

**2013 SENATE AGRICULTURE**

**SB 2026**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee  
Roosevelt Park Room, State Capitol

SB 2026  
January 31, 2013  
18054

Conference Committee

*Hauge*

The purpose of the rewrite, and its focus, is to lend clarity and order to those concepts that are already in law.

**Minutes:**

*Written testimony*

**Chairman Miller** opened discussion on SB 2026 relating to the North Dakota seed department, seed potatoes, and seed potato control area. All committee members were present.

**Anita Thomas**, Attorney with the ND Legislative Council, explained the purpose of rewrites. She added that purpose does require some changes. It involves a great deal more than just moving around commas. She explained SB 2026 and the changes made in the rewrite. **Written testimony #1**

**Senator Heckaman** asked if there were other bills drafted from this rewrite that was included in this chapter.

**Anita Thomas** replied that she was not aware of any bill that pertains to the seed potato certification.

**Senator Larsen** asked if there was an automatic process or order to the audit rewrites.

**Anita Thomas** said it is a tremendous amount of work and they don't solicit rewrites.

**Ken Bertsch**, State Seed Commissioner and administrator of the Seed Department, testified in support of SB 2026 and offered amendment.

**Written testimony #2**

**Attachment: Amendment 13.0151.03001**

**Senator Miller** had a question on the control areas.

**Ken Bertsch** referred the committee to the top of page 11 in the creation of the control area is where you would find language that basically says, a group of individuals, farmers, landowners in a particular area can petition for the creation of a controlled area. He said that at the present time there is a control area in the Cando area and it is approximately thirty sections of land. What this does is prohibit the production of commercial potatoes in that area so they can successfully produce low generation, high quality seed.

**Senator Larsen** had a question on control areas and if potatoes can still be grown in gardens in these areas. Can the growing of potatoes in farm yards become a problem?

**Ken Bertsch** said that it could be a problem. He said that the code does not refer to gardens. Any code language that limits production of potatoes refers to one acre. What happens in reality is that those growers in a control area give free garden seed.

**Senator Miller** asked Mr. Bertsch about their budget.

**Ken Bertsch** replied that over the years the Seed Department has been an appropriated agency with a self funded budget. They have fees for services provided. In the past they would go to the appropriation committee and would present their projected budget for the next biennium. After some discussion it seemed OMB would prefer that the Seed Department be changed to a continuous appropriation agency because it would be one less budget for the appropriation committee to hear and they don't receive any general funds.

Questions and answers continued on the health of the Seed Department, what other states are doing, and what types of research the Seed Department is doing.

#### **No opposing testimony**

**Chairman Miller** closed the hearing on SB 2026.

**Senator Heckaman** moved to adopt amendment 13.0151.03001.

**Senator Klein** seconded the motion.

**Amendment adopted: 5-0-0**

**Senator Heckaman** moved a **do pass as amended** to SB 2026.

**Senator Klein** seconded.

**Roll call vote: 5-0-0**

**Senator Heckaman** is the carrier.

13.0151.03001  
Title.04000

Prepared by the Legislative Council

January 29, 2013

*FB*  
*1-31-13*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2026

Page 4, line 8, replace "biennial" with "annual"

Page 4, remove lines 10 and 11

Page 4, line 12, replace "11." with "10."

Page 4, line 14, replace "12." with "11."

Renumber accordingly



Date: January 31<sup>st</sup>, 2013  
 Roll Call Vote #: #2

2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2026

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0151.03001

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

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

**REPORT OF STANDING COMMITTEE**

**SB 2026: 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). SB 2026 was placed on the Sixth order on the calendar.

Page 4, line 8, replace "biennial" with "annual"

Page 4, remove lines 10 and 11

Page 4, line 12, replace "11." with "10."

Page 4, line 14, replace "12." with "11."

Renumber accordingly

**2013 HOUSE AGRICULTURE**

**SB 2026**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee  
Peace Garden Room, State Capitol

SB 2026  
March 14, 2013  
Job #19934

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the North Dakota seed dept., seed potatoes; to provide a penalty; and a continuing appropriation

Attachments #1 & 2

## Minutes:

**Anita Thomas, Attorney for Legislative Council:** (See attached #1)  
Amendment in Senate

(9:40)

**Ken Bertsch, State Seed Commissioner:** (See attached #2)  
This has been a two-interim experience.

**Representative Larson:** There are some bills proposed this session to take the missions out of the different universities for more flexibility in moving things around. On lines 12 & 13 on the first page of the bill, "must be at NDSU." That might be a moot point if those other bills are passed.

**Ken Bertsch:** The language you are referring to is logistic placement. Whether the missions of the universities were changed or not, we would be required to be placed on campus at NDSU. As a land grant we work closely with breeding programs, the pathology programs, etc.

**Representative M. Nelson:** If authorized by USDA, you can issue phytosanitaries. Do you do that?

**Ken Bertsch:** No we don't. The authority to issue phytos rests with the Ag. Dept. We do the testing and have the information to generate the certificate. We would do so under their authority as they are designated by USDA.

**Chairman Dennis Johnson:** The rewrite is a grueling process and we appreciate your work.

**Opposition:** none

**Chairman Dennis Johnson:** Closed the hearing

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee  
Peace Garden Room, State Capitol

SB 2026  
March 14, 2013  
Job #19949

Conference Committee

Committee Clerk Signature

*DeMar Kueh*

## Explanation or reason for introduction of bill/resolution:

(Committee Action)

Relating to the North Dakota seed dept., seed potatoes; to provide a penalty; and a continuing appropriation

Minutes:

**Vice Chair John Wall:** Moved Do Pass

**Representative Rust:** Seconded

**Representative Rust:** Is there anything in here that is of concern to anyone?

**Chairman Dennis Johnson:** Everything has been worked out.

**A Roll Call vote was taken: Yes 10, No 0, Absent 3.**

Do Pass carries.

**Representative Wall** will carry the bill.

Date: 3/14/13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2026**

House **Agriculture** Committee

Legislative Council Amendment Number \_\_\_\_\_

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

Motion Made By Rep. Wall Seconded By Rep. Rust

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	AB				
Rep. Craig Headland	AB				
Rep. Joe Heilman	X				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. David Rust	X				
Rep. Wayne Trottier	AB				

**Total** Yes 10 No 0

Absent 3

Floor Assignment Rep. Wall

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

**REPORT OF STANDING COMMITTEE**

**SB 2026, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman)**  
recommends **DO PASS** (10 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING).  
Engrossed SB 2026 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**SB 2026**

Testimony on Senate Bill 2026  
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. Senator Flakoll was used to dealing with a fairly organized body of education law and when he assumed his role as ag

chairman, he realized that this particular area needed some time and attention as well and he was 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 is 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 brands, estrays, and livestock and wool dealers, as well as seed potato certification and seed potato control areas. The latter two are of course the topics of Senate Bill No. 2026.

Let me add one more thing about the parameters of the title rewrite before we turn to the bill itself. 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 an independent seed department. 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.

As an example, 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 Senate Bill No. 2026. 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. 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 four pages of the bill.

Prior to the rewrite effort that you enacted last session, the Seed Commissioner was responsible for I believe it was 5 different chapters. This interim, we sorted through two more. In that grand morass, there were sections that needed to exist and were applicable to all the seed chapters. However, they didn't need to be reiterated in every chapter, and they didn't really fit in one chapter or the other. We left them parked in the seed chapter last interim and this interim, the committee determined that the "misfits," so to speak, really should have their own chapter. So, in the newly created chapter 4.1-52, we set forth verbiage regarding the seed department, the membership of the commission,

administrative matters regarding meetings and compensation, the powers of the commission and its duties, and the powers of the seed commissioner and his duties.

On the bottom half of page 4, you will see that we also pulled in language regarding the seed department fund. Instead of having every one of the seed commissioner's chapters address the forwarding of dollars to the fund and the investment of the fund, the interim committee opted to make this applicable to all chapters over which the commissioner has authority.

On page 5, we begin chapter 4.1-55. This is the new seed potato certification chapter.

In the definition section, as we have in the past, we omitted terms that didn't need to be defined -- like agent, commissioner, and department, and to the greatest extent possible, we reconciled the definitions in this chapter with those of the other seed chapters. "Certification" and "variety" are terms that fit into this category.

At the top of page 6, we again paralleled language that we used in the ag seed chapter and directed the seed commissioner to establish a system for the certification of seed potatoes.

Below that, we got into permissible seed potato grades and label requirements and literally continued along the line of clarifying, cleaning up, and reordering the language. If potatoes are to be labeled "in accordance" with the chapter, the NDCC does not need to require that they also be labeled "in conformity" with the chapter. If potatoes "grown" in North Dakota need to be labeled, the NDCC does not need to also require labeling of potatoes "originating" in North Dakota.

The warranty language on the bottom of page 8 parallels language that was recrafted last interim. Under current law, this section also referenced wholesale potato dealers. Because wholesale potato dealers have their own chapter, we separated them from this section and put their warranty language into their own chapter. You'll see that on the last page of the bill.

On page 9, beginning on line 17, we have a section authorizing the seed commissioner to seize seed potatoes that the commissioner believes are mislabeled. Current law provides that the potatoes may be held until they are labeled or marked with the grade or essential details as indicated by the official report or certificate of the commissioner. The committee was told that from an operational perspective, mislabeled seed potatoes must be graded or reconditioned to meet the claims on their label or their label must be changed. The rewrite reflects this.

On the middle of page 10, starting at line 11, we enter another chapter - that dealing with seed potato control areas. This law was enacted in 1959 and right now pertains to one person. Nevertheless, the committee saw the potential for its future use, and directed that it be made workable in the event it is ever needed.

The general concept here is that landowners can petition to have a seed potato control area created and subject themselves to agreed upon standards for seed selection, treatment, field isolation, etc. The biggest challenge came in the fact that landowners were defined as including lessees. Since having one's land in a seed potato control area could significantly impact its value, the committee determined that only landowners should be given the right to encumber land - not the renters.

Under current law, once a seed potato control area is formed, it is to be governed by a three member committee, appointed by the seed commissioner from a list of five willing and able individuals. So, the next question was what authority does this committee have if there are not 3 members able to serve, let alone 5 who might be interested in being considered for the committee.

The solution was to provide that the governing committee must consist of 3 members, or a lesser number if 3 are not available. If, however, no one is willing to provide governance, then the seed commissioner is to dissolve the seed potato control area.

On the bottom half of page 15, you will see the section entitled Seed commissioner - Orders. Current law directs the seed commissioner to adopt rules relating to:

- The boundaries of a seed potato control area;
- The powers of a particular committee;
- The quality of seed to be grown in a particular control area; etc.

The interim committee determined that it was not appropriate to implement rules that would be applicable to only one control area, even though right now only one area exists. The committee decided that an "order" of the commissioner would be preferred, and so that change was made.

The final section of the bill is the repealers. Chapter 4-10 contains the existing provisions relating to the certification of seed potatoes and chapter 4-26 pertains to seed potato control areas. The other sections are those generic sections that pertain to the seed department, the seed commission, and the seed commissioner. Those are the sections that I spoke about earlier - the sections that we pulled into their own chapter

Fairly soon, you will see House Bill No. 1026. That's the second half of the interim rewrite effort. I bring that up at this point just to let you know that that bill contains a provision calling for 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.

Mr. Chairman, members of the committee --

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, the rewrite of these chapters could not have been brought to completion without a great deal of thoughtfulness and patience on the part of all the interim committee members and without the incredible commitment of time and energy that was made by the state seed commissioner, Ken Bertsch, and his staff.

A little bit ago I had mentioned that when a chapter gets cleaned up, the administering agency does have an easier time seeing what is actually in their law. And true to form, Mr. Bertsch called me a couple of days ago and suggested a small amendment. On page 4 of the bill, it is suggested that you replace the word biennial with annual on line 8, and that you remove lines 10 and 11.

Mr. Chairman, I'd be happy to answer any questions or turn the podium over to Mr. Bertsch so that he can explain the requested amendment, provide comments on the rewrite effort, and answer any questions about the art and business of seed potato certification.

#2



**Testimony  
SB 2026**

**Senate Agriculture Committee  
January 31, 2013**

**Ken Bertsch, Commissioner**

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 Seed Department. I appreciate the opportunity to speak to you today regarding SB 2026, the interim re-write of Seed Department chapters of ND Century Code.

I would like to thank the Interim Ag Committee and Committee Counsel for their work on the re-write. The Seed Department chapters were originally quite extensive, and achieving the objectives of a chapter re-write proved to be a major challenge as evidenced by the fact that it has taken two interims to complete the effort.

I will affirm that the bulk of the work done here is in keeping with the resolution that seeks to recommend changes to laws that are found "irrelevant, inconsistent, illogically arranged or unclear". I would add that from the Department perspective, other goals include to clarify, condense and modernize the code so as to make it more user-friendly. To achieve this goal, SB 2026 incorporates language in the 2 remaining chapters (4-10 and 4-26) that relate to our potato programs.

Chairman Erble was cautious to avoid changes that could be considered "policy" related, and for this reason my comments are brief. I believe that SB 2026 is fairly straightforward and suitable for support by the Agriculture Committee and Legislature.

With your consent, I will outline a few notable points in the bill.

**Section 1 (pages 1-5)**

As mentioned by Committee Counsel, this section creates powers and duties language that applies to the entire Department. Creation of the new chapter, titled Chapter 4.1-52, makes it much easier to isolate (and change in the future) those authorities related to the governance and administration of the Department. The amendment offered by Counsel, 4.1-52-10(9-10), is consistent with the effort to accurately define the powers and duties of both Commission and Commissioner.

**Section 2 (pages 5-10)**

Chapter 4.1-55 replaces the bulk of the current Chapter 4-10. 4-10 governs all of the potato certification and labeling program services provided by the Department as the designated authority for the State of North Dakota. The Interim Committee worked to modernize, condense and reorganize Chapter 4-10 language in the same format as was used in earlier versions of the rewrite. The newly created Chapter 4.1-55 is a much simpler and clearer document that outlines Department and citizen responsibilities in the process of seed certification and labeling.



### **Section 3 (pages 10-13)**

This section also replaces the entirety of Chapter 4-26, which governs the process of creating and administering a seed control area.

For the Committee's information, a seed control area is one in which the production of potato is controlled by Seed Commissioner and Control Area Committee to create what amounts to a quarantine zone dedicated to the production of high quality seed potatoes. Since the production of seed potato is highly influenced by isolation, commercial production is prohibited and seed production is regulated by order of the Seed Commissioner with input from the control area committee. The control area code language in 4.1-56 is essential to the process of producing seed in North Dakota.

Mr. Chairman and Committee members, these are the most notable changes from our perspective. While none of them can be considered substantive, we believe the clarity of the code is improved in SB 2026. I ask for your support of this measure, and will answer any questions you may have.

#1  
1  
3/14/13

Testimony on Engrossed Senate Bill 2026  
L. Anita Thomas  
ND Legislative Council

A few weeks ago, I presented the interim bill rewriting the brand laws, and the laws pertaining to estrays, stray inspections, and livestock and wool dealers. 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. Everything you were told about the rewrite process as it applied to House Bill 1026, applies equally to this bill.

Engrossed Senate Bill 2026 is the second and last part of the seed rewrite.

This interim, we were finally in a position to see the whole picture -- to look at all the sections that pertain to the seed department, the seed commission, and the seed commissioner. It became clear that there really needed to be a separate chapter to address the overarching administrative structure and the various powers and duties that could be exercised within that structure, regardless of whether the issue pertained to certified agricultural seed or seed potato control areas. That new chapter is 4.1-52 and it is section 1 of the bill.

Within that, you will find the description of the North Dakota Seed Department as the official seed certifying agency of the state, its location, and its required use of a seal. You will see several sections regarding the seed commission. These sections set forth its membership, who serves as chairman, the level of compensation, and the commission's powers and duties.

Beginning on page 3, the chapter contains the sections that set forth the general powers and duties of the seed commissioner and on page 4, you will see the department's continuing appropriation.

On page 5, we begin NDCC chapter 4.1-55. This is the new seed potato certification chapter.

In the definition section, as has been done in the past, the rewrite omits terms that do not need to be defined – e.g. agent, commissioner, and department, and to the greatest extent possible, the rewrite reconciles the definitions in this chapter with those of the other seed chapters. "Certification" and "variety" are terms that fit into this category.

At the top of page 6, on lines 1 through 3, the rewrite parallels language that is used in the agricultural seed chapter and directs the seed commissioner to establish a system for the certification of seed potatoes.

Below that, the rewrite addresses permissible seed potato grades and label requirements and literally continues along the line of clarifying, cleaning up, and reordering the language. For instance, if potatoes are to be labeled "in accordance" with the chapter, the NDCC does not need to require that they also be labeled "in conformity" with the chapter. If potatoes "grown" in North Dakota need to be labeled, the NDCC does not need to also require labeling of potatoes "originating" in North Dakota.

The warranty language on the bottom of page 8, beginning on line 26, parallels language that was recrafted last interim. As this section exists under current law, it also references wholesale potato dealers. Because wholesale potato dealers have their own chapter, the interim committee opted to

remove them from this section and put their warranty language into their own chapter. You'll see that on the last page of this bill.

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The general concept here is that landowners can petition to have a seed potato control area created and subject themselves to agreed-upon standards for seed selection, treatment, field isolation, etc. The biggest challenge came in the fact that landowners were defined as including lessees. Since having one's land in a seed potato control area could significantly impact its value, the committee determined that only landowners should be given the right to encumber land - not the renters.

In the middle of page 11, beginning on line 16, there is reference to a governance committee. Under current law, once a seed potato control area is formed, it is to be governed by a three member committee, appointed by the seed commissioner from a list of five willing and able individuals. So, the next question was what authority does this committee have if there are not three members able to serve, let alone five who might be interested in being considered for the committee.

The solution was to provide that the governing committee must consist of three members, or a lesser number if three are not available. If, however, no one is willing to provide governance, then the seed commissioner is to dissolve the seed potato control area.

Toward the bottom half of page 12, there is the section entitled *Seed commissioner - Orders*. Current law directs the seed commissioner to adopt rules relating to the boundaries of a seed potato control area, the powers of a particular committee, the quality of seed to be grown in a particular control area, etc.

The interim committee determined it was not appropriate to implement rules that would be applicable to only one control area, even though right now only one area exists. The committee decided that an "order" of the commissioner would be preferable, and so that change was made.

The final section of the bill is the repealers. Chapter 4-10 contains the existing provisions relating to the certification of seed potatoes and chapter 4-26 pertains to seed potato control areas. The other sections are those generic sections that pertain to the seed department, the seed commission, and the seed commissioner. Those are the sections that were referenced earlier, i.e. - the sections that were relocated into their own chapter.

Rewrites are initially met with reluctance and skepticism. One will hear people say, "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 did not know were there or they did not realize that that's how the provisions were to be interpreted. Once the clean-up process begins, the agencies have a much easier time seeing what is actually 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 readily admit that it is a lot of work. However, 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 sets forth clear expectations on those who are affected by the chapter.

The rewrite of the chapters in Engrossed Senate Bill No. 2026 could not have been brought to completion without a great deal of thoughtfulness and patience on the part of all the interim committee members and without the incredible commitment of time and energy that was made by the state seed commissioner, Mr. Ken Bertsch, and his staff.

When this bill was in the Senate, it received one small amendment. The word "biennial" was changed to "annual," in relation to the department's budget and as amended, it passed unanimously.

Please accept for consideration, Engrossed Senate Bill 2026.



North Dakota State  
**NDSSD**  
Seed Department

#2

1313 18<sup>th</sup> St. N.,  
P.O. Box 5257  
Fargo, ND 58105-5257  
Phone: (701) 231-5400  
Fax: (701) 231-5401  
Web: [ndseed.com](http://ndseed.com)

**Testimony**

**SB 2026**  
**House Agriculture Committee**  
**March 14, 2013**

**Ken Bertsch, Commissioner**

Good morning Mr. Chairman and members of the House Agriculture Committee. For the record, my name is Ken Bertsch and I serve as State Seed Commissioner and administrator of the Seed Department. I appreciate the opportunity to speak to you today regarding SB 2026, the interim re-write of Seed Department chapters of ND Century Code.

I would like to thank the Interim Ag Committee for their work on the re-write. The Seed Department chapters were originally quite extensive, and achieving the objectives of a chapter re-write proved to be a major challenge as evidenced by the fact that it has taken two interims to complete the effort.

I will affirm that the bulk of the work done here is in keeping with the resolution that seeks to recommend changes to laws that are found "irrelevant, inconsistent, illogically arranged or unclear". I would add that from the Department perspective, other goals include to clarify, condense and modernize the code so as to make it more user-friendly. To achieve this goal, SB 2026 incorporates language in the 2 remaining chapters (4-10 and 4-26) that relate to our potato programs.

Chairman Erble was cautious to avoid changes that could be considered "policy" related, and for this reason my comments are brief. I believe that SB 2026 is fairly straightforward and suitable for support by the Agriculture Committee and Legislature.

I will explain a few notable functions of the bill from the agency perspective.

**Section 1 (pages 1-5)**

As mentioned by Committee Counsel, this section creates powers and duties language that applies to the entire Department. Creation of the new chapter, titled Chapter 4.1-52, makes it much easier to isolate (and change in the future) those authorities related to the governance and administration of the Department.

The bill was amended in the Senate to reflect changes in the Seed Department status as a continuing appropriations agency. The amendment simply removed references to biennial budgets and reports, and updated language is found on page 4, line 9.

**Section 2 (pages 5-10)**

Chapter 4.1-55 replaces the bulk of the current Chapter 4-10. 4-10 governs all of the potato certification and labeling program services provided by the Department as the designated authority for the State of North Dakota. The Interim Committee worked to reorganize Chapter 4-10 language in the same format as was used in 2010-11 interim and session versions of the rewrite. The newly created Chapter 4.1-55 is a much simpler and clearer document that outlines Department and citizen responsibilities in the process of seed certification and labeling.

### **Section 3 (pages 10-13)**

This section also replaces the entirety of Chapter 4-26, which governs the process of creating and administering a seed control area.

For the Committee's information, a seed control area is one in which the production of potato is controlled by Seed Commissioner and Control Area Committee to create what amounts to a quarantine zone dedicated to the production of high quality seed potatoes.

Since the production of seed potato is highly influenced by isolation, commercial production is prohibited and seed production is regulated by order of the Seed Commissioner with input from the control area committee. The control area code language in 4.1-56 is essential to the process of producing seed in North Dakota.

### **Summary**

Mr. Chairman and Committee members, these are the most notable changes from our perspective.

While none of them can be considered substantive, we believe the code is improved by virtue of the work done with SB 2026, and HB 1027 passed in the 2011 session. We are left with a more clear, concise, organized and user-friendly Century Code for the agency, seed industry and public.

For the record, I would like to thank Counselor Thomas for her hard work and expertise in leading the effort to rewrite Seed Department chapters. Her experience with agricultural law and ND Century Code are a primary reason for the excellent end-result of this process.

I ask for your support of this measure, and will answer any questions you may have.