

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2138

2005 SENATE AGRICULTURE

SB 2138

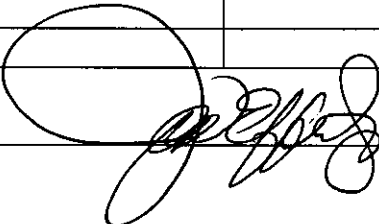
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2138

Senate Agriculture Committee

☐ Conference Committee

Hearing Date January 13, 2005

Tape Number	Side A	Side B	Meter #
1	x		70 - 1229
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the hearing on SB 2138, relating to the composition of the natural areas acquisition advisory committee. Senator Seymour was absent during roll call but arrived during the committee hearings. All other members were present. (tape failed during roll call)

Patrice Lahlum, Policy and Communications Coordinator, North Dakota Department of Agriculture, testified in favor of the bill. (written testimony)

Senator Klein asked if there is a reason the chairmen of the county commissions are not permitted to have a designee. (meter 284)

Ms. Lahlum said she believes the way it is written, any member can send a designee. It was not intentional to exclude them from having a designee.

Sandy Clark, North Dakota Farm Bureau, testified in favor of the bill. The President of the North Dakota Farm Bureau is on the committee and they support this bill.

Senator Klein asked how important is the state forester on the committee.

Ms. Clark said she has not attended a committee meeting. Perhaps the meeting would pertain to forest service land. (meter 500)

Senator Klein asked if there is someone not listed on the bill who should be a part of the committee.

Ms. Clark said the North Dakota Farm Bureau has not discussed it but if other groups wanted to be included, they would have no opposition.

Senator Klein asked if the North Dakota Stockman's Association would be opposed to be included in the group. We do affect a lot of ranch lands with the natural areas acquisition advisory committee .

Wade Moser, North Dakota Stockmen's Association, said he attends some of these meetings because they do affect ranch or pasture land. They have never been asked to be a part of the committee but they would like to be a part of the process. The North Dakota Stockmen's Association approves the designee language. (meter 634)

Chairman Flakoll closed the hearing on SB 2138.

Senator Klein said he would like to amend to permit the chairman of the county commission to appoint a designee, to include the North Dakota Stockmen's Association, and to remove the forester.

Senator Urlacher said he doesn't remember why the forester is included but he would have no problem including the North Dakota Stockmen's Association.

Senator Taylor said the forester probably has the same right to be on the committee as Game and Fish but he has no problem with adding the North Dakota Stockmen's Association.

Senator Klein said last session they removed the state engineer but he has no problem leaving the state forester, his concern was over the size of the committee.

Senator Klein moved to amend the bill so the "or their designee" moves to after the chairman of the county commission and to add the President of the North Dakota Stockmen's Association to the committee.

Senator Taylor seconded the motion.

The motion to amend passed on a roll call vote 6-0-0.

Senator Klein moved a do pass as amended on SB 2138.

Senator Taylor seconded the motion.

The motion passed on a roll call vote. **Senator Klein** will carry the bill to the floor.

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

Date: 1/13/05
Roll Call Vote # 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2138

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 51846.0101 .0200

Action Taken Do Pass Amendment

Motion Made By Sen Klein Seconded By Sen. Taylor

Senators	Yes	No	Senators	Yes	No
Senator Flakoll	✓		Senator Seymour	✓	
Senator Erbele	✓		Senator Taylor	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 4 No 0

Absent 0

Floor Assignment _____

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

- add President of North Dakota Bookmen's Association
- "designee" language moved so any representative can appoint a designee.

Date: 1/13/05
Roll Call Vote # 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2138

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58146.0101 .0200

Action Taken Do Pass as Amended

Motion Made By Sen. Klein Seconded By Sen. Taylor

Senators	Yes	No	Senators	Yes	No
Senator Flakoll	✓		Senator Seymour	✓	
Senator Erbele	✓		Senator Taylor	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Klein

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

REPORT OF STANDING COMMITTEE

SB 2138: 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 2138 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "or their" with "the president of the North Dakota stockmen's association"

Page 1, line 15, remove "designees"

Page 1, line 16, after "acquisition" insert ", or their designees"

Renumber accordingly

2005 HOUSE AGRICULTURE

SB 2138

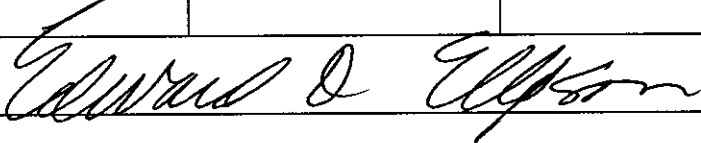
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2138

House Agriculture Committee

☐ Conference Committee

Hearing Date 2---24---05

Tape Number	Side A	Side B	Meter #
TWO	A		23.0 T0 51.6
TWO		B	0.0 T0 10.3
Committee Clerk Signature 			

Minutes:

VICE CHAIR WOMAN KINGSBURLY: We will go ahead and open the hearing on SB 2138.

JEFF WEISPFENNING: NORTH DAKOTA DEPARTMENT OF AGRICULTURE.

I am the Deputy Commissioner at the North Dakota Department of Agriculture. I am here on behalf of Agriculture Commissioner Roger Johnson. I am here in support of SB2138, which would allow the members of the Natural Areas Acquisition Advisory Committee { NAAAC} to have a designee represent them at hearings and meetings. {JEFF PASSED OUT PRINTED TESTIMONY-----PLEASE READ}

REPRESENTATIVE: MUELLER: The designee thing, I am certain that is not an uncommon provision in all kinds of bill that we look at. I am curious as to how that works. You representing the Agriculture Commissioner. Will that be the same designee each time..

JEFF: Not necessarily. The same dicing. It would be up to the president of the Farm Bureau to go himself or send someone else instead. The might appoint a local Farm Bureau

Resident where they may be purchasing land. There may be a loss of continuity with this procedure.

REPRESENTATIVE BRANDENBURG: Are there six people on this.

JEFF: Eight.

BRANDENBURG: Who am I missing.

JEFF: County Commissioners and Stockman's.

REPRESENTATIVE BRANDENBURG: So all that happened last time is you cleaned this up is you removed the word designee. You can't send some else.

JEFF: That is the intent. The most difficult is the meeting with the county commissioners Because they are usually scheduled for the day that the county commissioners all already meeting so the hearing is held in conduction. You sometimes run into scheduling conflicts. This interruption of designee is a universal interpretation in state law. Unless designee's are provided for in the law they can't be sent.

REPRESENTATIVE FROELICH: The Ebert ranch.

JEFF: That would not be the case. The state is making the acquisition. There is an exemption to non profits. The statute goes back I believe to the 87 session. The process has been around for a long time. Purely non profits cannot purchase land unless they were 1985 or 86. They had to have been able to do business before 1985. Or Jan 87 in another circumstance.

REPRESENTATIVE: We have eight board members here. So if we get to the point where we have four and four don't you think it would be better to have seven.

JEFF: The board that holds the meeting and makes the recommendation is purely an advisory group. This recommendation is not binding. Ultimately it is up to the Governor whether it is approved.

REPRESENTATIVE ONSTAD: When they right out this acquisition plan, how detailed is that And is it scrutinize by this advisory committee a little bit? Walk us throughout a typical purchase where a group wants to purchase land, put in an application

FEFF: It is intensive. Use maps. For property under consideration by the committee before the hearing is held. Intense investigation of the property. The group that is purchasing make a case that this particular property is unique. The applicants submit a lot of information. Virtues of the purchase.

REPRESENTATIVE MUELLER: I think Rep. Froelich's suggestion is pretty worthy one. What kind of process do we have for state agencies purchasing land. Game and Fish Dept. Is at this hearing.

COMMISSIONER HELDEBRAND: The Game and Fish Department owns 70,000 acres Of land in ND. We want approval from ND residents. In answer to your question any land that the Gamma and Fish Department purchase we do have to go through an exercise of having it approved. We purchase very little land. I can't remember the last purchase of land. People say we never pay taxes on our land. We do pay taxes. If you purchase land I want it up and above and the approval of almost of the people of the state of N.D. The people you represent. The Governor has to sign off if we purchase land. It is expensive to purchase land because of the work that we go through prior to purchasing the land.

CHAIRMAN NICHOLAS: Other Support of bill

Page 4

House Agriculture Committee

Bill/Resolution Number SB 2138

Hearing Date 2---24---05

BRIAN KRAMER: FARM BUREAU. We support this bill. The designee part of it.

WOODY BARTH: FARMERS UNION supports bill. Primarily because of the designee portion of the bill.

MIKE MC ENROE: North Dakota chapter of the wildlife society. We support the intent of this bill. { please read printed testimony]

REPRESENTATIVE FROELICH: I would rather actually see who membership is.

CHAIRMAN NICHOLAS: Mike I have a question for you. As a legislator for the past 30 years and primarily representing the Agriculture community which has been a priority for me. I have always felt a lot of support for the Game and Fish Department. But all the other groups you underline here inclosing US FISH AND WILD LIFE SERVICE have very little support. And a lot of hostility in the community. Why, what is being done to overcome that. If the Game and Fish put on a party, four or five hundred people show up. There is great public acceptance. Why haven't you and the Agencies and the groups you represent not been able to establish the same report. You have worked in it. I am not trying to put you on the spot. I think it is a fair question. Most communities like there game and fish representative. This is not an affront to you. You are here. Give us your feeling. The frustration is that the US GAME AND FISH IS UNTOUCHABLE.

MIKE: How long do we have. We have had problems with Garrison Dam situations, Devils Lake water. Wet lands etc are all problems/

REPRESENTATIVE BRANDENBURG: They need flexibility

REPRESENTATIVE MUELLER: There has been a shift. I have been doing what I do for 25 years. In regards to groups that you formerly worked with it would be nice if there was more accommodation for the land owner. I had an easement on my own land. It prohibits burning. Long before I got involved with the land. I have asked about that and I have had pretty good cooperation with fish and wild live. I have served on our local conservation board. I think that has been a change in attitude. I think there has been a willingness to work with farmers.

REPRESENTATIVE BE: Question, Game and Fish pays taxes on all land purchased. The range of taxes on conservation land ranges all over the board. State Game and Fish Dept. Does pay full taxes. Now all non profit conservation groups do now pay full taxes. All conservation groups now pay full taxes. They were exempt before. The US FISH AND WILD LIFE SERVICE A GOVERNMENT AGENCY MAKES A REVENUE SHARING PAYMENT WHICH UNFORTUNATELY WE AVERAGE ABOUT 50 PERCENT OF WHAT ENTITLEMENTS SHOULD BE. ENTITLEMENTS IS A FORMULA OF IS THREE QUARTER OF ONE PERCENT OF THE APPRAISED PROPERTY. Generally been less then taxes the past years. The other Federal agencies make a payment of seventy five cents an acre. If you are in oil country it may be higher then that. The rules are different under different federal agencies.

REPRESENTATIVE BRANDENBURG: We he farmers have to come up with the money to take care of the weeds, the roads.

MIKE Work together.

Work with congress. We want to change the percentage. Congress has to appropriate money.

Congress has to address problem. How can we get the money That is the big question.

Page 6
House Agriculture Committee
Bill/Resolution Number SB 2138
Hearing Date 2---24---05

MIKE: I will agree with you.

COMMISSIONER HILDENBRANT: I think the amendments that Mike has before you.

I would endorse the amendments. Take state agencies out of there. I have very excellent cooperation from the Game and Fish Department over the years. We meet monthly.

We can compliment work together. We have better cooperation then we have.

CHAIRMAN NICHOLAS: If any of you would like to prepare these amendments we will
Take action at a later date.

REPRESENTATIVE MUELLER. We have to research the amendments.

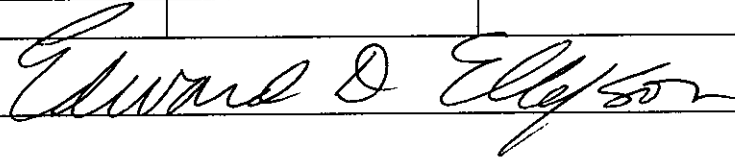
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2138

House Agriculture Committee

☐ Conference Committee

Hearing Date 2---25---05

Tape Number	Side A	Side B	Meter #
ONE	A		4.3 TO 9.0
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: Committee Members we will open on SB 2138. It was immediately decided that the committee would hold this bill over until next Thursday, March 3, 2005. There were amendments that were going to be offered as to the bill but the committee members and the Chair wanted to check with the entities that would be affected by this bill before they proceeded on with the bill.

THE CHAIR CLOSED ON SB 2138

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2138

House Agriculture Committee

☐ Conference Committee

Hearing Date 3---17---05

Tape Number	Side A	Side B	Meter #
ONE	A		06.0 TO 17.7
Committee Clerk Signature <i>Edward D. Ellyson</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee Members, we will open on SB 2138. The bill is relating to the composition of the natural areas acquisition advisory committee.

FRANCIS G. ZIEGLER, P.E., DIRECTOR OFFICE OF PROJECT DEVELOPMENT NDDOT
[[[PLEASE SEE F.G. ZIEGLER'S PRINTED TESTIMONY ALONG WITH A
MEMORANDUM SUBMITTED BY DAVID LEER AS TO THE STATUS OF NO-MOW
IMPLEMENTATION. DAVID SPEAKS TO THE COMMENTS OF PURCHASE
OF LAND THAT IS FOR POTENTIAL SALE. DAVID SUMMARIZED THE COST
AND APPRAISED VALUE OF THE TRACTS CAME IN MUCH HIGHER THEN THE
ESTIMATED VALUES. IT'S CLEAR THAT TO PURCHASE 4800 ACRES OF THESE
TRACTS WILL COST \$800,000.00 TO \$1,000,000.00. FRANCIS G. ZIEGLER STATED IN
HIS TESTIMONY THERE IS A GREAT EFFORT TO MITIGATE WETLANDS. HE ALSO
STATED THAT HE WAS RESPECTFULLY REQUESTING THAT THE NDDOT BE

Page 2
House Agriculture Committee
Bill/Resolution Number SB 2138
Hearing Date 3---17---05

EXEMPT FROM BEING ADDED TO THIS LEGISLATION. HE ALSO SPOKE TO THE FACT THAT THEY ARE VERY CAREFUL AS TO NOT MAKING SURE THAT THERE IS NO HARD FEELINGS FROM FARMERS RANCHES WHEN THEY PURCHASE LAND OR LEASE LAND.

CHAIRMAN NICHOLAS: Committee Members, your thoughts on SB 2138.

REPRESENTATIVE FROELICH: MADE A MOTION FOR A DO PASS.

REPRESENTATIVE KREIDT: SECONDED THE MOTION.

THE CHAIR ASKED THAT THE ROLL BE TAKEN.

THERE WERE 12 YES 0 NO 1 ABSENT. REPRESENTATIVE

FROELICH CARRIED THE BILL. CHAIRMAN NICHOLAS CLOSED ON SB 2138

SB 2138
2-17-05

Date:
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HOUSE AGRICULTURE COMMITTEE Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By FROELICH Seconded By KREIDT

Representatives	Yes	No	Representatives	Yes	No
REP. EUGENE NICHOLAS CHAIRMAN	✓		REP. TRACY BOE	✓	
REP. JOYCE KINGSBURY VICE CHAIRMAN	✓		REP. ROD FROELICH	✓	
REP. WESLEY BELTER			REP. PHILLIP MUELLER	✓	
REP. M. BRANDENBURG	✓		REP. KENTON ONSTAD	✓	
REP. CHUCK DAMSCHEN	✓				
REP. CHAIG HEADLAND	✓				
REP. GARY KREIDT	✓				
REP. GERALD UGLEM	✓				
REP. JOHN WALL	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment FROELICH

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

REPORT OF STANDING COMMITTEE (410)
March 17, 2005 1:02 p.m.

Module No: HR-49-5263
Carrier: Froelich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2138, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends
DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2138
was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2138

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

Testimony of Patrice Lahlum
North Dakota Department of Agriculture
Senate Bill 2138
Senate Agriculture Committee
Roosevelt Park Room
January 13, 2005

*Same given by
Jeff Weisfening
to House*

Chairman Flakoll and members of the Senate Agriculture Committee, my name is Patrice Lahlum. I am the Policy & Communications Coordinator at the North Dakota Department of Agriculture and I am here on behalf of Agriculture Commissioner Roger Johnson. I am here today in support of SB 2138, which would allow the members of the Natural Areas Acquisition Advisory Committee (NAAAC) to have a designee represent them at hearings and meetings.

SB 2138 was introduced at the request of the Agriculture Department. Our agency provides staff support for NAAAC committee, as Commissioner Johnson serves as chair.

The NAAAC committee is required by state statute to receive acquisition proposals from non-profit corporations, conduct a local hearing in conjunction with the county commission where the proposed acquisition is located, and formulate an advisory recommendation to the governor on the proposed sale of land. The NAAAC has 45 days from receipt of the proposal to provide the

governor with a recommendation. The governor then has 30 days to approve or deny the sale of the land.

The law governing the NAAAC committee was amended by the 57th legislative assembly and changed the makeup of the NAAAC committee by removing the state engineer and the manager of the Garrison Conservancy District and adding the chairman of the county commission of any county affected by a proposed acquisition. That legislation also removed the words "or their designee" from the section, which implied that only the named committee members may vote on proposed acquisitions. An interpretation of this change in law was sought from the Attorney General. Attached is a memorandum dated September 18, 2001, from then Assistant Attorney General Paul Germolus, which states, in part, "*...It is my opinion that the Deputy Agriculture Commissioner and Deputy Game & Fish Director may appear at the NAAAC and act as the substitute for their principals. The remaining committee members may not appoint a designee to serve in their place.*"

SB 2138 simply adds the language "or their designees" back into the statute so that committee members have the flexibility to appoint a designee to serve in their place when necessary. Each proposed acquisition involves at least two meetings.

Chairman Flakoll and committee members, I urge a do pass recommendation on SB 2138. I would be happy to answer any questions you may have.

MEMORANDUM

TO: Agriculture Commissioner Roger Johnson, Chairman
Natural Areas Acquisition Advisory Committee

FROM: Paul C. Germolus, Assistant Attorney General
Office of Attorney General

DATE: September 18, 2001

RE: Delegation of NAAAC duties to Designees
N.D.C.C. § 10-06.1-10.

2001 House Bill 1053 amended N.D.C.C. § 10-06.1-10 relating to the membership of the Natural Areas Acquisition Advisory Committee ("NAAAC"). See S.L. 2001, Ch. 111, § 1. In changing committee membership, the Legislature also removed the phrase "or their designees". You asked whether the removal of this phrase prohibits a NAAAC member from appointing a "designee" to serve as his or her representative. It is my opinion that a committee member with a statutory deputy may appoint that deputy as the committee member's "designee". It is my further opinion that committee members without a statutory deputy may not appoint a designee to serve on the committee.

Statutes are first interpreted based on their plain language and not on what a person thinks the Legislature meant to say. In Little v. Tracy, 497 N.W. 2d 700, 705 (ND 1993), the Supreme Court said:

It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed. It must be presumed, also, that it made no mistake in expressing its purpose and intent. Where the language of a statute is plain and unambiguous, the "court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it." City of Dickinson v. Thress, 290 N.W. 653, 657 N.D. 1940) (citations omitted). Usually, when the plain meaning of a statute is apparent, it is unwise and unnecessary to delve further.

See also N.D.C.C. § 1-02-05. Here, the language of N.D.C.C. § 10-06.1-10 is clear and unambiguous – whether intentional or by mistake, the Legislature specifically removed the phrase "or their designees". Therefore, under the plain language of the statute, I am forced to conclude that certain committee members, subject to my discussion below, may not use a "designee" to serve on the committee.

The Agriculture Commissioner may appoint a deputy under N.D.C.C. § 44-03-01. The Game & Fish Director may appoint a deputy under N.D.C.C. § 20.1-02-06. The

remaining NAAAC members do not have statutory deputies. A "deputy is a person appointed to act for another, a substitute or delegate who acts officially for his principal." 1991 N.D. Op. Att'y Gen. L-51. "[W]hile ministerial acts may be delegated by an officer or board to 'assistants' whose employment is authorized, they do not have the status of deputies to whom quasi-judicial functions may be delegated. Id. The business and object of a deputy is to perform the duties of his or her principal. But, as a general rule, powers conferred upon officers involving the exercise of judgment or discretion cannot be surrendered or delegated to subordinates in the absence of statutory authorization. 63C Am. Jur. 2d Public Officers and Employees § 40 (1997). In the 1991 Attorney General opinion, it was determined that "[b]ecause a deputy has power to do every act which the principal might do except those prohibited by statute...[and] absent express statutory authority, the Insurance Commissioner and the State Treasurer may not deputize an assistant to perform an act required by statute involving judgment and discretion. Only the single deputy appointed ... may perform those acts." Id.

In applying the general rule as to the authority of deputies, it is my opinion that the Deputy Agriculture Commissioner and Deputy Game & Fish Director may appear at the NAAAC and act as the substitute for their principals. The remaining committee members may not appoint a designee to serve in their place.

e:\germolus\corpfarm\10-06.1-10 naaac delegation authority2.doc

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1053
(Representative Boucher)

AN ACT to amend and reenact subsection 3 of section 10-06.1-10 of the North Dakota Century Code, relating to acquisition of farmland or ranchland by nonprofit organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 10-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

3. Before ~~any~~ farmland or ranchland may be purchased by ~~any~~ a nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, ~~the state engineer, the commissioner of agriculture~~ commissioner, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the ~~manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees~~ chairman of the county commission of any county affected by the acquisition. The advisory committee shall hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

MEMORANDUM

TO: Agriculture Commissioner Roger Johnson, Chairman
Natural Areas Acquisition Advisory Committee

FROM: Paul C. Germolus, Assistant Attorney General
Office of Attorney General

DATE: September 18, 2001

RE: Delegation of NAAAC duties to Designees
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See also N.D.C.C. § 1-02-05. Here, the language of N.D.C.C. § 10-06.1-10 is clear and unambiguous – whether intentional or by mistake, the Legislature specifically removed the phrase "or their designees". Therefore, under the plain language of the statute, I am forced to conclude that certain committee members, subject to my discussion below, may not use a "designee" to serve on the committee.

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remaining NAAAC members do not have statutory deputies. A "deputy is a person appointed to act for another, a substitute or delegate who acts officially for his principal." 1991 N.D. Op. Att'y Gen. L-51. "[W]hile ministerial acts may be delegated by an officer or board to 'assistants' whose employment is authorized, they do not have the status of deputies to whom quasi-judicial functions may be delegated. Id. The business and object of a deputy is to perform the duties of his or her principal. But, as a general rule, powers conferred upon officers involving the exercise of judgment or discretion cannot be surrendered or delegated to subordinates in the absence of statutory authorization. 63C Am. Jur. 2d Public Officers and Employees § 40 (1997). In the 1991 Attorney General opinion, it was determined that "[b]ecause a deputy has power to do every act which the principal might do except those prohibited by statute...[and] absent express statutory authority, the Insurance Commissioner and the State Treasurer may not deputize an assistant to perform an act required by statute involving judgment and discretion. Only the single deputy appointed ... may perform those acts." Id.

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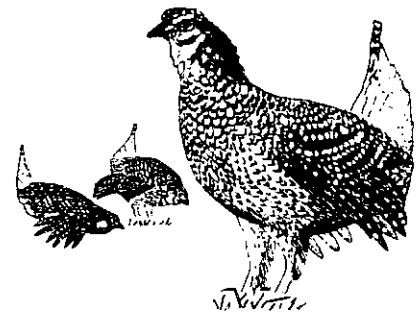
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North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



TESTIMONY OF MIKE McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED TO THE HOUSE AGRICULTURE COMMITTEE
ON SB 2138, FEBRUARY 24, 2005

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mike McEnroe speaking on behalf of the North Dakota Chapter of The Wildlife Society. The Chapter is comprised of over three hundred biologists, land managers, natural resource agency administrators, and educators across the State.

Most of the natural areas acquisitions deal with grassland and wetland habitats.

These areas are usually managed by the current private landowner as grazing lands, and are managed using prescribed grazing by a neighboring landowner after purchase by the non-profit conservation organization. With the tie to grazing management, the Stockmens' Association seems to be a better fit on the advisory committee than the Farm Bureau or the Farmers' Union. Unfortunately, the Stockmens' Association has a standing policy opposing all non-profit, tax-exempt organizations' ownership of agricultural lands.

Since this is an advisory committee to the Governor, we would also recommend

removing the Directors of the North Dakota Game and Fish Department and the North Dakota Parks and Recreation Department, and the State Forester from this Committee. These three positions are all members of the Governor's cabinet, and advise him on a daily or weekly basis.

We also recommend that four additional members be added to the Committee to replace the three State agency directors; one selected from the State University system with expertise in plant science, and three from the natural resources community with expertise in wildlife biology, land management, and natural area identification and conservation.

The Committee would then be a nine-member group; four from the agricultural side; four from the natural resources side, and the Chair of the involved County Commission. This then truly would be an advisory committee. Thank you for the opportunity to provide comments on SB 2138.

TESTIMONY
Engrossed SB 2138
Francis G. Ziegler, P.E., Director
Office of Project Development
NDDOT

The NDDDOT would have a concern about being added to Subsection 3 of this legislation for the following reasons:

1. As part of our process of building or improving roads we have to fill wetlands to build the embankments. Those wetlands must be mitigated because of Federal Aid Requirements.

The NDDOT mitigates for City, County, and NDDOT projects. To establish the mitigation acres, we go through a process of developing a Wetland Bank instrument. This instrument is signed by 3 state and 2 federal agencies. The process takes a long time to complete.

2. The North Dakota Legislature has required that the NDDOT mitigate existing no-mow acres off the highway right-of-way. These acres were to be replaced with state school lands that were either not leased or provided a lower income return to the State School Land Trust Fund, while at the same time have wildlife value and would be acceptable as mitigation for the no-mow acres.

This process has not been going as well as expected because we have received negative feedback from some of the individuals who have been leasing the land as to how it would impact their farming and ranching businesses if they lost the leases. We have been in the hearing process for over a year.

So you can see the effort needed to mitigate wetlands.

The process outlined in Subsection 3 would add more effort to the existing process that is already very costly and time consuming but, must be done.

We respectfully request that the NDDOT be exempt from being added to this legislation

March 9, 2005

March 16, 2005

Memorandum To: Francis Ziegler, Director Office of Project Development
From: David Leer 
Subject: Status of No-Mow Implementation

We have been working with the NDGF, SLD, and Great River Energy (GRE) in an effort to acquire lands to be used as mitigation for No-Mow.

We have been conducting hearings for the last year for tracts of land that the State Land Department (SLD) has identified for potential sale to the NDDOT to be used as mitigation for the elimination of the no-mow areas within the right-of-way of the state highway system. The mission is to purchase 4,800 acres of school land from the SLD for this purpose.

We have conducted hearings in 19 counties representing 7,109 acres of school land. We have received negative comments in 10 of these counties representing 3,660 acres. This leaves us with 3,449 acres that have not received negative comment but, leaves us short of the 4,800 acres by 1,351 acres.

Of the 3,449 acres that did not receive negative comment, the appraised value for 1,616 acres was \$325 per acre. This leaves 1,833 acres of school land that has not received negative comment and meets the original intent of the budget for this program. However, this leaves the DOT short of the mission of 4,800 acres by 2,967 acres.

Our original estimate to purchase the school land tracts was \$480,000 and was based on agricultural and pasture values.

The appraised value of the tracts came in much higher than the estimated values. It's clear that to purchase 4800 acres of these tracts will cost \$800,000 to \$1,000,000.