

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2277

2005 SENATE AGRICULTURE

SB 2277

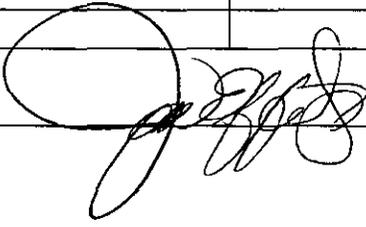
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2277

Senate Agriculture Committee

Conference Committee

Hearing Date January 27, 2005

Tape Number	Side A	Side B	Meter #
1	x		48 - 1990
Committee Clerk Signature 			

Minutes:

Chariman Flakoll opened the hearing on SB 2277, a bill relating to limitations on regulation of seed by political subdivisions Five members were present, Senator Taylor was absent.

Senator Flakoll introduced the bill. (written testimony)

Senator Klein asked if this bill would require the seed grown in North Dakota to follow the rules of the state, not the rules of the sub division.

Senator Flakoll said yes.

Terry Wanzek, president of the North Dakota Grain Growers Association, testified in favor of the bill. (written testimony) (meter 665)

Senator Klein asked if, with the scrutiny of biotech, could it be safer than those things we don't examine as closely.

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Senate Agriculture Committee

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Mr. Wanzek said yes. In August in Des Moines, he learned about the development of a cold and drought tolerant corn. The evaluation of biotech seed is precise and detailed. It has great potential.

Woody Barth, North Dakota Farmers Union, testified in favor of the bill.. This industry needs statewide regulation, not local regulation. Other industries are regulated on a statewide level.

Ken Bertsch, North Dakota Seed Commissioner, testified in favor of the bill.. (written testimony) (meter 1235) This is right to farm legislation.

Gary Knutson, North Dakota Agricultural Association, testified in favor of the bill.. His concerns have been expressed today by others. Uniformity is important and he is in strong support of the bill.

Chairman Flakoll closed the hearing on SB 2277.

Senator Klein moved a do pass for SB 2277.

Senator Erbele seconded the motion.

The motion passed on a roll call vote 5-0-1. Senator Taylor was absent.

Senator Flakoll will carry the bill to the floor.

REPORT OF STANDING COMMITTEE (410)
January 27, 2005 9:44 a.m.

Module No: SR-18-1181
Carrier: Flakoll
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2277: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2277 was placed on the
Eleventh order on the calendar.

2005 HOUSE AGRICULTURE

SB 2277

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2277

House Agriculture Committee

Hearing Date 2---25---05

Tape Number	Side A	Side B	Meter #
ONE		B	6.9 TO 47.0
TWO	A		0.0 TO 4.8
Committee Clerk Signature <i>Edward D. Ellson</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee Members we will open on SB 2277.

Bill is relating to limitations on regulation of seed by political subdivisions.

CHAIRMAN NICHOLAS: I would like to make a few comments in support of this bill.

I believe at this time in North Dakota there is nothing in place that would not be voiding any current ordinances or laws and the bill is almost identical to the pesticide preemption law presently in Section 4-35-06.1. I think one of the things we are trying to do with this bill is avoid some of the past. Some states have literally zoned there agriculture right out of production. I don't know if we will ever have that problem in North Dakota but this is more a preemptive piece of legislation and I hope we can look at it in that theme. It will also allow a degree of fairness as we continue to access technology. I think members of this committee as we look into the future technology obviously is with us. We are gaining new technology in genetics, the amount of production that is now coming from biotechnology in corn and soy

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House Agriculture Committee

Bill/Resolution Number SB 2277

Hearing Date 2---25---05

beans is more than a majority of the production. It is almost revolutionary in the aspect that it is happening so quickly. As we move into mammal technologies what is in store for us in agriculture I think will be almost phenomenal. We are moving very quickly and we need to continue to keep the doors open and I think in ND we will be able to do that. I think the other thing that we have to be careful with as farmers we can have situations where as farmers a lot of our asset base is predicated on our balance sheet and if we get groups that come in and adversely effect our production agriculture as all of us are impacted by we need to be very careful that we do not have groups, organizations that come in and try to take away our way of life and our ability to enhance our bottom line. We still have to make a profit in this business.

That is what it is all about. The majority of you sitting are hands on farmers and so you obviously know what I am talking about. I hope you can see fit to give this bill support.

I would be happy to answer any questions. Maybe if you have questions for me you can Hold them. I see Senator Flakoll is here.

SENATOR FLAKOLL: [please see and read Sen. Flakoll's printed testimony---along with his testimony there are two hand outs subject 4-35-06.1 and the other hand out is California County biotech 1/24/05 map coded in colors RED YELLOW AND GREEN.]

SENATOR FLAKOLL spoke to, for example prices of land being driven down by [example Huetterite colony] because they have the votes. They have one hundred votes for example, we don't. CHAIRMAN NICHOLAS, THIS IS REALLY A RIGHT TO FARM BILL AND I ASK FOR YOUR SUPPORT. OF THIS BILL.

CHAIRMAN NICHOLAS: Any other questions.

REPRESENTATIVE MUELLER: You said home rule or some restrictions of the kind that we are trying to eliminate here. Will they stay in effect.

SEN. FLAKOLL: First point, don't know that there is any home rule. I am not aware of that. There are no laws on the books that this bill will override.,

REPRESENTATIVE MUELLER: What you are telling us is that there is none in effect at the present time. Can you give us a definition of what seed represents in 2277? Can we be talking leafespurge, saltpeter, black nap shade etc worm wood.

SENATOR FLAKOLL: Those are covered in different codes within the law as to noxious weeds.

REPRESENTATIVE FROELICH: Is not this taking away local control?

SENATOR FLAKOLL: I think this provides local control. If you think of local control as in its finest form, it is the farmer being able to do what he wants on there land where they are using the technology to provide to plant a transgenetic soy bean, whether it is to provide The new advancements in certified seed. It will be local control for farmers. It will stop neighbor farmers from saying we are gong to ban what you are planting.

CHAIRMAN NICHOLAS: Questions. Rep. Brandenburg.

REPRESENTATIVE BRANDENBURG: I stand here in support of SB 2277. Research is out there and we need this legislation. There is corn seed that will grow at forty degrees.

SENATOR RANDY CHRISTMANN: DISTRICT 33. I agree with what I have heard and I support the bill.

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House Agriculture Committee
Bill/Resolution Number SB 2277
Hearing Date 2----25----05

TERRY WANZEK: N.D. GRAIN GROWERS PRESIDENT. [[please see Terry Wanzek printed testimony]] We support SB 2277. We do not want to deny even one ND farmer access to the latest tools of their trade. It is important to U.S. AND N.D. Agriculture's competitiveness. I might just share a little story. I just returned from a National Wheat Growers Association. Annual meeting in Reno. Scientist came to the meeting with a warning that wheat is going to be an orphan crop. There is less money being spend for research of wheat. New science feel that wheat has not been willing to go forward. The National Growers Board adopted a very positive Pro active resolution to move forward and start bring biotech into wheat. This is just for your information. Bill is necessary. We have good regulations in US. I don't want someone telling me that I can't raise a crop that is approved by the USDA. The corn belt is coming into ND. Because of biotechnology. We say corn that germinates at 40 degrees. It grows at tempter's ten degrees lower then current corn being planted. I already see less wheat growing in my area and more corn and soy beans being planted. They are generating more profit growing these crops. Japan imports a huge amount of our soy beans. Including biotech. The market works.

REPRESENTATIVE MUELLER: Any political subdivision cannot impose a set of rules That have any effect on seed. Lets say we have a township that has a lot of folks in that have an interest in organic. No one here is against organic. But, that township is determined with there people, those that are farming, running the township to say it might be a good idea for us to impose some regulation on the seed that is brought into our township on behalf of the organic Farmer. We are not going to let them do that if we pass this bill, is that correct.

TERRY WANZEK: Yes, I believe that is correct. Farmer should make management

Decision best for him under the law. [[TERRY IS GOING TO BRING A LETTER FROM
USDA AS TO ORGANIC FARMING AS TO CERTIFICATION REGULATIONS.

REPRESENTATIVE MUELLER: Lets say I am an organic farmer. Say folks in my area want
to do organic farming. They found a market. Your commentary is ya the guy next to you is
going to put in GMO WHEAT and the town ship can't stop him. Given what I just heard to
describe we are going to have to go through this whole process of making sure they go through
that blizzard of paper work that is required here because there might have been the advantageous
event that you spoke to and it ended up in-----? I did not end up loosing my market
because of what you just said but the concluding comment that I would make, we talk about
local control. In this instance, sneer that I outlined we have totally blown the local control.
On a township level and I don't know that we want do that.

TERRY WANZEK: May I respond with a question. Would you support a township that
decides only biotech crops be grown. Could a local farmer grown only organic in the township.
I would not support that either. I believe the farmer should make the management decisions
within the guide lines of law. Would you support only organic crops.

REPRESENTATIVE MUELLER: Absolutely not. That is the whole issue. We should not be
imposing laws on a local level that says you can or can't do anything.

REPRESENTATIVE BANDENBURG: The organic farmer have to follow guide lines. If they
follow there guide lines that they are not going to have a problem.

TERRY WANZEK: That is what I conclude from the USDA. I will provide the letter.
The problem is we are seeing some things in this country that we don't want to happen.
That will exclude or preclude our farmers from having the tools.

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House Agriculture Committee
Bill/Resolution Number SB 2277
Hearing Date 2----25----05

Maybe I need to read the bill again. We want to make sure our farmers have access.

CHAIRMAN NINCHOLS: You were here when we put the sirloin bill in and it was kind of a preemptive bill. Many states followed our example. There was harassment from people in our area and we handled it.

TERRY WANZEK: I think this send a clear message to those who live out of state. "This state is not going to put up with it." We are not going to allow it.

CHAIRMAN NICHOLAS: We have people living in Arizona writing articles for the paper tell us in ND how to farm in ND. So if you don't think those people are coming. Think again, they are already here.

STEVE SEBESTA: STATE SEED DEPARTMENT:

I AM HERE TO SPEAK IN SUPPORT OF SB 2277. Senate Bill represents a sensible way to make sure that ND has the opportunity to utilize all types of federally approved commercially available seed products that are also available to our competitors and neighbors. Giving the circumstances that they are developing in other parts of US. NORTH DAKOTA should look at this type of measure geographic regulations of production As the agency responsible for regulatory issues described in this bill it would be extremely if not impossible; To regulate the production handling sales and distribution. On a county by county basis. I cannot foresee how any agency could effectively carry out the intent of multiple county or township ordinances. Especially with the potential of inconsistent language from county to county. This bill assures that the concern will not become a reality. The well being of the

Liability of seed industry depends on opportunity of broad production and distribution of products. North Dakota is the largest producer of certified seed in the US. Township moratorium on certain products that are generally recognized as safe based on sound science would be detrimental to the economic impact of our industry. The best example that I could give the committee is this. Suppose a citizen of Fargo voted to ban the production of trans-Geneic soy beans in Cass County. First of all who would enforce that ban and what resources would be required. Secondly, and more important what would be the economic consequences Cass County is the largest producer of soy beans in the US. 14 billion bushes harvested. Worth 70 million dollars. A few million of these are for seed production produced by excellent seed producer's. The ban in Cass County would be economically hard on Cass County.

BRIANT KRAMER: Farm Bureau. We support SB 2277. We need to be at competitive edge.

MARK JOHNSON: Association of Counties. I am not excited about the bill except I want to provide some information as to zoning. For example application, registration, labeling and distribution. We do have zoning laws that have been on the books for many years.

We think that relative to zoning we have already been preempted from zoning agriculture products out of any kind of production of environments. Section 58-03 Section 11 Section 58-03.11 fits and township zoning. These regulations are redundant. The same zoning for townships

CHAIRMAN NICHOLAS: Any additional testimony in support of this bill.

Any testimony in opposition to bill.

DEAN HULSE CHAIRMAN OF DAKOTA RESOURCE COUNCIL. FARGO, N.D

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House Agriculture Committee
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I was born and raised here. I am a land owner of the family farm. We still own farm land.

I don't have the oil and grease on my hands today. I don't own a lot of stock. I have farm land and I kind of take exception that I am not actively engaged in farming that I don't care about the land. I would just respond as to some of the comets I heard today. Sen. Flakoll map of California is democracy in action. This is local control we are talking about. Mr Wanzek said 80 percent of the market is -----? Unable to make out.

Six thousand frames are in organic One person being denied his choice and this is all based what if serener. So I will flip that around. Mr. Wanzek said these products are safe. These products that are on the market today have been given substantial equivalent by the FDA

There has been no long term testing on these products. We don't know as to long term use of products. The reason I don't farm is because of chemicals. I choose to buy organic products. If some else's field is contaminated with GMO I will buy from a non countermined field.

I would encourage you to read testimony I passed out. Mention of research.

CHAIRMAN NICHOLAS: One clarification, you probably were not listening to what I said.

What I said was that these people are trying to influence public policy nothing about there voting here but they are trying to influence public policy. As to how I want to make Towner County. That is what my point is sir. I hope you understand. I don't want you misconstruing what I said. I hope you heard what I said.

REPRESENTATIVE DAMSCHEN: We live in a democracy. I am a strong supporter of local control. .

CHAIRMAN NICHOLAS: ANY ADDITIONAL TESTIMONY IN OPPOSITION TO THIS BILL. O.K. WE WILL CLOSE ON SB 2277

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2277

House Agriculture Committee

Conference Committee

Hearing Date 3----03----05

Tape Number	Side A	Side B	Meter #
TWO	A		13.4 TO 31.4
Committee Clerk Signature <i>Edward A. Weyson</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee Members, I would like to roll out one more bill. It is the preemption bill SB 2277. This bill committee members we heard last week and this bill is dealing with regulation and distribution of seed. It will allow preemption and somewhat over rule local ordinances. County ordinances that such in California where the map of California looks like a checkerboard as to regulations on seeding.etc. Environmentally groups coming in and basically over ruling farmers abilities to use the type of seed and grow the kind of crops they want. This, hopefully, is a farmer friendly bill.

REPRESENTATIVE BRANDENBURG: MADE A MOTION FOR A DO PASS.

REPRESENTATIVE HEADLAND SECONDED THE MOTION.

REPRESENTATIVE ONSTAD: You probably can answer a question for me.

The counties brought in that they are now allowed to get into zoning or prevent any kind of farm practice. I understand that so I am wondering if they are not we are not stopping

Any kind of technology.

CHAIRMAN NICHOLAS: Well I think one thing that is happening. The groups that are going around and let me give you a little and impeded probably different environmental groups. What they are doing is going around and destroying the crops and test plots GMO plots, of different types of crops and other parts of the county the problem is much worse then it is here and I know are researchers at NDSU have been concerned about that. They have relayed that to me. I think this is a preemptive strike and let me make a comparison when we put the sirloin bill in which we were having a lot of problems up in the St John area the people up there running the horse lines, the PEDAs people were coming in and disrupting there people. The were running into there barns with video cameras disrupting horses and causing them all sorts of problems.

We put that bill in, I believe it was the 99 session if my memory serves me right,

And we have not had a problem and that bill has been copied through the country. There are a couple of other states that have put this legislation in place already. So I think this is pretty farmer friendly legislation.

REPRESENTATIVE MUELLER: I think you make a very good point about groups that come in and we I think have discussed legislation in here and I think have actually passed some That discourages the destruction of those kinds of research plots and nobody in this room wants that to go on. I guess given what this bill is doing is a pretty far reaching bill. We are actually saying to the townships in the counties that you can't put any laws in place

Like that. I think that is kind of what the problem is. We are tying the hands of our people back home in our townships and counties to say which ever direction you can't do any thing about it

and for that reason I think I am in opposition to the bill. There are a lot of things in the bill that end up leaving more questions than answers at least for me. When we talk about

A definition of seeds, that what the thing says. Seeds. I did a little backgrounding on it

And there is no definition of seeds in the Code. Seed could be leafy spurge and all the others

Things in addition to corn, wheat and soy beans and everything else. So what we are kind of

saying with this is whatever the seed may be you just can't put any rules in effect to govern that.

One of the other points I might make one of the last parts of the exemption for any activities

is the disposal of seeds. If I am reading the correctly, I have a rotten load of corn from the

bottom of the bin I can go out and dump that on the township road. It says you can't put any

rules in place by the township to dump that -----I can do whatever I want. It allows for state

regulations here but I think we are doing some stuff the local control that we had not ought to

CHAIRMAN NICHOLAS: O.K. Rep. Headland. AND THEN REPRESENTATIVE

BRANDENBURG.

REPRESENTATIVE HEADLAND: I guess this bill goes to the very simplest form of local.

Control. It takes it right to the farmer and gives him the choices that he needs. I think farmers

are responsible and they do have to obey the laws and provisions that the state of North Dakota

puts forth but it simply allows him to do what he need to do to farm. It puts no restrictions on

him as far as organically or if he wants to plant GMO'S or anything and I think it is a good bill

and I am going to support it.

REPRESENTATIVE BRANDENBURG: I think this bill is so important to ND for research

and development. As we look and NDSU concerning not only Fargo but Minot and

Carrington and all the research and development that is done in the state and the money

That is need to do this research and development. We are looking at a new Green House
At NDSU and we are trying to expand new products for crops that are farmers grow
And it is going to put money to farmers that need research and development for new technology
For example we have a corn crop in ND was a failure and really it was a failure because
The technology is there right now for corn to be able to germinate in 40 degree weather and be
able to grow it in that type of environment where now some of those people have come and ran
some of those research dollars out of the state. For that reason this bill is important.

REPRESENTATIVE FROELICH: This bill tears me. I have a good friend that lives in
Colorado and he has seen how the Californians have come in and messed the whole thing up.
I believe in the bill. I really do. We had a meeting last night with 60 people there. You know
what they said. They want local control. I am going to vote against the bill because my
constituents come and say to me I don't want this. It is preemptive.

CHAIRMAN NICHOLAS: What we are seeing in ND right now, we have seen people come
in and along the Missouri and stuff probably even in your area Rep. Froelich and I have heard
prices as high as \$3,000.00 per acre and we know that is not realistic to produce any kind of
livestock. Most of that is livestock land. They are obviously not buying it for production
agriculture. Pretty soon we get a majority of those folks and they are dictating what you are
going to grow on your farm. That gives me some real heart burn. I don't want to stop anyone
from getting \$3,000.00 an acre that has historically sold for one hundred to one hundred and
fifty per acre.

REPRESENTATIVE DAMSCHEN: I am torn about this in a way because the local control
issue but then I think the local control. I don't think there are limits anymore then the existing

law that says the township or county can't regulate a farming practice. There are two obvious sides to this issue. You could zone for GMO products or you could zone for only the production of GMO products I don't think either one is what we want. I think I will vote for the bill. WE should not have government regulating.

REPRESENTATIVE MUELLER: I have a tendency to agree with Rep. Damschen that the Rules and regulations are already in place. First of all I do want technology to happen. I think it is important. I am doing it. Going after those fellow is not the objective here. I really believe number one we have rules in place now. The county people stood up here and handed them out Counties can not interfere with the practice of farming. That is pretty broad so I think that covers it. What we have here is kind of a slap on the face saying you guys are not going to be smart enough to figure this out. So we will put a law in place out here that takes care of it. I don't know that that is a message that I want to send back to them in regard to local control So I can't.

CHAIRMAN NICHOLAS: Did everyone get the map the other day on California,.
When I look at that it is scary.

REPRESENTATIVE MEULLER: I agree with you but we don't have any body and place in the state that is even contemplating that right now. This is not California.

CHAIRMAN NICHOLAS: They are coming. We have them editorializing in the Devil Lake Journal. These area people that have been living in Arizona all of there life and now they want to come back and dictate how we are going to farm in townner county. They spent a lot of money and in fact they have hired attorneys out of Fargo to come up and impede things that local people are trying to do. Rep. Boe has been working with some people that want to start a dairy

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House Agriculture Committee

Bill/Resolution Number SB 2277

Hearing Date 3---03---05

The next thing they will be doing is impeding that ability to put a dairy together in our area.

Or what ever we might want in the future. That is where I have the problem.

REPRESENTATIVE BRANDENBURG: They can stop research and development.

REPRESENTATIVE WALL: Much like Representative Froelich, the telephone calls and E-mails I have had from my continuance. They are offended by the bill. I have nothing the bill.

O.K. WE HAVE A MOTION FOR A DO PASS AND A SECOND.

THE CHAIR WILL TAKE THE ROLL.

THERE WERE 7 YES

4 NO

2 ABSENT

REPRESENTATIVE BRANDENBURG WILL CARRY THE BILL.

CHAIRMAN NICHOLAS: Committee, I respect your opinions and we had a good discussion and I am sure we will debate it on the floor. We have 7 yes's 4 no's And 2 absent. Thank you for your patience. We will see you tomorrow at nine o'clock.

CHAIRMAN CLOSED ON SB 2277 AND AGAIN SAID THANK YOU.

3-3-05
SB 2277

Date:
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HOUSE AGRICULTURE COMMITTEE Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By BRANDENBURG Seconded By HEADLAND

Representatives	Yes	No	Representatives	Yes	No
REP. EUGENE NICHOLAS CHAIRMAN	✓		REP. TRACY BOE	✓	
REP. JOYCE KINGSBURY VICE CHAIRMAN	✓		REP. ROD FROELICH		✓
REP. WESLEY BELTER			REP. PHILLIP MUELLER		✓
REP. M. BRANDENBURG	✓		REP. KENTON ONSTAD		✓
REP. CHUCK DAMSCHEN	✓				
REP. CHAIG HEADLAND	✓				
REP. GARY KREIDT					
REP. GERALD UGLEM	✓				
REP. JOHN WALL		✓			

Total (Yes) 7 No 4

Absent 2

Floor Assignment BRANDENBURG

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

REPORT OF STANDING COMMITTEE (410)
March 3, 2005 1:26 p.m.

Module No: HR-39-4072
Carrier: Brandenburg
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2277: Agriculture Committee (Rep. Nicholas, Chairman) recommends DO PASS
(7 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). SB 2277 was placed on the
Fourteenth order on the calendar.

2005 TESTIMONY

SB 2277

SB 2277
Senator Tim Flakoll

U.S. agriculture continues to embrace and rely upon biotech seed. In 2004, American farmers planted 47.6 million hectares of biotech cropland, which was an increase of 11% over the previous year. Activists have achieved local seed regulation in the Northeast and the West Coast with more initiatives on the way. In there situation, a farmer might be able to plant in their land on one side of the road but not on their land on the other side of the road.

Currently we run the risk that special interests groups could mount a campaign to have scientifically unqualified local governments restrict the sale and planting of seeds. Such local restrictions at the County, City or even down to the township level could create a confusing patchwork of seed regulations within a state and across the country.

Currently the law does not permit the preemption by counties but the law is a little fuzzy when it comes to home rule counties. SB 2277 would clear up that confusion.

There are a number of states that have enacted similar legislation including: Iowa, Nebraska and Wisconsin.

Points of support:

- 1) There is nothing in place in North Dakota at this time, so the bill will not be voiding any current ordinances or other laws.**

- 2) This bill is nearly identical to the pesticide preemption law presently in Section 4-35-06.1 of NDCC.**
> handout

- 3) Passage of the bill will avoid a local patchwork of rules and regulations:
> California handout**
- 4) This local patchwork would put farmers at a competitive disadvantage to farmers in neighboring counties or states.**
- 5) Passage of the bill will help insure fair access to seed technology.**
- 6) It will also avoid conflicts that may affect transportation (I29 and I94), experiment stations and other local variances.**
- 7) It will avoid a patchwork situation that may depress land values (Huetterite colony example).**
- 8) All seed companies, distributors and others in the seed retail chain would continue to be required to follow**



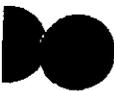
applicable state and federal seed and environmental regulations and statutes.

9) The Current regulatory framework includes:

- **USDA: is it safe to grow?**
- **EPA: is it safe for the environment?**
- **FDA: is it safe for consumption?**
- **State regulatory agencies as the ND Seed Commission in concert with other state and federal agencies.**



This is really a right to farm bill and I ask for your support.



Mr Chairman and Members of the Senate Agriculture Committee. My name is Terry Wanzek. I am president of the ND Grain Growers Assn. We support Senate Bill 2277.

As new and emerging scientific technologies come onto the agricultural scene it is very important that our farm producers have a nationwide, comprehensive and consistent set of rules and regulations regarding the commercialization of these technologies. A segregated and divided mish-mash set of rules and regulations regarding these new seed technologies will be extremely chaotic, convoluted and confusing, not to mention possibly illegal and in violation of interstate commerce laws. They will be a nightmare to enforce.

We believe this bill is necessary to prevent what is happening in California. Some counties or other political subdivisions are considering their own regulations and or moratoriums on new seed technologies. We do not want that situation in ND. We believe it is imperative that all of our ND farmers have access to all the new tools and technologies that become available to make production and management decisions that are necessary to compete in an ever increasing competitive global market. The number one global market issue is still price. If any one of our producers in any county are prohibited from gaining efficiencies in production or marketing costs from new technology, you limit their ability to be competitive in the world market.

All new biotech seed technologies go through an extensive federal regulatory process to be

proved for commercial release. Three agencies work with approving new biotech seed technologies. They are the USDA (APHIS), the EPA and the FDA. It takes hard work and a number of years to get approval before commercialization is approved for anyone product. They are tested for their affect on the environment and for their health safety effects.

In summary, considering the fact that these technologies are heavily regulated by the federal government and as long as they are approved as being safe, healthy and beneficial to society by the federal government, there should be no authorization of any local political subdivision to control the distribution and commerce of these new technologies. We need to support a consistent, clear, science based, national approach to dealing with the advent of new seed technology, not an individual, segregated, confusing, convoluted set of rules that would constrict our producers. It is important to US and ND Agriculture's competitiveness.



North Dakota State
NDSSD
Seed Department

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Ken Bertsch
State Seed Commissioner

Testimony
Senate Bill 2277

Senate Agriculture Committee
January 27, 2005

Good morning Mr. Chairman and members of the Senate Agriculture Committee. For the record, my name is Ken Bertsch and I serve as State Seed Commissioner and Administrator of the State Seed Department. Thank you for the opportunity to speak in support of SB 2277.

SB 2277 represents a sensible way to assure that the agriculture industry in North Dakota may utilize all types of federally approved, commercially available products at the disposal of neighbors and competitors. Unfortunately, North Dakota should look at this type of measure to dismiss concern that some type of quilted pattern of regulated geographic areas develop in this state, in the same manner happening in other areas of the U.S.

I will confine my comments to a few points directly related to the seed industry:

1. As the agency responsible for (at least) the regulatory issues described in the bill, it would be extremely difficult situation to regulate the production, handling, sale or distribution of "banned" seed on a county-by-county basis. I cannot imagine how any agency would carry out the intent of a county or township ordinance that prohibited the use of a particular seed product. SB 2277 simply ensures that this concern would not become a reality.
2. The well-being and viability of the seed industry depends on the opportunity for broad production and distribution of products and services. County-by-county or township-by-township moratoriums on certain products would harm the economic impact of our industry, which is the largest producer of certified seed products in the United States. The trickle down affect on the entire agriculture industry and individual producers in the affected political subdivision would be severe. State action to limit use of certain chemicals or seed is one thing; discriminating in the use of ag products on a township basis is quite different.

The best example that I can give the committee is this:

What if the citizens of Fargo voted to ban planting and production of transgenic soybeans in Cass County?

Cass County is (or has recently been) the largest soybean-producing county in the United States, harvesting nearly 14,000,000 bushels in 2004, worth over \$70 million dollars. It is estimated that 70%-80% of those may be transgenic.

Furthermore, a few million of these bushels are soybean seed production, produced by excellent seed growers and companies who condition the product locally and market the seed regionally. The adverse impact of a county, even a township ban in Cass would be enormous.

Thank you for your attention and support for SB 2277.

SB 2277
Senator Tim Flakoll

U.S. agriculture continues to embrace and rely upon biotech seed. In 2004, American farmers planted 47.6 million hectares of biotech cropland, which was an increase of 11% over the previous year. Activists have achieved local seed regulation in the Northeast and the West Coast with more initiatives on the way. In there situation, a farmer might be able to plant in their land on one side of the road but not on their land on the other side of the road.

Currently we run the risk that special interests groups could mount a campaign to have scientifically unqualified local governments restrict the sale and planting of seeds. Such local restrictions at the County, City or even down to the township level could create a confusing patchwork of seed regulations within a state and across the country.

Currently the law does not permit the preemption by counties but the law is a little fuzzy when it comes to home rule counties. SB 2277 would clear up that confusion.

There are a number of states that have enacted similar legislation including: Iowa, Nebraska and Wisconsin.

Points of support:

- 1) There is nothing in place in North Dakota at this time, so the bill will not be voiding any current ordinances or other laws.**
- 2) This bill is nearly identical to the pesticide preemption law presently in Section 4-35-06.1 of NDCC.**
> handout

- 3) Passage of the bill will avoid a local patchwork of rules and regulations:**
 - > California handout**
- 4) This local patchwork would put farmers at a competitive disadvantage to farmers in neighboring counties or states.**
- 5) Passage of the bill will help insure fair access to seed technology.**
- 6) It will also avoid conflicts that may affect transportation (I29 and I94), experiment stations and other local variances.**
- 7) It will avoid a patchwork situation that may depress land values (Huetterite colony example).**
- 8) All seed companies, distributors and others in the seed retail chain would continue to be required to follow applicable state and federal seed and environmental regulations and statutes.**
- 9) The Current regulatory framework includes:**
 - > USDA: is it safe to grow?**
 - > EPA: is it safe for the environment?**
 - > FDA: is it safe for consumption?**
 - > State regulatory agencies as the ND Seed Commission in concert with other state and federal agencies.**

This is really a right to farm bill and I ask for your support.

House Agriculture Testimony – SB 2277

ND Grain Growers President

Terry Wanzek

Chairman Nicholas and members of the House Agriculture Committee, my name is Terry Wanzek. I am president of the ND Grain Growers Assn. We support Senate Bill 2277.

As new and emerging scientific technologies come onto the agricultural scene it is very important that our farm producers have a nationwide, comprehensive and consistent set of rules and regulations regarding the commercialization of these technologies.

A segregated and divided set of mish-mash rules and regulations with regard to new seed technologies will be extremely chaotic, convoluted and confusing, not to mention possibly illegal and in violation of interstate commerce laws. They will be a nightmare to enforce.

We believe this bill is necessary to prevent what is happening in California. Some counties or other political subdivisions are considering their own regulations and or moratoriums on new seed technologies. We do not want that situation in ND.

We believe it is imperative that “all” ND farmers have access to new tools and technologies that become available and are necessary to compete in a very competitive global market. The number one global market issue is still price. If any of our producers, in any political subdivision, are prohibited from gaining economic efficiencies in production or marketing through new technology, you limit their ability to be competitive in the world market.

All new biotech seed technologies go through an extensive federal regulatory process to be approved for commercial release. Three agencies work with approving new biotech seed technologies. They are the USDA (APHIS), the EPA and the FDA. It takes hard work, serious investment and a considerable number of years before a developer can

get federal approval to commercialize any biotech product. They are tested for environmental, health and food safety effects.

In summary, considering the fact that these technologies are heavily regulated by the federal government and if they are approved as safe, healthy and beneficial by the federal government, there should be no authorization of any political subdivision to control the distribution and commerce of these new technologies. We do not want to deny even one ND farmer access to the latest tools of their trade!

We need to support a consistent, clear, common sense, science based, nationwide approach to dealing with the advent of new seed technology; not an individual, segregated, confusing, convoluted set of rules that would constrict our producers. It is important to US and ND Agriculture's competitiveness.

We ask for your support and positive vote on SB 2277 as it arrived from to you from the Senate. Thank you for your time and the opportunity to offer favorable testimony on SB 2277. Thanks.

CHAPTER 4-35 PESTICIDE ACT

4-35-01. Title. This chapter must be known as the "North Dakota Pesticide Act of 1975".

4-35-02. Creation of pesticide control board. There is hereby created the pesticide control board, hereinafter also called the "board", consisting of the agriculture commissioner, the director of the cooperative extension division of the North Dakota state university of agriculture and applied science, and the director of the agricultural experiment station at North Dakota state university of agriculture and applied science. The agriculture commissioner must be chairman of the board and is responsible for the enforcement of this chapter. The board shall meet at the call of the chair. The members of the board must be compensated for their expenses in performing their duties under this chapter at the same rate as other state officials and the board's expenses must be paid from funds provided for the administration of this chapter to the agriculture commissioner. The board may act through the office of the agriculture commissioner, and one person on the commissioner's staff may be specifically responsible to, or act as the state-level agent of, the board.

4-35-03. Enforcing agency. This chapter must be administered by the pesticide control board, hereinafter referred to as the "board".

4-35-04. Declaration of purpose. The legislative assembly hereby finds that pesticides are valuable to our state's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. The purpose of this chapter is to regulate, in the public interest, the distribution, storage, transportation, disposal, and use and application of pesticides to control pests as hereinafter defined. New pesticides are continually being discovered or synthesized which are valuable for the control of pests, and for use as defoliants, desiccants, plant regulators, and for related purposes. The dissemination of accurate scientific information as to the proper use or nonuse of any pesticide is vital to the public health and welfare and the environment, both immediate and future. Therefore, it is deemed necessary to provide for regulation of their use and application.

4-35-05. Definitions. As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.
3. "Applicator" means any person who applies a pesticide to land.
4. "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
5. "Certified applicator" means any individual who is certified under this chapter as authorized to use or supervise the use of any pesticide that is classified for restricted use.
6. "Commercial applicator" means an applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of a pesticide, whether classified as restricted or general use, for any purpose or on any property, other than as provided by subsection 26.
7. "Dealer" means any person who sells a pesticide to an end user.

4-35-06.1. Limitation on authority of political subdivisions regarding pesticides.

No political subdivision, including a home rule city or county, may adopt or continue in effect any ordinance, resolution, or home rule charter regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides. This section does not apply to city zoning ordinances.

4-35-06.2. Crop protection product harmonization and registration board -

Recovery of funds. The crop protection product harmonization and registration board may accept funds received for expenses paid relating to the registration of pesticides or donations offered to or for the benefit of the board. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The board shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer this section.

4-35-06.3. Minor use pesticide fund - Continuing appropriation.

The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the crop protection product harmonization and registration board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

4-35-07. Experimental use permits. Repealed by S.L. 2003, ch. 188, § 3.

4-35-08. Classification of certificates.

The board may classify commercial certificates to be issued under this chapter. The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if the person desires to be certified in one or more of the classifications provided for by the board under this section.

4-35-09. Commercial and public applicator's certification.

1. A commercial or public applicator may not purchase, use, or supervise the use of a pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial or public applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications for which the applicant has applied, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial applicator's certificate limited to the classifications in which the applicant is qualified.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial or public applicators for the use of pesticides.

California County Biotech 1/24/05



Red- Bans enacted in City of Arcata; Marin, Mendocino & Trinity Counties

Yellow- Possible signature gathering activities in Alameda, Contra Costa, Lake, Napa, Nevada, Placer, Sacramento, San Francisco, Santa Barbara, Solano and Yolo. Sonoma has submitted signatures already.

Kings County BOS to vote on proactive, pro-biotech ordinance.

Green: Bans defeated in Butte, Humboldt & San Luis Obispo.

BOS in Fresno adopted proactive, pro-biotech ordinance.

S.B 2277 - Seed Preemption

Points in support:

- ◆ There is nothing in place in North Dakota at this time, so it will not be voiding any current ordinances or other laws.
- ◆ This bill is nearly identical to the pesticide preemption law presently in Section 4-35-06.1, NDCC.
- ◆ This will avoid a local patchwork of rules and regulations, e.g. California.
- ◆ This local patchwork would put farmers at a competitive disadvantage to farmers in neighboring counties or states.
- ◆ It will allow fair access to seed technology.
- ◆ It will avoid conflicts that may affect transportation, experimental stations and other local variances.
- ◆ It will avoid a patchwork situation that may depress land values.
- ◆ All seed companies, distributors and others in the seed retail chain would continue to be required to follow applicable state and federal seed and environmental regulations and statutes, including regulations from the North Dakota Seed Commission, the North Dakota Department of Agriculture, the USDA, the EPA, and the FDA, among others.

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Testimony on SB 2277

House Agriculture Committee

February 25, 2005

Submitted by Dakota Resource Council

Just a few years ago, conservatives talked constantly about the need for local control when it came to regulations. Big timber, grazing and mining interests were encouraging local political subdivisions to pass "custom and culture" ordinances to try to prevent local enforcement of federal laws.

What a contrast to this bill, submitted by legislators generally identified as conservatives, which takes an axe to local control and tells counties and townships they have no right to decide what kind of regulations are in harmony with their local interests.

Apparently, the issue here is genetically-modified (GM) wheat. The authors of this bill must have heard about how the residents of Mendocino County, California, in a free and fair election, exercised their local control and decided that GM crops were not in harmony with local custom and agricultural industry, and banned them. It should also be noted that two other California counties rejected gmo bans.

There is also another aspect to enacting such legislation. With 2277, counties will no longer be in a position to assist in regulating GMO's within the county. There are eight extension research centers across the state plus the agronomy seed farm, and over the years countless expansion plots and fields growing breeders stock and foundation seed, as well as registered seed and certified seed. With hundreds if not thousands of different GMO events and varieties undergoing evaluation, field test plots, expansion and seed production, there may be the need to regulate and segregate the different gene events from each other. NDSU, however, is not the only entity involved in all this research and expansion of seed. Private concerns as well as farmers adjacent to research fields may be growing other gene events that may conflict with seed production because either those gene events are incompatible with the research ongoing, or proprietary property issues involved with cross pollination may come to fore. How may these issues be worked out? It is likely that counties may have to become involved, along with research entities, to work out voluntary arrangements between researchers private companies and farmers.

No one in North Dakota seems likely to enact such an ordinance. County commissions in North Dakota are a long way from Mendocino county, as are their voters, and such reactionary legislation is obviously unwarranted and produced for effect. I hope that people who take legislation seriously will see that it doesn't belong in the century code. Many GM crops are planted in this state. It is hard right now to say whether this will benefit farmers or not.

The question is: When is it ever desirable or necessary to prevent communities from deciding what is in their own best interest?

In SB 2277, GM wheat proponents are willing to sacrifice not only individual rights, but also the rights of communities.

Nothing could be more antithetical to self-government or true conservatism. The rights of corporate giants mean everything, evidently, and the rights of the people must be sacrificed to that end. There are scarcely words in the English language adequate to describe how repulsive a notion that is. But if you vote for this bill, that is what you are voting for.

MARK JOHNSON

NOT Excited about
Bill

Existing Restrictions on County/Township Zoning Authority

[58-03-11(2) Township zoning]. A regulation or restriction may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.

[58-03-11(6) Township zoning]. A board of township supervisors may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.

[11-33-02 (1) County zoning]. A regulation or restriction may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.

[11-33-02(5) County zoning]. A board of county commissioners may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.