

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2379

2001 SENATE AGRICULTURE
SB 2379

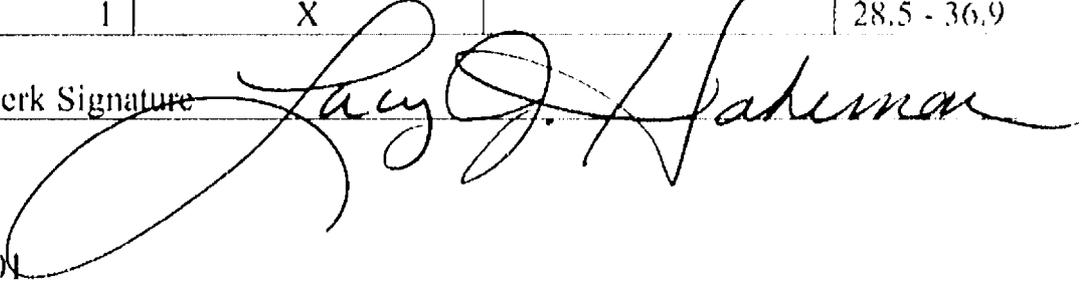
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2379

Senate Agriculture Committee

Conference Committee

Hearing Date February 9, 2001

Tape Number	Side A	Side B	Meter #
Feb. 9 1	X		0.0 - 50.3
Feb. 15 2	X		7.6 - End
Feb. 16 1	X		28.5 - 36.9
Committee Clerk Signature 			

Minutes:

February 9, 2001

SENATOR BOWMAN; Sponsor, introduced the bill to the committee. See attached testimony.

LT. GOVERNOR DALRYMPLE; testified in support of this bill. This bill is a good vehicle for getting projects running. The bill refers to this entity as a screening board, may consider changing to promotion board. May want to put someone from APUC on this board. We need a state wide function to be there, ready to receive the proposals as they come forward and immediately provide support and professional advice and options.

SENATOR WANZEK; Would this be a more focused approach?

DALRYMPLE; Yes, I think that the people at EDF would tell you that they are in the constant process of sorting out the prospects and clearly they do focus most of their time on the most promising, as they come forward. There is not question that we could do much more in the livestock area.

SENATOR NICHOLS; Will there be more risk through the Bank of North Dakota?

DALRYMPLE; It is clearly the main barrier to development now. Rather than push our lending institutions to go further, risk wise, we need to help them to put pools of equity capital in. Even the most aggressive lender needs some equity in a project to make a loan.

SENATOR G. NELSON; Sponsor, testified in support of this bill. Things haven't changed much. Agriculture continues to be, should be, and always will be strong.

SENATOR NICHOLS; Seems to me that this should be a way that we can help with some percentage of some of the projects that are very large.

SENATOR G. NELSON; I won't disagree with you.

SENATOR WANZEK; Sponsor, testified in support of this bill. I have always believed that the most obvious for potential economic development in this state is within our base industry, agriculture. There are a lot of opportunity there. We are limited in seeking out equity capital.

LANCE GAEBE; APUC, Economic Development Agency, testified in support of this bill. There are a lot of people out there but they need assistance.

WADE MOSER; ND Stockmen's Assoc. testified in support of this bill. Changing screening board to promotion board gives this a positive approach.

RICHARD SCHLOSSER; NDFU, testified in support of this bill.

BRIAN KRAMER; ND Farm Bureau, testified in support of this bill.

MIKE HILMAN; Board of Higher Education, testified in the neutral position on this bill. We need to look at partnerships.

COLE GUSTAVSON; testified in the neutral position of this bill.

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Page 3
Senate Agriculture Committee
Bill/Resolution Number SB 2379
Hearing Date February 9, 2001

EDDIE DUNN; Higher Education, testified in the neutral position. If North Dakota is going to have a brighter future it is going to need to be well connected to it research and intellectual capacity.

The hearing was closed.

~~February 15, 2001~~

Discussion was held.

~~February 16, 2001~~

~~Discussion was held.~~

SENATOR KLEIN moved the amendments.

SENATOR URLACHER seconded.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR KLEIN moved for a DO PASS of this bill.

SENATOR NICHOLS seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR KLEIN will carry the bill.

FISCAL NOTE
 Requested by Legislative Council
 03/30/2001

Bill/Resolution No.:

Amendment to: Engrossed
 SB 2379

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$24,000	\$0	\$24,000
Expenditures	\$0	\$0	\$16,640	\$24,000	\$16,640	\$24,000
Appropriations	\$0	\$0	\$16,640	\$24,000	\$16,640	\$24,000

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed SB 2379 with House amendments establishes a value-added agriculture promotion board that will meet regularly to review business plans for value-added agriculture projects. The board shall prioritize projects based on likelihood for success and promote the formation, development and growth of these projects - taking steps to improve the projects success. A selected project shall be assisted by a financing advisory group in completing feasibility, business plans and in seeking early stage money. (Section 1)

The program is to be located in the Department of Economic Development & Finance where administrative assistance is to be provided. Compensation for expenses related to the work of the promotion board and financing advisory group are to be reimbursed.

Section 2 seeks to limit the definition of production agriculture in order to allow investor-owned (and independently managed) livestock feeding or milking operations eligible for potential financing from the North Dakota Development and Regional Rural Revolving Loan Fund(s).

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.*

It is estimated that 50% of the 6 applications presented to the Board each quarter would be referred to the financing group. If a fee of \$1,000 is charged to those who are referred to the financing group, revenue

would potentially be \$24,000 for the biennium.

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.*

Based upon a fee system it is estimated that the agricultural promotion board could review 6 business plans every quarter. To effectively review those plans could take 2 full days. Expenses related to travel, lodging and per diem could total \$215 per person. Holding quarterly screenings (2 full days) for the 8 members would total about \$6,880 for the year (\$13,760 for biennium).

The financing group's expenses have been figured at approximately 1/2 of the screening committee's (\$3,440 per year, \$6,880 for biennium). The bill does not clarify whether the role of the individual experienced in capital formation will be working gratis or providing services for fee. If (for fee) additional expenditures need to be added (perhaps ranging from low of \$75,000 to \$150,000 per year; \$150,000 to \$300,000 for biennium) depending on number of projects, their needs/complexity and the capabilities of the individual.

As ED&F has no additional staff to provide administrative assistance (or FTE's) for this program, contract staff and additional overheads (for expenses related to the program) have been estimated at \$20,000 for the biennium).

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

A special fund appropriation of \$24,000/biennium would need to be provided to collect the revenue. A general fund appropriation would need to be provided to cover the additional \$16,640 of expenditures that would not be paid for out of the revenue.

Name:	Linda Butts	Agency:	Economic Development & Finance
Phone Number:	328-5342	Date Prepared:	04/03/2001

FISCAL NOTE

Requested by Legislative Council

03/19/2001

Bill/Resolution No.:

Amendment to: Engrossed
 SB 2379

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$40,640	\$0	\$40,640	\$0
Appropriations	\$0	\$0	\$40,640	\$0	\$40,640	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed SB 2379 with House amendments establishes a value-added agriculture promotion board that will meet regularly to review business plans for value-added agriculture projects. The board shall prioritize projects based on likelihood for success and promote the formation, development and growth of these projects - taking steps to improve the projects success. A selected project shall be assisted by a financing advisory group in completing feasibility, business plans and in seeking early stage money. (Section 1)

The program is to be located in the Department of Economic Development & Finance where administrative assistance is to be provided. Compensation for expenses related to the work of the promotion board and financing advisory group are to be reimbursed.

Section 2 seeks to limit the definition of production agriculture in order to allow investor-owned (and independently managed) livestock feeding or milking operations eligible for potential financing from the North Dakota Development and Regional Rural Revolving Loan Fund(s).

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.*

Not possible to estimate.

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.*

Using APUC applications as a guide, the agricultural promotion board could review 18 to 24 business plans every quarter. To effectively review those plans could take 2 full days. Expenses related to travel, lodging and per diem could total \$215 per person. Holding quarterly screenings (2 full days) for the 8 members would total about \$6,880 for the year (\$13,760 for biennium).

The financing group's expenses have been figured at approximately 1/2 of the screening committee's (\$3,440 per year, \$6,880 for biennium). The bill does not clarify whether the role of the individual experienced in capital formation will be working gratis or providing services for fee. If (for fee) additional expenditures need to be added (perhaps ranging from low of \$75,000 to \$150,000 per year; \$150,000 to \$300,000 for biennium) depending on number of projects, their needs/complexity and the capabilities of the individual.

As ED&F has no additional staff to provide administrative assistance (or FTE's) for this program, contract staff and additional overheads (for expenses related to the program) have been estimated at \$20,000 for the biennium).

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

There is no appropriation provided.

Name:	Linda Butts	Agency:	Economic Development & Finance
Phone Number:	328-5342	Date Prepared:	03/21/2001

FISCAL NOTE
 Requested by Legislative Council
 02/20/2001

Bill/Resolution No.:

Amendment to: SB 2379

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$38,060	\$0	\$38,060	\$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.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed SB 2379 establishes a value-added agriculture promotion board that will meet regularly to review business plans for value-added agriculture projects. The board shall prioritize projects based on likelihood for success and promote the formation, development and growth of these projects - taking steps to improve the projects success. A selected project shall be assisted by a financing advisory group in completing feasibility, business plans and in seeking early stage money. (Section 1)

The program is to be located in the Department of Economic Development & Finance where administrative assistance is to be provided. Compensation for expenses related to the work of the promotion board and financing advisory group are to be reimbursed.

Section 2 seeks to limit the definition of production agriculture in order to allow investor-owned (and independently managed) livestock feeding or milking operations eligible for potential financing from the North Dakota Development and Regional Rural Revolving Loan Fund(s).

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.*

Not possible to estimate.

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.

Using APUC applications as a guide, the agricultural promotion board could review 18 to 24 business plans every quarter. To effectively review those plans could take 2 full days. Expenses related to travel, lodging and per diem could total \$215 per person. Holding quarterly screenings (2 full days) for the 7 members would total about \$6,020 for the year (\$12,040 for biennium).

The financing group's expenses have been figured at approximately 1/2 of the screening committee's (\$3,010 per year, \$6,020 for biennium). The bill does not clarify the role of the individual experienced in capital formation will be working gratis or providing services for fee. If (for fee) additional expenditures need to be added (perhaps ranging from low of \$75,000 to \$150,000 per year; \$150,000 to \$300,000 for biennium) depending on number of projects, their needs complexity and the capabilities of the individual.

As ED&F has no additional staff to provide administrative assistance (or FTE's) for this program, contract staff and additional overheads (for expenses related to the program) have been estimated at \$20,000 for the biennium).

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on two biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

There is no appropriation provided.

Name:	Randy Schwartz	Agency:	ND Dept of Economic Development & Finance
Phone Number:	701-328-5314	Date Prepared:	02/21/2001

FISCAL NOTE

Requested by Legislative Council
01/29/2001

Bill/Resolution No.: SB 2379

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$32,900	\$300,000	\$32,900	\$300,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The bill seeks to establish a value-added agriculture entrepreneur program with a board (Section 1.1) to screen applications (business plans) for value-added agricultural projects and to appoint a financing group to assist selected projects. Much of the focus of the financing groups is on securing grants with which to reimburse the University system for any assistance they might provide to the entrepreneur.

The program is to be housed at the Department of Economic Development & Finance - where administrative assistance is to be provided.

Expenses related to this initiative are to be reimbursed (as per 54-06-09 and 44-08-04).

As provided to legislators in other fiscal notes regarding the department of economic development and finance, we are providing definitions of various stages of business formation and financing. Hopefully these will help legislators as they discuss the merits of the various financing programs already available to assist entrepreneurs.

FINANCING STAGE DEFINITIONS

EARLY STAGE FINANCING

Seed Financing: This stage is relative small amount of capital provided to an inventor or entrepreneur to

prove a concept and to qualify for start-up capital. This may involve product development and market research as well as building a management team and developing a business plan, if the initial steps are successful.

Start-Up Financing: This stage provides financing to companies completing development and initial marketing. Companies may be in the process of organizing or they may already be in business for one year or less, but have not sold their products commercially. Usually such firms will have made market studies, assembled the key management, developed a business plan, and are ready to do business.

First-Stage Financing: This stage provides financing to companies that have expended their initial capital, often in developing and market testing a prototype, and require funds to initiate full-scale production and sales.

EXPANSION FINANCING

Second-Stage Financing: This stage is working capital for the initial expansion of a company that is producing and shipping, and has growing accounts receivables and inventories. Although the company has made progress, it may not yet be showing a profit.

Third-Stage Financing: This stage provides major expansion of a company whose sales volume is increasing and that is breaking even or profitable. These funds are used for further plan expansion, marketing, working capital, or development of an improved product.

LATER STAGE FINANCING

Bridge Financing: This stage is needed at times when a company plans to go public within six months to a year. Often bridge financing is structured so that it can be repaid from the proceeds of a public underwriting. It can also involve restructuring of major stockholder positions through secondary transactions. Restructuring is undertaken if there are early investors who want to reduce or liquidate their positions, or if management has changed and the stockholdings of the former management, their relatives and associates are being bought out to relieve a potential oversupply when public.

Open Market: This stage involves acquiring securities of companies whose common shares trade publicly.

ACQUISITION/BUYOUT

Acquisition Financing: This stage provides funds to finance the acquiring of another company. Venture Economics tracks these deals when calculating venture capital disbursements in situations where the funding is by a venture capital firm, but not when it is by a buyout firm.

Management/Leveraged Buyout: These funds enable an operating management group to acquire a product line or business, at any stage of development, from either a public or private company. Often these companies are closely held or family owned. Management/leveraged buyouts usually involve revitalizing

an operation, with entrepreneurial management acquiring a significant equity interest.

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.*

Not possible to estimate.

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.*

Using APUC applications as a guide, the screening committee could review 18 to 24 business plans every quarter. To effectively review those plans could take 2 full days. Expenses related to travel, lodging and per diem could total \$215 per person. Holding quarterly screenings (2 full days) for 5 people would total about \$4,300 for the year (\$8,600 for biennium).

The financing group to assist in finding funding/writing grants for the entrepreneur could cost from a low of \$75,000 to \$150,000 per year (\$150,000 to \$300,000 for biennium) (dependent to what amount(s) the grant writer(s) are compensated). These grant expenditures have been classified in Other (assuming that the amount of the grant will compensate the grant writer.) Financing expenses have been figured at approximately 1/2 of the screening committee's (\$2,150 per year, \$4,300 for biennium).

As ED&F has no additional administrative assistance (or FTE's) for this program, contract staff and additional overheads (for expenses related to the program) have been estimated at \$10,000 per year (\$20,000 for the biennium).

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

There is no appropriation provided.

Name:	Randy Schwartz	Agency:	ND Dept. of Economic Development & Finance
Phone Number:	701-328-5314	Date Prepared:	01/30/2001

PROPOSED AMENDMENTS TO SB 2379

Prepared for Sen. Bowman

Page 1, line 1, after "program" insert "and to provide a continuing appropriation"

Page 1, line 4, replace "screening" with "promotion"

Page 1, line 8, after "education" insert "who has a background in value-added agriculture"

Page 2, line 7, replace "screening" with "promotion"

Page 2, line 12, replace "screening" with "promotion"

Page 2, after line 14, insert:

SECTION 2. APPROPRIATION. There is appropriated out of the North Dakota development fund of the amounts allocated to the regional rural development revolving loan funds the sum of \$15,000 for reimbursement of mileage, travel, and expenses.

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2379

Page 1, line 1, after "to" insert "create and enact a new subsection to section 10-30.5-01 of the North Dakota Century Code, relating to North Dakota development fund definitions, and to" and replace "entrepreneur" with "promotion"

Page 1, line 3, replace "entrepreneur" with "promotion"

Page 1, line 4, replace "entrepreneur screening" with "promotion"

Page 1, line 5, replace "five" with "seven"

Page 1, line 8, after the second "the" insert "North Dakota" and replace "board of higher education" with "university extension service"

Page 1, line 9, replace "designated" with "appointed" and replace "board" with "governor"

Page 1, line 10, replace "and a representative" with "two representatives"

Page 1, line 11, after "governor" insert "; and a representative of the farm credit system, appointed by the governor"

Page 1, line 12, replace "entrepreneur" with "promotion"

Page 1, line 14, replace "In order to be" with "The board shall meet on a regular schedule to review project proposals and prioritize projects based on the projects' likelihood for success. The board shall promote the formation, development, and growth of these projects and take steps to improve the projects' chances for success."

Page 1, remove lines 15 through 20

Page 1, line 21, replace "approved" with "selected for promotion" and after "financing" insert "advisory"

Page 1, line 22, after "financing" insert "advisory" and replace "must" with "may"

Page 1, line 24, replace "grant writing" with "capital formation" and after "financing" insert "advisory"

Page 2, line 2, replace "entrepreneur" with "project" and replace "improving the" with "completing a feasibility study and a"

Page 2, line 3, replace "grant" with "early stage" and after "financing" insert "advisory"

Page 2, line 4, remove "entrepreneur with the approved" and replace "the business plan and shall" with "equity investors, establishing an initial board of directors, locating professional services for completion of"

Page 2, remove line 5

Page 2, line 6, remove "higher education for any assistance provided in creating", after "plan" insert a comma, and after "and" insert "in approaching lenders"

Page 2, line 7, remove "The screening board representative of the state"

Page 2, remove lines 8 and 9

Page 2, line 10, replace "entrepreneur" with "promotion"

Page 2, line 12, replace "screening" with "value-added agriculture promotion", after "and" insert "members of", and after "financing" insert "advisory"

Page 2, after line 14, insert:

"SECTION 2. A new subsection to section 10-30.5-01 of the North Dakota Century Code is created and enacted as follows:

"Production agriculture" means the production of crops and livestock on or near a farm as part of the regular farm enterprise directed by a farm operator and the farm operator's partners. The term does not include an investor-owned livestock feeding or milking operation located apart from a farm headquarters which is managed by employees."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2379: Agriculture Committee (Sen. Wanzek, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2379 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new subsection to section 10-30.5-01 of the North Dakota Century Code, relating to North Dakota development fund definitions; and to" and replace "entrepreneur" with "promotion"

Page 1, line 3, replace "entrepreneur" with "promotion"

Page 1, line 4, replace "entrepreneur screening" with "promotion"

Page 1, line 5, replace "five" with "seven"

Page 1, line 8, after the second "the" insert "North Dakota" and replace "board of higher education" with "university extension service"

Page 1, line 9, replace "designated" with "appointed" and replace "board" with "governor"

Page 1, line 10, replace "and a representative" with "two representatives"

Page 1, line 11, after "governor" insert "; and a representative of the farm credit system, appointed by the governor"

Page 1, line 12, replace "entrepreneur" with "promotion"

Page 1, line 14, replace "In order to be" with "The board shall meet on a regular schedule to review project proposals and prioritize projects based on the projects' likelihood for success. The board shall promote the formation, development, and growth of these projects and take steps to improve the projects' chances for success."

Page 1, remove lines 15 through 20

Page 1, line 21, replace "approved" with "selected for promotion" and after "financing" insert "advisory"

Page 1, line 22, after "financing" insert "advisory" and replace "must" with "may"

Page 1, line 24, replace "grant writing" with "capital formation" and after "financing" insert "advisory"

Page 2, line 2, replace "entrepreneur" with "project" and replace "improving the" with "completing a feasibility study and a"

Page 2, line 3, replace "grant" with "early stage" and after "financing" insert "advisory"

Page 2, line 4, remove "entrepreneur with the approved" and replace "the business plan and shall" with "equity investors, establishing an initial board of directors, locating professional services for completion of"

Page 2, remove line 5

Page 2, line 6, remove "higher education for any assistance provided in creating", after "plan" insert a comma, and after "and" insert "in approaching lenders"

Page 2, line 7, remove "The screening board representative of the state"

Page 2, remove lines 8 and 9

Page 2, line 10, replace "entrepreneur" with "promotion"

Page 2, line 12, replace "screening" with "value-added agriculture promotion", after "and" insert "members of", and after "financing" insert "advisory"

Page 2, after line 14, insert:

"SECTION 2. A new subsection to section 10-30.5-01 of the North Dakota Century Code is created and enacted as follows:

"Production agriculture" means the production of crops and livestock on or near a farm as part of the regular farm enterprise directed by a farm operator and the farm operator's partners. The term does not include an investor-owned livestock feeding or milking operation located apart from a farm headquarters which is managed by employees."

Renumber accordingly

2001 HOUSE AGRICULTURE

SB 2379

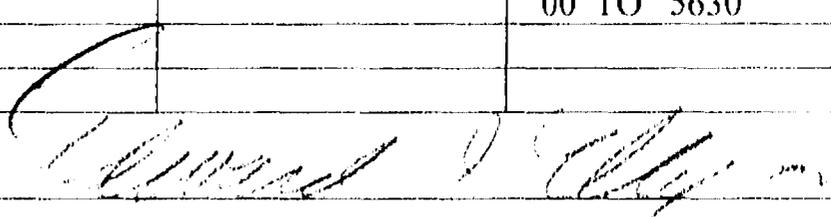
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2379

House Agriculture Committee

Conference Committee

Hearing Date 3--15--01

Tape Number	Side A	Side B	Meter #
ONE	A		00 TO 5630
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: Committee Members, we will open the hearing on SB 2379.

JACK DALRYMPLE: For the record, My name is Jack Dalrymple. I am the Lt. Governor of the state of ND. It is a pleasure to be with your committee today. I'd like to put in a few words in support for SB 2379. The Governors office has talked about the value added tax in ND. I think one of the things that did come up last year was that you wanted to develop a function within the new commerce department to move value added Agr. forward. Support in early stages and help groups stay and get off the ground without any problems. This particular board would be able to serve in that function, obviously they would work very closely with the new commerce department. I think there is also an important amendment on page two line fourteen that will allow us to treat larger feeder operations and large dairy as primary sector business. This is the breakthrough that we have been looking for for quite some time and we have been trying to figure out how to do this. Farmers want to go together in feeding livestock or in

a dairy they have had a problem not being able to act as some of our development programs because they just have not been defined as a primary sector business. That is the definition that opens up many of our opportunities for low interest financing, development funds investments, investment tax credits etc. I would encourage you to keep the Bill in its present form, I think it is in good shape and would be a great piece of legislation.

CHAIRMAN NICHOLAS: Any questions? Rep. Belter/

REPRESENTATIVE BELTER: Thank you Mr Chairman. I want to stand in support of SB2379. Value added is very important part of our economic development in ND. That is what this Bill does. We have the new commerce department. Bill is for Agriculture.

REPRESENTATIVE ONSTAD: When you get to line 18 page 2The term does not include an investor-owned livestock feeding or milling operation located apart from a farm headquarters which is managed by employees. If you have a farming operation lets say one hundred individuals going into a livestock feeding operation, a feed lot for example, is that considered production Agr. or not.

REPRESENTATIVE BELTER: I would think that it would be considered production Agr.

SENATOR BOWMAN: PLEASE SEE THE HANDOUTS: WHICH ARE ATTACHED.

In rural communities people have a lot of good ideas but they don't now where to go to get those ideas developed so they have run from one department to another to get the information they want. This brings together all the players in ND that can look at a project and move that project forward with its merits. When you look at failure you want to know why you failed. see Bill.

Page 3

House Agriculture Committee

Bill/Resolution Number SB 2379

Hearing Date 3--15--01

Please see amendments and fiscal notes. The Federal Government Rules and Regulations break the small feeder. We have to turn it around or we will all go broke. Keep data on each animal the more we make the better it is for rural ND. Feeder, buy high and sell low, you go broke. Retailers take care of them selves, they raise the price with inflation. If you control supply, you like say Tyson Foods for example. We have to control our own destiny. Lets educate the public and move the state forward. Please see fiscal note. Using the ND Beef Industry for an example. Approximate figures but I did use USDA figures when I plugged in the figures at the time. We have approximately 900,000 mother cows in ND. These are beef cattle. In an estimated feeder cattle mark of about 700,000 head. I plugged in and you can read the figures, the highs of a dollar per pound at 600 lb., and the low of \$.80 cents per lb. We export out of the state. Most of the cattle go right to Kansas. To the feed lots down there. I'd like to see those cattle finished out in ND. I would like to see us as add some value to it by using our own grain and taking advantage of a higher market. If we sell those cattle as fat cattle. We go from a four hundred and twenty million dollar business at the high end to a six hundred and seventy four million dollar business in the fat market. Lets see what those cattle are worth if you sell them as meat. Let take them all the way and really start to add value. The retail meat price continues to be constant, a typical animal will have approximate four hundred and fifty four lb. of sellable meat. You have approximately a fourteen hundred dollar animal. That is the average. Now if we take prime beef, the profit all come back to the producer because it costs no more to feed it, cost no more to process it, cost no more to distribute it, the only this is is that you get a lot more money for it and the money should go back the guy that produced the animal. That will generate a lot of new profit that we have never seen in this state. Currently,

today the packers are the one that is seeing that profit. Take the feeding. Large amount of money. Folks there is something in this for everyone. A program going like this in our state, we would have approximately the most affective processing plants that we studied for this was about 100,000 head a day kill. You could bring in special groups wanted specialty products. Different groups could use one processing plant. You have to have a big enough plant to off set the Federslp Rules and Regulations. Computer chips keep track of the cattle. If we do nothing, there is Tyson food. It is called contract agriculture. Either do it there way or don't do it.

We have to do something or in ten years things just won't be the same. I hope that this Bill will move us ahead.

CHAIRMAN NICHOLAS: The fiscal note is only \$38,000 dollars and I guess in looking at that small amount and with the majority leader testifying infavor of the bill I guess what I would prefer to do is leave the money in here. There is a lot of session yet and rather then put these amendments on and take the money out I would sooner send that down and get a general consensus of the committee, but if the committee is in agreement we will take action on this this morning and re-refer this to appropriations. Biggest problem right now is to have adequate cattle to establish an adequate kill line. There is a whole host of things that have to happen before we get to the last page.

BOWMAN: We don't product enough cattle in the US for our own consumption. The market is there. There is a new plant in New Zealand that we should look for impute as to building a plant.

REPRESENTATIVE MUELLER: The promotion aspect.

CHAIRMAN NICHOLAS: Senator, what the biggest problem is is the capital formation. If you can get the Bank of ND to probably work a little more closely to establish, for those of you on the committee, one of the big problems with feeding cattle is retaining ownership. The equity that most banks require and because of the FDIC rules and regulations they become short of capital and what's happening is the groups such as Agr. I just use them as an example are doing a lot of the cattle feeding central livestock where you have KOBANG coming in and really picking off a lot of the financing that the Bank of ND should be doing. I think the Bank of ND is going to have to establish a program where our county banks can go either overline and do the less equity that should have been done in the past or we are going to continue to export those cattle out of state. How that is going to be done is the Bank OF ND obviously not being in the FDIC has a lot more latitude than any other private lending institution in the state. [lost sound on tape from count 3179 to 3304] Most banks with the FDIC regulations cannot go out and do it with a hundred dollars a head. THINAGR for example to a qualified customer can go out at a hundred dollars ahead purchase a feeder calf they finance the feed until the animal is liquidated. There is not a bank in ND right now that I think is able to do that. Most FDIC regulators will absolutely not allow those banks to do that. There lies the problem. The owner that wants to retain that ownership is into his next production cycle before he liquidates and most of the time his banker wants the money for the calf crop that is on the ground before he is willing to finance the next calf crop. If we can address that problem, I think you have a viable program.

SENATOR BOWMAN: If you can get \$17.00 more in interest, to collect \$150.00 more dollars in profit, all of a sudden the thing starts to look a little more positive towards the bottom

Page 6

House Agriculture Committee

Bill/Resolution Number SB 2379

Hearing Date 3--15--01

line for the bank and for the guy that is borrowing the money. That is kind of what it figures out to be with a little study we did.

CHAIRMAN NICHOLAS: How many more people want to testify on this bill.

LANCE GAEBE: AGR PRODUCTS UTILIZATION COMMISSION.

I am here to speak in favor of the Bill.

CAROL TWO EAGLES: Industrial Agr. I like this Bill if you control Agr. you control the country. We are an Agr. based economy in ND

REPRESENTATIVE LEMIEUX: Comment.....Transportation cost. We reduce by feeding livestock here in ND

ALLEN BRATTEN: CORN GROWERS, STATE DIRECTOR. North Dakota is a good place to feed out livestock. For one reason you can feed them out cheaper. We produce corn and we get about the least in the US for the price of our corn. The land in ND is cheaper. Another advantage. Our corn acres have expanded and we need all the feeders we can get.

BOB HUMANN: I have no testimony: I am here to answer any questions that you may have.

CHAIRMAN NICHOLAS: My question would be. Banks in ND have a arrangement with the BAND OF N.D. in more way then one. Has it been discussed internally of putting the program such as the thin Agr program centralize stock program COOPBANKS do most of the financing The Bank of ND has not come up with a program that is very workable.. Are you working on anything that would be good for ND.

BOB HUMAN: WE are working something right now. Over the last two years we have worked with the ND AGR. DEPARTMENT and the CREDIT REVIEW BOARD on coming up with more options on financing and retention in ND.

Page 7

House Agriculture Committee

Bill/Resolution Number SB 2379

Hearing Date 3--15--01

CHAIRMAN NICHOLAS: Bank of ND has to work for us also. Bank of ND has to take leadership. Lets take a farmer with 500 feeder cattle who wants to take them over to the feed lot at Gascoyne. He want to get his money. Would you be able to put a program together where if he left a hundred dollars on the table verses six hundred dollar feeder calf's. If he left the a hundred and you allow an advance until the animal is liquidated. Can you give consideration to that type of program. So we don't have to go out of ND to get that kind of financing.

BOY HUMAN: We are willing to do it if the loan application comes in through a credit union or bank etc. We can't do them direct. We are getting requests and we are trying to help that along, there is always the fact that we have to put a program in place that not always works for us but will work for the local lender. We are getting more flexible all the time. We want to help. If there is management available that has some expertise we would be a lot more willing to lend.

BRIAN KRAMER: NDFB We are in favor of the Bill.

CHAIRMAN NICHOLAS: We will close the hearing.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO SB 2379b

House Agriculture Committee

Conference Committee

Hearing Date 3--15--01

Tape Number	Side A	Side B	Meter #
THREE	A		117 TO 1355
Committee Clerk Signature <i>Edward D. Wilson</i>			

Minutes:

CHAIRMAN NICHOLAS: WE WILL OPEN ON SB 2379.

I WILL ENTERTAIN A MOTION ON SB 2379. I WOULD LIKE TO GET THE
RE-REFERED TO APPROPRIATIONS IF THAT IS YOUR WISH.

REPRESENTATIVE LEMIEUX: THE AMENDMENTS?

CHAIRMAN NICHOLAS: Yes what the amendments would do is if it is the committee wished
is leave the money in an re-refer it to appropriations and if that committee sees fit we can take it
out at later point.

REPRESENTATIVE ONSTAD: I would just like to comment on section two your industrial
whether a feed lot or dairy operation. They are stuck in production Agr. Because they are stuck
into production Agr. they don't qualify for a lot of programs so that's what they are saying the
term dose not include those particular operations. When you are in production Agr. you are
considered a farm. We sat there with USDA and SBA and nobody could have put a feed lot

operation out there. No one new where to put it. A large dairy is a business. They are not large land owners, etc. It is like a feed supply store.

REPRESENTATIVE PIETSCH: I signed on the Bill. BUT I am concerned that it may be a step to far to guarantee that this can not be a corporate operation. I think that if you and fifty other producers or people in that dairy enterprise. I think we restrict the capacity of this business to succeed. Please read bill as to understanding the bill.

REPRESENTATIVE LEMIEUX: WE are still leaving production Agr. out but we are including industrial livestock feeding and milk marketing. Which is a real plus. This is good legislation in my mind. Please see amendments as to changes.

REPRESENTATIVE LLOYD: Could I add an amendment to that to. On line eight. It says a representative of the state board of Agr. research. I would like to insert the word voting, a voting representative. I say vote because I know of a number of people are nonvoting whether attached to that board and I think we should have a voting member.

CHAIRMAN NICHOLAS: What I will do as to moving on the amendments. I will take one amendment first. REPRESENTATIVE MUELLER MOVES AND SECONDED BY

REPRESENTATIVE LEMIEUX. Add commissioner of Agriculture or designee. On line 13 and on line seven we put in the word eight members. Please see amendments as to changes in the Bill.

CHAIRMAN NICHOLAS: It has been moved and I'll have Representative Lloyd a the second on those amendments. It has been moved and seconded. On line seven we will include eight and after a representative on line eight we include secretary of Agr. or his designee. O.K. then on line between a and representative we put in voting. ALL THOSE IN FAVOR SIGNIFY

Page 3
House Agriculture Committee
Bill/Resolution Number SB 2379
Hearing Date 3--15--01

BY SAYING YES. OPPOSED. We have the amendments. NOW I AM GOING TO ASK
FOR A MOTION: MOVED BY REPRESENTATIVE MUELLER AND SECONDED BY
REPRESENTATIVE LLOYD. ANY FURTHER DISCUSSION.

THE CLERK WILL TAKE THE ROLL.

THERE WERE 14*****YES*****0 NO*****1 ABSENT*****

REPRESENTATIVE NICHOLAS WILL CARRY THE BILL. RE-REFERRED TO APPROP.
WE WILL CLOSE THE HEARING ON SB 2379.

10706.0302
Title.0400

Adopted by the Agriculture Committee
March 15, 2001

VR
3/15/01

HOUSE AMENDMENTS TO ENGROSSED SB 2379 HOUSE AGR. 3-15-01
Page 1, line 7, replace "seven" with "eight"

Page 1, line 8, after the first "representative" insert "; the agriculture commissioner or the commissioner's representative"

Renumber accordingly

3-15-01

Date:
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2379

House AGRICULTURE Committee

Subcommittee on _____

or

Conference Committee REFERRED TO APPROPRIATION

Legislative Council Amendment Number AS AMENDED

Action Taken DO PASS

Motion Made By MUELLER Seconded By LLOYD

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	✓		Rod Froelich	✓	
Dennis E. Johnson - Vice Chairman	✓		Doug Lemieux	✓	
Rick Berg			Philip Mueller	✓	
Michael Brandenburg	✓		Kenton Onstad	✓	
Joyce Kingsbury	✓		Sally M. Slandvig	✓	
Myron Koppang	✓		Dennis J. Renner	✓	
Edward H. Lloyd	✓		Dwight Wrangham	✓	
Bill Pietsch	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment REP NICHOLAS

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

REPORT OF STANDING COMMITTEE (410)
March 16, 2001 2:16 p.m.

Module No: HR-46-5909
Carrier: Nicholas
Insert LC: 10706.0302 Title: .0400

REPORT OF STANDING COMMITTEE

SB 2379, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2379 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "seven" with "eight"

Page 1, line 8, after the first "representative" insert "; the agriculture commissioner or the commissioner's representative"

Renumber accordingly

2001 HOUSE APPROPRIATIONS

SB 2379

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2379

House Appropriations Committee

Conference Committee

Hearing Date **March 26, 2001**

Tape Number	Side A	Side B	Meter #
1		x	3122 - 6192
2	x		0 - 1363
Committee Clerk Signature			<i>Z J Danhe</i>

Minutes:

HOUSE APPROPRIATIONS COMMITTEE HEARING ON SB2379.

Rep. Timm: We will open the hearing on SB2379.

Sen. Bowman: I brought forth an idea that after spending seven months down in Kansas and studying the livestock industry, understanding that the majority of the cattle in my district go right down there and are fed and processed, and I looked at what could we do in North Dakota to enhance our agricultural industry and after I came back and visited with my brother who put together the feed lot down in Scranton and worked three years and he said its just like going through a maize to try and create something like that. I thought that we probably can do something better than that for a value added project, so what this bill actually does is address that issue, you can follow along and I will go through the testimony that I have prepared.

(Followed written testimony and then answered questions following the testimony)

Rep. Timm: What was the reason that the House Agriculture Committee wouldn't adopt the amendment? Did they give you a reason.

Sen. Bowman: Well basically they didn't think that was enough money to worry.

Rep. Warner: This sounds like a fabulous idea and somebody should have thought of it a long time ago to have a board that would coordinate Ag policy and I got to thinking that's what APUC does. Can you make distinctions between what this board would do and what APUC already does?

Sen. Bowman: I have never worked with APUC but APUC is included in this so all the resources that APUC has this just carries it out one step further. When I met with the University System I got to thinking about the biggest resources we have that has really not been tapped to its fullest. When your looking at developing programs like I'm thinking about you have to have people that understand marketing big time, taking a look at the innovative ideas we have with technology and how we can create web pages to market North Dakota products on big scale.

Rep. Gulleason: I really have some of the same concerns as Rep. Warner, I sat on the Ag. Products for a lot of years and when I look at the make up of the board and the mission they are almost identical, with the exception of really focusing on marketing and promotion verses the development of those types of programs, couldn't we just add marketing and promotion as an additional mission to APUC and channel it through there.

Rep. Bowman: Like I said, that would be up to you to decide, I don't believe that is what I want to see, but if you think that's the answer to this thing that's up to you.

Rep. Heuther: A few years ago Northern Plains Premium Beef tried to get off the ground and capital was the big thing. Do you see this board as being able to aid something like that, because all of that research is still available.

Sen. Bowman: I have researched a lot of that, and what I suggest is when you have a project that hasn't been successful it doesn't mean that the project wasn't a good idea, and what you have to do then is look at the reason for failure and turn that negative into a positive and find the answer to make it successful.

Rep. Timm: Any other questions of Sen. Bowman?

Sen. Nelson: Six or Eight years ago we started to develop a good deal of emphasis on economic development at the same time we backed off, I believe emphasizing economic development in agriculture, I think this is a step in starting to move back and understanding again in fact that agriculture still is a major industry in this state and it still is worth our efforts to try and promote value added processes in agriculture. Our producers can produce whether its onions or livestock or whatever, the reason that the Coops that we have tried to establish and have not been successful in this state, the biggest reason, or this biggest failures are marketing and business entity development. I think that's what sets this apart from Rep. Warner's question about APUC, APUC is there to help a grant for you to go out and develop or help you try to develop your program. This is how you go about using the APUC dollars to set up your business plan, to set up your business entity and talk about how your going to market for this company into the future and I believe that it is worthwhile for us to take a look at, I think it can help as we continue a struggling ag economy in North Dakota.

Rep. Gulleason: Would you see this program being administrated through the same format as we do APUC?

Sen. Nelson: What I see is that you have somebody that has an Idea, let us set up a value added business. Where can we go to get help in developing our business plan and Sen. Bowman in his meeting in Fargo had a couple of people from the business school at NDSU and a couple from

the University of North Dakota, where can we go to get help in national wide marketing, where can we go to get these kinds of expertise on putting us on the road to a successful company. I think that's different than the focus of APUC.

Rep. Timm: Any other questions of Sen. Nelson?

Rep. Belter: I just wanted to stand in support of SB2379, I think the value of this particular piece of legislation is that it reaffirms our support for agriculture and that we are asking the new commerce department and the people who are involved in promoting agricultural processing that it be brought to the forefront and so I think that's were the real benefit of this particular piece of legislation is that we as a legislature is saying we want more assistance in promoting value added products, and from that standpoint I would support this piece of legislation.

Rep. Timm: Any questions of Rep. Belter?

Lance Gabbe, Representative of the Ag Products Utilization Commission: Described the functions of the APUC commission and the number of requests for assistance they have received. After his comments he answered questions after his comments.

Rep. Timm: What do you think about the proposed amendment that would charge \$1000 for somebody to come in with their project for review and assistance. Do you think that would be a detriment to the people coming in to actually ask for a review?

Mr. Gabbe: Very generally our projects don't have a lot of money, it could help with some of the costs of course with the administrative costs and the salaries if we had to hire a consultant, but I would see it as being around about situation where they would go to APUC to find those moneys for help with marketing and then to go to another board. In project startups they are usually pretty short of cash, and the come to APUC for help with the feasibility and marketing studies.

Rep. Gulleason: Is it your understanding that this would come under your administrative hat?

Mr. Gabbe: That really hasn't been discussed at great length, but given that I am really the only value added entity within the economic development, particularly within the development of agricultural products it is very likely.

Rep. Gulleason: Under the authorization for the BPUC, that adds those areas that fall under business utilization creation, is that not being added unto your plate as well?

Mr. Gabbe: If your referring to HB1414, it was defeated.

Rep. Warner: My understanding of the rationale for moving APUC out of agriculture and to ED& F in the first place was that ED & F has some special expertise in marketing and project development, and I guess I'm very sorry to see that this hasn't taken place, but can you elaborate a little on the resources that ED & F has in place which could be used in developing marketing plans?

Mr. Gabbe: I would probably would defer that question to the director who is sitting behind me.

Rep. Delzer: I see there is board, and when the board O.K.'s the project it goes to a financing group. How is that group going to come together and work, are they going to paid for by APUC or start up money?

Mr. Gabbe: I'm not certain but I believe that is part of where Sen. Bowman's amendments would gear towards is trying help on how to pay that advisor group.

Rep. Timm: Any other testimony in support of SB2379?

Mr. Lee Peterson, Director of Economic Development and Finance: I'm here for a variety of issues, one is that agriculture has been extremely close to me and that's where I have spent most of my life. In Minot we had the Minot Magic Fund we had funded a variety of agricultural projects, a dairy farmer in Towner, a hog farm in Crosby, a beef cooperative that fed cattle. I believe it is essential for the State of North Dakota to diversify more in agriculture. Economic Development and Finance has always kept itself away from agriculture, we have been stripped of employees so many times, and a prime example of that is ag products utilization was given to Economic Development and Finance with no people, so we ended up taking two people from Economic Development and Finance to staff APUC, we also lost eight people last session, and we are having an extremely difficult time with our administrative end. Ag products utilization is such an involved project that you very often get a variety of books like the ones you have on your desk involving one project. Ag products utilization has also done an excellent job of administering itself, it has the ability to use up to 10% of its funds for administrative costs, and they have never used more than 4%. We believe we ability for one more person to assist both with APUC and with this new project but we need your authority to do that. We would certainly like to have another person to make this thing work and there are so many people supporting this

bill that I believe it is an excellent bill, and when you talk about marketing, the whole wide variety of marketing directions, and Economic Development and Finance currently we are not in the process of marketing products for companies and when you look at Ag. Products what you are looking at is finding a source to physically sell those products. Our marketing tends to be marketing to people who want to do business in North Dakota. I would be happy to answer any questions of the committee.

Rep. Timm: Any questions of Mr. Peterson? Any other testimony in support of SB2379?

Carol Two Eagles: I have been in business all of my adult life, I grew up in farming, when I was farming myself, I stood outside of the government programs and I made a profit, and every time I went into a government programs I didn't. I think that says something about the government projects and there programs unless things have changed since Mr. Bush took administration. There was a woman in Washington setting the milk price and she has never been on a farm, and she doesn't know anything about it and so we have farmers who are milking who are getting \$9.50 a hundred weight when it costs over \$10.50 to make hundred pounds of milk to make a profit. When I was growing up, since we are a working Indian family I was taught that the best investment that you will ever make is in yourself and I think that I went to the hearing with Sen. Bowman when he testified on his amendment and he said he just felt that it was just a pot sweeterer to insure that the bill got passed and Rep. Nickolas said he didn't think it was necessary and he thought that it might be detrimental. I can tell you that it would be detrimental. I have such a project and its been self funded on next to nothing, literally pennies an nickels, but the company is continuing to build because I have shoe stringed everything I have ever done and this particular one the function of it is to provide processing support for Durham producers of North Dakota and to provide living wage jobs mostly for American Indians since we are still the

bottom of the economic heap. It is to provide jobs and to expand North Dakota's economy and that way I firmly believe that the best economic investment you will ever make is in yourself. I don't think that the fiscal note on this worth considering, particularly when APUC says they have the funding, and as regarding this matter of a separate board, yes, because you don't put all of your chickens in one basket if you expect to survive and also it takes more than one perspective to make it work, and APUC has more to do than it can successfully get done. I think the additional board provides another perspective and provides kind of a back up resource of personnel, and I think these things are vital. More than 37% of North Dakota's economy is tied to agriculture and as long as we all eat, I don't care what anybody says about this being an information based society, Its an agricultural based society, I don't know about you but I'm not going to quit eating, but I sincerely believe that from my own personal situation, when I milked I milked goats, and the blue cheese factory was a coop, they were buying milk at \$22.00 a hundred, I sold it as non inspected pet food and I made sure that my bacterial counts met grade A standards and I made \$40.00 a hundred. I think that is bill is an excellent idea and I think that we should really pursue this, it isn't going to turn over overnight and I think we should be investing ourselves to a great degree.

Rep. Timm: Any questions? Any other testimony in support of SB2379? Any opposition to SB2379?

Rep. Wald: I have a question for Sen. Bowman, On page one line 14, you say a representative of the farm credit system, in your mind is that the same as farm credit services?

Sen. Bowman: Some one from the Ag sector lending institution and I think that would be appointed by the governor to find out someone is directly related to.

Rep. Timm: All these people on the board would be appointed except the director of ED & F and the Ag Commissioners representative, right? Answer was yes.

Rep. Heather: I have a question for Mr. Peterson. We rely on a lot of profit from the Bank of North Dakota and we keep spending that here as we balance our budget. I have a feeling that we could use a portion of that better directed out into the business world and create more jobs. I wonder if you would care to comment on that?

Mr. Peterson: I have for a long time been greatly concerned about the use of the profits that the Bank of North Dakota to fund the general fund of the State of North Dakota, and the reason I have been concerned is, being a former elected official myself I know that the profits from the bank will change, and when those profits change its going to be extremely difficult for you to find that source of money someplace else, and as we are beginning to see the longest good times in history start to slow down those may come sooner than we would like. The Bank of North Dakota was put in place in 1919 to assist in commerce and industry in the state and I believe that the profits of the bank should also be turned back to assisting industry and also to include agriculture and value added ag and also the new types of animal agriculture that we are seeing in large scale dairies, feed lots and other types of industries.

Rep. Timm: If there is no further testimony on SB2379 we will close the hearing.

House Appropriations Committee hearing on SB2379 was closed.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2379

House Appropriations Committee

Conference Committee

Hearing Date March 28, 2001

Tape Number	Side A	Side B	Meter #
03-28-01 tape #1		5375 - 6220	
03-28-01 tape #2	0 - 220		
Committee Clerk Signature	<i>Kathleen Hall</i>		

Minutes:

The committee was called to order, and opened committee work on SB 2379.

Rep. Gulleon: Has a question for the Lt. Governor, Mr. Jack Dalrymple. You've had a lot of experience with the APUC board. What does this do differently other than adding some marketing provisions. Why wouldn't we want to incorporate that into our existing commission?

Lt. Governor Jack Dalrymple: The idea is to get a group of people together who have the knowledge and experience with value added start ups to be available as advisors to the director of the commerce department in getting new projects off to the right start, getting them through the early stages, feasibility studies, grants for business plans, early professional advise, etc. And then to prioritize, or help the director prioritize the projects that have the most promise. APUC has done a lot of good work for us, but they are really looking at just one piece of it, early feasibility study. In this case we are talking about projects that might need millions of dollars of

Page 2

House Appropriations Committee

Bill/Resolution Number SB 2379

Hearing Date March 28, 2001

financing and development fund equity, they might be available for tax credits, etc. All that stuff has to be brought together and coordinated in the right way.

(further committee discussion)

Rep. Byerly: Moves to adopt amendment 10706.0303. Seconded by Rep. Wald.

Voice vote adopted the amendment.

Rep. Wald: Moves DO PASS AS AMENDED. Seconded by Rep. Kempenich.

Vote on Do Pass as Amended : 20 yes, 0 no, 1 absent and not voting. Motion passes.

Rep. Skarphol is assigned to carry the bill to the floor.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2379

Page 2, after line 13, insert:

- "5. The board may impose a fee of not more than one thousand dollars per project for review and assistance provided for the project. Fees collected under this section must be deposited in the operating fund of the department of economic development and finance and may be expended for expenses of members of the board and the financing advisory group for review and assistance provided for the project."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2379

In addition to the amendments adopted by the House as printed on page 964 of the House Journal, Engrossed Senate Bill No. 2379 is amended as follows:

Page 2, after line 13, insert:

- "5. The board may impose a fee of not more than one thousand dollars per project for review and assistance provided for the project. Fees collected under this section must be deposited in the operating fund of the department of economic development and finance and may be expended for expenses of members of the board and the financing advisory group for review and assistance provided for the project."

Renumber accordingly

Date: 3-28-01
 Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2379

House APPROPRIATIONS Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number 15706.0303

Action Taken to adopt amendment

Motion Made By Rep Byerly Seconded By Rep Wald

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman					
Wald - Vice Chairman					
Rep - Aarsvold			Rep - Koppelman		
Rep - Boehm			Rep - Martinson		
Rep - Byerly			Rep - Monson		
Rep - Carlisle			Rep - Skarphol		
Rep - Delzer			Rep - Svedjan		
Rep - Glassheim			Rep - Thoreson		
Rep - Gulleason			Rep - Warner		
Rep - Huether			Rep - Wentz		
Rep - Kempenich					
Rep - Korzman					
Rep - Kliniske					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
adopt Rep. Bowman's amendment

Passed

Date: 3-28-01
 Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2379

House APPROPRIATIONS Committee

- Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number 10706.0303

Action Taken Do Pass As Amended.

Motion Made By Rep. Wald Seconded By Rep. Kempenich

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman	✓				
Wald - Vice Chairman	✓				
Rep - Aarsvold	✓		Rep - Koppelman	✓	
Rep - Boehm	✓		Rep - Martinson	✓	
Rep - Byerly	✓		Rep - Monson	✓	
Rep - Carlisle	✓		Rep - Skarphol	✓	
Rep - Delzer	✓		Rep - Svedjan		
Rep - Glassheim	✓		Rep - Thoreson	✓	
Rep - Gulleason	✓		Rep - Warner	✓	
Rep - Huether	✓		Rep - Wentz	✓	
Rep - Kempenich	✓				
Rep - Kerzman	✓				
Rep - Kliniske	✓				

Total (Yes) 20 No 0

Absent 1

Floor Assignment Rep Skarphol

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

2001 TESTIMONY

SB 2379

Research Development Implementation of Value-Added Agriculture

The main goal of this project is to be creative in different marketing programs that will give the agriculture producers a larger share of the profit. The objective is to develop marketing initiatives that allow the producers to retain ownership and therefore retain profit. Only a process "from the producer to the consumer's plate" can accomplish this goal.

With limited resources and capital we must utilize the resources we have in this state to achieve this objective. I believe to accomplish this goal we must utilize the knowledge base that our university system has to offer. The university system has a tremendous knowledge base in agriculture research, business development, marketing, consumer needs, healthy foods, nutritional value, grant applications, capitalization, and other related fields.

Any person that has a specific field related to the needs of a project would be invited to participate. This would be accomplished by writing a letter to all people related to the fields necessary to accomplish a particular project. A file on all university staff that want to be a part of creating new wealth would be kept on file and when their expertise is needed they would be notified about the project. New wealth creation will benefit all people in this state.

Funds from the Sunday Opening Rural Development Loan Fund will fund the board and organizational costs. The bill would work like this:

Take a local, value-added idea.

1. Work with local economic development to develop a business plan.
2. Take the idea and business plan to a state screening board. The board's make-up would be the following:
 - A) State Economic Development
 - B) S-BARE
 - C) Higher Education
 - D) Bank of ND
 - E) Private Sector
3. If a project is not approved, it would be kept on file for later review. It might be approved later or combined with other like projects.
4. Funding: One suggestion would be to get a grant specialist to research grants and pay the person on a percentage basis. Also, a committee would be needed to work on a capitalization pool for processing plants.

Benefits of Value-Added Programs

North Dakota Beef Industry

North Dakota cow herd is estimated at around 900,000
 Estimated feeder cattle (steers + heifers) = 700,000

Current Value

	Yearlings - Low-End Prices	Yearlings - High-End Prices
Weight	600 lbs.	600 lbs.
Unit Price	\$0.80/lb.	\$1.00/lb.
Price per animal	\$480.00	\$600.00
Total number of animals	700,000	700,000
Total value in ND	\$336,000,000.00	\$420,000,000.00

Potential with a Value-Added Program

	Finished - Low-End Prices	Finished - High-End Prices
Weight	1200 lbs.	1200 lbs.
Unit Price	\$0.60/lb.	\$0.80/lb.
Price per animal	\$720.00	\$960.00
Total number of animals	700,000	700,000
Total value in ND	\$504,000,000.00	\$674,000,000.00

As you can see, the yearly value added to the state's economy would increase anywhere from \$168 million to \$254 million, depending on cattle prices.

Retail meat prices continue to be fairly consistent. A typical animal will have 454 lbs. of sellable meat, sold at \$3.10/lb. for a total of \$1,400. When this figure is applied to the 700,000 feeder cattle in the state, the yearly retail value of the meat is approximately \$984,900,000.

Feed consumption

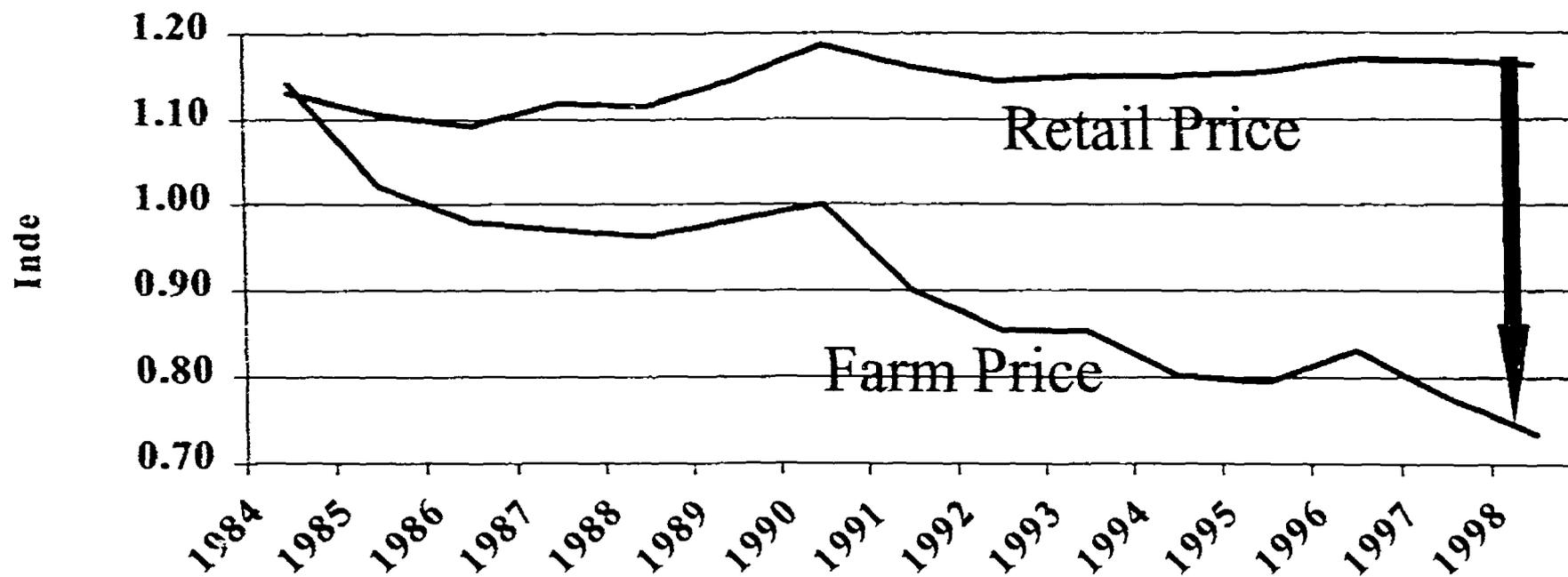
30 lbs. of feed/day generates a weight gain of 3 lbs./day

200 days = 6,000 lbs. of feed per animal

700,000 animals = 4,200,000,000 lbs. of feed per year = 2,100,000 tons

Retail Cost versus Farm Value for a Market Basket of Food*

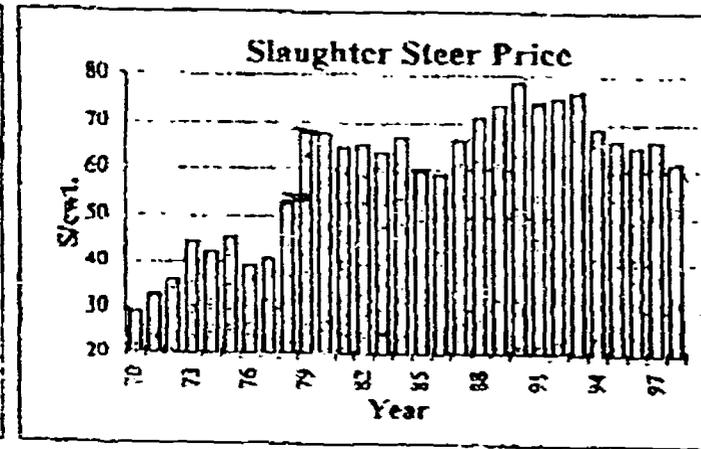
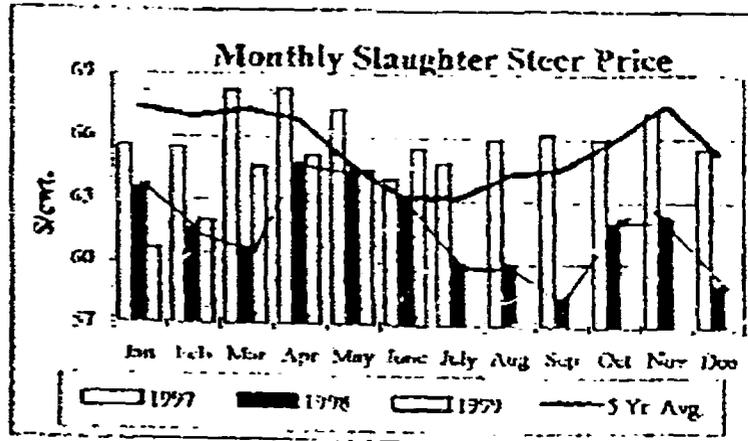
The increasing gap between retail food prices and farm prices in the 1990's is due largely to exploitation of market power, and not to extra services provided by processors and retailers.



C. Robert Taylor
Alfa Farmers Eminent Scholar
Auburn University

*Both indices are corrected for
inflation

Slaughter Steer Price



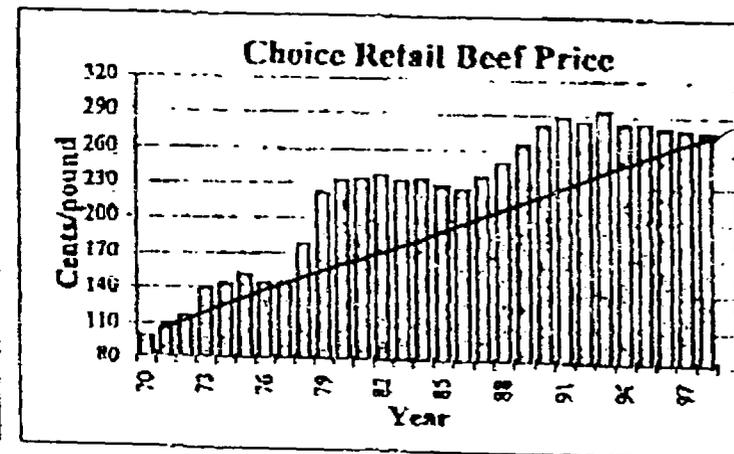
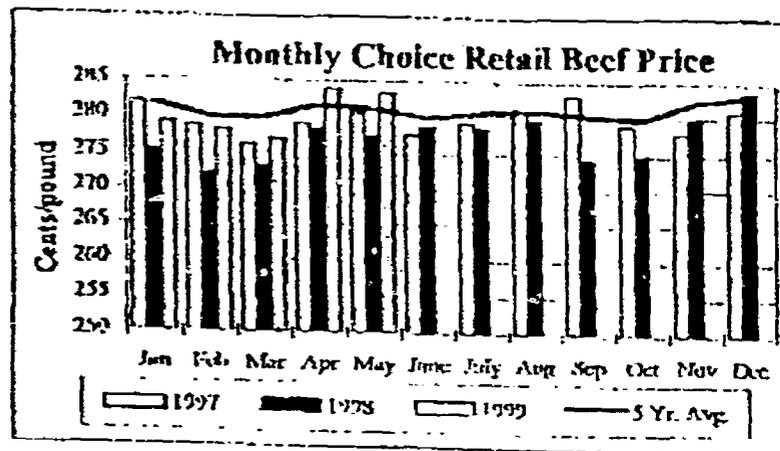
The information contained herein is based on data obtained from outside sources believed to be reliable. However, such information has not been verified by us and we do not make any representations as to the accuracy or completeness.

Source: USDA

Schwieterman, Inc. 800-272-9131

7/1/98
P/Star

Retail Beef Price



The information contained herein is based on data obtained from outside sources believed to be reliable. However, such information has not been verified by us and we do not make any representations as to the accuracy or completeness.

Source: USDA

Schwieterman, Inc. 800-272-9131

7/1/98
Retail Prices and Spreads

North Dakota Cattle/Calf Producers COMPLETE BEEF PROGRAM FROM PRODUCER TO CONSUMER

<u>Phase 1</u> Producer	<u>Phase 2</u> Feedlot	<u>Phase 3</u> Packer	<u>Phase 4</u> Retail and Distribution	<u>Phase 5</u> Consumer	<u>Phase 6</u> Impact on Rural America	<u>Phase 7</u> State/Federal Policies
<p>Herd health program</p> <p>Year-round calving cycles</p> <p>Retained ownership through final sale of meat products</p> <p>Continuous genetic and quality improvements</p> <p>Individualized ID tracking system -- ranch through processing</p>	<p>Ranch coordinated health program</p> <p>Eliminate high level, continuous feed of antibiotics and hormones</p> <p>Produce a consistent end product</p> <p>Ultrasound to determine optimum end point</p> <p>Individual animal performance and carcass data</p>	<p>New Zealand - mini-plant concept</p> <p>Clean, efficient, small town -- community based and locally friendly</p> <p>400 head per day capacity</p> <p>Add value to end consumer use</p> <p>Age middle meats</p> <p>Highly skilled, well paid workers</p> <p>Safe working environment</p> <p>Equal opportunity employer</p>	<p>Storage at point of shipping</p> <p>Consumer direct sales of any combination of products or quantity</p> <p>Restaurant-Retail promotion and marketing program</p>	<p>Provide a safe, high quality and consistent U.S. produced product at a reasonable cost</p> <p>Choice of any cut, in any form</p>	<p>Increase income to the farm-ranch gate by capturing added value beyond a commodity product and distribute fairly to the producer, feedlot operators, and rural communities</p>	<p>Assurance that federal and state policies and laws support the concept of this rural renewal effort</p>

Program Designed By Bill Bowman

10-30.5-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board of directors" means the board of directors of the corporation.
2. "Corporation" means the North Dakota development fund, incorporated, established under this chapter.
3. "North Dakota business" means a business owned by a North Dakota resident, partnership, association, corporation, or limited liability company domiciled in this state or a corporation or limited liability company, including a wholly owned subsidiary of a foreign corporation or limited liability company that does business primarily in this state or does substantially all of its production in this state.
4. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth. The term includes tourism, but does not include production agriculture.

Source: S.L. 1995, ch. 21, § 8.

Effective Date: This chapter became effective July 1, 1995, pursuant to N.D. Const., Art. IV, § 13.

10-30.5-02. Purpose and fund uses.

1. It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state. The corporation's principal mission is the development and expansion of primary sector business in this state. The corporation may form additional corporations, limited liability companies, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.

2. The exclusive focus of this corporation is business development in this state; however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to state residents in the creation of jobs or secondary business. Emphasis should be to develop jobs that provide an income adequate to support a family above the poverty level.

3. Moneys in the development fund may be used to provide working capital or for financing the purchase of fixed assets, but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.

4. The director of the department of economic development and finance shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation.

Source: S.L. 1995, ch. 21, § 8.

**Research - Development - Implementation of Value Added Agriculture
SB 2379 addresses this.**

The main objectives of this bill are to promote value-added agriculture, speed up the process for groups working on projects, save thousands of dollars in time and energy by bringing all the players together that are needed when developing a project.

Section one, subsection one sets up a board all appointed by the governor. It would consist of the following:

1. Director of ED&F (or his representative)
2. Specialist in agricultural research and education
3. Representative of the university extension service
4. Representative from the Bank of North Dakota
- 5 & 6. Two private sector representatives
7. Representative of farm credit systems

Section one, subsection two of the engrossed bill allows the board to adopt procedures and guidelines to administer the program. The board shall promote the formation, development, and growth of these projects and take steps to improve projects' chances for success.

Section one, subsection three deals with a financing advisory group that may include private sector and Bank of North Dakota individuals dealing with capital formation. These groups will have access to state institutions of higher education. Local or regional economic development organizations shall assist the project by completing a feasibility study and a business plan, and in seeking early-stage funding. This financing advisory group shall assist the project in pursuing equity investors, establishing a board of directors, locating professional services for completion of a business plan, and approaching lenders to fund project development.

Section one, subsection four places this program under the Department of Economic Development and Finance.

Section two gives definitions of production agriculture. It gives feedlots and milking operations primary sector funding from the Bank of ND

I have amendments to make this bill revenue neutral. Let's look at what this bill can do to the North Dakota economy, using the example of the complete beef program I developed. (Go to the handout - discuss the benefits - show the direction we're going - how to turn this around - how to eliminate risk) If we do nothing, get ready for contract agriculture - Tyson is buying IBP.

December 22, 2000
Department of Cereal Science
111 Harris Hall

Senator Bill Bowman
408 First Street SW
Bowman, ND 58623
P.O. Box 5728
Bowman, ND 58105-5728

Dear Senator Bowman:

Thank you very much for coming to NDSU to present your thoughts on value-added processing agriculture. You have given an excellent example with the beef business. When beef is processed, the profit outweighed the price the producers get. This is true for most of all food processing. Cereal foods companies get more than the wheat producers. It does not mean processing has no risks. However, if we do not try, we will have no opportunities to gain any wealth. I agree with you if right people with positive attitudes are put together in a program, our goals can be achieved. Traditional farming style is dying. Growers and communities must realize farming is a business and must be stretched beyond production to survive. NDSU can do a lot of work for our state citizens.

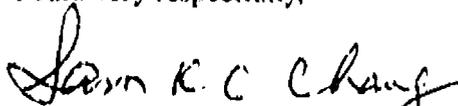
This morning I presented a Chart for a systematic integration of the food research that was evolved from a faculty committee on the development of a value-added food processing center at NDSU. I have been fortunate to serve as the Chair for this committee. The faculties interested in value-added research consist of many members in Departments of Agribusiness and Applied Economics, Cereal and Food Sciences, Agricultural and Biosystem Engineering and Animal and Range Sciences. In addition to the academic departments, we have several programs, centers or institutes, which have activities related to value-added agriculture. These include the Northern Crop Institute, the Quentine Burdick Center for Cooperatives, the Institute for Business and Industry Development, the Food Safety Center, the Imaging Center, the Bison Center, the Alternate Crop Research Program, extension service, etc. Some of these units deal with more than food utilization. However, they all include food processing to a certain degree. If I can use an example to illustrate, these units are just like peripheral nervous systems, there is a short of a central nervous system to plan and coordinate the activities with respect to value-added food processing. The objectives of these units differ. There are no horizontal or vertical interactions among these units. There is a need to create an infrastructure to integrate food research related activities. As a faculty member, I see the need to have a comprehensive structure with a strong leadership to lead the efforts for effective uses of our resources. The financial need for the creation of such a center/institute for food research may not be extraordinarily great if some of the functions of these units are re-organized to fit in the structure. Among major Midwestern research universities, NDSU is 10-20 years behind in the development of a value-added food and/or agricultural products utilization center.

As a faculty member, I appreciate your vision and encouragement for value-added utilization activities for the benefit of the state of North Dakota. NDSU has a group of food scientists and economists who are eager to assist in the economic development of rural ND. What you have stated about beef tenderization is very true. Beef after cutting will not tenderize in the same way as they would in the whole carcass. Both product quality and strategies in marketing are important for success. I believe, we at NDSU can establish a team to assist you in realizing your vision.

North Dakota has been a state of production ever since the state was born more than a hundred years ago, and the State University was established to develop the capability to support the growth of such a production industry. In my 16 years of tenure at NDSU, I have observed most people always doubt the need for utilization. There have been a lot of talks of reasons for business failure. There are few actions on how to establish conditions to favor the success of the business. There has been very little support to develop a modern capability in value-added research and development when compared to that for production agriculture. If we have more senators or representatives with the same vision as you, I believe, the picture of value-added utilization will be much more beautiful in the near future.

Please let me know if you need further assistance from me.

Yours very respectfully,


Sam K. C. Chung, Ph.D., Professor

VALUE ADDED Mtg., NDSU, Dec. 22, 2000

Name	Representing
Dave Lambert	Agbusiness, NDSU
Paul Berg	Animal Range Sci
Kass Davidson	ARS Dept
Cindy Facke	NDSU Extension - HVIC TR
Sam Chang	Cereal Science
Nally Kearns	UND - College of Business
Thomas Anderson	NDSU Extension Service
Jay A. Leitch	NDSU College of Business
Cole Gustafson	NDSU College of Agriculture
Pat Jensen	NDSU
Jim Tilton	NDSU - ARS
Bill Pietsch	Casselton
GARY NELSON	Casselton
Keith Bjerke	NDSU
Bill Nelson	NDSU - CBOC
TIM FELTY	NDSU - Agbus
Marty Marchallo	NDSU Animal & Range Sci
Joel Caton	NDSU Animal & Range Sci
Tom Archbold	SBARE
David Saxowsky	NDSU - Ag communication

Contract Production of Agricultural Products; Related Legal and Economic Issues

by Roger A. McEwen*

I. The Rising Tide of Contract Agriculture.

A. Goals of government policy.

1. Availability of an abundant food supply.
2. Maintenance or enhancement of productivity and environmental integrity of natural resources.
3. Prosperous and productive economic climate for producers.
4. Provision of low cost food.
 - a. Excessive concentration among producers interferes with low consumer prices. Oligopolistic conditions are present when eight or fewer firms control 50%-65% of output.
 - b. Production contracting with large food processors and distribution companies prevents consumers from fully realizing benefits of near perfect competition at production level. Middlemen are increasingly concentrated which increases the possibility of price collusion at processing, wholesale and retail levels.
5. Policy Failures of the 1996 Farm Bill.
 - a. Too heavy reliance on future demand for exports and overly optimistic assumption that trading partners would revise policies that distort world agricultural trade.
 - b. Failed to consider functionality of domestic agricultural markets, which have become extremely unbalanced due to rapid concentration of agricultural processing sector.
 - c. Failed to consider economic interdependence of farmers who are increasingly at risk of being folded into vertical production chains managed by the processing sector.

B. Concentration among seed input suppliers, livestock processors and retailers.

1. Fewer firms as input suppliers, particularly in the seed industry. For example, two firms control 69% of North American seed corn market and 47% of soybean seed market. One firm, Monsanto, sold 88% of the genetically-engineered seeds in the United States.

Note: In the seed industry, there were \$15 billion of combinations for time period 1996-1999. In early 2001, Tyson Foods, Inc. acquired IBP, Inc. for \$4.7 billion, making it the largest U.S. meat company with \$23 billion in annual sales.

* Associate Professor of Agricultural Economics and Extension Specialist, Agricultural Law and Policy, Kansas State University, Manhattan, Kansas. Member of Kansas and Nebraska Bars.

Pages missing

- a. Changing role of land-grant universities.
- b. Manipulation through genetic engineering.
- c. Ability to obtain patents (monopoly-like position). *See Diamond v. Chakrabarty, 447 U.S. 303 (1980)* (bacterium having unique genetic characteristics is patentable subject matter under general patent statute).

C. Effects of contracts.

- 1. Seed suppliers and meat packers can be expected to capture more of the yield premium.
- 2. Contracts will be written in favor of the suppliers and packers.
- 3. Division of revenue expected to shift over time to the party that has market power.
 - a. Less revenue goes to the producer.
 - b. Seed supplier receives more revenue - the control of the rights to the technology.

Note: The perception of potential profits in the future is what is driving the push toward concentration in control over germplasm.

- 4. Seed companies likely to negotiate for ownership of the product; producer only has right to receive payment.
- 5. Producer receives only compensation, but still bears significant risk; contracts used as a clever way to shift economic and environmental risk onto farmers.
 - a. *Minnesota Dept. of Ag v. Campbell Soup Co.*
 - (1) Chicken plant closed in Worthington, MN leaving 36 contract farmers holding debt on barns built solely for broilers.
 - (2) Minnesota Dept. of Ag has issued \$54,700 fine.
 - b. In December of 1998, Murphy Farms canceled hog contracts of twelve farmers due to poor hog markets.
 - c. Many contracts make farmers responsible for waste produced by their operations.

Example: Largest manured-caused fish kill in Minnesota occurred in 1997. Farmer running the operation received jail time and fine; company farmer raised pigs for (Christenson Farms and Feedlots) not penalized and remains one of nation's top 20 hog producers.
 - d. *Segers v. Pioneer Hi-Bred International, Inc.*, 997 F. Supp. 1124 (N.D. Ind. 1998) (plaintiff grew seed corn for defendant under contract and crop failed due to herbicide application; plaintiff liable for crop loss under contract provision even though choice of herbicide subject to defendant's approval).

sellers, not consumers; court specifically noted that sellers are to be protected by Sherman Act); see also *National Macaroni Manufacturers Assoc. v. Federal Trade Commission*, 345 F.2d 421 (7th Cir. 1965) (by fixing composition of a blend of durum and hard wheat, defendant substantially affected price of durum wheat).

D. Possible solutions for producers.

1. Antitrust oversight with objective to ensure that all sectors and subsectors have equal and low economic power.
2. Collective action by farmers; allowed by farmers so long as it does not unduly enhance price (*Capper-Volstead Act*, 7 U.S.C. §§ 291, 292).
3. More germplasm in public domain.
4. Mandatory disclosure of production contracts.
5. Prohibition against conditional purchases in which the purchase of animals from one seller is tied to the purchase of animals from another seller.
6. Reform captive livestock marketing regulations to establish fixed base-prices for livestock sold in contract feeding operations, and requiring disclosure in an attempt to bolster auction markets.
7. Limits on firms ability to control production and retail distribution.

Note: Some states ban meat packer ownership of livestock.

II. Hedge-to-Arrive Contracts

A. Defined - fixed price forward contracts where producer agrees to deliver specific quantity of grain at future date.

1. Farmer takes risk that commodity price will not rise before delivery is required under contract.
2. Buyer covers price risk by selling identical amount of commodity to a third party or by use of hedges in futures market.
3. Contracts allow delivery to be "rolled forward" to a date when prices are expected to be lower (if prices continue to rise, buyer may experience weakened liquidity position and may exhaust line of credit for margin calls).

B. Potential problem.

1. "Continuous forward roll" may make delivery requirement illusory and may violate Commodity Futures Trading Commission (CFTC) regulations that ban trade options (off-exchange derivatives) on agricultural commodities.
2. Legal contracts are those between nonspeculators where there is a reasonable expectation of delivery and farmer has sufficient commodity on hand or a reasonable expectation of being able to produce the amount specified in contract.

C. Illustrative cases.

contract and the farmer asked the buyer to defer delivery. The buyer refused and the farmer sold the grain to another buyer. The contract language stated that deferral was only a privilege rather than a right.

7. *Oeltjenbrun v. CSA Investors, Inc.*, 3 F. Supp. 2d 1024 (N.D. Iowa 1998) (contracts were valid cash forward contracts; contract plainly contemplated actual physical delivery of a specified amount of grain to a specified location at a specified price during a specified period of time; court found significant that plaintiff had made delivery of some grain, but was allowed to roll over the remainder of the grain due under the contract if not able to presently deliver the grain).

III. Regulation of Contract Production of Commodities and Livestock

A. Bargaining power disparity between farmers and large-scale food processors.

1. Creation of Interstate Commerce Commission (now Surface Transportation Board) in 1887 in response to farmer concerns about economic domination of railroads, which hauled farmers' grain and cattle to eastern markets.
2. Sherman Antitrust Act of 1890.
3. Clayton Antitrust Act of 1914 sought to limit corporate mergers that increased economic concentration levels. Farmer cooperatives were exempted as a counter-balance to the power of corporations. *See generally* 15 U.S.C. § 12-27 (1994). The exemption was strengthened in 1922 with passage of the Capper-Volstead Act. 7 U.S.C. § 291 (1994).
4. Agricultural Fair Practices Act of 1967. 7 U.S.C. §§ 2301-2306 (1994).

Note: The quality of bargaining power had been a persistent theme in agricultural policy debates for over 100 years, but did not receive any attention during the legislative debate over the 1996 Farm Bill. Indeed, in the legislative debates surrounding Freedom to Farm, no effort was made to address the competitive conditions in agricultural markets, the relative bargaining power between farmers and processing firms, and the ability of antitrust laws to address these concerns. Thus, policy makers failed to consider the workability of markets in which farmers would be selling their products. As a result, by deregulating ag prices, many farmers felt compelled to become part of an integrated production system in which they operate under contract to large processing entities, which are often very specific and tightly regulate their daily activities.

5. Congress mandated a large-scale study of concentration in meat packing sector – study published in 1996. *Concentration in the Red Meat Packing Industry, Grain Inspection, Packers and Stockyards Administration, USDA (Feb. 1996).*
6. Archer-Daniels-Midland implicated in three international price-fixing conspiracies (lysine, citric acid and corn sweeteners) and paid the then largest fine in American history.
7. Cargill-Continental Grain merger prompted introduction of federal legislation to freeze all large-scale agribusiness mergers for 18 months or until federal legislation addressing the issue could be passed. *Agribusiness Merger Moratorium Act, H.R. 3759, 106th Cong. (1999).*

5. Requirement of prompt payment. See, e.g., *Cal. Agric. Code § 56701; Minn. Stat. Ann. § 27.138* (establishing trust funds to ensure payment).
6. Prohibition of unfair practices. See, e.g., *Wis. Admin. Code § 101.07(4)(a)-(f); H.B. 2818, Ag Production Contract Fair Practices Act, Kansas 78th Legislature, 2000 regular session, no action taken; H.B. 2712, Competitive Livestock Markets Act, Kansas 78th Legislature, 2000 regular session, no action taken.*

Note: Any state legislation that is too aggressive in its attempts to protect family farmers is *not* the most effective way to provide protection. Corporate interests will move to states with less regulation and will become powerful competitive powers. Thus, states should not base farm policy exclusively on regulation of corporate behavior. Interstate compacts and federal legislation may be necessary.

7. Eliminate via regulation the aspects of forward contracts that display significant discrimination or have negative effect on competition.
8. Prohibit packers from achieving captive supplies in setting of high levels of concentration as currently exists in steer and heifer slaughter.
9. Western Organization of Resource Councils (WORC).
 - a. Asked USDA to use PSA authority to restrict use of captive supplies of cattle by packers by requiring them to offer firm, fixed base prices on forward contracts.
 - b. Asked USDA to require that cattle acquired by forward contract or owned by packers be offered for bid in an open, public market.
10. Is the price problems for beef a result of declining consumer demand caused by poor vertical integration? Arguably, the beef industry's problem has very little to do with waning demand. In 1979, for example, live cattle prices hit \$80, approximately where they are as of late 2000 and early 2001. But, in 1979, producers received 64% of total beef dollar. In the third quarter of 2000, producer's share of total beef dollar was 45% – the worst in history. The difference is \$334 per head on average. *USDA, Economic Research Service*. Interestingly, during the third quarter of 2000, record retail beef prices were reported along with packer profits, but substantial losses were reported on live cattle.
11. The federal mandatory price reporting (MPR) rule goes into effect Jan. 30, 2001, and is designed to address livestock pricing problems and force more pricing information into the system.
 - a. Any MPR must, however, recognize the variability amongst different types of transactions, i.e., joint ventures, forward price contracts, formula price contracts. The suggestion is that enabling legislation require disclosure of parameters and pricing details of each transaction. It could prove difficult for USDA to establish a meaningful and timely price reporting system.
 - b. Confidentiality of proprietary business information to be protected under "3-60" rule.

Note: The rule was not in the initial draft of the implementing rules, but the packers pushed for the

(6) At least 30 percent of stockholders must reside on the farm or be actively engaged in the daily labor or management of the operation.

c. Corporations can own livestock feedlots and confinement facilities.

E. Regulation of contract feeding through anti-corporate farming laws

1. "Type A" restrictions - corporate involvement in farming.

a. Missouri - "No corporation not already engaged in farming shall engage in farming; nor shall any corporation, directly or indirectly, acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any title to agricultural land...".

b. Arguably prohibits corporate contract feeding arrangements - e.g., use of production contracts by hog processors creates the functional equivalent of engaging in farming.

2. "Type B" restrictions - corporate ownership of agricultural land.

a. Kansas - "No corporation...shall, either directly or indirectly, own, acquire, or otherwise obtain or lease any agricultural land in this state."

b. Does not prohibit corporations from "engaging in farming." This "loophole" was used by livestock processors desiring to vertically integrate their operations by owning the livestock they processed.

c. An attempt was made in 1988 to close this loophole by passage of Kan. Stat. Ann. § 17-5905.

(1) Prohibits pork processors from owning hogs for more than 30 days before such hogs are manufactured, processed or prepared for sale.

(2) Prohibits pork processors from contracting for production of hogs that the processor owns.

(3) Does not prevent corporations that are *not* processors from engaging in contract hog production.

3. An important point is that laws regulating contract farming are usually much narrower, better focused, and more effective than state anti-corporate farming laws.

F. State regulation of contract swine production.

1. Colorado.

a. Restrictions apply to "housed commercial swine feeding operations.

(1) A "feeding operation capable of housing 800,000 pounds or more of live animal weight of swine at any one time, or is deemed a commercial operation under local zoning or land use regulations.

(2) State and local governments can impose restrictions that are more restrictive.

limited liability company within a county through one of two methods. Term "swine production facility" defined to include agricultural land necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production and to avoid nitrate buildup and for isolation of the facility to reasonably protect the confined animals from exposure to disease.

- a. Board of county commissioners may adopt a resolution, subject to notification and protest petition, for admitting the establishment of a swine production facility within the county.
- b. Qualified voters may submit a petition to board of county commissioners requesting establishment of such a facility within the county.

Note: The question of whether the swine production facility should be permitted, either through the protest petition (the first method) or the petition requesting the facility (the second method), is to be triggered by the signatures of not less than five percent of the county electors who voted in the election of the Secretary of State in the last preceding general election gathered within sixty days of the county decision.

2. Specifically protects the use of swine production contracts from being considered a violation of the anti-corporate farming law, and includes a number of provisions designed to regulate the manner in which swine production contracts are used.
 - a. If contractor is a subsidiary of another business, the parent company is liable to the producer for any unpaid claims arising from the contractor's failure to pay according to the contract.
 - b. All contracts are read to include "an implied promise of good faith" allowing for recovery of damages, court costs and attorney's fees, if a court finds a promise has been breached.
 - c. All contracts must include a provision requiring producers to comply with applicable state and federal environmental laws, and contractors must provide information concerning how to comply with the laws on request by producers.
 - d. Contracts requiring a capital investment of more than \$100,000 and having a useful life of five years or more, are subject to a notice of cancellation and right to cure procedure requiring the contractor to give the producer 90 days notice before cancellation or termination, and affording the producer an additional 60 days after receipt of the notice to "correct the reasons" given.
 - e. All contracts must contain language providing for resolution of contract disputes by either mediation or arbitration.
3. Permits establishment of dairy production facilities owned or leased by a corporation or limited liability company within a county through the same procedure as adopted for swine production facilities. *Kan. Stat. Ann. § 17-5907 (1994) - effective date, April 28, 1994.* Term "dairy production facility" defined to include agricultural land necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined cows from exposure to disease.

1. Producer receives a guaranteed price per pound regardless of market price;
2. Processor realizes lower costs due to decreased production time;
3. Consumer pays less for pork relative to the price of other meats; and
4. Processor realizes same economic advantage as ownership without attendant capital investment.

B. Disadvantages.

1. Individual producer no longer owns the final product.
 - a. Producer cannot pledge the product as loan security.
 - b. Producer must follow processor's meticulous care instructions in raising swine.
 - c. Producer may not hold the hogs for a better price and may not sell the hogs elsewhere.
 - d. Processor gains power to affect the market.
2. Loss of control - producer no longer makes many of the day-to-day decisions.
 - a. Integrator controls the production to marketing cycle.
 - b. Integrator has 24 hours access to producer's facilities.
 - c. Producer still bears risk of crop and/or livestock loss.

VI. Impact of Contract Hog Production on an Individual Producer's Conduct

A. Production in accordance with contract performance terms.

1. In order to obtain the promised price premiums, producers will be required to satisfy contract terms.
2. Contract production may limit the flexibility to farm as desired and introduces the risk that the hogs produced will not be accepted under the contract. Most production contracts set forth specific requirements that the finished product must meet, and any finished products not meeting those standards will be disqualified from receiving any premiums available under the contract terms.

B. Contract access - in many instances it will take a certain size of operation, and there can be required investments in equipment or other added costs associated with the contract.

C. Change in marketing and payment system.

1. Contract may require direct delivery of hogs to the processor, bypassing local marketing outlets.
2. Pricing mechanism may bypass traditional public pricing discovery processes - price may be based solely on contract terms rather than local prices or futures prices.
3. Hog ledger contracts ("cost-plus" contracts).

E. Potential for non-production reasons to serve as the basis for termination.

1. If producer violates any contract clause, such violation may serve as basis for breach of contract claim even though real reason was an adverse price movement or other market concern.
2. Quality compliance provisions leaving determination solely in hands of processor could, conceivably, create an opportunity for market factor to serve as the basis for rejecting the product and finding the contract has not been performed.

VII. Contract Issues Related to the Use of Genetically Modified Organisms (GMOs)

A. Acceptability in Commercial Markets of GMO Hybrids

The Problem: Certain world markets will not accept GMOs, and some United States grain processors have announced that they would not purchase GM grain until it is approved in particular foreign markets. This injects tremendous uncertainty into seed purchase transactions and product sales at or after harvest.

1. Always check labels and only utilize non-GM hybrids.

- a. But, there is a chance that GMOs may appear in bags of non-GM seed. Due to the cross-pollination problem, seed companies are not likely to be in a position to warrant that non-GM seed is free of GMOs.

- (1) Seed companies admit that contamination from pollination occurs (some say it is less than 1/10th of one percent). In addition, contamination can occur from mechanical means - i.e., augers, wagons, storage bins or even the combine itself.

Note: Some of the seed companies concede that their seed purporting to be non-GMO contained low levels of GMO germplasm.

- (2) No tolerances have been set for GMO germplasm in non-GMO seed, so producers requesting an express warranty from the seed company that seed is GMO free will likely be met with counter offer requiring producer to state that seed was produced without using GMO germplasm.

Note: That may not be an adequate defense if tolerances are set at low levels.

- (a) If producer asked by first purchaser to promise that crop is non-GMO, producer must be very careful concerning what is signed or what oral comments are made.
 - Can state that no seed represented by seed company as GMO was planted.
 - Can state that seed represented by seed company as non-GMO seed was planted.
 - Can state that care was taken in avoiding contamination in

- b. Any description of the goods which is made part of the basis of the bargain. The warranty is that the goods will conform to the description.
 - c. Any sample or model which is made part of the basis of the bargain. The warranty is that the whole of the goods will conform to the sample or model. But, "puffing" talk, statements of value or mere opinions of the seller generally do not create warranties.
2. Implied warranties - imposed by law to assist in the result.
- a. Warranty of merchantability - imposed on goods sold by merchants (farmers in about half of the state have been held to be merchants).
 - (1) Goods must pass without objection in trade under contract description.
 - (2) Fungible goods must be of "fair average quality" within the description.
 - (3) Goods must be fit for the ordinary purposes for which they are to be used.
 - (4) Goods must be packaged and labeled adequately in accordance with the agreement.
 - (5) Goods must run of even kind, quality and quantity within and between units except as variations are permitted by the agreement.
 - (6) Goods must conform to promises or affirmations of fact appearing on the container or label.
 - b. Implied warranty of fitness for a particular purpose is imposed if seller has reason to know any particular purpose for which the goods are required and if the buyer is relying on the seller's skill and judgment in providing such goods.

3. Disclaimers of warranties

- a. Implied warranty of merchantability - excluded or modified by seller if done orally or in a writing that mentions merchantability.
- b. Implied warranty of fitness excluded or modified only by conspicuous, written provisions in the contract.
- c. "As is," "with all faults," can be used to disclaim warranties; likewise, if buyer refuses to examine goods before signing contract, seller may be excused from implied warranties, if an examination would have disclosed the defects.

Note: The key is to examine contracts carefully concerning any representations about the genetic make-up of the crop being marketed. Watch contract language that involves warranty language on use or destination of the crop. Statements that purchaser anticipates that the crop will be exported to the EU could invoke an implied warranty of fitness.

D. Contracts may be offered on a "take it or leave it basis".

farmers, but no through intermediaries such as farm cooperatives and grain elevators).

- [ii] *Asgrow v. Winterboer*, 513 U.S. 179 (1995)(right to sell saved seed limited to seed needed to plant farmer's next crop).

f. PVPA amendments of 1994.

- (1) Sales provision removed from crop exemption - farmers now may only sell seed "for other than reproductive purposes" - for food or feed, and not for planting.
 - [i] Activity involved in *Winterboer* case would now constitute infringement.
 - [ii] Farmers still permitted to save seed for replanting, to save seed for planting the following season on owned and rented acreage or to sell seed for other than reproductive purposes.

2. General utility patents

- a. "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor...."
 - (1) Living micro-organisms are patentable. *Diamond v. Chakrabarty*, 447 U.S. 303 (1980)(bacteria was product of human labor rather than product of nature; however, decision only dealt with bacteria instead of plants).
 - (2) New plant varieties are eligible for general utility patents. *Ex parte Hibberd*, 227 U.S.P.Q. (BNA) 443 (Bd. Pat. App. & Interferences 1985)(statute applicable to maize plants; PPA and PVPA enacted out of concern that plants would not qualify for patent protection rather than because Congress thought plants were inherently unpatentable); see also, *Pioneer Hi-Bred International, Inc. v. J.E.M. Ag Supply, Inc.*, 49 U.S.P.Q. 2d (BNA) 1813 (N.D. Iowa 1998), *aff'd* 200 F.3d 1374 (Fed. Cir. Jan. 19, 2000), *pet. for rehearing denied*, 2000 U.S. App. LEXIS 6911 (Fed. Cir. Mar. 13, 2000) (PVPA not exclusive method of protecting seed corn in that federal law did not prevent protecting plant technology by utilization of both a general utility patent and a PVPA certificate).
- b. Developer given an exclusive monopoly over patented varieties for 17 years.

3. Purchase agreements

- a. Seed companies have attempted to utilize language in purchase contracts to gain protection exceeding that offered by the PVPA.
- b. Typical agreements allow breach of contract remedies to be pursued if farmer/purchaser uses harvested seed for replanting own fields, sells seed to another farmer, or allows seed to fall into the hands of a plant breeder who uses it to develop a new variety.

determining the enforceability of unwritten contracts where a written confirmation is received within a reasonable time.

- a. Unwritten contracts between merchants are enforceable if a written confirmation of the contract is received within a reasonable time unless written notice of objection to the contents of the writing is given within 10 days.
 - b. Kansas - in order to be a merchant, a farmer must satisfy three tests:
 - (1) Must be a professional dealer who deals in the goods of the kind involved;
 - (2) Must by occupation hold self out as having knowledge or skill peculiar to the practices or the goods involved in the transaction; or
 - (3) Must employ an agent, broker or other intermediary who by occupation holds self out as having knowledge or skill peculiar to the practices or goods involved in the transaction.
2. Accord and satisfaction in the acceptance of payment - arises in connection with claims that an accepted payment has served to terminate a dispute.
 3. Notice of anticipatory breach - arises when the producer gives the company notice of an intention to not perform under the contract.
 4. Measure of damages for breach.
 - a. The buyer has the option of cancelling the contract and recovering any amount paid as well as seeking damages for cover.
 - b. May also choose not to cover and seek damages for the contract-market differential.
 5. Oral contract modifications.
 6. Description of collateral if collateral is a genetically modified organism (GMO).
- B. Eligibility to receive federal farm program payments.
1. A producer must retain a beneficial interest in the commodity to remain eligible for farm programs and/or CCC loans.
 2. Thus, it is imperative to determine if the terms of the production contract as to risk of loss, title, and payment leave a sufficient beneficial interest with the producer.
- C. Tax issues.
1. Is a producer under a production contract an "independent contractor" or an "employee"?
 - a. If producer is an "independent contractor", the producer is responsible for reporting and paying self-employment tax.
 - b. If producer is an "employee", contractor must withhold taxes on wages paid, and there is liability for Social Security and, perhaps, federal unemployment tax on both employer and employee.

zoning regulations. *Att'y Gen. Op. 92-92 (July 15, 1992).*

- f. A swine breeding facility constitutes "farming" as such term is defined in the Kansas Anti-Corporate Farming Law. *Att'y Gen. Op. 91-133 (Oct. 25, 1991).*
 - g. For combined or multiple uses, the primary use controls.
3. Counties do not have authority under the zoning statutes to redefine "agricultural" or "agricultural purposes" more restrictively or narrowly than the approved usage of those terms. *Att'y Gen. Op. 79-260 (Nov. 14, 1979).*
- a. The statutory exemption for "agricultural purposes" extends to all uses of land which may be defined as "agricultural".
 - b. Counties do have authority to establish set-back requirements from public roads for all agricultural buildings.
4. Home rule powers.
- a. Generally, a board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate.
 - b. However, counties are prohibited from passing any local legislation contrary to or in conflict with any act of the state legislature which is of uniform application throughout the state.
 - (1) Substitute for H.B. 2950 (1998) - a county cannot exercise its home rule power to enact regulations for confined animal feeding operations that are different than the provisions of H.B. 2950.
 - (2) *Att'y Gen. Op. 98-41 (Jul. 21, 1998)* - a county may not impose more stringent separation distance requirements for confined animal feeding facilities than those set out in *Kan. Stat. Ann. § 65-171d (1997 Supp.)* As amended by substitute for H.B. 2950.
 - c. The statutes authorizing county-wide zoning are uniformly applicable to all Kansas counties. *Att'y Gen. Op. 85-39 (April 25, 1985).* As a result, counties may not utilize home rule to exempt themselves from, and enact substitute provisions for, county zoning.
- B. City zoning.
- 1. Cities are authorized to adopt zoning regulations affecting all or any portion of land located outside the city that is within three miles of the city limits. *Kan. Stat. Ann. § 12-715b.*
 - 2. Livestock feedlots are considered to be agricultural pursuits, but may be subject to city zoning. *Kan. Stat. Ann. § 47-1502.*
- C. Separation Distances.
- 1. Senate Bill 800 (effective July 1, 1994) requires any new construction or new expansion of a confined feeding facility to meet or exceed certain separation distances from any habitable structure.

- B. Consolidation in agricultural sector requires lenders to be more adept at analyzing and lending to new, more complicated enterprises.
1. Smaller share of production revenue flowing to producers
 2. Control of technology in hands of fewer firms.
- C. Understand the economics of the contract era of agriculture.
1. Increased concentration among input suppliers.
 2. Control of germplasm by a few firms.
 3. Division of revenue expected to shift increasingly in favor of input suppliers.
 4. Less buoyancy for land values (land values are price determined, not price determining; land has value as expected profitability is capitalized into value of land).
 5. More buoyancy for stock of input suppliers.
 6. Shift in management to input suppliers.
 7. Input suppliers may try to acquire other input supply and output processing firms.
 8. Shift in bargaining power away from farm firms.
 9. Majority of economic benefit inuring to party with whom producer contracts.
 10. Federal Trade Commission and U.S. Department of Justice not currently sensitized to potential for future economic abuses.
 - a. Examination of "tying arrangements" that are "per se" illegal (i.e. tying financing with seed variety).
 - b. The current belief is that agriculture is last bastion of perfect competition and is competitive by a wide margin.

PROCEDURE FOR RESOLVING GRAIN GRADE DISPUTES

60-02-05. Grain marketing - Procedure for resolving disputes.

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints of the grain in dispute may be taken together by both parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States. The person requesting the inspection service shall pay for the inspection. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the determination made by a federal licensed inspector may be made as provided

under the United States Grain Standards Act [Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.

2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints of the grain in dispute may be taken together by the parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed upon third party, who may examine the grain and determine the quality factors in dispute. The person requesting the inspection service shall pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

Officially licensed inspection agencies in North Dakota include:

Grain Inspection, Inc.
PO Box 1652
Jamestown, ND 58402
(701) 252-1290
Fax: (701) 252-1298
E-mail: grain@daktel.com

Grand Forks Grain Inspection
Department, Inc.
PO Box 639
Grand Forks, ND 58206
(701) 772-0151
Fax: (701) 772-7948
Cell phone: (701) 779-5686
E-mail: gfginsp@aol.com

Minot Grain Inspection, Inc.
PO Box B
Minot, ND 58702
(701) 838-1734
Fax: (701) 852-6533
E-mail: motgrins@minot.com

ND Grain Inspection Service, Inc.
1601 7th Avenue North
Fargo, ND 58102
(701) 293-7420
Fax: (701) 241-8818
E-mail: ndgisi@worldnet.att.net

Additional service points in North Dakota include:

Grand Forks Grain Inspection
Department, Inc.
PO Box 760
Devils Lake, ND 58301
(701) 662-2142
E-mail: gfgidi@stellarnet.com

ND Grain Inspection Service, Inc.
PO Box 123
Enderlin, ND 58027
701-437-3000 ext.: 202
E-mail: ndgisi@mlgc.com

Grand Forks Grain Inspection
Department, Inc.
PO Box 37
Gladstone, ND 58630
(701) 225-2268
Fax: (701) 225-2269
Cell phone: 701-260-2714
E-mail: gfgi@aol.com

Call the Public Service Commission's
Licensing Division at 701-328-4097 to
receive a copy of this procedure.



Selling Grain?

Know Your Rights and Your Responsibilities

- ▼ Grading disputes
- ▼ Will I be paid?
- ▼ Storage rates
- ▼ Handling fees

Jon H. Mielke
Executive Secretary, Licensing, and Rail
North Dakota Public Service Commission

George Flaskerud
Extension Crops Economist

Andrew Swenson
Farm and Family Resource Management



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No Grain License — No Bond Protection

Bond coverage does not exist if a buyer is not licensed. If grain is sold to an unlicensed buyer and if the buyer does not pay for the grain, there is no bond coverage available to help pay the seller. Court action may be a farmer's only recourse if an unlicensed buyer fails to pay for grain. **Therefore, farmers are strongly encouraged to check to ensure that the buyer is licensed. Warehouses and grain buyers must be licensed and bonded.** Unlicensed buyers are operating illegally.

In North Dakota, bond requirements are based on the physical size of an elevator or on the amount of grain that a grain buyer handles. **Even if the buyer is licensed and bonded, there is no guarantee that farmers will be fully reimbursed if a buyer becomes insolvent.** If the buyer does not have enough grain and bond assets available to satisfy all valid grain claims, available funds are distributed on a prorated basis.

Farmers must also be aware that **bond coverage may not be available if grain is sold to a company that is located outside the state.** If grain is sold to out-of-state entities, the laws of the state in which the buyer is located may govern the transaction. Farmers may find that they have far less protection in those states than they do if the grain was sold to a company that is licensed in North Dakota.

To find out if a warehouse or grain buyer is licensed in North Dakota, visit the Public Service Commission web site at www.psc.state.nd.us or call (701) 328-4097.

Delayed Price and Deferred Payment Contracts — No Bond Protection

Delayed price and deferred payment contracts are examples of credit-sale contracts. In most cases, credit-sale contracts do not have bond protection. State law defines credit-sale contracts as written grain sale contracts that provide that the sale price may be paid more than 30 days after the delivery or release of the grain.

The title to grain passes from the farmer to the buyer when the contract is signed. At this point, the farmer becomes an unsecured creditor.

Farmers must be aware of the fact that **credit-sale contracts are not typically protected by the buyer's bond.** Language concerning the lack of bond coverage or coverage limitations must be printed in bold type immediately above the signature block on the contract. **If no bond coverage is available, the contract will read something like this:**

THIS CONTRACT IS NOT PROTECTED BY BOND COVERAGE IN THE EVENT OF THE BUYER'S INSOLVENCY.

This warning means exactly what it says!

Storage Rates and Handling Fees

State law does not prescribe grain elevator storage rates and handling fees. **Each state licensed grain warehouse sets its own storage rates and redelivery fees** (i.e. "in" and "out" charges).

Licensees cannot, however, unjustly discriminate among patrons. State licensed grain warehouses must file their proposed rate schedule with the Public Service Commission; it must also be posted at the warehouse. The rates may be revised upon filing with the PSC.

Storage rates must be stated on warehouse receipts. If a warehouseman changes his rates, the rates that were in effect when a warehouse receipt was issued are the rates that apply to that storage contract. Warehouse receipts on beans expire on April 30 of each year; other grain receipts expire on June 30. If

expired receipts are reissued, the storage rate in effect at the time is the rate that will apply to the renewed receipt.

Farmers should not confuse storage rates with credit-sale contract service or handling charges (delayed price and deferred payment-type transactions). These fees are not regulated and are governed by the terms of the contract that is entered into by the buyer and the seller.

Grading Disputes — Don't Wait Or You'll Be Too Late

State law does not regulate elevator purchase prices, premiums, or discounts. State law does provide, however, that warehousemen may not unjustly discriminate among patrons.

If a farmer does not agree with an elevator's test results he has the right to ask that an independent test be performed on his grain. He must, however, **ask for the test when the grain is delivered.**

To initiate the process, the farmer must ask for the independent test. The farmer and the warehouseman must then draw a **mutually agreeable sample** of the load. This sample must be sealed in a container and sent to a **federally licensed inspection service** or to some other mutually agreed to third party for testing.

The buyer and the seller are both obligated to accept the results of the independent test. The farmer is responsible for the cost of the tests.

State law requires that warehousemen and grain buyers post a notice concerning the law's provisions concerning the resolution of grain grading disputes. To obtain a copy of the notice, visit the PSC's web site at www.psc.state.nd.us or call (701) 328-4097.

North Dakota
Public Service Commission
600 E. Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480
Web Site: www.psc.state.nd.us
E-Mail: skr@oracle.psc.state.nd.us
Phone: 701 328 4097



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