

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned three studies. House Concurrent Resolution No. 3055 directed a study of the extent of and remedies for damage caused to landowners from depredation by big animals, waterfowl, and turkeys and damage caused to property by hunters. By directive of the Legislative Council, the study was expanded to include damage caused to landowners by all game and nongame animals. House Concurrent Resolution No. 3045 directed a study of grain credit sale contracts to determine the need to provide protection for farmers against grain warehouse and grain buyer insolvency. Section 1 of Senate Bill No. 2356 directed a study of the feasibility and desirability of forming a multistate agricultural marketing commission for the purpose of marketing agricultural products on behalf of agricultural producers. In addition to its assigned studies, the Legislative Council designated the committee as the interim committee to receive reports as required under North Dakota Century (NDCC) Section 4-05.1-19 from the State Board of Agricultural Research and Education on the board's annual evaluation of research activities and expenditures and to receive periodic reports from the board as required by 1999 S.L., ch. 21, § 13, on the board's activities associated with researching and developing market opportunities for biotechnologically enhanced crops.

Committee members were Representatives John M. Warner (Chairman), James Boehm, Michael D. Brandenburg, Thomas T. Brusegaard, April Fairfield, Rod Froelich, Lyle Hanson, Dale L. Heneger (until his death on September 6, 1999), Gil Herbel, Keith A. Kempenich, James Kerzman, Ed Lloyd, Shirley Meyer, Phillip Mueller, Jon O. Nelson, Eugene Nicholas, Robert E. Nowatzki, Dennis J. Renner, Earl Rennerfeldt, Arlo E. Schmidt, and Ray H. Wikenheiser and Senators Bill L. Bowman, Meyer Kinnoin, Herb Urlacher, and Terry M. Wanzek.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

WILD GAME AND HUNTER DAMAGE STUDY

House Concurrent Resolution No. 3055 directed the Legislative Council to study the extent and remedies for damage caused to landowners from depredation from big game animals, waterfowl, and turkeys and damage caused to property by hunters. The Legislative Council chairman expanded the study to include damages caused to landowners by all game and nongame wild animals. This study was divided into two areas of damage--damage caused by wild animals and damage caused by hunters. The wild animals studied by the committee included deer, waterfowl, turkeys, blackbirds, coyotes, and prairie dogs.

Damage Caused by Deer

Under NDCC Section 20.1-01-02(4), "big game" means deer, moose, elk, big horn sheep, mountain goats, and antelope. The committee focused on the damage caused by deer due to the relatively large number of deer throughout the state. The main damage caused by deer is damage to haystacks during severe winters.

In the early history of the United States, it was commonly held that wild game belonged to the people and could be hunted at any time. This philosophy virtually decimated deer and elk populations--at one time there were approximately 6,000 deer in North Dakota. This state now has a hunting season for deer. Combined statistics for bow and gun season show a little over 100,000 permits are issued for deer. With a success rate of approximately 80 percent, over 80,000 deer are harvested each year. In addition, there are hunting seasons for elk, moose, and antelope. The number of permits issued for these species is much lower than for deer. In 1997, 127 permits or licenses were issued for elk, 145 for moose, and 520 for antelope. In 1997 the success rate for these species was 73 percent for elk, 81 percent for moose, and 76 percent for antelope.

Under NDCC Section 20.1-02-05(19), the director of the state Game and Fish Department may carry out a private land habitat and access improvement program that includes carrying out practices that will alleviate depredation caused by big game animals. Under Section 20.1-02-05(18), funding for the private land habitat and access improvement program is provided from the interest earned on the game and fish fund and habitat restoration stamp fees which is placed in the land habitat and deer depredation fund. In 1999 the Legislative Assembly appropriated \$2,703,224 for land habitat and deer depredation. Up to \$2.5 million of this amount is from the land habitat and deer depredation fund and is to be used for the purposes of leasing privately owned lands for wildlife habitat to reestablish wildlife populations, to improve wildlife habitat on private lands, and to alleviate big game and fur-bearer depredation. Deer depredation expenditures were \$255,139 for the 1991-93 biennium, \$576,515 for the 1993-95 biennium, \$1,123,107 for the 1995-97 biennium, and \$170,445 for the 1997-99 biennium.

The management philosophy of the Game and Fish Department is to balance the interest of hunters and landowners to sustain a level of deer which provides hunting opportunities and does not provide a financial hardship on landowners. The deer depredation fund provides moneys for activities used to alleviate or minimize damage caused to private livestock feed supplies by deer. The department does not provide damage compensation through monetary payments, nor does it provide depredation hunting permits. Department policy is to prevent depredation through short- and long-term assistance. Short-term assistance includes cracker shells, blood meal and other repellents, propane cannons, snow fence for wrapping haystacks, and intercept

feeding sites. The department avoids feeding wildlife because this trains deer to concentrate in the feeding areas. Long-term assistance is provided through the deerproof hay yard program that provides materials and supplies for the establishment of deerproof hay yards in or around private farmsteads with chronic deer problems.

Depredation problems are not continuous, but are dependent on the weather. The committee was informed that overpopulation intensifies depredation problems; however, there would be depredation complaints if there were very few deer in this state, under the right circumstances. In short, lowering the deer population will not eradicate depredation caused by deer.

North Dakota's Deerproof Hay Yard Program

The deerproof hay yard program is a cooperative effort that requires the labor of the landowner and materials from the Game and Fish Department. There is \$300,000 set aside in the Game and Fish Department budget for the deerproof hay yard program. The average cost for the materials used in the deerproof hay yard program is \$1,600. The focus of the deerproof hay yard program is protection of the winter feed supply for livestock. Entry into the program is voluntary and requests from landowners are prioritized based upon need. The determination of need includes a documented history of depredation.

Landowners who enter the deerproof hay yard program must sign a contract not to charge for hunting for the next 15 years. Some public access must be allowed under the contract because the contract requires "reasonable public access" for deer hunting. If a landowner violates this agreement, the contract contains a schedule of depreciation for the fence, and the rancher must pay for the depreciated value of the fence. The committee was informed that no one has ever had to pay for the materials provided by the Game and Fish Department or has opted out of a contract; however, the principle of being against governmental interference with property rights keeps some people from signing contracts.

The committee was informed by one landowner that the landowner's ranch is located next to public land and deer and antelope come from the public land, eat his alfalfa during the summer, and return to the public land during the fall and winter. The deerproof hay yard program does not help the landowner in this situation.

Committee discussion indicated the deerproof hay yard program works well at protecting the feed supply, but it is not used to its full extent because some landowners do not use the deerproof hay yard program because of the 15-year limitation. More landowners might use the program if there were no limitations placed on the use of the land for receiving fencing materials. In addition, some believe landowners who have suffered a financial loss should be provided assistance without being limited for 15 years or having to pay for the materials at a later time.

The committee considered a bill draft that prohibited the Game and Fish Department from discriminating against or penalizing a landowner in the deerproof hay yard program for entering a hunting for compensation agreement in the future. The idea for the bill draft came from complaints that if the Game and Fish Department's deer eat hay owned by a landowner, the Game and Fish Department should pay to protect that hay. As such, the deerproof hay yard program should not prohibit fee hunting. The committee was informed the Game and Fish Department presents the contract to landowners after delivering the materials to build the hay yard, and landowners did not appreciate this tactic. In addition, the Game and Fish Department treats the materials as a gift. In short, it was contended this is a control issue and the Game and Fish Department wants too much control over others' land.

A representative of the Game and Fish Department provided testimony in opposition to the bill draft. The contract for the deerproof hay yard program does not allow fee hunting because sportsmen's dollars pay for the supplies used for the hay yard. The department's position is that it would not be fair for a landowner to actively promote deer on the landowner's land and get a free fence to keep those deer away from the landowner's hay or feed.

A representative from the Stockmen's Association provided testimony in support of the bill draft. The position of that organization is that the problem is that the property of the state (deer) is causing damage to the property of ranchers, yet the Game and Fish Department requires ranchers to sign an agreement to take care of the Game and Fish Department's problem. The program is not a high-cost program, and farm families need opportunities to find extra income from on-farm sources. There are few risks to hunters in the bill draft because very few ranchers are involved in fee hunting and very few ranchers do not allow any hunting. The long-term lease for the deerproof hay yard program scares off some landowners even if they do not have fee hunting or plan on fee hunting in the future. In short, it would be worth the good will gained between the state and landowners to remove the payback provisions.

Ranchers testified that smaller farm and ranch operations may need a subsidy to build a deerproof hay yard even if a fee is received for hunting.

Committee members discussed the philosophical difference between deer being owned by the public or being a part of nature. One view expressed is that the damage caused by deer is not the same as damage caused by cattle but is more like damage caused by wind or hail. In addition, farmers and ranchers bear some responsibility for the wildlife on their property.

Committee members supported a solution in the middle ground between the Game and Fish Department contract and the bill draft. It was noted there are situations in which a landowner may have a fee hunting operation on one portion of the landowner's land and have a depredation problem on another.

Hunting Season Changes to Control Deer Depredation

In Iowa, a producer who has crop losses or potential crop losses in excess of \$1,500 in one growing season is eligible for a depredation management plan through the Wildlife Bureau. The plan may include preventive measures including pyrotechnics and cannons, guard dogs, temporary fencing, more hunters, an increased take of antlerless deer, and other measures.

There are two types of deer depredation permits--a deer depredation license or a deer shooting permit. The deer depredation license is issued to a producer of the crop, and the producer is allowed to designate any hunter to the Wildlife Bureau as having permission to purchase a license for the producer's land. A depredation license may only be used to shoot an antlerless deer. Other states, including Arizona, Idaho, Utah, and Virginia, have depredation hunts. A deer shooting permit may be obtained if damage cannot be controlled by hunting during the regular hunting season. This permit is issued directly to the producer who may shoot as many deer as needed up to the number specified in the permit.

The Game and Fish Department proposed a January 1977 hunt for deer as a depredation hunt. The idea was withdrawn because of the number of complaints. The complaints centered on the idea that shooting deer on haystacks is unsportsmanlike. In addition, a depredation season may cause the deer congregated in one area to disperse to another area, thereby merely transferring the problem to that area. Although there have not been specific depredation hunts in this state, seasons have been extended in the past when weather has prevented hunting during the regular season. The committee was informed that a permanent extended deer hunting season has not been popular with agricultural groups. The present 16½-day season is a compromise between landowners and hunters.

Committee members discussed a suggestion for a special late hunting season after the regular hunting season for shooting deer causing depredation. The hunters with unfilled tags from the regular season would be qualified to use them during the special season.

Allowing hunters with unfilled tags to hunt in a late season was seen as rewarding hunters for not hunting during the regular season which may create a larger problem than deer depredation. In addition, a late season raises issues of whether the license would be good statewide or only in specific areas where there is depredation and identification problems of whether a deer is a buck or doe if in an especially late season.

Forms of Compensation for Deer Depredation

The committee received testimony on game farms. There is considerable flexibility for individuals who operate game farms. The operation of a game farm falls outside most of the limits imposed by the Game and Fish Department because game farms stock game, and the department cannot spend money on property that is used for commercial hunting. Game farms must pay a nominal fee and perform some recordkeeping to be licensed.

The committee received testimony from ranchers concerning fee hunting. Fee hunting has become more popular as a secondary source of income. Fee-hunting operations follow the same rules as any hunter would follow because fee-hunting arrangements use wild game within the designated season. Fee hunting has no requirement for the operator to be licensed or for there to be any recordkeeping.

The committee received testimony on a pamphlet entitled *Hunting for Habitat: A Practical Guide to State-Landowner Partnerships* published by the Political Economy Research Center in Bozeman, Montana. The pamphlet offers information on ranching for wildlife programs and other similar programs that allow landowners to have control over hunting permits and thereby profit from selling those permits.

Ranching for wildlife is a managed program in eight states based on cooperative agreements between landowners and state wildlife agencies. The program encourages landowners to invest time, money, and resources to increase wildlife and hunting opportunities on their properties. In return, the state modifies hunting regulations so landowners can benefit from fee hunting. Ranching for wildlife gives landowners incentives to earn a profit from hunting through longer seasons, transferable game tags, and ranch-specific harvests. Ranching for wildlife opens opportunities for state agencies through more precise management of game, more leverage with landowners, and greater agency savings. New opportunities for sportsmen are offered through better hunting, longer seasons, and another source of a hunting license. These programs are controversial, however, because they involve fee hunting.

Colorado's program, Ranching for Wildlife, can be used to generally describe the program. In Colorado, the landowner is eligible

for transferable game tags, extended seasons, and flexible bag limits. The landowner must produce a wildlife management plan that includes proposed harvest levels and a schedule of habitat improvements. A participating landowner pays the same price for tags as does a hunter purchasing a tag from the state. Colorado has high prices for a hunt in the program which can be attributed to the fact that Colorado limits the number of ranches allowed in the program to 30, requires there to be at least 12,000 contiguous acres in a ranch for it to be considered for the program, and requires landowners to provide access at no charge to a limited number of hunters whose names are drawn by lottery.

New Mexico's program is different from other states' programs because it does not require the landowner to develop a wildlife management plan. The allocation of authorizations to landowners is based on animal populations alone. This discourages ranch-specific management, and there are elk depredation problems that remain in certain parts of the state. The allocation formula funnels numerous authorizations to a few larger ranches, and smaller ranches receive fewer authorizations even though they may be suffering more depredation. A landowner in New Mexico must allow access to a number of hunters selected by lottery who hunt for free. The program does not require that a property be a minimum size.

The main benefit to landowners under a ranching for wildlife program is the issuance of transferable tags that the landowner may sell for cash. Ranching for wildlife would provide an income to cover the expenses of depredation.

Committee discussion pointed out that the problem with deer depredation is that deer group together when there is severe weather that has decreased the food source for deer. When this happens, deer tend to congregate around feed stored by ranchers. This problem occurs after the regular hunting season. Hunting season changes, like those in ranching for wildlife programs, will not affect the problem of deer depredation. In addition, landowners are able to manage wildlife and to charge a fee for hunting, which fulfills the goals of a ranching for wildlife program without adopting the program.

The committee received testimony on using the sale of gratis tags as secondary income for landowners. A concern with the sale of gratis tags is that less land will be available for public hunting. Most landowners--at one time 85 percent--allow some free hunting; however, hunting is limited where there is a high concentration of game. In addition, 10 percent of the land in North Dakota is public land open to public hunting.

The committee was informed that ranchers consider a gratis tag as a courtesy to the landowner for owning land and the landowner should be able to decide how to use that gift. In particular, all gratis tags should be allowed to be sold or transferred by the landowner to a resident or a nonresident hunter. This would allow ranchers to sell their gratis tags to cover the cost of depredation problems. A suggestion was made that ranchers should be allowed to receive gratis tags based on the acres owned and should be allowed to sell tags. Adjustments could be made based upon the wildlife population. The wildlife population could be determined by surveys by the Game and Fish Department and by working with landowners.

In Wisconsin, a fund has been established to pay for wildlife damage control. The fund is supplied with money derived from all special deer licenses and a \$1 surcharge placed on every hunting license. The fund is used to pay for fences, for technical assistance, and claims to farmers who allow hunting and work with wildlife biologists. The fund works somewhat like an insurance policy. A property owner is not eligible for damage assistance until after \$250 of damage has occurred. The damages that the state will pay are limited to \$5,000. The property owner must permit hunting of the animals causing wildlife damage on the land where wildlife damage occurred and on contiguous land under the same ownership and control.

Other states, including Idaho, Massachusetts, Nevada, New Hampshire, Utah, Vermont, Washington, Wisconsin, and Wyoming, have monetary compensation for wildlife crop damage. In Idaho, the state may offer financial compensation for crop damage over \$1,000 which is not covered by other sources. In Vermont, reimbursement may be available to landowners whose land is not posted against hunting and who have suffered damage to crops by deer. In Washington, the claim may not exceed \$2,000.

The committee received testimony on direct compensation for damage caused by wild animals, in particular, deer. It was argued that landowners should have the right to protect their property or be compensated for damage to it. In addition, the committee was urged to consider requiring the Game and Fish Department to enter an insurance program to insure depredation costs.

Committee members pointed out that who should pay for damage caused by big game is a theoretical question based on whether the damage is caused by an act of God or by an act of the state. Because depredation appears to happen in high concentrations in distinct areas, the Game and Fish Department could agree with landowners in those areas to pay for the feed these animals eat in return for allowing hunting.

Damage Caused by Waterfowl

Under NDCC Section 20.1-01-02(42), "waterfowl" includes all varieties of geese, brant, swans, ducks, rails, and coots. The committee focused on damage caused by what are commonly known as geese because of their relatively high numbers in this state.

Most of the spring and summer damage is caused by the rising numbers of resident Canadian geese. The problem geese are the resident breeding pairs that hatch four to seven goslings each spring. Starting in June, the adults begin molting their flight feathers rendering them flightless and the goslings are pre-fledged. The adults and goslings seek out larger, more secure wetlands. This explains why a wetland can have hundreds of birds present that were not there during the nesting season. Flocks can range from 50 to 400 birds that must walk from the water onto surrounding crop fields to feed. The damage they impose can accumulate very quickly. Soybeans are preferred due to their high protein content. Another group of geese that cause damage, but to a lesser degree, are nonbreeding birds. Nonbreeding birds travel in bands of 10 to 100 birds and may decimate sprouting crops. Although nonbreeding birds may be deterred with simple frightening techniques including flags and propane cannons, flightless birds are more difficult to scare.

According to the Game and Fish Department, one method that works with young goslings is to create vegetative buffer strips surrounding sloughs in cropland. The vegetative buffer strip acts as a fence. Another method for reducing resident bird numbers is to have an early September hunt. The Game and Fish Department recently allowed a September goose season for this purpose. South Dakota and Minnesota have had September seasons in recent years as well. This state has had three goose hunting seasons--spring, early September, and regular.

All waterfowl abatement programs in the state are conducted by the United States Department of Agriculture's Division of Wildlife Services (previously called Animal Damage Control). Under NDCC Section 20.1-02-05(15), the director of the Game and Fish Department may cooperate with the Commissioner of Agriculture, the United States Fish and Wildlife Service, and other agencies in the destruction of destructive birds. In 1999 the Legislative Assembly appropriated \$100,000 from the game and fish fund for the purpose of providing grants to the Division of Wildlife Services for projects to alleviate wildlife depredation and damage. Projects funded may include projects to alleviate waterfowl depredation and damage and must be approved by the director of the Game and Fish Department. The 1999-2001 biennium is the first biennium in which Wildlife Services has been a line item in the Game and Fish budget. In the past, grants have been made to the Division of Wildlife Services; however, for at least the last 20 years no grant has been used for the alleviation of waterfowl depredation. The moneys have been used for other depredation and damage control, including the killing of predators. For example, the money has been used for matching dollars for cooperative projects to alleviate or minimize damage to private livestock caused by coyotes.

Under NDCC Section 4-01-17.1, the Agriculture Commissioner may cooperate with the United States Department of Agriculture and other appropriate federal agencies in the control and destruction of small game causing crop damage or substantial economic loss. This control and destruction must be approved by the director of the Game and Fish Department. The North Dakota Agriculture Department has received an appropriation for the last two bienniums of \$779,694 for cooperative projects with the Division of Wildlife Services.

The following tables were obtained from the Division of Wildlife Services and list the damage caused by waterfowl as verified through investigations based upon complaints and the amounts spent for the management of waterfowl to prevent crop damage.

Extent of Waterfowl Damage to Crops		
Year	Number of Investigations	Verified Damage
1995	93	\$45,700
1996	50	\$26,700
1997	25	\$43,000
1998	45	\$44,700

Funds Expended for the Management of Waterfowl Damage to Crops	
Year	Amount
1995	\$958
1996	\$1,387
1997	\$2,987
1998	\$3,530

It is important to note that in fiscal year 1998 the Division of Wildlife Services spent \$89,665 that it received from the North

Dakota Agriculture Department for crop damage programs. In fiscal year 1998, Wildlife Services did not receive any North Dakota Game and Fish Department money for crop damage but did receive \$18,588 for damage caused to livestock.

Other states have extensive programs to deal with waterfowl abatement. South Dakota has its own waterfowl depredation abatement program because the Division of Wildlife Services has no presence in that state. South Dakota collects a \$5 surcharge for all adult hunting licenses. This money is earmarked one-half for hunter access programs and the other half for depredation programs. This surcharge collects between \$800,000 to \$1 million for all depredation programs.

South Dakota has evaluated a number of depredation management techniques as they relate to waterfowl. According to a representative from the South Dakota Department of Game, Fish, and Parks, there are definite methods that work and are cost-effective. A major part of South Dakota's waterfowl abatement program relates to resident geese. Throughout the summer, the South Dakota program receives between 100 and 200 complaints of depredation by resident geese. The South Dakota Department of Game, Fish, and Parks has a number of remedies and programs for resident goose depredation.

One program is the food plot program area. This program provides payments to landowners for depredation done to crops in the field. In this program, the landowner allows the geese to eat the cash crops planted by the landowner and receives a cash payment from the Department of Game, Fish, and Parks. The payment per acre is based on the appraised value of the land per acre multiplied by the Farm Services Agency multiplier used to determine rental value as a percentage of value plus \$25 per acre for production costs. The department also places electrified fences around sloughs that contain goslings and adult molting birds. The department also places lathes around sloughs with mylar reflective tape or survey flags attached to scare geese from entering fields. In addition, the department uses scare kites--bird of prey kites on the end of a string attached to a 10-foot pole. The department also has used woven wire around sloughs and has made public land adjacent to private land more attractive to divert geese from the private land. All these methods appear to be effective in different circumstances.

Testimony and Committee Discussion on Nonresident Goose Hunting Licenses

One way to lessen goose depredation problems is by increasing the hunting of geese by nonresident hunters. Nonresident waterfowl licenses have increased from under 5,000 hunters in 1988 to almost 20,000 hunters in 1998. A nonresident waterfowl hunter must have a nonresident fishing, hunting, and fur-bearers certificate that costs \$2, a federal migratory bird stamp that costs \$15, and a nonresident waterfowl license that costs \$93. The license is good for both waterfowl and upland game. A nonresident has three options for fall waterfowl licenses:

1. A 14-day license restricted to zones.
2. A license for two 7-day periods restricted to zones; however, a separate zone may be chosen for each seven-day period.
3. A seven-day statewide license with no zone restrictions.

The committee reviewed legislation relating to nonresident goose hunting licenses. Much of the legislative history as it relates to the arguments for and against having more or fewer nonresident hunters has remained the same throughout the years. The main division is between individuals who do not want nonresidents leasing large tracts of land, thereby preventing residents from hunting, and individuals in the hospitality and service industries who want nonresident hunters to come to their communities and spend money on services. The conflict is between in-state goose hunters and local merchants and service providers. The confrontation between these groups has lessened, and the legislative history for House Bill No. 1459 (1999), which allowed a nonresident waterfowl hunter to purchase a license that is valid for seven consecutive days and is valid statewide, did not reveal any opposition to the bill.

The committee was informed that because geese are arriving later than usual from Canada this year, nonresident hunters are having to leave the state without being able to hunt because they are limited to hunting a total of 14 days. The number of days allowed for nonresident goose hunting is statutory. The limitation was enacted when there was low water in Devils Lake and that area was a major staging area. The original purpose of the limitation has lost some of its validity because the state has abundant water.

Committee discussion pointed out that the 14-day limit on goose hunting creates a problem if there are no geese in the state at the time out-of-state hunters arrive to go hunting. A solution could be an extension for a particular hunter if there is no opportunity to hunt. An ad hoc determination of the opportunity to hunt, however, would be administratively burdensome. Committee members also pointed out that most goose hunters are nonresidents who come to this state because of the high number of geese, and most farmers want more waterfowl hunting to decrease depredation.

Damage Caused by Turkeys

Although the number of turkeys in this state is relatively low, the state Game and Fish Department still receives a small number of complaints--under five--of damage being caused by turkeys each year. The main complaint received is of turkeys eating and defecating on feed piles.

In response to complaints received on turkey damage, the department does offer technical assistance and has trapped and moved turkeys when appropriate. In South Dakota, the Department of Game, Fish, and Parks uses scare kites to repel turkeys.

This state does allow the hunting of turkeys; however, this state does not have a nonresident turkey license. According to the Game and Fish Department, there are numerous resident applicants for each turkey permit. The number of fall turkey permits has increased from under 1,000 for all years before 1980 to a high of 5,938 in 1988. In 1997, 3,273 fall permits were issued. The number of spring turkey permits has increased from under 1,000 for all years before 1990 to a high of 1,807 in 1993. In 1998 the total was 1,695. The total number of turkeys in this state has fluctuated between 6,000 and 10,000 birds over the last 10 years.

Committee discussion indicated a good solution for turkey depredation would be to allow the sale of gratis tags. Increasing the number of gratis licenses may not provide much of a solution to the damage being done by turkeys; however, the sale of those licenses would compensate the landowner for the damage done.

Damage Caused by Blackbirds

A representative of the Animal and Plant Health Inspection Service, Division of Wildlife Services, United States Department of Agriculture, provided testimony on federal programs to alleviate depredation, including that done by blackbirds. In the mid-1980s, the Division of Wildlife Services began dealing with blackbirds and waterfowl. In 1999 the Division of Wildlife Services began a study on the chemical baiting of blackbirds by using DRC1339 applied to rice that is scattered in sunflower fields in a selected 40-township area. The baiting program uses a two percent concentration of the active ingredient. The bait is placed on the ground in a sunflower field. One grain is a lethal dose for a blackbird. The poison does not affect other birds because other birds do not like rice.

The study provided disappointing results because increased rainfall limited the effect of the chemical. In addition, farmers are reluctant to enter the study program because of the low concentration of poison and because the land cannot be cropped in the following year. Farmers suspect not enough blackbirds will be killed by the chemical. The Division of Wildlife Services is trying to have the Environmental Protection Agency lift its restriction that no crop may be planted in the year following a baiting program.

The Division of Wildlife Services also has a cattail spraying program that removes the habitat for blackbirds. The program is free of charge but is limited by funds and is administered on a first-come, first-served basis. The cattails are sprayed with Rodeo. The federal Fish and Wildlife Service requires the cattail area to be 15 acres or larger and allows only 70 percent of an area to be sprayed with Rodeo. This later restriction allows enough cattails for waterfowl habitat while making the area unattractive to blackbirds.

Damage Caused by Coyotes

The committee was informed of reports of coyotes killing 200- to 300-pound calves. An individual who has a problem with coyotes may contact one of the 10 local wildlife specialists who trap coyotes. There has been an outbreak of mange in the eastern part of this state, so coyote numbers are down and the number of requests for assistance with coyotes has declined.

South Dakota has a program in which private landowners can use cyanide in M44s or coyote getters. An M44 is a short stake in the ground with a spring-operated ejector on the top. The ejector contains a capful of sodium cyanide covered with bait. When a coyote investigates the bait, the M44 shoots the cyanide in the coyote's mouth. The South Dakota program was approved upon petition to the Environmental Protection Agency. Approval is required because cyanide is a restricted use pesticide. A state would have to have a training program and oversee the program for there to be approval.

Damage Caused by Prairie Dogs

A representative of the Forest Service Division, United States Department of Agriculture, provided testimony to the committee on the relationship among livestock, prairie dogs, plants, and other wild animals. There is direct competition between cattle and prairie dogs with a negative bottom line effect on cattle producers in the range of four to seven percent. However, prairie dogs increase in population in the presence of cattle because prairie dogs like short vegetation, which they are able to eat. When vegetation is over six inches high, prairie dogs generally do not expand into that area.

The highest productivity level of plants on the prairie is when there is a prairie dog town. These plants, however, are not necessarily edible to prairie dogs or livestock. There is an increase of 30 to 40 percent in wildlife around prairie dog towns because many birds and small mammals have prairie dog towns as their habitats. Although prairie dogs have been reduced 99 percent from historical highs because of poisoning, the North Dakota Game and Fish Department surveyed the number of acres of prairie dog towns in this state and discovered a recent significant increase in acres.

The committee received testimony on the Dakota Prairie Grasslands plan as it relates to black-tailed prairie dogs. The objective of alternative three of the plan is to establish two or more colony complexes within 10 to 15 years. A colony complex is 1,000 acres of prairie dog towns scattered between 10 or more towns. The plan will be reassessed in 10 to 15 years or if prairie dogs occupy more than five percent of potential habitat. There are 1.1 million acres in the Little Missouri Grasslands. There are 731,000 acres of potential habitat for prairie dogs. Five percent of 731,000 acres is approximately 37,000 acres.

The present goal is 5,100 acres of prairie dog towns. It is predicted in 10 years there will be an increase of prairie dog towns from 2,860 acres to 5,100 acres. The Forest Service selects areas for prairie dog towns based upon historical occupancy and present resources. The Forest Service will increase towns by burning or overgrazing. This will provide the historical habitat that was once provided by the bison.

The committee was informed there has been change in the management plan because of national public opinion. In deciding what to do about prairie dog habitat, the Forest Service first reviews federal law, which requires there be a viable population of native species. There is some discretion in rulemaking; however, there is little discretion with threatened or endangered species. Nothing in federal law says the Forest Service should not increase prairie dog population because of the economic impact on ranchers.

Committee members expressed concern that the "public" that wants a change in the management plan is not the public that lives in the areas around the national grasslands. The people who comment to the Forest Service that they want more prairie dogs may have signed a letter presented to them by a special interest group and may not have had all the facts presented before signing the letter. The residents near prairie dog towns should have more say about prairie dogs than people in the rest of the nation.

Committee members pointed out that increased prairie dog populations have an impact on the economy. It was stated that people in southwest North Dakota are fighting for survival, and a rodent should not take priority over the survival of people. A double standard is also observed because if a rancher destroyed as much as prairie dogs did, the rancher would be in trouble. In addition, prairie dog expansion is being experienced in this state and not in areas in which prairie dog habitat is being destroyed through urban sprawl.

Committee discussion indicated state agencies and the federal government should support farmers and ranchers in this state in decisions agencies make as to certain environmental issues, especially prairie dogs. Prairie dogs are pests under state law--they cause erosion and are a health risk. Committee members also pointed out that natural burning to increase prairie dog habitat poses a danger to surrounding private lands.

Damage Caused by Hunters

Research does not reveal any exact statistics on the extent and types of damage caused by hunters. However, there is anecdotal evidence of the types of damage caused by hunters. A common complaint is that hunters damage roads by driving on them in wet conditions. Although there are no official statistics on damage caused by hunters, there are statistics on violations of state laws by hunters. As to violations that relate to respect for landowner's property--using a motor vehicle off established trails and hunting on posted land without permission--there are statistics on these violations. In fiscal year 1997, of 184 big game gun season violations, 44 were for these violations. Of a total 47 violations for upland game hunters, 14 were for these violations. Of a total 1,596 game and fish violations in 1997, 67 were for these violations. There are similar statistics for fiscal year 1996. Of 192 big game gun season violations, 41 were for these violations. Of 110 upland game violations, 35 were for these violations. Of a total of 1,554 game and fish violations in 1996, 77 were for these violations.

During the 1999 legislative session, two bills--House Bill No. 1214 and House Bill No. 1244--were introduced to provide funding for roads damaged by hunters. House Bill No. 1214 would have required 20 percent of the fees generated from the sale of licenses to be sent to the county in which the licensee intends to hunt. House Bill No. 1244 would have created a special road and trail damage fund to be used for reimbursing landowners for damage caused by hunters to roads and trails that are not maintained with public funds. The amount of \$100,000 was to be transferred biennially from the game and fish fund on a continuing basis. One apparent reason for the failure of these bills is that testimony was received that the Game and Fish Department could not use the fees it receives from hunters for the purpose of compensating road damage or funding the county general fund because of federal regulations. The fiscal note for each bill stated that the Game and Fish Department would lose approximately \$2.5 million per year in federal aid for wildlife restoration funds if either bill were to pass. These funds come from an excise tax on hunting equipment, including firearms and archery equipment. The fiscal notes stated these funds would be lost because of a federal requirement that state hunting license fees not be used for anything other than the administration of the state's Game and Fish Department. In addition, North Dakota would remain ineligible for this funding until the license fee dollars were returned to the state game and fish fund.

Under NDCC Section 20.1-02-16.1, this state has a policy of having the income of the state Game and Fish Department deposited in the state game and fish fund for the exclusive use of the department. Under Section 20.1-02-17, this state has

assented to the rules and regulations of the federal government, including the use of state game and fish funds, as part of receiving funding for wildlife restoration projects and fish restoration and management projects. The section states, "hunting and fishing license fees and application fees assessed under section 20.1-03-12.2 may only be used for departmental programs and administration." The passage of this section was a prerequisite to receive federal funding. The Federal Aid and Wildlife Restoration Act, 16 U.S.C. 669-669i, defines the kinds of programs that the state can fund and does not include within that definition funding for compensating individuals for damage to roads or for the maintenance of general purpose roads.

In the 1940s, South Dakota passed a law similar to 1999 House Bill No. 1214, which funded counties with game and fish funds. Recently, the South Dakota Game, Fish, and Parks Department was audited as to its use of wildlife restoration funds by the United States Fish and Wildlife Service and was found to have diverted funds. South Dakota will be required to compensate the license fee fund with funds not gained from licensing. The law that provided funding to the county with game, fish, and parks money was repealed in 1999.

Committee members expressed concern that if hunters create a problem by damaging roads, they should bear the cost for repairing the roads as a matter of fairness. Counties need to have more money for roads to address damage by hunters.

Recommendations

The committee requested that the Legislative Council chairman approve a statement to be sent to the appropriate parties stating the committee's opposition to the expansion of prairie dog habitat in the national grasslands program. The Legislative Council chairman approved a statement based on committee discussion, and it was mailed to Dakota Prairie Grasslands, Northern Great Plains Planning, and this state's Congressional Delegation. The committee received a letter from Congressman Earl Pomeroy in response to the letter. Congressman Pomeroy supported the committee's position.

The committee recommends [Senate Bill No. 2025](#) to prohibit the Game and Fish Department from discriminating against or penalizing a landowner in the deerproof hay yard program for entering a hunting for compensation agreement.

CREDIT-SALE CONTRACT PROTECTION FOR FARMERS STUDY

House Concurrent Resolution No. 3045 directed the Legislative Council to study grain credit-sale contracts to determine the need to provide protection for farmers against grain warehouse and grain buyer insolvency.

Credit-Sale Contracts

Under state law, there are three basic types of grain transactions--cash sales, warehouse receipts, and credit sales. Cash sales involve transactions in which farmers sell their grain to an elevator or a grain buyer in exchange for cash. Farmers have up to 30 days to decide what they want to do with their grain, so the decision to sell for cash may come sometime after the grain is delivered. Warehouse receipts involve transactions in which the farmer decides to store the grain in the warehouse. The farmer continues to hold title to the grain and pays the elevator a storage fee. The farmer may eventually sell the grain to the warehouse or take redelivery. A credit-sale contract is a sale in which the selling price is to be paid more than 30 days after the grain is delivered or released for sale. There are two main types of credit-sale contracts--delayed price and deferred payment. Under a delayed price contract, no price is established at the time of transfer of title of the grain from the farmer to the elevator. The farmer has the option to price the grain as per the market during a period of time contained in the contract. The typical length of this time is 100 to 240 days; however, it could be any period of time. Under a deferred payment contract, title to grain passes from the farmer to the elevator and the price is set; however, the elevator does not pay for the grain immediately. Generally, a deferred payment contract is used for income tax planning purposes.

According to the Public Service Commission, there has been a substantial increase in the use of credit-sale instruments in recent years. Although a formal survey has not been completed, it is assumed that credit-sale contracts have risen from less than 10 percent of the industry's sales volume to between 40 and 60 percent. Much of this increase is related to the rail transportation system. Warehouses need to hold title to grain so they can have grain on hand to make use of rail transportation that has been purchased up to six months in advance under car auction programs. Whatever the reason for the increase in popularity of credit-sale contracts, the increase has increased the risk to farmers who sell their grain to a warehouse on a credit-sale contract. Because there is no bond protection for a credit-sale contract, the farmer is treated as an unsecured creditor if the warehouse becomes insolvent.

History of Protections in North Dakota

Grain Warehouses

A grain warehouse can elect to be licensed by federal or state authorities. The federal government regulates grain warehouses

under the United States Warehouse Act, 7 U.S.C., 241-273, which is administered by the United States Department of Agriculture. With respect to a grain warehouse licensed by federal authorities, matters regulated by the Act cannot be regulated by the state. Licensing under the Act is voluntary and may be accomplished by applying and qualifying. A grain warehouse licensed under the federal Act must meet requirements for sound warehouse operations, i.e., furnish an acceptable bond, maintain a minimum net worth, and pay inspection and licensing fees. In lieu of a bond, a warehouse may file a certificate of participation in and coverage by an indemnity or insurance fund, approved by the Secretary of Agriculture, and established, maintained, and backed by the full faith and credit of the applicable state.

North Dakota Century Code Chapter 60-02 regulates grain and seed warehouses. Sections 60-02-02 and 60-02-03 set out duties and powers of the Public Service Commission in regulating grain and seed warehouses. In addition to other prescribed duties, the commission is to exercise general supervision of public warehouses. Section 60-02-09 contains bond requirements, which must be met before issuance of a public warehouseman's license. The bond must be in a sum of not less than \$5,000 for any one warehouse (with the actual amount determined by the commission) and must be for the specific purposes of protecting holders of outstanding receipts and covering the costs incurred by the commission in the event of the licensee's insolvency. This section specifically exempts credit-sale contracts from bond coverage; however, under Section 60-02-19.1, specific terms and procedures are required to be used in a credit-sale contract.

Early in 1998, the United States Department of Agriculture informed the Public Service Commission that the commission cannot require federally licensed warehouses to obtain a state license for merchandising and warehousing grain. The United States Warehouse Act states that "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect." Courts have consistently held that federal law preempts state law, and a federally licensed facility is not required to have a state license to conduct its warehousing activities. It is less clear whether federal law preempts state law in the merchandising functions of warehouses; however, there is no explicit court decision as to this matter. Unlike many states, North Dakota required public grain warehousemen to obtain one license rather than two--one to govern merchandising and one to cover warehousing. The North Dakota license entitled them to conduct both merchandising and warehousing activities. In 1999, however, the Legislative Assembly through Senate Bill No. 2153 changed the law so that this state has a dual licensing procedure.

Roving Grain Buyers

Before August 1, 1999, NDCC Chapter 60-03 applied to roving grain or hay buyers, but now it applies to hay buyers only. Roving grain buyers are now licensed under NDCC Chapter 60-02.1, as described under **1999 Legislation**. Under Section 60-03-01(5), a hay buyer is a person who is in the business of buying hay for resale or processing, or is a person who markets hay on behalf of the owner. Licenses for roving hay buyers are issued on an annual basis and may be revoked or suspended for cause. The license of a hay buyer is automatically suspended for failure to have or maintain the required bond.

Under NDCC Section 60-03-04, a licensee is required to be bonded in an amount set by the commission. This section specifically exempts credit-sale contracts from bond coverage; however, under Section 60-03-04.1, a separate bond is required for credit-sale contracts. This bond may not be less than \$100,000. In addition, this section also provides for specific terms and procedures to be used in a credit-sale contract.

Insolvency Proceedings

North Dakota Century Code Chapter 60-04 pertains to insolvent grain warehousemen. The chapter establishes a procedure for the appointment of the Public Service Commission as trustee for an insolvent warehouseman, the establishment of a trust fund containing the assets of the insolvent warehouseman, and the distribution of the assets of the warehouseman to receiptholders. One farmer who is not being paid can force a company into an involuntary insolvency proceeding. In an insolvency proceeding, the Public Service Commission uses the grain on hand and the bond to pay cash and warehouse receipt customers. The bond covers these sales and any extra amount does not go to credit-sales. Farmers with a credit-sale contract are unsecured creditors and have to collect through a bankruptcy proceeding or a private action. Insolvency and bankruptcy proceedings are mutually exclusive.

Receiptholders, within 45 days of the last publication of notice or a longer period if prescribed by the commission, must file claims against the warehouseman. Failure to file a claim within the prescribed time may bar the receiptholder from participation in the distribution of the trust fund. Additionally, receiptholders are barred from bringing separate claims for relief against the warehouseman's bond, insurance proceeds, and other trust assets. However, the receiptholder may seek an action against the warehouseman for the whole amount owed or any deficiency.

1999 Legislation

In 1999 the Legislative Assembly enacted two bills that related to grain buyers and public warehousemen--Senate Bill No. 2153 and House Bill No. 1156.

Senate Bill No. 2153 removed public warehouses licensed under the United States Warehouse Act from the licensing requirements under NDCC Chapter 60-02. The bill created Chapter 60-02.1, which is similar to Chapter 60-02 but created a merchandising license for facility-based grain buyers which may include the merchandising activities of federally licensed warehouses. The bill also removed the roving grain buyer license provisions from Chapter 60-03 and placed them in this new chapter.

North Dakota Century Code Chapter 60-02.1 requires a licensee to be bonded for the purposes of insolvency in a sum of at least \$5,000 and in an amount as deemed necessary by the commission. The bond does not cover credit-sale contracts. Section 60-02.1-14, relating to credit-sale contracts, provides:

60-02.1-14. Credit-sale contracts. A grain buyer may not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The grain buyer shall maintain an accurate record of all credit-sale contract numbers including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02.1-08. However, if the grain buyer has obtained bond coverage in addition to that required by section 60-02.1-15 and the coverage extends to the benefit of credit-sale contracts, the grain buyer may state that fact in the credit-sale contract along with the extent of such coverage.

The contract must be signed by both parties and executed in duplicate. One copy must be retained by the grain buyer and one copy must be delivered to the seller. Upon revocation, termination, or cancellation of a grain buyer's license, the payment date for all credit-sale contracts, at the seller's option, must be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. However, if the license of the grain buyer is transferred to another grain buyer or licensed warehouseman, credit-sale contracts, if so agreed by the seller and transferee, may be assigned to the transferee.

House Bill No. 1156 provided that if required for United States Department of Agriculture approval of the Public Service Commission's warehouse inspection program, the commission may require an applicant for a public warehouse license to submit a current financial statement. A warehouseman is required to publish and post in a conspicuous place the fees that will be assessed for receiving, storing, processing, or redelivering grain.

Other States' Laws

The committee reviewed Illinois, Minnesota, and Ohio laws on protection to farmers for credit-sale contracts.

The Illinois indemnity fund covers credit-sales and has replaced a bond requirement. Illinois requires 90 percent of the unpaid balance for a price later contract to be held by a grain dealer in grain, rights to grain, or proceeds for the sale of grain.

Minnesota requires a bond; however, the bond only covers cash sales. Protection for credit-sales comes from a requirement, similar to Illinois, for the grain buyer to hold grain, rights to grain, or proceeds for sale of grain totaling 90 percent of an obligation.

Ohio protects credit-sale contracts through an indemnity fund that covers Commodity Credit Corporation grain. Ohio does not require a bond because of the indemnity fund. Ohio has an agricultural commodity depositors' fund that is funded by a per bushel fee remitted by licensed handlers. The fee is adjusted by the Director of Agriculture to keep the fund within statutory limits. If the assets of the fund exceed one-half of the sum of all claims approved during the preceding four years or \$4 million, whichever is greater, the fee is waived. Regular agreements are covered for 100 percent and other grain, including credit-sale grain, is covered for 100 percent for the first \$10,000 and 80 percent for the remaining loss. Ohio has a 90 percent rule similar to Illinois and Minnesota. Ohio has two unique provisions. A producer who sells a commodity to a handler under a delayed-price agreement may demand security for payment in an amount equal to 100 percent of the national loan rate value of the commodity or 75 percent of the average price being paid for the commodity in this state, whichever is less. Also, it is a felony for not having 90 percent of the rights in commodities as required by the 90 percent rule.

The committee was informed that if an elevator were required to keep 90 percent of the unpaid balance of a credit-sale on hand in cash or grain, it may impact elevators by decreasing their available line of credit.

Possible Solutions

There are at least three methods to address the issue of farmers not being protected in credit-sale transactions. One is to require warehouses to be bonded for credit-sale transactions. A second is to create a state indemnity fund to cover losses in cases of insolvency. A third is to rely on present provisions providing for certain contract provisions and procedures in credit-sale contracts.

Bond Requirements

During hearings on House Bill No. 1156 (1999), two shortcomings of requiring credit-sale bond coverage were discussed. First, not all grain warehousemen would be able to qualify for coverage through bonding companies. Unable to lawfully obtain a license, these warehousemen would be given the choice of operating illegally or losing a substantial portion of their business. Second, the cost of bonding would result in an extremely expensive form of insurance. The cost of coverage would be from five to six cents per bushel.

The bond for a state-licensed facility is based on the physical capacity of the facility. A federally licensed entity must have a grain buyer's license and a bond that is based on volume. State bond levels are set by rule. The committee was informed the Public Service Commission may consider higher bonds for processors because they handle a high volume of grain.

Indemnity Funds

During the 1987-88 interim, the Legislative Council's Agriculture Committee studied the feasibility and desirability of establishing a state bonding fund for those persons who are required by state law to be bonded in order to engage in business activities. By directive, the Legislative Council limited the study to grain warehousemen and livestock auction markets. The study was proposed to consider the establishment of a state bonding fund to address problems created by the escalating costs of obtaining bonds and the decreasing number of companies willing to provide bond coverage. Although the committee made no recommendation concerning the establishment of a state indemnity trust fund or a grain insurance fund, the committee received testimony on action in other states with a focus on Illinois.

Illinois has a program that operates through the use of two separate but interrelated funds--the grain indemnity trust fund and the Illinois grain insurance fund. All grain assets of failed grain warehouses are placed in the grain indemnity trust fund and all claims are paid from the fund. The Illinois grain insurance fund consists of assessments made against elevators, in lieu of requiring elevators to have bonds. The insurance fund is intended as a supplementary means of payment when the amount of the grain indemnity trust fund is insufficient to pay all claims. Commodity Credit Corporation grain is covered by the indemnity fund. The grain insurance fund is financed by an assessment on each licensed grain dealer and grain warehouseman for a period of three years and then as needed to maintain a fund balance of \$3 million. Each state-licensed grain dealer and grain warehouseman is required to participate in the program. Federally licensed warehouses may participate in the program through the use of a cooperative agreement. The fees assessed against the grain dealers and grain warehousemen are consistent with the current cost of bonds that are required in the grain industry on an annual basis. To generate sufficient initial funding, the assessments were doubled for the first year and for the initial year of each subsequent participant. Any claimant who has suffered a financial loss due to the use of a credit-sale contract is entitled to compensation for 85 percent of the balance claimed up to a maximum of \$100,000 from the fund. A claimant who has a financial loss other than through the use of a credit-sale contract is entitled to compensation for 100 percent of a valid claim.

Representatives of the North Dakota Stockmen's Association, North Dakota Grain Dealers Association, and Public Service Commission opposed the establishment of an indemnity trust fund and insurance fund. They testified that any person or company that is having difficulty obtaining a bond is probably having financial difficulty. They argued that if the state established an indemnity fund and an insurance fund, the state would be required to assume the responsibilities of the surety bond companies with regard to screening applicants to determine whether they have adequate financial capabilities to operate a business. Surety companies will not bond those companies that do not have the necessary financial strength required to operate. Although it would be easier and less expensive for companies to obtain bonds if the bonding requirements were lowered, doing so would decrease the financial protection afforded to producers. Because bond costs are based on risk, healthy companies pay less than a company in financially poor shape. In addition, opposition was expressed because all companies would have been required to pay the same assessment, thus penalizing financially healthy companies.

The committee was informed elevators make decisions based upon sound business judgment, and an indemnity fund would not encourage irresponsibility in elevators by having too many outstanding credit-sale contracts. An indemnity fund may be beneficial to elevators because it may result in a stronger selling point. In fact, at least six elevators voluntarily provide insurance or bond for credit-sale contracts. One negative for producers is that the producers will pay for the fund.

Present Protections

A review of the adequacy of present provisions of law governing the contract can only be evaluated by a study of whether farmers understand the risks involved with credit-sale contracts and deliberately assume those risks. The actual risk can be measured by the number of warehouse insolvencies. In the last 10 years, there have been fewer than three formal insolvencies but five or six informal insolvencies. An informal insolvency is when the Public Service Commission works with the warehouse, farmer, and bonding company to provide relief for the farmer without a formal insolvency proceeding.

The committee was informed that when someone takes over for an elevator that is in financial trouble, the old obligations are usually assumed as a matter of good business practice. As a result, there do not appear to be many losses for farmers from credit-sale contracts. The committee was informed there is no data to confirm whether companies buying troubled elevators would be less willing to pay outstanding credit-sale contracts to keep the farmers' good will than those companies would have been in the past.

There have been two recent insolvencies in this state. One insolvency involved an unlicensed entity that had no bond coverage. Creditors were paid eight cents on the dollar. A processor in Carrington was insolvent and had a \$100,000 bond. Of the \$700,000 to \$800,000 in claims, one-third were not credit-sales. Creditors are expected to receive up to 90 cents on the dollar returned because of capital provided from Cenex-Harvest States.

A representative of the Public Service Commission provided testimony on the preparation of a brochure that provides information on producers' rights and duties in selling grain. The Public Service Commission will be distributing the pamphlet through the county extension offices, elevators, farm groups, news releases, and the World Wide Web. The brochure includes information on credit-sale contracts.

Conclusion

The committee makes no recommendation regarding its study of grain credit-sale contracts.

MULTISTATE AGRICULTURAL MARKETING COMMISSION STUDY

Senate Bill No. 2356 (1999) directed the Legislative Council to study the feasibility and desirability of forming a multistate agricultural marketing commission for the purpose of marketing agricultural products on behalf of agricultural producers. The bill directed the study of which entities set and control the prices of specific agricultural products, which trade policies assist or hinder the marketing of agricultural commodities, which federal and state laws assist or hinder the marketing of agricultural commodities, and which federal and state laws assist or hinder the use of agricultural contracts. In addition, the bill directed the study on how this state can work with federal agencies and federal representatives to ensure the best possible climate for the marketing of agricultural products on behalf of this state's producers.

1999 Legislation

As introduced, Senate Bill No. 2356 (1999) would have required the Agriculture Commissioner to organize the formation of a multistate agricultural marketing commission. The duties of the commission would have been the same as the study areas required by this study. The multistate agricultural marketing commission was to be made up of member states represented by members appointed by the Governor of each member state. The commission was to be made up of farmers and legislators with state agriculture commissioners serving in an ex officio capacity. The bill initially appropriated \$1 million for organizing and operating the commission.

The Legislative Assembly approved a number of resolutions urging congressional action. House Concurrent Resolution No. 3009 urged Congress to carefully review the planned merger between Cargill, Inc., and Continental Grain Company and to take any action to minimize potential adverse effects on farmers, ranchers, and consumers. Senate Concurrent Resolution No. 4021 urged Congress to renegotiate the North American Free Trade Agreement. House Concurrent Resolution No. 3037 urged Congress to review the North American Free Trade Agreement and the General Agreement on Tariffs and Trade. House Concurrent Resolution No. 3033 urged Congress to raise the cap on marketing loans available to farmers and to adopt a cost-of-production index adjustment mechanism. Senate Concurrent Resolution No. 4018 urged Congress to address concentration and consolidation in the meat and grain industries so farmers and ranchers can compete fairly and profitably.

Past Bills on Interstate Compacts

At least two bills have been introduced to have this state enter the Interstate Compact on Agricultural Grain Marketing. Both bills failed to pass. The purpose of the compact would be to protect, preserve, and enhance:

1. The economic and general welfare of citizens of the joining states engaged in the production and sale of agricultural grains.
2. The economies and very existence of local communities in the states joining the compact, the economies of which are dependent upon the production and sale of agricultural grains.
3. The continued production of agricultural grains in the states joining the compact in quantities necessary to feed the increasing population of the United States and the world.

In 1989 when the last of these bills, Senate Bill No. 2453, was introduced, five states had joined the compact. It is important to note the multistate agricultural marketing commission proposed in Senate Bill No. 2356 (1999), as introduced, would have created an entity similar to the one the Interstate Compact on Agricultural Grain Marketing would have created. The compact establishes a commission to promote exporting American-produced grain; for example, wheat, durum, oats, rye, corn, barley, buckwheat, flaxseed, safflower, sunflower seed, soybeans, peas, and beans. According to the Council of State Governments, the status of this compact is unclear. Four states--Iowa, Nebraska, New Mexico, and Wyoming--repealed the authorizing legislation between 1995 and 1998. The legislation that repealed the compact also repealed the interstate administrative commission.

There are limitations on what this state and other states can do in marketing agricultural products. Federal law, including trade agreements, can preempt state law and the compact clause of the United States Constitution may be a consideration. Interstate compacts are specifically provided for in the United States Constitution as instruments to establish permanent arrangements among the states. Article I, Section 10, provides, "No state shall, without the consent of Congress . . . enter into any agreement or compact with another state or with a foreign power" It is important to note that the procedures for implementing a compact have developed through usage and court rulings. Under these procedures, congressional consent to a compact is required only for those agreements that affect the political balance within the federal system or that affect the power delegated to the national government. These are agreements that tend to increase the political power of the states at the expense of the federal government. Based on the purely investigatorial nature of the multistate agricultural marketing commission proposed in Senate Bill No. 2356 (1999) and because the Interstate Compact on Agricultural Grain Marketing did not require congressional consent, it would appear congressional consent would not be required for a group of states to combine energies to promote agricultural products.

Committee members discussed the fact that supply and demand and the value of the American dollar are what affects the market price, and the policy activities of a few states would not have a major impact on the price of commodities. To have a major impact on the market, a number of states would have to create mandatory pools, and this does not appear to be a popular idea.

Past Study on Agriculture Contracts

Vertical integration places suppliers in close relation to manufacturers. This helps spread the risk and save money; however, there is a potential for injury in vertical integration when the players are not of an equal power base. This can be the case with farmers and major corporations. One way to place farmers and corporations on the same level is through legislation.

During the 1993-94 interim, the Legislative Council's Agriculture Committee studied problems relating to the use of contracts for the sale of agricultural commodities. The committee also reviewed the effects of vertical integration on agribusiness. The committee reviewed basic contract law and the recommendations made by the Minnesota Agricultural Contracts Task Force, which included: Mandatory arbitration or mediation clauses should be required in agricultural contracts. Statutory provisions should require the payment of court costs, attorneys' fees, and double or treble damages to a prevailing party. Parent companies should be made responsible for the unfulfilled contracts of their subsidiaries. Statutory provisions should allow a producer, who has made a large capital investment in buildings and equipment as part of a contract with a processor, to recapture the investment when a contractor terminates or cancels the contract. Contracts should be written in plain language. A covenant or promise of good faith and fair dealing should be part of every agricultural contract. The Minnesota Department of Agriculture should provide an agricultural contracts ombudsman to disseminate information, investigate complaints, and provide or facilitate dispute resolution.

The 1993-94 interim committee recommended House Bill No. 1025 (1995), which failed to pass. The bill would have provided that any party to an agricultural commodity production contract may require all other parties to the contract to participate in mediation through the Agriculture Mediation Service, under rules of the Credit Review Board. In addition, the bill would have imposed liability on a parent entity for the amount of any unpaid claim of a producer resulting from a subsidiary's failure to pay or perform according to the terms of the contract.

The committee received testimony on agricultural contracts. The committee was informed the Antitrust Division of the Attorney General's office is working with a group on protection for producers in production contracts. The group is trying to prevent vertical integration based upon disparate power between large corporations and producers.

State and Federal Laws and Programs

This state has a number of state councils, commissions, and funds with marketing duties. These councils, commissions, and funds include the North Dakota Barley Council, the North Dakota Dry Bean Council, the North Dakota Beef Commission, the North Dakota Corn Utilization Council, the North Dakota Dairy Promotion Commission, the North Dakota honey promotion fund, the North Dakota Milk Marketing Board, the North Dakota Oilseed Council, the North Dakota Dry Pea and Lentil Council, the North Dakota Potato Council, the North Dakota Soybean Council, the North Dakota turkey promotion fund, and the North Dakota Wheat Commission.

Marketing of Barley by the Barley Council

The North Dakota Barley Council was created by the Legislative Assembly in 1983. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.4. The council's activities and duties are supported by an assessment of 10 mills per bushel collected from barley producers at the point of first sale.

Under NDCC Section 4-10.4-07, the council may contract and cooperate with any person for publicity and promotion of barley. In addition, the council may formulate the general policies and programs of this state with respect to the discovery, promotion, and development of markets and industries for the utilization of barley grown in this state.

The council promotes barley for feed and for malting in the domestic market. The council promotes foreign market development through its affiliation with the United States Grains Council. The United States Grains Council has sent North Dakota barley producers on market promotion missions to foreign countries and has brought foreign buyers to this state. The council takes an active role in participating in the World Trade Organization ministerial meetings and the Free Trade Agreement of the Americas, and in matters decided by the federal government.

Marketing of Dry Beans by the Dry Bean Council

The North Dakota Dry Bean Council was created by the Legislative Assembly in 1977. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.3. The council's activities and duties are supported by an assessment of 10 cents per hundredweight from producers at the first designated handling point.

The council develops domestic markets through increasing interest in edible beans which is directed at school and university food services and at cooking schools in the United States. The council investigates the potential for new foreign trade, provides services important to traditional overseas buyers, and increases worldwide demand for beans as part of its market development program. Under NDCC Section 4-10.3-07, the council may contract and cooperate with any person for the publicity and promotion of edible beans. The council is a member of North Harvest Bean Growers Association, which is a member of the National Dry Bean Council, which carries out foreign market development and promotion and serves as a government liaison; the Northern Crops Institute, which promotes the use of northern grown crops; and the American Dry Bean Board, which coordinates domestic promotion programs and market and nutrition research.

Marketing of Beef by the Beef Commission

The North Dakota Beef Commission was created by the Legislative Assembly in 1973. Statutory provisions relating to the commission are contained in NDCC Chapter 4-34. With the passage of the federal Beef Promotion and Research Act as part of the 1985 farm bill, the beef checkoff became a nationwide, uniform program at the rate of \$1 per head, including an assessment on imported cattle, beef, and beef products. The Cattlemen's Beef Board receives 50 cents of the assessment. Under Section 4-34-01(2), the purpose of the commission is to support beef promotion and marketing organizations with not less than 50 percent of the assessments collected. Under this section, 25 cents of the assessment goes to the National Cattlemen's Beef Association and the commission keeps 25 cents. The commission promotes domestic demand for beef through information to educators, health professionals, and the media.

The commission promotes beef through advertising, providing retail establishments with literature and displays, and food safety training sessions to food service workers. The North Dakota Beef Commission annually invests \$12,000 in two members on the United States Meat Export Federation. The United States Meat Export Federation works to open foreign markets to red meats from the United States and deals with beef promotion, food safety issues, and trade barriers in foreign countries. According to the 1998 North Dakota Beef Commission annual report, since the checkoff program has been in place, foreign marketing efforts in more than 50 foreign countries have increased United States beef exports to nearly \$3 billion, double the value of the exports in 1988.

The committee received testimony from a representative of the Kansas Cattlemen's Association on a program for producers to profit from every stage in the marketing of beef from producer to consumer. The program requires a computer chip be placed in the ears of cattle so that information can be retained and used to assure quality and increase profitability. Because of the information in the computer chips, ranchers will be able to compare their cattle to other cattle, and ranchers will be able to

choose the genetics that are the most profitable. Payment under the program is based on how well a rancher's cattle perform. The program benefits small feedlots as well as ranchers. The program would give small feedlots the ability to counteract lowering profitability due to the concentration of meatpacking facilities.

Marketing of Corn by the Corn Utilization Council

The North Dakota Corn Utilization Council was created by the Legislative Assembly in 1991. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.6. The council's activities and duties are supported by an assessment at the rate of one-quarter of one percent of the value of a bushel of corn collected by a designated handler until a national corn checkoff is implemented. Under Section 4-10.6-06, the council may contract and cooperate with any person for market maintenance and expansion. The council supports market development through support of the United States Feed Grains Council and the National Corn Growers Association.

Marketing of Dairy Products by the Dairy Promotion Commission

The North Dakota Dairy Promotion Commission was created by the Legislative Assembly in 1959. Statutory provisions relating to the commission are contained in NDCC Chapter 4-27. The commission's activities and duties are supported by an assessment of 10 cents per hundredweight on all milk or milk products produced and sold by a producer at the first dealer or processor.

Under Section 4-27-05, the commission has the duty to plan and carry out dairy products education, public relations, advertising, sales promotion, and other programs for the purposes of promoting the sale and consumption of dairy products both on a state and nationwide basis. In 1993 there was a consolidation among this state's commission and the dairy promotion organizations in South Dakota and Minnesota. The commission supports and contracts with the American Dairy Association/Dairy Council of the Upper Midwest. This organization promotes dairy products through national advertising promotions and through cooperation with national chain restaurants. In North Dakota, there are television and radio advertising, nutritional education programs in schools, and restaurant and grocery store promotions to enhance the consumption of dairy products. According to the 1997-99 North Dakota Dairy Promotion Commission's summary of activities, sales of milk have increased 29 percent since 1984.

Marketing of Honey Through the Honey Promotion Fund

The Agriculture Commissioner administers the honey promotion fund that was created by the Legislative Assembly in 1979. Statutory provisions relating to the fund are contained in NDCC Chapter 4-12.1. Honey promotion is funded by a five cent per colony assessment collected by the North Dakota Department of Agriculture along with beekeepers license fees due on March 1 of each year. As required by Section 4-12.1-07, the North Dakota Beekeepers Association oversees the disbursement of funds for research and promotion activities. Although most funding is used for bee research, some funding is used to supply recipe brochures and honey sticks.

Marketing of Milk by the Milk Marketing Board

The North Dakota Milk Marketing Board was created by the Legislative Assembly in 1967. Statutory provisions relating to the board are contained in NDCC Chapter 4-18.1. The board's activities and duties are supported by an assessment of not more than 14 cents per hundredweight on milk or milk equivalents. The board controls the marketing of milk within the state by establishing a minimum price for Grade A milk to be paid by processors to producers, and the board enforces fair trade practices regulations. In addition, the board establishes minimum wholesale and retail prices for milk.

Marketing of Oilseeds by the Oilseed Council

The North Dakota Oilseed Council was created by the Legislative Assembly in 1977. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.2. The council's activities and duties are supported by an assessment of three cents per hundredweight on all sunflower, safflower, rapeseed or canola, and crambe from oilseed producers at the first point of sale. Flax is assessed at a rate of two cents per bushel. The council may contract and cooperate with any person for publicity and promotion of oilseed. The council contracts with the National Sunflower Association for most services. The National Sunflower Association has a cooperative agreement with the United States Department of Agriculture's Foreign Agricultural Service to conduct foreign market development and promotional activities. These programs are designed to expand United States confection sunflower export opportunities, consumer product awareness, and product utilization. In 1989 these activities took place in China, Germany, Mexico, Northern Europe, Taiwan, and Turkey. Domestically, the council promotes a genetically altered sunflower oil suited for continuous frying operations so as to increase the premium price paid for the oil.

Because of the success confectionery sunflower producers have had in the marketplace without governmental assistance, the committee received testimony on the marketing of sunflowers. The acreage for confectionery sunflowers has increased threefold since 1985. United States farmers produce 90 percent of the confectionery sunflowers in the world market. One-half of the acres

for confectionery sunflowers are in North Dakota. The reason the marketing of confectionery sunflowers has been successful for farmers is because farmers control the market. The confectionery sunflower producers have tried to match production with demand, increase demand, have control over their hybrid seed, and contract approximately 70 percent of the acres planted. This produces the higher price. In addition there is less competition from the Europeans as with other agricultural products, because due to trade agreements, the Europeans cannot use production subsidies for confectionery sunflowers. However, the Argentineans are becoming a big competitor, and the cost of production in Argentina is \$3 or \$4 per bushel less.

The difficulties with marketing confectionery sunflowers is that the sunflowers must be of a high quality, and if they are not, business suffers. For the year 2000, there are serious concerns with head rot in North Dakota; however, there is an excellent crop in Kansas this year which can meet the needs of most of the high-quality market. The committee was informed that the overall long-and short-term view for the marketing of confectionery sunflowers is optimistic.

Marketing of Dry Peas and Lentils by the Dry Pea and Lentil Council

The North Dakota Dry Pea and Lentil Council was created by the Legislative Assembly in 1997. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.7. The term dry peas and lentils means the range of pulse crops including lentils, dry peas, chickpeas, and lupins. The council's activities and duties are supported by an assessment of one percent of the net value of dry peas and lentils at the point of the first sale.

Under NDCC Section 4-10.7-07, the council may contract and cooperate with any person for the publicity and promotion of dry peas and lentils. The council has hosted marketing seminars for growers, funded portions of seminars educating the public about growing, feeding, and marketing of pulses, and has hosted a meeting and field tour with the Saskatchewan Pulse Growers to open communications between the groups on areas of potential cooperation. Goals of the council are to work with potential processors to develop new processing facilities in this state and to work with the United States Dry Pea and Lentil Council to increase foreign export markets as well as domestic food and feed consumption.

Marketing of Potatoes by the Potato Council

The North Dakota Potato Council was created by the Legislative Assembly in 1967. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.1. The council's activities and duties are supported by an assessment of three cents per hundredweight imposed upon all potatoes grown in the state or sold to a designated handler. The council may increase the assessment by not more than one-half cent per hundredweight per year until a maximum assessment of four cents per hundredweight is reached. The council provides market information to producers so they may more profitably sell their crops. The council provides advertising promotion for better identification of North Dakota products. Under Section 4-10.1-08, the council may contract and cooperate with any person for the publicity and promotion of potatoes. The council contracts with Red River Valley Potato Growers Association for the promotion, advertising, research, and development of Irish potatoes grown in North Dakota.

Marketing of Soybeans by the Soybean Council

The North Dakota Soybean Council was created by the Legislative Assembly in 1985. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.5. Under the federal Soybean Promotion, Research, and Consumer Information Act of 1991, the checkoff for soybeans is one-half of one percent of the net market price. Under federal law, 50 percent of this revenue is sent from the state to the national soybean effort. The remaining assessment is administered by the council. The council promotes soybean use by providing consumers information on the health benefits of soybeans through local presentations and by public relations and media campaigns.

Marketing of Turkeys Through the Turkey Promotion Fund

The North Dakota turkey promotion fund was created by the Legislative Assembly in 1993. Statutory provisions relating to the turkey promotion fund are contained in NDCC Chapter 4-13.1. The Agriculture Commissioner administers the fund in consultation with the North Dakota Turkey Federation. The funds used to operate turkey promotion activities come from a per turkey checkoff based on the weight of the turkey which is levied at one cent for 18 pounds and under, 1.5 cents for 18.01 to 28 pounds, and 1.75 cents for 28.01 pounds and higher. Key processors collect these checkoff funds, and producers may apply to the commissioner for a refund. Turkey is promoted within the state by providing samples and recipes at events in this state and providing money for the purchase of turkeys for classroom instruction and for radio, television, and magazine advertising.

Marketing of Wheat by the Wheat Commission

The North Dakota Wheat Commission was created by the Legislative Assembly in 1959. Statutory provisions relating to the commission are contained in NDCC Chapter 4-28. Wheat producers finance the commission's efforts through a checkoff of 10

mills per bushel.

Under Section 4-28-06, the commission may foster and promote programs to increase the sale and utilization of wheat at home and abroad. The commission may contract and cooperate with any person for education and publicity. The commission promotes export market development. The commission works cooperatively with the United States Wheat Associates, the Northern Crops Institute and North Dakota State University, and the Wheat Marketing Center. The United States Wheat Associates bring trade delegations from around the world to North Dakota and provide short courses for indepth, hands-on training for the use of wheat and durum. The United States Wheat Associates maintain regular contact with customers in more than 100 countries and have more than 15 overseas locations.

The commission works with the United States Wheat Associates, the Wheat Export Trade Education Committee, the National Association of Wheat Growers, the North Dakota Grain Growers Association, the United States Durum Growers Association, the North Dakota Public Service Commission, and the North Dakota Grain Dealers Association in supporting policies domestically and abroad that allow for fair competition. The commission provided funding for former United States Trade Representative Mickey Kantor to represent wheat interests in trade issues with Canada and the World Trade Organization negotiations in late 1999. Domestically, the commission and its affiliates provide for the promotion of wheat through the education of nutrition, health, fitness, and school food service professionals as well as through media campaigns.

The committee received testimony on the marketing of wheat. The committee reviewed world wheat production, world wheat usage, world wheat stocks, wheat production among major exporters, wheat exports among major exporters, wheat stocks among major exporters, durum production and use in major exporter countries, durum stocks in major exporting countries, regional and national partnerships to expand markets for United States wheat, hard red spring and durum exports, production and disappearance of United States hard red spring wheat, production and disappearance of United States durum, trends in the United States wheat industry, United States export trade policy and programs, and United States wheat priorities for World Trade Organization talks.

The committee was informed there are trade offices for wheat in Asia--Tokyo, Taipei, Hong Kong, Korea, the Philippines, Singapore, and Beijing. Trade offices are the link between what a crop is and what the buyer wants. Trade offices engage in a constant educational process by providing milling and baking schools. Trade offices do trade servicing, i.e., finding out what buyers want. Trade offices also solve problems with shipments.

Marketing of Flour by the Mill and Elevator Association

The North Dakota Mill and Elevator Association promotes agriculture through marketing farm products. The Mill and Elevator Association specializes in the milling of hard red spring wheat and durum. The Mill and Elevator promotes its products in national food and product shows around the country. In addition, the Mill and Elevator Association advertises in major industry magazines. International exposure to the Mill and Elevator comes from tours hosted by the Wheat Commission.

The committee was informed that Mill and Elevator Association's location and contacts combined with the ability to source the highest-quality grain will ensure continued profitability while not competing with value-added facilities within this state. Ninety-five to ninety-eight percent of the grain received at the Mill and Elevator Association comes from North Dakota. The Mill and Elevator Association uses very little grain off the Minneapolis Grain Exchange.

The committee received testimony on the marketing of durum, spring wheat flour, family flour, and organic flour by the Mill and Elevator Association. In the past, durum products were marketed to large pasta companies. The Mill and Elevator is focusing sales toward smaller pasta companies that buy in bags. The future marketing plan is to expand sales in branded bags. Generally, the marketing of flour has been in smaller amounts over time. For example, Dakota Maid flour was sold in 25- and 50-pound bags in grocery stores throughout North Dakota, but now is sold in 5-, 10-, and 25-pound bags in 11 states. In the future, marketing will focus on large retail chains, and the products will have to offer the consumer speed and convenience.

Organic flour provides unique challenges because different buyers of organic flour have different requirements. Although the mill does not need dedicated facilities, there are different requirements as to the cleanup required before milling organic flour.

Agricultural Products Utilization Commission

The North Dakota Agricultural Products Utilization Commission was created by the Legislative Assembly in 1979. Statutory provisions relating to the commission are contained in NDCC Chapter 4-14.1. The commission administers grant programs to provide assistance for:

1. Developing new uses for agricultural products and byproducts.
2. Seeking more efficient systems of processing and marketing agricultural products and byproducts.

3. Promoting efforts to increase productivity and provide added value to agricultural products.
4. Stimulating and fostering agricultural diversification.
5. Encouraging processing innovations.

Its mission is to create new wealth and jobs through the development of new and expanded uses of North Dakota agricultural products. It accomplishes this mission through four grant programs. Two of these programs relate directly to marketing.

To meet the purposes of marketing, the commission administers a utilization and marketing grant program and a cooperative marketing program. Utilization and marketing grants are used to assist in the development and implementation of a sound marketing plan for North Dakota agricultural products or byproducts. This is accomplished through the financing of marketing feasibility studies, business plans, and test marketing. Proposals that encourage the creation of jobs and industry within the agricultural sector of the state are preferred.

Cooperative marketing grants are targeted for use by groups or individuals who want to work together in a cooperative fashion to look at production, processing, or marketing of agricultural products. Applications for grants that provide an outlet for products that normally have not been marketed through an existing cooperative are given priority. The purpose of these grants is to increase productivity, to provide added value to agricultural products, to stimulate and foster agricultural diversification, and to encourage processing innovations.

North Dakota Department of Agriculture

Marketing Services is a division of the Department of Agriculture, and the principal task of the division is increasing sales of North Dakota agricultural commodities and value-added agricultural products in international, domestic, and local markets through education, promotion, and market enhancement. The division aids companies in obtaining federal grants. In addition, the department is a member of the Mid-America International Agri-Trade Council. Through this council, food and agricultural businesses can apply for reimbursement for export promotion expenses. The United States Department of Agriculture's Federal-State Marketing Improvement program allocates funds through the department as well.

The main activity of the division is the Pride of Dakota program. The program promotes sales of North Dakota products through joint-marketing efforts by member companies. A major activity of the Pride of Dakota program is the holiday showcase events. In addition, the division has developed an Internet mall at www.shopnd.com, providing Pride of Dakota companies an opportunity to advertise throughout the world at a very low cost. The www.shopnd.com program is about a year old and is partly funded by the United States Department of Agriculture.

The committee received testimony on marketing by the department. On the international front, the department has sent representatives to foreign countries to provide information about this state's products. On the domestic front, the department aids companies in this state in participating in trade shows. The department works to promote products, whereas commodity groups focus on commodities. Commodity groups engage in generic promotion of a commodity and cannot focus on one company. The department can focus on one company.

The committee received testimony on the www.shopnd.com program. The committee was informed that sales are modest but have been doubling each month. This increase is due to the increased marketing of the site by focusing on advertisements in in-state publications that are sent to out-of-state addresses.

Northern Crops Institute

The committee held a meeting at the Northern Crops Institute on the campus of North Dakota State University. The Northern Crops Institute conducts educational and technical programs to promote the marketing of northern grown crops by increasing variety-specific demand. The Northern Crops Institute is funded by four states--North Dakota, Minnesota, South Dakota, and Montana. Sixty percent of funding comes from North Dakota.

Marketing Clubs

The committee received testimony on marketing clubs. Marketing clubs are groups promoted by the North Dakota State University Extension Service and the North Dakota Farm Business Management Program. The clubs are meant to become local centers of learning for risk management strategies and marketing. In 1999 the Legislative Assembly made funds available for 20 educational clubs. As of October 1999, there were 25 clubs with 10 to 20 members. Clubs are encouraged to charge a fee to bring in experts on marketing at each meeting.

Federal Farm Program and Domestic Policy

The federal government has a plethora of programs and agencies that deal with marketing. The federal government deals with marketing on an international and national level. As previously noted, some of the councils and commissions in this state send checkoff moneys to the national level as required by federal law. Because of the number of programs and agencies, the committee did not review all federal programs as was done for the programs within this state.

The committee received testimony on federal domestic programs and policy. The committee was informed federal farm policy has not become an emergency because of the good economy resulting in no great opposition to disaster payments. The committee was informed some reasons for the need for disaster payments are that the Export Enhancement program has not been used, and insurance is based on past yields and yields have not been good. The committee received multiple opinions on what should be done with federal farm policy. For 30 years up until 1996, the federal farm policy was that the federal government would give \$4 for wheat no matter what. The issues of cleanliness and quality were not addressed in the federal farm policy, so producers have a mindset that producing more is better. This thinking combined with poor prices has contributed to the present farm crisis. Freedom to farm required a change in thinking. Because of freedom to farm, farmers have become better at marketing because of necessity. The committee was informed that in the long run, American farmers will do better under the present farm policy with no changes if they weather the low prices because other countries cannot do the same.

The committee was informed that because of the World Trade Organization, there needs to be a farm bill that supports farmers in new ways. The new ways may be found by looking at other countries to see what they are doing.

The committee was informed that the conservation reserve program does not make sense in a free trade environment. The conservation reserve program takes land out of production and other countries react by placing more land into production.

International Trade and Trade Policy

World Trade Organization and the European Union

The committee received testimony on the World Trade Organization meeting in Seattle. The one issue at the World Trade Organization meeting was to identify an agenda. Although no agenda was agreed upon at the meeting, agriculture will be a key component when an agenda is adopted. The meeting will most likely be repeated in 2001 so as to develop an agenda. The agriculture agreement that the World Trade Organization began in Seattle is scheduled to be completed by 2003; however, implementation of that agreement will take a longer time.

The committee was informed food production is an issue of national security, and countries have an obligation to feed the people within their borders. The challenge to the World Trade Organization is to design a system that allows countries to feed themselves but not overproduce and dump the excess on the world market. The divisive issues in designing such a system were numerous; however, there are three major agricultural issues that will most likely be on the World Trade Organization agenda--genetically modified food, export subsidies and programs, and market access. Genetically modified products are a major issue for a few countries, especially in the European Union; however, genetically modified products are a nonissue for Third World countries. The committee was informed the greatest international problem affecting price is the subsidies provided by the European Union. Producers in this country cannot compete with the European Union without massive subsidies. The problems with Canada affect the price of grain in the amount of \$1 to \$3 per ton. European Union subsidies affect price by approximately \$40 per ton or \$1 per bushel.

Within the Uruguay Round Agreement there is a "peace clause" that allows countries to have time to implement the agreement, and certain trade actions may not be taken until 2003. This is what prohibits the United States from bringing trade actions against countries in the European Union for not implementing its agreement even though the United States has lived up to what this country agreed to in the Uruguay Round Agreement in The Freedom to Farm Act.

A major issue of the Europeans is multifunctionality. Multifunctionality states that low-cost production is not the only issue in trade, and issues concerning the environment, the beauty of the countryside, and income to producers should be considered as well as price. The European Union's farm policy is a social policy. There are other countries that see price as the only issue. The World Trade Organization has not considered noneconomic issues in the past. Market access is contrary to multifunctionality.

Federal Export Enhancement Program

A major component of the federal government's promotion of international trade used to be the Export Enhancement program. This program helps products produced by United States farmers meet competition from subsidizing countries, especially the European Union. Under the program, the United States Department of Agriculture pays cash to exporters as bonuses, allowing them to sell United States agricultural products in targeted countries at prices below the exporter's costs of acquiring them. Major objectives of the program are to expand United States agricultural exports and to challenge unfair trade practices.

The program helps United States agricultural producers, processors, and exporters gain access to foreign markets. The program makes possible sales of United States agricultural products that would otherwise not have been made due to subsidized prices offered by competitor countries. Commodities eligible under the program initiatives are wheat, wheat flour, rice, frozen poultry, barley, barley malt, table eggs, and vegetable oil.

The United States Department of Agriculture considers four criteria to select the commodities and countries which will best meet the Export Enhancement program's trade policy objectives:

1. **Trade policy effect** - Initiatives should have the potential to further the United States trade policy strategy of opposing competitors' subsidies and other unfair trade practices by displacing other countries' subsidized exports in targeted countries. Targeted countries are those where United States sales have been nonexistent, displaced, reduced, or threatened because of competition from subsidized exports.
2. **Export effect** - Initiatives must demonstrate their potential to develop, expand, or maintain markets for United States agricultural commodities while considering the United States historical market share and long-term commercial relationships. Efforts will be concentrated on export sales of those commodities that would be competitive if other suppliers did not use export subsidies.
3. **Effects on nonsubsidizers** - Individual initiatives will not be approved if they might have more than a minimal effect on nonsubsidizing exporters in the market.
4. **Subsidy requirements** - The Department of Agriculture compares the subsidy requirements of program initiatives to expected benefits. The overall program level for the program, as well as the amount of bonus awards under individual Export Enhancement program initiatives, will be maintained at the minimum levels necessary to achieve the expected benefits of the program.

All sales under the Export Enhancement program are made by the private sector, not the federal government. Once an invitation is issued, it is up to agricultural exporters to contact prospective buyers in eligible countries and negotiate a sales contract including price, quantity, quality, delivery, and other terms. The sale may be contingent on the United States Department of Agriculture's approval of a bonus. Each prospective exporter submits a bid to the department requesting a subsidy--or bonus--that would allow the sale to take place at the agreed price. The department reviews all bids for the competitiveness of the bonus value requested and compares bids with offers from other United States exporters and sales of competitor countries. The department has the right to reject any or all bids.

Once the department accepts a bid, the exporter and the Commodity Credit Corporation enter an agreement. The bonus is paid to the United States exporter in cash. The corporation determines the bonus payment by multiplying the corporation bonus specified in the agreement by the net quantity of the commodity exported. Once an exporter furnishes the department with evidence the specified commodity has been exported to the target country under the terms of the agreement, the exporter can request payment of the bonus.

The committee was informed the Export Enhancement program will not be used again any time soon. Although funded, the Export Enhancement program is not used because it does not have a significant impact on price and because of the problems it would cause with the European Union.

Committee discussion indicated the Export Enhancement program was very effective when it was first used. The Export Enhancement Program gave the United States a bigger market share and more competition with the European Union and Canada. The Export Enhancement program lessened the amount the United States had in reserves, increased the amount other countries had in reserves, and thereby lowered the amount of grain planted in those countries.

Major Entities Affecting Price

Canadian Wheat Board

A recent international issue is the transporting of grain from Canada to the United States. One complaint concerns the pricing practices of the Canadian Wheat Board which appear to promote Canadian wheat being sold in the United States, thereby lowering the price of wheat in the United States. In late 1998 the General Accounting Office did an independent study of the Canadian Wheat Board's pricing practices. The study confirmed that the lack of price transparency in the Canadian Wheat Board grain marketing activities makes it difficult to assess whether the Canadian Wheat Board's pricing practices are consistent with its international obligations under trade agreements. The Government Accounting Office report also verified the Canadian Wheat Board practices price discrimination, charging different prices to different customers. This pricing practice gives the Canadian Wheat Board greater ability to distort trade. Without accurate information, the United States is unable to determine if imports violate trade agreements or United States trade law. Canada has agreed, however, to reveal the Canadian Wheat Board's pricing methods in a recent trade pact.

According to the study, the Canadian Wheat Board has lowered its initial payment to producers from 90 percent to about 70 to

75 percent of expected final payments. The crux of the dispute between the United States and Canada is that the United States-Canada Free Trade Agreement prohibits sales at less than acquisition cost and Canada considers the initial payment to be acquisition cost. In addition, Canada provides a variety of other direct and indirect subsidies to grain producers, including guarantees of Canadian Wheat Board borrowings, export credit guarantees, net income stabilization, western grain transportation buyout, and government-owned and leased hopper cars.

According to the Canadian Wheat Board web page at www.cwb.ca there are three pillars to the Canadian Wheat Board's history which began in 1935. These pillars are single-desk selling, pooling, and government guarantees. The Canadian Wheat Board is the sole exporter of western Canadian wheat and barley. Instead of competing against one another, Canada's wheat and barley farmers act as one. There is price pooling that guarantees farmers will benefit equally, regardless of when their grain is sold during the crop year. All farmers delivering the same grade of wheat or barley will receive the same return at the end of the crop year. The government guarantees payment by delivering partial payment upon delivery. If returns to the pool exceed the sum of these total payments, farmers receive a final payment. If the returns fall short, the federal government makes up the difference.

Concentration of Grain Facilities

One issue of national concern is the concentration of agricultural wholesaling and marketing entities. According to newspaper reports, there have been a number of gatherings of farmers in response to this concentration, especially the merger between Cargill, Inc., and Continental Grain Company. The United States Justice Department approved the acquisition on July 8, 1999, provided Cargill, Inc., sells an array of grain and soybean facilities in several states. Cargill, Inc., is the nation's number one grain company. Continental Grain Company is the nation's number two grain company.

According to the Cargill, Inc., web page at www.cargill.com, the grain industry is not heavily consolidated. The combination of Cargill's 243 United States facilities with Continental's 83 United States facilities will represent less than three percent of all grain storage in the United States and six percent of total commercial storage. Based on past history, the combined business would handle about 10 to 13 percent of the United States grain moving to market. In the domestic market, there are very few communities in which Cargill and Continental facilities overlap.

Based on past history, the two companies have handled about 35 percent of United States exports. Cargill states that there is plenty of competition on the international level; that entry barriers to export facilities are very low; and that because of privatization in the foreign markets, the grain trade is a relationship-intensive business of many small sales for many individual purposes in which efficiency remains a vital criteria for success.

The committee was informed that there are two markets for a product--the product market and the geographic market. In the merger of Continental and Cargill, they had a product market share of about 18 percent; however, it was all in one geographic market. Some divestiture was required in certain geographic markets.

The committee was informed that major grain companies are investing outside the United States because the United States market is very mature, and there is no place to invest in this country. Future consolidation will come in South America.

Committee members pointed out that Harvest States has a monopoly on 70 to 80 percent of the purchasing of grain in certain parts of the state. Seventy percent of the durum originating in Canada and coming to the United States is going to Harvest States even though Dakota farmers helped finance Harvest States. The purchase of Canadian grain by Harvest States does not help the American farmer and shareholders in value-added cooperatives.

Concentration of Meatpacking Facilities

According to the Department of Agriculture's National Commission on Small Farms, four packing firms control 80 percent of the beef slaughter. Those firms controlled about 36 percent in 1980. The same is true in pork, where five packers control 55 percent of the industry. In short, four large firms in each sector are slaughtering four out of five beef cattle, three out of four sheep, three out of five hogs, and half of all chickens. According to a study conducted at the University of Missouri, 95 percent of all chickens are processed under production contracts. Likewise, in grain marketing and processing, the top four firms control 59 percent of port facilities, 62 percent of flour milling, 74 percent of wet corn milling, and 76 percent of corn crushing.

The United States Department of Agriculture has been active in studying the issue of concentration and moving to ensure adequate oversight of current practices as well as enforcement of current law. The Grain Inspection, Packers and Stockyards Administration is investigating packer competition for retail sales in light of record farm to retail price spreads. Another investigation will scrutinize recent plant closings and changes in kill capacity in recent years. In February 1996 the department released a major study on concentration in the red meat packing industry. According to the report:

Those concerned about the effects of concentration and integration focus on their effects on prices and the price discovery

process. Firms in a concentrated processing industry may be able to reduce prices paid to suppliers. Some observers fear that increases in vertical integration and coordination may amplify the potential for exercise of market power. Some also expressed concern that large packers may use vertical coordination arrangements as a means of blocking their smaller competitors from sources of supply, or as a mechanism for discriminating against livestock sellers. At the least, vertical coordination agreements reduce the prevalence of open-market transactions, thereby restricting the availability of market information.

Those who believe concentration and integration represent no threat argue that livestock prices are higher due to increased efficiency and lower costs realized by large packers and by vertical coordination agreements. They argue that without the size economies, consumer prices would be higher, livestock prices would be lower, and fewer animals would be sold.

The main conclusion of the study was that quick answers to complex market structure and behavior issues are not available. Steady, sustained monitoring and analysis provide the best opportunity to obtain timely, meaningful information as the industry evolves and market conditions change.

The committee was informed that conventional wisdom states that when there is a concentration of market power, there is collusion. Studies suggest there is no significant price distortion in meatpacking on the meat coming into or the meat going out of meatpacking plants. In the aggregate, studies suggest there is no effect of the big four meatpackers through captive supply on the market, although there may appear to be an effect of captive supply on local markets. The committee was informed there is competition in the meatpacking industry because of technology and rivalry between the meatpacking firms. However, clarity of the market has been lost because price discovery is difficult with so few buyers.

Antitrust Law as Prevention of Unlawful Concentration

The committee reviewed federal and state antitrust law and reviewed enforcement actions by this state with a focus on agriculture. As for federal antitrust actions, the Department of Justice reviews mergers following a definite procedure--companies with combined sales over a certain threshold must provide the Department of Justice with premerger notification; the department has a limited time to file an action; and the burden of proof is on the Department of Justice. As for state actions, states did not have the laws or resources to challenge agribusiness mergers during the 1980s. This was a time when there was major concentration of agribusinesses. The committee was informed it would be difficult to change what has already been done.

This state works with other states on antitrust matters. There are multistate working groups through the National Association of Attorneys General which work on antitrust matters. The lead state in the group is dependent upon the issue. This state participates with personnel, funding, research, and legal work.

A representative from the Attorney General's office suggested two ways to strengthen antitrust actions in this state. The representative suggested legislation:

1. To create a revolving fund initially funded with \$500,000 to \$1 million for pursuing antitrust actions. The revolving fund could be replenished with attorney's fees won in actions and could be increased by adding civil penalties.
2. To give the Attorney General additional investigative power in state actions by removing the requirement of showing reasonable cause for a violation to a district court before the issuance of a subpoena.

Committee members suggested that many multinational corporations are larger than some countries in the size of their budgets, and there needs to be enforcement of antitrust laws against large corporations and transnational corporations that control the markets.

Bill Drafts Considered

Antitrust Investigations

The committee considered a bill draft to remove the requirement that the Attorney General receive district court approval before investigating antitrust violations.

The committee received testimony in opposition to the bill draft. The committee was informed that present law requires a district court judge acting as an independent, nonpolitical decisionmaker to find reasonable cause before the Attorney General may begin an investigation. The points of opposition were that the bill draft would create a one-man grand jury in the politically elected office of the Attorney General, would remove a protection for individuals from government intrusion, and would change the burden on the accused to prove the investigation is improper. The ability for an entity to appeal the use of investigatory authority remained under the bill draft; however, the individual or business being investigated has to take an affirmative action to stop the investigation. In comparison, it was argued that it is a minor hurdle for the Attorney General to go to court and receive approval from a judge before exercising investigatory authority. Although one thought expressed was that this bill draft

may aid the Attorney General in investigating the meatpacking business through a multistate effort, the bill draft is broader because it applies to all entities, including individuals being investigated for antitrust violations.

The committee received testimony in support of the bill draft. The committee was informed there is no substantial merit for the requirement, and the requirement is unique to this state. Most states allow the Attorney General to conduct civil investigations without court approval, and the Attorney General of the United States is not required to get court approval before antitrust investigations. In addition, consumer protection investigations in this state do not need judicial oversight, and there have been no abuses of that power. The safeguard against abuse of power is that the Attorney General's office is under the control of an elected official and hence is sensitive to the citizens of North Dakota. In addition, the object of the investigation is protected because the court can quash any of the Attorney General's investigatory actions.

The committee was informed that getting court approval is not a major impediment; however, it is an inconvenience. This inconvenience creates a timelag when this state is working with other states in multistate antitrust investigations. The committee was informed the bill draft satisfied the request of what, if anything, could be done to strengthen this state's antitrust law.

Committee members pointed out that there is trust in the elected officials in this state to do the right thing. The bill draft basically removed the power of review from an elected district court judge and placed it with an elected state official--the Attorney General. The Attorney General represents the people of North Dakota, and if the bill draft gives more power to the people by taking away a minor protection for big business, then that is a reasonable tradeoff.

Antitrust Appropriation and Fund

The committee considered a bill draft to create a revolving fund for the enforcement of antitrust laws. The bill draft provided for an appropriation of \$500,000. Attorneys' fees and civil penalties would be deposited in the antitrust fund. All money in the antitrust fund would be subject to appropriation.

Under NDCC Section 54-12-18, all costs, expenses, and attorneys' fees and civil penalties collected by the Attorney General regarding any antitrust matter are placed into the Attorney General refund fund. This fund has a continuing appropriation; however, any excess funds at the end of each fiscal year are deposited in the general fund. The bill draft would allow moneys to stay in the fund at the end of a biennium, but the bill draft does not have a continuing appropriation. The bill draft would supersede Section 54-12-18, in which there is similar wording.

The committee received testimony in support of the bill draft. The major factor limiting antitrust actions in this state is the lack of resources to investigate agribusiness mergers. The \$500,000 appropriation would not be used as much for hiring people as for litigation expenses, e.g., expert witnesses, including economists.

Testimony on Other Factors Affecting Price

There are a number of factors that affect price. The committee was informed the major cause of low crop prices is the record world crop production for several years in succession and the high value of the dollar. The committee was informed of five circumstances that will increase prices:

1. Domestic demand is increased.
2. Bad weather is experienced in major growing areas.
3. Export levels are increased.
4. Low prices have squeezed out higher cost producers, thereby reducing the world supply of grain.
5. Federal farm policy is changed.

The committee was informed that one way to increase profitability is for producers to take over processing and marketing functions. The per capita income of Americans has increased, but food expenditures have stayed about the same. As a result of increasing incomes, people want more free time and do not want to cook. Greater wealth increases food elasticity because with more wealth, people become more critical as to the quality of their food. Higher quality usually means more processing which means higher costs. Farms have seen a rise in the cost of production and not in prices; however, consumer prices are increasing. Producers can take advantage of these higher prices by taking over marketing functions. In short, the processing component of food products is increasing, but the need for food products is fairly constant. However, the committee was informed that last year food processors lost 21 percent on investment. Although there has been a trend going on for a long time of farmers receiving a smaller portion of the pie, the trend does not appear attributable to food processors.

The committee was informed that United States producers have to spend more time and money on the marketing of their products; however, producers are not generally willing to spend money for marketing. Other industries spend much more on marketing than the agricultural production industry. One exception and success story is the Washington apple growers, who

spend \$1.50 per box on a \$6 box of apples for marketing. The way to increase prices through marketing is by education and information. The committee was informed that the marketing system should rely on the private sector, and government support should be in research and development.

Productivity

The committee was informed that by spending money on research and increasing production, the price of agricultural products may go down; however, this does not mean money should not be spent on research. The only way prices will increase because of less research is if the United States could convince all countries not to spend any money on research. It is impossible to convince others not to invest in the future of the agricultural industry. The first group to benefit from research has a window of opportunity to profit above competitors.

Commodity prices have consistently decreased for the last 100 years. The committee was informed that this trend is not likely to change because there are new areas in this world that are coming into production. The committee was informed that acreage reduction in the United States will not affect price because other countries will put land into production to fill the void. For example, China recently discovered it has one-third more acres in production than what was previously thought. Before this discovery, it was thought that average yields were higher than they are; hence, there is a greater potential for increased production than was previously thought. Farmers have increased production threefold over the last 40 years in wheat and corn. Productivity has increased by two and one-half times from 1949 to 1994 because of technology. There has been a 10 percent increase per year in productivity in North Dakota. The benefits from increased productivity have not benefited farmers, however, but have benefited consumers and manufacturers. If government payments are ignored, over time net farm income has gone down.

The committee was informed that family farmers cannot be independent. They need to form alliances to add value to their crops or lower production costs with larger operations. Farmers need to take advantage of economies of size.

Variety-Specific Demand and Quality Issues

The committee was informed that a bright spot in the future for grain marketing is in variety-specific demand. Buyers are looking for particular varieties that will work particularly well for certain purposes. Smaller producers who can meet a particular need have many opportunities. Although there is opportunity in producing particular varieties for particular needs, most grain buying still is done on price alone. The major benefit from variety-specific segregation will come when suppliers convince customers of the worth of the increased cost.

This country has some barriers in entering a variety-specific market and some advantages. Our economic system cannot compete with the Canadian Wheat Board. The Canadian Wheat Board has given away quality at no extra cost to receive market share. It is difficult to profit from selling specific-quality wheat for specific end uses if other countries give away quality. Canada keeps varieties of wheat separate through the national varietal release program and requires visual distinguishability. Varieties are separated on the state level in the United States. It would be difficult to require visual distinguishability in this country. This state plants 20 times more varieties of wheat than all of Canada. However, this country has an advantage in our separation system because of better on-farm storage. Testing will have to evolve to handle segregation.

Transportation

The committee received testimony on issues relating to the transportation of agricultural products. The committee was informed that the major transportation policy issues are:

1. How will transportation impact processing?
2. Who will bear the increased infrastructure costs--the farmer or the state?
3. How will we maintain low-volume roads?
4. How will we change our status as a residual supplier (a supplier that can be used as a backup to fill excess capacity)?
5. How can we regain lost market power?

The committee was informed there are two major railroad car auction programs. In one program, major grain companies lease the cars they own in exchange for capacity from the railroads. The large grain companies then lease the extra capacity to third parties. The second auction program is held by railroads. They hold a monthly auction of car capacity up to six months in advance of the provisions of that capacity. Provision of that capacity is guaranteed by the railroad, and elevators pay a premium for that guarantee. The premium paid to railroads for auctioned cars is hardly any amount if there is a grain shortage. The premium may rise between \$300 and \$400 per car when there is a large demand for cars. The auction is not truly free market because the railroad sets a minimum bid. The Public Service Commission and others monitor the auction program to assure that it is not manipulated or that artificial shortages are not created by the railroads.

Committee discussion indicated that there appears to be a certain amount of unfairness in the car auctioning process for small elevators because they do not have as much money as large elevators, thereby limiting the lots on which they can bid.

Grain Grading

The committee investigated reports that there are differences in the grades obtained from different federal laboratories. The destination grade is always less than the origination grade when there has been a difference for certain individuals. This causes a huge financial impact for the individuals.

The committee received testimony on official grain grading in the United States from a representative from the Federal Grain Inspection Service office in Grand Forks. The operation of the grain grading system within the United States is permissive. A producer can choose an unofficial laboratory. Inspection is mandatory for export. It would greatly increase costs for there to be a mandatory system established in the United States.

The committee received testimony on discrepancies in grain grading. All samples that are graded by the official system are kept for three days and may be redone, sent to the federal appeal level, and the board of appeal level to determine if there is a discrepancy due to the grading system. In addition, there are random checks of the official system to ensure quality. Historically, the official grain grading system has a good track record. Committee members pointed out that the appeal process is not practical because farmers need to quickly determine what to do with their crops.

Most grain headed to the South is unloaded according to North Dakota grades. Some elevators have had problems with elevators in the Pacific Northwest. Large elevators in the Pacific Northwest use the destination grade. Although there is a tracking system for determining the variability for destination and origin grades, the system has not been used for grain going to the Northwest. The Federal Grain Inspection Service could do the tracking survey at the request of an elevator and at no cost to the elevator. Only a federal law could require grading at the origination point.

Falling numbers tests alpha amylase activity. Alpha amylase changes the gluten strength. Falling numbers is not a measure of sprout damage; however, there is a correlation between falling numbers and sprout damage. Alpha amylase activity changes when sprouting is about to happen. Falling numbers is not damage under the official standards; however, in the marketplace a test resulting in low falling numbers means poor gluten strength, which results in bread with holes in it. End users are using grain grading to purchase high-quality grain. Flour millers need a certain level of falling numbers, and they place that requirement in their purchase contracts. A producer may not be happy with low falling numbers and low prices; however, a consumer would not be happy with large holes in bread because of no gluten strength.

The committee was informed concerning possible solutions to low falling numbers. A producer may plant a variety that is resistant to low falling numbers. A producer should not mix grain with low falling numbers and no sprout damage with good grain because it ruins the good grain.

The committee was informed that the difference between the amount of damage determined by different graders may be attributed to the fact that the submitted sample is not obtained by an official sampler or in a way that ensures the sample is representative of the entire field. It is important to note the damage determination is only for a particular sample, not the entire field. The uniformity of damage in the field is an issue. When, where, and how the sample is taken affects the damage percentage. A sample taken in the field at one point may differ from one taken in another point of the field or one taken in the combine or in the bin.

The process of doing a damage analysis is a visual and subjective process. It takes five years to become an effective analyzer for wheat. There are line slides, objective samples, to which the analyzer can compare the sample when there is a question. The analysis is done through a standardized procedure, including using the same surface with the same light bulbs.

There can be different portions of damage in the same sample test. If the variations are within two standard deviations, it is not significant unless there is a pattern showing the deviation to be in one direction. If there is a deviation above two standard deviations, then the Federal Grain Inspection Service takes a closer look at the grading process. As damage increases, especially sprout damage, variability increases and does not divide out equally.

The committee was informed the Federal Grain Inspection Service provides comment for the changing of grain grading standards; however, crop insurance works with the grain grading standards as written, and the Federal Grain Inspection Service has no involvement as to crop insurance.

Committee discussion indicated that farmers are disadvantaged by testing because crop insurance does not cover the damage, and the farmer cannot sell the grain on the market because of low falling numbers. The problem is that the falling numbers test is widely used in the market but is not part of the official grain grading system. In addition, the problems caused by the inability to get crop insurance payments appears to be one of the most severe problems in agriculture. It was suggested that falling

numbers should be correlated with crop damage insurance.

The committee considered a concurrent resolution draft urging Congress to provide for consistent grain grading. The draft was amended to promote point-of-origin grain grading and suggest that risk management grades follow Commodity Credit Corporation grades for adjustments for crop insurance.

Recommendations

The committee recommends [House Bill No. 1033](#) to remove district court approval before investigating antitrust violations by the Attorney General.

The committee recommends [House Bill No. 1034](#) to create a revolving fund for the investigation of antitrust violations and appropriates \$500,000 for that purpose.

The committee recommends [House Concurrent Resolution No. 3001](#) urging Congress to provide for consistent grain grading based on point-of-origin grain grading. In addition, the concurrent resolution suggests that risk management grades follow the Commodity Credit Corporation grades for adjustments for crop insurance.

AGRICULTURAL RESEARCH AND EDUCATION BOARD REPORTS

The committee received testimony from a representative from the State Board of Agricultural Research and Education on the board's activities as to research and expenditures. The representative provided information on the allocation of the agricultural research fund in fiscal years 1998 through 1999 and 1999 through 2000, and on all the research projects and the amount of money granted for fiscal year 1998 through 1999. Funds available for grants have increased from \$556,790.30 for fiscal year 1998 through 1999 to \$679,786.76 for fiscal year 1999 through 2000.

The Agricultural Research and Education Board was required to have its budget completed by February 2000. The budget was approved at 110 percent by the State Board of Higher Education in March 2000. The budget was prioritized and pared down to comply with the Governor's 100 percent budget request. The committee was informed that the board had \$239,000 cut from its budget from the time it was sent to the Governor. As a result, certain programs have been eliminated.

The State Board of Agricultural Research and Education reported on the activities and research that it is funding. An explanation of "granting committees" and how they have evolved and are functioning was detailed. Those committees are assisting in the design of research to meet the particular needs and available niches of North Dakota agriculture. The board has developed a long-term approach to beef research. The two goals of beef research are to provide lower cost of production and to increase the value and wholesomeness of beef. The board's barley initiative is investigating the feeding of low-grade barley to cattle.

The committee received testimony from a representative from the State Board of Agricultural Research and Education on the board's activities as to biotechnology crops. The board has approved the biotechnology initiative and will look at markets before research is done. The focus of study will be on wheat.

There are four research subject areas of focus identified for biotechnologically enhanced crops--quality, desired end-user traits, potential market impact, and identification of varieties and traits for future development. The area of quality includes a study of identity preservation. Studies have shown that to segregate and identify biotech crops will cost up to 18 cents per bushel on some crops with the average being three to six cents. The identification of varieties and traits for future development includes potential market impacts of biotech crops. For example, the potential market impact of Roundup-ready soybeans is \$8 million, assuming a 50 percent adoption rate. Farmers will receive 19 percent of this impact. Seed companies will receive 45 percent of this impact. If there is worldwide adoption of Roundup-ready soybeans, the impact will be \$2.4 billion; however, farmers will only receive six percent of this impact. For there to be identification of varieties and traits for future development, there needs to be cooperation between entities engaged in research and development and those engaged in marketing.

Committee members commented that biotechnology crops are in their stages of infancy and by using technology there will be less demand for pesticides. This will be appealing to consumers; however, there have been petitions against genetically modified crops, and there was controversy over genetically modified crops having an organic label. Consumers need to be informed of the benefits of genetically modified crops before there is increased production. Over one-half of the American public think their food is free of genetically modified products; however, 60 percent of food products have some genetic modification. Fifty-five percent of all soybeans and 40 percent of all corn are biotechnology modified. The impact of genetically modified crops on the structure of agriculture will be more vertical integration and more contracting.