*, 231 N.W.2d 801 (N.D. 1975).
- [8] In the same vein, when considering evidence, it is the responsibility of the Board to assess credibility and weight, not the reviewing Court. See generally *Midwest Processing Co. v. McHenry County*, 467 N.W.2d 895 (N.D. 1991); *Koch Hydrocarbon Co. v. Board of Equalization*, 454 N.W.2d 508 (N.D. 1990); *Ulvedal v. Board of Co. Comm. of Grand Forks Co.*, 434 N.W.2d 707 (N.D. 1989); *Chernick v. City of Grand Forks*, 210 N.W.2d 73, 78 (N.D. 1973). Only when there is such a complete absence of evidence or reason so as to amount to an arbitrary, capricious or unreasonable action does a reviewing Court have a basis to reverse the decision of the Board. *Dakota Northwestern Assoc. Ltd. Partnership v. Burleigh Co. Bd. of Co. Comm.*, 2000 ND 164, 616 N.W.2d 349.

- [9] In an appeal of this nature, a reconsideration of evidence is limited to the evidence in the record.¹ The evidence must be viewed in light of the Board's decision to determine whether it was arbitrary, capricious, or unreasonable. *Dahm* at ¶ 10. Moreover, the record is adequate to support the findings and conclusions of the Board if it allows this Court to discern the rationale for the Board's decision. *Dahm* at ¶ 8.

The Parcel at Issue

- [10] Estad owns and operates a potato warehouse that sits on approximately 11 acres on the outskirts of Crystal, located within Pembina County. Pembina County has classified the land as commercial property for taxation purposes, and has determined the potato warehouse is not exempt from taxation. Estad asserts the warehouse is situated on agricultural land, it is part of his farm plant, and therefore it is exempt from taxation. *Odyssey Doc. 22*, p. 61, l. 13-20.²
- [11] Estad's parcel is located in the southeast corner of section 12, or part of the E1/2 of the SE1/4 12-159-55. *Odyssey Doc. 42*. The parcel is located at the intersections of Sections 12 and 13, Crystal Township, and Section 7 and 18 of Elora Township. Estad's parcel is partly within Crystal Township, and partly within the city limits of the town of Crystal. *Odyssey Doc. 47*.
- [12] There is a noteworthy issue in the record the Court must address. The statutory scheme to determine whether Estad's potato warehouse is or is not exempt from taxation involves a determination of whether the land it sits on is platted as part of the town of Crystal.
- [13] An understanding of the meaning of "platted land" is necessary in order to move forward with the analysis.

- A. The North Dakota Century Code does not provide a specific definition of a "plat," although the term is used throughout the Code. (e.g., N.D.C.C. §§ 11-

¹ The Court notes the Board's objection in its brief (*Odyssey Doc. 67*, ¶¶ 25 & 28), to arguments made by Estad's counsel regarding matters outside of the record (*Odyssey Doc. 65*, ¶¶ 18 & 35). The Court agrees with the Board's position and advises the parties that it neither considered nor relied upon arguments of counsel that were based upon investigations and conversations of counsel outside of the official record.

² The page numbers referred to throughout this opinion are commonly called "Bates Numbers" which are stamped on the lower right-hand corner of the record in this case.

18-21, 11-33.2-01, 11-33.2-11, 11-33.2-12.1, 11-33.2-14, 40-28-22, 40-50.1-01, 47-19-02, and 57-02-39.) The most comprehensive description of what must be contained within a plat is found at N.D.C.C. § 40-50.1-01.

- B. With no specific statutory definition of "plat" located within the Code, the Court relies on the ordinary and common meaning of the word. N.D.C.C. § 1-02-02. Merriam-Webster defines plat as: "a plan, map, or chart of a piece of land with actual or proposed features (such as lots)." *Merriam-Webster.com Dictionary*, <https://www.merriamwebster.com/dictionary/plat>.
- C. A deed is not the same as a plat. A deed evidences transfer of ownership of the property defined by the legal description. A legal description is not a plan. A legal description is not a map. A legal description is not a chart.
- D. In the same vein, a recorded deed which conveys a small portion of a larger piece of land (*i.e.*, parceling it out) does not by operation equate to platting of the smaller portion.
- E. After reviewing scarce case law, opinions and the statutory use of the term "plat," this Court notes the filing of plats is typically undertaken as part of the development of city or other lands dedicated to public use. The plat is a document that has a graphic or diagrammatic depiction of the property. It sets out streets, alleys, and public grounds. It includes notations of open waterways. It is to scale. It is recorded in the office of the recorder in the county where the plat is located. It is recorded in a plat book, separate and apart from other recorded instruments. See N.D.C.C. Chapter 40-50.1, *et seq.*

[14] This Court considered the historical documents related to the City of Crystal, found in the record as *Odyssey Doc. 51*. The initial establishment documents go back to 1891 and refer to the incorporation of the town of Crystal. *Odyssey Doc. 51*, pp. 216-236. Significantly, there is a meets and bounds description of the area sought to be incorporated as the town of Crystal. See *Odyssey Doc. 51*, p. 230, enlarged at p. 237. This description is, essentially, a one square mile area of land. It is located mostly in Sections 12 and 13 of Crystal Township, but it also encompasses a quarter mile strip on the western edges of Sections 7 and 18 in Elora Township.

[15] There is a plat in the record. *Odyssey Doc. 51*, pp. 238 & 239. The document is stamped "Original" and "(Rearranged Plat)" over the lots between Appleton Avenue and Euclid Avenue, to the west of Third Street. The Court is unable to ascertain the

date of this document. It appears from p. 239 that the document came from a spiral bound book.

- [16] Of significance, this plat covers only a portion of the square mile area identified as the incorporated town of Crystal as per the meets and bounds description referenced in ¶ 14, *supra*. It appears this plat covers a very small portion of the intersection of Sections 12 and 13, Crystal Township, and Sections 7 and 18 in Elora Township, which is the location of Estad's parcel. The Court believes that the circular stamp in the upper right hand corner of the document is likely the intersection where Estad's parcel is located.
- [17] The Court notes the platted land on pp. 238 & 239 is essentially the town of Crystal. There are several parcels of land on the outskirts of this plat identified only by ownership, and they lack any dedication for streets, alleyways and the like.
- [18] The record does not contain any other *documentary* evidence to show Estad's parcel was platted.
- [19] The record also shows Estad's parcel falls partly within the original incorporated city limits of the town of Crystal, and partly within Crystal Township. *Odyssey Doc. 47*. It is indisputable that the potato warehouse itself is situated within the city limits of the town of Crystal.
- [20] All of this history is necessary because twice Estad represented to the Board at its meeting on March 3, 2020, that his parcel **is platted**, it has **always been platted**, and he **did not plat** it. *Odyssey Doc. 22*, p. 81, l. 5-7, and p. 90, Line 21 [emphasis supplied]. Yet, curiously, he did not produce a plat to support his assertion. Nevertheless, it is clear from the record that all of the parties, **including Estad**, operated under the belief the parcel was platted. See *Odyssey Docs. 19 & 22*.
- [21] Of significance, Estad changed his position between the first meeting of the Board held March 3, 2020, and the second meeting of the Board held March 17, 2020. During the March 17th meeting, Estad asserted that the parcel was "**still un-platted land**." See *Odyssey Doc. 26*, p. 123, Line 7 [emphasis supplied].
- [22] With this backdrop, the Court moves forward to consider the heart of Estad's appeal.

Taxation of Agricultural Property and Improvements

- [23] The North Dakota Century Code sets out numerous classifications of property for taxation purposes. N.D.C.C. § 57-02-01 lists:
1. Agricultural property
 2. Air carrier transportation property
 4. Centrally assessed property
 5. Commercial property (all property, or portions of property, not included in subsections 1, 4, 11 & 12)
 11. Railroad property, and
 12. Residential property.

The Court notes that the definition of commercial property is a catch-all definition. All property is commercial, unless it is agricultural, centrally assessed, railroad or residential.

- [24] Of specific import to the case *sub judice* is the statutory definition of agricultural property. The definition of agricultural property is found at N.D.C.C. § 57-02-01 at subsection 1:

"Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to use other than raising agricultural crops or grazing farm animals . . .

In general, land used for raising agricultural crops or grazing farm animals is taxed as agricultural property.

- [25] This definition then carves out an exception related specifically to property that was platted after March 30, 1981. The exception is that property platted after that date "is not agricultural property" when four of seven conditions exist. Those seven conditions are:

- (1) *The land is platted by the owner.*
- (2) *Public improvements, including sewer, water, or streets, are in place.*
- (3) *Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.*
- (4) *Property is zoned other than agricultural.*
- (5) *Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.*

- (6) *The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.*
- (7) *The property sells for more than four times the county average true and full agricultural value.*

N.D.C.C. § 57-02-01(1)(a).

[26] Overlaying this definition of agricultural property is the provision of North Dakota law which provides exemption from taxation for certain farm structures and improvements located on agricultural lands. Specifically, N.D.C.C. § 57-02-08 states:

All property described in this section to the extent herein limited shall be exempt from taxation:

a. *All farm structures and improvements located on agricultural lands.*

(1) *This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant,³ or as a farm residence.*

(3) *Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, any structure or improvement used by a manufacturing facility as defined in section 19-24.1-01, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.*

³ According to the North Dakota Office of State Tax Commissioner, the farm plant is "*the entire farm enterprise operated as an economic unit.*" The document specifies that the land where the building is sitting "*must be used for raising agricultural crops.*" *Odyssey Docs. 49 & 50, ¶ 1.*

- [27] The Board was required to utilize this legal framework when considering the appropriate classification of Estad's potato warehouse.

Review of Decision

- [28] Did the Board act arbitrarily, capriciously or unreasonably? The record contains a full history of the Board's review related to the classification of Estad's property. It shows the Board considered numerous factors before reaching its decision.

- A. The Board discussed the matter at numerous meetings. *Odyssey Docs. 14, 17, 18, 20-22 & 24-26.*
- B. The Board relied upon information collected and presented by the County Tax Director. *Odyssey Docs. 16, 19, 23, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39, 40, 41 & 44.*
- C. The Board considered the recommendation of the Township Board of Equalization. *Odyssey Docs. 12, 13, 15 & 27.*
- D. The Board reviewed information about the history, location, and use of the property. *Odyssey Docs. 33, 34, 42, 43, 45, 46, 47 & 48.*
- E. The Board considered historical records regarding the town of Crystal. *Odyssey Docs. 51 & 52.*
- F. The Board considered information provided by the County State's Attorney and the State of North Dakota. *Odyssey Docs. 49, 50 & 53.*
- G. Significantly, the record reflects Estad's active participation throughout the process. The record shows Estad was in communication with the County Tax Director, and he was afforded numerous opportunities to address the Board regarding the taxation status of his property.

- [29] Based upon these actions by the Board, it is evident the members conducted a comprehensive examination of the issue before arriving at a decision. In that regard, the Board did not act arbitrarily, capriciously or unreasonably.

- [30] The analysis does not end here, however. The more salient issue in this appeal is whether, after considering all of the aforementioned information, the Board correctly

interpreted and applied the law to that information. Failure to do so has been deemed arbitrary, capricious and/or unreasonable. *Trollwood Village, supra*.

[31] *Did the Board correctly interpret and apply the controlling law?* The record is replete with efforts by the Board to follow the law regarding taxation of Estad's potato warehouse. But to answer this question, the Court must walk through the statutes before deciding whether the Board correctly interpreted and applied the law. This analysis is fact driven.

[32] Still, this Court is mindful that it must not substitute its judgment for that of the Board. *Dakota Northwestern Assoc. Ltd. Partnership v. Burleigh Co. Bd. of Co. Comm.*, 2000 ND 164, ¶ 8, 616 N.W.2d 349; *Appeal of Johnson*, 173 N.W.2d 475, 484 (N.D. 1970). The Board is presumed to have faithfully performed its duties, to have exercised its discretion in honesty and good faith, and to have sufficient and competent evidence before it to justify its decision. *Ulvedal, supra*.

[33] The Court undertakes its review of the correct interpretation and application of the controlling law as follows:

- A. First, the Court refers to N.D.C.C. § 57-02-08, which is the statute listing various properties exempt from taxation. This statute exempts "all farm structures and improvements located on agricultural lands."
- B. Next, the Court looks to N.D.C.C. § 57-02-01(1), which provides the definition of agricultural property, regardless of whether the property is or is not platted. A parsing of this definition is required under the facts of this case.
 - i. Is the 11 acres, whether platted or not platted, used for raising agricultural crops?⁴ The County Tax Director consistently asserted the land was not being used to raise agricultural crops. In fact, the record shows in 2015 the parcel was reclassified from agricultural to commercial. *Odyssey Doc. 23*, p. 105. Estad asserted that the parcel is used as an economic unit with his farming operation of cultivating and harvesting potatoes. *Odyssey Doc. 22*, p. 90, l. 21 and p. 91, l. 10-17. The crux of Estad's argument is that the land always was agricultural, and it remains agricultural because it is an extension of his farm plant.

⁴ That portion of the statute referring to grazing animals is not referred to in the Court's analysis, as there is no evidence that the parcel was or is used for animal husbandry.

- ii. Accepting Estad's argument, the analysis then returns to § 57-02-08 to determine if the potato warehouse is an exempt structure.
- iii. Relying upon § 57-02-08(15)(a)(1), a reasonable person could conclude that the potato warehouse is an exempt structure as part of Estad's farm plant. But further reading of the statute is required.
- iv. § 57-02-08(15)(a)(3) provides that "any structure or improvement located on platted land within the corporate limits of a city" is not exempt. At the March 3, 2020, meeting of the Board, the Tax Director asserted, "the land was platted by the owner when you took it and platted it." *Odyssey Doc. 22*, p. 64. Estad did not object to this characterization of the parcel as being platted. In fact, Estad represented that his parcel was platted. *See* ¶ 20, *supra*. The record clearly establishes the potato warehouse is within the corporate limits of the town of Crystal. Both provisions being met, the plain language of this subdivision would result in a determination that Estad's potato warehouse is not an exempt structure.

C. But arguments on appeal address other issues as well. The record shows that the Board considered further the definition of agricultural property as applied to Estad's potato warehouse, specifically the second phrase of § 57-02-01(1). That phrase provides that lands *platted and assessed* as agricultural property *prior* to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops.

- i. Relying upon Estad's representation that the property was platted (¶ 20, *supra*), the question becomes: Was the land assessed as agricultural property prior to March 30, 1981? The record shows that all concerned accepted without objection that the parcel had been assessed as agricultural land until 2015, when it was changed to commercial land. *Odyssey Doc. 26*, p. 118, l. 3-8.
- ii. Hence, when Estad purchased approximately 12.5 acres in 2009 (*Odyssey Doc. 42*), he purchased property that had been classified as agricultural land. The record shows that in 2012, he began making plans for the construction of an office building and a potato warehouse on this site. *Odyssey Docs. 33 & 34*.
- iii. In 2015, Estad parceled out a little more than 1 acre where the office building had been constructed. That property was then classified as

commercial land and the office building taxed as an improvement. *Odyssey Doc. 26*, p.117, l. 20-21 and p.118, l. 1-2. The reclassification of the office building and property was without objection by Estad. *Odyssey Doc. 22*, p. 75, l. 9-14.

- iv. Again, it is the reclassification of the remaining 11 acres that is the point of contention. Estad is steadfast the construction of his potato warehouse on those remaining 11 acres constitutes part of his ongoing farming operation, and hence the use is agricultural. Estad acknowledges the portion of the 11 acres not dedicated to the warehouse structure is not being farmed by him, and he considers it wasteland. *Odyssey Doc. 26*, p. 129, l. 18-19.
- v. To tie up this line of analysis, then, the issue to be addressed is: Was the property "put to a use other than raising agricultural crops?" In other words, in 2015 when Estad carved out 1.39 acres from his original 12.5 acre purchase to establish his commercial office building, did that change the nature of the remaining acreage such that it was no longer used for raising agricultural crops?
- vi. The evidence in the record, when viewed from the perspective of the Board's decision, supports the reasonable conclusion that the remaining 11 acres was being put to a use other than raising agricultural crops. The evidence before the Board included that (a) Estad had purchased a relatively small parcel of land for a price significantly greater than the price of agricultural land, (b) that he then developed a commercial office on a portion of the parcel, and the construction of the office was contemporaneous with the construction of the potato warehouse, (c) that the property was within the city limits of Crystal, at an intersection surrounded by other commercial businesses, (d) that Estad was no longer raising crops on the parcel because the construction of the commercial office and the potato warehouse ended viability to raise crops, and (e) that the potato warehouse parcel also contained the welcome sign for the town of Crystal. Although Estad does not agree, it is nevertheless a reasonable conclusion reached by the Board.
- vii. Based upon this analysis, the Board had evidence that the use of the 11 acres changed from raising agricultural crops to commercial use. Consequently, the Board reasonably concluded that although the parcel had previously been platted and assessed as agricultural

property, it was now being put to a use other than raising agricultural crops. Applying this phrase of the statute to Estad's situation, the potato warehouse is not an exempt structure.

- D. Although likely unnecessary because of Estad's prior representation that the parcel had always been platted, the Board also considered that provision of § 57-02-01 regarding property platted *after* March 30, 1981. The record suggests that at the conclusion of the March 3rd meeting, the parties were in agreement that at the next meeting they would review the factors listed in subsection 1, subparagraph a, of § 57-02-01. *Odyssey Doc. 22*, pp. 100-102. The record contains a point-by-point analysis conducted during that follow-up meeting. *Odyssey Doc. 26*.
- i. At the March 17th hearing, the County Tax Director presented to the Board based upon the parcel being platted after 1981. It appears the County Tax Director believed the land was "platted" when purchased in 2009 and/or "platted" when the commercial office building was parceled out in 2015.⁵ The County Tax Director asserted that Estad met six of the seven factors to be considered. *Odyssey Doc. 26*, p. 117-123. *See also Odyssey Doc. 23*, described as "Pembina County Tax Director's Narrative – Commission Meeting March 17, 2020," which provides a comprehensive explanation of the seven factors.
 - ii. Only at the very end of the hearing on March 17th did Estad assert to the Board that the property was not platted. *See* ¶ 21, *supra*.
 - iii. Estad was at the meeting, addressed the Board, interacted with the County Tax Director, and voiced his disagreement with the analysis presented. *Odyssey Doc. 26*, pp. 120-134, pp. 4-18.
 - v. The Board then voted on and determined that six of the seven factors existed, and therefore the potato warehouse is not an exempt structure. *Odyssey Doc. 26*, p. 134.

[34] Based upon this analysis of the operations of the Board, the record shows the Board considered the evidence presented by the County Tax Director as well as evidence presented by Estad, and then applied the law to the various statutory schemes that could be utilized under the circumstances of Estad's situation. That

⁵ The Court knows not whether this is based upon an erroneous view of the effect of the recordation of the deed, or whether there are plats on file for these pieces of property.

the Board reached a conclusion different than Estad does not mean it wrongfully interpreted and/or applied the law.

- [35] This decision was clearly within the discretion of the Board, who is to consider and weigh the information presented and reach a conclusion. Although the Board did not have an actual plat of Estad's parcel in the record, they most certainly could rely on Estad's initial representation to them that the land was platted, and had been long before he took ownership of it in 2009. Whether the platting took place before or after March 30, 1981, matters not. Under either analysis, the record supports that that the potato warehouse is **not an exempt structure**. The Board did not incorrectly interpret or apply the law to the evidence as presented.
- [36] In the same vein, if the Board's belief that the land was platted is later determined to be factually inaccurate – that is of no consequence to the end result. Ultimately, the question of whether the land has an agricultural use comes back to the analysis of whether the land is being used to raise crops. As determined in ¶ 33(C)(vi), *supra*, the Board considered the use of the land, and did not see the parcel as having an agricultural nature. If the land itself is no longer agricultural in use, than any building thereon is **not an exempt structure**.
- [37] In other words, regardless of how Estad presents the property to the Board (*i.e.*, platted, unplatted), the issue always returns to whether the parcel is agricultural land or not. Ultimately, the Board exercised its discretion and reasonably concluded that the parcel should be reclassified from agricultural to commercial use based upon all of the evidence in the record.
- [38] *Did the Board have substantial evidence to support its decision?* Finally, this Court must address Estad's argument that the Board did not have substantial evidence to support its decision. The Court has combed this record, which includes documentation not only of public meetings but also of work undertaken by the County Tax Director to document the nature and use of the property at issue. The record is extensive, and this Court has referenced point by point, *supra*, the evidence before the Board.
- [39] Additional recital of the "substantial evidence" is unnecessary. There was ample and competent evidence presented which allowed the Board to reach its conclusion that the potato warehouse is not an exempt structure. No hearing is perfect, and gaps in information can exist that do not require a reviewing Court to overturn a decision made in honesty and good faith. The decision of the Board that the potato warehouse is **not an exempt structure** is supported by substantial evidence.

Order

- [40] This Court, having reviewed the record and arguments presented by the parties, finds that the Pembina County Board of County Commissioners did not act arbitrarily, capriciously, or unreasonably and its decision was based upon substantial evidence contained within the record. The Board's decision that Estad's potato warehouse is not an exempt structure is **AFFIRMED**.
- [41] The Court appreciates the length of time this case has been before the Court awaiting decision. The Court thanks the parties and counsel for their patience during the pendency of this appeal.
- [42] **IT IS SO ORDERED** this 2nd day of March, 2021.

BY THE COURT:



Barbara L. Whelan
District Court Judge
Northeast Judicial District

March 15, 2023

Chairman Thomas and members of the House Agriculture Committee
Legislative Assembly of North Dakota

Re: Senate Bill 2279
SUPPORT Letter

Representatives Thomas and Members,

My family has been raising potatoes in the Crystal area for over 70 years. When potatoes were first grown, the only mode of transportation was the railroad. Therefore, most of the potato storages were built on or near a railroad for access to transportation. Most of them were on Railroad Lease property out of necessity and were therefore considered commercial property.

As the industry has grown the warehouses have grown larger and most of the lease property has been bought by the farmers. Since the farmers now own their property, they should no longer be considered commercial property. They are storing only their own potatoes and not using the warehouses commercially such as storing other people's potatoes. Therefore, these storages should be considered part of their larger farm unit because without them they would not be raising potatoes.

This is not only a problem for potato storages but many grain and other agricultural storage warehouses that end up being on small parcels away from their farm plant. I know there is many grain bin sites located away from the main farm. It could even be an abandoned grain elevator in a town that can be put to good use and kept up instead of falling down. Would it be bought by a farmer if it was considered commercial property? Probably not.

I believe North Dakota law intends for all farm property to be Agricultural not commercial

Therefore, these warehouses should be considered agricultural and not taxed commercial.

This needs to be clarified because not all storage in the state is treated equally. This Bill will accomplish that.

I respectfully request the ND Agriculture Committee votes to **support SB 2279**.

Sincerely,

David Moquist

Bill 2279 Support letter

March 16, 2023

Good Morning Chairman Thomas and Members of the House Agriculture Committee

The passage of this bill is important to help bring clarity to situations such as what happened in 2017 to my parcels. In 2009 I purchased a 12 acre parcel of farm land that at the time of purchase was a township parcel, 11 years later changed to a parcel in the city limits of Crystal. It was agricultural property nonetheless, I built a potato warehouse on it in 2009 with the counties permission, and used it as any other farm storage building would be used. I harvest and store my own products in it. In 2017 our county tax department changed the classification on this 12 acre parcel to commercial without notification to me, and then proceeded to tax the improvement (warehouse) as commercial even though it was still used as part for my farming operation. Taxes on this property went from \$177 to \$31,581, yes that is correct, \$177 to \$31,581. They took this approach on other properties near Crystal as well.

The county, themselves has gone back and forth on whether it should be taxed as commercial or agricultural, all dependent on how they feel on any given day. The first couple years they claimed to be researching the issue and didn't apply the tax to the improvement, then the next year they decide to tax the improvement as commercial, after a 3 year legal battle, they exempt the property again but refused to pay back the commercial tax from the previous year. All which took place after the deadline to appeal at the State level that year. Hopefully with the passage of this bill with its proposed amendments, it will help maintain the intent of NDCC. This battle with the county government has been on going and been a costly unpleasant experience for all those involved.

I respectfully request this committee to recommend a DO-PASS

Sincerely,

Loren Estad
Crystal, ND

Heuchert Willow Creek Ranch
Josh Heuchert Farms
H & V Farms
P.O. Box 33
Hensel, ND 58241

3/15/2023

ND House Agriculture Committee
Room JW327C
State Capitol Building
Bismarck, ND

Dear Chairman Thomas:

We are writing you today in support of **SB 2279** and would like a **DO PASS** from your distinguished committee. I planned to be in attendance but with weather and community issues around cavalier the last couple days I decided to write and attend virtually tomorrow.

Our Farm(s) and our neighbors have been dealing with Ag storage taxation issues in and around Pembina County for many years now. We have been thru costly abatements, legal challenges, countless meetings, and poorly educated local officials making unfounded determinations within century code. Tax increases because of reclassification to commercial have been steep and unjust. Our neighbor Loren Estad's took the top prize from \$177 to \$31,581. That is a 17,742.4% increase in taxation. We have multiple properties that are owned privately by our farm(s) that are part of our farm plant and those were reclassified commercial with increases surpassing 4300%. We shouldn't have to burden your House Ag Committee with redefining new code, when existing code has worked for years.

We are simply storing our crops grown on our farm(s) for an upcoming market. Some of these commodities include Grains and Potatoes. Potatoes are a perishable commodity and must be properly stored. Also, you must have storage to be a potato producer in North Dakota. The only changes made to our grain or potatoes during storage is water removal from air systems (shrink), dirt, or dockage. Some of this removal of dirt or dockage is done by hand, or mechanical methods like a screener, chain conveyor.

It frustrates me to say that in some of our local county interactions where the Prior States Attorney advised the current PC Tax director and the County Commission that we were making French fries in the warehouses therefore we added value. (I have the Audio File) I'd like to be on record **WE DO NOT PHYSCALLY OR CHEMICALLY MODIFY OUR CROPS, MAKE FRENCH FRIES, OR ANY OTHER KINDS OF MANUFACTURED PRODUCTS.** I think having to actually type that statement out is absurd. It also frustrates me that we tried to rectify this in court beside Loren Estad. The court case

Chairman Thomas

3/15/2023

Page 2

was “limited in scope to evidence on the record” under (Appellee paragraph) (9) in the PC Tax Directors Testimony. Did we get all the critical facts into the Record? We asked the Prior States Attorney to Get an Attorney General Opinion on some Language in the NDCC about Platted Land to help clarify things. The Pembina County Commission Instructed her by motion and a Vote 3 times to do this. She refused to agree to accommodate the Commission’s request for the record. (Also, on Audio files). We were told a citizen cannot ask for an Attorney Generals Opinion so we asked the Pembina County Commission to ask. The Court case also says “an understanding of the word Platted is needed to move forward with this case” in Paragraph (13)(of the Parcel at issue) also, found in the PC Tax Directors testimony. **The court case only offers that the PC Commission didn’t act arbitrary, capricious, or unreasonable** on their decision with the fact provided. I didn’t define platted as the judge needed, or consider any new information we found or provided after it was filed.

In the last paragraph on PC Tax Directors testimony, she adds that is we decrease the evaluations the burden will fall on the remaining tax payers. Farmers have that square on our backs already. Without us utilizing some of these structures they would fall back to the county for demolition for back taxes. This land was taxed as ag land. The county moved it to commercial. We lost a Court case. We then brought a single cow to graze the grass around the warehouse. (Because the PC Tax Director told the PC Commission anything with cows is AG). The county moved it back to ag land where it sits today. There is no rhyme, reason, or consistency to there application on NDCC.

I truly Hate writing a letter like this but we are at our limits. It would take a novel to describe our experience dealing with this issue. So with all this frustration we ask that clearer heads prevail and help ND farmers utilize the tools necessary to bring our goods properly to market. We need now ever so greater clarity in the Law and Statutes so we are all on a level, well defined playing field. We want to Farm, be good neighbors, and community members. We don’t aspire to be scholars of the Law or the NDCC at every turn.

Sincerely,
Josh Heuchert

Donald W. Flaherty
Mayor

Candace Middlestead
Auditor

ellendal@drtel.net



City of Ellendale

Box 267
Ellendale, ND 58436

Phone 701-349-3252
Fax 701-349-3333
TDD 800-366-6889

www.ellendalend.gov

2023 House Agriculture Committee
Honorable Representative Paul Thomas, Chairman
North Dakota State Capitol

March 16, 2023

Dear Representative Thomas and Members of the House Agriculture Committee:

My name is Don Flaherty and I am the Mayor of the City of Ellendale. I am also the Director of Tax Equalization for Dickey County. I am writing to you today in opposition to SB 2279. I believe that the proposed addition to section 57-02-08 to provide a property tax exemption for the personal use of agricultural commodity structures on commercial property will have an impact on all types of cities in ways that cannot be fully anticipated without further study.

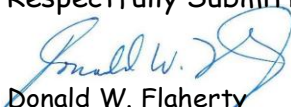
I commend Senator Myrdal for the changes she is proposing to her own bill for I believe they are a step in the right direction. My concern is that the concept may be good but the implementation can have adverse effects that have not been discussed and I would like to see any change of this type be thoroughly vetted before its implementation.

Cities will be concerned that an expansion of these types of structures will have a negative impact on current infrastructure and the emergency services that serve the area. This will lead to increased costs that cannot be off-set by a growing tax base since these buildings will no longer be a part that tax base. The advantages this exemption provides for a specific group of people will create an unfair advantage to other business in the area. In addition, there are health concerns and pest control issues that will be magnified by this exemption in ways yet to be determined.

The aspects of this legislation have a much further reach than is commonly understood and would have a huge impact on all the cities within the state.

Therefore, I would strongly recommend that SB 2279 be amended into a study so that a change of this magnitude may be better understood before it becomes law.

Respectfully Submitted,


Donald W. Flaherty
Mayor of Ellendale

"This institution is an equal opportunity provider and employer"

Northland
POTATO GROWERS ASSOCIATION



January 27, 2023

Re: Senate Bill 2279
SUPPORT Letter

We are writing this letter in **SUPPORT of SB 2279** relating to a commercial property tax exemption for grain elevator and potato warehouse property used for personal use.

The Northland Potato Growers Association (NPGA) represents 150+ potato growers across ND. As you are aware, potatoes are a perishable crop that must be properly stored in warehouses and buildings to extend their life for timely processing and shipping throughout the winter, spring and summer months. Many of these warehouses are located within town/city boundaries for the express purpose of ease of shipping, safety, transportation, etc. Some buildings are located adjacent to rail lines/spurs to accommodate shipping potatoes across the country. The vast majority of these warehouses are used exclusively to store and ship from the grower's own personal potato crop.

We respectfully request the approval of SB 2279.

Sincerely,

Donavon Johnson
President

Northland
POTATO GROWERS ASSOCIATION



January 27, 2023

Re: Senate Bill 2279
SUPPORT Letter

We are writing this letter in **SUPPORT of SB 2279** relating to a commercial property tax exemption for grain elevator and potato warehouse property used for personal use.

The Northland Potato Growers Association (NPGA) represents 150+ potato growers across ND. As you are aware, potatoes are a perishable crop that must be properly stored in warehouses and buildings to extend their life for timely processing and shipping throughout the winter, spring and summer months. Many of these warehouses are located within town/city boundaries for the express purpose of ease of shipping, safety, transportation, etc. Some buildings are located adjacent to rail lines/spurs to accommodate shipping potatoes across the country. The vast majority of these warehouses are used exclusively to store and ship from the grower's own personal potato crop.

We respectfully request the approval of SB 2279.

Sincerely,

Donavon Johnson
President

Engrossed Senate Bill 2279 with anticipated House Amendments
Property Tax Exemption for
Agricultural Commodity Storage Structures

EXEMPT Agricultural Commodity Storage Structures under SB 2279 *

- Farmer Owns Ag Structure and stores their own Ag Commodities.
- Farmer Owns Ag Structure and stores Direct Relative's Ag Commodities.
- Farmer Owns Ag Structure and stores their own & Direct Relative's Ag Commodities.
- Farmer Owns Ag Structure and Leases to Direct Relative who stores their own Ag Commodities.
- Farmer Owns Ag Structure and Leases to Farmer No. 2 (not a Direct Relative) and Farmer No. 2 stores their own Ag Commodities.

Storage Structures that are NOT EXEMPT under SB 2279

- Farmer Owns Ag Structure and stores their own Ag Commodities in conjunction with or after processing that results in a value added physical or chemical change.
- Farmer Owns Ag Structure and a person who is not a Farmer and not a Direct Relative stores their own Ag Commodities.
- Farmer Owns Ag Structure and Leases to Non-Farmer who stores their own Ag Commodities.
- Farmer Owns Ag Structure and Leases to Non-Farmer even if Direct Relative of Farmer stores their own Ag Commodities.
- Non-Farmer Owns Ag Structure and stores their own Ag Commodities.
- Non-Farmer Owns Ag Structure and stores their Direct Relative's own Ag Commodities.

* These structures are not exempt under the existing exemption farm structures and improvements exemption because these storage structures are located on commercial property.

23.0616.02002

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2279

Introduced by

Senators Myrdal, Luick, Weber, Weston

Representatives Grueneich, Monson

1 | A BILL for an Act to amend and reenact ~~subdivision a of~~ subsection 15 of section 57-02-08 of
2 | the North Dakota Century Code, relating to the farm structure and improvements property tax
3 | exemption; and to provide an effective date.

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

5 | ~~**SECTION 1. AMENDMENT.** Subdivision a of subsection 15 of section 57-02-08 of the North~~
6 | ~~Dakota Century Code is amended and reenacted as follows:~~

7 | ~~a. All farm Farm structures and improvements located on agricultural lands as~~
8 | ~~provided in this subdivision.~~

9 | ~~(1) This subsection subdivision must be construed to exempt farm buildings and~~
10 | ~~improvements only located on land used for an agricultural operation,~~
11 | ~~and with the exception of farm residences and structures used by a farmer to~~
12 | ~~provide housing for a farm employee, which must be located on agricultural~~
13 | ~~land. This subdivision may not be construed to exempt from taxation~~
14 | ~~industrial plants, or structures of any kind not used or intended for use as a~~
15 | ~~part of a farm plant, or as a farm residence.~~

16 | ~~(2) "Farm buildings and improvements" used or intended for use as a part of a~~
17 | ~~farm plant includes a:~~

18 | ~~(a) A greenhouse or other building used primarily for the growing of~~
19 | ~~horticultural or nursery products from seed, cuttings, or roots, if not~~
20 | ~~used on more than an occasional basis for a showroom for the retail~~
21 | ~~sale of horticultural or nursery products. A greenhouse or building~~
22 | ~~used primarily for display and sale of grown horticultural or nursery~~
23 | ~~products is not a farm building or improvement.~~

- 1 ~~(b) An agricultural commodity storage structure used exclusively for~~
2 ~~personal use which is permanently affixed to the land. To qualify for an~~
3 ~~exemption under this subdivision, an agricultural commodity storage~~
4 ~~structure may not be rented to an individual who is not a direct relative~~
5 ~~of the owner of the structure.~~
- 6 ~~(3) Any structure or improvement used primarily in connection with a retail or~~
7 ~~wholesale business other than farming, any structure or improvement,~~
8 ~~except an agricultural commodity storage structure as provided in~~
9 ~~subparagraph b of paragraph 2, located on platted land within the corporate~~
10 ~~limits of a city, any structure or improvement used by a manufacturing~~
11 ~~facility as defined in section 19-24.1-01, or any structure or improvement~~
12 ~~located on railroad operating property subject to assessment under chapter~~
13 ~~57-05 is not exempt under this subsection. For purposes of this paragraph,~~
14 ~~"business other than farming" includes processing to produce a value-added~~
15 ~~physical or chemical change in an agricultural commodity beyond the~~
16 ~~ordinary handling of that commodity by a farmer prior to sale.~~
- 17 ~~(4) The following factors may not be considered in application of the exemption~~
18 ~~under this subsection:~~
- 19 ~~(a) Whether the farmer grows or purchases feed for animals raised on the~~
20 ~~farm.~~
- 21 ~~(b) Whether animals being raised on the farm are owned by the farmer.~~
- 22 ~~(c) Whether the farm's replacement animals are produced on the farm.~~
- 23 ~~(d) Whether the farmer is engaged in contract feeding of animals on the~~
24 ~~farm.~~
- 25 ~~(5) For purposes of this subdivision:~~
- 26 ~~(a) "Agricultural commodities" include barley, buckwheat, canola, corn,~~
27 ~~crabwe, flaxseed, hay, hemp, honey, lentils, mustard seed, oats,~~
28 ~~peas, potatoes, safflower, sorghum, soybeans, sunflower seed,~~
29 ~~sesame seed, and wheat, all whether harvested as whole grain or~~
30 ~~other than whole grain.~~

- 1 ~~(b) "Direct relative" means a spouse, surviving spouse, child, parent,~~
2 ~~brother, sister, grandparent, great-grandparent, grandchild, great-~~
3 ~~grandchild, aunt, uncle, niece, nephew, first cousin, or second cousin,~~
4 ~~whether by blood, adoption, or marriage.~~
- 5 ~~(c) "Land used for an agricultural operation" means a single tract or~~
6 ~~multiple tracts of platted or unplatted agricultural or commercial land,~~
7 ~~which are not required to be contiguous, used for raising agricultural~~
8 ~~crops, grazing farm animals, storing or preserving agricultural~~
9 ~~commodities in a structure as provided in subparagraph b of~~
10 ~~paragraph 2, or other similar operations normally associated with~~
11 ~~farming and ranching.~~
- 12 ~~(d) "Personal use" means the use of a structure exclusively for post-~~
13 ~~harvest storage and preservation of agricultural commodities~~
14 ~~produced by the owner of the structure or a direct relative of the~~
15 ~~owner. The term does not include the use of a structure to store or~~
16 ~~preserve agricultural commodities produced by individuals other than~~
17 ~~the owner of the structure or the owner's direct relatives. For purposes~~
18 ~~of this subparagraph, "preserve" means the ordinary handling of~~
19 ~~agricultural commodities prior to sale and does not include processing~~
20 ~~that results in a value-added physical or chemical change to the~~
21 ~~agricultural commodity.~~

22 **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 15. a. All farm structures and improvements located on agricultural lands.
- 25 (1) This subsection must be construed to exempt farm buildings and
26 improvements only, and may not be construed to exempt from taxation
27 industrial plants, or structures of any kind not used or intended for use as a
28 part of a farm plant, or as a farm residence.
- 29 (2) "Farm buildings and improvements" includes a greenhouse or other building
30 used primarily for the growing of horticultural or nursery products from seed,
31 cuttings, or roots, if not used on more than an occasional basis for a

- 1 showroom for the retail sale of horticultural or nursery products. A
2 greenhouse or building used primarily for display and sale of grown
3 horticultural or nursery products is not a farm building or improvement.
- 4 (3) Any structure or improvement used primarily in connection with a retail or
5 wholesale business other than farming, any structure or improvement,
6 except an agricultural commodity storage structure as provided in
7 subdivision b. located on platted land within the corporate limits of a city,
8 any structure or improvement used by a manufacturing facility as defined in
9 section 19-24.1-01, or any structure or improvement located on railroad
10 operating property subject to assessment under chapter 57-05 is not
11 exempt under this subsection. For purposes of this paragraph, "business
12 other than farming" includes processing to produce a value-added physical
13 or chemical change in an agricultural commodity beyond the ordinary
14 handling of that commodity by a farmer prior to sale.
- 15 (4) The following factors may not be considered in application of the exemption
16 under this subsection:
- 17 (a) Whether the farmer grows or purchases feed for animals raised on the
18 farm.
- 19 (b) Whether animals being raised on the farm are owned by the farmer.
- 20 (c) Whether the farm's replacement animals are produced on the farm.
- 21 (d) Whether the farmer is engaged in contract feeding of animals on the
22 farm.
- 23 b. An agricultural commodity storage structure that is permanently affixed to
24 commercial property, owned by a farmer, and used exclusively for personal use
25 by the owner, a direct relative of the owner, or another farmer. For purposes of
26 this subdivision:
- 27 (1) "Agricultural commodity" includes barley, buckwheat, canola, corn, crambe,
28 flaxseed, hay, hemp, honey, lentils, mustard seed, oats, peas, potatoes,
29 safflower, sorghum, soybeans, sunflower seed, sesame seed, and wheat, all
30 whether harvested as whole grain or other than whole grain.

- 1 (2) "Direct relative" means a spouse, surviving spouse, child, parent, brother,
2 sister, grandparent, great-grandparent, grandchild, great-grandchild, aunt,
3 uncle, niece, nephew, first cousin, or second cousin, whether by blood,
4 adoption, or marriage.
- 5 (3) "Personal use" means the use of a structure for postharvest storage and
6 preservation of agricultural commodities produced by the owner of the
7 structure, a direct relative of the owner, or a farmer leasing the storage
8 structure associated with rented land. The term does not include the use of
9 a structure to store or preserve agricultural commodities produced by
10 individuals other than the owner of the structure, a direct relative of the
11 owner, or a farmer leasing the storage structure associated with rented land.
- 12 (4) "Preserve" means the ordinary handling of agricultural commodities prior to
13 sale and does not include processing that results in a value-added physical
14 or chemical change to the agricultural commodity.
- 15 c. It is the intent of the legislative assembly that this exemption as applied to a
16 residence must be strictly construed and interpreted to exempt only a residence
17 that is situated on a farm and which is occupied or used by a person who is a
18 farmer and that the exemption may not be applied to property which is occupied
19 or used by a person who is not a farmer. For purposes of this subdivision:
- 20 (1) "Farm" means a single tract or contiguous tracts of agricultural land
21 containing a minimum of ten acres [4.05 hectares] and for which the farmer,
22 actually farming the land or engaged in the raising of livestock or other
23 similar operations normally associated with farming and ranching, has
24 annual gross income from farming activities which is sixty-six percent or
25 more of annual gross income, including gross income of a spouse if
26 married, during any of the two preceding calendar years.
- 27 (2) "Farmer" means an individual who normally devotes the major portion of
28 time to the activities of producing products of the soil, with the exception of
29 marijuana grown under chapter 19-24.1; poultry; livestock; or dairy farming
30 in such products' unmanufactured state and has received annual gross
31 income from farming activities which is sixty-six percent or more of annual

1 gross income, including gross income of a spouse if married, during any of
2 the two preceding calendar years. For purposes of this paragraph, "farmer"
3 includes a:

4 (a) "Beginning farmer", which means an individual who has begun
5 occupancy and operation of a farm within the two preceding calendar
6 years; who normally devotes the major portion of time to the activities
7 of producing products of the soil, poultry, livestock, or dairy farming in
8 such products' unmanufactured state; and who does not have a
9 history of farm income from farm operation for each of the two
10 preceding calendar years.

11 (b) "Retired farmer", which means an individual who is retired because of
12 illness or age and who at the time of retirement owned and occupied
13 as a farmer the residence in which the person lives and for which the
14 exemption is claimed.

15 (c) "Surviving spouse of a farmer", which means the surviving spouse of
16 an individual who is deceased, who at the time of death owned and
17 occupied as a farmer the residence in which the surviving spouse
18 lives and for which the exemption is claimed. The exemption under
19 this subparagraph expires at the end of the fifth taxable year after the
20 taxable year of death of an individual who at the time of death was an
21 active farmer. The exemption under this subparagraph applies for as
22 long as the residence is continuously occupied by the surviving
23 spouse of an individual who at the time of death was a retired farmer.

24 (3) "Gross income" means gross income as defined under the federal Internal
25 Revenue Code and does not include a gain from the sale or exchange of
26 farm machinery as computed for federal income tax purposes. For purposes
27 of this paragraph, "farm machinery" means all vehicular implements and
28 attachment units designed and sold for direct use in planting, cultivating, or
29 harvesting farm products or used in connection with the production of
30 agricultural produce or products, livestock, or poultry on farms, which are
31 operated, drawn, or propelled by motor or animal power. "Farm machinery"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

does not include vehicular implements operated wholly by hand or a motor vehicle that is required to be registered under chapter 57-40.3.

(4) "Gross income from farming activities" means gross income from farming as defined for purposes of determining if an individual is a farmer eligible to use the special estimated income tax payment rules for farmers under section 6654 of the federal Internal Revenue Code [26 U.S.C. 6654].

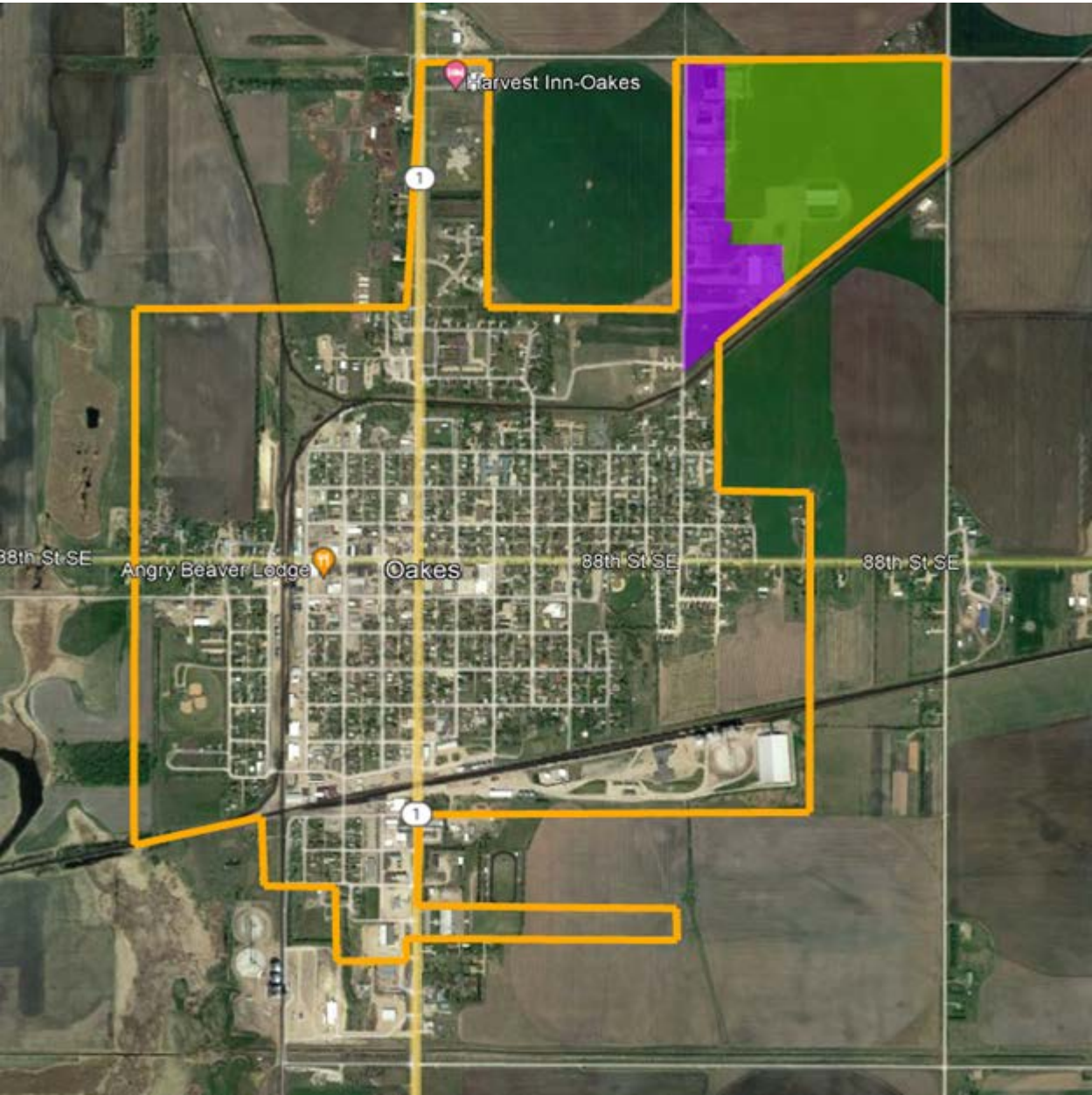
(5) When exemption is claimed under this subdivision for a residence, the occupant of the residence who it is claimed is a farmer shall provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that sixty-six percent or more of the gross income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, gross income from farming activities. The individual claiming the exemption also shall provide to the assessor, on a form prescribed by the tax commissioner, the necessary income information to demonstrate eligibility. Any income information provided to the assessor regarding eligibility for an exemption claimed under this subdivision is a confidential record.

(6) For purposes of this subsection, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.

(7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2022.





Harvest Inn-Oakes

1

88th St SE

Angry Beaver Lodge

Oakes

88th St SE

88th St SE

1

Testimony in Opposition to Senate Bill 2279
March 16, 2023
House Agriculture Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good morning, Mr. Chairman and members of the House Agriculture Committee. For the record. My name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in opposition to Senate Bill 2279.

This bill proposes to add an exemption to property taxation for agricultural commodity storage structures storing specified agricultural products produced by the owner of the warehouse or their direct relatives. These buildings no longer would need to be located on the primary farming tract. They could be anywhere.

A bill with similar intent was introduced as House Bill 1247. A copy is attached for your ease of reference. This bill was discussed at length by the House Finance and Taxation Committee who ultimately amended the bill into a study. The committee went further and included instructions for the study to cover issues it particularly wanted to have explored. These instructions are found on Lines 9 -14, Page 1 of the bill. The League of Cities thought these instructions were very well reasoned and has supported the amended bill and the study. HB 1247 passed the Senate last Friday and is on the way to the Governor's desk.

While the League of Cities has consistently opposed tax exemptions in the past on the grounds that each exemption only increases the tax burden for properties that are not exempt, the League supports this study as laid out in HB 1247. For these reasons the League opposes this bill and respectfully requests a Do Not Pass recommendation from the committee but it does support the study of the issues behind these bills. I will be happy to answer any questions you may have of me.

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1247

Introduced by

Representatives Grueneich, Brandenburg, Dockter, Heinert, Kempenich, Mitskog, Monson, J. Olson, Satrom, Weisz

Senators Erbele, Myrdal

1 A BILL for an Act to provide for a legislative management study regarding the impact of a
2 property tax exemption for agricultural products storage.

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

4 **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PROPERTY TAX EXEMPTION FOR**
5 **AGRICULTURAL PRODUCTS STORAGE.** During the 2023-24 interim, the legislative
6 management shall study the provision of a property tax exemption for elevators, warehouses,
7 and other farm structures classified as commercial property, which are privately owned and
8 used to store agricultural products produced by the owner or an individual related to the owner
9 as defined in section 10-06.1-12. The study must include consideration of the potential shift in
10 property tax burden if the exemption were to be enacted, the definitions of agricultural property
11 and farm plant as used in subsection 15 of section 57-02-08, and the impact of abandoned
12 elevators, potato warehouses, and other farm structures classified as commercial property on
13 the political subdivisions in which they are located, including the cost of refurbishment or
14 removal. The legislative management shall report its findings and recommendations, together
15 with any legislation required to implement the recommendations, to the sixty-ninth legislative
16 assembly.

Testimony on SB2279

Rep. David Monson

District 19

Good morning Chairman Thomas and members of the House Agriculture Committee. For the record I am Rep. David Monson from District 19 in far northeastern ND which includes all of Pembina County, most of Walsh County, and the eastern portion of Cavalier County.

I'm here to testify in favor of SB2279 which is before you today. I prepared a very similar bill to be introduced at the start of the session, but we decided this would be the vehicle to fix the problem we have been having in our area dealing with the taxation of personal potato storage facilities. It seems there has been some gray area in how various counties have taxed potato houses, and this bill should clarify it so all entities are able to get a clear message on how the taxes should be levied.

We had help from Commissioner Kroshus on writing the bill so it should be a good clean bill. I know the Senate made some changes to the original bill, and I think it is an improved bill now that considers various situations where one may end up renting bin space from their relatives.

I think you have some of my constituents online who can give you some testimony on how they have been affected by their potato house that was built years ago on ag land that has now been surrounded by the town and industry over the years. This has resulted in a change in their tax category that increased their property tax to a very extreme level despite no change in their operation of their farm. It is still for the storage of their personal farm commodities.

This bill is a good bill that should solve the problems we have in my area and be fair to everyone. It specifically says the building must be for storage of crops raised on their farm and be only for personal use. No commercial activity can be done there.

Thank you for your time and I'll stand for any questions.

23.0616.01002
Title.02000

Adopted by the Senate Agriculture and
Veterans Affairs Committee
January 26, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2279

Page 2, line 25, remove "To claim the exemption for an agricultural commodity storage structure"

Page 2, remove lines 26 through 28

Page 2, line 29, remove "(6)"

Page 2, line 31, after the fourth underscored comma insert "honey."

Page 3, line 4, after the first underscored comma insert "surviving spouse."

Page 3, line 5, after the first underscored comma insert "great-grandparent, grandchild, great-grandchild."

Page 3, line 5, remove the first "or"

Page 3, line 5, after the fifth underscored comma insert "first-cousin, or second-cousin."

Renumber accordingly

Prepared for
House Agriculture Committee
April 3, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2279

Page 1, line 1, remove "subdivision a of"

Page 1, line 2, replace "the farm structure and improvements" with "a"

Page 1, line 3, after "exemption" insert "for potato storage"

Page 1, remove lines 5 through 23

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 21

Page 3, after line 21, insert:

"SECTION 1. AMENDMENT. Subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands.
 - (1) This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.
 - (2) "Farm buildings and improvements" includes a greenhouse or other building used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for display and sale of grown horticultural or nursery products is not a farm building or improvement.
 - (3) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement, except a potato storage structure as provided in subdivision b. located on platted land within the corporate limits of a city, any structure or improvement used by a manufacturing facility as defined in section 19-24.1-01, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than

farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.

- (4) The following factors may not be considered in application of the exemption under this subsection:
- (a) Whether the farmer grows or purchases feed for animals raised on the farm.
 - (b) Whether animals being raised on the farm are owned by the farmer.
 - (c) Whether the farm's replacement animals are produced on the farm.
 - (d) Whether the farmer is engaged in contract feeding of animals on the farm.
- b. A potato storage structure which is permanently affixed to commercial property, owned by a farmer, and used exclusively for personal use by the owner, a direct relative of the owner, or another farmer. This exemption only applies to a potato storage structure that was originally constructed on agricultural property. For purposes of this subdivision:
- (1) "Direct relative" means a spouse, surviving spouse, child, parent, brother, sister, grandparent, great-grandparent, grandchild, great-grandchild, aunt, uncle, niece, nephew, first-cousin, or second-cousin, whether by blood, adoption, or marriage.
 - (2) "Personal use" means the use of a structure for post-harvest storage and preservation of potatoes produced by the owner of the structure, a direct relative of the owner, or a farmer leasing the storage structure associated with rented land. The term does not include the use of a structure to store or preserve potatoes produced by individuals other than the owner of the structure, a direct relative of the owner, or a farmer leasing the storage structure associated with rented land.
 - (3) "Preserve" means the ordinary handling of potatoes prior to sale and does not include processing that results in a value-added physical or chemical change to the potatoes.
- c. It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a

person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:

- (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has annual gross income from farming activities which is sixty-six percent or more of annual gross income, including gross income of a spouse if married, during any of the two preceding calendar years.
- (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, with the exception of marijuana grown under chapter 19-24.1; poultry; livestock; or dairy farming in such products' unmanufactured state and has received annual gross income from farming activities which is sixty-six percent or more of annual gross income, including gross income of a spouse if married, during any of the two preceding calendar years. For purposes of this paragraph, "farmer" includes a:
 - (a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the two preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the two preceding calendar years.
 - (b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
 - (c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at

the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.

- (3) "Gross income" means gross income as defined under the federal Internal Revenue Code and does not include a gain from the sale or exchange of farm machinery as computed for federal income tax purposes. For purposes of this paragraph, "farm machinery" means all vehicular implements and attachment units designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle that is required to be registered under chapter 57-40.3.
- (4) "Gross income from farming activities" means gross income from farming as defined for purposes of determining if an individual is a farmer eligible to use the special estimated income tax payment rules for farmers under section 6654 of the federal Internal Revenue Code [26 U.S.C. 6654].
- (5) When exemption is claimed under this subdivision for a residence, the occupant of the residence who it is claimed is a farmer shall provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that sixty-six percent or more of the gross income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, gross income from farming activities. The individual claiming the exemption also shall provide to the assessor, on a form prescribed by the tax commissioner, the necessary income information to demonstrate eligibility. Any income information provided to the assessor regarding eligibility for an exemption claimed under this subdivision is a confidential record.
- (6) For purposes of this subsection, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.
- (7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption

under this section except for the use of the residence as a bed and breakfast facility.”

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2022.”

Renumber accordingly