

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## AGRICULTURE COMMITTEE

Thursday, November 4, 2010  
Prairie Room, State Capitol  
Bismarck, North Dakota

Representative Phillip Mueller, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives Curt Hofstad, Richard Holman, Dennis Johnson, Joyce Kingsbury, Shirley Meyer, Phillip Mueller, Gerry Uglem, Benjamin A. Vig, John D. Wall; Senators Arthur H. Behm, Bill Bowman, Curtis Olafson, John Warner

**Members absent:** Representatives Mike Brandenburg, Mary Ekstrom, Rod Froelich, Keith Kempenich; Senators Tim Flakoll, Terry L. Jacobs, Terry M. Wanzek

**Others present:** See [Appendix A](#)

**It was moved by Senator Behm, seconded by Representative Kingsbury, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.**

### ADVISORY COMMITTEE ON SUSTAINABLE AGRICULTURE - REPORT

At the request of Chairman Mueller, Mr. Dane Braun, Program and Policy Analyst, Department of Agriculture, presented a report ([Appendix B](#)) regarding the recent activities of the Advisory Committee on Sustainable Agriculture. Mr. Braun said the Advisory Committee on Sustainable Agriculture was created by North Dakota Century Code Section 4-01-24. He said the committee has to date met only once.

Mr. Doug Goehring, Agriculture Commissioner, Department of Agriculture, said the purpose of the Advisory Committee on Sustainable Agriculture was to examine ways in which the concept of sustainability could be used to promote and market North Dakota agricultural products. He said there are multiple definitions of sustainability. He said the committee is considering the Keystone Fieldprint Calculator. He said this is an outcome-based metric that is used to determine if agricultural practices and systems are sustainable. He said time will be needed in order for this program to move forward. He said the program is based on branding and marketing. He said funds will be needed to promote and market North Dakota commodities in this manner.

In response to a question from Representative Mueller, Commissioner Goehring said no other state is pursuing the use of sustainability to promote and market its products. However, he said, on the national level, agricultural interests, retail interests, and food processors, among others, are exploring the concept of sustainability and marketing. He said on a

national level, consideration is being given to the sustainability and marketing of corn, soybeans, wheat, and cotton. He said North Dakota produces numerous other crops and leads in the production of approximately 14 major crops.

In response to a question from Representative Mueller, Commissioner Goehring said production agriculture was under attack five years ago. He said it was argued that production agriculture was not viable given sustainability standards. He said there was a realization that production agriculture would have to become more sustainable if it intended to continue feeding the world. He said through genetics and technology, agricultural producers do more today with less per unit than they did 20, 10, or even 5 years ago.

In response to a question from Representative Mueller, Commissioner Goehring said products would be certified as coming from a sustainable production method. He said consumers would pay more for this certification. He said the cost of the program comes in marketing efforts at the state, national, and international levels.

In response to a question from Representative Vig, Commissioner Goehring said inspectors will be needed to certify that producers are engaging in sustainable practices. He said he does not know what the cost of that will be.

In response to a question from Representative Uglem, Commissioner Goehring said other countries are starting to ask about carbon footprints when they consider purchasing American products.

### STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION - REPORT

Chairman Mueller said the State Board of Agricultural Research and Education has prepared its annual evaluation of research activities and expenditures. He said the report has been distributed to committee members and is on file in the Legislative Council office.

### BILL DRAFT - SEED LAW REWRITE

Chairman Mueller welcomed Mr. Ken Bertsch, Seed Commissioner, State Seed Department, and Mr. Steve Sebesta, Deputy Seed Commissioner, State Seed Department. Chairman Mueller said the committee will consider a bill draft [[10015.0400](#)] that rewrites as new law provisions of North Dakota

Century Code chapters pertaining to the State Seed Department. He said as before, the committee will focus on the notes that follow the respective sections.

### **Section 1 - Amendment of Section 4-10-12.1**

Chairman Mueller said this section reconciled a cross-reference found in Chapter 4-10. He said Chapter 4-10 pertains to seed potato certification and has not yet been addressed by the interim committee. However, he said, this section is parallel to proposed Section 4.1-53-59. He said at the last meeting of the committee, Mr. Bertsch indicated the State Seed Department could and should warranty that any inspections it conducts are made under the rules of the State Seed Department or the United States Department of Agriculture. He said Mr. Bertsch indicated to the committee that the State Seed Department could not be responsible for producing, grading, nor packing the commodities. He said as a result, the committee amended proposed Section 4.1-53-59 to reference only the inspections done by the State Seed Department.

Mr. Bertsch said he would ask that on page 1, line 18, the words "produced, graded, packed and" be removed. He said as with the proposed language in Section 4.1-53-59, the State Seed Department should not be statutorily directed to warranty activities in which it does not engage.

**It was moved by Representative Meyer, seconded by Representative Kingsbury, and carried on a voice vote that Section 4-10-12.1 be amended to provide that the only representation made is that the potatoes or other produce were inspected under the rules of the State Seed Department or the United States Department of Agriculture.**

### **Section 2 - New Section**

Committee counsel said Section 4-09-25 exempts certain records from the open records requirements of Section 44-04-18. She said this exemption in Chapter 4-09 specifically includes records generated under Chapter 4-10. She said in order to ensure the exemption for Chapter 4-10 is not eliminated in the rewrite of Chapter 4-09, it is necessary to reiterate the exemption and place it in Chapter 4-10.

In response to a question from Representative Mueller, Mr. Bertsch said the section as proposed is appropriate.

### **Section 4.1-53-41 - Nonresident Seed Dealer's License**

Chairman Mueller said like current law this section requires a nonresident seed dealer to obtain a license prior to selling agricultural seed in this state directly to a consumer. He said current law limits the section to agricultural seed dealers but does not reference those who sell vegetable, flower, and tree and shrub seed.

Mr. Sebesta said the section should be amended to reference all seed falling within the regulatory authority of the State Seed Department.

**It was moved by Representative Kingsbury, seconded by Representative Uglen, and carried on a voice vote that proposed Section 4.1-53-41 reference dealers of vegetable, flower, and tree and shrub seed in addition to agricultural seed.**

### **Section 4.1-53-59 - Liability of Seed Commission, Seed Department, Seed Commissioner, and Certified or Noncertified Agricultural Seed Producers**

Chairman Mueller said this section like the above-mentioned section pertaining to nonresident seed dealer licenses also references only agricultural seeds and does not extend to vegetable, flower, and tree and shrub seed. He said this is reflective of what is in current law.

Mr. Sebesta said this section also should reference all seeds within the regulatory authority of the State Seed Department.

**It was moved by Representative Wall, seconded by Senator Behm, and carried on a voice vote that proposed Section 4.1-53-59 be amended to reference all seeds within the regulatory authority of the State Seed Department.**

### **Section 4.1-57-04 - Application for License - Required Security**

Chairman Mueller said current law provides that as a condition of licensure the Seed Commissioner "may" require an applicant to file a current financial statement, a cash bond or a surety bond, or provide an irrevocable letter of credit. He said because State Seed Department personnel indicated that proof of financial stability is an integral part of the licensing process, the language has been changed so the Seed Commissioner "shall" require such evidence. He said the committee is asked to verify this change.

Mr. Bertsch said it is appropriate to require that the Seed Commissioner obtain proof of financial stability and not merely authorize the Seed Commissioner to request such.

Committee counsel said Section 4.1-57-04(1) is reflective of current law in that as a condition of licensure the Seed Commissioner is to obtain from the applicant a current financial statement, a cash bond or a surety bond, or an irrevocable letter of credit. However, she said, this is not reflective of the State Seed Department's current practice. She said the State Seed Department requests a financial statement at the time of application and then requires that the applicant present a cash bond, a surety bond, or an irrevocable letter of credit.

In response to a question from Representative Meyer, Mr. Bertsch said it would be his preference to amend this section.

Committee counsel said the subsection could be amended by providing:

1. As a condition of licensure, the seed commissioner shall require an applicant to file a current financial statement prepared in accordance with generally accepted accounting principles and:
  - a. A cash bond or a surety bond, in an amount and form determined by the seed commissioner; or
  - b. An irrevocable letter of credit.

**It was moved by Representative Uglen, seconded by Representative Kingsbury, and carried on a voice vote that the section be amended to reflect the manner in which the State Seed Department currently is conducting business.**

Committee counsel said based on the last motion for amendment, a change also is needed in Section 4.1-57-05. She said the second to the last sentence references the filing of a bond, whereas the last sentence references the filing of a bond or other form of surety.

**It was moved by Representative Johnson, seconded by Representative Meyer, and carried on a voice vote that proposed Section 4.1-57-05 be amended to reference both bonds and other forms of surety.**

#### **Section 4.1-57-17 - Report by Wholesale Potato Dealer - Payment**

Chairman Mueller said current law requires that a wholesale potato dealer provide to a shipper or consigner a written report detailing the potatoes' time of arrival, the quantity, the quality, and the price per unit. He said current law requires this report be provided "within a reasonable time." He said the committee might wish to clarify what constitutes a "reasonable time."

Mr. Bertsch said what constitutes reasonable time is the least of this section's problems. He said the section is entirely unworkable. He said in order to make it workable, there must be major policy changes.

Representative Meyer said it is her understanding the report referenced in this section is not used in the business world. She said if the section is outdated and not reflective of how business is being done, the committee should repeal the section.

Senator Warner said repealing the section at this late date does not allow for public input.

Senator Olafson said there will be appropriate time during the legislative session for citizens to come in and address the merits of what is being discussed.

In response to a question from Representative Mueller, Mr. Bertsch said Section 4.1-57-17 does not reflect common practice, and from his perspective, there would be nothing to be gained by keeping the section. In fact, he said, by leaving it there, anyone who does not provide the report is in fact in violation of the chapter. He said the State Seed Department is not equipped to police this requirement. He said the State Seed Department has very little to do with the

commercial aspect of the potato industry. He said the State Seed Department does need to suggest major policy changes to the chapter. He said these changes would go well beyond the scope of the interim study.

Senator Olafson said if the State Seed Department is going to engage in a major policy shift with respect to wholesale potato dealers, it should ensure that individuals who are intimately involved with the commercial potato industry participate in that effort.

Committee counsel said while an argument could be made for removing Section 4.1-57-17, there are other sections that also reference this particular report. She said perhaps it would be preferable to make the necessary changes within a separate bill draft that addresses substantive alterations of existing policy.

#### **Section 4.1-57-22 - Violations of Chapter - Penalty**

Chairman Mueller said subdivision b of subsection 1 provides that a person is guilty of a misdemeanor if the person refuses to accept, on agreed terms, any shipment for which the person has contracted and goes on to provide an exception, i.e., "unless the refusal is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment, and showing that the kinds or quality of potatoes is not that which was purchased or ordered." He said because subdivision d of subsection 1 provides that a person is guilty of a misdemeanor if the person "breaches any contract to which the person is a party for the purchase or sale of potatoes," perhaps the two concepts could be combined as follows: "A person is guilty of a misdemeanor if the person breaches any contract for the purchase or sale of potatoes to which the person was a party unless the breach is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment, and showing that the kind or quality of potatoes is not that which is purchased or ordered."

**It was moved by Representative Uglen, seconded by Representative Kingsbury, and carried on a voice vote that the language of subdivisions b and d of subsection 1 be combined.**

Chairman Mueller said subdivision j of subsection 1 provides that a person is guilty of a misdemeanor if the person "[f]ails to keep accurate records and financial accounts of all transactions as a wholesale potato dealer." He said this parallels proposed Section 4.1-57-10, which states that a "wholesale potato dealer shall keep accurate accounts and retain records of all transactions as a dealer for eighteen months. . . ." He said because subdivision l of subsection 1 applies the penalty to anyone who violates this chapter, subdivision j of subsection 1 is unnecessary and should be removed.

**It was moved by Representative Wald, seconded by Representative Holman, and carried**

**on a voice vote that subdivision j of subsection 1 be removed.**

Mr. Sebesta said proposed Section 4.1-54-01 was amended at the request of this committee to reference a producer appointed by the Agriculture Commissioner, rather than a representative of a major North Dakota farm organization. However, he said, that same reference needs to be reflected in Section 4.1-54-02.

**It was moved by Senator Warner, seconded by Representative Kingsbury, and carried on a voice vote that Section 4.1-54-02 be amended to reference a producer appointed by the Agriculture Commissioner.**

Mr. Sebesta said proposed Section 4.1-53-12 contains as its caption the words "**Label requirements - Agricultural seed.**" He said many of the other sections place a reference to agricultural seed first. He said this is preferable from their perspective and would ask that the captions be reviewed in this section and throughout the bill draft to reflect the type of seed being addressed first.

**It was moved by Senator Warner, seconded by Senator Bowman, and carried on a voice vote that the captions in the bill draft be amended to first reflect the type of seed being addressed in the sections.**

### **Phytosanitary Certificates**

Committee counsel said Section 4-09-06.1 authorizes the Seed Commissioner to inspect agricultural seed, flower seed, vegetable seed, tree and shrub seed, and Irish potato tubers and to issue a phytosanitary certificate for the seed or tubers. She said the section has not been included in the rewrite. She said Section 4-33-12 authorizes the Agriculture Commissioner to inspect any plant and plant product and to issue phytosanitary certificates. She said because the Department of Agriculture is the designated agency for the issuance of phytosanitary certificates in accordance with federal regulations there appears to be no reason to retain Section 4-09-06.1. She said she contacted the individual in charge of phytosanitary certificates at the Department of Agriculture and was told that some time in the future, the Department of Agriculture may wish to have the State Seed Department inspect seeds or plants in order to facilitate the department's issuance of phytosanitary certificates. She said since the Agriculture Commissioner is responsible for the issuance of such certificates, the Agriculture Commissioner can provide for such inspections in any lawful manner.

Mr. Bertsch said he agrees the authority comes through the Agriculture Commissioner and likewise agrees the current section referring to phytosanitary certificates does not need to be in the rewrite.

### **Committee Directive**

**It was moved by Senator Warner, seconded by Senator Olafson, and carried on a roll call vote that the bill draft, as amended, relating to the rewrite of North Dakota Century Code provisions governing the State Seed Department be approved and recommended to the Legislative Management.** Representatives Mueller, Hofstad, Holman, Johnson, Kingsbury, Meyer, Uglen, Vig, and Wall and Senators Behm, Bowman, Olafson, and Warner voted "aye." No negative votes were cast.

### **Resolution Draft - Continuation of Study - Committee Directive**

Chairman Mueller asked the committee to consider a resolution draft [[13018.0100](#)] pertaining to the continuation of the agriculture law rewrite. **It was moved by Representative Meyer, seconded by Representative Kingsbury, and carried on a roll call vote that the resolution draft relating to a continuation of the agriculture law rewrite be approved and recommended to the Legislative Management.** Representatives Mueller, Hofstad, Holman, Johnson, Kingsbury, Meyer, Uglen, Vig, and Wall and Senators Behm, Bowman, Olafson, and Warner voted "aye." No negative votes were cast.

### **OTHER BUSINESS**

**It was moved by Representative Hofstad, seconded by Representative Kingsbury, and carried that the chairman and staff of the Legislative Council be requested to prepare a report and the bill draft and resolution draft recommended by the committee and present the report and the recommended drafts to the Legislative Management.**

**It was moved by Representative Kingsbury, seconded by Senator Warner, and carried on a voice vote that the committee be adjourned sine die.**

No further business appearing, Chairman Mueller adjourned the committee sine die.

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L. Anita Thomas  
Counsel

ATTACH:2