

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1328

2001 HOUSE AGRICULTURE

HB 1328

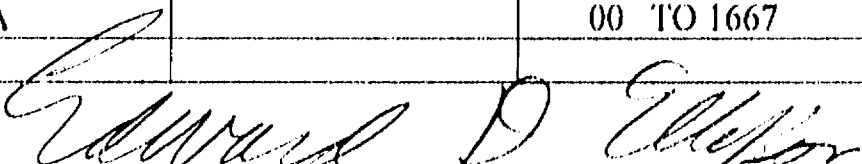
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1328

House Agriculture Committee

☐ Conference Committee

Hearing Date 2--09--01

Tape Number	Side A	Side B	Meter #
ONE	A		1860 TO 6020
TWO	A		00 TO 1667
Committee Clerk Signature 			

Minutes:

*CHAIRMAN NICHOLAS: We will open the hearing on HB 1328.*

*Representative Brandenburg: I am happy to be here today to talk about crop harmonization.*

As you recall last session there was a lot of discussion about harmonization and crop protection and the trying to come up with a solution to come a working group that may be able to work on these issues. I am happy to report that this committee was quite successful in working in the harmonization issues working with both industry and EPA. Everybody worked together on this Bill as to sponsors of the Bill. We all came from a little bit different concerns, I think we are all trying to resolve the harmonization issue. We want to add another member to the committee from the Governors Office. So that we have impute from the Governors office.

Representative Brandenburg went through the Bill {{please read the Bill}}. Rep. Brandenburg also talked about an amendment to add to the Bill which is attached. Please read amendment.

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House Agriculture Committee

Bill/Resolution Number HIB 1328

Hearing Date 2--09--1

Representative Brandenburg talked about the conola people, what they have done. They have hired people to work with EPA AND PRMA as to getting chemicals, crop protection products pushed along with NAFDA labels. Something that we would like to be able to do is group that comes to our committee that would like to have a particular crop or chemical that is being used on our crops that we would be able to hire a consultant to work on this issue and be able to harmonize and help them with the harmonization of that particular chemical.

REPRESENTATIVE LEMIEUX: Your new language on page two here suggests that we are going to set up a granting program. Is there a fiscal note that goes with this.

REPRESENTATIVE BRANDENBURG: Yes this BILL has to go on to appropriations. The sum of \$300,000.00 that would be put into the crop harmonization committee which would be able to administer these grants to different Agr. Groups that would come in and ask that they be worked. Some of the harmonization issues that they would like and they could approve or disapprove.

LEMIEUX: Is there not already an entity that grants money for to the conola people etc. Are we doing a duplication of services by creating another granting entity.

BRANDENBURG: There is another Bill going around which I am signed on, That is for \$500,000.00.

LEMIEUX: My friends in the conola are able to apply for grants to do these things. Do you as the harmonization committee realize the obligations that go into administering a granting program. What is going to be the cost of establishing. It cost us forty to fifty thousand dollars to administer the granting program.

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House Agriculture Committee

Bill/Resolution Number HIB 1328

Hearing Date 2--09--1

BRANDENBURG: The idea behind this is not to take away from any other fund but to add to it. We would have different growers of different varieties of crops that would be able to come and get a grant to work on a particular chemical that they would like to have harmonized. They have a plan to do this and we could or would be able to grant that money to them. The canola people may have another issue that they want to work on and they could come to the Crop Harmonization committee and request that we work with that particular chemical that they want worked on.

REPRESENTATIVE MUELLER: Please see your amendment. Page two line three.

Harmonization may study. The crop harmonization committee may study and, with the approval of the chairman of the legislative council, may take any action necessary to address international trade issues affecting agriculture in this state. Why does this group want to get involved with that?

BRANDENBURG: I think it is necessary that that language be there. We may be requested to testify at a meeting, trade issues etc. Not only does harmonization deal with crop protection. It also deals with trade issues. We want to have the authority that we may be able to go and testify and talk to these people with trade issues as well as harmonization issues. The issues go hand and hand. There is language there that we can clearly do that. We want the authority to do that.

MUELLER;: Do you need to put that into statute?

BRANDENBURG: We are working on harmonization issues. If we are going to make a trip out to Washington and there may be a meeting in Denver or somewhere in Canada. where there are trade issues along with harmonization. They tie together and cross over.

We need the authority.

LLOYD: I am concerned about the granting aspect. I think you might be biting off more than you can chew. The second thing I think I might object to is I think that if you wanted to do that it can be duck-tailed with the money going to SBAR and working with that group to get it done. I think that is the proper approach.

BRANDENBURG: By no means are these the final amendments to the Bill. We have ideas to how we should handle this. At this point we are trying to work through those ideas. We need not only work on minor crops but also major crops that we have to work on. The harmonization, we are looking at this so that we have some approval authority at what is happening within the harmonization issues. Not necessary do we want to administer all of these programs because we all farm, we are busy, but we want to be a part of the process. Have approval authority as to where this money goes.

BERG: We don't want to create another administrative operation but I think in practice what you could do is have ESBAR do the administration and granting and the harmonization committee could contract to them to administer and distribute it. You would also have the authority to contract with someone else as well. There may be other groups that you could do that as well. I think you can do that in the statute the way it is written here.

BRANDENBURG: We get all our minds going and we can figure out a way to do this.

BERG: The appropriation on here make this a two year Bill. We are breaking some new ground. We will learn as we go on this.

CHAIRMAN NICHOLAS: Any other questions? Testimony in favor of HB 1328?

ROGER JOHNSON: If I may, I am not here to testify either in support or opposition.

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House Agriculture Committee  
Bill/Resolution Number HB 1328  
Hearing Date 2--09--1

Please see printed testimony of Rogers. There is a lot of information in the attachment. SIX PAGES. TABLES ETC.

WE have done everything that we can to keep the committee informed as to what was going on in our office. So that we can work together. One of the significant things we got from last session was a fellow sitting over here. Jim Gray, is not our pesticide registration specialist. The last legislature session gave us some money and authority to hire a person to Deal with these issues. He is really the states expert on this issue in my judgment. He dose a lot of the section 18's now that we used to do in conjunction with NDSU. We still work very closely with NDSU. A lot of tend to moving into our office and into his lap. We at the secretaries suggestion, about a year and half ago, at your first harmonization committee meeting in Minot we appropriated EPA, got a grant from EPA to provide 100 of a portion of his salary. About half of that in fact, so EPA is on board in financing a lot of the work that we are doing as well.

CHAIRMAN NICNOLAS: ANY QUESTIONS.

REPRESENTATIVE LEMIUEX. Explain granting for minor use pesticide fund.

ROGER: The grants are approved through the pesticide control board. This is by statue. This is myself, Cole Guftason and S. Anderson, extension research at NDSU. We put out a list with rules, procedures, terms that need to be applied in terms of those dollars, we receive applications, review those applications and approve or deny based on what is provided in the law. This fund is only about four years old. We deal with sunflowers a number of others, primarily specialty crops. That is the focus.

CHAIRMAN NICHOLAS: Thank you Roger. We will take further testimony on HB 1328.

PAUL THOMAS: I am here representing the Canola Growers Association. We are in support of this Bill. We are in favor of more funds being used. Minnesota Groups were give an appropriation of \$500,000.00 and they have done a lot of work on this. Labeling and that type of thing. WE feel that this legislation and wording would help for a much need process of harmonization.

JEFF OLSON: Expanded on Roger Johnson testimony. Relating to salaries. Minor use projects can only be used on research projects. Not salaries.

GARY KUNUTSON: Mr Chairman and committee members. I am with the N.D.

AGRICULTURE ASSOCIATION. We represent the dealers and distributors of pesticides, and seeds in the crop production of the state. We have a numeral position. We have a concern that we maintain adequate dollars in the minor use program. We are talking minor use, not minor acres. Everybody needs to work together. We need to main so that we have adequate funding for minor use.

STEVE STRAGIE: I am with the N.D. GRAIN DEALERS ASSOCIATION. We think the Bill is a positive step. We support.

BRANT OMRENKEN: <<<spelling<<< One additional comment about minor use, I thin there are some differences between the harmonization initiative, the minor use initiative, there are also similarities. Both initiatives need to be continues.

LEMIEUX; The question has to do with the language in the Bill. Establishing a granting committee. Or doing Granting. Are you as a member of the committee will to put time in to do grants?

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House Agriculture Committee

Bill/Resolution Number HB 1328

Hearing Date 2--09--1

BRANT: I think certainly the current Bill greatly expands the work and the focus and harmonization committee and I think there is going to be a lot of debate amongst this committee. We will have to see how that plays out. I think in the end the best discussion is going to get made, what ever that decision is. Our committee will rise to the task. Get the job done. Increased skill a ability with have to be a factor in the committee.

CHAIRMAN NICHOLAS: One of the things we were told at our hearing in March. in Washington and also a follow up meeting that is was at but in the March meeting. The EPA told us that within two years they hoped that new chemicals coming to the market would be harmonized at that time. I did follow up on that question in September at a follow up meeting and I again asked the question with some of the EPA people and that is what the goal is.

At least for new chemicals coming to the market.

LLOYD: Just in the last two months I am aware of at least 60 applications for registration. from several countries. They want joint registration in both Canada and US. Also for the benefit of the committee members, a year ago I did a research project which was the first one done where the material I applied to the crops was to be registered in Canada, the US and Mexico. The registration went to all three countries at the exact same date. Progress is being done here.

BRANDENBURG: We need to keep working on the bill.

CHAIRMAN NICHOLAS: Anyone else wishing to appear in support of this Bill. Anyone wishing to appear in opposition.

THE COMMITTEE WILL CLOSE THE HEARING ON HB 1328. 1A:1667

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1328

Page 1, line 1, after "to" insert "create and enact a new section to chapter 19-18 of the North Dakota Century Code, relating to creation of a chemical and rebate equity fund; to amend and reenact section 19-18-04 of the North Dakota Century Code and to"

Page 1, line 2, after the first "to" insert "pesticide registration fees and"

Page 1, line 3, replace "an" with "a continuing"

Page 2, line 3, replace "administer a grant program through which" with "provide recommendations regarding:

- a. Registration fees for products if identical or substantially similar products are marketed in Canada.
- b. The manner in which funds collected under section 19-18-04 are to be rebated to consumers.

**SECTION 2. AMENDMENT.** Section 19-18-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**19-18-04. (~~Effective July 1, 2001~~) Registration - Fees.**

1. Any <sup>Registrant</sup> ~~person~~ before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:
  - 1- a. ~~Give~~ Include the name and address of each manufacturer or distributor.
  - 2- b. ~~Give~~ Include the name and brand of each product registered.
  - 3- c. Be accompanied by a current label of each product so registered.
  - d. Include the name and brand of any identical or substantially similar product marketed in Canada.
  - e. Include information regarding the wholesale price in Canada of products named under subdivision d.
  - f. Include use and wholesale price information from this state for each product registered.
  - 4- g. Be accompanied by a registration fee of at least three hundred dollars for each product registered, except if an identical or substantially similar product is available in Canada and the commissioner determines that a significant price difference exists between the product marketed in this country and that marketed in Canada, the registration fee must be equivalent to the difference between the price at which the product is marketed in this country and the price at which

the product is marketed in Canada times the number of units marketed in this state.

- h. Be accompanied by a material safety data sheet.
2. At the ~~close conclusion~~ of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and ~~the remainder of the registration fee~~ two hundred fifty dollars for each registered product to the environment and rangeland protection fund. The state treasurer shall credit the remainder of the registration fee for each registered product to the chemical and rebate equity fund.
- ~~5. Be accompanied by a material safety data sheet.~~
3. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment.
4. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.
5. Each registration covers a two-year period beginning January first and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location.
6. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, or within the same month the pesticides are first manufactured or sold within this state.
7. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.
8. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

**SECTION 3.** A new section to chapter 19-18 of the North Dakota Century Code is created and enacted as follows:

**Chemical and rebate equity fund - Continuing appropriation.** The chemical and rebate equity fund is a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the commissioner to provide rebates to persons who apply pesticides to land or crops in this state."

Page 2, remove lines 4 through 20

Renumber accordingly

VR  
2/9/01

HOUSE AMENDMENTS TO HB 1328

HOUSE AGR.

2-9-01

Page 2, line 3, after the underscored period insert "The crop harmonization committee may study and, with the approval of the chairman of the legislative council, may take any action necessary to address international trade issues affecting agriculture in this state.

3. The crop harmonization committee, with the approval of the chairman of the legislative council, may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs and international trade issues.

4."

Renumber accordingly

2-9-01

Date:  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

1328

House AGRICULTURE Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

AS AMENDED  
BERG PIETSCHE

Legislative Council Amendment Number

10303.0103

REPEL 2PA6

Action Taken

DO PASS

APPROVED

Motion Made By

BERG

Seconded By

PIETSCHE

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	✓		Rod Froelich		
Dennis E. Johnson - Vice Chairman	✓		Doug Lemieux		✓
Rick Berg	✓		Philip Mueller		✓
Michael Brandenburg	✓		Kenton Onstad		✓
Joyce Kingsbury	✓		Sally M. Standvig		✓
Myron Koppang	✓		Dennis J. Renner	✓	
Edward H. Lloyd	✓		Dwight Wrangham	✓	
Bill Pietsch	✓				

Total (Yes)

10

No

4

Absent

1

Floor Assignment

NICHOLAS

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

REPORT OF STANDING COMMITTEE

HB 1328: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1328 was placed on the Sixth order on the calendar.

Page 2, line 3, after the underscored period insert "The crop harmonization committee may study and, with the approval of the chairman of the legislative council, may take any action necessary to address international trade issues affecting agriculture in this state.

3. The crop harmonization committee, with the approval of the chairman of the legislative council, may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs and international trade issues.

4."

Renumber accordingly

*new copies "2"  
Amendments Attached*

2001 HOUSE APPROPRIATIONS

HB 1328

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB1328**

House Appropriations Committee

☐ Conference Committee

Hearing Date **February 19, 2001**

Tape Number	Side A	Side B	Meter #
1	X		4685 - 6226
1		x	0 - 822
Committee Clerk Signature <i>L L Dourheim</i>			

Minutes:

**HOUSE APPROPRIATIONS COMMITTEE HEARING ON HB1328.**

**Rep. Timm:** We will open the hearing on HB1328.

**Rep. Brandenburg:** I come to speak to you on HB1328 dealing with crop harmonization and basically what the bill does is that it allows the crop harmonization committee to deal with issues concerning dual labeling and joint labeling and Nafta labeling, dealing with being able to work with the pesticides problem and working along with EPA and PMRA which is a regulatory agency out of Canada and also EPA out of the United States and attending different meetings to work out this issue. This last biennium we attended meetings in Washington dealing with harmonization issues and we feel that this committee has done a good job towards the harmonization issue. We met with EPA in Washington and had the Crop Protection Agency attending as well. We had some of the top people from EPA attending and I think the emphasis put out by the crop harmonization committee will show a movement towards harmonization

issues and NAFTA labeling. Also, the harmonization committee which consisted of Chairman Nickolas, myself, and Senator Wanzek and others. The thing at looking at this as we go on to the next biennium, there is a lot of issues towards harmonization, and we feel that we should keep working on this, and one of the changes in this bill allows the governor or his designee to be a part of this committee, we are looking for leadership in that area to work with the governor because there's also the bill dealing with chemicals HB1287. This bill deals with pesticide free products coming across the border from Canada and those issues all tie together. Also, we have in here dealing with registration labeling needs and international trade issues, if you understand the crop harmonization committee, when you go to these meetings you also have not only harmonization people there from EPA and PRMA but you also have people there from USDA and Farming Canada, so if we go to a meeting and we are representing the State of North Dakota and its dealing with a trade issue, we want to be sure that we have the proper language that we can speak to those issues, because as we deal with trade and harmonization they go hand in hand. So Mr. Chairman and members of the Appropriations Committee, I gave you a brief summary on what this is about and I will take any questions.

**Rep. Timm:** How much money did you have appropriated to the committee this particular biennium, do you remember?

**Rep. Brandenburg:** Last session we had asked for an appropriation of \$250,000, but we didn't get to use that money because we didn't have the proper language in place and so that money went to the minor use fund. There was a ruling put out by the Attorney General saying that this money could not be used for crop harmonization or any grants that would be working on harmonization and the proper language is in the bill right now that would allow that to happen.

we were appropriated a general fund of about \$30,000, which we used for traveling and expenses for meetings.

**Rep. Timm:** It looks like if this bill passes you have \$500,000 available to you, is that right? Do you plan on giving out a lot of grants or do you plan on doing a lot of traveling?

**Rep. Brandenburg:** Actually it looks like there is 1/2 million dollars but I don't believe, the concept of it is that we will have the Ag.Groups come in to crop harmonization committee and ask for a grant, so the grants that were submitted last biennium to work with crop harmonization whether that be the grain growers, the wheat growers, the barley growers, the canola growers, the sunflower growers and then we would then give them a grant and they would have to match that grant to be able to work on harmonization issues, then in turn they can use that money to hire consultants and you have groups right now that work with harmonization issues, with EPA and PRMA who have been working within the hallways in Washington D.C as well as in Ottawa to be able to work on the harmonization issues of that particular chemical for that particular grain group. And that is what the money will basically will go to, the travels we broke it down and kind of looking at \$50 to \$60 thousand dollars for traveling, part of this will be used for the minor use fund.

**Rep. Kempenleh:** Is this crop harmonization going to be around for a long time, what do you think is a time line that you would take on this?

**Rep. Brandenburg:** I think were just in the infancy stage of crop harmonization, because if you talk to the crop protection people as well as EPA people, as well as PMR people, what were doing in North Dakota is making a move towards the harmonization issue, visiting with Rep. Lloyd and probably he should talk about this, he has had in this last year 60 requests for new registrations for NAFTA labeling, that's almost unheard of because before he had maybe 1/2

dozen to work on this, so I think this is an ongoing committee that is going to have to keep pursuing working on the harmonization issue.

**Rep. Warner:** My understanding of interim committee's is that they are usually ad hoc committees that have been thrown together to study issues specifically developed by the legislature, is there any precedence for the interim committee to become a regulatory agency?

**Rep. Brandenburg:** I really don't know, I just feel that this committee is very useful, but do we set a precedence? I don't know.

**Rep. Skarphol:** When Rep. Heuther and I worked on the Ag. Commissioner's budget we were aware that there was going to be a funding request of roughly this amount, and we are comfortable in the fact that this money is available in the EARP fund, not the minor use fund, so we would have to amend the bill to take the money out of the EARP fund verses the minor use fund.

**Rep. Delzer:** Currently, how do any of these groups get there funding or whatever they want to do, if your talking commodity groups or whatever, hiring consultants, if they want to do it do they have to do it through there own organization?

**Rep. Brandenburg:** Currently the different growers can go and request funds from the minor use fund or else they can put in a request for different chemical companies to work on harmonization issues or registration process or section 18 or whatever it may be.

**Rep. Gulleason:** My questions are surrounding a duplication of effort, we have the Ag. Commissioner's responsibilities for registration of chemicals, we have the pesticide control board that has responsibilities in that whole area, what would be the argument to support establishing a third entity to deal with this?

**Rep. Brandenburg:** I look at it as a ongoing process for everybody to work together, the pesticide control board is one part of it, crop harmonization committee is another part, and all of working together towards the harmonization issue can more that just speed it along. I don't look at it as a duplication of effort.

**Rep. Wald:** This is really a committee to kind of yank the chain of the feds, so to speak.

**Rep. Brandenburg:** This committee as you know, when you take Chairman Nicholas along and other people, and when we went from door to door with these people we had exceptionally good discussions.

**Rep. Skarphol:** I think in the past we have been rather confrontational about this issues, and is it not the intention of this group to try to be more conciliatory and settle the issues rather than argue over the issues, am I correct in that assumption?

**Rep. Brandenburg:** That's absolutely right.

**Rep. Timm:** Do you know what the approximate balance is in the minor pest fund?

**Rep. Brandenburg:** Right now, as I understand it, we have \$2 million 495 thousand for the EARP fund.

**Rep. Timm:** Any other questions of Rep. Brandenburg?

**Rep. Aarsvold:** I notice that your legislation requires you to consult with the pesticide control board in the process of coming up with recommendations, how often do you meet with them? Is there a regular meeting or somewhat regular on call of the chair?

**Rep. Brandenburg:** We have not met with the pesticide board, but we would work with them to.

**Rep. Timm:** Any other testimony in support of HB1328? Any opposition to HB1328? If not, we will close the hearing on HB1328.

**Committee hearing on HB1328 is closed.**

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1328

House Appropriations Committee

☐ Conference Committee

Hearing Date February 21, 2001

Tape Number	Side A	Side B	Meter #
02-21-01 tape #1	5180 - 6230	0 - 301	
Committee Clerk Signature <i>Kathleen Hall</i>			

Minutes:

The committee was called to order, and opened committee work on HB 1328, the crop harmonization bill.

Chairman Timm: There was a memo passed around earlier regarding crop harmonization provided by Rep. Brandenburg.

Rep. Byerly: He thinks the bill needs to be amended, page 2, line 22 of the engrossed bill, needs to say the Environment and Range Protection Fund (ERP). Moves to adopt the amendment. Seconded by Rep. Wald.

Rep. Skarphol: When Rep. Huether and I discussed this when working on the Agriculture Commissioner's budget it was our intention that this program be funded and that minor use get whatever is left in the fund and thus the increase in registration fees. I was wondering if there is any needed language to do that. We need to have the language follow our intention. Minor use gets \$500,000 or as much as available, but to fully fund this to \$300,000.

There is a number of things coming out of the ERP fund, I just want to make sure this gets fully funded. There will be another amendment also.

Roxanne, LC: Understands the amendment and sees no problem with the language.

Rep. Aarsvold: On the handout there is a reference to a staff member. I don't see any provision for additional staffing in the bill.

Rep. Delzer: This is interim committee, so I would assume it would be legislative council staff.

Voice vote adopted the amendment.

Rep. Delzer: He has concerns about granting authority to an interim legislative committee, and thinks the budget section should have oversight. Moves to make this amendment. Seconded by Rep. Boehm.

Roxanne, LC: Makes sure the language is correct, does the committee want them to get approval before making grants, or make reports after making grants.

Voice vote adopted amendments.

Rep. Skarphol: Moves DO PASS AS AMENDED. Rep. Byerly seconded.

Rep. Warner: He is uncomfortable with a legislative interim committee becoming a regulatory agency, and this is an enormous amount of money, and with that comes an enormous amount of power. He would just as soon see this done by professionals who do this as a full time position.

Rep. Gullerson: Sees that there is something mission, and she had requested a listing of the dollars spent last session and the accomplishments that that committee had. She doesn't know why that had not been provided.

Page 3  
House Appropriations Committee  
Bill/Resolution Number HB 1328  
Hearing Date February 21, 2001

Rep. Kempenich: So far I haven't seen much regulatory authority in here to granting money to pursue crop harmonization, from what I understand most of this is going to promote crop harmonization mainly between Canada and the US. He fails to see the regulatory part of this.

Vote on Do Pass as Amended: 15 yes, 5 no, 1 absent and not voting. Motion passes.

Rep. Kempenich is assigned to carry this to the floor.

**PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1328**

Page 2, line 20, after the underscored period insert "The committee shall report to the budget section of the legislative council on grants awarded under this subsection."

Page 2, line 22, replace "minor use pesticide" with "environment and rangeland protection"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Dept. 160 - Legislative Council - House Action**

This amendment changes the source of funds for the \$300,000 appropriation to the Legislative Council from the minor use pesticide fund to the environment and rangeland protection fund. A provision is added requiring the Crop Harmonization Committee to report to the Budget Section on the grants it awards.

Date: 2-20-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1328

House APPROPRIATIONS

Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number 10303. 6201

Action Taken to amend

Motion Made By Rep. Byerly Seconded By Rep. Wald

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman					
Wald - Vice Chairman					
Rep - Aarsvold			Rep - Koppelman		
Rep - Boehm			Rep - Martinson		
Rep - Byerly			Rep - Monson		
Rep - Carlisle			Rep - Skarphol		
Rep - Delzer			Rep - Svedjan		
Rep - Glassheim			Rep - Thoreson		
Rep - Guleson			Rep - Warner		
Rep - Huether			Rep - Wentz		
Rep - Kempenich					
Rep - Kerzman					
Rep - Kliniske					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*adopted*

Date: 2-20-01  
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1328

House APPROPRIATIONS Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number 10303.0201

Action Taken to adopt to make this budget section oversight

Motion Made By Rep. Delzer Seconded By Rep. Boehm

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman					
Wald - Vice Chairman					
Rep - Aarsvold			Rep - Koppelman		
Rep - Boehm			Rep - Martinson		
Rep - Byerly			Rep - Monson		
Rep - Carlisle			Rep - Skarphol		
Rep - Delzer			Rep - Svedjan		
Rep - Glassheim			Rep - Thoreson		
Rep - Gulleson			Rep - Warner		
Rep - Huether			Rep - Wentz		
Rep - Kempenich					
Rep - Kerzman					
Rep - Kliniske					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*adopted*

Date: 2-20-01  
Roll Call Vote #: 3

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1328

House APPROPRIATIONS

Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number 10303, 0201

Action Taken DO PASS AS AMENDED

Motion Made By Rep. Skarphol Seconded By Rep. Byerly

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman	✓				
Wald - Vice Chairman	✓				
Rep - Aarsvold		✓	Rep - Koppelman	✓	
Rep - Boehm	✓		Rep - Martinson	✓	
Rep - Byerly	✓		Rep - Monson	✓	
Rep - Carlisle	✓		Rep - Skarphol	✓	
Rep - Delzer	✓		Rep - Svedjan	✓	
Rep - Glasshelm		✓	Rep - Thoreson	✓	
Rep - Gulleeson		✓	Rep - Warner		✓
Rep - Huether	✓		Rep - Wentz		
Rep - Kempenich	✓				
Rep - Kerzman		✓			
Rep - Kliniske	✓				

Total (Yes) 15 No 5

Absent 1

Floor Assignment Rep. Kempenich

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

2001 SENATE AGRICULTURE

HB 1328

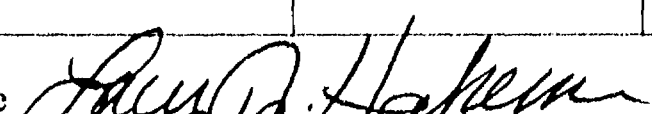
# 2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1328

Senate Agriculture Committee

☐ Conference Committee

Hearing Date March 9, 2001

Tape Number		Side A	Side B	Meter #
March 9	1	X		44.4 - End
	2		X	0.0 - 39.8
March 15	3	X		39.0 - End
	3		X	0.0 - 0.2
March 22	3	X		13.3
Committee Clerk Signature 				

Minutes: March 9, 2001

REP. BRANDENBURG; Sponsor, introduced the bill to the committee. This bill deals with the Crop Harmonization Committee that was organized last session. It was set up to work on crop harmonization issues between different chemicals and also looking at the NAFTA label, dual labeling, joint labeling and their concerns. There are a couple of changes in this bill. One is to add the Governor's Office or Designee to be part of the Harmonization Committee. Also the Harmonization may study different things concerning trade issues and give out grants to the Ag. Commodity groups. In visiting with all the people I believe that everyone looking towards harmonization EPA, PMRA their idea may be a little different than the crop protection. I feel that all people who are involved with this want harmonization, a single registration process between Canada and the U.S., which should reduce the cost of registration and cost of chemical.

SENATOR KROEPLIN; I see the addition of the Governor or Governor's Designee, why is the Agriculture Commissioner not included in this group? Would you object to having the Ag. Commissioner on here?

REP. BRANDENBURG; There are a couple places in the bill where the Ag. Commissioner is involved with reporting and request the Ag. Commission to peruse specific language and funding the private sources and report to the Legislative Council.

SENATOR KLEIN; The line, that may take any action, I think may be adjusted. I find that there is some people who think that this gives the committee more authority. Can this be worked out?

REP. BRANDENBURG; We need to look at the issues and make sure that we have the concerns of everyone and not giving too much authority.

SENATOR NICHOLS; How would this committee go about setting up the guidelines deciding who would get the grants and what the qualifications were.

REP. BRANDENBURG; The group would come to the committee and request an application and submit an application to the committee to look at whether it could be matched and how the money would be spent.

SENATOR KROEPLIN; In request for grants, last time, what were they requesting them for?

REP. BRANDENBURG; Last time the request for the grants they were for research.

SENATOR KROEPLIN; Last session when we formed this committee, I thought that the group that was put together would be working in the political arena to solve some of these thing not on a chemical by chemical basis.

REP. BRANDENBURG; This committee has worked in political arena. We talked with Rep. Pomeroy and Senator Dorgan and Senator Conrad, we had some very good dialog working in the political arena.

LT. GOVERNOR DALRYMPLE; shared his concern of this bill with the committee. We have made some good progress and we also still have a long way to go before we get the results that we envisioned in the last session. I think part of the problem has been getting people in Washington D.C. to understand the extent of this problem. We are in favor of being represented on this committee.

REP. LEMIEUX; testified in support of this bill and presented amendments to the committee. These amendments ask that we require registrant to provide information.

ROGER JOHNSON; Agriculture Commissioner, testified in support of this bill. See attached testimony and information.

LANCE HAGEN; ND Grain Growers Assoc., testified in support of this bill.

SENATOR WANZEK; Do you see merit in separating the regulatory function of administering pesticide rules and regulations from an effort to promote and push forward more products?

LANCE HAGEN; Absolutely, as the bill was written the last time it was probably limited too much towards research.

GARY KNUTSON; ND Agriculture Association, testified in support of this bill. We maintain a focus on the two fronts that this bill addresses and HB 1467 did as well and that is utilizing the legislative power to work at continued efforts toward joint registration, harmonization but at the same time we want to keep sight and focus on our minor crops in the state and keep a program in place for registering and getting labels for those crops.

BARRY COLEMAN; Canola Growers, testified in support of this bill. Commodity groups need to keep working with the EPA.

MERLIN LEITHOLD; ND Weed Control Assoc., testified in opposition of this bill. See attached testimony.

SENATOR WANZEK; What is your funding level?

MERLIN LEITHOLD; About \$1.4 million.

PAUL GERMOLUS; Attorney General's Office, provide information of the committee. The two areas of concern that we have is whether there will be any constitutional issues in giving a legislative study committee executive type powers to take any action not specifically enumerated by the legislature and second, deals with what type of international trade would be contemplated by this committee and how it would affect the office of Attorney General in defending or assisting with that trade action.

SENATOR WANZEK; Do You see any conflict of interest in the control board that administers the regulatory function of the pesticide laws, also being the that is trying to push forward or promote minor use chemicals and other products that the market wants?

PAUL GERMOLUS; As long as the legislature has delegated that authority to the pesticide control board, I don't see a problem with legislature doing this as long as the duties and roles and authority of that pesticide control board are clearly defined.

The hearing was closed.

**March 15, 2001**

REP. BRANDENBURG; provided the committee with amendments for this bill.

Discussion was held.

**March 22, 2001** - Discussion was held.

Page 5  
Senate Agriculture Committee  
Bill/Resolution Number HB 1328  
Hearing Date March 9, 2001

SENATOR KLEIN moved to DO PASS amendments.

SENATOR ERBELE seconded the motion.

Roll call vote: 4 Yeas, 2 No, 0 Absent and Not voting.

SENATOR KROEPLIN moved to further amend the bill.

SENATOR NICHOLS seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR KLEIN moved to further amend the bill.

SENATOR URLACHER seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR KLEIN moved for a DO PASS and rereferred to the Appropriation Committee.

SENATOR ERBELE seconded the motion.

Roll call vote: 4 Yeas, 2 No, 0 Absent and Not voting.

SENATOR WANZEK will carry the bill.

3/15

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1328

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to creation of a crop protection product harmonization and registration board; to amend and reenact sections 4-35-06.2 and 4-35-06.3 of the North Dakota Century Code, relating to funds received for expenses paid relating to the registration of pesticides and the minor use pesticide fund; to repeal section 11 of chapter 31 of the 1999 Session Laws, relating to the crop harmonization committee; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 4-35-06.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-06.2. ~~Commissioner of agriculture - Pesticide control~~ Crop protection product harmonization and registration board - Recovery of funds.** The ~~commissioner of agriculture crop protection product harmonization and registration board~~ may accept, on behalf of the ~~pesticide control board~~, funds received for expenses paid by the ~~pesticide control board~~ relating to the registration of pesticides or donations offered to or for the benefit of the ~~pesticide control board~~. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The ~~pesticide control board~~ shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer provisions of this section.

**SECTION 2. AMENDMENT.** Section 4-35-06.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-06.3. Minor use pesticide fund - Continuing appropriation.** The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the ~~pesticide control crop protection product harmonization and registration board~~ for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

**SECTION 3.** A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

**Crop protection product harmonization and registration board - Duties - Grants.**

1. The crop protection product harmonization and registration board consists of the governor or the governor's designee, the agriculture commissioner, the chairman of the house agriculture committee, the chairman of the senate agriculture committee, one crop protection product manufacturing industry representative appointed by the chairman of the legislative council, one crop protection product manufacturing industry representative appointed by the governor, and one consumer of crop protection products appointed by the governor. The governor or the governor's designee shall serve as chairman of the board. The board shall:

- a. Identify and prioritize crop protection product labeling needs;
  - b. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a);
  - c. Identify the data necessary to enable registration of a use to occur in a timely manner;
  - d. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section;
  - e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
  - f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
  - g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.
2. The board may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs.
  3. The board may administer a grant program through which agriculture commodity groups based in this state may apply for funds to be used by the groups to address issues related to the registration of crop protection products. To be eligible for receipt of a grant, an applicant must submit an application to the board which requests a specific amount of funds, specifies the exact purposes for which the grant would be used, and provides a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.
  4. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
  5. The board may adopt rules to implement this section.

**SECTION 4. REPEAL.** Section 11 of chapter 31 of the 1999 Session Laws is repealed.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$325,000, or so much of the sum as may be necessary, and from special funds derived from grants or donation income, the sum of \$200,000, or so much of the sum as may be necessary, to the crop protection product harmonization and registration board for the purposes of addressing crop protection product

registration and labeling needs and providing grants as provided in section 3 of this Act, for the blennium beginning July 1, 2001, and ending June 30, 2003."

Renumber accordingly

Date: 3-22-01  
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1328

Senate Agriculture Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number 10303.0305

Action Taken Do Pass

Motion Made By Sen. Klein Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroepflin		✓
Senator Erbele - Vice Chairman	✓		Senator Nichols		✓
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 3-22-01  
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1328

Senate Agriculture Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass - amendments

Motion Made By Sen Kroeplin Seconded By Sen. Nichols

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 3-22-01  
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1328

Senate Agriculture Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass - amendments

Motion Made By Sen. Klein Seconded By Sen. Urlacher

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroepflin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen

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

Date: 3-22-01  
Roll Call Vote #: 4

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate Agriculture Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass - referred

Motion Made By Sen. Klein Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin		✓
Senator Erbele - Vice Chairman	✓		Senator Nichols		✓
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator Wanzek

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

**REPORT OF STANDING COMMITTEE**

**HB 1328, as reengrossed: Agriculture Committee (Sen. Wanzek, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1328 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to creation of a crop protection product harmonization and registration board; to amend and reenact sections 4-35-06.2 and 4-35-06.3 of the North Dakota Century Code, relating to funds received for expenses paid relating to the registration of pesticides and the minor use pesticide fund; to repeal section 11 of chapter 31 of the 1999 Session Laws, relating to the crop harmonization committee; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 4-35-06.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-06.2. ~~Commissioner of agriculture - Pesticide control~~ Crop protection product harmonization and registration board - Recovery of funds.** ~~The commissioner of agriculture~~ The crop protection product harmonization and registration board may accept, ~~on behalf of the pesticide control board,~~ funds received for expenses paid ~~by the pesticide control board~~ relating to the registration of pesticides or donations offered to or for the benefit of the ~~pesticide control board~~. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The ~~pesticide control board~~ shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer ~~provisions of~~ this section.

**SECTION 2. AMENDMENT.** Section 4-35-06.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-06.3. Minor use pesticide fund - Continuing appropriation.** The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the ~~pesticide control~~ crop protection product harmonization and registration board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

**SECTION 3.** A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

Crop protection product harmonization and registration board - Duties - Grants.

1. The crop protection product harmonization and registration board consists of the governor or the governor's designee, the agriculture commissioner, the chairman of the house agriculture committee, the chairman of the senate agriculture committee, one crop protection product manufacturing industry representative appointed by the chairman of the legislative council, and two consumers of crop protection products appointed by the governor. The governor or the governor's designee shall serve as chairman of the board. The board shall:

- a. Identify and prioritize crop protection product labeling needs;
  - b. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
  - c. Identify the data necessary to enable registration of a use to occur in a timely manner;
  - d. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section;
  - e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
  - f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
  - g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.
2. The board may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs.
  3. The board may administer a grant program through which agriculture commodity groups established under this title may apply for funds to be used by the groups to address issues related to the registration of crop protection products. To be eligible for receipt of a grant, an applicant must submit an application to the board which requests a specific amount of funds, specifies the exact purposes for which the grant would be used, and provides a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.
  4. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
  5. The board may adopt rules to implement this section.

**SECTION 4. REPEAL.** Section 11 of chapter 31 of the 1999 Session Laws is repealed.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise

appropriated, the sum of \$325,000, or so much of the sum as may be necessary, and from special funds derived from grants or donation income, the sum of \$200,000, or so much of the sum as may be necessary, to the crop protection product harmonization and registration board for the purposes of addressing crop protection product registration and labeling needs and providing grants as provided in section 3 of this Act, for the blennium beginning July 1, 2001, and ending June 30, 2003."

Renumber accordingly

2001 SENATE APPROPRIATIONS

HB 1328

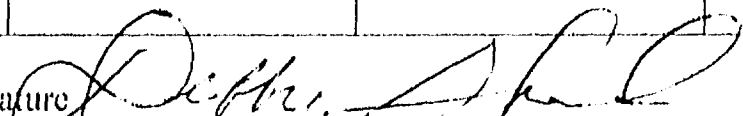
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1328

Senate Appropriations Committee

☐ Conference Committee

Hearing Date March 30, 2001

Tape Number	Side A	Side B	Meter #
1	X		14,1-54,6
		X	0,0-3,6
Committee Clerk Signature 			

Minutes:

Senator Solberg opened the hearing on HB 1328.

Senator Terry Wanzek, District #29, appeared in support of the bill and to speak on fiscal issue.

Information purposes this bill establishes a harmonization board. This budget contains \$325,000 from ERP fund and also \$200,000 additional dollars that might be gained through donations from various groups. This is workable and dollars available. A start in a good direction and change. This is not to harm other projects and take money away from them if funding is not available.

Senator Bowman: Original bill had \$300,000 from ERP fund and now appropriation is \$325,000, why \$25,000 added?

Senator Wanzek: That was done in the House. I can't explain or answer that.

Senator Tomac: Engrossed bill from House was \$300,000.

Senator Wanzek: That is correct. General consensus we do not want to dip into the weed control funds. I can answer concept of the bill not sure on the appropriation part.

Senator Tallackson: Appears we have two committees if this is approved. Are you dissatisfied with the Committee through the Ag Department now that seems to be making a lot of progress along the same line as this committee would do?

Senator Wanzek: No, that committee serves a very important function as a regulatory committee enforcing the laws, role more as regulatory and this to be different. I see industry and producers who want to be more directly involved and facilitate and accommodate this. This is endorsing the adoption of products and getting them registered and prioritized, get more involved.

Senator Tallackson: That is not what I've heard, they think we are creating more government and duplicating services.

Senator Wanzek: There are always questions on what we are doing. Can't explain the whole issue in the newspaper. Not our intent to duplicate, grower groups want this to be more directly involved.

Senator Lindaas: Confused on the purpose of this specifically? Can you give a scenario and what they going to do, with promotion or how would this work?

Senator Wanzek: I'm going by information provided by Cranola growers, grain growers, etc., to identify products. Their resources are limited in working with industry. If they could work directly in conjunction with government they can utilize some of these resources and research. This will let more people be involved and not just one entity.

Senator Robinson: Many I have talked to say to mess with a success story is a mistake and chemical companies a conflict of interest here?

Senator Wanzek: I don't see conflict of interest, only one member of seven member board. Can't understand distrust of the industry after bringing industry into this state and now distrust, I see it as resource to provide input to help us understand what needs to be done with other members.

Senator Robinson: Farmers have a good handle on process, I'd put trust with the farmers.

Senator Wanzek: Couldn't agree more. Growers group have not in direct opposition. Some concerns on dollars with wheat line item. Comes down to dollars taken from there I would object. Many growers are in favor of this.

Senator Heitkamp: Conflict of relations to the appropriation with the industry. Section 5, appropriation side, saying one member from industry on board as special interest also they are going to contribute \$200,000 for what this is about to do and really paying for part of this.

Senator Wanzek: It doesn't say that money is coming from industry, it could come from various groups and not specifically industry. Just trying to expand on the idea from last legislation when it all got started with new products. Efforts working together will speed up harmonization to eliminate a lot of problems between our borders with prices and accessibility with products.

Senator Heitkamp: The fiscal side, Cranola and wheat growers don't have a lot of money. The industry is coming up to subsidize this, paying for this, giving them strength.

Senator Wanzek: I think we are getting confused with pesticide regulator board and this board. This board will not have any authority to register or approve products for use. It still would be required of the regulatory board and their function for approvals. Industry person on the board will not have a vote in approving in registering or approving products. This is more of a promote effort and not necessarily a regulatory vote.

Senator Solberg: We need to focus only on the appropriations on this bill, \$325,000 from ERP fund only.

Senator Tomac: Under the harmonization we passed last session, was the grower input not allowed or what happened; what kind of grants are they going to write that they can apply for; what are they going to do with the money; is this a million dollar handout?

Senator Wanzek: I'm not an expert on this or with the involvement with a lot of the grower groups that were more involved. There is a number of different products. With all these different needs and priorities it adds up to a fair amount of money. They would have to show merits with their proposals to this board before any kind of grant would be extended to them. There could be a conflict of interest when a regulatory board has total control over deciding which product are needed and which products approved and registered.

Senator Lindaas: Wouldn't you agree that a lot of the chemicals are unique to the crops that they are applied on, for instance Cranola or wheat, would there be an interest in that and commodity groups themselves promote these chemicals for application?

Senator Wanzek: I'm speaking for a number of these groups, and they could speak better to that issue than I can.

Representative Mike Brandenburg, District #26, spoke in support of the bill and any questions the committee might have.

Senator Robinson: On the fiscal side of the bill, expenditure of significant dollars here, already have a program in place that I believe is working well, and we are looking at another 15% for administration, how can we justify those kind of expenditures. Wouldn't we be better working with the existing program and their resources? Or another bureaucracy?

Representative Brandenburg: I believe this appropriation for \$325,000 is a small amount of money to go towards the harmonization issue. We realized with the last session that dealing with the harmonization committee is to involve all parties for these issues. Last session was learning

process. We feel this will save millions of dollars to the farmers of our state and as we go on with this we need to work together with all concerned. We have added the Agriculture Commissioner in order to do this.

Senator Robinson: If there is that type of commitment out there to make this better. What if we deleted the appropriation and pass the bill.

Representative Brandenburg: That would be a bad mistake because we need all stake holders to be working together.

Senator Heitkamp: Are you okay with creating this whole another level of bureaucracy?

Representative Brandenburg: Absolutely, this is a good bill.

Senator Thane: Do you have any idea where the extra \$25,000 came into this and what was the intent of adding this from the House?

Representative Brandenburg: It came from the drafting and amendments on the bill.

Senator Thane: I would assume the legislative council would have some notation on that with drafting this rewrite.

Senator Solberg: This will be noted in the subcommittee for review.

Senator Bowman: In the subcommittee we will address that issue, if we take the \$25,000 and leave it at the original \$300,000 will the committee be able to survive?

Representative Brandenburg: Absolutely, the \$300,000 will take care of us, and will be happy with it.

Senator Schobinger: Are you a farmer?

Representative Brandenburg: Yes I am a farmer.

Senator Schobinger: And as a farmer do think this is wise use of these dollars.

Representative Brandenburg: Absolutely. The harmonization group has made efforts within the nation; I believe together we can resolve this issue with new administration and committee working in a bipartisan effort along with congressional delegation.

Senator Tomac: Could you survive with \$200,000?

Representative Brandenburg: Referring to last session, I will give you a handout (attached) which explains the position of crop protection people, \$25,000 was received and very little accomplished. We need to work with higher consultant's to get harmonization to work and move on. The fiscal aspect is a fair amount of money for us to work with.

Senator Tomac: The issue of harmonization, product registration we aren't registering and trying to balance the prices here with prices in Canada which are in two different directions.

Representative Brandenburg: There are many different issues that work with harmonization. Those are both parts of it. We need to work together, Canada and United States as well as with the farmers.

Senator Tomac: Is this program going to be here next time or is it a one request or forever?

Representative Brandenburg: We will have to earn our keep. If we don't deliver and get things done, then we will have to look at that issue to keep this funding. Looking at last two years, we have earned our keep and move towards harmonization.

Roger Johnson, Commissioner of Agricultural, and here to provide information (attached) on importance of this bill.

End Tape #1, Side A, meter 54.6.

Senator Bowman: If in our Subcommittee we feel that the \$25,000 added, any would go to different area, like noxious weeds would you be opposed to that?

Roger Johnson: Would not be opposed to noxious weed. Important that the minor use fund not be forgotten, this bill takes control of that fund. Getting new products with the science and the data behind the products so registration is moved forward.

Jim Deepooler, farmer, recommended to the committee a Do Not Pass on this bill (attached testimony).

Senator Solberg: This bill is assigned to the Ag Subcommittee.

With no further testimony, the hearing was closed.

Tape #1, Side B, meter 3.5.

After the hearing testimony was handed in from Merlin Leithold, ND Weed Control Association and made part of the record (attached).

4-2-01 Full Committee Action (Tape #3, Side A, Meter # 3.3 - 10.7)

Senator Nething reopened the hearing on HB1328 - Crop Harmonization Committee.

Senator Bowman, Subcommittee Chair reviewed the bill, and reported the Subcommittee's findings. He presented amendments 10303.0307. Discussion.

Senator Bowman moved to adopt the amendments; seconded by Senator Solberg. Discussion; call for the vote: Roll Call Vote: 9 yes; 5 no; 0 absent and not voting.

Discussion on the bill. Senator Bowman moved DO PASS AS AMENDED; seconded by Senator Solberg; call for the vote: 9 yes; 5 no; 0 absent and not voting.

Senator Bowman will carry the amendment; Senator Wanzek the bill.

April 2, 2001

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1328

In lieu of the amendments adopted by the Senate as printed on pages 947-949 of the Senate Journal, Reengrossed House Bill No. 1328 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to creation of a crop protection product harmonization and registration board; to amend and reenact sections 4-35-06.2 and 4-35-06.3 of the North Dakota Century Code, relating to funds received for expenses paid relating to the registration of pesticides and the minor use pesticide fund; to repeal section 11 of chapter 31 of the 1999 Session Laws, relating to the crop harmonization committee; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 4-35-06.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-06.2. ~~Commissioner of agriculture - Pesticide control~~ Crop protection product harmonization and registration board - Recovery of funds.** The ~~commissioner of agriculture~~ crop protection product harmonization and registration board may accept, on behalf of the ~~pesticide control board~~, funds received for expenses paid by the ~~pesticide control board~~ relating to the registration of pesticides or donations offered to or for the benefit of the ~~pesticide control board~~. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The ~~pesticide control board~~ shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer provisions of this section.

**SECTION 2. AMENDMENT.** Section 4-35-06.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-06.3. Minor use pesticide fund - Continuing appropriation.** The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the ~~pesticide control~~ crop protection product harmonization and registration board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

**SECTION 3.** A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

**Crop protection product harmonization and registration board - Duties - Grants.**

1. The crop protection product harmonization and registration board consists of the governor or the governor's designee, the agriculture commissioner, the chairman of the house agriculture committee, the chairman of the senate agriculture committee, one crop protection product manufacturing industry representative appointed by the chairman of the legislative council, and two consumers of crop protection products appointed by the governor.

The governor or the governor's designee shall serve as chairman of the board. The board shall:

- a. Identify and prioritize crop protection product labeling needs;
  - b. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a);
  - c. Identify the data necessary to enable registration of a use to occur in a timely manner;
  - d. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section;
  - e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
  - f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
  - g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.
2. The board may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs.
  3. The board may administer a grant program through which agriculture commodity groups established under this title may apply for funds to be used by the groups to address issues related to the registration of crop protection products. To be eligible for receipt of a grant, an applicant must submit an application to the board which requests a specific amount of funds, specifies the exact purposes for which the grant would be used, and provides a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.
  4. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
  5. The board may adopt rules to implement this section.

**SECTION 4. REPEAL.** Section 11 of chapter 31 of the 1999 Session Laws is repealed.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, and

from special funds derived from grants or donation income, the sum of \$200,000, or so much of the sum as may be necessary, to the crop protection product harmonization and registration board for the purposes of addressing crop protection product registration and labeling needs and providing grants as provided in section 3 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

SENATE - This amendment reduces the total appropriation for the Crop Harmonization Committee by \$75,000 from \$525,000 to \$450,000 by reducing the appropriation from the environment and rangeland protection fund by \$75,000 from \$325,000 to \$250,000.

Date: 4-2-01

Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. LB 1328

Senate Appropriations Committee

☐ Subcommittee on \_\_\_\_\_  
or

☐ Conference Committee

Legislative Council Amendment Number 10303.0317

Action Taken Adopt Amendment

Motion Made By

Senator Berman

Seconded

By

Senator DeWitt

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas		✓			
Harvey Tallackson		✓			
Larry J. Robinson		✓			
Steven W. Tomac		✓			
Joel C. Heitkamp		✓			
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 9 No 5

Absent 0

Floor Assignment Senator

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

Date: 4-2-01

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1328

Senate Appropriations Committee

☐ Subcommittee on \_\_\_\_\_  
or

☐ Conference Committee

Legislative Council Amendment Number 10303.0307

Action Taken As passed as amended

Motion Made By Senator Burman Seconded By Senator Silkey

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas		✓			
Harvey Tallackson		✓			
Larry J. Robinson		✓			
Steven W. Tomac		✓			
Joel C. Heitkamp		✓			
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 9 No 5

Absent 0

Floor Assignment Senator Bill Wanzek

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

Burman - Amend

**REPORT OF STANDING COMMITTEE**

HB 1328, as reengrossed and amended: Appropriations Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1328, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the Senate as printed on pages 947-949 of the Senate Journal, Reengrossed House Bill No. 1328 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to creation of a crop protection product harmonization and registration board; to amend and reenact sections 4-35-06.2 and 4-35-06.3 of the North Dakota Century Code, relating to funds received for expenses paid relating to the registration of pesticides and the minor use pesticide fund; to repeal section 11 of chapter 31 of the 1999 Session Laws, relating to the crop harmonization committee; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 4-35-06.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-06.2. ~~Commissioner of agriculture - Pesticide control~~ Crop protection product harmonization and registration board - Recovery of funds.** ~~The commissioner of agriculture~~ The crop protection product harmonization and registration board may accept, ~~on behalf of the pesticide control board,~~ funds received for expenses paid ~~by the pesticide control board~~ relating to the registration of pesticides or donations offered to or for the benefit of the ~~pesticide control board~~. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The ~~pesticide control board~~ shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer ~~provisions of~~ this section.

**SECTION 2. AMENDMENT.** Section 4-35-06.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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**SECTION 3.** A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

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1. The crop protection product harmonization and registration board consists of the governor or the governor's designee, the agriculture commissioner, the chairman of the house agriculture committee, the chairman of the senate agriculture committee, one crop protection product manufacturing industry representative appointed by the chairman of the legislative council, and two consumers of crop protection products appointed by the

governor. The governor or the governor's designee shall serve as chairman of the board. The board shall:

- a. Identify and prioritize crop protection product labeling needs;
  - b. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
  - c. Identify the data necessary to enable registration of a use to occur in a timely manner;
  - d. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section;
  - e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
  - f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
  - g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.
2. The board may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs.
  3. The board may administer a grant program through which agriculture commodity groups established under this title may apply for funds to be used by the groups to address issues related to the registration of crop protection products. To be eligible for receipt of a grant, an applicant must submit an application to the board which requests a specific amount of funds, specifies the exact purposes for which the grant would be used, and provides a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.
  4. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
  5. The board may adopt rules to implement this section.

**SECTION 4. REPEAL.** Section 11 of chapter 31 of the 1999 Session Laws is repealed.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, and from special funds derived from grants or donation income, the sum of \$200,000, or so much of the sum as may be necessary, to the crop protection product harmonization and registration board for the purposes of addressing crop protection product registration and labeling needs and providing grants as provided in section 3 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003."

Renumber accordingly

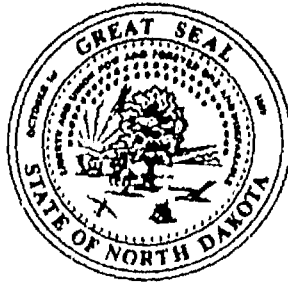
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SENATE - This amendment reduces the total appropriation for the Crop Harmonization Committee by \$75,000 from \$525,000 to \$450,000 by reducing the appropriation from the environment and rangeland protection fund by \$75,000 from \$325,000 to \$250,000.

2001 TESTIMONY

HB 1328

COMMISSIONER OF AGRICULTURE  
ROGER JOHNSON



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**NORTH DAKOTA DEPARTMENT OF AGRICULTURE  
LEGISLATIVE TESTIMONY**

**NORTH DAKOTA DEPARTMENT OF AGRICULTURE  
LEGISLATIVE TESTIMONY**

Testimony of Roger Johnson  
Agriculture Commissioner  
House Bill 1328  
February 9, 2001  
9:00 a.m.  
House Agriculture Committee  
Peace Garden Room

Chairman Nicholas and members of the committee, I am Agriculture Commissioner Roger Johnson. I am here to provide information related to HB 1328, but not to support or oppose the bill.

Much of what is contemplated by this bill is already being done by the Pesticide Control Board, by my office, and by North Dakota State University. I believe it is important that if this bill passes and becomes law, we all need to work together so as to avoid unnecessary duplication.

The ND Department of Agriculture continues to make every effort to work with growers, industry, and government to achieve pesticide harmonization of both the availability of pesticide products and of pricing products between the U.S. and Canada. Pesticide harmonization is actually two issues, harmonized availability and price differential. Access to the pesticides needed by North Dakota growers is a high priority for the Department. Obtaining these products at a fair price is also a high priority for North Dakota farmers to be able to compete fairly in the world markets. I have been very diligent to keep the Legislative Harmonization Committee informed as to the activities of the Department related to these two issues. Attached to my testimony is an outline of the activities that the Department has participated in dealing with these two issues.

You will recall that three lists of priority action were developed in the last legislative session by a working group of legislatures, farmers, industry representatives and my office. These lists describe products which were available for use in both the U.S. and Canada but for which a price differential existed (list 1), products which were available for use in Canada but were not available for use in the U.S. (list 2), and desired new products which were not yet available in either country (list 3). Progress on the latter two lists, both of which deal with the availability of pesticides for North Dakota farmers, has been substantial<sup>1</sup>. These lists are attached to my testimony.

List 1 products show a retail cost summary of pesticides that are substantially more expensive in North Dakota than in Canada. This data was used to determine a fiscal note for HB 1445. As you can see, the increased cost to North Dakota farmers is estimated to be approximately \$42,000,000 per year.

From Canadian products not available in the U.S., list 2, nine products are available for North Dakota growers by either a section 3 registration, section 18 emergency exemption, or special local needs section 24C. Of the pesticides that were not available in either country, list 3, seven pesticides have been submitted for emergency exemptions and approved in the past two years.

The Department hired a person last year to work strictly on pesticide registration issues. With these efforts, North Dakota submitted 25 section 18 requests in 2000 and all of them were approved along with eight 24C registrations. These results came about because of a closer working relationship between the Department, the commodity groups and EPA in determining what the growers want or need. Funding for the registration specialist was provided by legislative action last session, and by EPA as suggested by the Chairman of the Pesticide Harmonization Committee at their first meeting in Minot in October 1999.

The Pesticide Control Board through the funding of the Minor Use Fund, has expedited the process of getting chemicals into the EPA review process. The Pesticide Control Board, has also provided funds for research to look at new products that have very

limited information available for minor crops or minor uses. The Minor Use Fund has allocated approximately \$540,000 to research projects to help deal with the availability issue.

The price differential issue is a tougher one to resolve. Several obstacles have come-to-light in getting access to Canadian products. Because of the way FIFRA is written and interpreted, the companies that register chemicals in the U.S. and Canada have sole discretion over which products they choose to register and market in the respective countries. While state governments or grower groups may encourage companies to register certain products for certain uses, the decision is up to the registrants.

Companies also control the marketing and the pricing of their products. The 1999 ND Legislature gave the Agriculture Commissioner the authority to authorize the sale and use of a crop protection product that has a Canadian label, if the product is the same or substantially similar to a product registered in the U.S. and its importation does not violate federal law. EPA also gave the states the authority to use the Special Local Needs Label (24C) for Canadian products that are the same or substantially similar to a U.S. product if the registrant concurs.

As you know, in early August, the Attorney General's office and I filed a lawsuit against EPA over the way they interpreted FIFRA by expanding the definition of the term "production" to include "labeling and relabeling." That lawsuit is moving forward. This

lawsuit has not altered the close working relationship between the Department and EPA.

Prior to filing the lawsuit, my office, the Attorney General's office and EPA collaborated to draft language that will resolve the technicalities we came across last summer. This federal legislation would allow importation of Canadian registered chemicals to be transported across the border and used in North Dakota. This federal legislation, "Pesticide Harmonization Act," has been submitted by Congressman Pomeroy.

There are two legislative ways of dealing with the pricing issue that I would recommend:

- 1) The ultimate solution needs to occur on the federal level. This legislative assembly should pass HRC 3042 which supports the "Pesticide Harmonization Act" introduced by Congressman Pomeroy.
- 2) On the state level, HB 1445 describes a process which would require my office to charge a registration fee equal to the extra costs incurred by North Dakota farmers and providing the fees be rebated back to the farmers on the basis of their use of the product.

My office will be please to work with your committee in any efforts to continue work on this issue.

COMMISSIONER OF AGRICULTURE  
ROGER JOHNSON



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## **Timeline of NDDA Efforts on Pesticide Harmonization**

### **May 6, 1999**

Roger Johnson attended the North American Market for Pesticide meeting in Washington DC. The purpose was to foster a dialogue among stakeholders on issues related to pesticide harmonization and joint registration of products. Specifically related to the differences in product availability and to identify opportunities for enhancing cooperation on pesticide harmonization issues (section IV A, E, and F of handout).

### **May 24, 1999**

Jeff Olson attended the Technical Working Group meeting in San Antonio between EPA, PMRA, and the Mexican delegation. This was the first meeting attended by Mexico. The North American Initiative (NAI) provides for the conceptual framework for the work of the Technical Working Group (TWG) to develop a North American market for pesticides and to establish joint reviews and work sharing as routine by 2002.

The NAFTA Industry Work Group (IWG) reported on the outcome of a NAFTA label and concluded that the creation of the NAFTA label for an end product was impractical. The NAFTA IWG proposed the creation of a container label for country specific directions for use.

### **June 28, 1999**

Jeff Olson attended the first meeting dealing with the issue of seed treatments with EPA and PMRA officials in Washington DC. There was discussion on the timeline for reducing the use of Lindane in Canada and the progress towards registration of Helix and Gaucho.

### **September 15, 1999**

Roger Johnson attended a meeting held with the Congressional delegation and representatives from the EPA, USDA, FDA, and USTR to discuss the differences in policies for allowing import of commodities with residue from products not registered in the U.S.

### **October 1999**

USDA released report on "Pesticide Price Differentials Between Canada and the United States."

**October 16, 1999**

Letters sent to four pesticide manufacturers, including Zeneca Agro, requesting permission to add a Special Local Needs label to Canadian pesticides.

**October 26, 1999**

Zeneca responded in a letter, saying Achieve® 80DG will be discontinued worldwide over the next two years and would only be available "in the distribution channels" until the stock runs out. Zeneca said it will not produce an U.S. label for this reason.

**October 27, 1999**

Attended the first Harmonization Committee meeting at Minot. The Department presented the Committee a copy of all the activities the Department has participated in dealing with the pesticide harmonization and price differential issues. The Committee suggested the Department pursue EPA funding for harmonization efforts.

**November 15 - 17, 1999**

NDDA sponsored the Northern Plains Producer Conference attended by 400 to 500 U.S. and Canadian Producers in Fargo.

**March 8, 2000**

Jim Gray attended the second Harmonization Committee meeting in Washington D.C. where the Committee met with ACPA to discuss pesticide harmonization efforts by the industry.

**April 14, 2000**

Jeff Olson attended the North American Market for Pesticides in Ottawa, Canada. Representatives from USEPA, USDA, Pest Management Regulatory Agency (PMRA), Agriculture and Agri-Food Canada (AAFC), Grower Associations, Industry Representatives, State, and Provincial representatives to discuss the continued process toward pesticide harmonization and joint registration of pesticide products.

**May 2, 2000**

NDDA received a request for a Special Local Needs label from Norac Concepts, Canada for DCT seed treatment on dry beans. Need to overcome the following issues to meet EPA requirements that are not friendly to Harmonization: 1) EPA registered or approved sources; 2) EPA approved label; 3) use and distribution restricted to ND; 4) acute toxicity data even though it was not being "used" in the U.S.

**May 25, 2000**

NDDA was informed that a ND producer brought Achieve® 80DG down from Canada and declared it at U.S. Customs. Customs allowed the product to pass through the border into North Dakota.

**May 26, 2000**

Commissioner Johnson wrote a letter to EPA Region 8 regarding potential enforcement action against the producer who brought Achieve® 80DG into the US. NDDA had a phone conversation with a Zeneca employee and was informed that Achieve® 80DG was already registered in the U.S., but not marketed here.

**May 30, 2000**

EPA confirmed that Achieve® 80DG was registered in the U.S.

**May 31, 2000**

Commissioner Johnson held a press conference announcing his plan to post the label, with the registration number, for Achieve® 80DG on the NDDA website. The label, along with instructions for importing the herbicide, was posted the same day. EPA was notified of the action taken.

**June 1, 2000**

NDDA learned of the first load of Achieve® 80DG crossing the border into the United States, minus the import form 3540-1, "Notice of Arrival of Pesticide and Devises". NDNA was unaware of this form. Zeneca contacted Commissioner Johnson asking for a meeting to discuss his action. Jim Gray had a meeting with U.S. Customs at the Pembina office.

**June 2, 2000**

Zeneca representatives flew to Bismarck to meet with Commissioner Johnson, Attorney General Heitkamp, and staff members and express an interest in resolving the situation. Johnson asked the company to publicly approve North Dakota's action, and they refused. Zeneca argued three reasons why the product was less expensive in Canada: (1) exchange rate (2) Canadian farmers aren't making much money (3) coagulation problems. During the same meeting, Zeneca confirmed that there is no danger to human health or the environment with the use Achieve® 80DG and that the coagulation problems with Achieve® 80DG were resolved in the mid 90's. Zeneca also promised a formal written response to North Dakota's action.

**June 5, 2000**

Instead of providing North Dakota with a formal written response, Zeneca wrote EPA asking it to take action against North Dakota for FIFRA violations and also asked for a meeting to discuss the matter.

**June 8, 2000**

After learning of Zeneca's letter and request for a meeting, Commissioner Johnson asked to participate in the meeting. NDNA was notified that EPA Region 8 had approved two 3540-1 forms. Commissioner Johnson also attended the Harmonization Committee meeting in Northwood and presented the Committee a detailed description of the Achieve/Zeneca issue.

**June 9, 2000**

Zeneca met with EPA in Washington, DC to discuss the situation. Commissioner Johnson and Attorney General Heitkamp joined the meeting via telephone. Heitkamp promised to issue a formal written response to EPA to address Zeneca's complaint. EPA notified NDNA that a decision would be forthcoming by early the following week after EPA received North Dakota's written response. That same day, EPA Region 8 stopped issuing the form 3540-1, based on a directive from EPA in Washington.

**June 12, 2000**

Commissioner Johnson and Attorney General Heidi Heitkamp wrote EPA to refute Zeneca's arguments raised in the June 5 letter.

**June 13 -- 14, 2000**

Commissioner Johnson and Jeff Olson attended the Technical Working Group conference at Ottawa, Canada. Attendants included EPA, PMRA, and Mexico Agriculture representatives.

**June 29, 2000**

Top agriculture officials from the 12 border-states joined Johnson in a letter asking EPA Administrator Carol Browner to help U.S. farmers obtain pesticides at the same prices as Canadian farmers. On the same day, the House Agriculture Committee held a hearing on agricultural input issues. Among those testifying were Zeneca Ag Products Inc. president, Robert Woods.

**July 5, 2000**

EPA sent a letter to NDDA responding to their action with Achieve® 80DG and stated that placing a label on a pesticide is considered "producing" and those labelers would need an EPA "Establishment Number."

**July 7, 2000**

US Senator Byron Dorgan blocked approval of two EPA nominees until the matter is resolved.

**July 12, 2000**

NDDA sent a letter to EPA with recommended language and reasoning for proposed federal legislation to facilitate Canadian pesticide importation and use.

**July 13, 2000**

Commissioner Johnson sent a letter to EPA requesting their legal position on affixing labels in regard to emergency exemptions and special local needs (SLN) registrations. EPA sent NDDA reworked draft legislation. The language stated that North Dakota needs to be listed as the registrant. During phone conversations following receipt of the EPA letter, NDDA stated that this requirement was unacceptable.

**July 24 - 25, 2000**

Commissioner Johnson, Assistant Attorney General Paul Germolus, and NDDA Registration Specialist Jim Gray met with EPA attorneys and staff to work on finalizing draft legislation.

**July 26, 2000**

The Midwestern Association of State Departments of Agriculture adopted a resolution authored by Commissioner Johnson in support of chemical price harmonization.

**July 28, 2000**

Tri-National Accord members supported harmonization efforts by including language in their "Joint Communiqué." The Accord is an annual meeting of Commissioner Johnson's agricultural counterparts in the U.S., Canada, and Mexico.

**August 2, 2000**

NDDA and EPA reached agreement on draft federal legislation.

**August 11, 2000**

Attorney General Heitkamp and Commissioner Johnson filed a lawsuit against EPA regarding their interpretation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

**August 11, 2000**

NDDA met with representatives of commodity groups, chemical dealers, and distributors to seek input on the draft legislation. Input from the meeting participants was then used to revise the draft legislation.

**August 25, 2000**

Commissioner Johnson sent a letter to Jay Vroom, ACPA requesting a meeting between ACPA and Commissioner Johnson to discuss how the Department can help the industry in the registration process.

**September 8, 2000**

Draft legislation was forwarded to Congressman Pomeroy's office.

**September 14, 2000**

Congressman Earl Pomeroy introduced the "Pesticide Harmonization Act" (H.R. 5187).

**September 28, 2000**

Commissioner Roger Johnson and staff attended the Harmonization Committee meeting in Bismarck. Johnson briefed the Committee on the lawsuit with EPA and other harmonization activities.

**October 4, 2000**

Roger Johnson received award from EPA for "Exemplary State-EPA teamwork in pesticide harmonization" from Bill Yellowtail, EPA Region VIII Administrator.

**November 2, 2000**

Jeff Olson and Jim Gray held a meeting with all commodity groups and extension personnel to determine emergency exemption needs for the 2001 growing season.

**November 28, 2000**

Commissioner Roger Johnson, Jeff Olson, and Jim Gray presented an open forum at the Agriculture Association annual meeting to discuss the "Pesticide Harmonization Act" and other avenues to achieve pesticide harmonization.

**December 1, 2000**

U.S. Department of Justice filed a "Motion to Dismiss and Memorandum in Support of Motion to Dismiss" in response to the lawsuit filed by the State of North Dakota and the North Dakota Department of Agriculture against EPA on August 11, 2000.

**February 2, 2001**

The State filed with the Federal Court its response brief in opposition to the EPA's motion to dismiss. Lawsuit caption updated to reflect present agency officials (Stenehjem, et al. v. Whitman, et al.). The Attorney General argued that the State has *parens patriae* standing because the State is not questioning the validity of a federal statute. Rather, the State was relying on the validity of a federal statute to challenge the EPA's violation of the statute. Second, the State was well within the 6-year statute of limitations since the State's "right of action" did not accrue when the EPA exceeded its authority in promulgating the regulations; the State's right of action accrued only after the EPA applied the regulations in question against the State. The State conceded to the dismissal of the Agriculture Commissioner as a party to the action.

**February 8, 2001**

Commissioner Roger Johnson and Representative Earl Pomeroy sent a letter to Jay Vroom, President of ACPA. In the letter, Johnson and Pomeroy presented two proposals that would expedite pesticide registrations and directly address the market access component of pesticide harmonization. Johnson and Pomeroy also asked for ACPA's assistance in drafting federal legislation to implement the proposals.

**March 12-14, 2001**

Jim Gray attended the AAPCO meeting in Washington D.C. While there, Gray co-moderated a meeting of border state regulatory representatives, ACPA, and industry representatives to discuss harmonization issues from the industry perspective. Gray also presented the two proposals outlined in the February 8, 2001, letter to ACPA, and asked for proposals to address the market access component of pesticide harmonization.

Table 1. Retail cost summary of pesticides that are substantially more expensive in North Dakota than in Canada.

Product	Active Ingredient	Price Difference per Acre (\$) <sup>a</sup>	ND Acres (000) <sup>b</sup>	Increased Cost to ND Producers (\$)
Achleve	tralkoxydim	6.31	21.5	135,665
Amitrole	amitrole	59.36	1.5	89,040
Assert	imamethabenz	9.48	248.6	2,356,728
Avenge	difenzoquat	4.53	57.1	258,663
Fargo	trillate	4.53	442	2,002,260
Butyrac	2,4-DB	18.41	1.3	23,933
Bronate	bromoxynil	1.94	539.6	1,046,824
Hoelon	diclofop	4.55	308.7	1,404,585
Liberty	glufosinate	10.03	500	5,015,000
Lorox	linuron	2.29	0.5	1,145
Stinger	clopyralid	9.36	128.3	1,200,888
Poast	sethoxydim	9.48	410.7	3,893,436
Matrix	rimsulfuron	1.26	18.1	22,806
Puma	fenoxaprop	5.06	3670	18,570,200
Curtall M	clopyralid + MCPA	1.63	5.7	9,291
several	glyphosate	5.62	1110.5	6,241,010
Total				42,271,474

<sup>a</sup>Reflects in the increased cost per acre in U.S. dollars in North Dakota vs Canada. These figures were derived from the 1999 retail pricing survey conducted by the Minnesota Association of Wheat Growers.

<sup>b</sup>Product use numbers were obtained from the 1999 pesticide use survey conducted by the North Dakota State University Extension Service.

North  
Dakota  
Priority

List 2 Chemicals labeled in Canada but no similar product registered in the U.S.

February, 2001

Canadian Product	Crop	Section 18 Status	EPA Response (April 6, 1999)	Company
1 Assure II	Sunflower	nc	nc	
2 Benlate	Canola	Denied 97	Seed trait registered in the US; no US tolerance; IR-4 petition received but not scheduled for review due to major risk concerns.	Dupont
3 Dual	Sugarbeets	Not big enough use	nc	
4				
5				
6 Lindane	Canola		Registration withdrawn; Canada discontinues use 12/31/01	
7				
8				
9 Preharvest	Dry Beans	No Submission because the processors doesn't want it	Import tolerance expected in the next few weeks; registrant decided not to register in US	Monsanto
10 Roundup				
11				
12 Raptor	Peas	Submitted 99	nc	American Cyanamid
13				
14 Ronilan	Dry Beans		Risk concerns	BASF
15				
16				
17 Tough	Chickpeas	nc	Tolerance Published 10-98; Possible 24C	
18 Warrior	Canola	Granted 98,99	Section 18 granted for ND expires 12/31/00	Zeneca

Note: The shaded areas indicate the pesticide products that are now available for ND growers either by section 3, section 18, or section 24C.

# North Dakota

## Priority List 3

## Chemicals not labeled in the U.S. or Canada

Product	Company	Crop	Section 18 Status	EPA Response (April 6, 1999)
1	PL	Peas	Not Labeled	Not Labeled
2	PL	Peas	Not Labeled	Not Labeled
3	Spartan	Peas, Lentils, Chickpeas	nc	nc
4				
5				
6				
7	Roundup, Postharvest?	Monsanto	nc	nc
8	Non Group 1 (ACC-ASE)	Durum	nc	nc
9				

Note: The shaded areas indicate the pesticide products that are now available for ND growers either by section 3, section 18, or section 24C.

## ANALYSIS OF PROPOSED AMENDMENTS TO HB 1328

### Summary

Proposed amendments to HB 1328 would create a new agency that assumes control of the Minor Use Fund from the Pesticide Control Board. The purpose of this new agency is to serve as a granting agency to commodity groups to support pesticide registrations and address registration issues. These amendments raise several issues dealing with the composition of the board, potential conflicts of interest for certain board members, and high administrative costs. The proposed amendments may also conflict with the Attorney General's ruling dealing with appropriate uses of the minor use pesticide fund.

### Section-by-Section Analysis of the Proposed Amendments

#### Section 1 and Section 2.

These sections move control of the Minor Use Fund from the Pesticide Control Board and place that control with the new agency (Crop Protection Product Harmonization and Registration Board). Since the Pesticide Control Board will still remain intact, this will create another level of bureaucracy in place of an already efficiently functioning system.

Although this section clearly states that minor use funds will be appropriated to the new board, it is unclear who will administer those funds. Last session, the Attorney General ruled that money from the minor use fund could not be used other than for research leading to new registrations. If the intent of this board is to lobby for registrations, it may conflict with the Attorney General's opinion since "lobbying" is not research.

#### Section 3, subsection 1.

This subsection creates the new agency and identifies the seven members of the board that oversee the agency. These members will be two pesticide industry representatives, one pesticide consumer representative, two legislators, the Governor, and the Ag Commissioner.

Since the board will be dealing with agricultural issues and pesticide registration issues, one would expect that the Agriculture Commissioner, who has these statutory responsibilities, would be chair and likely appoint the board members. Instead, the Governor and Legislature appoint these members. Also, because the board funds research projects through the Minor Use Fund, one would expect a level of scientific background to assess the validity of grant proposals.

Industry representatives on this board will face constant conflicts of interest. The Minor Use Fund responsibilities of the board will require issuing grants to address harmonization and product registration issues. How can industry representatives from one company objectively decide on grants supporting the registrations of products from competing companies? How can an industry representative fairly assess the validity of grant proposals supporting registrations of products from their own company? In either scenario, the industry representatives will face conflicts of interest.

This subsection also outlines additional duties for this new agency, in addition to the responsibilities that come with the Minor Use Fund. However, most of these activities are already being done by other parties, and there will be redundancy and duplication if the board assumes responsibility.

- a. "Identify and prioritize crop protection product labeling needs." --The product registrants, Environmental Protection Agency (EPA) and the Department of Agriculture already do this.
- b. "Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act"--This responsibility has already been completed by the Interim Crop Harmonization Committee as stated in their final report to the Legislature Council on November 16 and 17, 2000.
- c. "Identify the data necessary to enable registration of a use to occur in a timely manner." --This is already the responsibility of EPA and the product registrant.
- d. "Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section." --This is already the responsibility of EPA and the product registrant.
- e. "Request the Agriculture Commissioner to pursue specific research funding options from public and private sources." -- Unclear why this is included or how the Agriculture Commissioner will do this. The Pesticide Control Board already provides "specific research funding" to pursue product registration.
- f. "Request the North Dakota State University Agricultural Experiment Station to pursue specific research to coordinate registration efforts."--This seems to duplicate State Board of Ag Research and Education (SBARE).
- g. "Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable."--The Department of Agriculture, NDSU and commodity groups already do this.

#### Section 3, subsection 2

This allows the agency to contract with consultants to conduct studies or research.

#### Section 3, subsection 3

This section establishes a grant program to commodity groups to address registration issues. The conflict of interest questions posed for industry representatives in Section 3, subsection 1 are raised by this grant program, as well. Is it a conflict to vote regarding a grant to facilitate a registration of your own company's product? Is it a conflict to vote regarding a grant for one of your industry competitors?

There is no provision for NDSU researchers to apply to the board for funds to conduct scientific research. NDSU researchers need the ability to obtain funds without going through a commodity group.

#### Section 3, subsection 4

This establishes a cap of fifteen percent of total funds available for administration. If HB1467 along with this bill are adopted, over \$1 million would be provided to this agency and would allow administrative costs of over \$150,000. This seems to be quite a lot, when the Pesticide Control Board has incurred administrative costs of \$1,989 to date in the current biennium and the Pesticide Harmonization Committee has spent just over \$7,000 in the current biennium.

How was 15% chosen as a suitable figure to be used to support administrative costs? Another agricultural granting agency, the Ag Products Utilization Commission, is capped at 10% for its administrative costs.

#### Section 4.

This eliminates the Legislative Council Crop Harmonization Committee. This interim committee addressed many of these issues, with a budgetary impact of just over \$7,000.

#### Section 5.

This provides an appropriation of \$525,000 to the agency, in addition to the continuing appropriation authority of the Minor Use Fund. To date, no one has developed a budget for these funds describing specifically what types of research or activities will be funded.

This section points out yet another potential conflict of interest. Section 5 allows the board to receive donations, presumably from the agricultural chemical industry. The level of "donation" may have an effect on the board's activities. In other words, how can we be assured that the board won't preferentially lobby or fund research for products of those companies with the greatest contributions to the board?

## CROP HARMONIZATION COMMITTEE - 2001-03 BIENNIAL APPROPRIATION

House Bill No. 1328 (as amended by the House Agriculture Committee) proposes to appropriate \$300,000 from the minor use pesticide fund and \$200,000 from special funds derived from grants or donation income to the Legislative Council for the purposes of addressing crop protection product registration and labeling needs and providing grants during the 2001-03 biennium. House Bill No. 1328 would expand the authority of the Crop Harmonization Committee to administer a grant program through which agriculture commodity groups based in the state may apply for funds to be used by the groups to address issues related to the registration of crop protection products. The bill also provides that the Crop Harmonization Committee, with the approval of the chairman of the Legislative Council, may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs and international trade issues.

The estimated meeting costs of the Crop Harmonization Committee for the 2001-03 biennium are:

Per diem at \$100 per day	\$16,536
Travel, including airfare, mileage, meals, and lodging	43,725
Total estimated meeting costs - 2001-03 biennium	\$60,261

Assumptions used in the estimate shown include:

- The committee will consist of six members as proposed in House Bill No. 1328.
- Per diem will be paid to all committee members at \$100 per day as proposed in Senate Bill No. 2176. If a \$75 per diem rate is used, the above estimate would be reduced by \$4,118.
- The entire committee and one staff member will attend five out-of-state meetings.
- Three committee members will be attending six out-of-state meetings.
- The entire committee and one staff member will attend one in-state meeting.

After taking into account the estimated meeting costs of the Crop Harmonization Committee for the biennium, approximately \$240,000 would remain from the \$300,000 appropriated from the minor use pesticide fund. Those moneys could be used for the other purposes of the committee, including administering the grant program and contracting with consultants as authorized by the bill. In addition, if the committee were to receive any donations or grant income, the additional funds could be used for any of the purposes of the committee.

COMMISSIONER OF AGRICULTURE  
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**NORTH DAKOTA DEPARTMENT OF AGRICULTURE  
LEGISLATIVE TESTIMONY**

Testimony of Roger Johnson  
Agriculture Commissioner  
House Bill 1328  
March 9, 2001  
9:30 a.m.  
Senate Agriculture Committee  
Roosevelt Room

Chairman Wanzek and members of the committee, I am Agriculture Commissioner Roger Johnson. I am here to provide information related to HB 1328, but not to support or oppose the bill.

Much of what is contemplated by this bill is already being done by the Pesticide Control Board, by my office, and by North Dakota State University. I believe it is important that if this bill passes and becomes law, we all need to work together to avoid redundancies.

The ND Department of Agriculture continues to make every effort to work with growers, industry, and partner regulatory agencies to achieve pesticide harmonization. In order for American farmers to be economically competitive with their Canadian counterparts, they need access to the same chemical pest management tools at a similar price.

Pesticide harmonization actually relates to two issues, namely market access and consumer access. Market access relates to industry's concerns that pesticide products reach the market at the same time in the U.S. and Canada so that registrants can access those markets simultaneously. This is important to ensure that our producers have access to the same pest management tools as Canadian producers. It is also vital for products to reach the market as soon as possible so that registrants can position their products in the market and more quickly recoup development costs.

The consumer access component of harmonization relates to the regulatory barriers that currently prohibit U.S. producers from accessing pesticides in Canada that are identical to products registered in the U.S. for the desired use. By eliminating these barriers, we will create a free market for pesticides, and therefore eliminate disparate pesticide prices in the U.S. compared to Canada. To illustrate the magnitude of this problem, I have included a table showing a retail cost summary of pesticides that are substantially more expensive in North Dakota than in Canada. These data were used to develop a fiscal note for HB 1445. As you can see, the increased cost to North Dakota farmers exceeds \$42,000,000 per year.

I have been very diligent to keep the Legislative Harmonization Committee informed as to the activities of the Department related to these two components of the pesticide harmonization issue. Attached to my testimony is an outline of the activities that the Department has participated in dealing with pesticide harmonization.

You will recall that three lists of priority action were developed in the last legislative session by a working group of legislatures, farmers, industry representatives, and my office. These lists describe products which were available for use in both the U.S. and Canada but for which a price differential existed (list 1), products which were available for use in Canada but were not available for use in the U.S. (list 2), and desired new products which were not yet available in either country (list 3). Progress on the latter two lists, both of which deal with the availability of pesticides for North Dakota farmers, has been substantial. These lists are attached to my testimony.

From Canadian products not available in the U.S. (list 2) nine products are available for North Dakota growers by either a Section 3 registration, Section 18 emergency exemption, or a Section 24(c) special local needs registration. Of the pesticides not available in either country (list 3) seven pesticides have been submitted to EPA for emergency exemptions and approved in the past two years.

The Department hired a person last year to work strictly on pesticide registration issues. With these efforts, North Dakota submitted 25 Section 18 requests in 2000, all of which were approved. In addition, eight Section 24(c) registrations were granted in 2000. These results came about because of a closer working relationship developed among the Department, commodity groups, and EPA in determining what the growers want or need. Funding for the registration specialist was provided by legislative action last session, and by EPA as suggested by the Chairman of the Pesticide Harmonization Committee at their first meeting in Minot in October 1999.

Through the use of the Minor Use Fund, the Pesticide Control Board has funded scientific research to generate necessary data to support new pesticide registrations. To date, \$540,000 has been allocated from the Minor Use Fund to support these types of research studies. As a result, the Pesticide Control Board has expedited product registrations and directly addressed the market access component of pesticide harmonization.

A timely product registration from EPA is based on the soundness of the registration data package and how EPA prioritizes a registration package relative to others submitted for review. It must be stressed that new pesticide registrations depend on scientific data, and lobbying efforts for new registrations will be ineffective in addressing the market access component of pesticide harmonization without the presence of high-quality scientific data. The State can help generate these data by continuing to use Minor Use Fund dollars through the Pesticide Control Board.

The consumer access component of harmonization is a tougher issue to solve. Several obstacles have come-to-light in getting access to Canadian products by North Dakota farmers, dealers, and distributors. Because of the way FIFRA is written and interpreted, a pesticide registration is viewed by EPA as a license, and thus the companies that register chemicals in the U.S. and Canada have control over how their products are distributed. Therefore, registrants have been able to use the U.S./Canadian border to block access of American producers to Canadian products, and vice versa.

By blocking transborder consumer access to pesticides, agricultural chemical companies have been able to segment pesticide markets and establish different pricing systems in the U.S. and Canada. The 1999 ND Legislature gave the Agriculture Commissioner the authority to authorize the sale and use of a crop protection product that has a Canadian label, if the product is the same or substantially similar to a product registered in the U.S. and its importation does not violate federal law. EPA also gave the states the authority to issue Section 24(c) special local needs registrations for Canadian products under certain conditions. However, this authority has been ineffective in eliminating consumer access barriers because it depends on the consent of the product registrants. To date, not one registrant has granted their support for a state registration of their Canadian product.

As you know, the Attorney General's office and I filed a lawsuit against EPA in early August of last year over the way EPA interpreted FIFRA to block further importation of a Canadian pesticide called Achieve 80DG. In that suit, we allege that EPA superceded its authority by expanding the definition of the term "production" during rule-making to include "labeling and relabeling." That lawsuit is moving forward. It must be stressed that this lawsuit has not altered the close working relationship between the Department and EPA.

Prior to filing the lawsuit, my office, the Attorney General's office, EPA, and Congressman Pomeroy's office collaborated to draft legislation that will resolve the

technicalities we came across last summer. This federal legislation would allow importation of Canadian registered chemicals to be transported across the border and used in North Dakota. This federal legislation, "Pesticide Harmonization Act," was submitted by Congressman Pomeroy and Senator Dorgan in the 106<sup>th</sup> Congress as HR 5187 and S 3108, respectively. The bill will be submitted in both houses of Congress again in the 107<sup>th</sup> Congress. If enacted, this Act would eliminate the barriers that prevent North Dakota farmers and dealers from accessing lower-priced pesticides in Canada.

I will be happy to answer any questions you may have.

**NORTH DAKOTA WEED CONTROL ASSOCIATION  
TESTIMONY FROM  
MERLIN LEITHOLD  
LOBBYIST # 515**

Good Morning, MR. Chairman, members of the Senate Agriculture Committee. For the record, my name is Merlin Leithold. I am the lobbyist for the ND Weed Control Association. HB 1328 deals with providing grants and studies for various crop needs. I am not against what HB 1328 would do. I can't help but wonder why we need a crop harmonization committee when we already have a minor use fund. But I am not here today to try and figure that out. I am here today to say I am worried about noxious weed funding. Not this session, but the next session, and so forth.

HB 1328 would receive funds from EARP. Minor use already receives funds from EARP. EARP was originally intended for weed control, groundwater testing, food testing, and disposing of unused chemicals and containers.

EARP stands for environmental and rangeland protection fund. The original users of the fund fall under that category, but I have a hard time where minor use or crop harmonization fit. EARP cannot become the go to place for funds. It has to stop.

I urge either a do not pass on HB 1328, or amend it to general fund dollars, or combine it with minor use. I would be happy to answer any questions.

Thank-you

HB 1328



## U.S. Durum Growers Assn.

PROMOTING THE PRODUCTION AND MARKETING OF  
DURUM AND SEMOLINA

---

- 1). Don't need chemical representatives on the board.
  - 1). They're present anyway.
- 2). Don't move pro-active farmer friendly duties of Ag Commissioners office.  
Leaving only regulatory duties.
  - 1). Leaves only the police.
- 3). Blocks accountability and access
  - 1). Layers of bureaucrats.
  - 2). Durum Growers would not be eligible because we are non-statutory check off group.
  - 3). We can vote out the Ag Commissioner, but how can you hold accountable layers of committees and boards.
- 4). Creates a huge bureaucracy and a government agency that already exists.

HB 1328

**NORTH DAKOTA WEED CONTROL ASSOCIATION  
TESTIMONY BY MERLIN LEITHOLD  
LOBBYIST # 515  
HB 1328  
SENATE APPROPRIATIONS COMMITTEE  
MARCH 23, 2001**

Good Morning, Mr. Chairman, members of the Senate Appropriations Committee.

For the record, my name is Merlin Leithold. I am here this morning representing the ND Weed Control Association. I am also a weed control officer in Grant County.

HB 1328 deals with crop harmonization, not noxious weeds. I'm sure you are wondering why I am here this morning on this type of bill. First of all, I would like for you to know that the ND Weed Control Association is not against crop harmonization. We are against what is taking place in this session to fund crop harmonization.

HB 1328 is asking for funds from EARP. EARP, if you don't know, stands for Environmental and Rangeland Protection Fund. EARP was created in 1991 to fund noxious weed control, ground water testing and analysis, disposing unused pesticides and containers, and testing food for chemicals. The latter has never been funded.

Why is EARP being tapped for crop harmonization? What does crops have to do with protecting rangeland?

Another bill you have is the Ag Department budget HB 1009. In House Appropriations, they changed the wording in the ND Century Code. Under Section 19-18-02.1., they have placed crop harmonization as the main user of the fund. They went on to state that other projects such as weed control MAY also be funded.

*Handled out - no testimony*

As with any other project, next biennium crop harmonization could very likely need more funding. If that were to happen, and the way the language states in HB 1009, noxious weeds could be in for a very tough fight.

I have recently learned that from recent county surveys, Canada thistle has taken Leafy Spurge over as the noxious weed with the most acres in North Dakota. In HB 1009, we have asked for some new funding for Canada thistle. These funds will help counties cost share for Canada thistle. They won't be enough, but will be a good start.

The ND Weed Control Association was very instrumental in finding an alternative funding source for noxious weeds. We were always very short of what we needed in funds before EARP.

With all the new invasive weeds just over the horizon, noxious weeds cannot be ignored, whether in the field or in funding.

I urge you to consider two things.

First of all, I urge you to undo what the House did to the wording for EARP. Help save noxious weed funding.

Secondly, I urge you to try to find a different place to fund crop harmonization, not from EARP. Leave EARP for protecting our rangeland, the reason it was created.

I would be happy to try and answer your questions.

Thank-you

HB 1328

**STATEMENT FOR THE RECORD BEFORE THE CROP HARMONIZATION  
COMMITTEE, STATE OF North Dakota**

**AMERICAN CROP PROTECTION ASSOCIATION**

**October 27, 1999**

The American Crop Protection Association is a national trade association representing the manufacturers, distributors and formulators of crop protection chemicals used in the United States.

ACPA is pleased to have the opportunity to submit comments for the meeting on three topics: an update on harmonization of registration data and testing requirements for pesticides between US and Canadian regulatory authorities; our support as well as commentary on the recently-released USDA/Ag Canada Study on Pesticide Pricing Differentials; our concerns with the ND Department of Agriculture's recent spate of letters to crop protection registrants for special local need exemption applications for Canadian products.

**Harmonization**

Under the North American Free Trade Agreement (NAFTA), the governments of Mexico, Canada and the United States formed the Technical Working Group on Pesticides in 1996. The scope of work for TWG has been to develop a coordinated pesticides regulatory framework among NAFTA partners to address trade irritants, build national regulatory/scientific capacity, share the review burden, and coordinate scientific and regulatory decisions on pesticides.

ACPA and our member companies have worked closely with the TWG throughout this process. As communicated to the North Dakota legislature this past session, we remain committed to effective and expedited harmonization. We have consistently stated that key issues of contention to growers within the state should effectively be addressed once the registration data and testing requirements between Canada and the US are harmonized.

The goals of NAFTA TWG are to:

- 1) share the work of pesticide regulation;
- 2) harmonize scientific and policy considerations for pesticide regulations;
- 3) reduce trade barriers; and
- 4) Maintain current high levels of protection of public health and the environment and support the principles of sustainable pest management.

We will continue to work closely with the NAFTA TWG and growers organizations and will update ND State government entities as to activities regarding harmonization.

*Harcourt Rep Brandenburg*

## Pesticide Pricing Study on Differentials Between Canada and the United States

The "Pesticide Price Differentials Between Canada and the US" Study was released just a few weeks ago both by USDA as well as Agriculture and Agri-Food Canada. The Study was conducted by expert researchers with the NC State University and University of Guelph. We strongly recommend this study be read and analyzed by the ND Department of Agriculture or other non-partial entities for productive education and use in the state. Merely picking and choosing certain bits of data contained in the Study to further a particular point of view is not productive.

In particular, it is important to note the impartial conclusions of the Study authors, that we paraphrase below:

- Some pesticide products have lower prices in Canadian provinces than similar products in North Dakota. Conversely, others are listed as being the opposite: lower priced in ND. The marketplace factors given for price differentials include: differences in patent protection length; differences in market size and costs; differences in farmer demands; differences in availability alternative products.
- Availability is not a problem in either region, except in the case of products registered for canola. As we have stated in testimony before the ND legislature, reasons for this have much more to do with more recent demand for canola in the United States compared to historically higher demand for the crop in Canada and other parts of the world. The situation for canola is rapidly changing for the better.
- ND growers spend less on weed control products than their northern counterparts.
- Frequently used products in Manitoba and Saskatchewan differ from those frequently used in ND or MN.
- There is a difference of US \$3 - 4 on a per treated acre basis with ND growers spending less than growers in MB or SK.
- Overall, cost per treated acre in ND is significantly lower than in Canadian provinces.
- The percent difference that MB growers spend over ND growers by crop was: +209 percent for wheat, +169 percent for barley, +41 percent for canola, +29 percent for potatoes.
- ND growers have higher costs of production, but these have much more to do with non-chemical issues such as land, labor and management costs.

The US/Canada Pricing Study conclusions in many ways reflect points ACPA and our member companies have stated before the ND legislature this past session. We believe that the ND Department of Ag may have reached similar conclusions in its recent COFA activities.

### Section 24 (c ) of FIFRA and ND Department of Agriculture

Section 24 ( c ) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA – federal law regulating pesticides) governs ways by which state governments can address special local needs of an existing or imminent pest problem for which there is no available federally registered pesticide product.

Recently, the ND Department of Agriculture has transmitted memos to at least five crop protection manufacturers asking for if there was interest in applying for 24c SLN for products they marketed in Canada which allegedly had same or similar formulations in ND at different prices.

Since we just recently learned of this activity, and have not yet had time to fully discuss the issues with our member companies which were contacted, we cannot at this time give a full statement on this matter.

However, we have serious reservations about such activity and worry about potentially circumventing federal law. After our initial reading of FIFRA and USEPA guidelines on this issue, we arrive at conclusions that make us question the actions asked for by the ND Department of Agriculture.

40 CFR 162.151 (Code of Federal Regulations) states that special local need (SLN) means an existing or imminent pest problem within a state for which the state lead agency, based upon satisfactory supporting information, has determined that an appropriate federally registered pesticide product is not sufficiently available. USEPA in guidance documents available on its official website, clearly states that "not sufficiently available" means a state can document that a federally registered product (a) is not available in the state for the desired site to adequately control the target pest, or (b) cannot be applied without posing unacceptable risk to human health or the environment, or (c ) is necessary to maintain an IPM, resistance management, or minor use pest control program, or (d) could be replaced by a formulation that poses less risk to man or the environment.

Furthermore, USEPA guidelines in its website clearly delineate what cannot be considered for SLN designation: "States may not consider a price differential between products as a candidate for a special local need." - USEPA Office of Pesticide Programs, Guidance on FIFRA Sec. 24 (c ) Registrations (<http://www.epa.gov/oppr001/24c/>).

**Crop Protection Industry Commitment to ND Crop Harmonization Committee and ND Growers**

ACPA and our member companies are committed to assisting, where our resources permit and where appropriate, ND grower organizations, the Crop Harmonization Committee, and state legislative leadership on issues of common concern. In fact, the pesticide industry backed this commitment to the tune of approximately \$400,000 when we agreed in negotiations during the legislative session to an increase in pesticide registration fees. It was our belief that the increases would go not only to the pesticide program administration at the ND Department of Agriculture, but also towards crop protection research and activities to support expedited harmonization.

We back up this significant cost with additional promise to assist relevant groups in perhaps holding a forum in Washington, D.C. to discuss harmonization and aid in high level dialog between ND growers, legislative leaders, and leadership in the US Congress and relevant federal agencies.

For further information, please feel free to call Ab Basu, ACPA Manager for State and Regional Affairs, at (202) 872-3841, or email him at [basu@acpa.org](mailto:basu@acpa.org)

- Following the larger coalition visit to Washington, D.C., there will be a meeting in Bismarck to address future steps for the coalition. A more formal structure for the coalition, and a list of goals may be appropriate at that time. **A cost sharing to underwrite future coalition efforts would be warranted.** Make no mistake, any coordinated effort underwritten purely by agribusiness would not be as effective in Washington, D.C. as would be an effort with investments included from producers and state governments.

While this document serves to conceptualize what we believe to be consensus agreements between Agribusiness and ND legislative leadership, we are open to any comments to make such a document more acceptable to both. Please do not hesitate to call NDAA, ACPA or our representative lobbyists John Olson or Cal Rolfson.

Sincerely,

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For ACPA

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For NDAA

Dated: -----