

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2355

2005 SENATE AGRICULTURE

SB 2355

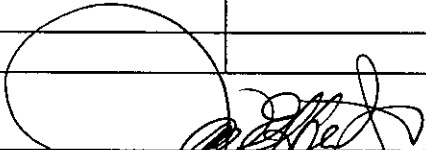
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2355

Senate Agriculture Committee

Conference Committee

Hearing Date February 11, 2005

Tape Number	Side A	Side B	Meter #
1	x		2742 - 3730
Committee Clerk Signature 			

Minutes:

Vice Chairman Erbele opened the hearing on SB 2355, a bill relating to designation of the agent for service of process for a nonresident pesticide applicator or dealer.

Senator Klein introduced the bill.

Mary Feist from the Secretary of State's office testified in favor of the bill. (written testimony)
(meter 2773)

Jeff Olson, Agriculture Department, testified in favor of the bill. (written testimony) (meter 3062)

Senator Seymour asked how many years this has been designated to the Secretary of State.

Mr. Olson said since 1975.

Senator Seymour asked whose idea it was to change the process.

Mr. Olson said the Secretary of State.

Page 2

Senate Agriculture Committee
Bill/Resolution Number SB 2355
Hearing Date February 11, 2005

Senator Taylor asked if the Pesticide Control Board is an entity of the Agriculture Department.

(meter 3306)

Mr. Olson said the board is chaired by the Agriculture Commissioner and consists also of the Director of University Extension and the Director of Research Stations. They are charged with enforcing chapter 4-35.

Senator Klein asked if Mr. Olson has talked to the secretary of state's office about his amendments.

Mr. Olson said he hasn't shown them his amendments and he hadn't seen theirs previously but their amendments are fine with him. He has spoken with the head of the pesticide program at NDSU extension and he is fine with taking over the responsibilities.

Ms. Feist indicated the Agriculture Department amendments are fine with the secretary of state. Vice Chairman Erbele closed the hearing on SB 2355.

Senator Taylor moved the amendments submitted from the secretary of state and Agriculture Department.

Senator Klein seconded the motion.

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

Senator Klein moved a do pass as amended on SB 2355.

Senator Taylor seconded the motion.

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

Senator Klein will carry the bill.

Date: 2/11/05
Roll Call Vote # 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Amendments

Motion Made By Sen. Taylor Seconded By Sen. Klein

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 _____

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

amendments of Secretary of State and Agriculture Department.

Date: 2/11/05
Roll Call Vote # 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No 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 2355: 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 2355 was placed on the Sixth order on the calendar.

Page 1, line 3, after "dealer" insert "; and to provide for application"

Page 1, line 10, replace "pesticide control board" with "North Dakota state university extension service or its designee"

Page 1, line 15, replace the first "board" with "extension service" and replace the second "board" with "extension service"

Page 1, line 17, replace "board" with "extension service"

Page 1, line 18, replace "board" with "extension service"

Page 1, after line 18, insert:

"SECTION 2. APPLICATION. Any document filed before the effective date of this Act designating the secretary of state as agent for service of process, including any written powers of attorney, must be transferred to the extension service on the effective date of this Act."

Renumber accordingly

2005 HOUSE AGRICULTURE

SB 2355

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2355

House Agriculture Committee

Conference Committee

Hearing Date 3---03---05

Tape Number	Side A	Side B	Meter #
ONE	A		27.1 TO 32.7
Committee Clerk Signature <i>Edward D. Olson</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee Members, please turn to SB 2355.

We will take testimony in favor of SB 2355. Who would like to go first.

MARY FEIST, DIRECTOR ADMINISTRATIVE AND LICENSING DIVISION on behalf of

Al Jaeger, Secretary of State. [[Please read attached testimony of Mary Feist]]

CHAIRMAN NICHOLAS: Any questions. O.K. Additional testimony. Jeff.

JEFF OLSON: PROGRAM MANAGER--HOUSE AGRICULTURE COMMITTEE..

I am here to testify in support of SB 2355.

Current pesticide applicators must show proof of designated resident agent through the Secretary

of State, before such applicators are granted their pesticide certification from N.D. STATE

UNIVERSITY EXTENSION SERVICE. Senate bill 2355 proposes to name the N. D.

State University Extension Service as the designated resident agent for out of state

Pesticide applicators in place of the Secretary of State. [[PLEASE READ JEFF'S PRINTED

Page 2
House Agriculture Committee
Bill/Resolution Number SB 2355
Hearing Date 3--03--05

TESTIMONY]] Jeff again at the end of his printed testimony asked for support of the bill.

CHAIRMAN NICHOLAS: Any questions of Jeff. Thanks Jeff.

Any additional testimony in favor of SB 2355. Any opposition to bill.

O.K COMMITTEE MEMBERS, WHAT ARE YOUR WISHES ON SB 2355.

REPRESENTATIVE BRANDENBURG MADE A MOTION FOR A DO PASS.

REPRESENTATIVE KINGSBURY SECONDED THE MOTION.

CHAIRMAN NICHOLAS: THE CLERK WILL TAKE THE ROLL.

THERE WERE 11 YES 0 NO 2 ABSENT.

REPRESENTATIVE WALL CARRIED THE BILL.

CHAIRMAN NICHOLAS CLOSED ON SB 2355

SB 2355

Date: 3-3-05
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 BRANDENBURG Seconded By KINGSBURY

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) 11 No 0

Absent 2

Floor Assignment WALL

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

REPORT OF STANDING COMMITTEE (410)
March 3, 2005 1:56 p.m.

Module No: HR-39-4096
Carrier: Wall
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2355, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2355 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2355

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 11, 2005

TO: Senator Flakoll, Chairman, and Members of the Senate Agriculture Committee

FR: Mary Feist, on behalf of Al Jaeger, Secretary of State

RE: SB 2355 – Service of Process for nonresident pesticide applicator

Before a commercial or public applicator can apply pesticides, they must first receive a commercial applicator's certificate from the Extension Service of North Dakota State University per the provisions of N.D.C.C. § 4-35-09.

As required in N.D.C.C. § 4-35-11, when a nonresident pesticide applicator seeks to be certified, they must designate the Secretary of State for service of process in the event any suit is initiated against the nonresident applicator.

Under state law, the designating of the Secretary of State for service of process for foreign or nonresident entities is done in selected situations when it pertains to entities that have a direct registration or licensing requirement with the Secretary of State. However, the Secretary of State's office has no role in the pesticide certification process.

The designating of the Secretary of State for service of process is a one-time requirement. For example, our records go back to 1975 when the designating of the Secretary of State for service of process first became law. As a result and because there is no requirement for the nonresident applicator to notify the Secretary of State of any change in their address, many of our records are outdated.

On the other hand, the Extension Service has a continuing relationship with the nonresident applicator because of the on going certification process. Therefore, they always have current data on record as to the nonresident applicator's address along with other pertinent information.

Having current information about the nonresident applicator on record in the event of service of process could be very critical in an emergency. In contrast, because of the one-time only registration requirement, it is quite possible that the information on file with the Secretary of State's office is not accurate and the service of process may not be processed as timely as the situation warrants.

This bill simply transfers the service of process designation from the Secretary of State to the Extension Service. Because they will have current information, this change will provide better protection for the public as well as maintaining the reliability of the legal process if legal action is undertaken.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2355

Page 1, line 18, after the second period insert "Any documents filed before the effective date of this Act designating the secretary of state as agent for service of process including any written powers of attorney shall be transferred to the board on the effective date of this Act."

Renumber accordingly

Roger Johnson
Agriculture Commissioner
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Testimony of Jeff Olson, Program Manager
Senate Bill 2355
February 11, 2005
Senate Agriculture Committee
Roosevelt Room

Chairman Flakoll and members of the Agriculture Committee, my name is Jeff Olson. I am here to testify in support of Senate Bill 2355. I will also submit amendments for your consideration.

The process that now exists is that out of state pesticide applicators must show proof of a designated resident agent from the Secretary of State before they are granted their pesticide certification from the North Dakota State University Extension Service. Senate bill 2355 proposes to name the Pesticide Control Board as the designated resident agent for out of state pesticide applicators in place of the Secretary of State. Because the Pesticide Control Board does not have full time personnel, the proposed language would be difficult to follow.

The proposed amendment would designate the North Dakota State University Extension Service or it's designee to be designated as the resident agent. This information is presently received by the NDSU Pesticide Program prior to issuing the certifications. I have discussed these amendments with the NDSU Extension Director, Duane Hauck, and Extension has agreed to be the designated resident agent. This would be a better use of the resources in administering this provision of the law.

Thank you for your consideration of this bill and the proposed amendments.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2355

Page 1, line 10, overstrike "pesticide control board" and immediately insert "North Dakota state university extension service or its designee":

Page 1, line 15, after the first "~~secretary of state~~" overstrike "board" and immediately insert "extension service" and after the second "~~secretary of state~~" overstrike "board" and immediately insert "extension service"

Page 1, line 17, after "~~secretary of state~~" overstrike "board" and immediately insert "extension service"

Page 1, line 18, after "~~secretary of state~~" overstrike "board" and immediately insert "extension service"

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 3, 2005

TO: Rep. Nicholas, Chairman, and Members of the House Agriculture Committee

FR: Mary Feist, Director, Administrative and Licensing Division,
on behalf of Al Jaeger, Secretary of State

RE: SB 2355 – Service of Process for nonresident pesticide applicator

Before a commercial or public applicator can apply pesticides, they must first receive a commercial applicator's certificate from the Extension Service of North Dakota State University under the provisions of N.D.C.C. § 4-35-09.

As required in N.D.C.C. § 4-35-11, when a nonresident pesticide applicator seeks to be certified, they must designate the Secretary of State for service of process in the event any suit is initiated against the nonresident applicator.

Under state law, the designating of the Secretary of State for service of process for foreign or nonresident entities is done in selected situations when it pertains to entities that have a direct registration or licensing requirement with the Secretary of State. However, the Secretary of State's office has no role in the pesticide certification process.

The designating of the Secretary of State for service of process is a one-time requirement. For example, agency records go back to 1975 when the designating of the Secretary of State for service of process first became law. As a result and because there is no requirement for the nonresident applicator to notify the Secretary of State of any change in their address, many of these records are obsolete.

On the other hand, the Extension Service has a continuing relationship with the nonresident applicator because of the on going certification process. Therefore, they always have current data on record as to the nonresident applicator's address along with other pertinent information.

Having current information about the nonresident applicator on record in the event of service of process could be very critical in an emergency. In contrast, because of the one-time only registration requirement, it is quite possible that the information on file with the Secretary of State's office is not accurate and the service of process may not be processed as timely as the situation warrants.

This bill simply transfers the service of process designation from the Secretary of State to the Extension Service. Because they will have current information, this change will provide better protection for the public as well as maintaining the reliability of the legal process if such action is initiated.

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Testimony of Jeff Olson, Program Manager
Senate Bill 2355
March 3, 2005
House Agriculture Committee
Peace Garden Room

Chairman Nicholas and members of the Agriculture Committee, my name is Jeff Olson. I am here to testify in support of Senate Bill 2355.

Currently pesticide applicators must show proof of a designated resident agent through the Secretary of State, before such applicators are granted their pesticide certification from the North Dakota State University Extension Service. Senate bill 2355 proposes to name the North Dakota State University Extension Service as the designated resident agent for out of state pesticide applicators in place of the Secretary of State.

This information is presently received by the NDSU Pesticide Program prior to issuing the certifications. I have discussed this change with the NDSU Extension Director, Duane Hauck, and Extension has agreed to be the designated resident agent. This would be a better use of the resources in administering this provision of the law.

Thank you for your consideration of this bill. I would be happy to answer any questions you may have.