

MULTISTATE AGRICULTURAL MARKETING COMMISSION - BACKGROUND MEMORANDUM

Senate Bill No. 2356 (1999) (attached as an appendix) directs the Legislative Council to study the feasibility and desirability of forming a multistate agricultural marketing commission for the purpose of marketing agricultural products on behalf of agriculture producers. In particular, this bill directs the study of which entities set and control the prices of specific agricultural products, which trade policies assist or hinder the marketing of agricultural commodities, which federal and state laws assist or hinder the marketing of agricultural commodities, and which federal and state laws assist or hinder the use of agricultural contracts. In addition, the bill directs the study on how this state can work with federal agencies and federal representatives to ensure the best possible climate for the marketing of agricultural products on behalf of this state's producers. This memorandum provides a history and inventory of state and federal programs and agencies with marketing duties. In addition, it provides an overview of some major marketing issues.

HISTORY

1999 Legislative Action

As introduced, Senate Bill No. 2356 would have required the Agriculture Commissioner to organize the formation of a multistate agricultural marketing commission. The duties of the commission in the bill as introduced were the same as the study areas required by this study. The multistate agricultural marketing commission was to be made up of member states represented by members appointed by the Governor of each member state. The commission was to be made up of farmers and legislators with state agriculture commissioners serving in an ex officio capacity. The bill initially appropriated \$1 million for organizing and operating the commission.

There were many other bills and resolutions introduced during the 56th Legislative Assembly which related to the marketing of agricultural products. The following are examples of these bills, all of which failed to pass. As introduced, House Bill No. 1419 would have provided a number of appropriations for the marketing of agricultural products, including \$250,000 for the expansion of the mission of the Northern Great Plains Research Center in Mandan to include value-added animal agricultural production and dry land agricultural production and \$20,000 for developing and maintaining an Internet marketing site for North Dakota products. Senate Bill No. 2427 would have provided authority to the Industrial

Commission to establish a voluntary durum wheat marketing pool. Senate Bill No. 2416 would have provided an appropriation to study the feasibility of forming a wheat marketing board.

As passed, House Concurrent Resolution No. 3009 urges Congress to carefully review the planned merger between Cargill, Inc., and Continental Grain Company and to take any action to minimize potential adverse effects on farmers, ranchers, and consumers. As passed, Senate Concurrent Resolution No. 4021 urges Congress to renegotiate the North American Free Trade Agreement. As passed, House Concurrent Resolution No. 3037 urges Congress to review the North American Free Trade Agreement and the General Agreement on Tariffs and Trade. As passed, House Concurrent Resolution No. 3033 urges Congress to raise the cap on marketing loans available to farmers and to adopt a cost-of-production index adjustment mechanism. As passed, Senate Concurrent Resolution No. 4018 urges Congress to address concentration and consolidation in the meat and grain industries so farmers and ranchers can compete fairly and profitably.

There were a number of studies that passed which related to the marketing of agricultural products, but were not prioritized by the Legislative Council. House Concurrent Resolution No. 3051 suggested a study of the role and mission of the Milk Marketing Board. House Concurrent Resolution No. 3071 suggested a study of the feasibility and desirability of licensing or franchising the "Dakota Maid" logo and the trade name of the North Dakota Mill and Elevator Association and promoting the logo on a nationwide basis. In addition, Senate Concurrent Resolution No. 4034 suggested a study of the farm cooperative business structure to determine how it may be used to expand dairy and livestock production to enhance rural economic development.

Past Bills and Studies

In the history of North Dakota, there have been numerous bills that relate to the marketing of agricultural products. In recent history there have been a number of legislative actions germane to the present study.

At least twice there has been introduced a bill to have this state enter the Interstate Compact on Agricultural Grain Marketing. Each time the bill was introduced, it failed. The purpose of the compact is to protect, preserve, and enhance:

1. The economic and general welfare of citizens of the joining states engaged in the production and sale of agricultural grains.

2. The economies and very existence of local communities in the states joining the compact, the economies of which are dependent upon the production and sale of agricultural grains.
3. The continued production of agricultural grains in the states joining the compact in quantities necessary to feed the increasing population of the United States and the world.

In 1989 when the last of these bills, Senate Bill No. 2453, was introduced, five states had joined the compact. It is important to note that the multistate agricultural marketing commission proposed in 1999 Senate Bill No. 2356, as introduced, creates an entity much like the Interstate Compact on Agricultural Grain Marketing would have created. The compact establishes a commission to promote exporting American-produced grain; for example, wheat, durum, oats, rye, corn, barley, buckwheat, flax seed, safflower, sunflower seed, soybeans, peas, and beans. According to the Council of State Governments, the status of this compact is unclear. Four states--Iowa, Nebraska, New Mexico, and Wyoming--repealed the authorizing legislation between 1995 and 1998. The legislation that repealed the compact also repealed the interstate administrative commission.

Interstate compacts are specifically provided for in the United States Constitution as instruments to establish permanent arrangements among the states. Article I, Section 10, provides: "No state shall, without the consent of Congress . . . enter into any agreement or compact with another state or with a foreign power" It is important to note that the procedures for implementing a compact have developed through usage and court rulings. Under these procedures, congressional consent to a compact is required only for those agreements that affect the political balance within the federal system or that affect the power delegated to the national government. These are agreements that tend to increase the political power of the states at the expense of the federal government. Based on the purely investigatorial nature of the multistate agricultural marketing commission proposed in 1999 Senate Bill No. 2356 and that the Interstate Compact on Agricultural Grain Marketing did not require congressional consent, it would appear congressional consent would not be required for a group of states to combine energies to promote agricultural products.

During the 1993-94 interim, the Agriculture Committee studied problems relating to the use of contracts for the sale of agricultural commodities. The committee also reviewed the effects of vertical integration on agribusiness. The committee reviewed basic contract law and the recommendations made by the Minnesota Agricultural Contracts Task Force, which included:

1. Mandatory arbitration or mediation clauses should be required in agricultural contracts.
2. Statutory provisions should require the payment of court costs, attorneys' fees, and double or treble damages to a prevailing party.
3. Parent companies should be made responsible for the unfulfilled contracts of their subsidiaries.
4. Statutory provisions should allow a producer, who has made a large capital investment in buildings and equipment as part of a contract with a processor, to recapture the investment when a contractor terminates or cancels the contract.
5. Contracts should be written in plain language.
6. A covenant or promise of good faith and fair dealing should be part of every agricultural contract.
7. The Minnesota Department of Agriculture should provide an agricultural contracts ombudsman to disseminate information, investigate complaints, and provide or facilitate dispute resolution.

The committee recommended 1995 House Bill No. 1025, which failed to pass. The bill would have provided that any party to an agricultural commodity production contract may require all other parties to the contract to participate in mediation through the Agriculture Mediation Service, under rules of the Credit Review Board. In addition, the bill would have imposed liability on a parent entity for the amount of any unpaid claim of a producer resulting from a subsidiary's failure to pay or perform according to the terms of the contract.

Marketing Groups and Programs

The study directive requires a study of federal and state laws that assist or hinder marketing of agricultural commodities. This state has a number of state councils, commissions, and funds with marketing duties. These councils, commissions, and funds include the North Dakota Barley Council, the North Dakota Dry Bean Council, the North Dakota Beef Commission, the North Dakota Corn Utilization Council, the North Dakota Dairy Promotion Commission, the North Dakota honey promotion fund, the North Dakota Milk Marketing Board, the North Dakota Oilseed Council, the North Dakota Dry Pea and Lentil Council, the North Dakota Potato Council, the North Dakota Soybean Council, the North Dakota turkey promotion fund, and the North Dakota Wheat Commission. The following discusses each of these councils, commissions, and funds and certain marketing-related activities conducted by each.

Barley Council

The North Dakota Barley Council was created by the North Dakota Legislative Assembly in 1983. Statutory provisions relating to the council are contained in North Dakota Century Code (NDCC) Chapter 4-10.4. The council's activities and duties are supported by an assessment of 10 mills per bushel collected from barley producers at the point of first sale. A producer may apply to the council for a refund.

Under NDCC Section 4-10.4-07, the council may contract and cooperate with any person for publicity and promotion of barley. In addition, the council may formulate the general policies and programs of this state with respect to the discovery, promotion, and development of markets and industries for the utilization of barley grown in this state.

The council promotes barley for feed utilization and for malting in the domestic market. The council promotes foreign market development through its affiliation with the United States Grains Council. The United States Grains Council has sent North Dakota barley producers on market promotion missions to foreign countries and has brought foreign buyers to this state. The council takes an active role in participating in the World Trade Organization ministerial meetings and the Free Trade Agreement of the Americas, and in matters decided by the federal government. The council received \$1,777,798 for the 1997-99 biennium.

Dry Bean Council

The North Dakota Dry Bean Council was created by the North Dakota Legislative Assembly in 1977. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.3. The council activities and duties are supported by an assessment of 10 cents per hundredweight from producers at the first designated handling point. A producer may apply to the council for a refund.

The council develops domestic markets through increasing interest in edible beans which is directed at school and university food services and at cooking schools in the United States. The council investigates the potential for new foreign trade, provides services important to traditional overseas buyers, and increases worldwide demand for beans as part of its market development program. Under Section 4-10.3-07, the council may contract and cooperate with any person for the publicity and promotion of edible beans. The council is a member of North Harvest Bean Growers Association, which is a member of the National Dry Bean Council, which carries out foreign market development and promotion and serves as a government liaison; the Northern Crops Institute, which promotes the use of northern grown crops; and the American Dry Bean Board, which coordinates domestic promotion programs and market and nutrition research. The council received \$1,667,400 for the 1997-99 biennium.

Beef Commission

The North Dakota Beef Commission was created by the North Dakota Legislative Assembly in 1973. Statutory provisions relating to the commission are contained in NDCC Chapter 4-34. With the passage of the federal Beef Promotion and Research Act as part of the 1985 farm bill, the beef checkoff became a nationwide, uniform program at the rate of \$1 per head, including an assessment on imported cattle, beef, and beef products. A producer may not apply to the commission for a refund. The Cattlemen's Beef Board receives 50 cents of the assessment. Under Section 4-34-01(2), the purpose of the commission is to support beef promotion and marketing organizations with not less than 50 percent of the assessments collected. Under this section, 25 cents of the assessment goes to the National Cattlemen's Beef Association and the commission keeps 25 cents. The commission promotes domestic demand for beef through information to educators, health professionals, and the media.

The commission promotes beef through advertising, providing retail establishments with literature and displays, and food safety training sessions to food service workers. The North Dakota Beef Commission annually invests \$12,000 in two members on the United States Meat Export Federation. The United States Meat Export Federation works to open foreign markets to red meats from the United States and deals with beef promotion, food safety issues, and trade barriers in foreign countries. According to the 1998 North Dakota Beef Commission annual report, since the checkoff program has been in place, foreign marketing efforts in more than 50 foreign countries have increased United States beef exports to nearly \$3 billion, double the value of the exports in 1988. The commission received \$1,128,000 for the 1997-99 biennium.

Corn Utilization Council

The North Dakota Corn Utilization Council was created by the North Dakota Legislative Assembly in 1991. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.6. The council's activities and duties are supported by an assessment at the rate of one-quarter of one percent of the value of a bushel collected by a designated handler, until a national corn checkoff is implemented. A producer may apply to the council for a refund. Under Section 4-10.6-06, the council may contract and cooperate with any person for market maintenance and expansion. The council supports market development through support of the United States Feed Grains Council and the National Corn Growers Association. The council received \$444,000 for the 1997-99 biennium.

Dairy Promotion Commission

The North Dakota Dairy Promotion Commission was created by the North Dakota Legislative Assembly in 1959. Statutory provisions relating to the commission are contained in NDCC Chapter 4-27. The commission's activities and duties are supported by an assessment of 10 cents per hundredweight on all milk, or a product therefrom, produced and sold by a producer at the first dealer or processor. A producer may apply to the commission for a refund.

Under Section 4-27-05, the commission has the duty to plan and carry out dairy products education, public relations, advertising, sales promotion, and other programs for the purposes of promoting the sale and consumption of dairy products both on a state and nationwide basis. In 1993 there was a consolidation among this state's commission and the dairy promotion organizations in South Dakota and Minnesota. The commission supports and contracts with the American Dairy Association/Dairy Council of the Upper Midwest. This organization promotes dairy products through national advertising promotions and through cooperation with national chain restaurants. In North Dakota, there are television and radio advertising, nutritional education programs in schools, and restaurant and grocery store promotions to enhance the consumption of dairy products. According to the 1997-99 North Dakota Dairy Promotion Commission's summary of activities, sales of milk have increased 29 percent since 1984. The commission received \$1,328,790 for the 1997-99 biennium.

Honey Promotion Fund

The Agriculture Commissioner administers the honey promotion fund that was created by the North Dakota Legislative Assembly in 1979. Statutory provisions relating to the fund are contained in NDCC Chapter 4-12.1. Honey promotion is funded by a five cent per colony assessment collected by the North Dakota Department of Agriculture along with beekeepers license fees due on March 1 of each year. The promotion program is voluntary and a refund of fees may be requested. As required by Section 4-12.1-07, the North Dakota Beekeepers Association oversees the disbursement of funds for research and promotion activities. Although most funding is used for bee research, some funding is used to supply recipe brochures and honey sticks. The honey promotion fund contains approximately \$25,000 per biennium.

Milk Marketing Board

The North Dakota Milk Marketing Board was created by the North Dakota Legislative Assembly in 1967. Statutory provisions relating to the board are contained in NDCC Chapter 4-18.1. The board's activities and duties are supported by an assessment of not more than 14 cents per hundredweight on milk or milk equivalents. The board controls the marketing of milk within the state of North Dakota by establishing

a minimum price for Grade A milk to be paid by processors to producers and enforces fair trade practices regulations. In addition, the board establishes minimum wholesale and retail prices for milk. The board received \$513,165 for the 1997-99 biennium.

Oilseed Council

The North Dakota Oilseed Council was created by the North Dakota Legislative Assembly in 1977. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.2. The council's activities and duties are supported by an assessment of three cents per hundredweight on all sunflower, safflower, rapeseed or canola, and crambe from oilseed producers at the first point of sale. Flax is assessed at a rate of two cents per bushel. A grower may request a refund of the assessment. The council may contract and cooperate with any person for publicity and promotion of oilseed. The council contracts with the National Sunflower Association for most services. The National Sunflower Association has a cooperative agreement with the United States Department of Agriculture's Foreign Agricultural Service to conduct foreign market development and promotional activities. These programs are designed to expand United States confection sunflower export opportunities, consumer product awareness, and product utilization. In 1989 these activities took place in China, Germany, Mexico, Northern Europe, Taiwan, and Turkey. Domestically, the council promotes a genetically altered sunflower oil suited for continuous frying operations so as to increase the premium price paid for the oil. The council received \$1,619,663 for the 1997-99 biennium.

Dry Pea and Lentil Council

The North Dakota Dry Pea and Lentil Council was created by the North Dakota Legislative Assembly in 1997. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.7. The term dry peas and lentils means the range of pulse crops including lentils, dry peas, chickpeas, and lupins. The council's activities and duties are supported by an assessment of one percent of the net value of dry peas and lentils at the point of the first sale. A producer may apply to the council for a refund.

Under Section 4-10.7-07, the council may contract and cooperate with any person for the publicity and promotion of dry peas and lentils. The council has hosted marketing seminars for growers, funded portions of seminars educating the public about growing, feeding, and marketing of pulses, and has hosted a meeting and field tour with the Saskatchewan Pulse Growers to open communications between the groups on areas of potential cooperation. Goals of the council are to work with potential processors to develop new processing facilities in this state and to work with the United States Dry Pea and Lentil Council to increase foreign export markets as well as

domestic food and feed consumption. The council received \$110,000 for the 1997-99 biennium.

Potato Council

The North Dakota Potato Council was created by the North Dakota Legislative Assembly in 1967. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.1. The council's activities and duties are supported by an assessment of three cents per hundredweight imposed upon all potatoes grown in the state or sold to a designated handler. The council may increase the assessment by not more than one-half cent per hundredweight per year until a maximum assessment of four cents per hundredweight is reached. Participation in the assessment is voluntary. The council provides market information to producers so they may more profitably sell their crops. The council provides advertising promotion for better identification of North Dakota products. Under Section 4-10.1-08, the council may contract and cooperate with any person for the publicity and promotion of potatoes. The council contracts with Red River Valley Potato Growers Association for the promotion, advertising, research, and development of Irish potatoes grown in North Dakota. The council received \$1,214,103 for the 1997-99 biennium.

Soybean Council

The North Dakota Soybean Council was created by the North Dakota Legislative Assembly in 1985. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.5. Under the federal Soybean Promotion, Research, and Consumer Information Act of 1991, the checkoff for soybeans is one-half of one percent of the net market price. Under federal law, 50 percent of this revenue is sent from the state to the national soybean effort. The remaining assessment is administered by the council. A producer may not receive a refund. The council promotes soybean use by providing consumers information on the health benefits of soybeans through local presentations and by public relations and media campaigns. The council received \$1,466,300 for the 1997-99 biennium.

Turkey Promotion Fund

The North Dakota turkey promotion fund was created by the North Dakota Legislative Assembly in 1993. Statutory provisions relating to the turkey promotion fund are contained in NDCC Chapter 4-13.1. The Agriculture Commissioner administers the fund in consultation with the North Dakota Turkey Federation. The funds used to operate turkey promotion activities come from a per turkey checkoff based on the weight of the turkey which is levied at 1 cent for 18 pounds and under, 1.5 cents for 18.01 to 28 pounds, and 1.75 cents for 28.01 pounds and higher. Key processors collect these checkoff funds,

and producers may apply to the commissioner for a refund. Turkey is promoted within the state by providing samples and recipes at events in this state and providing money for the purchase of turkeys for classroom instruction and for radio, television, and magazine advertising. The turkey promotion fund receives approximately \$60,000 to \$65,000 per biennium.

Wheat Commission

The North Dakota Wheat Commission was created by the North Dakota Legislative Assembly in 1959. Statutory provisions relating to the commission are contained in NDCC Chapter 4-28. Wheat producers finance the commission's efforts through a checkoff. The checkoff was raised as a result of 1999 House Bill No. 1399 from 8 mills to 10 mills per bushel. This increase became effective on July 1, 1999. The bill further provides that the Wheat Commission may use the increase to support its involvement in trade issues throughout the world. A producer may receive a refund.

Under Section 4-28-06, the commission may foster and promote programs to increase the sale and utilization of wheat at home and abroad. The commission may contract and cooperate with any person for education and publicity. The commission promotes export market development. The commission works cooperatively with the United States Wheat Associates, the Northern Crops Institute and North Dakota State University, and the Wheat Marketing Center. The United States Wheat Associates bring trade delegations from around the world to North Dakota and provide short courses for indepth, hands-on training for the use of wheat and durum. The United States Wheat Associates maintain regular contact with customers in more than 100 countries and have more than 15 overseas locations.

The commission works with the United States Wheat Associates, the Wheat Export Trade Education Committee, the National Association of Wheat Growers, the North Dakota Grain Growers Association, the United States Durum Growers Association, the North Dakota Public Service Commission, and the North Dakota Grain Dealers Association in supporting policies domestically and abroad that allow for fair competition. The commission provides funding for former United States Trade Representative Mickey Kantor to represent wheat interests in trade issues with Canada and the World Trade Organization negotiations later this year. Domestically, the commission and its affiliates provide for the promotion of wheat through the education of nutrition, health, fitness, and school food service professionals as well as through media campaigns. The commission received \$3,803,061 for the 1997-99 biennium.

Mill and Elevator Association

The North Dakota Mill and Elevator Association promotes agriculture through marketing farm products. The Mill and Elevator specializes in the milling of hard red spring wheat and durum. The Mill and Elevator promotes its products in national food and product shows around the country. In addition, the Mill and Elevator advertises in major industry magazines. International exposure to the Mill and Elevator comes from tours hosted by the Wheat Commission.

Agricultural Products Utilization Commission

The North Dakota Agricultural Products Utilization Commission was created by the North Dakota Legislative Assembly in 1979. Statutory provisions relating to the commission are contained in NDCC Chapter 4-14.1. The commission administers grant programs to provide assistance for:

1. Developing new uses for agricultural products and byproducts.
2. Seeking more efficient systems of processing and marketing agricultural products and byproducts.
3. Promoting efforts to increase productivity and provide added value to agricultural products.
4. Stimulating and fostering agricultural diversification.
5. Encouraging processing innovations.

Its mission is to create new wealth and jobs through the development of new and expanded uses of North Dakota agricultural products. It accomplishes this mission through four grant programs. Two of these programs relate directly to marketing. For the 1997-99 biennium, the commission had available \$2,172,076 for all grant programs.

To meet the purposes of marketing, the commission administers a utilization and marketing grant program and a cooperative marketing program. Utilization and marketing grants are used to assist in the development and implementation of a sound marketing plan for North Dakota agricultural products or byproducts. This is accomplished through the financing of marketing feasibility studies, business plans, and test marketing. Proposals that encourage the creation of jobs and industry within the agricultural sector of the state are preferred.

Cooperative marketing grants are targeted for use by groups or individuals who want to work together in a cooperative fashion to look at production, processing, or marketing of agricultural products. Applications for grants that provide an outlet for products that normally have not been marketed through an existing cooperative are given priority. The purpose of these grants is to increase productivity, to provide added value to agricultural products, to stimulate and foster agricultural diversification, and to encourage processing innovations.

Marketing Services Division

Marketing Services is a division of the Department of Agriculture whose principal task is increasing sales of North Dakota agricultural commodities and value-added agricultural products in international, domestic, and local markets through education, promotion, and market enhancement. The division aids companies in obtaining federal grants. In addition, the department is a member of the Mid-America International Agri-Trade Council. Through this council, food and agriculture businesses can apply for reimbursement for export promotion expenses. The United States Department of Agriculture's Federal-State Marketing Improvement program allocates funds through the department as well.

The main activity of the division is the Pride of Dakota program. The program promotes sales of North Dakota products through joint marketing efforts by member companies. The division has developed an Internet mall at www.shopnd.com, providing Pride of Dakota companies an opportunity to advertise throughout the world at a very low cost.

Federal Export Enhancement Program

The federal government has a plethora of programs and agencies that deal with marketing. The federal government deals with marketing on an international and national level. As previously noted, some of the councils and commissions in this state send checkoff moneys to the national level as required by federal law. Because of the number of programs and agencies, this memorandum does not catalog the programs as was done for the programs within this state, but focuses on a selected program--the Export Enhancement program.

A major component of the federal government's promotion of international trade is the Export Enhancement program. This program helps products produced by United States farmers meet competition from subsidizing countries, especially the European Union. Under the program, the United States Department of Agriculture pays cash to exporters as bonuses, allowing them to sell United States agricultural products in targeted countries at prices below the exporter's costs of acquiring them. Major objectives of the program are to expand United States agricultural exports and to challenge unfair trade practices.

The program helps United States agricultural producers, processors, and exporters gain access to foreign markets. The program makes possible sales of United States agricultural products that would otherwise not have been made due to subsidized prices offered by competitor countries. Commodities eligible under the program initiatives are wheat, wheat flour, rice, frozen poultry, barley, barley malt, table eggs, and vegetable oil.

The United States Department of Agriculture considers four criteria to select the commodities and

countries which will best meet the Export Enhancement program's trade policy objectives:

1. **Trade policy effect** - Initiatives should have the potential to further the United States trade policy strategy of opposing competitors' subsidies and other unfair trade practices by displacing other countries' subsidized exports in targeted countries. Targeted countries are those where United States sales have been nonexistent, displaced, reduced, or threatened because of competition from subsidized exports.
2. **Export effect** - Initiatives must demonstrate their potential to develop, expand, or maintain markets for United States agricultural commodities while considering the United States historical market share and long-term commercial relationships. Efforts will be concentrated on export sales of those commodities that would be competitive if other suppliers did not use export subsidies.
3. **Effects on nonsubsidizers** - Individual initiatives will not be approved if they might have more than a minimal effect on nonsubsidizing exporters in the market.
4. **Subsidy requirements** - The Department of Agriculture compares the subsidy requirements of program initiatives to expected benefits. The overall program level for the program, as well as the amount of bonus awards under individual Export Enhancement program initiatives, will be maintained at the minimum levels necessary to achieve the expected benefits of the program.

All sales under the Export Enhancement program are made by the private sector, not the federal government. Once an invitation is issued, it is up to agricultural exporters to contact prospective buyers in eligible countries and negotiate a sales contract including price, quantity, quality, delivery, and other terms. The sale may be contingent on the United States Department of Agriculture's approval of a bonus. Each prospective exporter submits a bid to the department requesting a subsidy--or bonus--that would allow the sale to take place at the agreed price. The department reviews all bids for the competitiveness of the bonus value requested and compares bids with offers from other United States exporters and sales of competitor countries. The department has the right to reject any or all bids.

Once the department accepts a bid, the exporter and the Commodity Credit Corporation enter an agreement. The bonus is paid to the United States exporter in cash. The corporation determines the bonus payment by multiplying the corporation bonus specified in the agreement by the net quantity of the commodity exported. Once an exporter furnishes the department with evidence that the specified commodity has been exported to the target country

under the terms of the agreement, the exporter can request payment of the bonus.

MAJOR ISSUES AFFECTING PRICE Concentration of Facilities

The study directive required a study of which entities set and control the prices of specific agricultural products and of which trade policies assist or hinder the marketing of agricultural commodities. One issue of national concern is the concentration of agricultural wholesaling and marketing concerns. According to newspaper reports, there have been a number of gatherings of farmers in response to this consolidation, especially the proposed merger between Cargill, Inc., and Continental Grain Company. This is one of the first agricultural acquisitions that has hit a major delay from the United States Justice Department. However, the department approved the acquisition on July 8, 1999, provided Cargill, Inc., sells an array of grain and soybean facilities in several states. Cargill, Inc., of Minnetonka, is the nation's number one grain company. Continental Grain Company is the nation's number two grain company.

According to the Cargill, Inc., web page at www.cargill.com, the grain industry is not heavily consolidated. The combination of Cargill's 243 United States facilities with Continental's 83 United States facilities will represent less than three percent of all grain storage in the United States and six percent of total commercial storage. It further states that based on past history, the combined business would handle about 10 to 13 percent of the United States grain moving to market. The web page states that in the domestic market there are very few communities in which Cargill and Continental facilities overlap.

Based on past history, the two companies have handled about 35 percent of United States exports. Cargill states that there is plenty of competition on the international level; that entry barriers to export facilities are very low; and that because of privatization in the foreign markets, the grain trade is a relationship-intensive business of many small sales for many individual purposes in which efficiency remains a vital criteria for success.

According to the Department of Agriculture's National Commission on Small Farms, four packing firms control 80 percent of the beef slaughter. Those firms controlled about 36 percent in 1980. The same is true in pork, where five packers control 55 percent of the industry. In short, four large firms in each sector are slaughtering four out of five beef cattle, three out of four sheep, three out of five hogs, and half of all chickens. According to a study conducted at the University of Missouri, 95 percent of all chickens are processed under production contracts. Likewise, in grain marketing and processing the top four firms control 59 percent of port facilities, 62

percent of flour milling, 74 percent of wet corn milling, and 76 percent of corn crushing.

According to the United States Department of Agriculture, it has been very active in studying the issue of concentration and moving quickly to ensure adequate oversight of current practices as well as enforcement of current law. The department states the Grain Inspection, Packers and Stockyards Administration is investigating packer competition for retail sales in light of record farm to retail price spreads. Another investigation will carefully scrutinize recent plant closings and changes in kill capacity in recent years. The department has completed and released a major study on concentration in the red meat packing industry. This report was released in February 1996. According to the report:

Those concerned about the effects of concentration and integration focus on their effects on prices and the price discovery process. Firms in a concentrated processing industry may be able to reduce prices paid to suppliers. Some observers fear that increases in vertical integration and coordination may amplify the potential for exercise of market power. Some also expressed concern that large packers may use vertical coordination arrangements as a means of blocking their smaller competitors from sources of supply, or as a mechanism for discriminating against livestock sellers. At the least, vertical coordination agreements reduce the prevalence of open-market transactions, thereby restricting the availability of market information.

Those who believe concentration and integration represent no threat argue that livestock prices are higher due to increased efficiency and lower costs realized by large packers and by vertical coordination agreements. They argue that without the size economies, consumer prices would be higher, livestock prices would be lower, and fewer animals would be sold.

The main conclusion of the study was that quick answers to complex market structure and behavior issues are not available. Steady sustained monitoring and analysis provide the best opportunity to obtain timely, meaningful information as the industry evolves and market conditions change.

Canada

A major recent international issue of late is the transporting of grain from Canada into the United States. One complaint is of the pricing practices of the Canadian Wheat Board which appears to have resulted in much Canadian wheat being sold in the United States, thereby lowering the price of wheat. In late 1998 the General Accounting Office did an independent study of the Canadian Wheat Board's pricing practices. The study confirmed that the lack of price

transparency in the Canadian Wheat Board grain marketing activities makes it difficult to assess whether the Canadian Wheat Board's pricing practices are consistent with its international obligations under trade agreements. The Government Accounting Office report also verified that the Canadian Wheat Board practices price discrimination, charging different prices to different customers. This pricing practice gives the Canadian Wheat Board greater ability to distort trade. Without accurate information, the United States is unable to determine if imports violate trade agreements or United States trade law. (However, Canada has agreed to reveal the Canadian Wheat Board's pricing methods in a recent trade pact.)

According to the study, the Canadian Wheat Board has lowered its initial payment to producers from 90 percent to about 70 to 75 percent of expected final payments. The crux of the dispute between the United States and Canada is that the United States-Canada Free Trade Agreement prohibits sales at less than acquisition cost and Canada considers the initial payment to be acquisition cost. In addition, Canada provides a variety of other direct and indirect subsidies to grain producers, including guarantees of Canadian Wheat Board borrowings, export credit guarantees, net income stabilization, western grain transportation buyout, and government-owned and leased hopper cars.

According to the Canadian Wheat Board web page at www.cwb.ca there are three pillars to the Canadian Wheat Board's history which began in 1935. These pillars are single-desk selling, pooling, and the government guarantees. The Canadian Wheat Board is the sole exporter of western Canadian wheat and barley. Instead of competing against one another, Canada's wheat and barley farmers act as one. There is price pooling that guarantees farmers will benefit equally, regardless of when their grain is sold during the crop year. All farmers delivering the same grade of wheat or barley will receive the same return at the end of the crop year. The government guarantees payment by delivering partial payment upon delivery. If returns to the pool exceed the sum of these total payments, then farmers receive a final payment. If the returns fall short, the federal government makes up the difference.

SUGGESTED STUDY APPROACH

The suggested study approach for the committee is to follow the same general organization as this memorandum in researching the assigned study. The committee could review the role of state, federal, and private actors in the marketing of agricultural products to determine if there is any particular program, policy, or action which has been or will be beneficial to the pricing of agricultural products for farmers. In performing the study, preliminary organization would be beneficial considering the complexity of agricultural

markets and programs. In *Structural Change and Performance of the U.S. Grain Marketing System*, edited by Donald W. Larson, Paul W. Gallagher, and Reynold P. Dahl, 1998, there is an analysis of the United States grain marketing system. The goal of the book is to describe and analyze structural changes in the United States grain marketing system and their performance implications. The book lists numerous factors for different changes in grain marketing developments. For example, factors that influenced the export boom from 1972 to 1980 were a decline in world grain production, a shift in the exchange rate policy, continuing world economic growth, a dramatic increase in petroleum prices, and price and import policies followed in centrally planned economies. This example is offered to show the

extreme complexities in marketing that are exasperated even more by the interrelation among state and federal programs and trade practices of foreign countries. Because of this complexity, there are numerous individuals and organizations from which the committee could receive testimony in examining any area of agricultural marketing, and the committee should be specific in its request for testimony as to provide an organized study. The committee could address what this state or a group of states could do about any particular issue studied and could compare that to what is being done already by private groups and state and federal agencies.

ATTACH:1

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE BILL NO. 2356
(Senator Bowman)

AN ACT to provide for a Legislative Council study of the feasibility and desirability of forming a multistate agricultural marketing commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. MULTISTATE AGRICULTURE MARKETING COMMISSION - LEGISLATIVE COUNCIL STUDY. During the 1999-2000 interim, the Legislative Council shall consider studying the feasibility and desirability of forming a multistate agricultural marketing commission for the purpose of marketing agricultural products on behalf of agricultural producers. If conducted, the study must examine which entities set and control the prices of specific agricultural products, which federal trade policies assist or hinder the marketing of agricultural commodities, which federal and state laws assist or hinder the marketing of agricultural commodities, and which federal and state laws assist or hinder the use of agricultural contracts. If conducted, the study must also examine how this state can work with federal agencies and federal representatives to ensure the best possible climate for the marketing of agricultural products on behalf of North Dakota producers. The Legislative Council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.

Approved March 26, 1999
Filed March 26, 1999