

2011 HOUSE AGRICULTURE

HB 1321

2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1321
February 4, 2011
Job #14037

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Fiscal note)

Relating to anhydrous ammonia facility inspections.

Minutes:

Representative Belter, Co-Sponsor: (amendment)

This bill turns over the responsibility of the inspection and supervision over anhydrous ammonia facilities to the state. Currently it is divided between the Insurance Department and the Department of Agriculture. The Insurance Department has the boiler inspectors who are the ones that go out and inspect the facility. Then most of the paper work and educational type of compliance work is done by the Agriculture Department.

We need to make sure this work is done properly and timely. There were several instances where the EPA has come in and fined three facilities \$61,300 each for violations. Another facility was fined \$54,600. We have a problem that needs to be solved.

What the amendment does is turn over the money to run this endeavor to be taken out of the Environmental and Rangeland Protection Funds. It also repeals the anhydrous ammonia storage inspection fund. The cost is estimated to be around \$400,000 so this will need to go to appropriations. We have made provisions to take it out of the environmental fund. When it gets to appropriations they will have to address the fact that if it is out of the Insurance Department they won't need as many boiler people.

Joe Killoran, owner of Maple Valley Ag of Tower City and Past President of ND Agricultural Association: (see attached #1)

Dan Wogsland, Executive Director of ND Grain Growers Association:
(see attached #2)

Representative Mueller: Previous testimony talked about the EPA being responsible for the inspection of anhydrous facilities. Does the Insurance Dept. now have oversight of what they do?

Dan Wogsland: Risk Management Plans mandated under the Clean Air Act are regulated in the State of ND by the Environmental Protection Agency. This would allow the ND Dept. of Agriculture to take over that function. We think that is a good idea in North Dakota.

Jim Gray, Pesticide, Feed, and Fertilizer Division Director, ND Agriculture Dept.:
(See attached #3)

As was explained, regulation exists in two different agencies. In my testimony is a flow chart (attached #3a) that breaks down what each agency does. The Agriculture Department has responsibility to register the product and to license facilities. We have 368 licensed facilities in the state. When a company applies for a new license, the first thing is to check if the company complies with the siting needs. There are minimum distances between schools and residences. They make sure all of the valves, fittings, etc. fit the rules.

The Insurance Department has the expertise in the engineering part. Prior to the Ag. Dept. issuing that license, we contact the Insurance Dept. They visit that site. They measure minimum distances between the other properties. They check all of the pipes, fittings, valves. When compliance is verified, they notify the Agriculture Department. We issue a license. State law requires those facilities need an inspection at least once every five years. The Insurance Department puts the facility in their data base and schedule if for a periodic inspect. If there are violations noted then, rules give that agency freedom to work with that facility. Any violations are reported back to the Agriculture Department. We do regulatory response based on that inspection. When we are notified that the issue is fixed, we contact the Insurance Department. They go back to verify the engineering change. The Ag. Dept. also has the responsibility to do safety and outreach education to the anhydrous industry. We have received feedback from the industry that they are frustrated and confused. We agreed having the regulatory duties split between two agencies can cause problems. The public doesn't always know which agency to go to. There are communication gaps. Sometimes there are duplication of efforts. We have our data base for licenses. The Insurance Department has their data base for the inspections.

The public is concerned about anhydrous ammonia. Minnesota this fall had two significant releases. Currently even under the best of situations compliance can only be so high. It is a flawed model. We need to put the whole program into one agency. It can be either agency.

The fiscal note with the bill was written by the Agriculture Department based on the original version of the bill where no funding or FTEs were part of that bill. The note was written on the premise that the Ag. Dept. would take on those duties without any increase in our funding. That was meant to reflect a hit to our general fund. The amendment introduced today will create some resources. There is a breakdown of how we came to those numbers. (See attached #3c) There is also a map in your testimony that lays out where all of these facilities are. (See attached #3b) They are spread out all over.

What we could do if we were given the duties outlined in this bill:

1. We could inspect all those facilities at least once every five years. Two full time inspectors could do that.
2. While in those facilities, we would also use those resources to do other things:
 - a. Gather fertilizer samples that are consistent with our state fertilizer law
 - b. Perform outreach and education especially in the winter months
 - c. Carry out Risk Management Plan duties under the clean air act. Under the Clean Air Act, facilities that have certain chemicals are required to write and maintain risk management plans. Those plans include things like documenting the training of their workers and notifying local first responders. Any facility in North Dakota that has at least 10,000 gallons needs to prepare and have on hand a Risk Management Plan. This is a program the EPA has tried to delegate to numerous agencies. The Insurance Department, the Agriculture Department, and the Health Department have been asked. It doesn't come with any federal funding. Each agency has said "no." Some people have been inspected and received some significant fines. One over \$50,000 and three over \$60,000. If we had two new positions, while they are doing the anhydrous inspections, they could also be doing verification of those Risk Management Plans and getting people in compliance.

To explain about the Tonnage Fees: (see attached #3d)

Every year entities that are in fertilizer distribution have to submit annual tonnage reports. They are charged a tonnage fee, 20 cents per ton or a minimum of \$10. The Non-Anhydrous Tonnage Fee comes from other fertilizers. Currently those fees are going into the general fund. The Anhydrous Ammonia Tonnage Fees bring in a little over \$50,000 per year and go into the special fund, the Anhydrous Ammonia Fund. The amendment today would strike that special fund so all tonnage fees would go into EARP Funds. An appropriation of \$410,000 would come out of the EARP to fund this program.

Representative Boe: The penalties imposed by EPA, would there penalties to the Ag. Dept. if there is noncompliance?

Jim Gray: We are talking to EPA this week about that program. There are a range of things we could do. On the low end would be to simply increase outreach and education to the anhydrous industry of how they need to comply with the risk management plans. That would keep the number of violations down in the future. We've also talked to EPA about taking on the whole program. I've told them I either want to take on the whole program or none of it. They are working very hard this week to figure out how to do that. Other states have taken it on, not only the inspections but also the regulatory response when a violation is found. Any penalties would be under state authority not federal.

Representative Boe: The income from those penalties would belong to the State of ND or would they belong to federal?

Jim Gray: If we are issuing a penalty under state authority, the penalties would go to the state general fund.

Representative Boe: Can we direct them to the EARP fund the same as the fees?

Jim Gray: The legislature can direct them however they want. My view is an agency should not benefit economically from penalties that they levy. For our pesticide program we don't get any of those penalties back. Penalties are to change a person's behavior not as a revenue source. If you want to capture those penalties, my advice would be to put them in the general fund and increase appropriation out of some other part for our program. That way you have more control over our funding. The advantage of getting a funding source out of tonnage fees is, it is a win-win. If we regulate companies out of business, the number of tons sold each year declines, funding decreases. If we work to grow that industry, and regulate at the same time, tonnage fees go up.

Chairman Johnson: If this works, the responsibility would shift to the ND Agriculture Department away from EPA. Is the Ag. Dept. subject to scrutiny from EPA and subject to fines?

Jim Gray: Every program we take on authority from the federal government, we are under scrutiny. We would do an MOU. Have them delegate authority to us. We would have to file annual reports to let them know what we are doing. If EPA doesn't like how we are running the program, they can take that authority back. They can do that now with any program.

Chairman Johnson: Is EPA inspecting all facilities? Are these fines just the start of inspections?

Jim Gray: EPA wants a regulatory presence. They have contractors in ND doing these inspections.

Representative Rust: The fiscal note, the bulk is for salary & benefits. I am assuming that is for a two-year period of time? I would divide that by 4. That is about \$82,000 per person. Is there special training or education for inspectors?

Jim Gray: On the resource needs page (attached #3c), the Insurance Department has a chief boiler inspector and two deputy boiler inspectors. OMB went to look at funds allocated for their deputy boiler inspectors for the next biennium. That's where the \$163,768 came from. We took that times two for two employees to get the salary and benefits. Because of the technical nature required for these inspections, these folks would need to have a Boiler Inspection License.

Representative Mueller: You have people out in the field now checking fertilizer mix, etc. Do you see any combining of duties?

Jim Gray: You saw the map where the facilities are located. There are roughly 370 that need to be inspected once every 5 years. That is 70 some per year. If one person was going to do this, they would only be doing inspections. They wouldn't have time to do the risk management, fertilizer sampling, etc. If we want to have a comprehensive program, we would need two inspectors.

Representative Schatz: How long does it take to do an inspection?

Jim Gray: The Insurance Dept. is better suited to answer that. We calculated this based on one day per facility. It is an intensive process.

Representative Schmidt: The fiscal note shows an average annual revenue of \$290,000 from the dealers.

Jim Gray: When we pool all fertilizers, it is about \$289,000 annually.

Representative Schmidt: The fiscal note doesn't show any revenues at all but yet the dealers are paying 20 cents. Is there is a reason why that isn't classified as a revenue when the testimony says it goes to the general fund?

Jim Gray: This fiscal note was written assuming we took on these new duties without any appropriation. The funds from the anhydrous tonnage fees, which account for over \$100,000, are already being utilized. This was written if we took on the inspection beyond that.

Representative Schmidt: Is the total bill then the \$410 plus the \$400 they are already paying?

Jim Gray: The anhydrous fund from the tonnage fees has never paid for the full cost of the program. It only generates about \$100,000/biennium. To look at covering the full cost of the program, we would need additional funding.

Representative Headland: What does the EARP Fund stand for? Where does the funding in it now come from? How much money is there?

Jim Gray: It is the Environmental and Rangeland Protection Fund. The major source of revenue is our state pesticide registration fees. Around 11,100 products are registered in the state. Take that times \$350/product every biennium. There is also a small amount of revenue from the Weed Seed Free Forage program that goes to EARP. A lot of programs are funded out of EARP. Some of it goes for noxious weed control, Project Safe Send, Pesticide Regulatory Program, nutrient management work, ground water protection. I could provide what is budgeted from the Environmental and Rangeland Protection Funds for this current biennium. (See attached #5)

Representative Boe: You said EPA currently contracts with inspectors in the State of ND. Could we set the law so that we could be the contractor?

Jim Gray: If that is what the state wishes, we could do that. When you receive federal money you do have a lot less control of what you can do on a day-to-day basis. Would the EPA be willing to pay us? When I asked before, the answer is "no."

Representative Boe: Our standards aren't less stringent than the EPA standards, are they?

Jim Gray: If the Agriculture Department took on compliance work for the Risk Management Plan, we would ensure those entities comply with the Clean Air Act. We

would use a mix of regulatory response and outreach education. When those violations are noted, what is the regulatory response? Is it a \$60,000 fine or is it something more reasonable?

Representative Rust: Is the Insurance Department inspecting things now?

Jim Gray: The anhydrous facilities require a person with expertise in that area. The Insurance Dept. is the entity on the ground for 19-20.2 compliance. They are not doing the Risk Management Plan under the Clean Air Act.

Representative Rust: There must be individuals that are paid through the Insurance Dept. If that duty is switched to the Agriculture Dept., then you wouldn't need to spend money in the Insurance Dept. There must be an offset in regard to personnel.

Jim Gray: Insurance Dept. representatives are here. I developed a budget for two FTEs at over \$410,000. That is the legislator's prerogative.

Representative Mueller: We don't need to spend time on how it is funded. We do need to talk about an amendment that attempts to do that.

Tom Lilja, Executive Director of the ND Corn Growers Assn.: We do support a **Do Pass** of HB 1321. Over the past five years, our check-off organization has funded over a half million dollars for research to look at alternative forms of anhydrous fertilizer. We are aware of the safety issues. The price anhydrous used to track natural gas. Now anhydrous is tracking more with the price of corn futures and crude oil futures. We feel there is a need to keep all forms of nitrogen fertilizer on the market. Anhydrous is an important part of that process. We feel the Agriculture Commissioner's office is the appropriate place for this.

Opposition: None

Neutral:

Rebecca Ternes, Deputy Insurance Commissioner: (See attached #4)

The fines levied by the EPA were not due to inspection type violations. They were due to lack of having a Risk Management Program.

Internal inspections of boilers can only be done when the boilers are not working. That has to be done during the warmer months. Anhydrous also has to be done in the warmer months. We have to work our people hard in those months to get these inspections done. We are strictly doing inspections. No Risk Management or education.

When we can't cover costs with money from the Agriculture Department, it comes out of the Fire and Tornado Fund which really isn't the appropriate place. Our people are extremely busy. We cannot give up an FTE to help the Ag Dept.

Representative Holman: Some problems have been with risk management. If there is a formal process, is anyone doing that?

Rebecca Ternes: I don't believe so. It is up to the facilities to be compliant with the federal act. We haven't been able to help folks out with that.

Vice Chairman Kingsbury: Closed the hearing.

Representative Headland: Moved the amendment from Rep. Belter

Representative Boe: Seconded the motion

Representative Mueller: What the amendment does is take those fees and put them into Environmental and Rangeland Protection Funds. Then we fund the anhydrous inspection from those funds?

Chairman Johnson: I think we are trying to help appropriations. We are identifying where the money could come from.

Voice Vote taken. Motion carries

Representative Headland: Moved **Do Pass** as amended.

Representative Boe: Before we move **Do Pass**, the Insurance Dept. asked to fix the requirement to the boiler makers.

Representative Belter: Because of time we can have amendments drafted and take it to appropriations or we can do it through administrative rule.

Representative Schatz: Seconded the motion

A Roll Call vote was taken. **Yes:** 13, **No:** 0, **Absent:** 1,
(Representative Wrangham)

DO PASS carries. Rereferred to Appropriations.

Representative Johnson will carry the bill.

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1321
2/15/11
Job #14556

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the anhydrous ammonia storage facility inspection fund; and to provide an appropriation.

Minutes:

Representative Dennis Johnson: Introduced the bill which refers to the group that inspects anhydrous facilities. This got started years ago over at the Public Service Commission and got moved to the Insurance Department. They are talking about the extra work that goes between the Insurance Department and the Agriculture Department. One group licenses the facilities, performs the outreach and education along with safety compliance and regulatory issues. The other one deals with inspections. We are trying to bring that inspection service under one umbrella which is the Ag. Dept. They are two different things when you are talking about boiler inspections and anhydrous inspections. Now the Insurance Department is doing the package deal and we want to separate out the anhydrous under the Ag. Dept.

The dealers see the tonnage fee is 20 cents/ton on dry fertilizer. The tonnage fee used to go into the Environmental and Rangeland Protection Funds and then years back was moved over to the general fund. We would like to see that tonnage fee moved back to the Environmental and Rangeland Protection Funds. The number now using an average is about \$478,208 in a biennium. To move this anhydrous inspection service over to the Dept. of Ag. would take about \$410,000. The money is there to pay for this operation. That would include the two FTEs to provide the service and education that goes along with it. If we could get this program established in the Dept. of Agriculture, we could do the compliance part that EPA is doing now. If the state could get that back along with education, we could avoid the situation we had where a local dealer was fined \$180,000 for being in noncompliance. We would have the ability to work with our dealers and help them stay in compliance.

Chairman Delzer: I don't see anything in here about FTEs in the bill. Is there somewhere it actually mentions them?

Representative Johnson: In hearings we were talking 2 FTEs.

Chairman Delzer: It is in Section 9, line 21.

Representative Johnson: Anhydrous ammonia is low pressure so it is different than boiler inspectors. That was not part of our discussion

Chairman Delzer: This bill does not take any FTEs away from the Insurance Commissioner, correct?

Representative Johnson: That was not part of our discussion of where the FTEs are going to come from.

Chairman Delzer: Currently the money goes to the general fund. Does this Section 9 repeal the part that says it is suppose to go to the general fund or does this just overtake that?

Representative Johnson: We are just offering a suggestion as to where the monies can come from.

Chairman Delzer: We'll check that out because there has to be language that pushes it to the general fund.

Vice Chairman Kempenich: Section 5 is the only thing that has to do with the pressure vessel. They are auditing more than the tanks. Did you talk about what the components are of this?

Representative Johnson: I would direct you to ask those that will be implementing this program.

Representative Pollert: I have an anhydrous plant and I also have a feed plant that has a boiler. What you are telling me if this bill is adopted, I will have an inspector come in from the Insurance Department to do my boiler and a separate inspection every five years to inspect the anhydrous tanks and the storage tank. We don't have worry about the Insurance Dept. to test our anhydrous tanks anymore?

Representative Johnson: That is the goal we're trying to achieve. The Ag. Dept. would take care of it because they do the sampling of the fertilizers.

Representative Pollert: A lot of anhydrous tanks are getting sold. Some may go for propane. Some may go to another facility. They have to go through a black light test. If this happens, is the Dept. of Ag. going to be able to do the black light test and paper work?

Representative Johnson: In our discussion they would be able to provide that service.

Representative Pollert: When we have an inspection, they will ask us questions about RMP (Risk Management Practices). We have to fill out a form that has longitude, latitude, direction of wind, distance from farms, etc. Will this be run through the Ag. Dept. or would it still be run through the Insurance Dept.? I want it through one place. When we have an inspection now, we have the Insurance Dept. and then they give the report to the Ag.

Commissioner. Then we have to give a report to both departments but the enforcement is from the Insurance Dept. So is this bill going to alleviate that?

Representative Johnson: That is our ultimate goal here—to get it to one department.

Representative Pollert: Including all the RMP work? When we get audits with the federal government that we have to have all these standards in place, we won't have to report to the Insurance Dept. anymore?

Representative Johnson: That is what the Department of Agriculture is working on now with EPA in trying to get compliance for the federal government end of it. They are willing to consider moving this to ND so the Dept. of Ag. is allowed to do everything asked here.

Representative Pollert: I've gotten phone calls from other dealers that have a sense of frustration because if they want to move a storage tank, they call the Insurance Dept. and then they have to call the Ag. Dept. and they never know for sure which. So if you have to move a storage tank, will that all be run through one department?

Representative Johnson: That's why we have the bill here, so we don't have this back and forth of one agency not knowing what the other agency is doing.

Chairman Delzer: Do they have authority to do this from the federal government?

Representative Johnson: That's what they're working on, and the federal government is in favor of moving this to the state.

Chairman Delzer: We need to have assurance with date certain of when they would make that decision.

Representative Williams: What was the committee vote?

Chairman Delzer: 13-0-1.

Becky Keller, Legislative Council: Section 1 of the bill transfers the deposit for the inspection fees from the general fund to the EARP fund. The fiscal note reflects that will be a decrease in revenue of \$478,208 for the general fund.

Chairman Delzer: If the expenditures are \$410,000, what happens to that \$68,000? That sits in the EARP fund?

Becky Keller: I believe it would be kept in there as a continuing appropriation.

Chairman Delzer: Section 8, the repeal of the anhydrous storage facility fund? Where does that money go?

Becky Keller: I believe that will go in the EARP fund also.

Chairman Delzer: That's where it is currently going? Or is that the money the Insurance Dept. was charging?

Representative Johnson: In our testimony, it showed it was going into a special fund.

Chairman Delzer: Where was that special fund being used?

Jim Gray, ND Department of Agriculture: The repeal of that section in 19-20.2 addresses the \$101,000 that is currently going into a special fund--the anhydrous ammonia fund. Currently under 19-20.2 all tonnage fees collected for anhydrous are put into a special fund, the anhydrous ammonia fund. That generates about \$101,000 every biennium. The Ag. Dept. takes about \$40,000 of that to oversee our licensing program, outreach and education program, and our regulatory response. The balance of that goes to the boiler inspection program. In the engrossed bill, that section of 19-20.2 is repealed. The effect of Section 1 of the bill, lines 15 & 16 would mean that all fertilizer tonnage fees would go into the EARP fund. So the fiscal note you have reflects the decrease of \$478,208 that is currently going into the general fund would now be going into the EARP fund.

Chairman Delzer: With that 478 and the 101, you're expenses are only 410, what are the plans for the other 160,000?

Jim Gray: The EARP fund is used to fund a whole variety of programs. The Legislature allocates those funds to fund everything from noxious weed control to Project Safe Send.

Chairman Delzer: Have you requested them to be used?

Jim Gray: No, what we are requesting from the EARP fund in the fiscal note is just the \$410,328 to run the anhydrous ammonia inspection program.

Chairman Delzer: In the Ag. Commissioner's budget you are not requesting to use those others.

Jim Gray: No.

Chairman Delzer: How much of the EARP funds are you requesting to use in your Ag. Commissioner's budget?

Jim Gray: Our budget bill is currently in the Senate side, and it is being negotiated this week.

Chairman Delzer: What about the question of the federal authority to do this?

Jim Gray: It is under the Clean Air Act. Under that act, if a facility has a certain amount of different chemicals they need to prepare and maintain a Risk Management Plan. One of those chemicals is anhydrous ammonia. Those facilities that have at least 10,000 pounds of anhydrous ammonia need to prepare and maintain a Risk Management Plan. EPA has tried to delegate that program to a variety of state agencies in the past but has not offered

any federal funding to help run it. They have offered it to the Agriculture Department, the Insurance Department, and the Health Department all have turned them down. So EPA folks are the ones on the ground doing inspections of those facilities. We know of one facility that received a \$50,000 fine and three that were fined over \$60,000. We are in negotiations with EPA this week. I've told them we could take this program on if we were provided these two additional staff and operating budget. They are anxious and willing to delegate it. We think we can do it through a Memo of Understanding.

Chairman Delzer: When do you expect them to be done?

Jim Gray: I don't know. It could go through fairly quickly. They won't delegate unless they know we have the resources to run the program. We are in a circular argument. I would think we could have that done within a month to a month and a half.

Chairman Delzer: If we took the money out on this side so it was dealt with in the Ag. Commissioner's budget on the second half and left all the other language so this isn't an issue when we have the Insurance Department's budget and the Ag. Commissioner's budget, so we would have the knowledge of what is going on. If we pass this and the feds say "NO", we have a predicament.

Jim Gray: In my discussions with the EPA, we've talked about a whole suite of options. On the low end our goal is to go out and educate those anhydrous facilities of what the RMP needs are under the Clean Air Act and get them into compliance through safety and outreach. We could dramatically increase dealer compliance with the RMP just through that. On the other end of the spectrum is to do the whole package: enforcement, the response to violations, and the outreach and education.

Chairman Delzer: I don't think anyone here argues that. The question is, if we pass the bill out with the money in it, we as the House side lose control and yet we have both budgets. If we take the money out, does that stop the EPA from going forward with the Memo.

Jim Gray: All I can tell you is I continue to work with EPA and try to get the Memo finalized. If we have a good indication that we will receive the resources as outlined in this bill, we will sign that Memo.

Chairman Delzer: You would be able to tell us that so we could do it before you had to sign the Memo.

Representative Nelson: Wouldn't another option be to appropriate the money contingent on the signing of the Memo of Understanding.

Chairman Delzer: That's an option, but we'd have to say what we'd do if it wasn't there. It may be easier to deal with that after the fact.

Representative Nelson: I would agree with you from an appropriations standpoint, but from a negotiations standpoint for the department knowing they have the funds available might put them in a stronger position.

Chairman Delzer: It really doesn't make any difference because they don't have the funds available even if it is in the bill until both houses take action.

Representative Nelson: If we take it out, that sends a different message.

Vice Chairman Kempenich: Because this is crossing into two agencies, we're going to need to have the whole package on this thing. Leave the language in place right now so they understand we are moving in a direction where we are going to take over. I like to use it more as an auditing than inspecting, paperwork is where they're getting dinged at.

Chairman Delzer: Are you expecting you would have to hire a boiler inspector to do this in the Ag. Commissioner's office?

Jim Gray: This week I've been visiting with a lot of my counterparts across the country to see what qualifications they require for their anhydrous inspectors. I cannot find any other state besides us that has boiler inspectors doing the anhydrous inspections. If we got the two new positions, we would work with the Chief Boiler Inspector to do some training of our staff. I don't think we need a boiler inspector to do the low pressure work for anhydrous facilities.

Representative Pollert: Wouldn't you have to have inspectors that have certification?

Jim Gray: Part of my contact with other state agencies is to find the right terminology of what a qualified field inspector is. There is commissioning for boiler inspectors. There is no certification, licensure or commissioning of people to do anhydrous work. We would get staff with the right education background and proper training with the Chief Boiler Inspector.

Vice Chairman Kempenich: If we can get by without boiler inspectors, that's the way we should go.

Representative Pollert: Your inspectors are going to do physical inspections of trailers, tires, chains, hydrostatic relief valves, hoses, everything. Plus the paperwork, audits, and RMPs?

Jim Gray: Yes. If this bill passed, and we were provided with the 2 new positions and operating budget, we would do the on the ground inspections of those anhydrous facilities and nurse tanks to make sure they all comply.

Chairman Delzer: All you have to say is you're going to do everything.

Jim Gray: Yes.

Representative Glassheim: The \$478,000 that would be lost to the general fund, are we already spending that for this purpose or is there some actual loss to the general fund?

Jim Gray: The only funding source for anhydrous ammonia in North Dakota is the special funds, the \$101,000. That has never covered the cost of the program. The boiler inspectors spend much more on that through their normal duties. For us to take it on, we would need additional resources.

Chairman Delzer: That currently goes to the Insurance Commissioner, that \$101,000?

Jim Gray: We get around \$40,000, they get the rest.

Chairman Delzer: This does not lower the Insurance Commissioner's budget? They still have their two boiler inspectors and all the same people.

Jim Gray: The only impact to their budget is they are not getting that \$70,000. That is now going into the EARP fund.

Chairman Delzer: But they still are expending the same money they currently are. It costs \$478,000 because it is going from general fund to the EARP fund. We'll set this aside and move to the next bill.

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1321
February 15, 2011
Job #14560—last 10 min.

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work-- Relating to the anhydrous ammonia storage facility inspection fund; and to provide an appropriation.

Minutes:

Vice Chairman Kempenich: I think we could move the money. I think the policy is more of what they are interested in. I don't think they need boiler inspectors for this.

Chairman Delzer: The policy should stay alive to the second half. The question is whether we want to leave the money sit in the bill, contingent it, or wait and take care of it when it is on our side.

Representative Klein: I move Do Pass.

Representative Brandenburg: Seconded the motion.

Chairman Delzer: We have a motion and a second, discussion?

Representative Glassheim: I'm still not clear on whether that money went into the general fund and was used by the general fund for general purposes or went in the general fund and was reappropriated for this purpose. I'm not sure if the general fund is losing \$400-500,000 with this bill or not.

Chairman Delzer: Yes, it's going to lose. Currently it's being done in the Ag. Commissioner's budget for part and in the Insurance Commissioner's budget for part of it. If we don't make changes to those budgets, those two issues will still be there. The Insurance Commissioner will lose \$70,000 which is part of the \$101,000. The Ag. Commissioner would have the \$40,000 but then they would pick up the \$410,000 that is appropriated in this bill. The general fund would show a reduction of \$478,208. I am uncomfortable with leaving the money in here.

Representative Nelson: Wouldn't the expectation be that when the two agency budgets come across, that the FTEs would be reconciled?

Chairman Delzer: That is what we should be doing, but if we pass the bill this way, it gives the two FTEs to the Ag. Commissioner.

Representative Nelson: Exactly. But we do have control of both budgets in the second half.

Chairman Delzer: But we couldn't affect this appropriation, because it would be out.

Vice Chairman Kempenich: There's no money in these bills until both chambers pass them, so I don't know that taking the money out is a big deal.

Representative Brandenburg: With that money from the tonnage fees going into the EARP fund, working with EPA and Ag. Dept. they are requiring a lot more regulations. It is much better to work with our Ag. Dept. than work with EPA. It is going to take some money to do that.

Representative Skarphol: I tend to agree that the appropriation needs to come out so the discussion is forced to take place in the second half when the two budgets come before us. I would offer a substitute motion for a Do Pass with the exclusion of Section 9.

Representative Wieland: Seconded the substitute motion.

Chairman Delzer: Motion is to remove Section 9 and put a Do Pass on the bill.

Representative Pollert: The reason for the motion is just so you can reconcile the Insurance Commissioner's budget and the Ag. Commissioner's budget.

Representative Skarphol: That is correct

Representative Monson: I have no problem except I believe I heard Mr. Gray say that with the money in there it might help his negotiations with the EPA.

Chairman Delzer: I understand that, but the issue is still out there. For the record, the intent is to fund it. They can use that. The question is do we fund it in this bill and lose control of it or do we wait until we have the two budgets before us..

Vice Chairman Kempenich: The EPA was trying to shop this off. They tried three different agencies.

A Roll Call vote was taken. **Yes:** 20, **No:** 1, **Absent:** 0,

DO PASS as amended carries.

Representative Pollert will carry the bill.

FISCAL NOTE
Requested by Legislative Council
03/23/2011

Amendment to: Reengrossed
HB 1321

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	(\$478,208)	\$478,208	\$0	\$478,208
Expenditures	\$0	\$0	\$0	\$410,328	\$0	\$410,328
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers anhydrous ammonia inspection duties to the agriculture commissioner, eliminates the anhydrous ammonia inspection fund, deposits the fertilizer inspection fees in the Environment and Rangeland Protection Fund (EARP), and repeals the NH3 storage facility inspection Fund.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill transfers the deposit of fertilizer inspection fees collected under section 19-20.1-06 from the general fund to the EARP Fund. Section 8 repeals the NH3 storage facility inspection fund.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department projects that an additional \$579,386 will be deposited in the EARP Fund during the 11-13 Biennium - \$478,208 from non-anhydrous tonnage fees currently deposited in the general fund and \$101,178 from anhydrous ammonia tonnage fees currently deposited in the anhydrous ammonia storage facility inspection fund. The projected deposit amount is based on a ten-year average.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill doesn't provide an appropriation and doesn't authorize any additional FTEs to the agriculture commissioner to assume the anhydrous ammonia inspection program. It's anticipated that the agriculture commissioner will need \$410,328 to assume the NH3 inspection duties.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

This bill doesn't provide an appropriation and doesn't authorize any additional FTEs to conduct the anyhydrous ammonia inspection duties.

Name:	Kenneth S. Junkert	Agency:	Agriculture
Phone Number:	328-4756	Date Prepared:	03/25/2011

FISCAL NOTE
Requested by Legislative Council
02/22/2011

REVISION

Amendment to: Reengrossed
HB 1321

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	(\$478,208)	\$478,208	\$0	\$478,208
Expenditures	\$0	\$0	\$0	\$410,328	\$0	\$410,328
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers anhydrous ammonia inspection duties to the agriculture commissioner, eliminates the anhydrous ammonia inspection fund, deposits the fertilizer inspection fees in the Environment and Rangeland Protection Fund (EARP), and repeals the NH3 storage facility inspection Fund.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill transfers the deposit of fertilizer inspection fees collected under section 19-20.1-06 from the general fund to the EARP Fund. Section 8 repeals the NH3 storage facility inspection fund.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department projects that an additional \$579,386 will be deposited in the EARP Fund during the 11-13 Biennium - \$478,208 from non-anhydrous tonnage fees currently deposited in the general fund and \$101,178 from anhydrous ammonia tonnage fees currently deposited in the anhydrous ammonia storage facility inspection fund. The projected deposit amount is based on a ten-year average.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill doesn't provide an appropriation and doesn't authorize any additional FTEs to the agriculture commissioner to assume the anhydrous ammonia inspection program. It's anticipated that the agriculture commissioner will need \$410,328 to assume the NH3 inspection duties.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a*

continuing appropriation.

This bill doesn't provide an appropriation and doesn't authorize any additional FTEs to conduct the anyhydrous ammonia inspection duties.

Name:	Kenneth S. Junkert	Agency:	Agriculture
Phone Number:	328-4756	Date Prepared:	02/17/2011

FISCAL NOTE
Requested by Legislative Council
02/17/2011

Amendment to: HB 1321

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	(\$478,208)	\$478,208	\$0	\$478,208
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers anhydrous ammonia inspection duties to the agriculture commissioner, eliminates the anhydrous ammonia inspection fund, and deposits the fertilizer inspection fees in the Environment and Rangeland Protection Fund (EARP).

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill transfers the deposit of fertilizer inspection fees collected under section 19-20.1-06 from the general fund to the EARP Fund. Section 8 repeals the NH3 storage facility inspection fund.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department projects that an additional \$579,386 will be deposited in the EARP Fund during the 11-13 Biennium - \$478,208 from non-anhydrous tonnage fees currently deposited in the general fund and \$101,178 from anhydrous ammonia tonnage fees currently deposited in the anhydrous ammonia storage facility inspection fund. The projected deposit amount is based on a ten-year average.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill doesn't provide an appropriation and doesn't authorize any additional FTEs to the agriculture commissioner to assume the anhydrous ammonia inspection program.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

This bill doesn't provide an appropriation and doesn't authorize any additional FTEs to conduct the anhydrous

ammonia inspection duties.

Name:	Kenneth S. Junkert	Agency:	Agriculture
Phone Number:	328-4756	Date Prepared:	02/17/2011

FISCAL NOTE
Requested by Legislative Council
02/10/2011

REVISION

Amendment to: HB 1321

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	(\$478,208)	\$478,208	\$0	\$478,208
Expenditures	\$0	\$0	\$0	\$410,328	\$0	\$410,328
Appropriations	\$0	\$0	\$0	\$410,328	\$0	\$410,328

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers anhydrous ammonia inspection duties to the agriculture commissioner, eliminates the anhydrous ammonia inspection fund, deposits the fertilizer inspection fees in the Environment and Rangeland Protection Fund (EARP), provides an appropriation, and authorizes FTEs.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill transfers the deposit of non-anhydrous ammonia inspection fees collected under section 19-20.1-06 from the general fund to the EARP Fund. Section 8 repeals the NH3 storage facility inspection fund. Section 9 provides an appropriation and authorizes FTEs.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department projects that \$579,387 will be deposited in the EARP Fund during the 11-13 Biennium - \$478,208 from non-anhydrous tonnage fees currently deposited in the general fund and \$101,179 from anhydrous ammonia tonnage fees currently deposited in the anhydrous ammonia storage facility inspection fund. The projected deposit amount is based on a ten-year average (\$289,387) multiplied by two (\$579,387).

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The agriculture commissioner's salary line would increase by \$327,526 and the operating line would increase by \$82,792, for a total of \$410,328. All expenditures would be made from the EARP Fund.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The appropriation amount matches the expenditure amount. This appropriation wasn't included in the executive budget for the agriculture commissioner. This appropriation isn't related to a continuing appropriation.

Name:	Kenneth S. Junkert	Agency:	Agriculture
Phone Number:	328-4756	Date Prepared:	02/10/2011

FISCAL NOTE
Requested by Legislative Council
02/09/2011

Amendment to: HB 1321

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	(\$478,208)	\$478,208	\$0	\$478,208
Expenditures	\$0	\$0	\$0	\$410,328	\$0	\$410,328
Appropriations	\$0	\$0	\$0	\$410,328	\$0	\$410,328

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers anhydrous ammonia inspection duties to the agriculture commissioner, eliminates the anhydrous ammonia inspection fund, deposits the fertilizer inspection fees in the Environment and Rangeland Protection Fund (EARP), provides an appropriation, and authorizes FTEs.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill transfers the deposit of fees collected under section 19-20.1-06 from the general fund to the EARP Fund. Section 8 repeals the NH3 storage facility inspection fund. Section 9 provides an appropriation and authorizes FTEs.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department projects that \$579,387 will be deposited in the EARP Fund during the 11-13 Biennium. The projected deposit amount is based on a ten-year average (\$289,387) multiplied by two (\$579,387).

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The agriculture commissioner's salary line would increase by \$327,526 and the operating line would increase by \$82,792, for a total of \$410,328. All expenditures would be made from the EARP Fund.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The appropriation amount matches the expenditure amount. This appropriation wasn't included in the executive budget for the agriculture commissioner. This appropriation isn't related to a continuing appropriation.

Name:	Kenneth S. Junkert	Agency:	Agriculture
Phone Number:	328-4756	Date Prepared:	02/10/2011

FISCAL NOTE

Requested by Legislative Council
01/14/2011

Bill/Resolution No.: HB 1321

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$410,328	\$0	\$410,328	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers anhydrous ammonia inspection duties to the agriculture commissioner.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill doesn't contain any appropriation language. If the anhydrous ammonia inspection duties are transferred, the agriculture commissioner's budget (SB 2009) will be impacted by \$410,328. The anhydrous ammonia fund (Fund 264) doesn't generate enough revenue through tonnage fees to cover the expenditures in this bill. The anhydrous ammonia license fees are deposited in the general fund. This bill identifies no impact to the insurance commissioner's budget.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

There is no impact to revenue by this bill.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The agriculture commissioner will require 2 FTEs and associated operating expenses to assume the anhydrous ammonia inspection duties. The salary line will require a \$327,436 increase and the operating line will require an \$82,792 increase.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

There is no appropriation language included in this bill.

Name:	Kenneth S. Junkert	Agency:	Agriculture
Phone Number:	328-4756	Date Prepared:	01/19/2011

V/K
2/4/11
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1321

Page 1, line 1, after "sections" insert "19-20.1-06,"

Page 1, line 3, after "inspections" insert "; to repeal section 19-20.2-08.1 of the North Dakota Century Code, relating to the anhydrous ammonia storage facility inspection fund; and to provide an appropriation"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-06. Inspection fees and tonnage reports.

There must be paid to the commissioner for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter forwarded to the state treasurer for deposit in the environment and rangeland protection fund.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten dollar fee, as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during the period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee."

Page 4, after line 14, insert:

"SECTION 8. REPEAL. Section 19-20.2-08.1 of the North Dakota Century Code is repealed.

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$410,328, or so much of the sum as may be necessary, to the agriculture department for the purpose of administering the anhydrous ammonia storage facility inspection program, for the biennium beginning July 1, 2011, and ending June 30, 2013. The agriculture department is authorized two full-time equivalent positions for administering the anhydrous ammonia storage facility inspection program."

Renumber accordingly

Date: 2/4/11

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB1321

House **Agriculture** Committee

Legislative Council Amendment Number 11.0602.01001

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

☐ Rerefer to Appropriations

Motion Made By Representative Headland Seconded By Representative Boe

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

Total Yes _____ No _____

Absent _____

Bill Carrier _____

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

Date: 2/4/11

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB1321

House **Agriculture** Committee

Legislative Council Amendment Number 11.0602.01001

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

☒ Rerefer to Appropriations

Motion Made By Representative Headland Seconded By Representative Schatz

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	X		Phillip Mueller	X	
David Rust	X				
Mike Schatz	X				
Jim Schmidt	X				
Wayne Trottier	X				
John Wall	X				
Dwight Wrangham	AB				

Total **Yes** 13 **No** 0

Absent 1

Bill Carrier Chairman Johnson

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

REPORT OF STANDING COMMITTEE

HB 1321: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1321 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "19-20.1-06,"

Page 1, line 3, after "inspections" insert "; to repeal section 19-20.2-08.1 of the North Dakota Century Code, relating to the anhydrous ammonia storage facility inspection fund; and to provide an appropriation"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-06. Inspection fees and tonnage reports.

There must be paid to the commissioner for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter forwarded to the state treasurer for deposit in the environment and rangeland protection fund.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten dollar fee, as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during the period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee."

Page 4, after line 14, insert:

"SECTION 8. REPEAL. Section 19-20.2-08.1 of the North Dakota Century Code is repealed.

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$410,328, or so much of the sum as may be necessary, to

the agriculture department for the purpose of administering the anhydrous ammonia storage facility inspection program, for the biennium beginning July 1, 2011, and ending June 30, 2013. The agriculture department is authorized two full-time equivalent positions for administering the anhydrous ammonia storage facility inspection program."

Renumber accordingly

2011 HOUSE APPROPRIATIONS

HB 1321

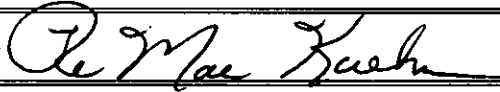
2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1321
2/15/11
Job #14556

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the anhydrous ammonia storage facility inspection fund; and to provide an appropriation.

Minutes:

Representative Dennis Johnson: Introduced the bill which refers to the group that inspects anhydrous facilities. This got started years ago over at the Public Service Commission and got moved to the Insurance Department. They are talking about the extra work that goes between the Insurance Department and the Agriculture Department. One group licenses the facilities, performs the outreach and education along with safety compliance and regulatory issues. The other one deals with inspections. We are trying to bring that inspection service under one umbrella which is the Ag. Dept. They are two different things when you are talking about boiler inspections and anhydrous inspections. Now the Insurance Department is doing the package deal and we want to separate out the anhydrous under the Ag. Dept.

The dealers see the tonnage fee is 20 cents/ton on dry fertilizer. The tonnage fee used to go into the Environmental and Rangeland Protection Funds and then years back was moved over to the general fund. We would like to see that tonnage fee moved back to the Environmental and Rangeland Protection Funds. The number now using an average is about \$478,208 in a biennium. To move this anhydrous inspection service over to the Dept. of Ag. would take about \$410,000. The money is there to pay for this operation. That would include the two FTEs to provide the service and education that goes along with it. If we could get this program established in the Dept. of Agriculture, we could do the compliance part that EPA is doing now. If the state could get that back along with education, we could avoid the situation we had where a local dealer was fined \$180,000 for being in noncompliance. We would have the ability to work with our dealers and help them stay in compliance.

Chairman Delzer: I don't see anything in here about FTEs in the bill. Is there somewhere it actually mentions them?

Representative Johnson: In hearings we were talking 2 FTEs.

Chairman Delzer: It is in Section 9, line 21.

Representative Johnson: Anhydrous ammonia is low pressure so it is different than boiler inspectors. That was not part of our discussion

Chairman Delzer: This bill does not take any FTEs away from the Insurance Commissioner, correct?

Representative Johnson: That was not part of our discussion of where the FTEs are going to come from.

Chairman Delzer: Currently the money goes to the general fund. Does this Section 9 repeal the part that says it is suppose to go to the general fund or does this just overtake that?

Representative Johnson: We are just offering a suggestion as to where the monies can come from.

Chairman Delzer: We'll check that out because there has to be language that pushes it to the general fund.

Vice Chairman Kempenich: Section 5 is the only thing that has to do with the pressure vessel. They are auditing more than the tanks. Did you talk about what the components are of this?

Representative Johnson: I would direct you to ask those that will be implementing this program.

Representative Pollert: I have an anhydrous plant and I also have a feed plant that has a boiler. What you are telling me if this bill is adopted, I will have an inspector come in from the Insurance Department to do my boiler and a separate inspection every five years to inspect the anhydrous tanks and the storage tank. We don't have worry about the Insurance Dept. to test our anhydrous tanks anymore?

Representative Johnson: That is the goal we're trying to achieve. The Ag. Dept. would take care of it because they do the sampling of the fertilizers.

Representative Pollert: A lot of anhydrous tanks are getting sold. Some may go for propane. Some may go to another facility. They have to go through a black light test. If this happens, is the Dept. of Ag. going to be able to do the black light test and paper work?

Representative Johnson: In our discussion they would be able to provide that service.

Representative Pollert: When we have an inspection, they will ask us questions about RMP (Risk Management Practices). We have to fill out a form that has longitude, latitude, direction of wind, distance from farms, etc. Will this be run through the Ag. Dept. or would it still be run through the Insurance Dept.? I want it through one place. When we have an inspection now, we have the Insurance Dept. and then they give the report to the Ag.

Commissioner. Then we have to give a report to both departments but the enforcement is from the Insurance Dept. So is this bill going to alleviate that?

Representative Johnson: That is our ultimate goal here—to get it to one department.

Representative Pollert: Including all the RMP work? When we get audits with the federal government that we have to have all these standards in place, we won't have to report to the Insurance Dept. anymore?

Representative Johnson: That is what the Department of Agriculture is working on now with EPA in trying to get compliance for the federal government end of it. They are willing to consider moving this to ND so the Dept. of Ag. is allowed to do everything asked here.

Representative Pollert: I've gotten phone calls from other dealers that have a sense of frustration because if they want to move a storage tank, they call the Insurance Dept. and then they have to call the Ag. Dept. and they never know for sure which. So if you have to move a storage tank, will that all be run through one department?

Representative Johnson: That's why we have the bill here, so we don't have this back and forth of one agency not knowing what the other agency is doing.

Chairman Delzer: Do they have authority to do this from the federal government?

Representative Johnson: That's what they're working on, and the federal government is in favor of moving this to the state.

Chairman Delzer: We need to have assurance with date certain of when they would make that decision.

Representative Williams: What was the committee vote?

Chairman Delzer: 13-0-1.

Becky Keller, Legislative Council: Section 1 of the bill transfers the deposit for the inspection fees from the general fund to the EARP fund. The fiscal note reflects that will be a decrease in revenue of \$478,208 for the general fund.

Chairman Delzer: If the expenditures are \$410,000, what happens to that \$68,000? That sits in the EARP fund?

Becky Keller: I believe it would be kept in there as a continuing appropriation.

Chairman Delzer: Section 8, the repeal of the anhydrous storage facility fund? Where does that money go?

Becky Keller: I believe that will go in the EARP fund also.

Chairman Delzer: That's where it is currently going? Or is that the money the Insurance Dept. was charging?

Representative Johnson: In our testimony, it showed it was going into a special fund.

Chairman Delzer: Where was that special fund being used?

Jim Gray, ND Department of Agriculture: The repeal of that section in 19-20.2 addresses the \$101,000 that is currently going into a special fund--the anhydrous ammonia fund. Currently under 19-20.2 all tonnage fees collected for anhydrous are put into a special fund, the anhydrous ammonia fund. That generates about \$101,000 every biennium. The Ag. Dept. takes about \$40,000 of that to oversee our licensing program, outreach and education program, and our regulatory response. The balance of that goes to the boiler inspection program. In the engrossed bill, that section of 19-20.2 is repealed. The effect of Section 1 of the bill, lines 15 & 16 would mean that all fertilizer tonnage fees would go into the EARP fund. So the fiscal note you have reflects the decrease of \$478,208 that is currently going into the general fund would now be going into the EARP fund.

Chairman Delzer: With that 478 and the 101, you're expenses are only 410, what are the plans for the other 160,000?

Jim Gray: The EARP fund is used to fund a whole variety of programs. The Legislature allocates those funds to fund everything from noxious weed control to Project Safe Send.

Chairman Delzer: Have you requested them to be used?

Jim Gray: No, what we are requesting from the EARP fund in the fiscal note is just the \$410,328 to run the anhydrous ammonia inspection program.

Chairman Delzer: In the Ag. Commissioner's budget you are not requesting to use those others.

Jim Gray: No.

Chairman Delzer: How much of the EARP funds are you requesting to use in your Ag. Commissioner's budget?

Jim Gray: Our budget bill is currently in the Senate side, and it is being negotiated this week.

Chairman Delzer: What about the question of the federal authority to do this?

Jim Gray: It is under the Clean Air Act. Under that act, if a facility has a certain amount of different chemicals they need to prepare and maintain a Risk Management Plan. One of those chemicals is anhydrous ammonia. Those facilities that have at least 10,000 pounds of anhydrous ammonia need to prepare and maintain a Risk Management Plan. EPA has tried to delegate that program to a variety of state agencies in the past but has not offered

any federal funding to help run it. They have offered it to the Agriculture Department, the Insurance Department, and the Health Department all have turned them down. So EPA folks are the ones on the ground doing inspections of those facilities. We know of one facility that received a \$50,000 fine and three that were fined over \$60,000. We are in negotiations with EPA this week. I've told them we could take this program on if we were provided these two additional staff and operating budget. They are anxious and willing to delegate it. We think we can do it through a Memo of Understanding.

Chairman Delzer: When do you expect them to be done?

Jim Gray: I don't know. It could go through fairly quickly. They won't delegate unless they know we have the resources to run the program. We are in a circular argument. I would think we could have that done within a month to a month and a half.

Chairman Delzer: If we took the money out on this side so it was dealt with in the Ag. Commissioner's budget on the second half and left all the other language so this isn't an issue when we have the Insurance Department's budget and the Ag. Commissioner's budget, so we would have the knowledge of what is going on. If we pass this and the feds say "NO", we have a predicament.

Jim Gray: In my discussions with the EPA, we've talked about a whole suite of options. On the low end our goal is to go out and educate those anhydrous facilities of what the RMP needs are under the Clean Air Act and get them into compliance through safety and outreach. We could dramatically increase dealer compliance with the RMP just through that. On the other end of the spectrum is to do the whole package: enforcement, the response to violations, and the outreach and education.

Chairman Delzer: I don't think anyone here argues that. The question is, if we pass the bill out with the money in it, we as the House side lose control and yet we have both budgets. If we take the money out, does that stop the EPA from going forward with the Memo.

Jim Gray: All I can tell you is I continue to work with EPA and try to get the Memo finalized. If we have a good indication that we will receive the resources as outlined in this bill, we will sign that Memo.

Chairman Delzer: You would be able to tell us that so we could do it before you had to sign the Memo.

Representative Nelson: Wouldn't another option be to appropriate the money contingent on the signing of the Memo of Understanding.

Chairman Delzer: That's an option, but we'd have to say what we'd do if it wasn't there. It may be easier to deal with that after the fact.

Representative Nelson: I would agree with you from an appropriations standpoint, but from a negotiations standpoint for the department knowing they have the funds available might put them in a stronger position.

Chairman Delzer: It really doesn't make any difference because they don't have the funds available even if it is in the bill until both houses take action.

Representative Nelson: If we take it out, that sends a different message.

Vice Chairman Kempenich: Because this is crossing into two agencies, we're going to need to have the whole package on this thing. Leave the language in place right now so they understand we are moving in a direction where we are going to take over. I like to use it more as an auditing than inspecting, paperwork is where they're getting dinged at.

Chairman Delzer: Are you expecting you would have to hire a boiler inspector to do this in the Ag. Commissioner's office?

Jim Gray: This week I've been visiting with a lot of my counterparts across the country to see what qualifications they require for their anhydrous inspectors. I cannot find any other state besides us that has boiler inspectors doing the anhydrous inspections. If we got the two new positions, we would work with the Chief Boiler Inspector to do some training of our staff. I don't think we need a boiler inspector to do the low pressure work for anhydrous facilities.

Representative Pollert: Wouldn't you have to have inspectors that have certification?

Jim Gray: Part of my contact with other state agencies is to find the right terminology of what a qualified field inspector is. There is commissioning for boiler inspectors. There is no certification, licensure or commissioning of people to do anhydrous work. We would get staff with the right education background and proper training with the Chief Boiler Inspector.

Vice Chairman Kempenich: If we can get by without boiler inspectors, that's the way we should go.

Representative Pollert: Your inspectors are going to do physical inspections of trailers, tires, chains, hydrostatic relief valves, hoses, everything. Plus the paperwork, audits, and RMPs?

Jim Gray: Yes. If this bill passed, and we were provided with the 2 new positions and operating budget, we would do the on the ground inspections of those anhydrous facilities and nurse tanks to make sure they all comply.

Chairman Delzer: All you have to say is you're going to do everything.

Jim Gray: Yes.

Representative Glassheim: The \$478,000 that would be lost to the general fund, are we already spending that for this purpose or is there some actual loss to the general fund?

Jim Gray: The only funding source for anhydrous ammonia in North Dakota is the special funds, the \$101,000. That has never covered the cost of the program. The boiler inspectors spend much more on that through their normal duties. For us to take it on, we would need additional resources.

Chairman Delzer: That currently goes to the Insurance Commissioner, that \$101,000?

Jim Gray: We get around \$40,000, they get the rest.

Chairman Delzer: This does not lower the Insurance Commissioner's budget? They still have their two boiler inspectors and all the same people.

Jim Gray: The only impact to their budget is they are not getting that \$70,000. That is now going into the EARP fund.

Chairman Delzer: But they still are expending the same money they currently are. It costs \$478,000 because it is going from general fund to the EARP fund. We'll set this aside and move to the next bill.

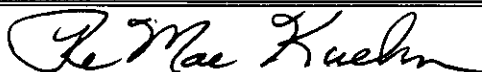
2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1321
February 15, 2011
Job #14560—last 10 min.

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work-- Relating to the anhydrous ammonia storage facility inspection fund; and to provide an appropriation.

Minutes:

Vice Chairman Kempenich: I think we could move the money. I think the policy is more of what they are interested in. I don't think they need boiler inspectors for this.

Chairman Delzer: The policy should stay alive to the second half. The question is whether we want to leave the money sit in the bill, contingent it, or wait and take care of it when it is on our side.

Representative Klein: I move **Do Pass**.

Representative Brandenburg: Seconded the motion.

Chairman Delzer: We have a motion and a second, discussion?

Representative Glassheim: I'm still not clear on whether that money went into the general fund and was used by the general fund for general purposes or went in the general fund and was reappropriated for this purpose. I'm not sure if the general fund is losing \$400-500,000 with this bill or not.

Chairman Delzer: Yes, it's going to lose. Currently it's being done in the Ag. Commissioner's budget for part and in the Insurance Commissioner's budget for part of it. If we don't make changes to those budgets, those two issues will still be there. The Insurance Commissioner will lose \$70,000 which is part of the \$101,000. The Ag. Commissioner would have the \$40,000 but then they would pick up the \$410,000 that is appropriated in this bill. The general fund would show a reduction of \$478,208. I am uncomfortable with leaving the money in here.

Representative Nelson: Wouldn't the expectation be that when the two agency budgets come across, that the FTEs would be reconciled?

Chairman Delzer: That is what we should be doing, but if we pass the bill this way, it gives the two FTEs to the Ag. Commissioner.

Representative Nelson: Exactly. But we do have control of both budgets in the second half.

Chairman Delzer: But we couldn't affect this appropriation, because it would be out.

Vice Chairman Kempenich: There's no money in these bills until both chambers pass them, so I don't know that taking the money out is a big deal.

Representative Brandenburg: With that money from the tonnage fees going into the EARP fund, working with EPA and Ag. Dept. they are requiring a lot more regulations. It is much better to work with our Ag. Dept. than work with EPA. It is going to take some money to do that.

Representative Skarphol: I tend to agree that the appropriation needs to come out so the discussion is forced to take place in the second half when the two budgets come before us. I would offer a substitute motion for a Do Pass with the exclusion of Section 9.

Representative Wieland: Seconded the substitute motion.

Chairman Delzer: Motion is to remove Section 9 and put a Do Pass on the bill.

Representative Pollert: The reason for the motion is just so you can reconcile the Insurance Commissioner's budget and the Ag. Commissioner's budget.

Representative Skarphol: That is correct

Representative Monson: I have no problem except I believe I heard Mr. Gray say that with the money in there it might help his negotiations with the EPA.

Chairman Delzer: I understand that, but the issue is still out there. For the record, the intent is to fund it. They can use that. The question is do we fund it in this bill and lose control of it or do we wait until we have the two budgets before us..

Vice Chairman Kempenich: The EPA was trying to shop this off. They tried three different agencies.

A Roll Call vote was taken. **Yes:** 20, **No:** 1, **Absent:** 0,

DO PASS as amended carries.

Representative Pollert will carry the bill.

Date: 2/15
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1321

House Appropriations Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep Klein Seconded By Rep Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Substituted with subsequent motion

VR
2/15/11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1321

Page 1, line 3, after the semicolon insert "and"

Page 1, line 4, remove "; and"

Page 1, line 5, remove "to provide an appropriation"

Page 5, remove lines 16 through 22

Renumber accordingly

Date: 2/15
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1321

House Appropriations Committee

Legislative Council Amendment Number 02001

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

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein		X			
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 20 No 1

Absent _____

Floor Assignment Rep. Pollert

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

remove section 9

REPORT OF STANDING COMMITTEE

HB 1321, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (20 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1321
was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "and"

Page 1, line 4, remove "; and"

Page 1, line 5, remove "to provide an appropriation"

Page 5, remove lines 16 through 22

Renumber accordingly

2011 SENATE AGRICULTURE

HB 1321

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1321
March 17, 2011
Job # 15587

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the anhydrous ammonia storage facility inspection fund.

Minutes:

Attachments: #1, #2, #3, #4

Senator Flakoll; Meeting called to order HB1321 at 10:00 am

Rep Wes Belter: District 22; Introduce HB 1321 Bill is for inspection of the anhydrous ammonia done jointly by the insurance (boiler inspectors) and paperwork is done by the Agriculture Dept. The bill brings the whole program under the Ag Dept. and brought an amendment for allowing the state Ag Commissioner to undertake the risk management program. It is important we pass this piece of legislation as there are more rules and regulations coming from the federal government that you are aware of the fines that were imposed upon on some anhydrous plants recently. Each getting about \$61,000 in finesit is apparent that the state of ND can relieve the EPA of doing these inspections and we take over that as well as the risk management programs, it will a benefit to our state and to the industry. The Ag dept can be of benefit of helping our anhydrous dealers comply with the rules and regulations and avoid these excessive fines.

Senator Flakoll; Two options: Let the EPA run this or the Ag Commissioner Office run this.

Rep Belter: Bring the inspections under one house.

Senator Miller; Does this change over funds....change over from Insurance commission to the Ag Dept

Rep Belter: That will be taking care of in appropriations....they are aware of this bill.

Senator Miller; Not have any increase cost

Rep Belter: Keep everything revenue neutral. More boiler inspectors are needed because of the added oil. Appropriations will have to work out.

Joe Killoran: Owner of Maple Valley Ag, Tower City. Director of ND Ag Association (Attachment #1)

Senator Klein; Have the insurance dept been slacker as the EPA has come in a leveraged fine.....now is this that the Ag Dept can do it better?

Joe Killoran: The insurance dept is slack on coming out to getting inspections out across the state. There have been issues where we are looking for education and dept of Agricultural has a tendency to come out to educate people rather than coming out and giving huge fines on them. EPA has a history of not educating the coming out and using the fine as their hammer making sure people come into compliance. By fining, it tends to put the others in the question of what do I need to do to become into compliance; whereas I feel the Ag dept will be more efficient to the public and businesses to educate them to be within compliance.

Senator Klein; Educate before regulate.

Senator Flakoll (Example)

Joe Killoran: The insurance dept wasn't fully aware of what were the rules and regulations and the companies to come in with the huge fines.....they don't have it budgeted. They would have to charge a larger amount to cover these fines. We are asking, rather than being fined, we know we need to comply, but we need to be educated on what we need to do to comply. We feel the state Ag dept have shown in their past history they are willing to do that.

Senator Flakoll; From a citizen standpoint, do we have anything to worry about?

Joe Killoran: We are not at that stage today. There are a lot of regulations coming that are overkill.....regulations on top of other regulations. ND people are concerned about the well being of the citizens of ND and not out there directly trying to cause a problem. We are trying to keep things as clean as we can. Mandated by EPA are redundant and unnecessary in our state; however, we have no choice, but we do have to comply.

Senator Murphy; Congratulations on new facility on the Interstate. Are the current practices that farmers are adapting?increasing or decreasing or neutral for amount of anhydrous that applies? Using more or less?

Joe Killoran: The tillage practices are not affecting the anhydrous usage as much as what our goal for high yields are. Yields in our state have increased....so is the requirement that go into the crops. Today our biggest usage is tried to increase the production of our corncorn is sought all over the worldND is a huge supplier of the corn.

Troy Bassingthwaite: Land a Lakes; work the western part of the state, selling crop protection and seed products (wholesale fertilizer).On behalf of the retailers I call on, show strong support for this bill. Most retail wants to focus on compliance, safety, education and currently have a very good working relationship with the state Ag Dept. Makes a lot of

sense to get this to the Ag Dept.....keep the working relationship and compliance with the retailers in the state

Terry Weckerly: Farmer from Hurdsfield, ND President of ND Grain Growers Association (Attachment #2)

Senator Murphy; What the propositionis it two time full equivalent that we are asking forthe Ag to come in to enforce this? Those people would be covering the state and checking? How do you see their function?

Terry Weckerly: Writing the risk management plans is a challenge/choresomebody has to be in charge of that and review they are correct.....you need inspections plus the risk management plan is the second addition that has not been done before. That takes time. One job for each....one working for risk mngt and one as inspector.

Senator Flakoll; Jim Gray will testifyhe will answer some of the questions.

Richard Schlosser: ND Farmers Union. It does make sense that compliance, inspection, and testing reside under one roof/dept and stay with the Ag dept. It is one of the tools that farmers use as risk of not being in compliance....we do not want to lose this product.

Senator Klein; Hope is that adding the risk management side will help curb the concerns that EPA would have and also would provide enough education for all the people who are selling the product?

Richard Schlosser: It is as close as you can where the product is dispensed and sold and provides the oversight, provide a risk manager program. We feel it will be closer where you need it and safety is an issue with this.

Jim Gray: Pesticide, Feed, and Fertilizer Division Director at ND Dept Ag (NDDA) (Attachment #3)

Senator Heckaman: Are you anticipating stealing those two FTE from the insurance dept? Or is the insurance dept going to keep those two FTE's to do something else?

Jim Gray: We were asked as to how we would handle this if asked to take it over....I came up with a budget of 2 FTE's and \$410,000. I'll let the legislature decide where they get those resources.

Senator Miller; Do you envision in anyway the chemical inspections the elevators that carry fertilizers and anhydrous have chemicals. Do you see any way that would merge these possibilities and costs in the long run?

Jim Gray: Absolutely...plan was to use these resources to do things like sampling fertilizers. If they have pesticides in those facilities, we could use those resources to help out with the duties, too. Each inspection of the facility it would take one day to do those two things.

Senator Flakoll: Effective date of the legislation would be normal effective day? Does that make it problematicwould it be better having the effective date Jan 1 or some other point in time?

Jim Gray: If it passes with normal date to start, we'll make the best use of our resources we can. Both departments have had conversations in regards to what the transition period going to look like? We need their help to train and up to speed.....we do the best we can. Effective date would not be a big deal.

Senator Larsen; What are the qualifications of FTE?

Jim Gray: Inspections done by the chief boiler inspector or one of the two deputy boiler inspectors. The engineer checks are technical....metal thickness, strength, proper fittings, etc., you need a lot of technical experience. Original stated that the new staff would have to be commissionednational association which is a private association. Contacted other states for their qualifications....many varieties of qualified technicians.

Senator Larsen; The umbrella where the person owns his own tank....are they tagged and have to have the tag before filling the tank?

Jim Gray; Farm tanks would not be covered under the risk management plants. Just dealers. Under the current license for these facilities.....if they have at least 6,000 gals....regardless if dealership or farmer, they need to be licensed and a site inspection at least once every 5 years. Concerns are the nurse tanks....easy to stop at a dealership and have them inspected. How many nurse tanks are on farms and we never see? There is no color tag that goes on a nurse tank.

Senator Luick; The 6,000 limitation is that in one pressure vessel?

Jim Gray: In one container with the capacity of 6,000 gallons

Senator Luick; You do not have an inspection if you had 4 vessels?

Jim Gray: Correct. Engineering laws for Nurse Tanks... they would not be licensed in the data base.

Senator Murphy Does the insurance dept have any problem giving it up?

Jim Gray: The insurance dept is here....let them communicate their concerns.

Gary Knutson: ND Ag Association: comment on Senator Flakoll; We would appreciate a time line on this. Expedience would be important...we need to visit to see how the transition would take place. Good for the industry how it should be laid out. We have supported this issue for years. Insurance has not been negligent just is not their charge....like it all under one roof.

Senator Flakoll; You're fine as is or would you like to push it back? Probably don't want the emergency clause on it? (No from both departments....as soon as possible...reasonable)
Senator Flakoll; Opposition?

Rebecca Ternes: Deputy Commissioner ND Insurance Dept (Attachment #4)

Senator Larsen: Those fines that were levied for those inspection....do you know what they entailed?

Rebecca Ternes: Related to the risk management program that the facilities have to have according to the EPA regulations, not the state regulations or the inspection of the actual safety of the facilities or the tanks.

Senator Heckaman; In your comment in removing the word boiler inspector removes also their qualifications. Where does that need to be returned....in what sections..... in all of them?

Rebecca Ternes; Don't want to imply it has to be, just wanted you aware that removing that does take any requirements for a certain certification or accreditation for that inspector.

Senator Heckaman; You don't need it back in there?

Rebecca Ternes; Up to the Ag department and you if you decide that is an important factor. For our pressure vessel inspection, it is extremely important. We would not hire someone who could not be certified under the national board.

Senator Flakoll; That is not in any other place in law?

Rebecca Ternes: Not that I am aware of.

Senator Luick; What is the cost to test a pressure vessel/nurse tank?

Rebecca Ternes: Approximately a day at a facilitywhen we do these on the road for something else, we do reduce the cost.

Jeff Bitz: Director of Special Funds which include the inspection of the anhydrous ammonia facilities. Inspection is usually a half a day....if there is follow up because of a deficiency of piping, valve, etc.; follow up so they can get their licensing from the dept.

Senator Luick; What happens if you run across a tank that has been out of compliance? How do you re-certify that tank?

Jeff Bitz; Anhydrous ammonia law was enacted, we grandfathered a lot of the facilities in and if a site/tank was sold, it would have to comply with the new standards. If didn't comply, could not be re-used.

Senator Luick; No way to bring a tank back into compliance?

Jeff Bitz: Has to do with metal fatigue thickness. Regarding the storage container itself. Valve, piping might be able to bring back into compliance. Tank by tank bases.

Senator Flakoll; Opposition?

Senator Flakoll; Close hearing on HB 1321

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

HB1321
March 17, 2011
Job # 15598

☐ Conference Committee

Committee Clerk Signature

Greta Nelson

Explanation or reason for introduction of bill/resolution:

Relating to the anhydrous ammonia storage facility inspection fund.

Minutes:

Senator Flakoll; Meeting called to order March 17, 2011, discussing the anhydrous ammonia with Jim Gray (Pesticide, Feed, and Fertilizer Division Director at ND Department of Agriculture) explaining the credentials and qualifications of the inspectors.

Senator Klein; I wanted you to respond to Rebecca's comment about referencing the section that dealt with the qualification of inspectors. We need to hear your response.

Jim Gray: ND Department of Agriculture; She is right, the chief boiler inspector qualifications are described in statute, talks about all the training, commissioning, and is very extensive. Qualifications of the deputy boiler inspectors (2) are not captured in statute. We are struggling with is how to describe what a qualified inspector looks like for doing the anhydrous ammonia work? Those are low pressure vessels, not high pressure vessels. They are corrosive. First step was to make sure these 2 new people were commissioned by national board, boiler inspector and pressure vessel inspectors. A private association who set their own bi-laws and a test they take in order to get commissioned. Because of the bi-laws, you can only be commissioned if you work for the designated boiler inspection agency in the state. In ND, the Insurance Dept is the designated boiler inspection agency. A person cannot work for another agency and be commissioned. Many states who have a similar arrangements as we do....most to not. In MN, their anhydrous ammonia inspectors have a high school diploma with technical training. They train them. I don't think it is a problem to strike the boiler inspector language in 1920.2, but what could do is as condition of employment in that vacancy announcement, Is have the person pass the test...they can't offer a commission to the new inspectors, but make sure the pass the test. We would look at something like that. There is no such thing as a licensed boiler inspector or a boiler maker....there is nothing. Most states it is a mix of education and training.

Senator Miller; Comparing ability and anhydrous and propane are almost the same. Anhydrous more dangerous of a substance, the flow ability, weight, comparable.

Jim Gray: Similar pressure, corrode of anhydrous will be higher. That is what the technical training is on how to check for proper welts, how do you check for signs.

Senator Klein; The IBL committee spent a lot of time listening to propane vendors and there is no inspectionthey have to follow the manuals and trained and assume liability as the Ag Dept will have to assume liability for their inspections. The concern in the Ag Dept will be safety in everything they do and will make sure it is done as you move down the road on this inspection process.

Jim Gray: We absolutely do not want to do are lower safety standards. Insurance Dept is correct...ND has to a compliance rate that is relatively high compared to other states. Is it high enough? With these chemicals, you need to shoot for 100%. If this bill passed, we would make sure the people we hire are qualified.

Senator Larsen: Concern that if we overburden these FTE's with tons of certificates and boiler certificates with something that the person with the experience of filling these anhydrous tanks for a number of years and additional training could do that. If we want all thisit will price FTE out of the market because the boiler maker inspectors and people working on that will do a switch over to this anhydrous project.

Jim Gray: The boiler inspectors are already swamped with the work they are doing. We need them doing what they are doingone of the first attempts was to move the whole boiler inspection program into the Ag Dept. We don't want that because what we want to make use of those resources and if our inspectors are in those fertilizer facilities doing other thing they can do the anhydrous, but the boiler inspectors do the high pressure, their expertise.

Senator Klein; One employee would spend 35% of their time inspecting 20% of the plants. That seems like there will be extra time....is that possible of the 385 facilities?

Jim Gray: I don't think you took into consideration the travel time. Boiler inspectors are doing the anhydrous work when they are inspecting the boilers. Taking advantage of time they are in that location. We have about 370 licenses and anhydrous facilities all over the state. They have to be inspected once every 5 years. That is 70 a year, takes about a day to do each facility and could possibly mean a follow up visit if a problem. You can't do the anhydrous check in the middle of winter, so this limits the check. Because of seasons, it would be about impossible for one person to cover all the facilities. It is too much for one person...probably not enough for 2 people, but add on other duties to make it a full time position.

Senator Klein; Not a major issue for us when working through this. The appropriations committee is when the discussion will need to be defended.

Senator Murphy; Didn't they have 3 people....3 times 30% is like an FTE which they are proposing for that and one for the other portion.

Jim Gray: I would have to re-read Rebecca's testimony to see how they came up with the figure. It is safe to say the anhydrous work for them is an afterthought when they are

already in that city/location. The anhydrous industry wants this to be a primary focus, not a secondary focus.

Senator Miller; We have an issue because we are getting fined....we have a compliance issue and that is what this bill is trying to do.....avoid the fines that have been happening.

Jim Gray: Those fines, the non compliance, are for the clean air act risk management plan.

With the compliance rate as close to zero. We need to do a better job there to get those people into compliance with those requirements not only from the Health and Safety but to avoid those fines. Let any of the regulatory actions be issued under state authority instead of federal authority.

Senator Flakoll; If the fines are associated with a \$10,000 the money would go to the general fund?

Jim Gray: If we take on this program, I told the EPA we will take on this whole thing. We want to be able to visit facility, inspect them, keep the records, review the risk management plan, and issue our own regulatory respond. Under state authority, under the language that Rep Belter brought in. Under state law if the law does not direct those funds to go directly into a special fund, they will be deposited to General fund. If the legislature wants the funds to be deposited to a special fund....then we need to put language in to direct where you want the funds to go.

Senator Flakoll; Effective date?

Jim Gray: This transition period will be a bit complicated. Is the proposal of Jan 1, 2012....is that what we are thinking. July 1 is in the middle, so the challenge is this bill passed out of the legislature quite quickly. We would have to start advertising and have someone up to speed but won't be trained by July 1. If we put an effective date of Jan 1, 2012 would give us more time and up to speed.

Senator Flakoll: Available at 4:00 today to work on amendments.

Jim Gray: Anita Thomas included to work on

Senator Flakoll; Meet in Anita Thomas office. There are some concerns about the effective date.

Senator Flakoll: We will take this up tomorrow and have a window in the morning.

Senator Flakoll; Closed meeting

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1321
March 18, 2011
Job # 15668

☐ Conference Committee

Committee Clerk Signature

Greta Nelson

Explanation or reason for introduction of bill/resolution:

Relating to anhydrous ammonia storage facility inspection fund.

Minutes:

Senator Flakoll: Meeting called to order at 10:15 HB 1321

Senator Larsen; On page one line 1 we are going to insert "to create"

Senator Flakoll; Anita we wanted you and Mr. Gray to be here to get what we wantwe understand what we want and don't want too many more goes at this. Senator Larsen will walk through the amendments.

Senator Larsen; Creating in chapter 19-20.3 in the century code about the anhydrous risk management ...remove on page one line three a word same with line 4 after fund, insert "to provide an effective date" and declare an emergency on page 5 after line 11, insert our section 18 which will discuss the risk management program of the anhydrous ammonia and that is where the day will be inserted in the next biennium June 30, 2011. On bullet point 3, on obtain a review risk management plan that is where the FTE will be part of their job to make those plans. Put it in their handbook policy and give a 12 month time frame to get the boiler license and certificate they need. Continued addressing the amendment changes.

Jim Gray: ND Dept of Agriculture: We discussed the transfer of the tonnage fees. Two sections in the bill...one is to move and one is to appeal the anhydrous fund. Those changes need to take place of the next biennium because there are other appropriations out of ERB that depend upon taking effect. The risk management plan provisions would take effect whenever EPA delegates us that program. Reasonably that would be late summer, but if they fast tracked it, they could do it most any time. For the anhydrous inspections sections, everywhere in the bill were the boiler inspector, the insurance commissioner and replaces it with the Ag commissioner. Those duties take effect Jan 1, 2012. In the interim, we could advertise and hire new staff member with the current boiler inspectors, but those duties that legal authority would not transfer until Jan 1, 2012.

Senator Flakoll; Do you think the 3002 amendments will cover all the concerns that have been expressed through testimony?

Jim Gray: I think they do and I think this will work. Anita Thomas and I discussed the emergency clause language in the new amendment and that is for the funding shifts. Still questionable with that.

Senator Larsen; We discussed the next biennium is the June date? I wrote that wrong on the amendment.

Jim Gray: You are talking about at the bottom of the section. The June 30 is the clean air act.

Senator Luick; Only thing for me is the confusion of the emergency clause.

Jim Gray: A question for legislative council. We wanted to make sure where those tonnage fee transfers and implementation of some others take effect at the beginning of the next biennium. That is when funding takes place and where law changes take place.

Senator Flakoll; Question is on the 3002 amendment, section 12....emergency clause.

Anita Thomas: Tonnage fee is July 1. If we don't start it on July 1, the bill will normally start on Aug 1.

Senator Flakoll: Checking on the House....making sure we have the emergency clause in play?

Anita Thomas: I drafted these amendments

Senator Larsen: Move that adopt these amendments of 11.0602-03002

Senator Miller; Second

Senator Flakoll; Moved and second to adopt the amendment

Senator Flakoll; Discussion? Clerk take roll of the adoption of 3002 amendments to re-engrossed HB 1321

Clerk: 7-0-0

Senator Larsen Motion adopt amendments to HB 1321 and Do pass HB 1321 as amended to re-engrossed to HB 1321 and rerefer to committee of appropriations.

Senator Miller; Second

Senator Flakoll; Discussion.

Senator Miller; The bill is the best we can do for our fertilizer, and anhydrous dealers...it is going to make it work better for them.....Ag Dept looks out for the industry and help them move through the obstacles that the Fed gov throws on their plate. Every time the Fed government wants North Dakota to do something, they come in with guns and threaten our businesses and force us to take action that we normally wouldn't like to or wish to take. Want to be on record stating my dissatisfaction with the EPAthey have forced many businesses to close or sell out. They have logged huge fines on businesses in ND as pointed out in testimonies. I support the HB1321

Senator Larsen: When we were drafting this bill, I did not want to burden the new FTE's with huge amount of certificates or trying to get a doctor to do a CNN's work (example) If we overburden these people with too much certification and qualifications, it would be hard to fill those positions. I support the bill.

Senator Flakoll; We have the 3000 version before usthat is what we are acting on. Discussion? Clerk to take roll for Do Pass as amended to engrossed HB 1321 and rerefer to the committee on appropriations.

Clerk: 7-0-0

Senator Flakoll; Motion pass Senator Larsen carries the bill

Senator Flakoll; At ease

Date: 3/18/11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1321 (ENGROSSED)

Senate Agriculture Committee

Legislative Council Amendment Number 3002

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Larsen Seconded By Senator Miller

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

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

Date: 3/18/11

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1321 (ENGROSSED)

Senate Agriculture Committee

Legislative Council Amendment Number 3000

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

☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Larsen Seconded By Senator Miller

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 Larsen

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

REPORT OF STANDING COMMITTEE

HB 1321, as reengrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1321 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact chapter 19-20.3 of the North Dakota Century Code, relating to anhydrous ammonia risk management program requirements; to"

Page 1, line 3, remove "and"

Page 1, line 4, after "fund" insert "; to provide an effective date; and to declare an emergency"

Page 5, after line 11, insert:

"SECTION 8. Chapter 19-20.3 of the North Dakota Century Code is created and enacted as follows:

19-20.3-01. Risk management program - Anhydrous ammonia.

In order to determine compliance with the risk management program requirements set forth in section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011, the agriculture commissioner may:

1. Request information from any person that:
 - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
 - b. Is required to comply with the risk management program requirements;
2. Conduct inspections of any person that:
 - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
 - b. Is required to comply with the risk management program requirements; and
3. Obtain and review risk management plans required under 40 Code of Federal Regulations, part 68, as amended through June 30, 2011, and other records applicable to any person that:
 - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
 - b. Is required to comply with the risk management program requirements.

19-20.3-02. Risk management program - Enforcement authority.

If the agriculture commissioner determines that there is noncompliance on the part of any person that sells, stores, or handles anhydrous ammonia for agricultural purposes and that is required to comply with the risk management program requirements referenced in section 19-20.3-01, the agriculture commissioner may:

1. Bring an action to enjoin a violation or a threatened violation;
2. Issue a cease and desist order; and
3. Impose a civil penalty through an administrative hearing in an amount not exceeding ten thousand dollars per day for each violation."

Page 5, after line 12, insert:

"SECTION 10. CONTINGENT EFFECTIVE DATE. Section 8 of this Act becomes effective on the date that the governor certifies to the legislative council that the agriculture commissioner has been delegated by the administrator of the environmental protection agency to implement and enforce the risk management program as it pertains to the sale, storage, and handling of anhydrous ammonia for agricultural purposes, in accordance with section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011.

SECTION 11. EFFECTIVE DATE. Sections 1 and 9 of this Act become effective on July 1, 2011. Sections 2 through 7 of this Act become effective on January 1, 2012.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2011 SENATE APPROPRIATIONS

HB 1321

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1321
03-29-2011
Job # 16098

☐ Conference Committee

Committee Clerk Signature

Alice DeBoer

Explanation or reason for introduction of bill/resolution:

A BILL relating to anhydrous ammonia facility inspections; and relating to the anhydrous ammonia storage facility inspection fund.

Minutes:

See attached testimony.

Chairman Holmberg called the committee to order on Tuesday, March 29, 2011 at 8:30 am in reference to HB 1321. Roll call was taken. All committee members were present. Tammy R. Dolan, OMB and Brady Larson, Legislative Council were also present.

Rep. Wes Belter, District 22, Fargo. This bill puts the entire inspection of the anhydrous ammonia under the Ag Commission. Currently it's a split duty, the Insurance Commissioner has the boiler inspectors and they inspect the facilities and then the Ag Dept. does all the rest of the work, dealing with the inspections. This bill puts it all under the Ag Commissioner. The ND Ag Commission asked me to introduce this bill because we run into situations where a number of anhydrous plants this past year have come under severe fines. Three plants received finds in excess of \$63,000 and another one over \$50,000. Hopefully with the Ag Dept. taking this over, we can relieve ourselves of having the EPA doing inspections, which has been a problem. Under this bill, the Ag Dept. will be able to assist the supplier so that anhydrous ammonia will be under their risk management program. That is where the real problem is and where the fines have come about, is over the risk management program. The Ag Dept. feels that if they have control over this entire system that there will be better communications between those that are inspecting the facilities and the facility management. We need get a handle on this and not experience the type of fines that have been incurred and because I think if we do not do this, no company is going to be willing to sell anhydrous ammonia, if they can't get a handle on the whole program. That is basically what the bill does. It is also from the money end. There are fees that are collected on fertilizer and these funds are then deposited in the environmental and range and protection fund. There is approximately \$410,000 will be needed to carry out this program. Currently, that money had been put into the general fund, where now it will go straight into the environmental and range protection fund.

Chairman Holmberg states, that the money, \$410,000, currently is in the Ag Commissioners budget.

Senator Fischer states, that is correct.

Chairman Holmberg states, that would be one of the key things that this committee would want to know. Are we being asked to find an additional \$410,000 and the \$410,000 is already in the Ag Commissioners budget.

Senator Fisher asks, I see on page 3, line 1, chief boiler inspector is removed. Who would take the place of the chief boiler inspector when it comes to inspecting the tanks?

Rep. Belter states, there will be boiler inspectors assigned to the Ag Dept. I believe they are planning to have 2 boiler inspectors. Maybe someone from the Ag Dept. can clarify that for sure.

Senator Kilzer asks, when the feds come around the EPA dept., are they used to dealing with the Ag depts. or are they use to dealing with the Health Dept. on this issue?

Rep. Belter states, they are dealing with the Ag Dept. or the insurance department. I would suspect most of the dealings with the Ag Commissioner, over the risk management part and that is what the Ag Dept. would be concerned about.

V. Chair Grindberg asks, could you speak to section 7 of the bill. Would we expect a seamless transition, on the locking of the tanks, due to the methamphetamine crisis, but I would assume this would be a seamless transition on that program as well?

Rep. Belter states, that would be the goal to make sure that's all taken care of. Currently, all these tanks are currently on a random inspection just as the facilities are and that would continue.

Dayne Brown, Pulse Analyst at the Dept. of Agriculture. This bill moves the authority from the Insurance Dept. to the Dept. of Agriculture. In section 8 of this bill allows us to implement the risk management plan, which are under the Clean Air Act and it also moves the tonnage fees in to the ERP fund. The question about a smooth transition, actually portions of the bill don't become effective until January 1, and this will allow us to work with the Insurance Dept. to do some cross training during the interim. We plan to hire a boiler inspector as soon as possible after July 1 and work with the Insurance Dept. in cross training and then on January 1, we would assume all authority of inspection.

V. Chair Grindberg states, from prior years in the insurance dept., it was a significant challenge to hire boiler inspectors. Currently are there boiler inspectors employed that can be transitioned over to Ag. Dept.?

Dayne Brown states, we calculated the numbers, where they come from and where the funding comes from is not our decision. We do believe we can hire 2 boiler inspectors, train them and get them certified by Jan 1.

Senator Warner asks, would you refresh my memory on what projects are funded out of the environmental and range land protection fund?

Dayne Brown states, I do not have that in front of me. I believe some of the noxious weed is funded through that program.

Chairman Holmberg states, we do have that information.

Senator Warner states, my understanding that the way this is laid out, is that we are taking a revenue source away from the general fund, which has been paying for the expenses. The expenses will still be covered out of the general fund. We will be transferring the revenue that comes in from this. This is going to the environmental and range land protection fund, correct? So this is a burden on the general fund by doing it this way?

Dayne Brown states, the funds that are transferred would be in the fiscal impact. The \$478, 208 from the general fund into the ERP fund. The \$410,000 would come out of the ERP fund, is what the inspection would cost.

Tammy R. Dolan states, the items that are pending, dissipated to be paid out of the ERP fund, a groundwater program with the Health Dept., livestock waste programs with the Stockmen's Association, Ag Dept., pesticide programs, projects safe send, noxious weed program, weed-seed-free storage, crop harmonization board, ag in the classroom, farmers market, endangered species protection, the minors use fund and operating expenses and a daily coalition grant that comes out of that fund in the next biennium.

Senator Warner asks, I am still trying to trace the money. We are taking a revenue source, which has contributed to paying the inspections, and putting it into this fund but then we are having the general fund paying the expenses of the inspections?

Tammy R. Dolan states, I didn't mention that. These expenses for this program would come from the ERP fund. The funding for the staff and their operating expenses would come from the ERP fund.

Senator Krebsbach asks, I am assuming an inspection of all boilers in the state?

Dayne Brown, states, no. Only anhydrous.

Senator Robinson asks, is there a possibility anyone from the Insurance Dept. will be freed up to help with this program?

Dayne Brown states, I think that would be best answered by the Insurance Dept.

Senator Wanzek states, he is co-sponsor of the bill but if I recall the main reason for the bill is to provide some clarity and continuity, in the real world for the marketers of anhydrous. There is confusion, one is inspecting, one is regulating and they have not had a clear direction in how to manage them, as a result there has been a \$60,000 fine .

Senator Robinson states, I agree. I am supportive and I share the concern of the availability of inspectors are tough to come by.

Rebecca Ternes, Deputy Insurance Commissioner, states coming in a neutral position on HB 1321. (Written Testimony attached # 2) which shares the purpose of this bill. One of the things we talked about is this transmission to get the boiler inspectors on board with the Ag Dept. and to create a new risk management function within the Dept. of Agriculture. These inspections are currently performed by staff in the special funds division, which you know as boiler inspectors. One thing for clarity, boiler inspectors and ours, are a chief boiler inspector and two deputy boiler inspectors are very difficult to come by and they have to be commissioned by the National Board of Boiler Inspectors. The only people that can be commissioned have to work in the insurance dept. because we are the jurisdiction overseers. We have talked with the Ag Dept. about, is that these folks, if they work with the Ag Dept., can't really be commissioned boiler inspectors? So we have talked about this transition and what kind of qualifications these folks will need and how long it will take to get them there. We are hoping with the 6 month period that Mr. Brown referred to, that we can do some onsite training. The period of inspection for anhydrous tanks is clearly when the weather is nice and so usually that is July. The transition to January seems to be more conducive to this. Hopefully, they can find some folks who would be able to be qualified. One of the ideas the Ag. Dept. had, is that they would still take the test, which we can administer for boiler inspectors, and that may be a condition of employment. That within a certain period of time they have to pass that command. They couldn't get their commission but at least we would know that they have the ability, skills and training to inspect these kinds of tanks. They are not high pressure tanks; they are low pressure tanks but as we know, this is about public safety. That is why in 1995, the program came in to the Insurance Dept. and was given to us. We do inspect 385 storage facilities and we inspect them once every five years. About 20% of them each year. We did about 98 inspections in 2010 and 2657 boiler inspections. That is the bulk of their work. We have a huge increase of boilers right now in the oil fields. There were 15 oil drilling boilers in 2001. There were 180 in 2010 and we would suspect that number to go up significantly in the next couple of years. (Continued on with written testimony #2).

Senator Robinson asks; talk to us the ability to recruit these people. Are they hard to find?

Rebecca Ternes, states, they are extremely difficult to find. We were down to one when I was hired. The qualifications and skills they have are a unique combination. We'll do the best we can.

Senator Christmann asks, it takes about 1/3rd of an FTE to actually do the inspections, we are talking 2 FTE's, so about 5/6th of their time spent doing this training and things so people will not get into trouble with the EPA?

Rebecca Ternes states, I should also be clear that one of the reasons we only spend 1/3rd of the time because we are already on the road for boilers. We are out there doing other inspections so we will do an anhydrous tank as well. The EPA risk management side, however, has been an issue that has been around for several years. The EPA has tried to get several of our departments in the state of ND to take on these duties but there is no federal funding for these. That is why it hasn't been taken up by any of us. Now in these recent fines that were just levied, by the inspectors that came through, it is our chief boiler inspector that has been working with the EPA to try to explain where there are some errors in their determinations and great expectations that those fines will get knocked down. We have continued to do that if they need our help. It is a bigger job working on these risk management

plans. Of course it is state wide. Coverage of the state is difficult only with 3. One is stationed in Fargo.

The locking program was sunseted, I believe, for two biennium's, starting in 2003 and then it was renewed in 2005-2007. So that program is no longer existent.

Dan Wogsland, Executive Director of ND Grain Growers Association testified in favor of HB 1321 (Written Testimony attached # 3). **Urged a DO PASS**

Chairman Holmberg states, we will close the hearing on HB 1321.

Senator Warner makes a motion for a DO PASS on HB1321.

Senator Robinson seconded.

Senator Christmann asks, the budget bill for the Ag Commissioners office, as I recall, we set it up in anticipation of this bill passing so that it would work in conjunction of this bill. Am I correct and has there been any changes or serious considerations to changes over there?

Brady Larson states, that SB 2009 does have some provisions that compliment this bill and that does include appropriation authority for the duties included in HB 1321. Also there were some statutory changes in SB 2009 regarding the distribution or the deposit of fees into the ERP fund, which also compliments this bill. As the amended bill sits in full House appropriations, I believe both bills are in line with each other.

A ROLL CALL VOTE WAS TAKEN ON A DO PASS on HB 1321. YEA: 13, NAY: 0; ABSENT:

Senator Larsen from AG will carry the bill.

Chairman Holmberg closed the hearing on HB 1321.

Date: 3-29-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1321

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Warner Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Back to ag ser Larson

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

REPORT OF STANDING COMMITTEE

HB 1321, as reengrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Reengrossed HB 1321 was placed on the Fourteenth order on the calendar.

Amended

[Handwritten signatures and initials]
56
C11

[Large handwritten signature]

REPORT OF STANDING COMMITTEE

HB 1321, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1321, as amended, was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1321

#1
HB 1321

North Dakota Agricultural Association
415 38th St SW, Suite B
Fargo, ND 58103
T: 701-282-9432 F: 701-277-5902 E-mail: gary@ndag.org

February 4, 2011

North Dakota 62nd Legislative Assembly
House Agricultural Committee

Chairman Johnson and members of the House Agriculture Committee. My name is Joe Killoran. I am an owner of Maple Valley Ag of Tower City. I also serve as a ~~Director and Past President~~ of the North Dakota Agricultural Association. Our membership consists of over four hundred members who are dealers, distributors, and individual service providers of fertilizers, pesticides, seed, and crop production products in our region's agriculture industry.

We have been long time supporters of this type of legislation, HB 1321. We believe it simply makes good sense. The current system of having boiler inspectors from the Insurance Department staff inspect the anhydrous facilities in the state and then turn the report over to staff of the Agriculture Department for any compliance activity certainly lends itself to potential inefficiencies but also may lead to communications breakdown and/or difficulties in compliance uniformity throughout the state anhydrous facilities.

There are over 370 facilities In North Dakota, all of which require full stewardship and safety management given the nature of the product. Anhydrous is a critical, important nutrient option to our farmers and the agriculture economy in general. Given this fact, it is very important a program for total safety in storage and distribution be in place.

This is why we urge you to "put it all under one roof". The plants and locations by law must be inspected every five years. In addition to the inspection function the need also strongly exists for an ongoing education function in the area of risk management planning. Recently many NH3 dealers were inspected by EPA contractors under authority of the Clean Air Act which has generated serious concerns among the industry as to the methodology used to facilitate compliance. We strongly feel this function should be administered by our state Agriculture Department. EPA would no doubt, readily turn this over to our State in a manner similar to the programs the Department has established for compliance to the Pesticide Law.

Funding. Department staff has determined that funding this legislative request will require two FTE and with related expenses the program cost will amount to approximately \$400,000. Currently, the dealers are assessed 20 cents per ton on all fertilizers sold in N.D. which amounts to over \$400, 000.00 each Biennium. However, these dollars go directly to the general fund. We are simply asking that they be directed to the Agriculture Department for this purpose and benefit the industry that pays the fee: the crop production industry.

Thank you.



#2

Your voice for wheat and barley. www.ndgga.com

North Dakota Grain Growers Association
Testimony on HB 1321
House Agriculture Committee
February 4, 2011

Mr. Chairman, members of the House Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association. I appear before you today in support of HB 1321; the bill seeks to unify anhydrous ammonia regulation and enforcement in the North Dakota Department of Agriculture (NDDA). As you are all aware, anhydrous ammonia is a major source of nitrogen fertilizer for use in agriculture in North Dakota.

Mr. Chairman, members of the House Agriculture Committee, under current law the North Dakota Insurance Department conducts inspections of anhydrous ammonia facilities in our state. Licensure, safety meetings, outreach and enforcement of anhydrous ammonia regulations fall into the hands of the NDDA. This duplicative situation causes confusion among stakeholders leaving gaps in responsibilities at a time when there is heightened awareness and concerns among the general public. HB 1321 seeks to remedy this potentially dangerous regulatory situation by placing both anhydrous ammonia regulation and enforcement under one roof in the NDDA.

What are the benefits to HB 1321? Consolidation of anhydrous regulation and enforcement:

- Eliminates stakeholder confusion by providing one point of contact which is the NDDA
- Promotes uniform and consistent regulations and enforcement
- Allows NDDA to assist anhydrous ammonia facilities with other regulatory efforts

One very important aspect of this legislation is that it will allow the NDDA to assist facilities of 10,000 pounds of capacity or greater with formulating Risk Management Plans (RMP) which are mandated by the Clean Air Act. Currently RMP compliance and enforcement are administered by the Environmental Protection Agency (EPA).

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

Moving anhydrous ammonia regulation and enforcement to NDDA would remove EPA from administering the RMP; this would better serve anhydrous ammonia stakeholders and would provide greater safety to the general public.

As always, there is a concern with the fiscal note on the bill. However, what price is the state willing to pay for better compliance, increased general public safety and security, and decreased EPA involvement? To the North Dakota Grain Growers Association, the benefits to consolidation envisioned by HB 1321 far outweigh the cost.

Mr. Chairman, members of the House Agriculture Committee, HB 1321 addresses a glaring need in regulatory environment surrounding anhydrous ammonia fertilizer. The consolidation envisioned by this legislation will strengthen regulation, decrease confusion, and will enhance public safety. The North Dakota Grain Growers Association urges a Do Pass on HB 1321 and would urge the Committee and the House to concur.

COMMISSIONER
DOUG GOEHRING



#3
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**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL
600 E BOULEVARD AVE DEPT 602
BISMARCK ND 58505-0020

**Testimony of Jim Gray, Division Director
North Dakota Department of Agriculture
House Bill 1321
House Agriculture Committee
Peace Garden Room
9:00 am, February 4, 2011**

Chairman Johnson and members of the House Agriculture Committee, I am Jim Gray, the Pesticide, Feed, and Fertilizer Division Director at the North Dakota Department of Agriculture (NDDA). I am here today on behalf of Agriculture Commissioner Doug Goehring to provide supporting information relating to HB 1321, a bill which will amend North Dakota Century Code (NDCC) § 19-20.2 to transfer anhydrous ammonia inspection authority from the North Dakota Insurance Commissioner to the Agriculture Commissioner.

Regulation of anhydrous ammonia under N.D.C.C. § 19-20.2 is currently split between two agencies, the North Dakota Department of Agriculture (NDDA) and the North Dakota Insurance Department (NDID). The enclosed flowchart describes the current duties of each agency. The Agriculture Department issues anhydrous ammonia licenses to facilities that have storage capacity of at least 6,000 gallons. Prior to issuing a license, the NDDA must verify that the facility complies with necessary siting and engineering requirements. However, inspection of facilities, both prior to licensing and at least once every five years thereafter, is the responsibility of the ND Insurance Department. The Department of Agriculture then has responsibility to issue regulatory actions based on those inspections. The NDDA also has responsibility to conduct anhydrous safety training and outreach.

The Department of Agriculture has received feedback from anhydrous ammonia dealers and users expressing frustration and confusion with anhydrous ammonia regulation. We agree that

the current split of regulatory responsibilities can be problematic.

First, the current regulatory framework creates confusion and a lack of transparency with the public. For instance, a company applying for a license to the NDDA is soon visited with an inspector from the Insurance Department. Then, after receiving an inspection from the Insurance Department and an Insurance Department inspection form, a facility with violations receives an enforcement letter from the Department of Agriculture. Furthermore, when the Department of Agriculture is contacted by a facility and told that any engineering deficiencies have been corrected, the NDDA can't even verify whether or not the proper repairs have been made. Instead, we have to depend on the Insurance Department to revisit that facility to perform a re-inspection. It is my opinion that anhydrous dealers and users are generally confused who they are to call with questions or concerns.

Second, the frequent exchange of information between the two agencies creates inefficiencies, delays in responding to regulatory issues, and duplication of efforts. For instance, both agencies have their own database of anhydrous facilities, one for licenses and one for inspections.

Third, because both the Department of Agriculture and Department of Insurance have only part of the regulatory authority for anhydrous ammonia, neither agency takes true ownership of the program or responsibility for general oversight of the anhydrous ammonia industry. This is especially problematic at a time when high-profile anhydrous releases make the public question whether or not the risks of anhydrous outweigh its benefits to agriculture. To address public concerns and ensure that ND farmers have access to low-cost nitrogen in the form of anhydrous ammonia, it is essential that anhydrous dealers and users operate at a very high level of compliance. It is my opinion that the current model of split regulatory responsibilities will hinder efforts to reach those high levels of compliance, regardless of how hard the two agencies work to communicate and exchange information.

Therefore, we agree with industry efforts to move anhydrous ammonia regulation into one agency in North Dakota, whichever agency that might be. However, it should be noted that HB 1321 does not include an appropriation, and the ND Department of Agriculture will require additional resources if we assume anhydrous ammonia inspection authority.

The fiscal note prepared by the NDDA for HB 1321 estimates the impact to the Department's budget if HB 1321 passes without an appropriation. There are currently 368 licensed anhydrous ammonia facilities in North Dakota, and N.D.C.C. 19-20.2 requires that these be inspected at least once every five years. As you will see from the enclosed map, these facilities are distributed throughout the state. We estimate that we would require two additional inspectors to assume the inspection responsibilities. Along with an estimated salary and benefits appropriation of \$327,536 to cover these two inspectors, we would require an operating budget of \$82,792 for a total appropriation of \$410,328. More information on this budget estimate is included with this testimony.

With these resources, the Department of Agriculture could provide adequate regulation of the anhydrous industry in North Dakota. We could also utilize the two inspectors for related duties. Since many anhydrous facilities distribute other fertilizers, the inspectors could gather fertilizer samples to ensure compliance with state fertilizer law. We could also expand anhydrous ammonia outreach efforts relating to safety and compliance. Last, we could assume responsibilities from US EPA relating to anhydrous ammonia Risk Management Plans (RMPs).

Under the Clean Air Act, facilities with at least 10,000 pounds of anhydrous ammonia are required to complete, implement, and periodically update an RMP. These RMP documents include such things as documenting the training of employees, notifying local first responders, and developing response plans in the event of an anhydrous release. EPA has tried for several years to delegate RMP inspection and education responsibilities to the ND Department of Agriculture, ND Insurance Department, and the ND Department of Health. Since the delegated responsibilities would not include federal funding, each agency has declined assuming the additional workload. As a result, EPA is inspecting anhydrous facilities for compliance with the RMP requirements. The results of these inspections are noteworthy. In just the last few months, EPA documented RMP deficiencies in four North Dakota anhydrous facilities. One of these facilities was issued a fine of over \$50,000. The other three each received fines of over \$60,000. The high levels of these fines will likely force some facilities to make the difficult decision of discontinuing their anhydrous business. These costs will also be passed onto the agricultural

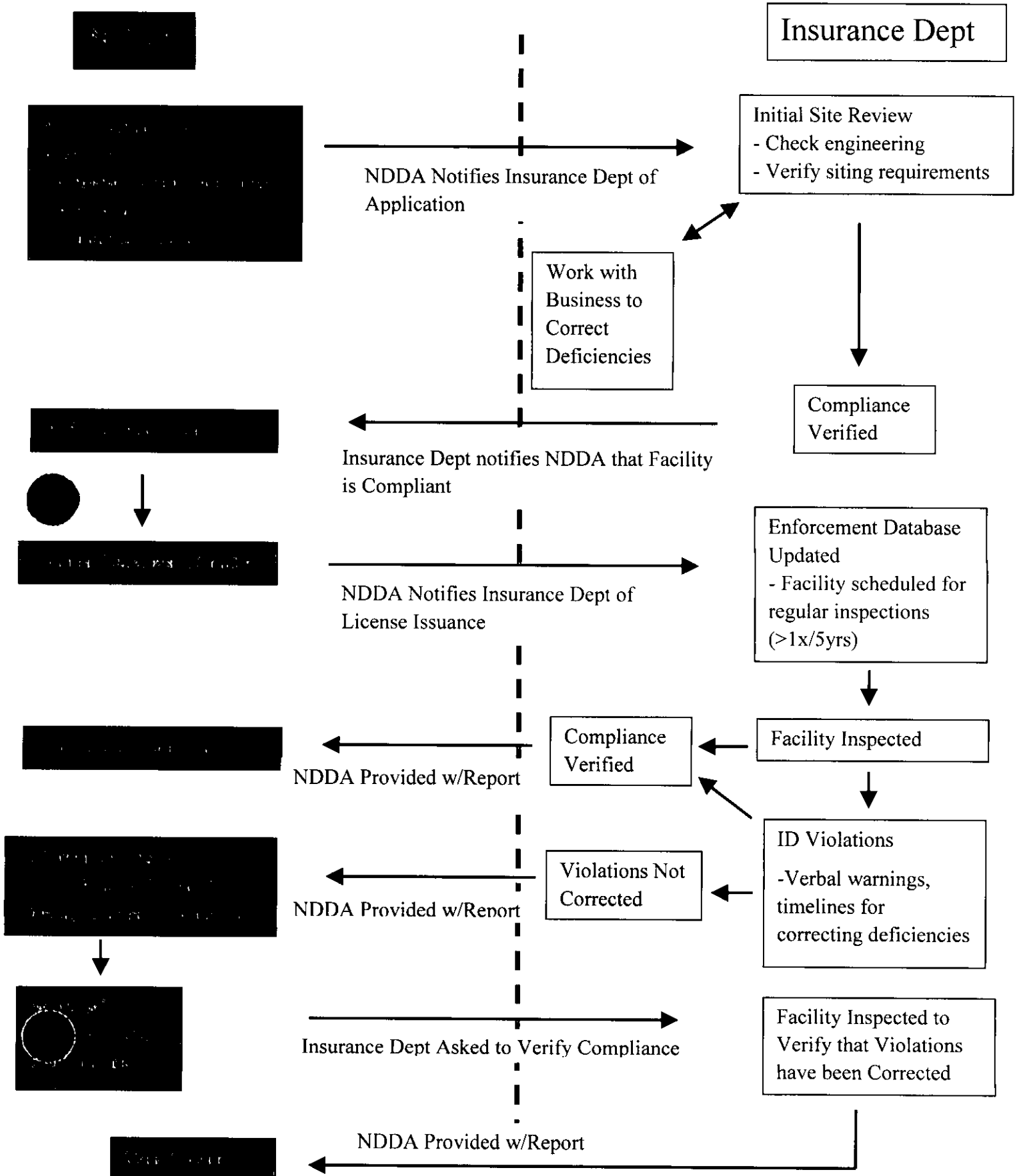
community. Assuming all or part of the RMP regulatory program within a state agency would improve compliance and ensure a more reasonable response when non-compliance is identified.

In summary, the ND Department agrees with the concept of moving anhydrous ammonia regulatory authority into one state agency. If the necessary resources are appropriated to adequately administer an anhydrous ammonia inspection program, the ND Department of Agriculture would support HB 1321. However, if these resources are not appropriated, the NDDA would be unable to assume the increased responsibilities created by the bill.

Chairman Johnson and committee members, I thank you for the opportunity to provide information on anhydrous ammonia regulation in North Dakota. I would be happy to answer any questions you may have.

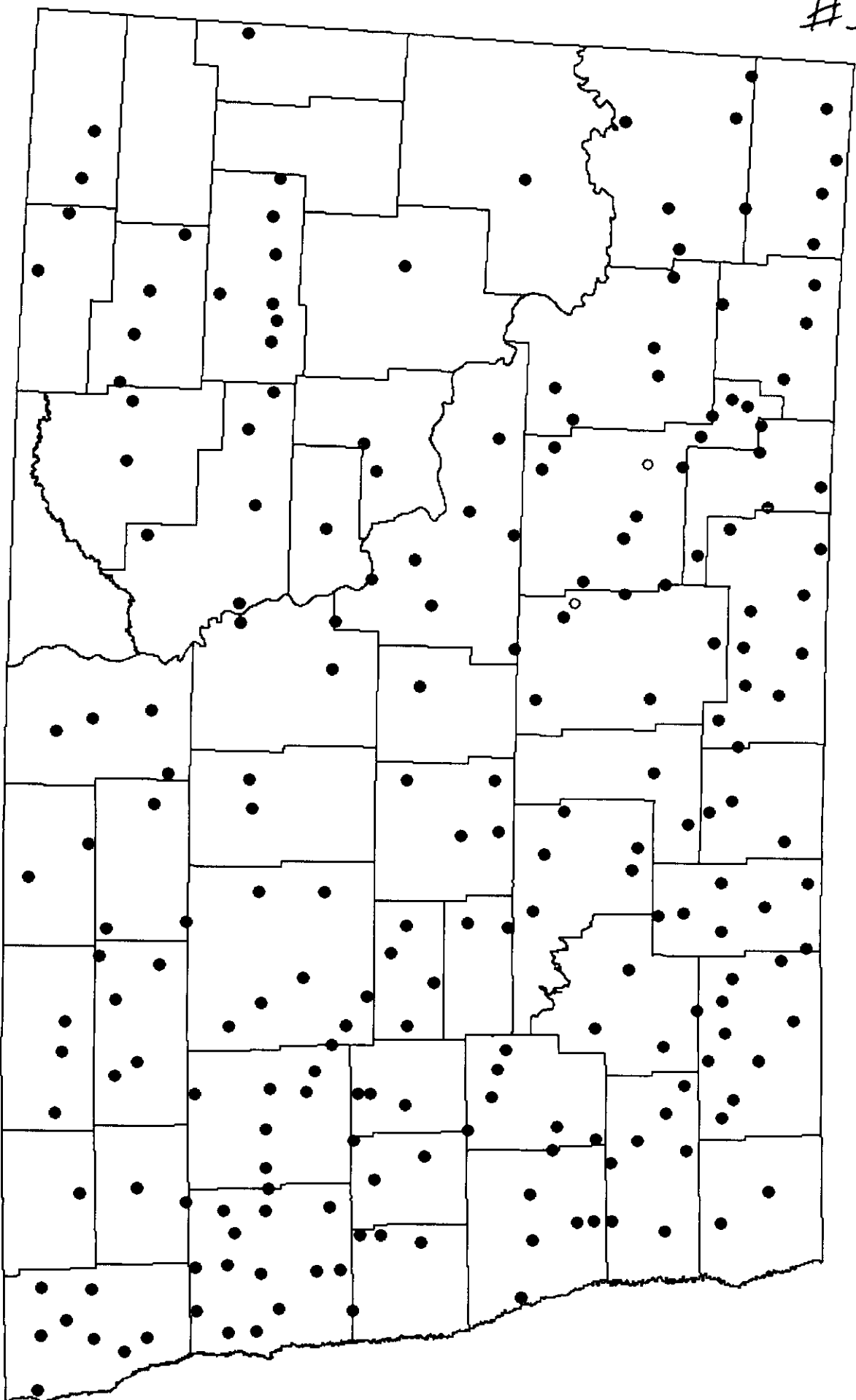
#3a

Distribution of Anhydrous Ammonia Regulatory Duties Under N.D.C.C. 19-20.2



#36

North Dakota Licensed Anhydrous Ammonia Facilities



Number of facilities by municipality



#3C

**Resource Needs for ND Department of Agriculture (NDDA) to
Absorb Anhydrous Ammonia Inspection Duties**

Assumptions: NDDA would assume anhydrous ammonia inspection responsibilities under N.D.C.C. 19-20.2 from the ND Insurance Department. To create efficiencies and better serve the regulated public, inspectors would also verify compliance with anhydrous ammonia risk management plans (RMPs) from EPA under the Clean Air Act and gather fertilizer samples under the authority in N.D.C.C. 19-20.1.

Staffing Needs: Two inspectors (Grade 11)

Salary:

Salary + benefits for each inspector: \$163,768
Salary plus benefits for two inspectors: \$327,536

Operating:

Mileage: \$51,600

- Each inspector 30,000 miles/yr or 60,000 miles/biennium
- 120,000 total miles X \$0.43/mi = \$51,600

Lodging: \$13,440

- Each inspector four hotel stays per month (48 stays/year or 96 stays/biennium)
- 192 total hotel stays X \$70 per night = \$13,440

Meals: \$9,600

- \$200/month X 24 months X 2 inspectors = \$9,600

Information Technology: \$5,152

- \$2,000 for computer, monitor, etc X 2 = \$4,000
- Cell phone: \$24/month X 24 months X 2 inspectors = \$1,152

Training, safety equipment = \$3,000

- Includes safety gear, annual training to keep boiler certification

Totals:

Salary + Benefits	\$327,536
Operating	\$82,792
Mileage: \$51,600	
Lodging: \$13,440	
Meals: \$9,600	
IT: \$5,152	
Training, Equipment: \$3,000	
Total	\$410,328

#32

ND fertilizer tonnage fees, 2000-2009.

Year	Non-Anhydrous Tonnage Fees*	Anhydrous Ammonia Tonnage Fees**	Total Fertilizer Tonnage Fees
2000	\$216,636.20	\$44,426.80	\$261,063.00
2001	\$234,005.20	\$44,722.80	\$278,728.00
2002	\$216,911.00	\$54,453.00	\$271,364.00
2003	\$241,125.60	\$46,977.40	\$288,103.00
2004	\$264,559.40	\$48,413.60	\$312,973.00
2005	\$273,429.80	\$50,787.20	\$324,217.00
2006	\$217,305.00	\$55,255.00	\$272,560.00
2007	\$220,992.00	\$53,948.00	\$274,940.00
2008	\$267,778.20	\$63,554.80	\$331,333.00
2009	\$238,298.00	\$43,356.00	\$281,654.00
Annual Ave:	\$239,104.04	\$50,589.46	\$289,693.50

*Deposited to General Fund

**Deposited to Anhydrous Ammonia Fund

#4

HOUSE BILL NO. 1321

Presented by: Rebecca L. Ternes
Deputy Commissioner
North Dakota Insurance Department

Before: **House Agriculture Committee**
Representative Dennis Johnson, Chairman

Date: **February 4, 2011**

TESTIMONY

Good morning, Chairman Johnson and members of the committee. My name is Rebecca Ternes and I am the Deputy Insurance Commissioner. I appear before you in a neutral position on House Bill No. 1321 to provide some information on the anhydrous inspection program in the Insurance Department.

The purpose of the bill is to move the anhydrous ammonia inspection duties from the Insurance Department to the Department of Agriculture. We understand the industry's concerns related to having two regulatory entities involved in the inspection of tanks and do not disagree. The inspections are currently performed by staff in our Special Funds Division. These same staff members spend the bulk of their time on boiler inspections in the state and have special training and certifications from the National Board of Boiler and Pressure Vessel Inspectors.

The anhydrous inspection program came to the Insurance Department in 1995. There are approximately 385 storage facilities in the state. On average, 20 percent of these facilities are inspected each year. Facility inspections include the inspection of main containers, piping, and nurse tanks. The Insurance Department employs three full-time inspectors in Bismarck and Fargo that primarily travel the state performing inspections. In 2010, the inspectors completed 98 anhydrous inspections and 2,657 boiler inspections. While our anhydrous inspection numbers have remained relatively stable,

the number of boilers requiring inspection in the state has risen since the program's inception and most recently, we are seeing a large increase in the number of oil drilling boilers. In 2001, there were 15 oil drilling boilers compared to 180 in 2010. We expect this number to continue to rise.

In 1995 when the Insurance Department was given anhydrous inspection duties, the Department asked to reduce the frequency of its boiler inspections in certain buildings and change the schedule for internal boiler inspections to be able to absorb the additional duties. This has caused some challenges in getting the work completed and ensuring inspections are done frequently enough.

The Department added up the hours the inspectors spent on anhydrous inspections in 2010 and determined the sum equaled 35 percent of one employee's full-time hours for a year. However, because of the increased numbers of boilers in the state we also know staff repeatedly work extra hours to complete the scheduled inspections, especially if they are physically in the area for another inspection. In the end, the actual percentage of FTE would be smaller than 35 percent if we were able to calculate all of the overtime hours.

The Insurance Department has identified \$120,000 for the 2011-2013 biennium to be transferred from the Department of Agriculture from the Anhydrous Ammonia Inspection Fund (tonnage tax) to cover the costs of inspections. There is no inspection fee charged for the inspection. If this bill is passed, the Insurance Department would not be opposed to the transfer funds remaining within the Department of Agriculture but would not be able to transfer any portion of an FTE given the added responsibilities and resources required to safely and adequately inspect the boilers in the state.

One other item we noted in this bill that may simply be an oversight is that in striking all of the references to the Chief Boiler Inspector, the bill removes any reference to qualifications of inspectors. In N.D.C.C. §§ 26.1-22.10-3 and 26.1-22.1-08 the requirements for the chief, deputy and special boiler inspectors are detailed. Without a

reference to any standards or certifications, inspectors would likely not have the appropriate pressure vessel and piping knowledge to ensure public safety.

Thank you for your time. I would be happy to answer any questions.

#5 ANALYSIS OF THE ENVIRONMENT AND RANGELAND PROTECTION FUND FOR THE 2009-11 AND 2011-13 BIENNIUMS (REFLECTING THE 2011-13 BIENNIUM EXECUTIVE BUDGET RECOMMENDATIONS)

	2009-11 Biennium		2011-13 Biennium	
Beginning balance		\$1,358,407		\$1,186,698
Add estimated revenues				
Pesticide registration fees	\$3,960,000 ¹		\$3,885,000 ¹	
Weed seed-free forage (2009 HB 1270; 2009 HB 1009; 2011 SB 2009)	10,000 ²		48,922 ²	
Total estimated revenues		3,970,000		3,933,922
Total available				\$5,120,620
Less estimated expenditures and transfers				
Agriculture Commissioner				
Noxious weed control (2009 HB 1009; 2011 SB 2009)	\$1,854,106		\$2,003,582	
Pesticide disposal project (Safe Send) (2009 HB 1009; 2011 SB 2009)	605,699		591,732	
Pesticide programs (2009 HB 1009; 2011 SB 2009)	908,976		1,212,401	
Agriculture in the Classroom project (2009 HB 1009; 2011 SB 2009)	110,000		110,000	
Farmer's market	29,500		29,500	
Endangered species (2009 HB 1009; 2011 SB 2009)	212,196		161,572	
Livestock pollution prevention (2009 HB 1009; 2011 SB 2009)	50,000		50,000	
Crop Protection Product Harmonization and Registration Board ³				
Crop protection product registration, labeling, and grants (2009 HB 1009; 2011 SB 2009)	50,000		50,000	
Minor use pesticide registration				
Weed seed-free forage (2009 HB 1270; 2009 HB 1009; 2011 SB 2009)	48,922 ²		150,000	
State Department of Health	0		48,922 ²	
Ground water testing (2009 SB 2004; 2011 HB 1004)	222,310		222,310	
North Dakota Stockmen's Association environmental services program (2009 SB 2004; 2011 HB 1004)	50,000		50,000	
Total estimated expenditures and transfers		4,141,709		4,680,019
Estimated ending balance		\$1,186,698		\$440,601

¹The 1999 Legislative Assembly approved Senate Bill No. 2009, which included a provision increasing the biennial pesticide registration fee by \$50, from \$300 to \$350, only for the 1999-2001 biennium. The \$350 pesticide registration fee was extended for the 2001-03 biennium (2001 House Bill No. 1009), the 2003-05 biennium (2003 Senate Bill No. 2319), and the 2005-07 biennium (2005 House Bill No. 1009). The \$350 pesticide registration fee was continued, without an expiration date, by 2007 Senate Bill No. 2323. The 2009 Legislative Assembly approved House Bill No. 1009, which deposits all pesticide registration fees in the environment and rangeland protection fund rather than a portion in the general fund.

²House Bill No. 1270 (2009) allows the Agriculture Commissioner to certify forage acreage as being free of certain weeds and weed seed. The appropriation provided to the department for the program is the amount that is anticipated to be received from fees charged for certifications.

³North Dakota Century Code Section 4-35-30, as created by House Bill Nos. 1328 and 1009 (2001), created the Crop Protection Product Harmonization and Registration Board. The duties of the board consist of:

- Identifying and prioritizing crop protection product labeling needs.
- Exploring the extent of authority given to North Dakota under the federal Insecticide, Fungicide, and Rodenticide Act.
- Using the data necessary to enable registration of a use to occur in a timely manner.

2/4/11 HB1321 Jim Gray

- Determining what research, if any, is necessary to fulfill data requirements for responsibilities of the board.
- Requesting the Agriculture Commissioner to pursue specific research funding options from public and private sources.
- Requesting the Agricultural Experiment Station to pursue specific research to coordinate registration efforts.
- Pursuing any opportunities to make more crop protection product options available to agriculture producers in this state through any means the board determines advisable.
- Administering a grant program through which agriculture commodity groups may apply for funds to be used to address issues related to the registration of crop protection products.

The members of the Crop Protection Product Harmonization and Registration Board consist of:

- The Governor or the Governor's designee (chairman).
- The Agriculture Commissioner or the commissioner's designee.
- The chairman of the House Agriculture Committee or the chairman's designee.
- The chairman of the Senate Agriculture Committee or the chairman's designee.
- A member of the House or Senate Agriculture Committee who is not a member of the faction in which the committee chairman is a member, appointed by the Legislative Council chairman.
- A crop protection product dealer in the state appointed by the Governor from a list of three nominees submitted by the North Dakota Agricultural Association.
- A consumer of crop protection products appointed by the Governor from a list of three nominees submitted by the North Dakota Grain Growers Association.
- A consumer of crop protection products appointed by the Governor from a list of three nominees submitted by the North Dakota Oilseed Council.
- A representative of the crop protection product manufacturing industry appointed by the chairman of the Legislative Council (nonvoting).
- The director of the Agricultural Experiment Station (nonvoting).

FUND HISTORY

North Dakota Century Code Section 19-18-02.1, created by 1991 Senate Bill No. 2451, establishes the environment and rangeland protection fund. The fund contains collections from pesticide registration fees. During the 2007-09 biennium, the biennial fee was \$350 per pesticide product registered in the state. Of this amount, \$300 was deposited in the environment and rangeland protection fund and \$50 in the general fund. Pursuant to provisions of 2009 House Bill No. 1009, beginning with the 2009-11 biennium, the entire pesticide registration fee is deposited in the environment and rangeland protection fund rather than a portion in the general fund.

#1

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March 17, 2011

North Dakota 62nd Legislative Assembly
Senate Agricultural Committee

Chairman Flakoll and members of the Senate Agriculture Committee. My name is Joe Killoran. I am an owner of Maple Valley Ag of Tower City. I also serve as a Director and Past President of the North Dakota Agricultural Association. Our membership consists of over four hundred members who are dealers, distributors, and individual service providers of fertilizers, pesticides, seed, and crop production products in our region's agriculture industry.

We have been long time supporters of this type of legislation, HB 1321. We believe it simply makes good sense. The current system of having boiler inspectors from the Insurance Department staff inspect the anhydrous facilities in the state and then turn the report over to staff of the Agriculture Department for any compliance activity certainly lends itself to potential inefficiencies but also may lead to communications breakdown and/or difficulties in compliance uniformity throughout the state anhydrous facilities.

There are over 370 facilities in North Dakota, all of which require full stewardship and safety management given the nature of the product. Anhydrous is a critical, important nutrient option to our farmers and the agriculture economy in general. Given this fact, it is very important a program for total safety in storage and distribution be in place.

This is why we urge you to "put it all under one roof". The plants and locations by law must be inspected every five years. In addition to the inspection function the need also strongly exists for an ongoing education function in the area of risk management planning. Recently many NH₃ dealers were inspected by EPA contractors under authority of the Clean Air Act which has generated serious concerns among the industry as to the methodology used to facilitate compliance. We strongly feel this function should be administered by our state Agriculture Department. EPA would no doubt, readily turn this over to our State in a manner similar to the programs the Department has established for compliance to the Pesticide Law.

Funding. Department staff has determined that funding this legislative request will require two FTE and with related expenses the program cost will amount to approximately \$400,000. Currently, the dealers are assessed 20 cents per ton on all fertilizers sold in N.D. which amounts to over \$400, 000.00 each Biennium. However, these dollars go directly to the general fund. We are simply asking that they be directed to the Agriculture Department for this purpose and benefit the industry that pays the fee: the crop production industry.



#2

Your voice for wheat and barley. www.ndgga.com

**North Dakota Grain Growers Association
Testimony on HB 1321
Senate Agriculture Committee
March 17, 2011**

Mr. Chairman, members of the Senate Agriculture Committee, for the record my name is Terry Weckerly, I am a fourth generation farmer and farm retail business owner from Hurdsfield, North Dakota. I am also President of the North Dakota Grain Growers Association. I appear before you today in support of HB 1321; the bill seeks to unify anhydrous ammonia regulation and enforcement in the North Dakota Department of Agriculture (NDDA). As you are all aware, anhydrous ammonia is a major source of nitrogen fertilizer for use in agriculture in North Dakota.

Mr. Chairman, members of the Senate Agriculture Committee, under current law the North Dakota Insurance Department conducts inspections of anhydrous ammonia facilities in our state. Licensure, safety meetings, outreach and enforcement of anhydrous ammonia regulations fall into the hands of the NDDA. This duplicative situation causes confusion among stakeholders leaving gaps in responsibilities at a time when there is heightened awareness and concerns among the general public. HB 1321 seeks to remedy this potentially dangerous regulatory situation by placing both anhydrous ammonia regulation and enforcement under one roof in the NDDA.

What are the benefits to HB 1321? Consolidation of anhydrous regulation and enforcement:

- Eliminates stakeholder confusion by providing one point of contact which is the NDDA
- Promotes uniform and consistent regulations and enforcement
- Allows NDDA to assist anhydrous ammonia facilities with other regulatory efforts

One very important aspect of this legislation is that it will allow the NDDA to assist facilities of 10,000 pounds of capacity or greater with formulating Risk Management Plans (RMP) which are mandated by the Clean Air Act. Currently RMP compliance and enforcement are administered by the Environmental Protection Agency (EPA).

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Moving anhydrous ammonia regulation and enforcement to NDDA would remove EPA from administering the RMP; this would better serve anhydrous ammonia stakeholders and would provide greater safety to the general public.

As always, there is a concern with the fiscal note on the bill. However, what price is the state willing to pay for better compliance, increased general public safety and security, and decreased EPA involvement? To the North Dakota Grain Growers Association, the benefits to consolidation envisioned by HB 1321 far outweigh the cost.

Mr. Chairman, members of the Senate Agriculture Committee, HB 1321 addresses a glaring need in regulatory environment surrounding anhydrous ammonia fertilizer. The consolidation envisioned by this legislation will strengthen regulation, decrease confusion, and will enhance public safety. The North Dakota Grain Growers Association urges a Do Pass on HB 1321.

COMMISSIONER
DOUG GOEHRING



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**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**
STATE CAPITOL
600 E BOULEVARD AVE DEPT 602
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**Testimony of Jim Gray, Division Director
North Dakota Department of Agriculture
House Bill 1321
Senate Agriculture Committee
Roosevelt Park Room
10:00 am, March 17, 2011**

Chairman Flakoll and members of the Senate Agriculture Committee, I am Jim Gray, the Pesticide, Feed, and Fertilizer Division Director at the North Dakota Department of Agriculture (NDDA). I am here today on behalf of Agriculture Commissioner Doug Goehring to provide supporting information relating to HB 1321, a bill which will amend North Dakota Century Code (NDCC) § 19-20.2 to transfer anhydrous ammonia inspection authority from the North Dakota Insurance Commissioner to the Agriculture Commissioner. The bill also creates authority for the NDDA to enforce Risk Management Plan requirements for anhydrous facilities under the Clean Air Act. I testify in support of the bill, although I stress that the department cannot assume these extra duties without additional resources

Regulation of anhydrous ammonia under N.D.C.C. § 19-20.2 is currently split between two agencies, the North Dakota Department of Agriculture (NDDA) and the North Dakota Insurance Department (NDID). The enclosed flowchart describes the current duties of each agency. The Agriculture Department issues anhydrous ammonia licenses to facilities that have storage capacity of at least 6,000 gallons. Prior to issuing a license, the NDDA must verify that the facility complies with necessary siting and engineering requirements. However, inspection of facilities, both prior to licensing and at least once every five years thereafter, is the responsibility of the ND Insurance Department. The NDDA then has responsibility to issue regulatory actions based on those inspections. The NDDA also has responsibility to conduct anhydrous safety training and outreach.

The NDDA has received feedback from anhydrous ammonia dealers and users expressing frustration and confusion with anhydrous ammonia regulation. We agree that the current split of regulatory responsibilities can be problematic.

First, the current regulatory framework creates confusion and a lack of transparency with the public. For instance, a company applying for a license to the NDDA is soon visited by an inspector from the Insurance Department to verify siting requirements have been met. Then, after receiving an inspection from the Insurance Department, a facility with violations receives an enforcement letter from the NDDA. Furthermore, when the NDDA is contacted by a facility and told that any deficiencies have been corrected, the NDDA can't even verify whether or not the proper repairs have been made. Instead, we have to depend on the Insurance Department to revisit that facility to perform a re-inspection. It is my opinion that anhydrous dealers and users are generally confused who they are to call with questions or concerns.

Second, the frequent exchange of information between the two agencies creates inefficiencies, delays in responding to regulatory issues, and duplication of efforts. For instance, both agencies have their own database of anhydrous facilities, one for licenses and one for inspections.

Third, because both the NDDA and Department of Insurance have only part of the regulatory authority for anhydrous ammonia, neither agency takes true ownership of the program or responsibility for general oversight of the anhydrous ammonia industry. This is especially problematic at a time when high-profile anhydrous releases make the public question whether or not the risks of anhydrous outweigh its benefits to agriculture. To address public concerns and ensure that ND farmers have access to low-cost nitrogen in the form of anhydrous ammonia, it is essential that anhydrous dealers and users operate at a very high level of compliance. It is my opinion that the current model of split regulatory responsibilities will hinder efforts to reach those high levels of compliance, regardless of how hard the two agencies work to communicate and exchange information.

Therefore, we agree with industry efforts to move anhydrous ammonia regulation into one agency in North Dakota, whichever agency that might be. Sections 2, 3, 4, 5, 6 and 7 of the bill

replace all references to the insurance commissioner or chief boiler inspector in the Chapter with the agriculture commissioner.

Sections 8 and 10 in the latest engrossment (11.0602.03001) create a new chapter in the Century Code and provide authority for the agriculture commissioner to assume responsibilities from US EPA relating to anhydrous ammonia Risk Management Plans (RMPs).

Under the Clean Air Act, facilities with at least 10,000 pounds of anhydrous ammonia are required to complete, implement, and periodically update an RMP. These RMP documents include such things as documenting the training of employees, notifying local first responders, and developing response plans in the event of an anhydrous release. EPA has tried for several years to delegate RMP inspection and education responsibilities to the ND Department of Agriculture, ND Insurance Department, and the ND Department of Health. Since the delegated responsibilities would not include federal funding, each agency has declined assuming the additional workload. As a result, EPA is inspecting anhydrous facilities for compliance with the RMP requirements. The results of these inspections are noteworthy. In just the last few months, EPA documented RMP deficiencies in four North Dakota anhydrous facilities. One of these facilities was issued a fine of over \$50,000. The other three each received fines of over \$60,000. The high levels of these fines will likely force some facilities to make the difficult decision of discontinuing their anhydrous business. These costs will also be passed onto the agricultural community. Assuming all or part of the RMP regulatory program within a state agency would improve compliance and ensure a more reasonable response when non-compliance is identified.

The fiscal note prepared by the NDDA for HB 1321 estimates the impact to the Department's budget if HB 1321 passes without an appropriation. There are currently 368 licensed anhydrous ammonia facilities in North Dakota, and N.D.C.C. 19-20.2 requires that these be inspected at least once every five years. As you will see from the enclosed map, these facilities are distributed throughout the state. We estimate that we would require two additional inspectors to assume the anhydrous ammonia inspection and RMP enforcement responsibilities. We could also utilize the two inspectors for related duties such as gathering fertilizer samples to ensure compliance with state fertilizer law and expanding anhydrous ammonia outreach relating to safety and compliance.

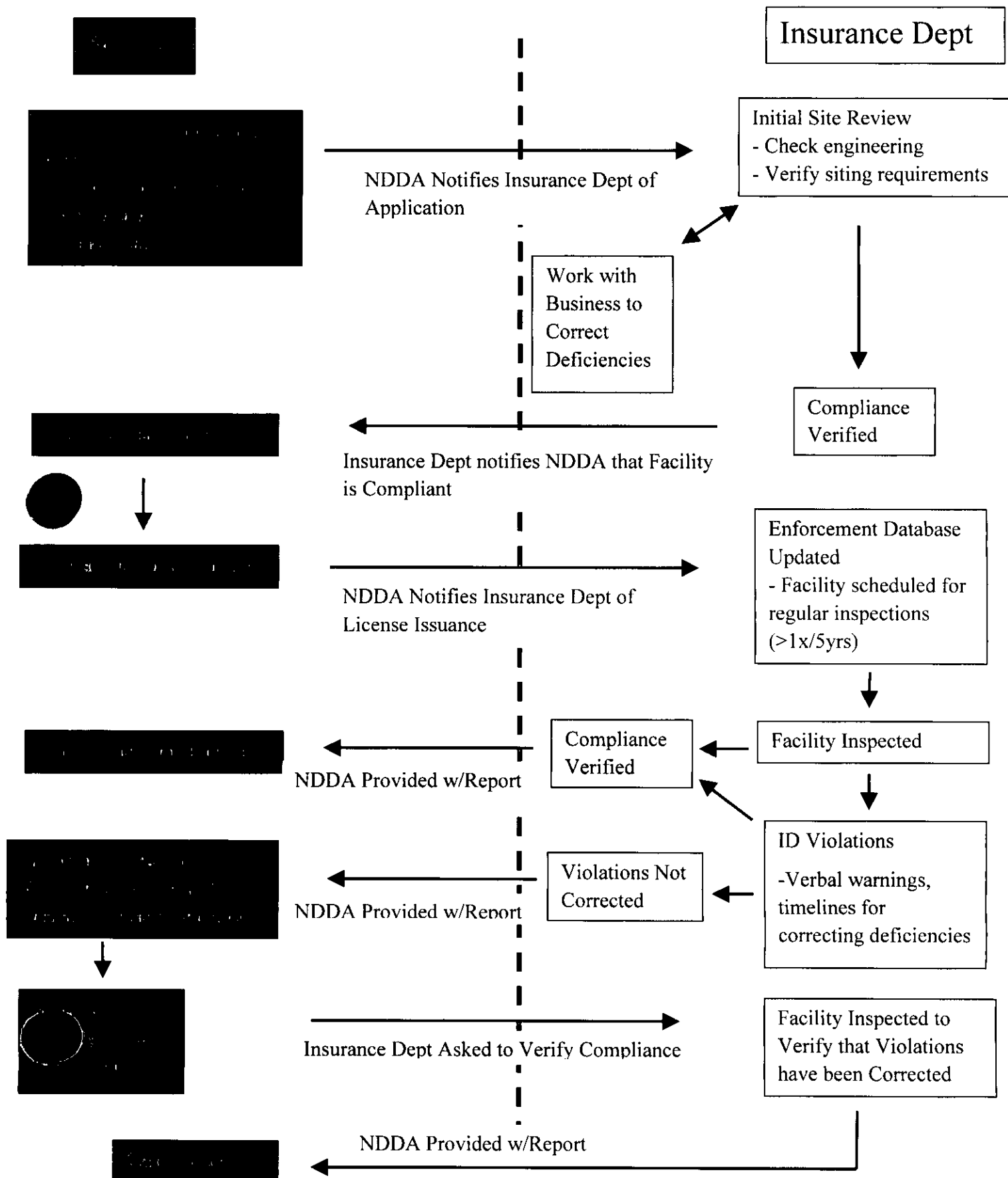
Along with an estimated salary and benefits appropriation of \$327,536 to cover these two inspectors, we would require an operating budget of \$82,792 for a total appropriation of \$410,328. More information on this budget estimate is included with this testimony.

It is my understanding that the appropriation for HB 1321 will be addressed when the NDDA's budget bill is finalized. Two sections of HB 1321 create a funding mechanism for an appropriation by moving annual fertilizer tonnage fees into the Environment and Rangeland Protection (EARP) fund. The enclosed table indicates that NDDA collects approximately \$579,386 in fertilizer tonnage fees each biennium; \$101,178 of those fees come from anhydrous ammonia sales, while the remaining \$478,208 comes from fertilizers other than anhydrous. Currently, the anhydrous ammonia tonnage fees are deposited to a special fund called the anhydrous ammonia storage facility inspection fund. The remaining tonnage fees are deposited to the General Fund. Sections 1 and 9 of the third engrossment of the bill direct all of the fertilizer tonnage fees (anhydrous and non-anhydrous) to be deposited to the EARP fund.

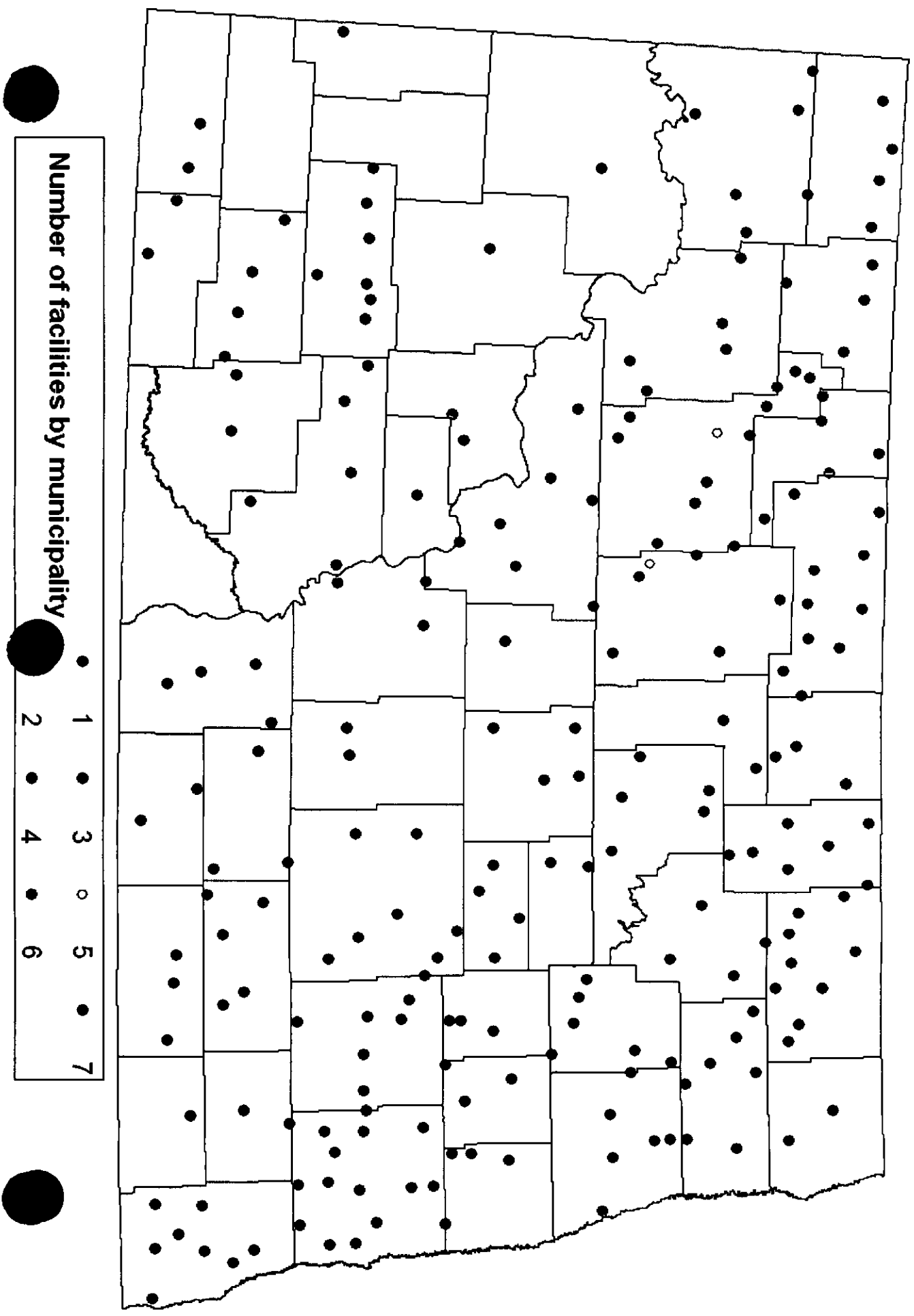
In summary, the ND Department agrees with the concept of moving anhydrous ammonia regulatory authority into one state agency. If the necessary resources are appropriated to adequately administer an anhydrous ammonia inspection program, the ND Department of Agriculture would offer its firm support of HB 1321. However, if these resources are not appropriated, the NDDA would be unable to assume the increased responsibilities created by the bill.

Chairman Flakoll and committee members, I thank you for the opportunity to provide information on anhydrous ammonia regulation in North Dakota. I would be happy to answer any questions you may have.

Distribution of Anhydrous Ammonia Regulatory Duties Under N.D.C.C. 19-20.2



North Dakota Licensed Anhydrous Ammonia Facilities



Resource Needs for ND Department of Agriculture (NDDA) to Absorb Anhydrous Ammonia Inspection Duties

Assumptions: NDDA would assume anhydrous ammonia inspection responsibilities under N.D.C.C. 19-20.2 from the ND Insurance Department. To create efficiencies and better serve the regulated public, inspectors would also verify compliance with anhydrous ammonia risk management plans (RMPs) from EPA under the Clean Air Act and gather fertilizer samples under the authority in N.D.C.C. 19-20.1.

Staffing Needs: Two inspectors (Grade 11)

Salary:

Salary + benefits for each inspector:	\$163,768
Salary plus benefits for two inspectors:	\$327,536

Operating:

Mileage: \$51,600

- Each inspector 30,000 miles/yr or 60,000 miles/biennium
- 120,000 total miles X \$0.43/mi = \$51,600

Lodging: \$13,440

- Each inspector four hotel stays per month (48 stays/year or 96 stays/biennium)
- 192 total hotel stays X \$70 per night = \$13,440

Meals: \$9,600

- \$200/month X 24 months X 2 inspectors = \$9,600

Information Technology: \$5,152

- \$2,000 for computer, monitor, etc X 2 = \$4,000
- Cell phone: \$24/month X 24 months X 2 inspectors = \$1,152

Training, safety equipment = \$3,000

- Includes safety gear, annual training to keep boiler certification

Totals:

Salary + Benefits	\$327,536
Operating	\$82,792
Mileage: \$51,600	
Lodging: \$13,440	
Meals: \$9,600	
IT: \$5,152	
Training, Equipment: \$3,000	
Total	\$410,328

ND fertilizer tonnage fees, 2000-2009.

Year	Non-Anhydrous Tonnage Fees*	Anhydrous Ammonia Tonnage Fees**	Total Fertilizer Tonnage Fees
2000	\$216,636.20	\$44,426.80	\$261,063.00
2001	\$234,005.20	\$44,722.80	\$278,728.00
2002	\$216,911.00	\$54,453.00	\$271,364.00
2003	\$241,125.60	\$46,977.40	\$288,103.00
2004	\$264,559.40	\$48,413.60	\$312,973.00
2005	\$273,429.80	\$50,787.20	\$324,217.00
2006	\$217,305.00	\$55,255.00	\$272,560.00
2007	\$220,992.00	\$53,948.00	\$274,940.00
2008	\$267,778.20	\$63,554.80	\$331,333.00
2009	\$238,298.00	\$43,356.00	\$281,654.00
Annual Ave:	\$239,104.04	\$50,589.46	\$289,693.50
Estimated Amt per Biennium	\$478,208.00	\$101,178.00	\$579,386.00

*Currently deposited to General Fund

**Currently deposited to Anhydrous Ammonia Fund under NDCC 19-20.2-08.1

#4

HOUSE BILL NO. 1321

Presented by: Rebecca L. Ternes
Deputy Commissioner
North Dakota Insurance Department

Before: Senate Agriculture Committee
Senator Tim Flakoll, Chairman

Date: March 17, 2011

TESTIMONY

Good morning, Chairman Flakoll and members of the committee. My name is Rebecca Ternes and I am the Deputy Insurance Commissioner. I appear before you in a neutral position on House Bill No. 1321 to provide some information on the anhydrous inspection program in the Insurance Department.

The purpose of the bill is to move the anhydrous ammonia inspection duties from the Insurance Department to the Department of Agriculture. We understand the industry's concerns related to having two regulatory entities involved in the inspection of tanks and do not disagree. The inspections are currently performed by staff in our Special Funds Division. These same staff members spend the bulk of their time on boiler inspections in the state and have special training and certifications from the National Board of Boiler and Pressure Vessel Inspectors.

The anhydrous inspection program came to the Insurance Department in 1995. There are approximately 385 storage facilities in the state. On average, 20 percent of these facilities are inspected each year. Facility inspections include the inspection of main containers, piping, and nurse tanks. The Insurance Department employs three full-time inspectors in Bismarck and Fargo that primarily travel the state performing inspections. In 2010, the inspectors completed 98 anhydrous inspections and 2,657 boiler inspections. While our anhydrous inspection numbers have remained relatively stable,


the number of boilers requiring inspection in the state has risen since the program's inception and most recently, we are seeing a large increase in the number of oil drilling boilers. In 2001, there were 15 oil drilling boilers compared to 180 in 2010. We expect this number to continue to rise.

In 1995 when the Insurance Department was given anhydrous inspection duties, the Department asked to reduce the frequency of its boiler inspections in certain buildings and change the schedule for internal boiler inspections to be able to absorb the additional duties. This has caused some challenges in getting the work completed and ensuring inspections are done frequently enough.

The Department added up the hours the inspectors spent on anhydrous inspections in 2010 and determined the sum equaled 35 percent of one employee's full-time hours for a year. However, because of the increased numbers of boilers in the state we also know staff repeatedly work extra hours to complete the scheduled inspections, especially if they are physically in the area for another inspection. In the end, the actual percentage of FTE would be smaller than 35 percent if we were able to calculate all of the overtime hours.

The Insurance Department has identified \$120,000 for the 2011-2013 biennium to be transferred from the Department of Agriculture from the Anhydrous Ammonia Inspection Fund (tonnage tax) to cover the costs of inspections. There is no inspection fee charged for the inspection. If this bill is passed, the Insurance Department would not be opposed to the transfer funds remaining within the Department of Agriculture but would not be able to transfer any portion of an FTE given the added responsibilities and resources required to safely and adequately inspect the boilers in the state.

One other item we noted in this bill that may simply be an oversight is that in striking all of the references to the Chief Boiler Inspector, the bill removes any reference to qualifications of inspectors. In N.D.C.C. §§ 26.1-22.10-3 and 26.1-22.1-08 the requirements for the chief, deputy and special boiler inspectors are detailed. Without a



reference to any standards or certifications, inspectors would likely not have the appropriate pressure vessel and piping knowledge to ensure public safety.

Thank you for your time. I would be happy to answer any questions.

Fertilizer Tonnage Tax: 2000-2009

Year	Non-Anhydrous Tonnage Fees*	Anhydrous Ammonia Tonnage Fees**	Total Fertilizer Tonnage Fees
2000	\$216,636.20	\$44,426.80	\$261,063.00
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Annual Ave:	\$239,104.04	\$50,589.46	\$289,693.50
Per Biennium	\$478,208 *	\$101,178 **	\$579,386.00

Proposed EARP Fund Deposits

NDCC Sections Amended	Type of Fee	Deposits	Transfer Legislation
19-20.1-03 & 19-20.1-03.1	Fertilizer Registration & License	\$ 306,792	SB 2009
19-20.1-06 & 19-20.2-08.1	Inspections Fees (tonnage)	\$ 579,386	HB 1321
	TOTAL	\$ 886,178	

Fertilizer Fee Description

Fee Description	NDCC Section	Fee Amount	Time Period
Fertilizer Registration	Section 19-20.1-03	\$50/registration	Two-year registration
Fertilizer Distribution License	Section 19-20.1-03.1	\$100/license	Two-year license
Inspection Fees	Section 19-20.1-06	\$.20/ton	Annual
NH3 Storage Facility License	Section 19-20.2-04	\$25/storage & \$100/retail site	One-time fee*

* Currently Deposited to General Fund

** Currently Deposited to Anhydrous Ammonia Storage Facility Inspection Fund

HOUSE BILL NO. 1321

Presented by: Rebecca L. Ternes
Deputy Commissioner
North Dakota Insurance Department

Before: Senate Appropriations Committee
Senator Ray Holmberg, Chairman

Date: March 29, 2011

TESTIMONY

Good morning, Chairman Holmberg and members of the committee. My name is Rebecca Ternes and I am the Deputy Insurance Commissioner. I appear before you in a neutral position on House Bill No. 1321 to provide some information on the anhydrous inspection program in the Insurance Department.

The purpose of the bill is to move the anhydrous ammonia inspection duties from the Insurance Department to the Department of Agriculture and to create a new risk management function within the Department of Agriculture. We understand the industry's concerns related to having two regulatory entities involved in the inspection of tanks and do not disagree. The inspections are currently performed by staff in our Special Funds Division. These same staff members spend the bulk of their time on boiler inspections in the state and have special training and certifications from the National Board of Boiler and Pressure Vessel Inspectors.

The anhydrous inspection program came to the Insurance Department in 1995. Since that date there have been no incidents from anhydrous storage containers due to inspections. There are approximately 385 storage facilities in the state. On average, 20 percent of these facilities are inspected each year. Facility inspections include the inspection of main containers, piping, and nurse tanks. The Insurance Department employs three full-time inspectors in Bismarck and Fargo that primarily travel the state

performing inspections. In 2010, the inspectors completed 98 anhydrous inspections and 2,657 boiler inspections. While our anhydrous inspection numbers have remained relatively stable, the number of boilers requiring inspection in the state has risen since the program's inception and most recently, we are seeing a large increase in the number of oil drilling boilers. In 2001, there were 15 oil drilling boilers compared to 180 in 2010. We expect this number to continue to rise.

In 1995 when the Insurance Department was given anhydrous inspection duties, the Department asked to reduce the frequency of its boiler inspections in certain buildings and change the schedule for internal boiler inspections to be able to absorb the additional duties. This has caused some challenges in getting the boiler inspection work completed and ensuring inspections are done frequently enough.

The Department added up the hours the inspectors spent on anhydrous inspections in 2010 and determined the sum equaled 35 percent of one employee's full-time hours for a year. However, because of the increased numbers of boilers in the state we also know staff repeatedly work extra hours to complete the scheduled inspections, especially if they are physically in the area for another inspection. In the end, the actual percentage of FTE would be smaller than 35 percent if we were able to calculate all of the overtime hours.

The Insurance Department has identified \$120,000 for the 2011-2013 biennium to be transferred from the Department of Agriculture from the Anhydrous Ammonia Inspection Fund (tonnage tax) to cover the costs of inspections. There is no inspection fee charged for the inspection. If this bill is passed, the Insurance Department would not be opposed to the funds remaining within the Department of Agriculture in the ERP Fund but would not be able to transfer any portion of an FTE given the added responsibilities and resources required to safely and adequately inspect the boilers in the state.

One other item we noted in this bill is that in striking all of the references to the Chief Boiler Inspector, the bill removes any reference to qualifications of inspectors. In

N.D.C.C. §§ 26.1-22.10-3 and 26.1-22.1-08 the requirements for the chief, deputy and special boiler inspectors are detailed. Without a reference to any standards or certifications, inspectors are not required to have the same pressure vessel and piping knowledge as current inspectors.

Thank you for your time. I would be happy to answer any questions.



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**North Dakota Grain Growers Association
Testimony on HB 1321
Senate Appropriations Committee
March 29, 2011**

Mr. Chairman, members of the Senate Appropriations Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association. I appear before you today in support of HB 1321; the bill seeks to unify anhydrous ammonia regulation and enforcement in the North Dakota Department of Agriculture (NDDA). As you are all aware, anhydrous ammonia is a major source of nitrogen fertilizer for use in agriculture in North Dakota.

Mr. Chairman, members of the Committee, under current law the North Dakota Insurance Department conducts inspections of anhydrous ammonia facilities in our state. Licensure, safety meetings, outreach and enforcement of anhydrous ammonia regulations fall into the hands of the NDDA. This duplicative situation causes confusion among stakeholders leaving gaps in responsibilities at a time when there is heightened awareness and concerns among the general public. HB 1321 seeks to remedy this potentially dangerous regulatory situation by placing both anhydrous ammonia regulation and enforcement under one roof in the NDDA.

What are the benefits to HB 1321? Consolidation of anhydrous regulation and enforcement:

- Eliminates stakeholder confusion by providing one point of contact which is the NDDA
- Promotes uniform and consistent regulations and enforcement
- Allows NDDA to assist anhydrous ammonia facilities with other regulatory efforts

One very important aspect of this legislation is that it will allow the NDDA to assist facilities of 10,000 pounds of capacity or greater with formulating Risk Management Plans (RMP) which are mandated by the Clean Air Act. Currently RMP compliance and enforcement are administered by the Environmental Protection Agency (EPA).

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

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Moving anhydrous ammonia regulation and enforcement to NDAA would remove EPA from administering the RMP; this would better serve anhydrous ammonia stakeholders and would provide greater safety to the general public.

As always, there is a concern with the fiscal note on the bill. However, what price is the state willing to pay for better compliance, increased general public safety and security, and decreased EPA involvement? To the North Dakota Grain Growers Association, the benefits to consolidation envisioned by HB 1321 far outweigh the cost.

Mr. Chairman, members of the Senate Appropriations Committee, HB 1321 addresses a need in the regulatory environment surrounding anhydrous ammonia fertilizer. The consolidation envisioned by this legislation will strengthen regulation, decrease confusion, and will enhance public safety. The North Dakota Grain Growers Association urges a Do Pass on HB 1321.