

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### AGRICULTURE COMMITTEE

Wednesday, October 31, 2012  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Robert Erbele, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Robert Erbele, Bill Bowman, Tim Flakoll, Oley Larsen, Curtis Olafson, Donald Schaible, Gerald Uglem; Representatives Tom Conklin, Dennis Johnson, Joyce Kingsbury, Phillip Mueller, Wayne Trottier, John D. Wall

**Members absent:** Senators Larry Luick, Philip M. Murphy; Representative Michael D. Brandenburg

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

**It was moved by Senator Flakoll, seconded by Representative Johnson, and carried on a voice vote that the minutes of the August 1, 2012, meeting be approved as distributed.**

#### **BRANDING - ESTRAYS - LIVESTOCK AND WOOL DEALERS**

Chairman Erbele asked the committee to consider the bill draft [[13.0058.02000](#)] relating to livestock branding, estrays, and the licensing of livestock dealers and wool dealers. He said Ms. Julie Ellingson, Executive Director, and Mr. Stan Misek, Chief Brand Inspector, North Dakota Stockmen's Association, are available to answer any questions the committee might have regarding this bill draft.

##### **Section 4.1-72-01**

Chairman Erbele said current law authorizes the North Dakota Stockmen's Association to provide inspection services for the purpose of determining or verifying ownership of all cattle, horses, and mules that are shipped or consigned to a livestock auction market, a buying station, or a packing plant. He said because brand inspections are statutorily required for other purposes as well, the committee asked that verbiage be added to reference "other purposes." He said this was done in subsection 2.

##### **Section 4.1-72-04**

Chairman Erbele said North Dakota Stockmen's Association personnel indicated that an individual who is hired as a Chief Brand Inspector or as a Deputy Brand Inspector might need some time within which to complete the classes and examinations necessary to become a licensed peace officer. He said subsection 2 was added to address this concern.

##### **Section 4.1-72-05**

Chairman Erbele said North Dakota Stockmen's Association personnel requested retention of current language referencing their role in any federally sponsored animal identification program. He said this has been accomplished in subsection 1. He said subsection 2 authorizes the association's participation in any other federally sponsored program pertaining to livestock.

##### **Section 4.1-73-01**

Chairman Erbele said North Dakota Stockmen's Association personnel asked that this section be clarified to accommodate the use of freeze brands on equines.

##### **Section 4.1-73-03**

Chairman Erbele said at the request of North Dakota Stockmen's Association personnel, a forward and a backward slash were added to the statutory list of acceptable symbols. He said the change, which is found in subdivision b(7)(k) of subsection 1, reflects current practice.

##### **Section 4.1-73-07**

Chairman Erbele said at the request of North Dakota Stockmen's Association personnel, the reference to tattoos was removed. A tattoo is not considered to be a "brand" for purposes of this chapter.

##### **Section 4.1-73-25**

Chairman Erbele said because current law was not clear regarding the confidentiality of slaughter records, the committee asked that language comparable to that found in current Section 36-09-28 and proposed Section 4.1-72-06 be included in this section.

##### **Section 4.1-74-01**

Chairman Erbele said because this section pertains to registered livestock and not commercial livestock, the committee asked that it be relocated to a more suitable chapter within the North Dakota Century Code.

Senator Olafson said he believes that this concept belongs within the purview of the various registry groups and not in the North Dakota Century Code.

### Section 4.1-75-08

Chairman Erbele said the committee asked that verbiage be added to ensure that an individual would not be liable for any injury, damage, or economic loss stemming from an attempt to take possession of the estray. He said that has been done in subsection 2.

In response to a question from Senator Flakoll, Ms. Ellingson said the Brand Board and the Board of the North Dakota Stockmen's Association have been kept apprised of the rewrite's progress. She said the bill draft was presented at the association's annual meeting and there was an explanation regarding the changes that are being recommended. She said the North Dakota Stockmen's Association will be prepared to support the bill in the 2013 session.

In response to a question from Senator Olafson, Ms. Ellingson said the federal animal traceability program is still under review and no movement is expected until after the election.

Chairman Erbele said the next portion of the bill draft focuses on livestock and wool dealers. He said Mr. Wayne Carlson, Livestock Development Director, Department of Agriculture, will be available to answer any questions the committee might have regarding this bill draft.

### Section 4.1-83-10

Chairman Erbele said the committee directed that the section include "any other just and good cause" as a ground for the denial of a livestock dealer's license. He said because it is the policy of the Agriculture Commissioner to grant a hearing if requested in the case of a license denial, the committee also directed that the provision for a hearing be included in this section. He said that has been done in subsection 3.

### Section 4.1-83-15

Chairman Erbele said the committee directed that the section include "any other just and good cause" as a ground for the denial of an agent's license. He said because the committee directed that a provision be made for a hearing within 30 days if the Agriculture Commissioner denied a livestock dealer's license, that same hearing provision was included in subsection 2 of this section. He said the committee consents to this addition.

### Section 4.1-83-30

Chairman Erbele said this section, like current law, imposes a penalty for the violation of this chapter. He said the committee wanted to further consider whether the penalty should apply only to a "willful" violation. He said perhaps the Attorney General's staff might wish to make a recommendation regarding the culpability language during the legislative session.

### Section 4.1-88-09

Chairman Erbele said the addition of any other just and good cause as a ground for license denial parallels proposed Section 4.1-83-10. He said the

hearing provision in the case of a license denial was added in the same manner as for livestock dealers.

### Section 4.1-88-14

Chairman Erbele said the addition of any other just and good cause as a ground for license denial parallels proposed Section 4.1-83-09. He said the hearing provision in the case of a license denial was added in the same manner as for livestock dealers.

### Section 4.1-88-29

Chairman Erbele said this section, like current law, imposes a penalty for the violation of this chapter. He said the committee wanted to further consider whether the penalty should apply only to a "willful" violation. He said perhaps the Attorney General's staff might wish to make a recommendation regarding the culpability language during the legislative session.

### Section 7

Chairman Erbele said this section provides that the Legislative Management shall continue its study of North Dakota Century Code provisions that relate to agriculture for the purpose of recommending changes to laws that are found to be irrelevant, inconsistent, illogically arranged, or unclear in their intent and direction.

**It was moved by Senator Flakoll, seconded by Representative Mueller, and carried on a roll call vote that the bill draft [13.0058.02000] be approved and recommended to the Legislative Management.** Senators Erbele, Bowman, Flakoll, Larsen, Olafson, Schaible, and Uglem and Representatives Conklin, Johnson, Kingsbury, Mueller, Trottier, and Wall voted "aye." No negative votes were cast.

### SEED POTATO CERTIFICATION AND SEED POTATO CONTROL AREAS

Chairman Erbele asked the committee to consider a bill draft [[13.0151.01000](#)] relating to seed potato certification and seed potato control areas. He said Mr. Ken Bertsch, Seed Commissioner, and Mr. Steve Sebesta, Deputy Seed Commissioner, are available to answer any questions the committee might have regarding this bill draft.

Chairman Erbele said the Seed Commissioner is responsible for at least three different chapters-- 4.1-53, which pertains to seed certification; 4.1-55, which pertains to seed potato certification; and 4.1-57, which pertains to potato dealers. He said the committee determined there are a number of generic issues that are applicable to all of the chapters that the Seed Commissioner administers. He said the sections do not, however, clearly fit solely within one chapter and likewise, do not need to be repeated in every chapter. He said these include the location of the Seed Department, reference to its official seal, the operation of the Seed Commission, the powers and duties of the Seed Commissioner, and the Seed Department's continuing appropriation. He said this

committee gave permission to consolidate all of these similar provisions within a newly created chapter, designated as Chapter 4.1-52. He said this is the same thing that was done with the North Dakota Stockmen's Association in bill draft 13.00058.02000. He said most of the sections have been relocated in their original form. He said the exceptions are addressed in the notes.

#### **Section 4.1-52-07**

Chairman Erbele said subsections 1 through 3 consist of language relocated from Section 4.1-53-08. He said subsection 4 was inserted at the committee's request to clarify that various promotional and marketing activities are within the purview of the Seed Commission. He said under Section 4-10-02, the Seed Commissioner is to provide the means and direct the promotion of quality and assist in the promotion and advertising of seed potatoes. Historically, he said, the Seed Commissioner has promoted certified seed in general and this committee wanted to ensure that there was no question as to the commission's authority in this regard.

#### **Section 4.1-52-09**

Chairman Erbele said subsection 3 contains changes. He said under current law, the Seed Commissioner is authorized to enter upon real property and access any structure and personal property, at any time, to inspect, sample, and test seed for compliance with this chapter and to inspect records for compliance with this chapter. He said the rewrite references the inspection, sampling, and testing of seeds, potatoes, including seed potatoes, and other commodities.

#### **Section 4.1-52-10**

Chairman Erbele said subsection 11 contains changes. He said under current Sections 4.1-53-11 and 4.1-57-21, the Seed Commissioner is mandated to do all things necessary to enforce this chapter and the rules implementing this chapter. He said the rewrite references the multiple chapters under the Seed Commissioner's authority.

#### **Section 4.1-52-11**

Chairman Erbele said subsections 1 and 2 contain changes from Section 4.1-53-62. He said under current law, the Seed Commissioner is directed to forward all money received under this chapter to the State Treasurer for deposit in a special fund known as the Seed Department fund. He said all money in the Seed Department fund are appropriated on a continuing basis to the Seed Department to carry out "this" chapter. He said the rewrite references the multiple chapters under the Seed Commissioner's authority.

Chairman Erbele said subsection 1 also provides that the money is appropriated to carry out "statutory and regulatory obligations." He said the reference to

"regulatory obligations" is inserted because the prior section authorizes the Seed Commissioner to "enforce the chapters over which the commissioner has authority and the rules implementing those chapters." He said that phraseology is in current law.

Chairman Erbele said the Seed Commissioner also is directed to approve all expenditures made pursuant to "this" chapter. He said the rewrite references the multiple chapters under the Seed Commissioner's authority.

Chairman Erbele said current Section 4.1-57-20 provides that the Seed Commissioner shall forward all money received from the collection of fees and other charges under this chapter to the State Treasurer for deposit in a special fund known as the Seed Department fund. He said all money in the Seed Department fund is appropriated on a continuing basis to the Seed Department to carry out statutory directives. He said the rewrite references the multiple chapters under the Seed Commissioner's authority.

#### **Section 4.1-55-01**

Committee Counsel said "inspection" is defined as the examination of a random sample of potato plants or potato tubers in accordance with rules of the Seed Department or requirements of the United States Department of Agriculture Food Safety and Inspection Service. She said the genesis of this section is the current law's reference to the United States Department of Agriculture's Food Safety and Quality Service. She said Seed Department personnel indicated that the sub-agency reference is not necessary and should be removed.

Mr. Bertsch said the Seed Department does work with the Food Safety and Quality Service. He said the department works even more with the United States Department of Agriculture Animal and Plant Health Inspection Service. He said it would be appropriate to reference only the United States Department of Agriculture. He said that way there is no need to make a statutory change whenever there is reorganization within the Department of Agriculture.

**It was moved by Senator Flakoll, seconded by Senator Schaible, and carried on a roll call vote that the reference to the "Food Safety and Inspection Service" be deleted.** Senators Erbele, Bowman, Flakoll, Larsen, Olafson, Schaible, and Uglem and Representatives Conklin, Johnson, Kingsbury, Mueller, Trottier, and Wall voted "aye." No negative votes were cast.

#### **Section 4.1-55-02**

Chairman Erbele said current law provides that the "commissioner shall establish potato and other produce grades for the purpose of making inspection and otherwise providing for the proper handling and marketing of the agricultural commodities defined in this chapter under the classifications of 'potatoes' and 'other produce', and shall promulgate rules and regulations prohibiting or otherwise regulating the

importation or dissemination within the state of particular detrimental insects and diseases." He said subsection 1 of the proposed language parallels current Section 4.1-53-42, which directs the Seed Commissioner to establish a seed certification system for the state. He said subsection 2, as proposed, would require the Seed Commissioner to provide for grade inspections, as opposed to establishing grades.

Chairman Erbele said current law also requires the promulgation of "rules and regulations prohibiting or otherwise regulating the importation or dissemination within the state of particular detrimental insects and diseases." He said if taken literally, this is an impossible requirement. He said the reference was omitted from the rewrite because the whole purpose of a certification system is to set standards that are designed to control the spread of insects and disease.

#### **Section 4.1-55-03**

Chairman Erbele said current law states "[u]nclassified lots shall include all potatoes not meeting the requirements of any of the foregoing grades." He said it is optional, however, to use the unclassified labeling on any lot of potatoes. He said because of subsection 1(b), which authorizes the Seed Commissioner to utilize additional designations, the cited language has been removed.

#### **Section 4.1-55-04**

Chairman Erbele said current law provides that the labeling requirements do not apply to seed potatoes that are being shipped for processing or repacking. He said in the interest of consistency, the rewrite uses the language of Section 4.1-53-61 and provides that the requirements do not apply to seed potatoes that are not intended for planting purposes.

#### **Section 4.1-55-05**

Chairman Erbele said paragraph 3 references a particular set of circumstances under which a producer can be authorized by the Seed Commissioner to plant seed potatoes that are not certified.

#### **Section 4.1-55-10**

Chairman Erbele said current law references potatoes "grown or originating in this state." He said the reference to origination is redundant and therefore omitted.

#### **Section 4.1-55-12**

Chairman Erbele said under current law, a warranty is not made by the Seed Commission, the Seed Department, the Seed Commissioner, certified seed potato producers, or wholesale potato dealers. He said because wholesale potato dealers have their own chapter, the reference to them has been removed from this section and recreated within Chapter 4.1-57. He said that can be found in Section 4 of this bill draft.

#### **Section 4.1-55-13**

Chairman Erbele said the language of this section was initially located in the chapter pertaining to agricultural seed. He said because it cross-referenced Chapter 4-10, the language was inserted into Chapter 4-10 during the 2009-10 interim. He said the committee is asked to review this section to ensure that the language is appropriate to the seed potato certification process.

Mr. Bertsch said the language is appropriate to the seed potato certification process.

#### **Section 4.1-55-14**

Chairman Erbele said current law provides that the vendor of seed may not alter the label or certificate furnished by [an] "inspector." He said although a grade inspection certificate may be furnished by an inspector, it is in fact issued by the Seed Commissioner. He said this change is reflected in subsection 2. He said the committee may wish to determine whether the prohibition set forth in subsection 2 should be limited to seed vendors or extended to other persons.

Mr. Bertsch said the concept behind this section is that once a label is issued, it cannot be altered.

Chairman Erbele said Seed Department personnel may wish to determine whether the language needs to be broadened and, if so, consider a bill to do so during the legislative session.

#### **Section 4.1-55-15**

Chairman Erbele said current law provides that the seed potatoes may be held until "they are labeled or marked with the grade or essential details as indicated by the official report or certificate of the commissioner . . . ." He said from an operational perspective, mislabeled seed potatoes must be graded or reconditioned to meet the claims on their label or their label must be changed. He said the rewrite reflects this.

#### **Section 4.1-56-11**

Chairman Erbele said the next portion of the bill draft focuses on seed potato control areas. He said current law authorizes the Seed Commissioner to adopt rules governing the topics set forth in this section. He said because the topics are applicable only to the operation of one particular seed control area, it is suggested that the Seed Commissioner have the authority to issue appropriate orders. He said the Seed Commissioner still has general rulemaking authority under Chapter 28-32.

#### **Section 4.1-57-18.1**

Chairman Erbele said under current law, a warranty is not made by the Seed Commission, the Seed Department, the Seed Commissioner, certified seed potato producers, or wholesale potato dealers. He said because wholesale potato dealers have their own chapter, the reference to them has been removed

from proposed Chapter 4.1-55 and recreated within Chapter 4.1-57.

**It was moved by Representative Kingsbury, seconded by Representative Wall, and carried on a roll call vote that the bill draft [13.0151.01000], as amended, be approved and recommended to the Legislative Management.** Senators Erbele, Bowman, Flakoll, Larsen, Olafson, Schaible, and Uglem and Representatives Conklin, Johnson, Kingsbury, Mueller, Trottier, and Wall voted "aye." No negative votes were cast.

### STATUTORY REPORTS

Chairman Erbele said in accordance with Section 4-05.1-19, the committee received a written report ([Appendix B](#)) from the State Board of Agricultural Research and Education. He said because the Advisory Committee on Sustainable Agriculture did not meet, no report was prepared, as required by Section 4-01-24.

Representative Mueller said he is a member of the Committee on Sustainable Agriculture. He said the committee has no mission or purpose and should be removed from the North Dakota Century Code.

### FINAL MOTIONS

**It was moved by Senator Bowman, seconded by Senator Uglem, and carried on a voice vote that the Chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and present the report and the recommended bill drafts to the Legislative Management.**

Chairman Erbele thanked Representatives Kingsbury and Mueller and Senators Uglem and Olafson for their work on the interim committee and for their service to the state of North Dakota. He said working with them has been a privilege and they will be missed.

**It was moved by Senator Bowman, seconded by Representative Johnson, and carried on a voice vote that the committee be adjourned sine die.** No further business appearing, Chairman Erbele adjourned the meeting sine die.

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L. Anita Thomas  
Committee Counsel

ATTACH:2