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2003 SENATE AGRICULTURE

SB 2356

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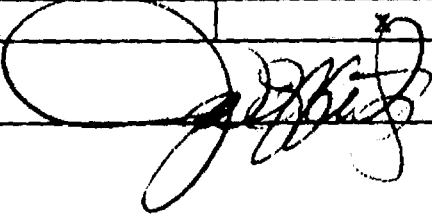
2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2356

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 02/07/03

Tape Number	Side A	Side B	Meter #
1	x		4105 - end
1		x	0 - 3377
1		x	4167 - 5058
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the hearing on SB 2356. All members were present.

Senator Fairfield introduced the bill. (written testimony)

Senator Klein asked if conventional seed is still available?

Senator Fairfield said yes.

Senator Flakoll asked if this applies to all technology fees, soy beans, sugar beets included?


Senator Fairfield said yes. She also said the legislature regulates interest fees and late fees and it is appropriate for them to regulate technology fees.

Senator Flakoll asked what percent of the total feed cost is technology fee?

Senator Fairfield deferred the answer to a farmer during testimony.

Representative Kerzman testified in favor of the bill. (meter # 4850) He said the rules are changing and when you sign a tech fee, unless you read the fine print, you don't know what you are getting into. It is hard to get home pollinated canola.

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Senator Flakoll asked if there were no tech fees, would there be advances in genetics?

Representative Kerzman said he thought so.

Senator Flakoll asked if this will have any affect on the University Foundation that has some control over what they have produced?

Representative Kerzman said he wasn't sure but he guessed it would.

Richard Schlosser, vice president of the North Dakota Farmer's Union, testified in favor of the bill. (written testimony) (meter # 5244) Is the tech fee issue a trade issue? It is important to bring forth the question.

Senator Flakoll asked if Mr. Schlosser uses biotech soybeans?

Mr. Schlosser said yes and he will again this year. He has no problem with the technology.

Senator Flakoll asked if these products are good for farmers in this state?

Mr. Schlosser said he was a little concerned about the international market. The weather also contributed to his decision to use biotech beans this year. Farmers are looking at the technology positively.

Senator Flakoll asked if Mr. Schlosser thought North Dakota might get isolated by not allowing tech fees?

Mr. Schlosser said he testified on the bill because he wanted to raise the issue of the tech fees not being uniformly charged from country to country and how long are we going to pay these tech fees?

Senator Flakoll asked if fees are relatively uniform across the US?

Mr. Schlosser said he doesn't know.

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Senator Klein said as a farmer, you make decisions long before the planting season, producers are very intelligent. Isn't it our job to stay out of the way of farmers and let them do their work?

There are other program rewards that go with tech fees.

Mr. Schlosser said he was carrying the message that farmers are tired of increased input costs.

Senator Klein asked about the other costs on conventional seed, won't they exceed the tech fees on biotech seed?

Mr. Schlosser said he must compete on a world market. This technology should help him compete.

Senator Flakoll said this issue may be more expansive than North Dakota. Would this issue be better addressed through our congressional delegation?

Mr. Schlosser said he hopes that is an avenue. North Dakota has done a good job of investigating the chemical price differences in Canada vs. the US.

Cal Rolfson, representing CropLife America, testified against the bill. (written testimony) (meter # 766)

Senator Seymour asked why the term "tech fee" was used?

Mr. Rolfson said he had no idea. This is a very unusual bill. It would raise a barrier around North Dakota.

Eric Ausmundstad, president of the North Dakota Farm Bureau, testified against the bill. He said the bill clearly flies in the face of free enterprise. Do we like paying more for this technology than the rest of the world? No but it is a function of the free market system. If we don't like it, we don't have to raise it. This technology reduces farmers' costs and allows them to more effectively compete on a world market.

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Senate Agriculture Committee
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Senator Erbele asked if there are tech fees in Brazil? It is his understanding that biotech seed is not allowed in Brazil. About 30% of their soy bean production is biotech but its done on the black market.

Mr. Ausmundstad said he is not an expert but in talking with people who farm in South America and in talking to people in Europe who are South American customers, it is true about the black market. They have laws that prohibit biotech crops but they raise them and Europe takes the stance that since they have laws that prohibit biotech crops, they must not raise them and Europe closes their eyes to it.

Senator Flakoll said he read 156 million acres were grown globally with a crop using some kind of genetically modified seed. What impact would this bill have?

Mr. Ausmundstad said worldwide, not much. Why would anyone want to do business in North Dakota if they are not allowed to receive payment for services they provide or make a profit on a product they have developed? It puts North Dakota farmers at a competitive disadvantage.

Senator Flakoll asked if we should limit the price of ethanol at the pump to not to exceed the price of regular gas at the pump?

Mr. Ausmunstad said no, charge what the market will bear.

Ken Grafton, director of the North Dakota Agricultural Experiment Station at Fargo. Prior to that position in July 2002, he was a plant breeder at NDSU for over 20 years. He stands in opposition to the bill as does NDSU because of the negative ramifications on research and development activities at NDSU. They have several public/private partnerships and are looking at and testing new technologies to help producers make sound decisions in their production

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practices. If we slam the door on this, we could prevent any future development for North Dakota producers for any other high value crops in addition to stress resistance. (meter # 2037)

Senator Flakoll asked what percent of budget is spent on R & D by some of these companies?

Dr. Grafton said he can't answer the question. He has heard figures of Monsanto spending \$100 million on the round up ready trait. There is tremendous opportunity to crops and livestock in this industry. In talking with the head of agriculture in Norway, he was told that all countries in Europe are spending millions of dollars on biotech research because they don't want to be left behind.

Senator Klein said Syngenta has spent \$300 million doing scab research and have been approved to do research in Germany.

Dr. Grafton said Syngenta has approached NDSU to evaluate scab resistance materials in North Dakota. They are anxiously awaiting the contracts.

Mike Brandenburg, a farmer from Edgely, testified against the bill. (meter # 2784) In the cafe, people sit around and talk about hating Monsanto. But everyone is planning to plant round up ready beans and corn. They are making these decisions because the round up ready corn ran 20 - 30 bushels per acre better and the round up ready beans were clean and they spent a lot more spraying the conventional beans. This technological progress has been good for communities - the co-ops have grown, the elevators have grown. Its reality in rural North Dakota.

John Olson, representing Monsanto, testified against the bill. (meter # 3023)

Senator Flakoll asked about Monsanto's position on pricing?

Mr. Olson said he thinks Monsanto is changing their pricing structure, they are diverting some tech fees with producers to royalty fees with seed companies.

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Senator Flakoll asked if Monsanto would be discouraged from selling these products in North Dakota if this bill passed?

Mr. Olson said they are here to work with producers, with marketers, with researchers; they don't think that impairing contracts in existence now would produce anything positive. The free market enterprise arguments have already been made. They want to look at the positive approach.

Chairman Flakoll closed the hearing on SB 2356. (meter # 3377)

It was moved by Senator Erbele and seconded by Senator Klein that the Senate Agriculture Committee take a Do Not Pass action on SB 2356.

Senator Klein said the bill doesn't address anything we want to do in North Dakota.

Senator Urlacher said the bill is not workable. It is good to bring things to attention but when its so unworkable, he has a problem with it.

Senator Nichols said the chemical prices in Canada are much lower than the same chemical in the US so its good to have a discussion about whether the farmers in other countries are paying their fair share.

Senator Klein said we are not dealing with the Canadian issues, we are exempting ourselves from South Dakota and Minnesota. Senator Seymour made a good point in asking why did they ever call them tech fees? We will see this a movement toward adding the fees to the total seed price. We can't legislate who wants to pay for new technology.

The motion passed on a roll call vote. Voting yes were Senator Flakoll, Senator Erbele, Senator Klein and Senator Urlacher. Voting no were Senator Nichols and Senator Seymour. Senator Flakoll will carry the bill to the floor.

Deanna Hall
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10/22/03

Date

Date: 2/7/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2356

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Sen Erbele Seconded By Sen Klein

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) 4 No 2

Absent 0

Floor Assignment Sen. Flakoll

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

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REPORT OF STANDING COMMITTEE (410)
February 7, 2003 1:01 p.m.

Module No: SR-24-1981
Carrier: Flakoll
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2356: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO NOT PASS
(4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2356 was placed on the
Eleventh order on the calendar.

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2003 TESTIMONY

SB 2356

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**SENATE AGRICULTURE COMMITTEE
TESTIMONY REGARDING SB 2356
SENATOR APRIL FAIRFIELD
February 7, 2003**

Mr. Chairman, members of the Committee, for the record my name is April Fairfield and I am the Senator from District 29. I am the prime sponsor of SB 2356.

SB 2356 has one simple purpose, to level the playing field for North Dakota farmers that raise biotech crops. The bill would prohibit so-called technology fees, charged to farmers when they sign technology agreements and purchase genetically modified seed from biotechnology companies.

Farmers currently pay, on average, \$18 per acre in technology fees to plant biotech crops. For some crops technology fees can be as low as \$10 per acre or as high as \$24 per acre.

Last spring, during testimony before the Interim Agriculture Committee, I asked a representative of the biotechnology company Monsanto if they charge the same technology fees to farmers in other countries that raise biotech crops. Although there were a number of explanations offered, the simple answer was no, Monsanto and other biotech companies do not charge the same technology fees in other countries.

Canadian farmers pay technology fees, but those fees are often only a fraction of what is charged in the United States. In other countries that raise biotech crops farmers do not pay technology fees at all. There is no reason for this disparity, other than the desire on the part of biotech companies to extract additional money from American farmers.

SB 2356 would provide balance in a system that has no balance.

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There is little doubt that representatives from the biotechnology industry will tell us that they have to charge technology fees to recoup their investment in research and development. They will not, however, explain why farmers in North Dakota and the rest of the United States are expected to shoulder such an inordinate share of the burden of paying for those companies' research and development.

Neither will they make mention of how much of their research and development is subsidized by our tax dollars nor how much of that research takes place at public institutions like our land-grant colleges. They will not point out the irony, or more aptly the absurdity, of the fact that they charge farmers in North Dakota technology fees in order to recoup the company's investment in research and development when those farmers and every other farmer in America has already contributed more financial support for their research than anyone in any other country.

You may also hear that technology fees are offset by higher productivity. In my experience speaking with farmers and looking at research, that is inconclusive. However, even if it were true, that would not negate the inequity of how technology fees are applied.

SB 2356 would save a farmer with 1,000 acres planted to biotech crops \$10,000 or even \$20,000 per year. Yesterday a majority of Senators voted to continue to allow biotechnology companies to shift all of the liability associated with biotech crops to farmers. It would seem appropriate, in light of that decision, to provide North Dakota farmers a modicum of financial relief in lieu of the fact that they have been shouldered with the biotechnology companies' liability.

I ask the Committee for a Do Pass recommendation for SB 2356.

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North Dakota Farmers Union

PO Box 2136 • Jamestown ND 58402-2136

PHONE: 701-252-2340

E-MAIL: ndfu@ndfu.org

800-366-NDFU (6338)

WEBSITE: www.ndfu.org

FAX: 701-252-6584

MISSION STATEMENT: North Dakota Farmers Union, guided by the principles of cooperation, legislation and education, is an organization committed to the prosperity of family farms and rural communities.



Testimony on SB 2356

February 6, 2003

Senate Agriculture Committee

Mr. Chairman and members of the committee, my name is Richard Schlosser. I am vice president of North Dakota Farmers Union. I farm near Edgeley raising wheat, corn and soybeans. I am here to speak in support of SB 2356 on behalf of the members of North Dakota Farmers Union.

This is the time of the year when farmers are making many of their planting decisions. Working with an agronomist and a seed salesman to lay out a plan for the 2003 crop year is not only a good idea, but given today's challenges, it is a necessity. Weighing the costs and the benefits of certain inputs is an annual ritual on most farms. With the ever increasing costs of inputs and the resulting decreased margins, farmers have to be ever so diligent in their planning for the upcoming year.

While pricing some of my seed for the upcoming crop year, I asked my agronomist to do some price comparisons of biotech and conventional

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seed. The round up ready soybean varieties cost about \$27.50 per unit at \$38.50 per acre compared to \$17.45 per unit at \$24.43 per acre for the conventional beans. Round up ready Bt corn costs about \$138 per unit (approximately 90,000 seeds) while the same variety in a conventional costs \$92 per unit. A unit of corn will seed about 3.4 acres. My seed salesman thought that tech fees for round up ready soybeans are about \$6.50 per unit, while tech fees for biotech corn varied from \$10 to \$20 per unit depending on whether it was simply round up ready or round up ready with Bt.

As a farmer who talks and visits with a lot of other farmers who are concerned about the increased costs of inputs, I often hear complaints about the tech fees and the added cost of doing business. There are those that would argue that chemical costs are reduced under a biotech program, but I would also argue that I usually make two applications of round up to my round up ready beans where I seldom make two passes on my conventionals.

As an aside to this whole issue, a farmer can use his own saved conventional seed, but by law he can not save round up ready seed. I say that because that may be another cost savings of conventional over biotech seed.

In conclusion, every farmer understands that the costs of research and development have to be recouped by the patent holders of these

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technologies, but they question the huge price differences between conventional seed and biotech seed when both may actually be the same variety. We would ask for your support on SB 2356. Thank you and I will try to answer any questions you may have.

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"tgrgr"
<tgrgr@mt.net>

To: <tflakoll@state.nd.us>
cc:
Subject: SB 2356

02/05/2003 01:11 PM

Tim, Terry Goerger here. I don't like the looks of this bill. First I don't really understand what this is supposed to do. First of all seed production of transgenic seed is the business of the two parties involved in the contract not the state government. The patent holder has the right to write any contract with fees in it and a party either agrees or doesn't sign the contract. I am assuming this is the concern of the bill. If I am way off base let me know. Otherwise I don't think this bill should pass. It will be in your committee on Friday and I am unable to be there.
Thanks for your time. Terry

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TESTIMONY

BY
CALVIN N. ROLFSON
IN OPPOSITION TO
SENATE BILL NO. 2356

My name is Cal Rolfson. I am an attorney here in Bismarck. I represent CropLife America. I appear in opposition to Senate Bill No. 2356.

CropLife America is a national trade association representing the manufacturers, formulators and distributors of virtually all of the crop protection and crop biotechnology products used in agriculture in North America. These agricultural biotechnology companies are the same companies that would be effected by Senate Bill 2356.

Senate Bill 2356 is loaded with practical, legal and constitutional problems. I am not sure which entities are seeking special protection under this Bill, but I have great concerns about its legality. Let me explain why.

The language is confusing. The word "fees" is not defined. It leaves the reader to wonder whether "fees" is synonymous with the "sales price" or "profit" in a contract.

My original reading of this Bill caused me to initially believe that it was

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intended to target only one biotech company, which certain entities in North Dakota seem to obsessively try to embarrass or humiliate through the legislative process. However, in reading this Bill more closely, it is so vague that all biotech seed manufacturers and patent holders in the United States would be affected.

From a legal standpoint, Senate Bill 2356 appears to me to be in direct violation on the Commerce Clause in the United States Constitution (Article 1, Section 8) by restricting the free right of a biotech seed company to engage in interstate commerce. It also appears to violate the federal restraint of trade laws of the United States and as prohibited in the North Dakota Constitution (Article 12, Section 16). It further appears to violate the North Dakota Constitution prohibiting the impairment of a contract (Article 1, Section 18 and Article 1, Section 20).

Aside from the legal and constitutional hurdles facing this Bill, the practical affect of this legislation, if it is passed, would have the most serious chilling effect on the free enterprise right of all agricultural biotechnology companies to do business in North Dakota. Since when has it been illegal in North Dakota to charge a fee or make a profit for ones service or inventions? Since when is it unlawful to recoup the cost of your investment in patenting an innovative product? Since when has the public policy of the State of North Dakota restricted the free right of any industry, not to mention agricultural biotechnology companies, to do business in

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this State for their benefit, and for the benefit of farmers?

In the United States, the free market system sets the price level that anyone can charge. Except in a socialistic system, seldom does the government enter into the free enterprise marketplace to set prices as this Bill seems to do.

In the sale of organic or transgenic seeds, certainly the premium charged to a purchaser could be seen as a "fee". Why would it be acceptable to allow premiums or fees to be charged for other segments of the agricultural industry, but disallow one segment to do so when that transgenic seed segment could prove to be even more valuable to North Dakota's agriculturally economy? Remember, before any transgenic seed can be sold, it must first receive the approval of no less than 3 federal agencies - the FDA, EPA and USDA.

Perhaps this Bill through, the North Dakota legislative process, is intended to be used merely to bring the public's attention to technology fees. Perhaps its just introduced in an attempt to nationally embarrass biotech seed companies doing business in North Dakota. I hope that is not the case, because, if so, some may believe that, the legislative process is being abused.

Would anyone seriously argue that a real estate agent may not charge a fee within the terms of the real estate agent's contract with a homeowner? Would anyone argue that an automobile dealership could not charge a fee under a contract

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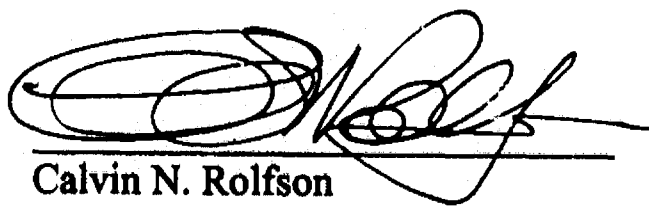
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willingly entered into between the seller and the purchaser? Does the attorney general have the staff to review perhaps hundreds or thousands of contracts between biotechnology companies and their customers?

I urge this committee to give a "DO NOT PASS" recommendation on this unusual Bill.



Calvin N. Rolfson
Legislative Counsel
CropLife America
(Lobbyist No. 144)

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