

2011 HOUSE AGRICULTURE

HB 1027

2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB1027
January 20, 2011
Job #13136

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Updating the seed law.

Minutes:

Representative Mueller: This is a rewrite of state seed laws. The 38 pages in front of you are from this and other documentation (shows large pile of paper). The charge of the committee was to clarify the law, eliminate irrelevant or duplicate parts of the law, and to arrange in a logical order. It wasn't to invent new laws. I urge a due pass on HB 1027.

L. Anita Thomas, Legislative Council Attorney: (see attached testimony #1)

Ken Bertsch, State Seed Commissioner: (see attached testimony #2)

There are 7 separate chapters and approximately 35 or 40 pages of Century Code that deal with the Seed Department and various programs within. The Seed Dept. of North Dakota is unique in that we do potato certification along with all field crop certification and the regulatory work for seed labeling. Basically anything that involves seed in North Dakota takes place in one spot. In other states this is accomplished by a variety of different groups. Most states the potato certification effort is done by a university program. The seed regulatory work might be a division of the Dept. of Agriculture. The seed certification work might take place within a private association that certifies the seed under the authority of United States Department of Agriculture or some other agency.

Some of what we tried to accomplish within the work of the code is to condense and confine those areas of code to a smaller product—easier to read. We didn't finish. We still have one large chapter dealing with potato certification. That is why you are hearing HCR 3001.

Chairman Johnson: There have been a lot of hours of work put into this.

Ken Bertsch: This is a very nice job of reorganizing. Statements and laws are in places that make sense.

Chairman Johnson: I have an amendment from the Secretary of State's office. I've handed it to Anita to get her input.

Anita Thomas: This is an odd amendment because current law states "The official seal of as recorded in the Office of the Secretary of State must be used exclusively in connection with the affairs of the department." The way it was rewritten we've said the Seed Dept. shall have and use an official departmental seal that has been recorded in the Office of the Secretary of State. I have no idea how Mr. Jaeger might have recorded it in the interim. For the purposes of this act we don't care how he records it. If he wants to record it as a trademark or a service mark as provided in Chapter 47-22, that is fine. It's not an amendment that needs to be in the Agriculture bill.

Chairman Johnson: I'll accept your opinion for now. We won't act on the bill today.
Closed the hearing.

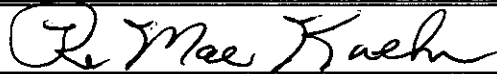
2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1027
January 27, 2011
Job #13542

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Johnson: I did have an amendment from the Secretary of State. Anita Thomas found a correction that we don't need that amendment. That amendment does not have to be introduced. The Secretary of State is researching what he has to do to correct the situation.

Representative Rust: Are you talking about the amendment that inserts on page 5, line 3 after "state" as a trademark or service mark as provided in section 47-22-03. That is not needed?

Chairman Johnson: Right. It was just misinformation. They don't need it.

Representative Mueller: Moved Do Pass

Representative Rust: Seconded the motion.

Representative Mueller: A lot of time went into this effort. I am comfortable with what was done for the rewrite of the seed law.

A Roll Call vote was taken. **Yes:** 12, **No:** 0, **Absent:** 2,
(Representatives Headland and Schatz)

DO PASS carries.

Representative Mueller will carry the bill.

Date: 1/27/11

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1027

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Mueller Seconded By Representative Rust

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	X		Tracy Boe	X	
Joyce Kingsbury, Vice Chair	X		Tom Conklin	X	
Wesley Belter	X		Richard Holman	X	
Craig Headland	AB		Phillip Mueller	X	
David Rust	X				
Mike Schatz	AB				
Jim Schmidt	X				
Wayne Trottier	X				
John Wall	X				
Dwight Wrangham	X				

Total **Yes** 12 **No** 0

Absent 2

Bill Carrier Representative Mueller

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

REPORT OF STANDING COMMITTEE

HB 1027: Agriculture Committee (Rep. D. Johnson, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1027 was placed on the
Eleventh order on the calendar.

2011 SENATE AGRICULTURE

HB 1027

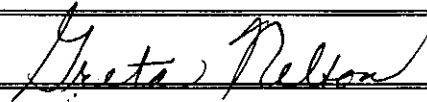
2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1027
March 4, 2011
14945

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the labeling, certification, and sale of seed; to provide a penalty; and to provide a continuing appropriation.

Minutes:

Attachments: #1, #2

Senator Flakoll Meeting called to order the 4th day of March, 2011 HB1027 at 9:00 am.
Clerk take roll call;

Clerk: roll call

Rep. Phil Mueller; Dist 24 work done on Ag rewrite (Microphone not on) Contributed to the seed dept on the Agricultural committee. It took many drafts to the agriculture peopleusing 36 pages. Spent the time clarifying and taking out duplications while arranging in order and clean up grammar/sentences. Judgment made by not changing or adding.

Senator Flakoll; Next week we have scheduled HB 1399 a companion bill to this. Will there be any problem if we pass both bills....clean un-amended....sequencing or anything? Are they totally separated issues or is that an Anita question?

Rep Mueller: Not a problem one way or another.

Senator Flakoll; We don't want to wipe out either bill if we were to pass both bills.

Rep Mueller: That doesn't seem to be a problem.

Senator Flakoll; Mr. Bertsch is aware of the scheduling.

Senator Miller: Are there any points on the re-write you felt you were not confident that you were able to keep the language at the same level as previous. Would you point to this where you had the greatest difficulty?

Rep Mueller: (Microphone off) Yes, we tried to be consistent with the law....important that Kent Bertsch from the Seed Dept was there. (Impossible to hear as his microphone was off.)

Senator Flakoll; Changes were done to unify refund, timing issues, which I would view as the most dramatic modification in the spirit of uniformity. Do you think there is anything in this bill that rises above that level in terms of changes?

Rep Mueller: No thrust of wherever going.....this is a good piece of work for seed (Impossible to hear as microphone was off.)

Anita Thomas: Attorney with Legislative Council (Attachment #1)

Senator Flakoll; Comments about the HB1399.....do we have to worry about any sequencing problems?

Anita: Don't worry about the sequencing problem as 1399 and this bill

Senator Flakoll; If we were to pass both needs to be signed first?

Anita: Not necessarily(Impossible to hear.....microphone off) they will be reconciled.

Senator Heckaman; Page 6 of bill.....you talk about the powers of the seed commission and seed commissioner. Is there any reason why you wouldn't put those in one section nor are you talking about the whole organization itself and then the individual person? Is that why 2 separate parts?

Anita: Specific duties and authorities as does the seed commissioner. (Microphone off)

Senator Klein; In the process over the years, private seed salespersons have been here and indicated pleasures or displeasures. During the process, did we get everyone on board as the room isn't packed with what we have done? Was there input from the private sector seed folks?

Anita: There were rarely others in the room

Senator Heckaman; Any new terminology or were they all existing?

Anita; All existing terms....

Senator Flakoll; Was it the duty or something related to the seed commissioner that we had some discussions on that we know what they are doing.....just had to figure out how to word it.....make more sense.

Anita: We had discussions about the role of the seed commission vs. the seed commissioner. It was not clear who reported to whom and one thing Mr. Bertsch assured us that he does work for the seed commission and all major decisions come from the seed commission.

Kent Bertsch: NDSSU State Seed Commissioner (Attachment #2) Answer to Senator Miller questionduring the course of the re-write the code gets torn all the way down and

you have agency people saying we are not going to be able to find what we are used to be working with/whereas now things are all reorganized into a format we are working with is much easier to work with. The public will be able to look at this, which is most important thing is that when we point out to the people that we work with is easier to read and understand. We don't want to have to interpret the code as we have been doing previously. We want everyone to read and interpret the same thing.

Senator Heckaman; On the second page on the top page 7 line 8. You said you condensed the whole section into the one line?

Kent: Correct.

Senator Heckaman; Does that require you to do administrative rules to address those sections that you don't have specified in code or were they not necessary to have?

Kent; I don't think we have any existing administrative rules for what was 409.1 the commodity inspection chapter. If there arewhat we will need to do is re-write all the administrative rules at lease to sight the appropriate chapter giving us the authority.

Senator Larsen; How many inspectors.....is this just for the agriculture or do you do box store inspections or any seeds in the state?

Kent: We do inspections seed products that you would find in box stores to make sure the seed that are being marketed are labeled correctly and within the specifics of the law as to the germination dates. Regulatory inspectors make visits to retailers around the state.....this is anyone who markets seed. Not a large staff.....we have 26 FT's working in the department for all our program areas. Many go out in the field inspection process and hire about 30-35 PT staff (trained) to do field inspections in our field crop as cereal, beans, anything other than potatoes.

Senator Klein; Associating yourself with the commodity with your appropriation issue, but report to the appropriation committee? Is that the way I understand it and not be a formal presenter at the commodity group outing we have once a session?

Kent: That is correct and it is a good thing that we have been an appropriated agency for a long time and allows us to be connected to appropriation committees and understanding what is happening in another Ag agency out there. Middle ground which was arrived at.

Senator Luick: how many seed zones are in ND?

Kent: Not sure I can answer this question

Senator Flakoll; There are zone 2 and 3 and 4. Questionshave you ever had to have an Attorney General's ruling on what the definition of many of these sections might be that you can recall?

Kent: Difficult to remember.....cannot recall specifically.

Senator Flakoll; How many sections have been rolled into these sections?

Kent: They have been rolled into different sections.....condensed many chapters

Senator Flakoll; Opposition?

Senator Flakoll; Close the hearing.

Senator Flakoll: Any amendments to this bill?

Senator Klein; Move to Do Pass on HB 1027

Senator Larsen; Second

Senator Flakoll; Clerk take roll call vote

Clerk: 7-0-0

Senator Flakoll; Motion carries

Senator Flakoll; Senator Heckaman carries the bill.

Senator Flakoll; Meeting adjourned

Date: 3/4/11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1027

Senate Agriculture Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Klein Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	✓		Senator Heckaman	✓	
Vice-Chair Larsen	✓				
Senator Klein	✓				
Senator Luick	✓				
Senator Miller	✓				
Senator Murphy	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Heckaman

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

REPORT OF STANDING COMMITTEE

HB 1027: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1027 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1027

#1
1/20/11

HB 1027 - Testimony
L. Anita Thomas, J.D., LL.M.
North Dakota Legislative Council

Ever since House Bill No. 1027 was recommended to the Legislative Management last November, I've been trying to figure out how to effectively and efficiently explain both the process that was used to create the bill and the content of the bill itself.

I volunteered to walk through every last change, but I was left with the distinct impression that that would not be universally appreciated. Both Chairman Johnson and interim Chairman Mueller kept emphasizing the word "brief" when they spoke with me about this testimony.

I can understand why they said that. The process of rewriting legislation is, in all honestly, every bit as exciting as actuarial tables and no amount of verbal creativity can hide that fact.

However, it's also a very important process, because the end game is to have a piece of legislation that clearly indicates rights, duties, obligations, and consequences on the part of those citizens who are subject to the legislation and on the part of the agency responsible for its administration.

The interim committee had two basic rules. The first was: to the greatest extent possible, do not change existing legislative policy and the second was: Do not use the phrase "we know how this is supposed to work." If you know how something is supposed to work - articulate it - We'll capture it with words -- and then everyone will know how it is supposed to work. Those were the mantras.

The 2009-10 interim committee was a unique group of people from a number of perspectives - not the least of which was the fact that 11 of the 15 legislators had served on the prior interim agriculture committee - the one that tackled phase I of the rewrite. Phase I had allowed us to develop an approach to the rewrite - a modus operandi that seemed to work well and the legislators were amenable to using that same method.

As most of you know, interim committees tend to begin meeting in June or July - following a legislative session. The agriculture committee did not meet for the first time until December.

During those intervening months, we began the rewrite with a section by section - sentence by sentence - and often word by word review of the current law. Using a standard amendment process -- underscores and overstrikes - so everybody could see what changes were being suggested, we began cleaning up style and grammar . . . fixing sentence structure . . . and standardizing word usage.

We looked at definitions to determine if they were necessary. Defining "tree and shrub seed" as "seed commonly known and sold as tree and shrub seed" did not seem to be particularly

helpful. At other times, we worked to find words that would more clearly state what needed to be stated.

We started using subsections and subdivisions to put order to required procedures and started pulling apart those interminable paragraphs to try and separate multiple concepts that over the years had just been jammed together.

I've used the word "we" quite intentionally. All of these points of discussion and initial drafts involved Mr. Bertsch and his staff and Chairman Mueller.

The next step in the process was to address those sections that had a discernible focus, but not necessarily a clear one. For example, the seed department has a contractual relationship with North Dakota state university. We spent some time learning about that relationship and making sure that the statutes accurately articulated both the required and the authorized interactions.

The final category of sections were those that made no sense to this city kid/music major . Either they involved scientific concepts that were beyond my scope of understanding or they were plainly incomprehensible.

With each type of section, all of the changes that were being suggested were reflected through overstrikes and underscores and both for the committee's benefit and for historical purposes, were addressed in footnotes that followed the individual sections. Each time Chairman Mueller called the committee together, the focus was on those items that were footnoted - that needed to be discussed - explained - articulated - and resolved. Once there was agreement as to the content, the footnotes were removed.

With successive drafts and as the footnotes became fewer and fewer, we were able to take the content of the amended sections and draft them as new law. The reason we do this is to have maximum flexibility in moving concepts to more logical locations and putting some order to those concepts and to the entire chapters.

Let me give you a brief overview of the bill.

The meat of the bill begins with section 3 on the second page. It starts with a definition section.

From there - on the bottom of page 4 - we identify the seed department as the official seed certifying agency of the state -- list the members of the seed commission, articulate the designation and role of the chairman, continue the use of a proxy, address the compensation of seed commission and then set forth its powers and duties. Current law has all of this within one section. The rewrite separates the concepts into six sections. In large part, these sections parallel the work that was done with the commodity groups - Who constitutes the group - Who is the chairman - When do they have to meet - How are they paid - What may they do and what must they do.

On page 6, we move to the seed commissioner. Unlike current law, the rewrite has separate sections governing the seed commissioner's powers and duties. Right now, some of those are buried in the seed commission section and others are spread throughout the chapter. At the bottom of page 7, the rewrite contains the label requirements for agricultural seed. Again, current law puts all of those requirements into one large section. The rewrite separates the concepts into nine sections, and those sections are then paralleled with respect to vegetable seeds on page 10, flower seeds on page 12, and tree and shrub seeds on page 14.

Beginning on page 16, the bill addresses tolerances, requires seed labelers to obtain permits, sets forth requirements for seed shipped in from out-of-state, provides for a nonresident seed dealers license, and establishes a seed certification system.

On page 19, we start with a list of thou shall nots

In the ensuing section we spell out the period of time after a germination test, within which certain seeds may be sold, and finish we with an additional list of prohibited activities.

Thereafter, the bill sets forth the actions that the seed commissioner may take in the event of a violation - and that is a stop sale order, as well as a petition for seizure of the seed.

The bill retains the penalty provisions currently found in law - which are a class A misdemeanor and a civil penalty up to \$5000.

In the middle of page 24, we begin a new chapter. This one pertains to the seed arbitration board. This is in current law but, according to seed department personnel, it is not used. The committee never received a firm response from the agriculture commissioner with respect to whether this section should be kept or repealed. So, it was moved into its own chapter and hopefully, in the coming weeks, a decision regarding its utility can be made.

Page 25 is the start of the wholesale potato dealer's chapter. The attorney general's office has reviewed this with the seed department and suggested a few minor changes governing the bonding of potato dealers. Because those changes are policy changes, they will be brought to you as a separate bill.

Page 33 contains three sections limiting the authority of counties, cities, and townships with respect to restricting or otherwise regulating the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. This is current law, but it is buried in the seed law. Political subdivisions would not necessarily think to look there in determining their authority - so the committee opted to put this language in the respective city, county, and township chapters.

The remainder of the bill contains cross reference reconciliations. That is the case with sections 1 and 2 as well.

Mr. Chairman, members of the committee - This bill rewrites 80 sections in 5 chapters. It was a very labor intensive and time intensive effort and could not have been accomplished without a tremendous commitment on the part of Mr. Bertsch and the seed department staff, interim Chairman Mueller, who spent countless hours in meetings at the seed department and even more hours reviewing not only the drafts, but their component parts as they went through the creative process, and last but certainly not least, the members of the interim committee who worked tirelessly to provide advice and guidance and most importantly to ensure that the final product not only complied with the study directive but could also stand on its own as a clear and concise compilation of the state's seed laws.



North Dakota State
NDSSD
Seed Department

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**Testimony
HB 1027**

**House Agriculture Committee
January 20, 2011**

Ken Bertsch, Commissioner

Good morning Mr. Chairman and members of the House Agriculture Committee. For the record, my name is Ken Bertsch and I serve as State Seed Commissioner and administrator of the Seed Department. I appreciate the opportunity to speak to you today regarding HB 1027, the interim re-write of Seed Department chapters of ND Century Code.

I would like to thank the Interim Ag Committee and Committee Counsel for their work on the re-write. The Seed Department chapters are extensive, and achieving the objectives of a chapter re-write proved to be a major challenge, evidenced by the fact that we were unable to complete review of all Seed Department chapters. Chapter 4-10 (dealing with Potato Certification) remains to be reviewed during the upcoming interim provided that HCR 3001 is passed and accepted as a priority resolution.

I will re-affirm that the bulk of the work done here is in keeping with the resolution that seeks to recommend changes to laws that are found "irrelevant, inconsistent, illogically arranged or unclear". I would add that from the Department perspective, other goals include to clarify, condense and modernize the code so as to make it more user-friendly. HB 1027 incorporates language in 5 separate chapters (4-09, 4-09.1, 4-11, 4-25 and 4-42). All but 4-11, which deals with our Wholesale Potato Dealers License program, are related to seed certification or seed regulatory work.

Chairman Mueller was cautious to avoid changes that could be considered "policy" related, and for this reason my comments are not extensive. HB 1399 is a companion bill to HB 1027 and was drafted as a vehicle for amendments that are either outside the scope of the re-write, or take care of concerns that emerged after HB 1027 was drafted. For that reason, I believe that HB 1027 is fairly straightforward and suitable for support by the Agriculture Committee and Legislature.

With your consent, I will outline a few notable points in the bill.

Page 1, lines 15 and 18

This section replicates a minor change in the warranty disclaimer language that exists in all chapters of the Department code. The change in the re-write occurs on page 23, section 4.1-53-59.

The section simply transfers the change in disclaimer language to Chapter 4-10, so that the language is consistent across all relevant Department chapters. I will provide an explanation of the change when we discuss 4.1-53-59.

Page 2, lines 1-8

This section replicates records exemption language that currently exists in Chapter 4-09 (and now in 4.1-53), and places it in Chapter 4-10. The records exemption language is intended to cover all of the information generated by the Department and needs to be placed in the Chapter (4-10), which is untouched by the re-write.

Page 7, line 8

This statement represents the entirety of what is currently Chapter 4-09.1, which grants the Department authority to provide commodity inspection services. This is also an excellent example of simplifying and condensing century code through an organized re-write process.

Page 19, lines 12-24

This section also incorporates an entire chapter into a condensed statement. The language grants the authority to provide identity preserved testing and certification services for seed and commodities that is currently found in Chapter 4-42.

Page 23, lines 1-10

This is the warranty disclaimer language found on the first page of HB 1027, which is to be replicated in Chapter 4-10.

The only change made by the Interim Ag Committee was the removal of the terms "produced, graded, packed" from the version that has been codified for some time. The change was at the Department's request, since the agency does not inspect or test these functions/actions (as they are activities of growers), and we cannot assure that they have been done under the rules of the Department. The Department continues to warrant that the work done by the agency has been performed under the rules of the agency, or USDA if applicable.

With this change, the same disclaimer language will be in place for the two necessary chapters, 4.1-53 and 4-10

**Page 23, lines 26-29
Page 24, lines 4-8**

The changes in these two sections transform the Seed Department from an appropriated to a continuing appropriations agency.

The statement on page 23, line 28; "are appropriated on a continuing basis", completes a discussion that has been in play for some time. As a self-funded agency, it is believed (especially by OMB) that there is little need for the Department to go through the appropriations process in the same manner as agencies that receive general funds. The change in terms from "must be disbursed, within the limits of legislative appropriation" to the current language completes this process. The Department will now operate similarly to other self-funded agriculture agencies such as commodity groups.

The statement on page 24, lines 4-8 provides that the Department will continue to report activities to the House and Senate Appropriations Committees.

Page 25, line 14 through Page 33, line 4

Section 5 re-writes Chapter 4-11 of the code, the Wholesale Potato Dealers License chapter operated by the Seed Department.

Mr. Chairman and Committee members, these are the most notable changes from our perspective. While none of them can be considered substantive, we believe the clarity of the code is improved in HB 1027. We ask for your support of this measure, and will answer any questions you may have.

ALVIN A. JAEGER
SECRETARY OF STATE

PAGE www.nd.gov/sos



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January 19, 2011

TO: Rep D. Johnson and Members of the House Agriculture Committee

FR: Al Jaeger, Secretary of State

RE: HB 1027 – State Seed Commission

The Secretary of State's office does not have a procedure to file the official seal of the seed department, as it is currently stated on page 5, lines 1 through 3.

Therefore, I request the committee's consideration in adopting the attached amendment to enable the official seal to be recorded per the intent of this portion of the bill.

Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1027

Page 5, line 3, after "state" insert as a trademark or service mark as provided in section 47-22-03

Renumber accordingly

NDLA, S AGR

From: Thomas, L. Anita
Sent: Friday, March 04, 2011 10:56 AM
To: NDLA, S AGR
Subject: 1027 Testimony



HB 1027 - Testimony
L. Anita Thomas, J.D., LL.M.
North Dakota Legislative Council

Most bills that come before you are designed to create new law or change current law. That is not the case with House Bill No. 1027. This bill was designed strictly to clean up and clarify existing law.

As a result, the interim committee's approach to this bill was different than what most of you are familiar with.

A traditional interim study begins with a background memorandum explaining the issue and discussing state and federal legislation. It also includes a study plan that calls for testimony by other interested parties. When sufficient information is garnered, the committee determines a direction and requests a bill draft.

As most of you know, interim committees tend to begin meeting in June or July - following a legislative session. When we have a title rewrite, the committee is generally not brought in until the fall. In fact, the agriculture committee this past interim did not meet for the first time until December.

During the intervening months, we began with a section by section - sentence by sentence - and often word by word review of the current law. Using a standard amendment process -- underscores and overstrikes - so everybody could see what changes were being suggested, we began cleaning up style and grammar . . . fixing sentence structure . . . and standardizing word usage.

We looked at definitions to determine if they were necessary. Defining "tree and shrub seed" as "seed commonly known and sold as tree and shrub seed" did not seem to be particularly helpful. At other times, we worked to find words that would more clearly state what needed to be stated.

We started using subsections and subdivisions to put order to required procedures and started pulling apart interminable paragraphs to try and separate multiple concepts that over the years had just been jammed together.

I've used the word "we" quite intentionally. All of these points of discussion and initial drafts involved Mr. Bertsch and his staff and Chairman Mueller.

The next step in the process was to address those sections that had a discernible focus, but not necessarily a clear one. For example, the seed department has a contractual relationship with North Dakota state university. We spent some time learning about that relationship and making sure that the statutes accurately articulated both the required and the authorized interactions.

The final category of sections were those that were just inordinately problematic either because they involved complex scientific concepts that were beyond most people's scope of understanding or because they were plainly incomprehensible.

With each type of section, all of the changes that were being suggested were reflected through overstrikes and underscores and, both for the committee's benefit and for historical purposes, the changes were addressed in footnotes that followed the individual sections. Each time Chairman Mueller called the committee together, the focus was on those items that were footnoted - items that needed to be discussed, explained, or articulated - and issues that needed to be resolved. Once there was agreement as to the content, the footnotes were removed.

With successive drafts and as the footnotes became fewer and fewer, we were able to take the proposed changes and draft them as new law. The reason we do this is to have maximum flexibility in moving concepts to more logical positions and putting some order to those concepts and to the entire chapters.

Let me give you a brief overview of the bill itself.

The meat of the bill begins with section 3 on the second page. It starts with a definition section.

From there - on the bottom of page 4 - the seed department is identified as the official seed certifying agency of the state. The members of the seed commission are listed. The bill goes on to articulate the designation and role of the chairman, the use of a proxy, and the compensation of the seed commission members, as well as the commission's powers and duties. Current law has all of this within one section. This bill separates these concepts into six sections. In large part, these sections parallel the work that was done with the commodity groups during the prior interim - Who constitutes the group - Who is the chairman - When do they have to meet - How are they paid - What may they do and what must they do.

On page 6, the bill deals with the seed commissioner. Unlike current law, the bill has separate sections governing the seed commissioner's powers and duties. Right now, some of those are buried in the seed commission section and others are spread throughout the chapter.

At the bottom of page 7, the bill addresses the requirements for agricultural seed. Again, current law puts all of those requirements into one large section. This bill separates the concepts into nine sections, and those sections are then paralleled with respect to vegetable seeds on page 10, flower seeds on page 12, and tree and shrub seeds on page 14.

Beginning on page 16, the bill addresses tolerances, requires seed labelers to obtain permits, sets forth requirements for seed shipped in from out-of-state, provides for a nonresident seed dealers license, and establishes a seed certification system.

On page 19, you will find a list of prohibitions.

In the ensuing section the bill spells out the period of time after a germination test, within which certain seeds must be sold, and it finishes with an additional list of prohibited activities.

Thereafter, the bill sets forth the actions that the seed commissioner may take in the event of a violation - Those include issuance of a stop sale order, as well as a petition for seizure of the seed.

The bill retains the penalty provisions currently found in law - which are a class A misdemeanor (1 yr/\$2000 max) and a civil penalty up to \$5000.

In the middle of page 24, a new chapter begins. This one pertains to the seed arbitration board. This is in current law but, according to seed department personnel, it is not used. The committee never resolved whether this section should be kept or repealed. So, it was moved into its own chapter.

Page 25 is the start of the wholesale potato dealer's chapter. After the interim bill was completed, the attorney general's staff reviewed the chapter with the seed department and suggested a few minor changes governing the bonding of potato dealers. Because those changes are policy changes, they have been incorporated in House Bill No. 1399, rather than amended onto this bill. House Bill No. 1399 will be presented to you for your consideration in the near future.

Page 33 contains three sections limiting the authority of counties, cities, and townships with respect to restricting or otherwise regulating the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. This is current law, but it is buried in the seed law. Political subdivision administrators would not necessarily think to look in the seed law in order to determine their authority - so the committee opted to put this language in the respective city, county, and township chapters.



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**Testimony
HB 1027**

**Senate Agriculture Committee
March 4, 2011**

Ken Bertsch, Commissioner

Good morning Mr. Chairman and members of the Senate Agriculture Committee. For the record, my name is Ken Bertsch and I serve as State Seed Commissioner and administrator of the Seed Department. I appreciate the opportunity to speak to you today regarding HB 1027, the interim re-write of Seed Department chapters of ND Century Code.

I would like to thank the Interim Ag Committee and Committee Counsel for their work on the re-write. The Seed Department chapters are extensive, and achieving the objectives of a chapter re-write proved to be a major challenge, evidenced by the fact that we were unable to complete review of all Seed Department chapters. Chapter 4-10 (dealing with Potato Certification) remains to be reviewed during the upcoming interim provided that HCR 3001 is passed and accepted as a priority resolution.

I will re-affirm that the bulk of the work done here is in keeping with the resolution that seeks to recommend changes to laws that are found "irrelevant, inconsistent, illogically arranged or unclear". I would add that from the Department perspective, other goals include to clarify, condense and modernize the code so as to make it more user-friendly. HB 1027 incorporates language in 5 separate chapters (4-09, 4-09.1, 4-11, 4-25 and 4-42). All but 4-11, which deals with our Wholesale Potato Dealers License program, are related to seed certification or seed regulatory work.

Chairman Mueller was cautious to avoid changes that could be considered "policy" related, and for this reason my comments are not extensive. HB 1399 is a companion bill to HB 1027 and was drafted as a vehicle for amendments that are either outside the scope of the re-write, or take care of concerns that emerged after HB 1027 was drafted. For that reason, I believe that HB 1027 is fairly straightforward and suitable for support by the Agriculture Committee and Legislature.

With your consent, I will outline a few notable points in the bill.

Page 1, lines 15 and 18

This section replicates a minor change in the warranty disclaimer language that exists in all chapters of the Department code. The change in the re-write occurs on page 23, section 4.1-53-59.

The section simply transfers the change in disclaimer language to Chapter 4-10, so that the language is consistent across all relevant Department chapters. I will provide an explanation of the change when we discuss 4.1-53-59.

Page 2, lines 1-8

This section replicates records exemption language that currently exists in Chapter 4-09 (and now in 4.1-53), and places it in Chapter 4-10. The records exemption language is intended to cover all of the information generated by the Department and needs to be placed in the Chapter (4-10), which is untouched by the re-write.

Page 7, line 8

This statement represents the entirety of what is currently Chapter 4-09.1, which grants the Department authority to provide commodity inspection services. This is also an excellent example of simplifying and condensing century code through an organized re-write process.

Page 19, lines 12-24

This section also incorporates an entire chapter into a condensed statement. The language grants the authority to provide identity preserved testing and certification services for seed and commodities that is currently found in Chapter 4-42.

Page 23, lines 1-10

This is the warranty disclaimer language found on the first page of HB 1027, which is to be replicated in Chapter 4-10.

The only change made by the Interim Ag Committee was the removal of the terms "produced, graded, packed" from the version that has been codified for some time. The change was at the Department's request, since the agency does not inspect or test these functions/actions (as they are activities of growers), and we cannot assure that they have been done under the rules of the Department. The Department continues to warrant that the work done by the agency has been performed under the rules of the agency, or USDA if applicable.

With this change, the same disclaimer language will be in place for the two necessary chapters, 4.1-53 and 4-10

Page 23, lines 26-29

Page 24, lines 4-8

The changes in these two sections transform the Seed Department from an appropriated to a continuing appropriations agency.

The statement on page 23, line 28; "are appropriated on a continuing basis", completes a discussion that has been in play for some time. As a self-funded agency, it is believed (especially by OMB) that there is little need for the Department to go through the appropriations process in the same manner as agencies that receive general funds. The change in terms from "must be disbursed, within the limits of legislative appropriation" to the current language completes this process. The Department will now operate similarly to other self-funded agriculture agencies such as commodity groups.

The statement on page 24, lines 4-8 provides that the Department will continue to report activities to the House and Senate Appropriations Committees.

Page 25, line 14 through Page 33, line 4

Section 5 re-writes Chapter 4-11 of the code, the Wholesale Potato Dealers License chapter operated by the Seed Department.

Mr. Chairman and Committee members, these are the most notable changes from our perspective. While none of them can be considered substantive, we believe the clarity of the code is improved in HB 1027. We ask for your support of this measure, and will answer any questions you may have.