

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2256

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Deanna G. Hall
Operator's Signature

10/21/03
Date

2003 SENATE AGRICULTURE

SB 2256

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10/21/03
Date


2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2256

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 01/30/03

Tape Number	Side A	Side B	Meter #
1	x		62 - 2674
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the hearing on SB 2256. All members were present.

Senator Klein said he introduced the bill at the request of the State Seed Commissioner.

Ken Bertsch, North Dakota Seed Commissioner, testified in favor of the bill. (written testimony)
(meter # 140) He added we may have some issues to deal with in the language to be sure the records to be exempt from the open record law are well and narrowly defined. The key issue is as the industry changes and we start identity preserving more and more specialized traits, whether the traits are of a transgenic nature or a quality nature, the information generated by what's grown in the field is of value to the producers and we need to preserve that value. Mr. Bertsch will continue to work with Jack MacDonald of the North Dakota Newspaper Association on trying to bring language to the bill that will work with everyone. They have some amendments they need to fine tune. They need to get this formed up so it is of value.

Page 2
Senate Agriculture Committee
Bill/Resolution Number SB 2256
Hearing Date 01/30/03

Senator Seymour asked if the Seed Commission would keep private all records of testing, even with NDSU?

Mr. Bertsch said originally the Seed Commission intended to make the decision as to who information was shared with and for and that is part of what they are trying to work out with the North Dakota Newspaper Association. However, Mr. Bertsch said he has always thought this is a moot issue because NDSU is a public entity and the records could be obtained from them.

Brad Nilson, a Seed Commission member and seed potato producer, testified in favor of the bill. He grows seed potatoes for Frito Lay who have their own protected varieties. He believes if they are going to keep the Frito Lays and the private companies coming into North Dakota and doing business here, we have to provide them with some protection for their varieties in which they have invested substantial amounts of money. (meter # 888)

Johnny Thiel, seed potato producer from St. Thomas and a member of the Seed Commission, testified in favor of the bill. He pays the fees for all of his testing and he thinks he should be able to give the information he gets from the Seed Commission to whomever he chooses. He does not think a competitor should have access to the information and be able to use it against him.

Senator Nichols asked if its easy to do the testing somewhere else on a private basis?

Mr. Thiel said there is no other facility in North Dakota. If it got to that point, people might take their business out of state.

Senator Urlacher asked if potatoes have to be tested for certification?

Mr. Thiel said yes.

Senator Urlacher asked if they would accept out of state testing for certification?

Deanna Waller
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10/21/03
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Senate Agriculture Committee
Bill/Resolution Number SB 2256
Hearing Date 01/30/03

Mr. Thiel said he doubted it.

Gary Knutson of the North Dakota Agriculture Association, testified in favor of the bill. His members support the bill and the issues are important to the membership.

Jack MacDonald, representing the North Dakota Newspaper Association and the North Dakota Broadcasters Association, testified against the bill (written testimony) (meter # 1361). He wants to work with the Seed Commission in drafting an amendment. He has no problems with protecting trade secrets. When there are exemptions to the open records law, they should be very specific. The bill without amendments says all records and that is unacceptable to the North Dakota Newspaper and Broadcaster's Associations. With public entities, the records should remain public.

Senator Klein asked if the public has an opportunity to see the records through the public entity itself?

Mr. MacDonald says it creates some confusion and problems. They have just dealt with this issue in another situation. It creates a difficulty when one agency holds confidential records and the same records are open with another agency.

Senator Klein said if the Seed Commission became privatized, you would have open records on the other side.

Mr. MacDonald said his amendments would take care of this. If the Seed Commission were a private business, this issue would be moot. The North Dakota Newspaper Association has no desire to interfere with the business of the Seed Commission. With the proposed amendments, the Seed Commission can effectively carry out their work while keeping public records public.

Deanna Wall
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10/21/03
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Senate Agriculture Committee
Bill/Resolution Number SB 2256
Hearing Date 01/30/03

Scott Fry, Dakota Resource Council, testified against the bill. (written testimony) (meter # 2320).

He thinks the exemption is too broad.

Senator Flakoll asked if his cow died and he sent tests to the North Dakota Diagnostic Labs at NDSU, is it an open record?

Mr. Fry said he did not know.

Senator Flakoll asked Mr. Bertsch to clarify the kernal bunt issue.

Mr. Bertsch said kernal bunt would be a quarantine pest and that would not fall into the exempt record category.

Chairman Flakoll closed the hearing on SB 2256.

Senator Klein will work with Mr. Bertsch and Mr. MacDonald on the amendments.

Chairman Flakoll asked if it would be possible to have the amendments by tomorrow.

Senator Klein will work on it.

Chairman Flakoll moved on to other business of the Senate Agriculture Committee.

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10/21/03
Date


2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2256

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 01/31/03

Tape Number	Side A	Side B	Meter #
1	x		4900 - 5684
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened discussion on SB 2256. All members were present.

Senator Klein distributed a proposed amendment that has been developed by Jack MacDonald of the North Dakota Newspaper Association and Ken Bertsch, North Dakota Seed Commissioner.

The amendment makes the records for analysis or testing on a fee-for-service basis for nonpublic entities exempt from the open records law. Records for services performed for public entities would remain open.

Senator Flakoll clarified that the amendment, because it deals with the open records law, affects a new section of the code than the previous proposed amendment.

It was moved by Senator Klein and seconded by Senator Erbele that the Senate Agriculture Committee take a Do Pass action on the amendment as printed.

Senator Nichols said this amendment accomplishes exactly what we intended. It keeps the records of public entities open and makes the records of testing for private business exempt.

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12/21/03
Date

Page 2
Senate Agriculture Committee
Bill/Resolution Number SB 2256
Hearing Date 01/31/03

The amendment passed on a roll call vote. Voting yes were Senator Flakoll, Senator Erbele, Senator Klein, Senator Urlacher, Senator Nichols, and Senator Seymour. There were no negative votes cast.

It was moved by Senator Klein, seconded by Senator Erbele and passed on a roll call vote that the Senate Agriculture Committee take a Do Pass As Amended action on SB 2256. Voting yes were Senator Flakoll, Senator Erbele, Senator Klein, Senator Urlacher, Senator Nichols, and Senator Seymour. No negative votes were cast. Senator Klein will carry the bill to the floor. Chairman Flakoll moved on to other business of the Senate Agriculture Committee.

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Deanna Waller
Operator's Signature

10/21/03
Date

30522.0201
Title.0300

Adopted by the Agriculture Committee
January 31, 2003

JP
1-31-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2256

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 4-09 of the North Dakota Century Code, relating to plant and seed records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-09 of the North Dakota Century Code is created and enacted as follows:

Plant and seed records - Exempt. The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed analysis or testing and variety or disease determination conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under chapter 4-09, 4-10, or 4-42 from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret."

Renumber accordingly

Deanna D. Smith
Operator's Signature

10/21/03
Date

Date: 1/31/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2256

Senate	<u>Agriculture</u>	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass Amendment as Printed

Motion Made By Sen. Klein Seconded By Sen. Erbeke

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment

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

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Operator's Signature Deanna Waller Date 10/21/03

Date: 1/31/03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2256

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30522.0201

Action Taken Do Pass As Amended

Motion Made By Sen. Klein Seconded By Sen Erbele

Senators	Yes	No	Senators	Yes	No
Senator Tim Flakoll, Chair	✓		Senator Ronald Nichols	✓	
Senator Robert S. Erbele, V. Chair	✓		Senator Tom Seymour	✓	
Senator Jerry Klein	✓				
Senator Herb Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Klein

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

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Deanna D. Ball 10/21/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 3, 2003 8:40 a.m.

Module No: SR-20-1481
Carrier: Klein
Insert LC: 30522.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2256: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2256 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 4-09 of the North Dakota Century Code, relating to plant and seed records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-09 of the North Dakota Century Code is created and enacted as follows:

Plant and seed records - Exempt. The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed analysis or testing and variety or disease determination conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under chapter 4-09, 4-10, or 4-42 from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret."

Renumber accordingly

Deanna Hall
Operator's Signature

10/21/03
Date

2003 HOUSE AGRICULTURE

SB 2256

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10/21/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2256

House Agriculture Committee

☐ Conference Committee

Hearing Date 2--28--03

Tape Number	Side A	Side B	Meter #
ONE	A		8.7 TO 35.7
Committee Clerk Signature <i>Edward D. Elgson</i>			

Minutes:

CHAIRMAN NICHOLAS : Committee Members We will open on SB 2256.

SENATOR KLEIN: SB 2256 turned in to kind of a Hog House Bill. It started out as a simple little bill. There was a strong belief by the producers and the seed companies that the information generated by the ND Seed Department should belong to individuals and businesses That requested that information. And were paying for those services. There has been increasing need for seed department to collaborate with private industry in the seed inspection services. The issues of competition in the see industry and the negative impact of disclosure of certain types of information to business interests and seed producers. I think the seed commissioner will address some of this. The original was short and to the point. There was concern in the New Paper Industry. The Commissioner and industry worked this out. Some of the issues that we had in the Senate as to open and closed records. This is a good bill.

CHAIRMAN NICHOLAS: Any questions of Senator Klein. Additional testimony.

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10/21/03
Date

Page 2
House Agriculture Committee
Bill/Resolution Number SB 2256
Hearing Date 2--28--03

KEN BERTSCH: My name is Ken Bertsch. I am the State Seed Commissioner.

{{{please read Ken's printed testimony}}}

CHAIRMAN NICHOLAS: Any questions of Ken? Representative Pollert.

REPRESENTATIVE POLLERT: As an example if I send in a sample from my elevator the State Seed Commission, that is a fee for service so that would be private information.

KEN BERTSCH: This is correct. We have to develop some clear policies. In the past if anybody called and asked for the results of those tests you sent in we would be forced under law to provide the results. It would not just go to you. Now is clear. It is owned by Representative Pollert. He has been given the information. You should ask him. If there is a problem in the industry or if there is a legal problem those pieces of information are still open but they are open by subpoena MUELLER: Has this been an issue? Or do you anticipate an issue. Are you being proactive or reactive.

KEN BERTSCH: I like to think we are being proactive. We are taking the next step. Creating service for the future. We have found that the open records laws as they are written and applied to us really do inhibit an industry from collaborating with the seed department. To create services. We do have exemptions for privacy in ND.

REP. MUELLER: There are two or three levels of oversight. Who is going to oversee this?

KEN BERTSCH: There are two or three levels of oversight. I would like to see it being the Seed Commission. The way the bill is drafted it is specific.

REPRESENTATIVE POLLERT: Say I send you a sample. Can you run through, let's say you find ----- ? In it. Can you tell me what is going to happen.

Page 3
House Agriculture Committee
Bill/Resolution Number SB 2256
Hearing Date 2--28--03

KEN BERTSCH: We would immediately inform the Agriculture Department. Collaborate with them. The next step would be some kind of State wide action as to quarantine. Open records would not apply at this point.

CHAIRMAN NICHOLAS : Any one else in support of this bill?

JACK MCDONALD: I am appearing on behalf of the North Dakota Broadcasters Association. We support the engrossed bill and urge you to give it a do pass. {{{please see Jack's testimony which is attached}}}

CHAIRMAN NICHOLAS: Any additional support of this bill.

JOHNNY THIELE I am a certified potato seed grower. I am from St Thomas ND I am also a member of the State Seed Commission. I am in favor of this Bill. I feel that If I am pay the fees I should be the only one to get the results. If someone wants top buy seed from me and he wants to know the results of the tests and I don't tell him, I would not buy the seed and I would not expect him to. The coemption is getting such in this industry. This will give us a tool as growers that will protect us as growers. We can give the information to the people that we want it to go to. Not to someone else.

BRAD NILSON; I am from Hoople ND I am a potato seed grower. I sit on the state seed commission. We grow seed potatoes for Frito Lay. To sign a contract with them you sign a confidentially contract. We are raising soy beans also. Those are confidential also. I support this bill.

REPRESENTATIVE MUELLER: Is there in down sides to what maybe be construed by Some as lack of transparency in this whole process. Dose the industry have a concern about that.

Page 4

House Agriculture Committee

Bill/Resolution Number SB 2256

Hearing Date 2--28--03

BRAD: I don't think so We have to be proactive I think it would add to our credibility.

CHAIRMAN NICHOLAS: Any additional testimony in support or opposition.

CHAIRMAN NICHOLAS : THE CHAIR WILL ENTERTAIN A MOTION ON
SB 2256.

REPRESENTATIVE KELSCH MADE A MOTION FOR A DO PASS

REPRESENTATIVE KINGSBURY SECONDED THE MOTION.

THE ROLL WAS TAKEN. THERE WERE 13 YES 0 NO 0 ABSENT.

REPRESENTATIVE CARRIED THE BILL.

CHAIRMAN NICHOLAS CLOSED ON 2256.

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10/21/03
Date

SB 2256
2-28-03

Date:
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House AGRICULTURE COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

DO PASS

Motion Made By

NELSON

Seconded By

KINGSBURY

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
VICE CHAIRMAN POLLERT	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE BELTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE BOEHNING	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE KELSCH	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE KINGSBURY	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE KREIDT	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE UGLEM	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE WRANGHAM	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE BOE	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE FROELICH	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE MELLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
REPRESENTATIVE ONSTAD	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Total (Yes)

13

No

0

Absent _____

Floor Assignment

POLLERT

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Deanna D. Balluff

Date

10/21/03

REPORT OF STANDING COMMITTEE (410)
February 28, 2003 2:07 p.m.

Module No: HR-36-3686
Carrier: Pollert
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2256, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends
DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2256
was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-36-3686

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10/21/03
Date

2003 TESTIMONY

SB 2256

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Deanne Waller
Operator's Signature

12/21/03
Date



North Dakota State
NDSSD
Seed Department

1313 18th St. N., P.O. Box 5257
Fargo, ND 58105-525
Phone: (701) 231-5400
Fax: (701) 231-5401
Web: ndseed.com

Ken Bertsch
ND State Seed Commissioner

Testimony
Senate Bill 2256

Senate Agriculture Committee
January 30, 2003

Good morning Mr. Chairman and members of the Senate Agriculture Committee. For the record, my name is Ken Bertsch and I serve as the State Seed Commissioner. Thank you for the opportunity to testify on SB 2256 which provides an exemption to some of the information generated by the programs and services of the Seed Department.

SB 2256 has evolved for a number of reasons, including:

1. The prevailing (and strong) belief by producers and seed companies that the information generated by NDSSD services should belong to the individual or business requesting and paying for those services.
2. The increasing need to for the Department to collaborate with private industry in seed inspection and testing areas; coupled with a parallel hesitancy of private industry to share sensitive information with a public entity for fear of open records requirements.
3. Issues of competition in the seed industry, and the negative impact of disclosure of certain types of information to the business interests to seed producers and seed companies.

Mr. Chairman and committee members, the Seed Commission seeks only to exempt those records which apply to the issues I just listed, and are related to fee-for-service work done by the Seed Department. Chapter 44-04-17.1.(5) defines "exempt record" as "all or part of a record...that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity".

The discretion to apply a records protection policy to industry sensitive information is precisely what is being sought in SB 2256.

SB 2256 does not seek to protect information from certain program areas of the Seed Department. The areas include:

1. Any information generated through **Regulatory Programs** of the Department. Information defined as producer protection related would not be affected by the proposed exemption. Additionally, this proposal would not apply to information related to collaboration with federal regulatory programs. An example is APHIS regulation of transgenic field testing.
2. Any information generated by Laboratory Service areas of the Department that deal with **quarantine pests** or seed health testing done as survey work in conjunction with other state and federal agencies. Examples are recent nationwide or regional kamal bunt or potato mop top virus surveys.
3. Any aggregate information utilized in the **promotion** of certified seed production and usage. Part of the mission of the Department is to assist the industry in this area.

SB 2256 does recognize that the seed industry is changing rapidly, and that this change will affect the Seed Department and utilization of our services in the future. Chapter 4-42 was created in the 2001 Session to address the need for specialized trait-testing and identity preservation services in the agriculture industry. Our effort to improve services in laboratory areas is inhibited by the hesitancy of private companies to sign material transfer agreements that would allow the Seed Department to develop services. Our efforts to provide identity preservation or advanced trait testing services may be under-utilized in the future through the disincentive of open records.

The Seed Commission envisions that fairly strict internal policy guidelines would need to be implemented prior to the enactment of an exemption. It is the intention of the Commission to provide the same standard of information protection to our customers, as could be expected by those customers in dealing with a private company. Simply put, if a customer pays for the service, he/she should be the recipient of the information.

As a self-funded agency, the Seed Department is in the unique position of trying to meet industry expectations for service, while remaining in compliance with executive branch and state agency policies. Passage of SB 2256 will help us to better meet industry expectations while remaining in compliance with agency regulations.

Mr. Chairman, I have attached a brief overview of the issue as additional information for the Committee. I ask for your support of SB 2256, and would be happy to answer any questions of the Committee.

Deanna Waller
Operator's Signature

12/21/03
Date



North Dakota State
NDSSD
Seed Department

1313 18th St. N., P.O. Box 5257
Fargo, ND 58105-525
Phone: (701) 231-5400
Fax: (701) 231-5401
Web: ndseed.com

Ken Bertsch
ND State Seed Commissioner

(DRAFT 1/03)
Open Records Exemption
ND State Seed Department

Overview

As the agriculture industry changes (with the introduction of specialized traits in seed and commodity production), demand is increasing to protect information generated by laboratory analysis and field inspections. There is a belief among producers and seed companies that the information produced by the Seed Department should be available only to the owner of the particular sample or field in question, and should not be released publicly through open record request. The industry is beginning to reflect the opinion that dealing with private companies (for testing and field inspection services) is a safer alternative than having their information work against them in the competitive marketplace.

The Seed Commission has directed the Commissioner to seek an exemption to open record requirements for information generated in the course of providing services. The main objective of the legislation should be to provide the agency discretion in protecting information by request of the owner, or depending on market sensitivity. The focus areas of the exemption are (among others):

1. Results of fee-for-service testing
2. Lab testing methods and materials
3. Field inspection records
4. Seed health testing results

Many records generated by the Department are open, often published as a promotion of certified seed produced in state. Additionally, the Seed Department publishes lists of regulatory violations. These are examples of information for which an exemption to open record is not applicable. These examples also provide the reason for seeking as much discretionary authority as possible, where internal policies could guide the disclosure/protection of information.

Lastly, it is becoming increasingly difficult to form and maintain working relationships with private companies because of open record requirements. Our effort to provide up-to-date services in laboratory and field programs (specifically Identity Preservation) is slowed when a private company hesitates to release non-commercialized methods or materials for fear that their proprietary interests may be compromised. We have specific precedent in regard to this problem.

Summary

This is a brief outline of the reasoning behind pursuit of an exemption to open records. The agency does not seek confidentiality status for records, only the ability to protect information deemed sensitive or confidential by the customer. The incentive to "do business" with this agency is limited in the future, as production of trait specific, specialized or private varieties expands.

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10/21/03
Date

JANUARY 30, 2003

SENATE AGRICULTURE COMMITTEE
SB 2256

SENATOR FLAKOLL AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We recognize the concerns behind this bill, but feel it is too broad and vague.

Our organizations have always maintained, as have the courts, that open records exceptions should be specific and clearly identify the records sought to be closed. As it now reads, this bill closes "any record" having to do with seed testing. This would close all information about how many tests are conducted, income from the tests, trends in the tests, etc. We don't think this is what is intended. We agree that the testing done for private individuals and companies, on a fee basis, should be closed as trade secrets or proprietary information. However, tests for public entities should be public records.

Therefore, we are proposing the amendment below and urge you to adopt the amendment and then give the bill a do pass. The bill, as amended, is on the back of my testimony.

If you have any questions, I'd be glad to try and answer them. Thank you for your time and consideration.

PROPOSED AMENDMENTS TO SB 2256

On page 1, line 6, remove "Any record generated by the state seed"

On page 1, line 7, replace "department as a result" with "The results"

On page 1, line 8, replace "is" with "conducted by the state seed department on a fee-for-service basis for nonpublic entities or individuals are"

Renumber accordingly

SB 2256 with the amendments proposed on the reverse side:

Plant and seed records – Exempt. The results of any plant or seed analysis, testing, and variety or disease determination conducted on the state seed department on a fee-for-service basis for nonpublic entities or individuals are exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

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Dennis A. Ball
Operator's Signature

12/21/03
Date

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Testimony in opposition of Senate Bill 2256

Presented to the Senate Agriculture Committee

January 30, 2003

Chairman Flakoll and members of the Senate Agriculture Committee, thank you for the opportunity to present testimony in opposition to Senate Bill 2256. My name is Scott Fry; I am an organizer based out of Bismarck for Dakota Resource Council.

Dakota Resource Council is a community-organizing group that brings people together at the local and state level to work on issues that concern them. Dakota Resource Council has seven local groups around the state with a third organization developing in the Stutsman county area. Dakota Resource Council has long believed in the institution of democracy and the voices of informed citizen. Our members currently are working on many issues. Here are two examples: placing the decision of whether to allow genetically modified wheat to be grown in North Dakota in the hands of North Dakotans and banning packer ownership of livestock at the national level.

Dakota Resource Council sees problems with the language contained in Senate Bill 2256. It is obvious that the state seed department and the sponsors of this legislation are trying to protect farmers and producers from the release of information that would harm their operations. However, the bill as drafted, exempts too broadly, and thus restricts information too severely.

North Dakota has a great and wonderful tradition in its sunshine laws. The citizens of North Dakota, for half a century, have had free access to the information exempted in Senate Bill 2256. What is the point of abridging that freedom now?

While citizens of North Dakota do not necessarily deserve to know exactly how many bushels their neighbors raised, they do deserve to have access to information that might harm them.

Is the state seed department compelled to notify surrounding farmers if a neighbor's field becomes contaminated with GM wheat? Hiding seed testing results from farmers around the state will only increase the friction caused by the introduction of these products.

Unfortunately, genetically modified crop contamination is only one example of the type of testing exempt from open records laws due to the overly general manner in which this legislation is currently written. Karnal bunt could be exempt as well.

Please vote DO NOT pass on Senate Bill 2256. North Dakota farmers deserve to know what is being grown next to them. North Dakota taxpayers deserve to know when state assets, such as foundation seedstocks, are being threatened by contamination. North Dakota's citizens have access to that information now. Do not take that access away from them.

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Scott Fry
Operator's Signature

10/21/03
Date



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Ken Bertsch
ND State Seed Commissioner

Testimony
Senate Bill 2256

House Agriculture Committee
February 28, 2003

Good morning Mr. Chairman and members of the House Agriculture Committee. For the record, my name is Ken Bertsch and I serve as the State Seed Commissioner. Thank you for the opportunity to testify on SB 2256, which provides for an exemption to state open records requirements for some of the information generated by the programs and services of the Seed Department.

SB 2256 has evolved for a number of reasons, including:

1. A belief by much of the industry (including producers) that the information generated by NDSSD services should belong solely to the individual or business requesting and paying for those services.
2. The need for the Department to collaborate with private industry to build services in seed inspection and testing areas.
3. Competition in the seed industry, and the negative impact of disclosure of certain types of information to the profit opportunities for seed producers.

The Seed Commission seeks only to exempt a range of records, not provide for complete confidentiality of all Seed Department records. Chapter 44-04-17.1(5) defines "exempt record" as "all or part of a record...that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity".

The discretion to apply a record protection policy to industry sensitive information is precisely what is being sought in SB 2256.

SB 2256 does not seek to protect information from certain program areas of the Seed Department. The areas include:

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Ken Bertsch
Operator's Signature

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1. Any information generated through **Regulatory Programs** of the Department. Information defined as producer protection related would not be affected by the proposed exemption. Labeling violations and noxious weed information are included in this area. Additionally, this proposal would not apply to information related to collaboration with federal regulatory programs. An example is APHIS regulation of field testing and research on transgenic traits.
2. Any information generated by Laboratory Service areas of the Department that deal with **quarantine pests** or seed health testing done as survey work in conjunction with other state and federal agencies. Examples are recent nationwide or regional kamal bunt or potato mop top virus surveys. The Seed Department and Agriculture Department intend to formalize interagency agreements to assure that these areas continue to be treated as open record, as they have traditionally been.
3. Any aggregate information utilized in the **promotion** of certified seed production, supply and usage (a traditional part of the mission of the Department).

SB 2256 does recognize that the seed industry is changing rapidly, and that this change will affect the Seed Department and utilization of our services in the future.

Chapter 4-42 was created in the 2001 Session to address the need for specialized trait testing and identity preservation services in the agriculture industry. Our effort to improve services in laboratory areas is inhibited by the unwillingness of private companies to sign material transfer agreements that would help the Seed Department in developing services. Our efforts to provide identity preservation or advanced trait testing services may be under-utilized in the future because of this problem.

SB 2256 creates a specific exemption in Chapters governing Seed Department programs. In Section 1, paragraph 1, the exemption is limited to fee-for-service work done for private individuals or companies. Paragraph 2 provides the necessary language allowing the Department to protect information and materials provided by private companies under Material Transfer Agreements. As written, these areas provide a concise guideline for record protection.

The Seed Commission envisions that fairly strict internal policy guidelines would need to be implemented prior to the enactment of an exemption. It is the intention of the Commission to provide the same standard of information protection to our customers, as could be expected by those customers in dealing with a private company.

As a self-funded agency, the Seed Department is in the unique position of trying to meet industry expectations for service, while remaining in compliance with executive branch and state agency policies. Passage of SB 2256 will help us to achieve these goals.

Mr. Chairman, this concludes my testimony on SB 2256. I would ask for the support of your Committee of this legislation, and would be happy to answer any questions you may have.

Deanna D. Smith
Operator's Signature

10/21/03
Date

February 28, 2003

HOUSE AGRICULTURE COMMITTEE
SB 2256

REPRESENTATIVE NICHOLAS AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We support the engrossed bill and urge you to give it a do pass.

We recognized the concerns behind this bill, but felt it was too broad and vague as introduced. We worked with the State Seed Commission and the Senate Agriculture Committee to come up with this amended version.

As amended, the open records exceptions are specific and clearly identify the records sought to be closed. It protects the testing done for private individuals and companies, on a fee basis, as trade secrets or proprietary information. However, tests for public entities and other information about the Seed Commission will remain public.

Therefore, we respectfully request you give the bill a do pass. If you have any questions, I'd be glad to try and answer them. Thank you for your time and consideration.

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James O. Hall
Operator's Signature

10/21/03
Date