

2013 HOUSE AGRICULTURE

HB 1026

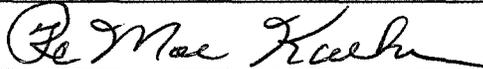
2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1026
January 10, 2013
Job #17066

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Statutory rewrite of livestock provisions

Minutes:

L. Anita Thomas, Legislative Council Attorney: (1:10) (See attached testimony #1)

Chairman Dennis Johnson: (28:40) The directive we are given when going into these rewrites is to not have any significant changes. If there are, they should be stand-alone bills. How would amendments be handled?

L. Anita Thomas: There are two categories of amendments that came up with respect to the rewrite bills.

The first is the basic error--a typo.

If one wanted to increase fees or substantially change language of the rewrite, it is suggested that independent bills be introduced. By using a stand-alone bill, the concept can have a full hearing.

If someone wants to introduce an independent bill, we use a special drafting technique that allows you to consider the concepts on its own merits. If it is passed then it becomes part of the rewrite bill either as an addition to the rewrite or as a substitution for a particular section.

If a proposal is presented that is simple and short and noncontroversial, it can be an amendment.

Representative Belter: This section doesn't address fees from producers or provision changes to registered feed lots?

L. Anita Thomas: No it doesn't. The fees, penalties, and anything in current law was translated in the exact amount.

Representative Larson: On page 14 the definition of an estray lists certain animals. Then on page 17 "livestock dealer" lists additional animals. Why are some animals listed in one section and not in another section?

L. Anita Thomas: Some animals are more important than others historically. We don't worry about goats wandering around. But we do get excited when someone's prized bull is lost.

Representative Fehr: My question has to do with two sections on confidentiality. One is on page 3 and the other is on page 12. Everything is open records unless there is reason to be confidential. Why do these sections list things to be confidential?

L. Anita Thomas: This is a very special segment of an industry. It is a longstanding historical and personal perspective.

Wayne Carlson, Livestock Director for the Agriculture Department: I deal with the section that pertains to livestock dealers. I will be available for any help that you need.

Julie Ellingson, ND Stockmen's Association: (36:15) (See attached #2)

In answer to Representative Larson's question about the three animals in one section and the additional animals in the other: Brand inspection is required for three species--cattle, horses, and mules. That is why the estray is zeroed in on three species.

In answer to the question on confidentiality, there are two areas that refer to confidentiality on the brand portions of this bill. Those are in relationship to identification programs as well as to the records that processing plants or slaughter facilities maintain. In the first instance, there are programs for animal identification that records very specific information about a producer's operation. The second instance has to do with slaughter records with information that only should be used in legitimate enforcement activities and should not be available to someone who would want to harm that facility or give out private business information. We ask for your favorable consideration of this bill.

Opposition:

Kenny Graner, President of the Independent Beef Association of North Dakota (IBAND): (40:00) (See attached #3)

Representative Nelson: Would you clarify on page 2, since it is not mandatory that these other things be administered by the Stockmen's Association but only if the Ag. Commissioner and State Board of Animal Health requested them. You don't feel that the Ag Commissioner/State Board of Animal Health can make a judgment call?

Kenny Graner: No I am not stating that. This is new verbiage that is interjected.

Representative Fehr: You are in opposition and offered two amendments. If these amendments were adopted, would your organization be in favor of the bill with the amendments?

Kenny Graner: Not 100% because it is clear that we can't change the intent of the bill. These changes we feel are necessary. There is an area for another bill. These are respectful and precise.

Chairman Dennis Johnson: Do you have these amendments drafted?

Kenny Graner: Anita is working on that for us.

Larry Kinev: (45:39) I am not in opposition to HB 1026. I would like to bring your attention to page 15, 4.1-75-05. Subsection 2 is new to this and yet contradicts subsection 1. In the old estray Chapter 36-13-05, under lawful charges, it said "a determination under this subsection is final." In 4.1-75-05 it says that the Stockmen's Association will determine what would go to the person possessing an estray in the form of damages or fees. They would be paid by the owner after the owner is found. Then in subsection 2 it said if two people couldn't agree, the animal would be sold. There is no finality in this subsection.

I propose an amendment to strike subsection 2 completely and give them final authority.

L. Anita Thomas: When amendments are suggested, committee members need to determine whether they would like to see our office prepare the amendment for your consideration.

Chairman Dennis Johnson: Closed the hearing.

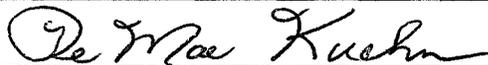
2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1026--Committee Action
January 18, 2013
Job #17387

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Statutory rewrite of livestock provisions
Committee Action

Minutes:

Attachment #1

Vice Chair John Wall: (2:00) This amendment restores the language as found in code. On p. 2 line 25 "Animal identification" as currently found in code would replace "Federally sponsored programs." Currently there are no federally sponsored programs.

Also on p. 2, line 25, remove "Authorization."

On p. 2, line 26, delete number 1 as lines 29-31 are also deleted to mirror current law.

Vice Chair John Wall: moved amendment 13.0058.03002 to HB 1026

Representative Fehr: seconded the motion

Alan Lund, Selfridge: (5:45) (see attached #1) I am in favor of this amendment which strikes lines 29-31.

Julie Ellingson, North Dakota Stockmen's Association: Also in favor of amendment presented.

A Roll Call vote was taken: Yes 13, No 0, Absent 0.

Chairman Dennis Johnson: This amendment is adopted to HB1026.

Vice Chair John Wall: 2nd amendment. (9:30) (See amendment #13.0058.03003)
The rationale for this amendment is based on testimony that we heard where producers said that many do not have access to the website or don't use it. They also may not see the notice in the official county newspaper as required in code now.

Vice Chair John Wall: Moved amendment 13.0058.03003.

Representative Fehr: seconded the motion

Representative Fehr: Is it the intent of this amendment that the livestock auction markets would then publically post this list. They are not being required to post it. Is it the intent that they would post it?

Chairman Dennis Johnson: and at scale houses. It would have to be posted.

Representative Fehr: The amendment doesn't require them to post it.

Vice Chair John Wall: The intent is that it would be posted in both places but it does not call for that.

Representative Larson: I have a question on "regularly." Is that once a year, once a month?

Vice Chair John Wall: I don't know.

Chairman Dennis Johnson: We would have to further define.

Representative Headland: This is new language and it should be a separate bill.

Representative Fehr: Regarding Rep. Larson's question, is there now another administrative code that would define "regularly"?

Dwight Keller, Mandan: The purpose is to try to find rightful owners of estray cattle. People probably don't use the website. A lot of livestock producers are older. The posting can follow whatever is done on the website. There are brand inspectors at the sale barns.

Representative Headland: I understand that estray cattle are common. How common is it that the rightful owner gets his money?

Dwight Keller: It is difficult to get strays back. My experience is I get one back out of several.

Representative Kiefert: With the price of cattle, what about implants? They could be scanned at the loading chute.

Dwight Keller: The electronic ID program is out there where they are in the ear. There is also a bolus that can be put into the cow and be scanned. They need to get sale barns set up.

Vice Chair John Wall: Julie, there are problems with the amendment. What is the timeline to send this to sale barns and weigh stations? Without putting it into code, would this be a problem for the Stockmen's Association to monthly or quarterly send to weigh stations and sales rings a list of the strays?

Julie Ellingson: First to explain some of the discussion and then I'll get to your question. We also ask for a separate bill. The current statute requires the Stockmen's Association to provide a list of all estrays for two publications in the county newspaper. In preparation of the brand bill rewrite, HB 1026, we voluntarily suggested that we enhance the ability in information reporting about estrays by adding the website component. That is not now a statutory requirement. It is one that we suggested. We also maintain a list of all missing livestock.

To differentiate between estrays and missing livestock, estrays are animals that you are not sure who the owner is. They are presented for sale by an individual and that person needs to provide the appropriate proof of ownership before proceeds are released to that seller. If ownership cases are not resolved within 60 days, they become an estray.

Would it be a problem to provide this information? We are already compiling it. We think it would be a more progressive way to add it to the website. We could update it more regularly. It would be available 24/7. This is already over what is in current statute. We are happy to do that. In not adding new language to the rewrite, we suggest to proceed as with the first amendment and strike any new provisions.

Representative Rust: Is it fair to say that the difference between an estray and a missing animal is who reports it? An estray is reported by somebody who found the animal and wants to sell it. A missing animal is one that is reported by someone who owned it, can't find it and wants to get it back.

Julie Ellingson: An estray is an animal that you don't know who the owner is and is found in the country and then reported. With missing livestock, the owner is looking for a specific animal. The one making the report is the owner.

Chairman Dennis Johnson: Our Intern researched "regularly."

Jacob Geierman, Intern for House Ag. Committee: I researched the term "regularly" both in Title I--general definitions and also a West Law search of all occurrences. It is not defined. It is used frequently. My opinion would be that if this committee would like it to be more definite they should make a specific amount of days within the amendment just as in Section I where they say at least twice a year.

Representative Trottier: If a cow comes onto my place not branded, I put an ad in the local paper and nothing turns up. I haul her to the market and the brand inspector identifies her. How long is that money held? Or do I get the money for that cow?

Julie Ellingson: The process is to immediately call your local law enforcement or our office to make that report. They would give you instructions of how to proceed. At the point of you making the report, you would be entitled to a standardized fee structure for feed and mileage. Those funds would be held in the estray account until we can identify the owners.

Chairman Dennis Johnson: We have the amendment before us. In the spirit of the rewrite we should introduce a stand-alone bill.

A Roll Call vote was taken: Yes 0, No 13, Absent 0.

The amendment failed.

Chairman Dennis Johnson: If you want a stand-alone bill there is time to get it introduced. You have until Monday.

Representative Rust: Julie, did you answer the question about what can be done as far as putting a list at sale barns?

Julie Ellingson: Our preference is that we provide additional information on the website rather than doing mailings to the auction markets.

Representative Headland: Moved Do Pass as amended.

Vice Chair John Wall: Seconded the motion.

A Roll Call vote was taken: Yes 12, No 0, Absent 1. (Rep. Belter)

Do Pass as amended carries.

Representative Haak will carry the bill.

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1/18/13
LNC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1026

Page 2, line 25, replace "**Federally sponsored programs**" with "**Animal identification program**"

Page 2, line 25, remove "**- Authorization**"

Page 2, line 26, remove "1."

Page 2, remove lines 29 through 31

Renumber accordingly

13.0058.03003
Title.

Prepared by the Legislative Council staff for
Representative Wall
January 17, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1026

Page 16, after line 16, insert:

"3. The association shall regularly forward to each livestock auction market and buying station in this state a list of estrays for which the association recently received sale proceeds."

Page 16, line 17, replace "3." with "4."

Renumber accordingly

Date: 1/18/13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1026**

House **Agriculture** Committee

Legislative Council Amendment Number 13.0058.03002

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Wall Seconded By Rep. Fehr

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman John Wall	X		Rep. Jessica Haak	X	
Rep. Wesley Belter	X		Rep. Marvin Nelson	X	
Rep. Alan Fehr	X				
Rep. Craig Headland	X				
Rep. Joe Heilman	X				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. David Rust	X				
Rep. Wayne Trottier	X				

Passed

Total Yes 13 No 0

Absent 0

Floor Assignment _____

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

Page 2, replace Federally sponsored programs with Animal identification program
Remove Authorization

Date: 1/18/13

Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1026**

House **Agriculture** Committee

Legislative Council Amendment Number 13.0058.03003

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Wall Seconded By Rep. Fehr

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson		X	Rep. Joshua Boschee		X
Vice Chairman John Wall		X	Rep. Jessica Haak		X
Rep. Wesley Belter		X	Rep. Marvin Nelson		X
Rep. Alan Fehr		X			
Rep. Craig Headland		X			
Rep. Joe Heilman		X			
Rep. Dwight Kiefert		X			
Rep. Diane Larson		X			
Rep. David Rust		X			
Rep. Wayne Trottier		X			

Failed

Total Yes 0 No 13

Absent 0

Floor Assignment _____

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

Forward to each livestock auction market and buying station a list of estrays

Date: 1/18/13

Roll Call Vote #: 3

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1026**

House **Agriculture** Committee

Legislative Council Amendment Number 13.0058.03002

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Headland Seconded By Rep. Wall

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman John Wall	X		Rep. Jessica Haak	X	
Rep. Wesley Belter	AB		Rep. Marvin Nelson	X	
Rep. Alan Fehr	X				
Rep. Craig Headland	X				
Rep. Joe Heilman	X				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. David Rust	X				
Rep. Wayne Trottier	X				

Total Yes 12 No 0

Absent 1

Floor Assignment Rep. Haak

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

REPORT OF STANDING COMMITTEE

HB 1026: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1026 was placed on the Sixth order on the calendar.

Page 2, line 25, replace "Federally sponsored programs" with "Animal identification program"

Page 2, line 25, remove "- Authorization"

Page 2, line 26, remove "1."

Page 2, remove lines 29 through 31

Renumber accordingly

2013 SENATE AGRICULTURE

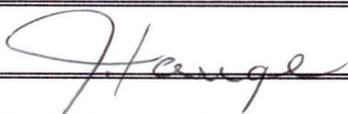
HB 1026

2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

Engrossed HB 1026
March 7, 2013
19564

Conference Committee



A bill relating to the North Dakota stockmen's association, livestock branding, estrays, registered livestock, and the licensing of livestock dealers and wool dealers.

Minutes:

Written testimony

Chairman Miller opened the hearing on Engrossed HB 1026. All committee members were present.

Anita Thomas, North Dakota Legislative Council introduced HB 1026 and explained the purpose and process of a rewrite. She went through the bill and explained the changes.
Written testimony #1

Senator Miller asked if we needed all that language in the wool section.

Anita Thomas said that material is in the law now. Her recollection from the Interim committee is that there are three wool dealers that are licensed and that is the law that applies to them.

Julie Ellingson representing the North Dakota Stockmen's Association testified in support of HB 1026. **Written testimony #2**

No opposing testimony

Neutral testimony

Les Witkowski, Burleigh County Sheriff's Department and Chairman for the North Dakota Peace Officer Standards and Training Board, gave an overview of the Board and explained the amendment regarding peace officer licensing. The amendment simply replaces the "is" at the end of line 20 on page 2 with "obtains a limited peace officer license under section 12-63-09". It then removes lines 21 through 24.

Senator Miller asked what the time requirement was for a limited license.

Les Witkowski replied that if they complete minimal requirements, including education, medical, psychological, and sidearm requirements, they can be hired. The limited license allows the officers to perform peace officer duties until the officers complete the basic

training course at the Law Enforcement Training Center, and pass the licensing examination.

Senator Heckaman asked him to explain why they are removing lines 20-24.

Les Witkowski explained the assistant attorney general proposed this and subsection 1, relates to the information of enforcing brand laws and lines 20-24 might be redundant. He further explained this.

Senator Miller clarified that what they wanted to achieve was if they were going to hire someone to be in this capacity that they have to get a limited license if they have no experience and are newly hired.

Senator Klein asked what they did before.

Les Witkowski said that since he has been on the board they haven't dealt with brand inspectors before.

Discussion followed on schooling to be a licensed peace officer, training, and time table.

Senator Klein asked the stakeholders what they thought.

Julie Ellingson, North Dakota Stockmen's Association, said she hadn't seen the amendment but she understood what the concept is. She gave an example. She said they wanted to maintain the licensed peace officer component, and have flexibility to hire people that don't automatically come with the badge. She emphasized that they have to go through training and have to be successful and pass it to maintain employment with the NDSA.

Senator Heckaman still had some problem with getting rid of lines 21-24.

Anita Thomas, Legislative Council, explained that on lines 11, 12, 13 it states that the chief brand inspector and the deputies have to be licensed peace officers in accordance with chapter 12-63. Mr. Witkowski is suggesting we cross reference current law. She explained. She offered to help work on the amendment.

Senator Miller closed the hearing.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1026
March 8, 2013
19628

Conference Committee

Stange

A bill relating to the North Dakota stockmen's association, livestock branding, estrays, registered livestock, and the licensing of livestock dealers and wool dealers.

Minutes:

Do Pass as amended

Chairman Miller open discussion on HB 1026 and explained the amendments.

Senator Klein moved amendments 13.0058.04001.

Senator Larsen seconded.

Roll call vote: 5-0-0

Senator Heckaman moved a **Do Pass as Amended** for engrossed HB 1026.

Senator Klein seconded.

Roll call vote: 5-0-0

Senator Heckaman is carrier.

Chairman Miller adjourned.

3/8/13
TJ

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1026

Page 2, line 11, remove "1."

Page 2, line 13, replace "and" with "or hold a limited peace officer license under section 12-63-09. These individuals"

Page 2, line 13, replace "that" with "their"

Page 2, remove lines 18 through 24

Page 16, line 6, after "proceeds" insert "during the preceding twelve months"

Renumber accordingly

Date: 3-8-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1026**

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Senator Klein Seconded By Senator Larsen

Senators	Yes	No	Senator	Yes	No
Chairman Joe Miller	✓				
Vice Chairman Larry Luick	✓				
Senator Jerry Klein	✓				
Senator Oley Larsen	✓				
Senator Joan Heckaman	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

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

Date: 3-8-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 10 246

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Senator Heckaman Seconded By Senator Klein

Senators	Yes	No	Senator	Yes	No
Chairman Joe Miller	✓				
Vice Chairman Larry Luick	✓				
Senator Jerry Klein	✓				
Senator Oley Larsen	✓				
Senator Joan Heckaman	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator ~~Heckaman~~ Heckaman

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

REPORT OF STANDING COMMITTEE

HB 1026, as engrossed: Agriculture Committee (Sen. Miller, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1026 was placed on the Sixth order on the calendar.

Page 2, line 11, remove "1."

Page 2, line 13, replace "and" with "or hold a limited peace officer license under section 12-63-09. These individuals"

Page 2, line 13, replace "that" with "their"

Page 2, remove lines 18 through 24

Page 16, line 6, after "proceeds" insert "during the preceding twelve months"

Renumber accordingly

2013 TESTIMONY

HB 1026

1/10/13
#1

Testimony on House Bill 1026
L. Anita Thomas
ND Legislative Council

In a pure world, laws should be clear and concise. Agencies charged with administering the laws and the people to whom they apply should have due notice of the requirements and expectations placed upon them.

In the real world, however, there are many laws that are irrelevant, duplicative, inconsistent, illogically arranged, or otherwise unclear in their intent and direction. The laws didn't get to this point because of malicious or nefarious intent. They got to this point because it is difficult to write good laws. In fact, it's difficult to write.

If you've ever tried to write a love letter -- or a column for your local newspaper, you know how hard it is to take a thought and accurately convey it, so that another can read it and understand it the way you had intended. Words in and of themselves are fairly precise, but people's ability to use words precisely, varies tremendously.

In the process of creating laws, whether initially or through amendment, a lot of different people, with a lot of different oral and written skill levels, both have the opportunity and take the opportunity to put their own imprimatur on the final product. Sometimes this results in a well crafted law. Other times, it results in something that is not appropriately placed in the chapter, or that is duplicative of, or in conflict with, other sections. Sometimes, it is just not English.

Unfortunately, just because a law is not well written, does not mean that it is "shelved." It still gets implemented. It is interpreted, and an administrative modus operandi develops that is sometimes based more on perceptions of how the law should work than on what the words actually say.

You are going to find examples of this throughout the Century Code.

I would hope that you do not add to those examples. To that end, here are three things to watch out for:

#1. If you think of yourself as a reasonably intelligent person, and when you try to read a particular bill or a section, you don't understand it, the problem is probably not with you. In all likelihood, more work needs to be done on the language.

#2. If people say to you, "We've worked on this language for months, and we agreed to it and this is exactly the way we want it," Be wary. Often, fresh eyes on a series of words see their meaning differently.

#3. My personal favorite - "Oh - Don't worry about the language . . . trust us, we know how this is supposed to work."

Over time, you can get chapters and titles that are quite unwieldy. In the late 1990's, we took a couple of interims and rewrote the K-12 education title. Representative Johnson and Senator Flakoll were used to dealing with a fairly organized body of education law and when they assumed their roles as chairmen, they realized that this particular area needed some time and attention as well. Both were instrumental in initiating the rewrite. While we knew it would be a large project, until we got into it, we didn't truly realize how much of an undertaking it really would be.

North Dakota laws pertaining to agriculture can be found in more than 90 chapters and they are scattered across six titles.

Within that array of legislation, we found that the ag commissioner inherited "all papers, writings, documents, books, records, files, and all other papers of whatever nature, used by or in connection with the office of commissioner of immigration."

We found functioning committees whose membership was nowhere close to that which was specified in statute.

We found issues with continuing appropriations, and prosecutorial discretion.

We found divergence on whether statutory directives were duties or merely powers.

We found lengthy definitions of terms that weren't ever used in the chapter, and we found absolutely mindboggling sentences:

"The owner or possessor of any livestock that inflicts damage or injury to motor vehicles or their occupants upon a public highway within a grazing area in which proper signs, approved by the director of the department of transportation, indicating limited liability are posted at a point adjacent to the highway not less than two hundred feet [60.96 meters] nor more than four hundred feet [121.92 meters] from the entrance of the highway into the grazing area and so posted as to be plainly visible to individuals approaching the entrance

The end of that particular sentence is actually found in another subdivision.

When you come across things like that, it takes a lot of time to try and figure out what it's supposed to say and how it meshes with other sections. This is not an undertaking for the faint of heart or those with very little patience.

To date, interim ag committees have rewritten the chapters pertaining to noxious weeds and the commodity boards. They've rewritten the seed laws, and this interim, the committee tackled seed potato certification and seed potato control areas, as well as brands, estrays, and livestock and wool dealers. This of course is the topic of House Bill No. 1026.

Let me add one more thing about the parameters of the title rewrite before we turn to the bill. The point of the title rewrite was not to change statutory concepts that the Legislative Assembly enacted in the past. As a very obvious example, the interim committee did not discuss whether the state should still have brand laws or whether they should still be administered by the North Dakota Stockmen's Association. That was the intent of the Legislative Assembly and the purpose of the rewrite is not to second guess that. Instead, the purpose of the rewrite, and its focus is to lend clarity and order to those concepts that are already in the law.

That purpose does, however, require some changes. It involves a great deal more than just moving around commas.

When we did the education title, we found a section that required the superintendent of public instruction to inspect outhouses. After some discussion, the interim committee decided to remove that requirement. Was that a substantive change? A change in policy? Absolutely. Was it merited? In the interest of modernizing the law and making it reflect the manner in which business is conducted, - Yes.

Not all changes fit neatly into a little box where you can easily say this is appropriate and this is not appropriate. It's important for you to understand that we kill a lot of trees during the course of an interim rewrite. We do that to try and ensure that any changes which are made, are discussed, and understood, and supported.

We always begin the rewrite with the current law. We look at each section and make recommendations for change, using standard overstrike and underscore. If a section is recommended for repeal, we include that, so people can see what is being recommended. We usually have one agency or entity that is most significantly involved in administering the chapter and we ask them to sit at the table and go through each section with the committee. I insert notes after each section that include questions, comments, and suggestions. The notes are designed for committee discussion and interaction with the administering agencies. The various iterations of each bill we have tackled are available on line. Anybody can pull them up on the legislative council website, and they can also pull up the minutes of each meeting.

The discussion that is generated during each interim meeting provides guidance and direction with respect to the committee's wishes and serves as the foundation for the next draft. That version involves taking the concepts, refining them, and reordering them into a logical comprehensible chapter. If there are sections that are still not as refined or as workable as they ought to be, or if the committee discussion indicated that a consensus was not reached, those are further notated and brought up at an ensuing meeting. This process continues until the committee has reached a consensus and a recommendation on each section.

All committee meetings are duly noticed, as required by law. Bill drafts are sent out well ahead of the meeting, not only for the legislators to review the material, but also to share the drafts with whomever they choose. The agencies and principal entities are also encouraged to share the drafts as they see fit. At each meeting, opportunities are provided for interested parties to comment on the effort.

Let me give you a little walk through House Bill No. 1026. One of the first things you will notice about it is that it creates new chapters within a new title. Many of you are used to seeing ag related issues in title 4 or title 36. As we are rewriting the laws, they are being moved to the newly created title 4.1. We did this so that we had the flexibility to move not only words and phrases, but also sections and chapters. You will see this with the first three pages of the bill.

In current law, brands are covered under chapter 36-09, estrays are in 36-13, and estray inspection is in 36-22. Even though the North Dakota stockmen's association is given numerous duties under the first two chapters, it is not until the third mentioned chapter, 36-22, that their statutory authority is addressed. In addition, at various points throughout those chapters, there are sections that are generic. They don't really fit into brands, or estrays, or estray inspection, but they do deal with the general authority and operations of the stockmen's association. And so, within the rewrite, we pulled all of those sections together. Now, we begin with a chapter that sets forth the statutory authority of the association.

On page 2, the bill maintains the current language providing that the association may not discriminate between their members and non-members when it comes to administering the law.

The bill continues the requirement that the stockmen's association maintain a brand recording office and that it employ a chief brand inspector.

In the middle of page 2, the bill mentions deputy brand inspectors. Those of you familiar with the business know that one talks about the chief and one talks about fieldmen. You still can. However, from a statutory perspective, "fieldman" is a colloquial term and the committee didn't want it to be confused

with the 200 individuals who go into the field to provide local brand inspections. The committee really didn't want it to be confused because the chief and the deputies are licensed peace officers. The local inspectors are not.

Now, let me make a brief comment about the section at the bottom of page 2. 4.1-72-05. This one has generated a little discussion of late.

Current law (36-09-25) states:

The North Dakota stockmen's association shall serve as the state's administrator and allocator for that portion of any federally sponsored animal identification program which pertains to cattle, horses, and mules. That's current law and the exact language you will find on page 2, lines 26 through 28.

During the interim, the committee was told that there is no federally sponsored animal ID program and there is none on the horizon. Even if such a program were to come into being, there is no way of knowing whether it would be structured to utilize the stockmen's association as the administrator and allocator. The association may not have the financial or technical resources to perform such a function for a future program and it may not even want to. So, the initial recommendation was to repeal the language. The committee asked, instead, that it be broadened.

The first draft looked at the two state entities most likely to have involvement in any federal animal program and it provided that if the agriculture commissioner or the state board of animal health requested it, the stockmen's association may serve as the state administrator for or assist in the administration of any federally sponsored program pertaining to livestock. That's the language found on lines 29 through 33.

The stockmen's association indicated that they didn't feel strongly about subsection 2, but that they wanted to maintain subsection 1, so, the interim committee decided to keep the existing language regarding animal ID programs and to recommend the proposed language pertaining to federally sponsored livestock programs.

Record information, a continuing appropriation, and a biennial audit requirement, all of which are in current law, round out the chapter.

Beginning on page 4, we enter the chapter pertaining to brands.

Current law does not have a definition of a brand, for purposes of brand recording, so the committee came up with one and then articulated the steps that must be taken in order to apply for a brand.

Current law has a list of symbols that are acceptable for use in a brand and we found that a forward or backward slash, while considered acceptable, was not on the list. Since the interim chairman had a slash in his personal brand, we made certain that the statute would accurately reflect that practice.

As many of you know, there is a whole culture surrounding permissible placements and impermissible placements, and when one can have a numerical brand, and when one can have only upright numbers or characters. It's a little mystifying. So, the committee, in its infinite wisdom, is recommending an additional section. This can be found on page 6. It would give the chief brand inspector the final call on whether or not a brand was acceptable and whether its placement or location was permissible. This was viewed as being much more practical than an appeal to the supreme court.

The next change that I want to draw your attention to can be found on page 11. This pertains to brand inspection services at out of state facilities.

Under current law, an out-of-state livestock facility that seeks to obtain brand inspection services from this state may file a written request with the North Dakota stockmen's association. Upon receiving the request, the Stockmen's Association must petition the state board of animal health for permission to provide the services. The state board of animal health is directed to adopt rules setting forth the criteria that must be met before out-of-state brand inspections are approved.

The interim committee asked, what happens if the stockmen's association doesn't think that providing brand inspections at the suggested location is a good idea? The association is literally being forced to file the petition for the services.

What the committee was told was that the stockmen's association wanted to know when such requests came through and wanted an opportunity to express their thoughts regarding the pros and cons of such requests. So, the committee reconfigured the statute to provide that an out of state entity may file a petition with the state board of animal health for the provision of brand inspection services and that the board has to provide the stockmen's association with an opportunity to comment.

At the bottom of page 11, there is another section with a change I want to point out.

Current law requires that certain records be kept by persons slaughtering cattle on a custom basis or for the purpose of selling the meat at retail or wholesale. Apparently, these slaughter records are provided to the ND stockmen's association. Since the association is not a governmental entity, the committee wondered whether the records, once in the hands of the association were public, or available only to entities with legitimate enforcement interests.

The rewrite, on page 12, clarifies that, from the time of compilation until the records are actually forwarded to the stockmen's association, the records must be made available for inspection by a representative of the association and that once in the hands of the stockmen's association, the records are confidential, except for the standard five circumstances:
i.e. If everyone identified consents; if federal law dictates a revelation; if a state or federal agency requires the information for animal disease control or traceback; if there is pursuit of a criminal investigation; or if a court orders release of the information.

On page 14, we begin the chapter on estrays. The interim committee wasn't interested in changing the law, but rather trying to figure out who had a duty to do what. This was truly a "we know how it's supposed to work" chapter. On page 14, three sections of law were combined to provide that if an individual discovers an estray, the individual shall take possession, try to determine its ownership, and facilitate its return. If the individual is unable to determine the animal's owner, the individual is to notify the sheriff or the chief brand inspector and follow their instructions, or bring it to a livestock auction market and notify the brand inspector that it appears to be an estray.

Under current law, on page 16, the ND stockmen's association is to send estray lists to the county auditor of each county from which estrays were originally shipped. The county auditor was to post one copy in a conspicuous place in the courthouse and place one copy on file in his office. The association was also to place a notice in the official newspaper of each county from which estrays were shipped, indicating that the estray list has been posted at the auditor's office.

The committee determined that most people don't spend as much time at the auditor's office as perhaps they once did. Again, in keeping with current practice, they changed the law to require that the association publish, at least twice in the official newspaper of the county, a list of all estrays found in the county and for which the association received proceeds. In addition, the committee directed that the association maintain and make an updated list available on its website. Apparently, this is already being done.

Yesterday, it was suggested that this committee consider an amendment to the section requiring that the list also be posted at each salebarn and weighstation.

When the committee looked at the immunity from liability provision on page 16, it wanted to clarify that not only was there immunity from liability for the person who took possession of the stray, but also for the person who in good faith and without being negligent "attempted" to take possession of the stray.

Beginning on page 17, we enter the realm of livestock dealers. Current law, lumps together livestock dealers and wool dealers. Most people could read between the lines and figure out when the law meant to reference one and when it meant to reference the other. Everybody knew how it was supposed to work. The interim committee, however, chose to separate the two entities. That way we're not holding wool dealers liable for any acts or omissions pertaining to their agents' livestock dealings, etc.

The first thing that the committee clarified on page 17 was the definition of a livestock dealer. It paralleled packers and stockyards. The definition can be found between lines 11 and 18.

Whereas current law begins with the licensing of livestock agents, the rewrite begins with the licensing of the big boys -- the dealers. Again, there is nothing substantively outstanding. We just took a number of disjointed sections, pulled them apart and tried to place them in some logical order:

- Who must be licensed;
- The application process;
- The application fee;
- The bond;
- Records release; and
- Grounds for denial of a license.

The grounds for denying a license received some time and attention. This is at the top of page 20. Under current law, the commissioner shall deny a license or revoke a license for a variety of offenses that deal with everything from deceit, fraud, forgery, and theft, to failing to collect the beef checkoff or violating any law pertaining to the transportation of livestock. The interim committee wasn't sure whether this meant that the commissioner had to revoke a license if a person went 35 in a 25 zone.

The committee thought that the best approach was to require that the commissioner deny a license in two instances -- when the applicant's assets did not exceed his liabilities, and when the applicant submitted false or misleading information in connection with the application. In all other instances, the commissioner was given discretion. The committee also clarified that a person was entitled to a hearing if requested within 30 days of the denial.

On page 20, you will find a new section. Lines 17 through 23.

This pertains to changes in circumstances. As the committee was looking at licensing and bonding, and assets and liabilities, it became clear that the ag commissioner had no vehicle with which to track changes in circumstances that could significantly impact the financial status of a dealer. So this section directs a dealer to notify the commissioner if there is a legal change to the name in which the dealer's license is issued; if there is any change to the dealer's legal status; and if there is any change in the nature and scope of the business that would warrant an increase in the required bond.

Page 20, also contains a second new section. This one is on lines 24-27 and pertains to records. Current law provides that a dealer's license could be revoked for failing to maintain suitable records. The committee thought that if this was a ground for revocation, it might be nice if somewhere in the chapter, the dealers were actually required to keep the records and if the law would indicate for how long. This was done and the retention period was set at two years.

As for agents' licenses, current law provides that:

No agent may act for any dealer unless the dealer is licensed and has designated such agent to act in the dealer's behalf and has notified the department of the appointment in the dealer's application for a license or in a separate written instrument and requested the department to issue to such agent an agent's license in such form as may be prescribed by the commissioner and has signed a statement in substantially the following form . . . and the sentence goes on.

In the rewrite, beginning at the bottom of page 20, the committee clarified that an agent must be licensed and that the principal must request the license. The ag commissioner is required to engage in some verification pertaining to the licensure of the principal. The committee clarified the criteria under which an agent's license may be denied. It included the phrase "for any other good and just cause" and it also required a hearing if requested within 30 days of the denial.

On the top of page 22, the committee clarified the investigatory duties of the commissioner. Current law authorizes an investigation of the sales and transaction of any dealer and of the conditions under which the dealer's business is conducted. That was viewed as being somewhat nebulous. Current law also required the commissioner to conduct an investigation if packers and stockyards is conducting an investigation. The committee was assured that if the federal agency brought its lawyers and accountants to delve into a dealer's business, there was very little that our ag department, with its limited resources, could do to contribute to the effort.

The rewrite therefor specified that the ag commissioner shall conduct an investigation if there is reasonable cause to believe that the livestock dealer violated this chapter or engaged in any activity that constitutes a ground for license suspension or revocation. It also specified that if the packers and stockyards was on the scene, the ag commissioner did not have to share the stage.

The remaining sections cleanup the provisions that address what happens in the event of a default -- How to start the claim against the bond -- the appointment of a trustee -- the marshaling of assets -- and the distribution of the trust fund. This portion is really lawyers talking to lawyers, and was not something that captured the committee's interest. The committee did, however, make one practical change:

Current law requires the ag commissioner, upon being appointed as the trustee, to take possession of "all the books and records of the dealer which were kept by the dealer in connection with such

business. . . . "

Mr. Carlson had visions of having to store massive amounts of paperwork for a seeming eternity. The committee decided that the better part of valor involved directing the commissioner to take possession of the records, review them, and return to the dealer anything that was not pertinent to the settlement of claims. This can be found in the middle of page 24, beginning on line 12.

As I said earlier, the remaining portions of the bill provide parallel provisions, tailored for wool dealers.

If I might, Mr. Chairman, I would also like to draw your attention to page 35 of the bill draft. Section 7 contains another directive that the rewrite process be continued. It would be up to the next chairman to determine which chapters should be addressed. I can tell you there are a number that are in need of time and attention. I believe that you will see some of them yet this session.

Rewrites are initially met with reluctance and skepticism. You'll hear people say, well we know what our chapter is supposed to mean and how it is supposed to work. Rewrites force administering agencies to read what they are administering very critically. Often, they find provisions that they didn't know were there or didn't realize that that's how they were to be interpreted.

Once the clean up process begins, the agencies have a much easier time seeing what actually is in their chapters. And then they can have a discussion about whether or not it should be in their chapters.

Any agency that has gone through a rewrite will tell you that it's a lot of work and especially so because, under the directive of the interim committee, there is an insistence on getting the verbiage correct. Say what you mean and mean what you say.

They will also tell you that when all is said and done, they have a chapter that is logically arranged, that gives them clear direction with respect to their powers, duties, and responsibilities, and that sets forth clear expectations on those who are affected by the chapter.

Mr. Chairman, that serves as a summary of this portion of the interim committee's efforts.

HB 1026

1/10/13
#2

Good morning, Chairman Johnson and members of the House Agriculture Committee. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

As Ms. Thomas described, we were pleased to work closely with her and the Interim Agriculture Committee over the last many months to bring you the front half of HB 1026.

We are pleased with the end product, as it is much easier to read and understand, all while preserving the legislative intent and policies outlined in current statute.

The Stockmen's Association is proud to have administered state brand programs since the 1930s. It is a responsibility we take very seriously, as we help uphold the laws related to the livestock industry and protect livestock producers' investments.

I would like to introduce a few people joining me here today: Stan Misek, the state's chief brand inspector, and Fred Helbling, a Morton County cattle producer and chairman of the Stockmen's Association Brand Board.

With that, I will close my remarks by saying that we support HB 1026, we ask for your favorable consideration of the bill and would be happy to answer any questions you have about it or brand programs.

#3
11/10/13

Good Morning Chairman Johnson and Members of the House Ag Committee. I am Kenny Graner, President of the Independent Beef Association of North Dakota.

I, along with our Board Members have reviewed HB1026. We are opposed to the bill as written and we are offering the following changes:

On page 2, under "Federally Sponsored Programs", 4.1-72-05, lines 29 to 31, paragraph 2, should be stricken from the Bill as this addition is changing the intent of the original law by adding "any other federally sponsored programs pertaining to livestock." We believe any other federally sponsored program pertaining to livestock should remain with the Board of Animal Health and/or the North Dakota Agriculture Department. Paragraph 2 is not part of the current law.

Also, we would like to offer an amendment: please refer to page 16, under "List of Estrays", line 14, paragraph 2, we propose to add "sale barns and weigh stations" as additional places to place notice of Estray animals.

It should read as follows:

2. The association shall maintain and make available on its website as well as post a list at sale barns and weigh stations an updated list of all estrays for which the association received sale proceeds during the preceding 72 months.

Thank You for your time.

1/18/13 #1

January 18, 2013

RE: HB 1026

Chairman Johnson:

Members of the House Agriculture Committee:

For the record, my name is Allen Lund.

I own and operate a ranch close to Selfridge, ND.

I stand in favor of amendments to HB 1026.

Specifically I stand in favor of the amendment to strike language in chapter 4.1-72-05, lines 29, 30 and 31.

The language reads: **“If requested by the agriculture commissioner or the state board of animal health, the North Dakota stockmen’s association may serve as the state administrator for or assist in the administration of any other federally sponsored program pertaining to livestock.”**

As I understand it, HB 1026 pertains to cleaning up and clarifying language in the original brand bill with no intent to make any changes to the original bill.

The language I am referring to is added and therefore I believe would need to be inserted in a stand alone bill.

I would ask for the committees support in approving the amendment.

Thanks and I would answer any questions you may have.

Allen Lund

lundranch@westriv.com

701-422-3747 cell 701-471-3747

Testimony on House Bill 1026
L. Anita Thomas
ND Legislative Council

A few weeks ago, I appeared before you on the interim rewrite bill pertaining to seed potato certification and we spoke about the need for laws to be clear and concise so that the agencies charged with administering the laws and the people to whom they apply have due notice of the requirements and expectations placed upon them.

In addition to rewriting the seed potato certification chapters, the 2011-12 interim agriculture committee also rewrote the state's brand laws, and the laws pertaining to estrays, stray inspections, and livestock and wool dealers.

As with other rewrite efforts, the purpose was not to change statutory concepts that the Legislative Assembly enacted in the past. As a very obvious example, the interim committee did not discuss whether the state should still have brand laws or whether they should still be administered by the North Dakota Stockmen's Association. That was the intent of the Legislative Assembly and the purpose of the rewrite is not to second guess that. The purpose of the rewrite, and its focus, is to lend clarity and order to those concepts that are already in the law.

As I have said in the past, this involves more than moving commas and changing "musts" to "shalls." That's why we kill a lot of trees during the course of an interim rewrite. We try and ensure that any changes which are proposed, are discussed, and understood, and supported.

We always begin the rewrite with the current law. We look at each section and make recommendations for change, using standard overstrike and underscore. If a section is recommended for repeal, we include that, so people can see what is being recommended. We have the agency or entity that is most significantly involved in administering the chapter sit at the table and go through each section with the committee. I insert notes after each section that include questions, comments, and suggestions. The notes are designed for committee discussion and interaction with the administering agencies. The various iterations of each bill we have tackled are available on line. Anybody can pull them up on the legislative council website, and they can also pull up the minutes of each meeting.

The discussion that is generated during each interim meeting provides guidance and direction with respect to the committee's wishes and serves as the foundation for the next draft. That version involves taking the concepts, refining them, and reordering them into a logical comprehensible chapter. If there are sections that are still not as refined or as workable as they ought to be, or if the committee discussion indicated that a consensus was not reached, those are further notated and brought up at an ensuing meeting. This process continues until the committee has reached a consensus and a recommendation on each section.

All committee meetings are duly noticed, as required by law. Bill drafts are sent out well ahead of the meeting, not only for the legislators to review the material, but also to share the drafts with whomever they choose. The agencies and principal entities are also encouraged to share the drafts as they see fit. At each meeting, opportunities are provided for interested parties to comment on the effort.

Having said all of that, let me give you a walk through House Bill No. 1026.

One of the first things you will notice about it is that it creates new chapters within a new title. Many of you are used to seeing ag related issues in title 4 or title 36. As we are rewriting the laws, they are being moved to the newly created title 4.1. We did this so that we had the flexibility to move not only words and phrases, but also sections and chapters. You will see this with the first three pages of the bill.

In current law, brands are covered under chapter 36-09, estrays are in 36-13, and estray inspection is in 36-22. Even though the North Dakota stockmen's association is given numerous duties under the first two chapters, it is not until the third mentioned chapter, 36-22, that its statutory authority is addressed. In addition, at various points throughout those chapters, there are sections that are generic. They don't really fit into brands, or estrays, or estray inspection, but they do deal with the general authority and operations of the stockmen's association. And so, within the rewrite, we pulled all of those sections together. Now, we begin with a chapter that sets forth the statutory authority of the association.

On page 2, the bill maintains the current language providing that the association may not discriminate between their members and non-members when it comes to administering the law.

The bill continues the requirement that the stockmen's association maintain a brand recording office and that it employ a chief brand inspector.

In the middle of page 2, the bill mentions deputy brand inspectors. Those of you familiar with the business know that one talks about the chief and one talks about fieldmen. You still can. However, from a statutory perspective, "fieldman" is a colloquial term and the committee didn't want it to be confused with the 200 individuals who go into the field to provide local brand inspections. The committee really didn't want it to be confused because the chief and the deputies are licensed peace officers. The local inspectors are not.

Current law states simply that the chief and the two fieldmen have the power of a police officer. Since they are licensed peace officers, this was clarified in the rewrite. The Stockmen's Association asked for additional verbiage allowing them to hire someone who has not yet attained licensure as a peace officer, but would pursue that as a condition of employment. Apparently, that is occasionally the practice.

At the bottom of page 2, beginning on line 25, you will see the section entitled "Animal Identification program - Administration."

During the interim, the committee was told that there is no federally sponsored animal ID program and there is none on the horizon. Even if such a program were to come into being, there is no way of knowing whether it would be structured to utilize the stockmen's association as the administrator and allocator. The association may not have the financial or technical resources to perform such a function for a future program and it may not even want to. So, the initial recommendation was to repeal the language. The interim committee asked, instead, that it be broadened.

The first draft looked at the two state entities most likely to have involvement in any federal animal program and it provided that if the agriculture commissioner or the state board of animal health requested it, the stockmen's association may serve as the state administrator for or assist in the administration of any federally sponsored program pertaining to livestock.

The stockmen's association indicated that they didn't feel strongly about the new language, but that they wanted to maintain the current language as well i.e. that the association shall serve as the state's

administrator and allocator for that portion of any federally sponsored animal identification program which pertains to cattle, horses, and mules.

So, it came out of the interim with the reference to animal ID programs and to any other federally sponsored program pertaining to livestock.

The one amendment made by the House Agriculture Committee was to return this section to the current law and that is what you have on lines 25 through 28 of page 2..

Record information, a continuing appropriation, and a biennial audit requirement, all of which are in current law, round out the chapter.

Beginning on page 4, we enter the chapter pertaining to brands.

Current law does not have a definition of a brand, for purposes of brand recording, so the committee came up with one and then articulated the steps that must be taken in order to apply for a brand.

Current law has a list of symbols that are acceptable for use in a brand and we found that a forward or backward slash, while considered acceptable, was not on the list. Since the interim chairman had a slash in his personal brand, the committee made certain that the statute would accurately reflect that practice. You will see that on page 5, line 15.

As many of you know, there is a whole culture surrounding permissible placements and impermissible placements, and when one can have a numerical brand, and when one can have only upright numbers or characters. It's a little mystifying. So, the interim committee, recommended an additional section. This can be found on page 6 - line 19. It would give the chief brand inspector the final call on whether or not a brand was acceptable and whether its placement or location was permissible. This was viewed as being much more practical than an appeal to the supreme court.

The next change that I want to draw your attention to can be found on page 11, beginning on line 1. This pertains to brand inspection services at out of state facilities.

Under current law, an out-of-state livestock facility that seeks to obtain brand inspection services from this state may file a written request with the North Dakota stockmen's association. Upon receiving the request, the Stockmen's Association must petition the state board of animal health for permission to provide the services. The state board of animal health is directed to adopt rules setting forth the criteria that must be met before out-of-state brand inspections are approved.

The interim committee asked, what happens if the stockmen's association doesn't think that providing brand inspections at the suggested location is a good idea? Under current law, the association is literally being forced to file the petition for the services.

What the committee was told was that the stockmen's association simply wanted to know when such requests came through so they could have an opportunity to express their thoughts regarding the pros and cons of such requests. So, the committee reconfigured the statute to provide that an out of state entity may file a petition with the state board of animal health for the provision of brand inspection services and that the board has to provide the stockmen's association with an opportunity to comment.

At the bottom of page 11, there is another section with a change I would like to point out.

Current law requires that certain records be kept by persons slaughtering cattle on a custom basis or for the purpose of selling the meat at retail or wholesale. Apparently, these slaughter records are provided to the ND stockmen's association. Since the association is not a governmental entity, the committee wondered whether the records, once in the hands of the association were public, or available only to entities with legitimate enforcement interests.

The rewrite, on page 12, line 7, clarifies that, from the time of compilation until the records are actually forwarded to the stockmen's association, the records must be made available for inspection by a representative of the association and that once in the hands of the stockmen's association, the records are confidential, except for the standard five circumstances:

i.e. If everyone identified consents; if federal law dictates a revelation; if a state or federal agency requires the information for animal disease control or traceback; if there is pursuit of a criminal investigation; or if a court orders release of the information.

On page 14, we begin the chapter on estrays. This was truly a "we know how it's supposed to work" chapter and the committee spent some time trying to figure out who had a duty to do what. On page 14, three sections of law were combined to provide that if an individual discovers an stray, the individual shall take possession, try to determine its ownership, and facilitate its return. If the individual is unable to determine the animal's owner, the individual is to notify the sheriff or the chief brand inspector and follow their instructions, or bring it to a livestock auction market and notify the brand inspector that it appears to be an stray.

Moving on to page 16, line 4, the ND stockmen's association is to send stray lists to the county auditor of each county from which estrays were originally shipped. The county auditor was to post one copy in a conspicuous place in the courthouse and place one copy on file in his or her office. The association was also to place a notice in the official newspaper of each county from which estrays were shipped, indicating that the stray list has been posted at the auditor's office.

The committee determined that most people don't spend as much time at the auditor's office as perhaps they once did. Again, in keeping with current practice, they changed the law to require that the association publish, at least twice in the official newspaper of the county, a list of all estrays found in the county and for which the association received proceeds. In addition, the committee directed that the association maintain and make an updated list available on its website. Apparently, this is already being done.

With respect to the publishing of the list in the newspaper, the stockmen's association has suggested a small amendment on line 6. The bill currently requires that the association publish a list of all estrays that were found in the county and for which the association received sale proceeds. The stockmen's association would like to add the phrase "during that calendar year," or better yet, "during the preceding 12 months." This clarifies that they are not expected to list all of the estrays from a particular county for which the association received sale proceeds since time immemorial.

The interim committee also suggested a change to the liability section. Under current law, there is immunity from liability for an individual who, without being negligent, takes possession of an stray. The committee thought that the immunity provision should cover not only the person who took

possession of the estray, but also the person who in good faith and without being negligent "attempted" to take possession of the estray. You will see that language on page 16, lines 22-28

Beginning on page 17, we enter the realm of livestock dealers. Current law lumps together livestock dealers and wool dealers. Most people could read between the lines and figure out when the law meant to reference one and when it meant to reference the other. Everybody knew how it was supposed to work. The interim committee, however, chose to separate the two professions. That way we're not holding wool dealers liable for any acts or omissions pertaining to their agents' livestock dealings, etc.

The first thing that the committee clarified on page 17 was the definition of a livestock dealer. It now parallels packers and stockyards. The definition can be found between lines 4 and 10.

Whereas current law begins with the licensing of livestock agents, the rewrite begins with the licensing of the dealers. Again, there is nothing substantively outstanding. We just took a number of disjointed sections, pulled them apart and tried to place them in some logical order:

- Who must be licensed;
- The application process;
- The application fee;
- The bond;
- Records release; and
- Grounds for denial of a license.

The grounds for denying a license received some time and attention. This can be found on page 19, beginning on line 26. Under current law, the commissioner shall deny a license or revoke a license for a variety of offenses that deal with everything from deceit, fraud, forgery, and theft, to failing to collect the beef checkoff or violating any law pertaining to the transportation of livestock. The interim committee wasn't sure whether this meant that the commissioner had to revoke a license if a person was ticketed for driving a stock trailer 35 in a 25 zone.

The committee thought that the best approach was to require that the commissioner deny a license in two instances -- when the applicant's assets did not exceed his liabilities, and when the applicant submitted false or misleading information in connection with the application. In all other instances, the commissioner was given discretion. The committee also clarified that a person was entitled to a hearing if requested within 30 days of the denial.

On page 20, you will find a new section - Lines 11 through 17.

This pertains to changes in circumstances. As the committee was looking at licensing and bonding, and assets and liabilities, it became clear that the ag commissioner had no vehicle with which to track changes in circumstances that could significantly impact the financial status of a dealer. So, this section directs a dealer to notify the commissioner if there is a legal change to the name in which the dealer's license is issued; if there is any change to the dealer's legal status; and if there is any change in the nature and scope of the business that would warrant an increase in the required bond.

Page 20, also contains another new section. This one is on lines 18 - 21 and pertains to records. Current law provides that a dealer's license could be revoked for failing to maintain suitable records. The committee thought that if this was a ground for revocation, it might be nice if somewhere in the

chapter, the dealers were actually required to keep the records and if the law would indicate for how long. This was done and the record retention period was set at two years.

As for agents' licenses, current law provides that:

No agent may act for any dealer unless the dealer is licensed and has designated such agent to act in the dealer's behalf and has notified the department of the appointment in the dealer's application for a license or in a separate written instrument and requested the department to issue to such agent an agent's license in such form as may be prescribed by the commissioner and has signed a statement in substantially the following form . . . and the sentence goes on.

In the rewrite, beginning on page 20, line 22, the interim committee clarified that an agent must be licensed and that the principal must request the license. The section also requires the ag commissioner to engage in some verification pertaining to the licensure of the principal.

The interim committee then clarified the criteria under which an agent's license may be denied. It included the phrase "for any other good and just cause" and it also required a hearing if requested within 30 days of the denial.

Beginning on Page 21, line 25, the interim committee clarified the investigatory duties of the commissioner. Current law authorizes an investigation of the sales and transaction of any dealer and of the conditions under which the dealer's business is conducted. That was viewed as being somewhat nebulous. Current law also required the commissioner to conduct an investigation if packers and stockyards is conducting an investigation. The committee was assured that if the federal agency brought its lawyers and accountants to delve into a dealer's business, there was very little that our ag department, with its limited resources, could do to contribute to the effort.

The rewrite therefor specified that the ag commissioner shall conduct an investigation if there is reasonable cause to believe that the livestock dealer violated this chapter or engaged in any activity that constitutes a ground for license suspension or revocation. It also specified that if the packers and stockyards was on the scene, the ag commissioner did not have to share the stage.

The remaining sections cleanup the provisions that address what happens in the event of a default -- How to start the claim against the bond -- the appointment of a trustee -- the marshaling of assets -- and the distribution of the trust fund. This portion is really lawyers talking to lawyers, and was not something that captured the committee's interest. The committee did, however, make one practical change and this can be found on page 24, lines 3 through 8.

Current law requires the ag commissioner, upon being appointed as the trustee, to take possession of "all the books and records of the dealer which were kept by the dealer in connection with such business. . . ."

Mr. Carlson had visions of having to store massive amounts of paperwork for a seeming eternity. The committee decided that the better part of valor involved directing the commissioner to take possession of the records, review them, and return to the dealer anything that was not pertinent to the settlement of claims.

In the middle of page 26, you will see that a new chapter is created. This is the wool dealers' chapter and essentially parallels the provisions for livestock dealers.

If I might, Mr. Chairman, I would also like to draw your attention to page 34 of the bill draft. Section 7, at the bottom of the page, contains another directive that the rewrite process be continued. It would be up to the next interim chairman to determine which chapters should be addressed. I can tell you there are a number that are in need of time and attention. (Open range, pesticides, more cleanup on fertilizers and commercial feed, etc.)

Rewrites are initially met with reluctance and skepticism. You'll hear people say, well we know what our chapter is supposed to mean and how it is supposed to work. Rewrites force administering agencies to read what they are administering very critically. Often, they find provisions that they didn't know were there or didn't realize that that's how they were to be interpreted.

Once the clean up process begins, the agencies have a much easier time seeing what actually is in their chapters. Thereafter, they can have a discussion about whether or not it should be in their chapters.

Any agency that has gone through a rewrite will tell you that it's a lot of work, but they will also tell you that when all is said and done, they have a chapter that is logically arranged, that gives them clear direction with respect to their powers, duties, and responsibilities, and that sets forth clear expectations on those who are affected by the chapter.

On behalf of the interim committee, Mr. Chairman, I present for your consideration, Engrossed House Bill No. 1026.

HB 1026

Good morning, Chairman Miller and Senate Agriculture Committee members. My name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

As Ms. Thomas described, we were pleased to work closely with her and the Interim Agriculture Committee over the last many months to bring you the front half of HB 1026. I think we all know what a go-getter Anita is in her role as legal counsel, but she took it to a whole new level in my mind when she volunteered to spend a day with our chief brand inspector and auction market brand inspection staff last January on sale day at Kist Livestock to learn more about brand inspection and to prepare for this rewrite endeavor.

Simply put, we are pleased with the end product of the rewrite, as the chapters are much easier to read and understand, and preserve the legislative intent and policies outlined in current law.

The Stockmen's Association is proud to have administered the state's brand programs since the 1930s. It is a responsibility we take very seriously as we help uphold the laws related to the livestock industry and protect producers' investments.

We support HB 1026 and ask for your favorable consideration.

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TESTIMONY ON HOUSE BILL NO. 1026
SENATE AGRICULTURE COMMITTEE
MARCH 7, 2013

MAJOR LES WITKOWSKI
Chief Deputy, Burleigh County Sheriff's Department
Chairman, North Dakota Peace Officer Standards and Training Board

Good morning Chairman Miller and Members of the Senate Agriculture Committee. My name is Les Witkowski, a Chief Deputy at the Burleigh County Sheriff's Department. In 2010 Attorney General Wayne Stenehjem appointed me to the North Dakota Peace Officers Standards and Training Board (P.O.S.T. Board).

This morning I come before you to offer information that relates specifically to Section One page 2, lines 20 through 24 and to propose an amendment.

Normally I review bills that come before the Judiciary, Transportation or Political Subdivision Committees however I noticed House Bill 1026 dealt with estrays and upon review discovered the section related to brand inspectors pursuing a peace officer license. Unfortunately after contacting Representative Diane Larson, a member of the House Agriculture Committee, was informed House Bill 1026 had passed the House and was forwarded to the Senate.

The North Dakota Peace Officers Standards and Training Board legal advisor, Assistant Attorney General Ken Sorenson, prepared the proposed amendment which is attached to my testimony.

OVERVIEW OF THE BOARD

The North Dakota Peace Officer Standards and Training Board is made up of nine members appointed by the Attorney General. The nine members include six peace officers, the Director of the Law Enforcement Training Center, a county government representative and a city government representative. The Attorney General is required to provide support staff for the Board. The support staff includes administrative and legal support, with one employee serving as the Executive Secretary and ex officio non-voting member of the Board.

The Board is charged with the administration and enforcement of North Dakota Century Code Chapter 12-63 relating to peace officer standards, training, and licensing, including establishing criteria for training, certification of curriculum, instructors, and schools, and establishing minimum standards for sidearm training and certification.

The Legislature established the North Dakota Peace Officer Standards and Training Board in 1981 as part of the North Dakota Attorney General's Law Enforcement Training and Statistics Division. When the Board was established, peace officers were not licensed, but instead, the Training and Statistics Division issued certificates to officers who met the Division's training and sidearm requirements. A newly hired peace officer had up to one year to complete the division's training requirements. In 1987, the Legislature changed the law from a certification system to a licensing system that became effective in 1989.

When the licensing system was established, the Board was authorized to issue what is called a limited license to newly hired peace officers who had completed certain minimal requirements, including education, medical, psychological, and sidearm requirements. The limited license allowed the officer to perform peace officer duties until the officer completed the basic training course at the Law Enforcement Training Center, and passed the licensing examination.

The current statute (N.D.C.C. 12-63-09) requires the applicant for a limited license to attend the first available basic training program recognized by the Board. That was not too difficult for the Board to administer, or for agencies hiring new officers, when there were only two basic law enforcement training courses taught at the Law Enforcement Training Center each year, and those were the only basic training courses provided in North Dakota.

At the present time, because of increased demand for law enforcement officers in the state, the Highway Patrol is conducting three basic law enforcement training courses at its Law Enforcement Training Center in Bismarck each year, and there are also Board-authorized basic law enforcement training programs conducted under a community college approach through the Lake Region State College in Devils Lake. The Lake Region State College basic law enforcement training programs are also taught in Fargo, Grand Forks, and Minot. Typically, the individuals who attend the course at the Law Enforcement Training Center are already hired by law enforcement agencies and already have their limited license. Those individuals who attend the Lake Region State College basic law enforcement training programs in one of the several locations have not been hired by a law enforcement agency and pay tuition to attend the program. These students become licenseable upon graduation.

Attached is the proposed amendment to House Bill 1026 so that it complies with current law regarding peace officer licensing. The amendment simply replaces the "is" at the end of line 20 on page 2 with "obtains a limited peace officer license under section 12-63-09". It then removes lines 21 through 24.

If there are any questions I will try to answer them. Thank you.

12-63-07. Examination for license.

1. Only a person satisfying the requirements of subsections 1 through 5 of section 12-63-06 may apply for examination. The application must be filed in the manner the board prescribes and be accompanied by the fee prescribed under section 12-63-05. The fee is nonrefundable. A person who fails an examination may apply for reexamination upon payment of the prescribed fee.
2. Each applicant for licensing must be examined by written examination as established by the board.
3. Applicants for licensing must be examined at a time and place and under supervision as the board requires.
4. Applicants may obtain their examination scores and may review their papers in accordance with rules adopted by the board.

Source: S.L. 1987, ch. 154, § 8.

12-63-08. Exception from training requirement — Issuance of certain licenses as of right.

1. Peace officers with experience or training outside this state before January 1, 1989, may qualify for exception from portions of the training requirement. The applicant shall apply to the board for an exception. After review the board may grant a complete or partial exception. Before the issuance of a license, the applicant must successfully complete the written examination.
2. The board shall grant a license to any person certified as a peace officer before July 1, 1989.

Source: S.L. 1987, ch. 154, § 9.

12-63-09. Limited license. Pending successful completion of the written examination required in this chapter, the board may grant a limited license to a person who has completed the education, medical, and psychological examination requirements and has been qualified to carry a sidearm. The limited license allows the person to practice peace officer duties in accordance with rules of the board. Except as otherwise provided, the limited license is valid for no longer than the earlier of the expiration of the next available training session, until the person is issued a license under section 12-63-10, or until the limited license is suspended or revoked by the board. After being employed but before taking the written examination, the person shall attend the first available basic training program recognized by the board. The limited license may be renewed one time if the person has failed the examination. On terms and conditions prescribed by the board, the limited license is limited to the jurisdiction in which the person is employed.

Source: S.L. 1987, ch. 154, § 10; 2003, ch. 101, § 12.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1026

Page 2, line 20, replace "is" with "obtains a limited peace officer license under section 12-63-09."

Page 2, remove lines 21 through 24.

Renumber accordingly