

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

AGRICULTURE COMMITTEE

Tuesday, October 16, 2007
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Phillip Mueller, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Phillip Mueller, Tracy Boe, Rodney J. Froelich, Curt Hofstad, Dennis Johnson, Joyce Kingsbury, Dorvan Solberg, Gerry Uglem; Senators Robert S. Erbele, Tim Flakoll, Ryan M. Taylor, Terry M. Wanzek

Members absent: Representative Mike Brandenburg; Senators Arthur H. Behm, Bill Bowman

Others present: See [Appendix A](#)

Chairman Mueller said most members are familiar with the Legislative Council [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#) and there will not be a formal presentation. However, he said, members need to be aware that the rules prohibit subcommittees without the approval of the chairman of the Legislative Council and that all committee communications expressing policy need to be approved by the chairman of the Legislative Council before distribution.

Chairman Mueller said he had asked the Legislative Council staff to work with the Agriculture Commissioner and members of the North Dakota Weed Control Association to prepare a bill draft rewriting the provisions of North Dakota Century Code (NDCC) Chapter 63-01.1 which pertains to noxious weeds.

At the request of Chairman Mueller, committee counsel presented a memorandum entitled [Provisions of the North Dakota Century Code Which Relate to Agriculture - Background Memorandum](#).

At the request of Chairman Mueller, Mr. Roger Johnson, Commissioner, Department of Agriculture, presented testimony regarding the rewrite of NDCC Chapter 63-01.1. His testimony is attached as [Appendix B](#). Commissioner Johnson said he is very supportive of the committee's efforts to rewrite the laws pertaining to agriculture. He distributed a document containing proposed amendments for the committee's consideration. The document is attached as [Appendix C](#). He said the amendments can be discussed as the committee focuses on the individual sections.

Commissioner Johnson introduced Mr. Ken Junkert, Manager, Plant Industries, Department of Agriculture, Ms. Judy Carlson, Plant Industries, Department of Agriculture, and Mr. Myron Dieterle, President, North Dakota Weed Control Association. He said, with the permission of Chairman Mueller, all

will participate in the discussion of the noxious weed bill draft.

SECTION 63-01.1-01

Committee counsel said NDCC Section 63-01.1-01 provides that every person in charge of or in possession of land is responsible for controlling or eradicating noxious weeds on those lands. She said there are two concerns with this policy statement. She said the policy statement creates confusion with respect to who is in fact ultimately responsible for the noxious weeds on a piece of property, e.g., a renter or the landowner. She said the landowner can rent out the land and the rental contract can specify that the renter is to control the weeds. She said if the renter does not abide by the contract and control the weeds, there may be a private contractual issue between the landowner and the renter. However, she said, the state should not be placed in the position of having to review private contracts and trying to determine or sort out who has the contractual responsibility to control weeds on a given piece of land. She said one party clearly should be responsible. She said that would be the landowner and for that reason she recommended that the section be amended to clarify that responsibility.

Committee counsel said current law directs that weeds be controlled or eradicated. She said this seems to imply that the landowner has a choice. She said there are economic consequences to that choice. She said at least for certain noxious weeds, controlling them might be the best anyone can do. She said eradication may be a legal requirement that is impossible to meet. She said if a person "eradicates" a weed, the person has in fact destroyed the weed so it is not viable and has thereby succeeded in controlling its spread.

Senator Flakoll said there may need to be a determination if there are existing lease agreements that would be impacted by clarifying that the landowner is ultimately responsible for weed control.

In response to a question from Senator Flakoll, Mr. Dieterle said railroads pay taxes on rolling stock and not on real property.

Senator Wanzek said given the intense competition for rental land, it would appear that the landowner would have significant influence over how a renter cares for the land and whether the renter controls weeds.

Commissioner Johnson said if a custom operator is responsible for the spread of weeds, there is no landowner to whom the state can turn.

Senator Wanzek said if a person knows that a custom operator is spreading weeds, there should be some way to impose a penalty on the operator.

Commissioner Johnson said he is concerned about an elderly widow in a nursing home who rents out her land. He said it would be difficult to use the process against her because a renter did not control weeds on her land.

Mr. Junkert said county weed boards in the eastern part of the state are concerned about the proposed pipeline and where the responsibility lies if the equipment operators spread weeds.

Representative Froelich said some Bureau of Indian Affairs' leases require the lessees to control weeds but others do not. He said he is familiar with one landownership arrangement that listed over 600 landowners.

Representative Boe said he is aware of a county that obtained gravel from a pit infested with noxious weeds. He said the county did far more seeding of noxious weeds than any individual.

Representative Johnson said custom harvesters are not allowed into South Dakota or into Kansas unless their machines are clean. If business is desired, he said, the harvester makes certain the machine is clean leaving a farmer's land so weeds are not spread onto someone else's land. He said that is common sense.

Senator Wanzek said the committee's role is to establish clarity in the law. He said under current law both the landowner and the lessee are charged with controlling weeds. Right now, he asked, how does anyone decide who is responsible.

Commissioner Johnson said if Section 1 provides that the landowner is responsible for weed control, there also is a need to ensure that other provisions in the chapter allowing us to respond when someone who does not own land is spreading noxious weeds.

Mr. Dieterle said counties levy taxes so counties have the funds to address weed control along road right of ways.

Chairman Mueller said it is the consensus of the committee that the Legislative Council staff be asked to meet with the Agriculture Commissioner and his staff to review the implications of statutorily placing responsibility for weed control on the landowner. He asked that those individuals also examine whether there are sufficient mechanisms in place to address the spread of noxious weeds by individuals who are not landowners.

Commissioner Johnson said one way to address whether "control or eradicate" or merely "control" would be to recognize that eradication is a form of control and to include it in the definition of control.

Committee counsel said the concern with using the phrase "control or eradicate" is that the phrase provides an option. She said it is a little like saying the maximum speed limit is 65 miles per hour or 75

miles per hour. She said it is important there be one clear standard. She said it appears that within the definition of control, one could include the act of destroying a plant so it is not viable.

Chairman Mueller said it is the consensus of the committee that the definition of control should be changed in accordance with the recommendation.

SECTION 63-01.1-02

Committee counsel said the first recommended change to NDCC Section 63-01.1-02 is that the definition of a "control authority" be removed. She said under current law a "control authority" means the Agriculture Commissioner, a county weed board, a county weed officer, a city weed board, and a city weed officer. She said a basic rule of statutory drafting is that one does not define a phrase that is not used in the respective chapter. She said in the rewrite the phrase "control authority" was removed. Instead, she said, if a duty was placed on a particular individual or on a specific board, that individual or entity was named.

Committee counsel said the second recommended change is that the phrase "[H]ighway, street, or road" be removed. She said those are general terms and not normally in need of definition. She said if there is an issue about whether the term includes the entire "right of way" for purposes of spraying, then it would be appropriate to make certain such is clear in those sections pertaining to spraying on highways, streets, or roads.

Committee counsel said the third recommended change is that the definition of a "landowner" be removed. Again, she said, the term is self-explanatory. She said whether the "ownership" is "statutory or otherwise", i.e., contractual, does not change the status of ownership. She said the provision that a landowner does not mean a lessee, a renter, a tenant, an operator, or the owner of an easement is quite obvious. She said retaining the definition does nothing to clarify the term "landowner" and, therefore, the definition does not need to be in the North Dakota Century Code.

Committee counsel said the fourth recommended change pertains to the definition of a "noxious weed." Under the current definition, she said, a plant can be declared "noxious" by the Agriculture Commissioner after consultation with the North Dakota State University (NDSU) Extension Service or by a county weed board after consultation with the county extension agent. She said the current definition fails to provide that city weed boards may also declare weeds to be noxious. Therefore, she said, the rewrite includes city weed boards.

In response to a question from Senator Flakoll, Commissioner Johnson said there had been discussion about references in the chapter to required consultation with the Extension Service and, in particular, whether those consultations should also include the North Dakota Agricultural Experiment Station. He said it would be the preference of the

NDSU Extension Service that the North Dakota Agricultural Experiment Station be referenced as well.

With the permission of Chairman Mueller, Dr. Rod Lym, Professor of Plant Science, North Dakota Agricultural Experiment Station, said he is representing both the Extension Service and the Agricultural Experiment Station. He said he is charged with research in the area of basic weeds. He said he has been with NDSU since 1979 and any questions regarding weeds have come to him because that is his research area. He said he does not have an extension appointment. He said the extension people do not work directly with either the weed boards or the Agriculture Commissioner.

Senator Flakoll said he thought it was not necessary to reference both entities. He said there could be consultation between the two entities. He said Extension Service personnel receive most of their information through the Agricultural Experiment Station personnel. He said when he was a child, he would ask a question of one parent and if he did not like that answer, he would ask the other parent. He said the committee should not provide the option for weed control entities to shop for preferred answers.

Dr. Lym said this summer a question arose regarding whether hound's tongue should be designated as a noxious weed. He said he was consulted over a year ago and his position was that it should not be added to the state list. He said individuals then went to Extension Service personnel and asked them to write a letter. He said Dr. Kenneth Grafton, Director, Agricultural Experiment Station, would like to have the statutes include the Experiment Station, so that Dr. Lym, or whoever was doing noxious weed work in the future, would be involved. He said the Extension Service does not have someone in a comparable position.

Senator Taylor said he wondered if the Extension Service should be required to consult with the designated weed authority at the Agricultural Experiment Station.

Representative Mueller said he wondered if the statute could reference the Extension Service and designees.

Dr. Lym said he would like to have the statute require consultation with the director of the Agricultural Experiment Station and the director of the Extension Service, or their designees. He said if there was a desire to have only one person function as a consultant, then the word designee should be used in the singular not in the plural.

Committee counsel cautioned the committee about inserting a phrase such as "or their designees." She said North Dakota Century Code places numerous duties on officials such as the Agriculture Commissioner. She said there is no expectation that the commissioner personally perform all those duties. She said the expectation is that the commissioner will designate many of them. She said even though he designates certain duties, he is still ultimately responsible for ensuring their completion. Similarly,

she said, the director of the Extension Service and the director of the Agricultural Experiment Station could appropriately designate individuals to perform statutory duties on their behalf. She said referencing designees throughout the North Dakota Century Code would also serve to greatly increase its size.

Senator Flakoll said he would like to see all questions and communications directed to one individual or through one central point. He said whether the individual answers the questions or responds to the communications personally or assigns the work is statutorily irrelevant.

Committee counsel said the statutory directive is that the Agriculture Commissioner consult with a stated individual or entities. She said that is a very different standard than requiring advice and consent. She said consultation implies nothing more than picking up the telephone and asking "What do you think"? She said the Agriculture Commissioner can accumulate as much information as he desires or requires and then make a decision. She said there is no reduction or expansion of the number of people who can be consulted by the Agriculture Commissioner.

Chairman Mueller said it is the consensus of the committee that the current language regarding consultation be maintained.

Committee counsel said in NDCC Section 63-01.1-04.4 it appears as if the only thing that a county weed board needs to do in order to declare a weed noxious is simply to make that declaration. She said that section contains no requirement for consultation. However, she said, the definition section contains a requirement that county weed boards consult with county extension agents prior to declaring weeds to be noxious. She said if substantive law is put into a definition section, the substantive provision easily can be missed. She recommended that a noxious weed be defined as a plant propagated by either seed or vegetative parts and declared to be noxious by the commissioner, a county weed board, or a city weed board in accordance with the respective sections. She said those respective sections should contain a clear step-by-step process to be followed by an entity in order to declare a weed as being noxious.

Committee counsel said the fifth recommended change calls for removing the definition of an "operator." She said the term is used sparingly in the chapter and not in a fashion that would require a definition for clarity.

Committee counsel said the sixth recommended change pertains to the definition of a "pest." She said under current law a pest is defined as it is defined in NDCC Section 4-33-01 and a prairie dog is added. For purposes of clarity, she said, it is recommended that the actual definition be included in this chapter. That way, she said, the definition can be added to or subtracted from, strictly for purposes for this chapter and not for those affecting the pesticide chapter. However, she said, pests do not fit well within the chapter pertaining to noxious weeds. She said one

option would be to create a separate chapter for pests. She said a second option would be to determine if one needs to include pests at all. She said depending on the purpose, perhaps it would be possible to simply authorize a local weed board to spray for or otherwise eliminate pests, however defined, at the direction of the local governing body. She said there will be an opportunity to discuss pest control more fully when the committee addresses the specific sections dealing with that issue. She said depending on the committee's recommendation, it may be necessary to revise this subsection and the definition of a "pest."

Committee counsel said the seventh and final recommendation cleans up the definition of a "township road." She said under current law a township road is an improved public road that is not in a city and not part of a county, state, or federal-aid road system. She said the road must also be constructed, maintained, graded, and drained by the township or by the county if the township is unorganized. She said current law also provides that the term includes a street in an unincorporated townsite. She said put another way, that would make it a road outside an incorporated city. She said current law provides that the road does not have to be surfaced, but the road may not be a sod road. She said in other words, the road does have to be improved. She said current law provides that a township road may include a section line, if that section line is graded, drained, and maintained, i.e., if it is maintained. She said taking all of this together, the recommended changes consolidate and clarify the definition of a township road.

Chairman Mueller said it is the consensus of the committee that the recommended changes be accepted.

SECTION 63-01.1-03

Committee counsel said NDCC Section 63-01.1-03 sets forth the duties of the Agriculture Commissioner. She said the first directive is that the Agriculture Commissioner enforce the chapter. She said there is no need to have this general language. She said if any one of the sections requires that the Agriculture Commissioner perform a duty, it will say "The agriculture commissioner shall"

Committee counsel said the second directive is that the Agriculture Commissioner will cooperate with other weed control authorities and law enforcement officers. She said this amounts to "feel good" language without a standard. She said people may differ on what constitutes cooperation and for that reason, it is recommended that the language be removed.

Representative Mueller said there is no issue regarding whether there should be cooperation. He said the directive just does not need to be in the North Dakota Century Code.

Committee counsel said the third directive pertains to the determination of noxious weeds and requires

that the Agriculture Commissioner consult with the Extension Service. She said this section can require that the Agriculture Commissioner determine which weeds are noxious. However, she said, if that is to be done, there should be a phrase such as "in accordance with section XYZ" and, in that referenced section, there would be language setting forth exactly how weeds are to be declared noxious. She said if there is a separate section governing how weeds are to be declared noxious, and by who, there is no need to have it referenced in this section.

Committee counsel said the fifth directive pertains to establishing procedures. She said it was not clear to what that referred. She said as for preparing the notices, posters, and forms that are addressed in both current subsections 5 and 6, such activity did not seem to be taking place so the mandate was removed.

Committee counsel said under the seventh directive the Agriculture Commissioner is to "encourage" the Extension Service to disseminate information and conduct educational campaigns regarding weed and pest control. She said "encourage" is a nebulous term. She said since nothing would preclude the Agriculture Commissioner from contacting the Extension Service and "encouraging" their involvement in weed and pest control, it did not appear this was a duty that necessarily deserved statutory status. She said if there is something specific that the Extension Service should be doing, it should be noted in that entity's statutes.

Committee counsel said a clarification is being recommended under subsection 8 of current law. She said the current directive is that the Agriculture Commissioner forward all "written" complaints to the proper entities. She said this was instituted in the hope of eliminating anonymous oral complaints made for harassment purposes. However, she said, one can still have a written complaint that is anonymous. She said by using the word "signed" rather than written, the presumption is that a name will be attached to the complaint. She said if the Agriculture Commissioner receives an anonymous complaint, this does not preclude him from forwarding it to the proper entities as well. She said this section would just provide that if the complaint is signed, it must be forwarded by the commissioner.

Committee counsel said under current law the Agriculture Commissioner is charged with calling an annual meeting of all weed control officers. She said that same subsection states the Agriculture Commissioner shall invite all weed control authority members, i.e., city and county weed board members and weed control officers. She said if the language was removed nothing would preclude the Agriculture Commissioner from inviting the board members. She said it is not necessary to incorporate the guest list in the North Dakota Century Code.

Committee counsel said the final directive is that the Agriculture Commissioner "encourage" the

cooperation of federal and state agencies. As before, she said, if this directive is removed from statute, the Agriculture Commissioner is not precluded from encouraging cooperation. She said the decision for this committee is whether a statutory directive is in fact required.

Ms. Carlson said the final subsection referencing the annual meeting could be shortened to provide that the Agriculture Commissioner shall call an annual meeting of all weed control officers to review the intent, operation, procedures, and accomplishments under this chapter.

Committee counsel said it could be shortened even further by providing that the purpose of the annual meeting is to review noxious weed control efforts in this state.

Chairman Mueller said it is the consensus of the committee the bill draft be amended to provide that the purpose of the annual meeting is to review noxious weed control efforts in this state.

SECTION 63-01.1-03.1

Committee counsel said NDCC Section 63-01.1-03.1 contains only a couple of nonsubstantive changes so the section would appear as an amendment in this draft. She said the section might be moved or consolidated in a later draft.

SECTION 63-01.1-03.2

Committee counsel said NDCC Section 63-01.1-03.2 is considered a "power" of the Agriculture Commissioner. She said it states that the Agriculture Commissioner "may" require a report. She said he does not have to require a report. Under Section 63-01.1-05, she said, county weed control officers are directed to prepare reports as requested by the Agriculture Commissioner. She said there is a similar section governing city weed control officers. She said given the existence of the language in Sections 63-01.1-05 and 63-01.1-07.5, there is no need for separate statutory language authorizing the Agriculture Commissioner to require reports. She said it is recommended, therefore, that Section 63-01.1-03.2 be repealed.

Chairman Mueller said it is the consensus of the committee that NDCC Section 63-01.1-03.2 be repealed because of duplication.

SECTION 63-01.1-04

Committee counsel said NDCC Section 63-01.1-04 directs boards of county commissioners to establish weed board member areas and provides only qualified electors residing within those areas are eligible to serve on their county weed board. She said certain counties are finding it more and more challenging to find people who reside in those particular areas and who are willing to hold positions on the county weed boards. For other counties, she said, members do not seem to be a problem--yet. She said the proposed solution was to accommodate both situations. She

said if a board of county commissioners is content with the current county weed board member areas, the county can continue to do business exactly the way it has. She said nothing would change. However, she said, if a county is having difficulty finding potential members, the board of county commissioners may opt to appoint its county weed board members at large.

Representative Mueller said this would provide counties with an option to use in the face of declining populations.

In response to a question from Senator Flakoll, committee counsel said the proposed change would allow boards of county commissioners to either establish county weed board member areas or appoint county weed board members at large.

Commissioner Johnson said current law states if a county has a city with a population of 5,000 or more, one weed board member must reside within that city unless the city has its own weed control program. He said if a county has several cities with populations over 5,000, it would appear to require that there be a weed board member residing in each of those cities. He said it should be clarified to ensure that every large city does not have to have a weed board member residing within its borders.

Chairman Mueller said it is the consensus of the committee the section be clarified to ensure that every large city does not have to have a weed board member residing within its boundaries.

Committee counsel said an attached issue has to do with the size of the county weed board. She said under current law county weed boards must consist of five or seven members. She said the proposed new language would allow counties the option of going to three members.

Committee counsel said the two subsections, when read together, provide that a county weed board shall appoint a secretary and a treasurer. She said neither have to be members of the weed board. She said the board of county commissioners pays the weed board members. She said it is not clear under current law who then pays the secretary and the treasurer.

In response to a question from Representative Mueller, Mr. Dieterle said the county or the city weed board currently pays nonboard members serving as secretary and treasurer for the board.

Chairman Mueller said it is the consensus of the committee that the section be amended to provide that secretaries and treasurers are to be paid by the weed boards if they are not members of the weed boards.

In response to a question from Representative Uglem, Mr. Dieterle said often the secretaries and treasurers are county extension agents. He said often the weed boards meet outside of normal office hours for county extension agents. He said the weed boards, in many instances, provide compensation for the added duties undertaken by county extension agents. He said in other instances part of a county

extension agent's salary might be paid by the county weed board.

SECTION 63-01.1-04.1

Committee counsel said subsection 1 of NDCC Section 63-01.1-04.1 looks like it is new language directing each county weed board to "implement and pursue" a program for the control of noxious weeds. However, she said, this is current language that has been moved because it is a general statement that logically should precede the more detailed directives. She said when someone is directed to "implement" a program, there is an assumption that it will also be "pursued." She said the phrase "implement and pursue" is not used elsewhere in the North Dakota Century Code and there is no need for both directives. She said it is recommended that the words "and pursue" be deleted.

Committee counsel said current subsection 2 was deleted because it also contains a directive that county weed boards "cooperate" with other entities.

Committee counsel said current law requires county weed boards to meet at least once each year. She said the language is not problematic from a statutory perspective. However, she said, the committee is being asked to consider whether meeting once a year is sufficient to accomplish that which must be done in accordance with this chapter.

Mr. Dieterle said the North Dakota Weed Control Association believes county weed boards should meet at least three or four times per year so they can undertake an effective weed control program.

In response to a question from Representative Mueller, Mr. Merlin Leithhold, Grant County Weed Control Officer, said if a weed board meets only once each year, it is leaving a great deal of what should be board responsibility to the weed control officer.

Commissioner Johnson said some weed boards are very aggressive and others are not. He said the Weed Control Association is struggling to find ways in which those less aggressive weed boards can be made to step up and do their jobs.

Senator Flakoll said it is his preference that the current language be left intact. He said changes to the frequency requirement could be considered at a later date.

In response to a question from Senator O'Connell, committee counsel said this section does not contain any consequences for a board that chooses not to meet. She said there are legal actions that could be instituted if a board does not abide by its statutory obligations.

Representative Boe said boards that meet more than once a year do so because there are things to do. He said he does not want to see a statute that requires boards to meet if they have no reason to do so. He said he too would leave the current language in place.

Representative Mueller said if a board meets only once a year even if it really does not want to do that, statutorily requiring that it meet more frequently is not

likely to improve its performance. He said it is the consensus of the committee that the language in current law regarding the frequency of meetings be retained.

Committee counsel said current law requires each county weed board to conduct at least one annual inspection to determine the progress of noxious weed control activities in its county. She said the language was removed because it appeared that such inspections were either not being done at all or at least not being done consistently.

Committee counsel said current law states that a county weed board shall provide technical assistance to any city that has a population of 3,000 or more and which establishes its own noxious weed control program under this chapter. She said it is assumed the reference is to any city in the county. Second, she said, under NDCC Section 63-01.1-07.1, it appears that a city of any size could establish a noxious weed control program. She said in NDCC Section 63-01.1-10.1 such programs are specifically limited to cities with populations over 3,000. She said either option is statutorily acceptable. She said there is simply a need for clarity and consistency. She said one might also wonder if the 3,000 population requirement is strictly for the establishment of a city weed control program or if it extends to the continuation of a program. She asked whether a city loses its right to have a weed control program when its population falls below 3,000.

Senator Taylor said there are only five or six city weed boards in existence. He said if a city wants to establish a weed control program and if the city has the resources to do so, the city probably should be allowed to do so regardless of its population.

In response to a question from Senator Taylor, Mr. Dieterle said the only problem with removing the requirement for a threshold population is that in the past, a city has established its own weed board so it could levy the authorized taxes and retain the dollars rather than really carry out all the duties of weed control at the city level.

Representative Hofstad said current law states that a county weed board shall provide technical assistance to any city having its own weed program. He said a city would have its own revenue stream for providing weed control and getting its own technical assistance. He said he does not understand why the county weed board must provide assistance to any city that has its own program, especially when the county weed board receives no taxes from a city that has its own program.

In response to a question from Senator Flakoll, Representative Mueller said if a city has a weed control program for which the city is levying taxes, the county cannot assess the land in the city for weed control efforts.

In response to a question from Representative Kingsbury, Representative Mueller said the current law requires a county weed board provide technical assistance to a city having its own weed control

program even though the county has no taxing authority for weed control efforts within the city boundaries.

In response to a question from Representative Kingsbury, Mr. Dieterle said the Weed Control Association would support the removal of the statutory language requiring counties to provide technical assistance to cities having their own weed control programs. He said that activity is not being done.

In response to a question from Representative Hofstad, committee counsel said if the proposal is to change the phrase "shall provide technical assistance" to "may provide technical assistance", the committee might want to consider whether the entire concept should be removed from the North Dakota Century Code. She said changing the "shall" to "may" removes the mandate. She said if one governmental entity, in the spirit of good friends and good neighbors, wants to provide technical assistance, there is nothing that would preclude that entity from doing so.

In response to a question from Senator Wanzek, committee counsel said there is nothing in this section that precludes a county weed board from purchasing technical services.

Chairman Mueller said it is the consensus of the committee that the reference to technical assistance be removed.

Senator Flakoll said there does not appear to be a public outcry for weed boards by cities with a population under 3,000.

Representative Uglem said he believes that the 3,000 cap should remain in place to ensure a very small city does not elect to establish its own weed board strictly for the purpose of not having to pay the county levy for weed control.

In response to a question from Senator Wanzek, Chairman Mueller said although the job of this committee is not to make substantive changes, sometimes changes have to be made to meet the directive to reconcile inconsistencies. He said the situation before this committee is that some of the sections appear to allow a city of any size to have its own weed program while other sections appear to require that the city have a population of at least 3,000. He said the committee is being asked to pick one or the other so the bill draft can be consistent.

Chairman Mueller said it is the consensus of the committee that the bill draft be clarified to ensure only cities of at least 3,000 be allowed to establish their own weed control programs.

SECTION 63-01.1-04.3

Committee counsel said NDCC Section 63-01.1-04.3 provides that the county weed board may authorize the county weed control officer to cooperate with law enforcement personnel in stopping and inspecting vehicles suspected of transporting noxious weed-infested materials. She said the question is if a county weed board does not authorize the cooperation, may the weed officer still cooperate with law enforcement. Second, she said, there is no

indication as to what level of action constitutes "cooperation." She said, therefore, it is recommended that the language be removed.

Commissioner Johnson said the practical matter is if law enforcement officers determine the matter is civil, they are not likely to cooperate with weed control officers in enforcing this chapter.

Representative Mueller said this section requires a county weed officer to cooperate with law enforcement officers. He said a later section addresses the duties of law enforcement officers.

Committee counsel said under current law a county weed board may expend funds if it determines that the extent of noxious weed infestation is so severe, "eradication" efforts would place an extreme financial burden on the responsible party. She said the committee needs to determine whether it is appropriate to allow for the expenditure of public funds if "control" efforts, rather than "eradication," would place an extreme financial burden on the responsible party. She said the committee needs to determine if the use of public funds for the purpose of this section is appropriate, given the fact that the county has the authority to incur expenses and then charge those expenses against the land on which the services were performed.

Mr. Dieterle said this language would allow a county weed board to go in and control or eradicate weeds at the county's expense so other public or private land would not be impacted.

Representative Hofstad said the weed board is being asked to determine what is an "extreme financial burden" on a landowner. He said who can and cannot afford weed control could be an arbitrary decision.

Commissioner Johnson said the committee needs to determine whether the word "eradication" should be changed to "control." He said he believes that would be appropriate. He said the issue of determining financial burden is already in the statute.

In response to a question from Representative Mueller, Commissioner Johnson said a county weed board has the ability to expend funds from all available sources for the purposes of this section.

Chairman Mueller said he is inclined to question the merit of using public funds for control efforts when it is determined there would be an extreme financial burden on a landowner. However, he said, that is current law and it is the consensus of the committee that it be left as is for the present time.

SECTION 63-01.1-04.4

Committee counsel said NDCC Section 63-01.1-04.4 provides that a county weed board may designate a weed as being noxious. She said if the commissioner disagrees with that call, after consulting with the county weed board and with the Extension Service, the commissioner may require that the weed be removed from the county list. She said under this section it appears as if the county weed board does not have to consult with anyone or any entity prior to

declaring a weed noxious. However, she said, under the section defining a noxious weed, it appears as if the county weed board must first consult with the county extension agent. She said, if in fact that is what the county weed board must be doing, then it needs to be included in the policy section and not in the definition section.

Committee counsel said the second issue with this section is almost one of not having a central repository. She said a county weed board can determine which weeds are to be on its county list. She said there is no requirement that the county weed board notify the Agriculture Commissioner of its decision. As an alternative, she said, the rewrite provides that a county weed board may designate certain weeds as being noxious. However, she said, the county weed board must first consult with the Extension Service and it must have the designation approved by the commissioner.

Mr. Dieterle said the Weed Control Association is supportive of the requirements in the proposed language.

Commissioner Johnson said he too is supportive of the requirements. He said he would like to see a five-year review of all weed lists and authorization to adopt rules for review.

Committee counsel said it is not necessary to incorporate the authority that the Agriculture Commissioner adopt rules. She said the authority already exists in the North Dakota Century Code.

In response to a question from Representative Uglem, Representative Mueller said the issue of whether a state noxious weed list, county noxious weed lists, and city noxious weed lists are needed has been discussed from time to time.

Mr. Dieterle said if a county places a weed on its noxious weed list it can expend dollars to address that particular weed. He said if all of the weeds on the county lists were added to the state list, the state list would be quite long and burdensome.

Commissioner Johnson said from the state perspective, it would certainly be easier to administer just one state list. However, he said, the county weed boards have strongly indicated they would like to maintain the ability to keep their own noxious weed lists. He said if counties are going to have the authority to maintain their own lists, they need to follow procedures for adding to and subtracting from their lists and there needs to be oversight provisions.

Representative Mueller said cities as well as counties can maintain their own lists.

In response to a question from Representative Johnson, Ms. Carlson said the county lists do vary significantly from the state noxious weed list. She said the rulemaking process under NDCC Chapter 28-32 is used to amend the state noxious weed list.

In response to a question from Representative Mueller, Mr. Dieterle said the Weed Control Association is supportive of the language proposed in the bill draft.

Chairman Mueller said it is the consensus of the committee that the Legislative Council staff should be requested to work with the Agriculture Commissioner and refine the language.

SECTION 63-01.1-05

Committee counsel said NDCC Section 63-01.1-05 begins with the directive that the county weed control officer shall "cooperate" with a variety of entities. That language was deleted for the same reason addressed earlier.

Committee counsel said under current law the county weed officer is required to investigate all complaints regarding noxious weeds. She said this language opens up the possibility for both harassment and abuse. She said people could leave anonymous telephone messages, slip notes under doors, and in general keep the county weed officer quite tied up and perhaps unable to perform other required functions. She said the change provides that if the complaint is signed, the county weed officer must investigate it. She said if a complaint is not signed, the county officer then has discretion with respect to his response.

In response to a question from Senator Flakoll, Mr. Dieterle said the county weed officers do not keep records of anonymous complaints. He said they do keep records of signed complaints.

Committee counsel said under current law a county weed officer shall take enforcement action when necessary. She said this language was removed because it is a mandate that is made discretionary, i.e., the officer shall take enforcement action if the officer decides action is necessary. She said that language is not needed in the North Dakota Century Code, especially since later sections authorize weed officers to enter land, perform duties, and exercise powers under the chapter.

Committee counsel said under current law the county weed officer is directed to "publish in official newspapers" any notices the commissioner deems necessary to further noxious weed control. She said because this is a county function, it was changed to provide that any notices be published in the official newspaper of the county.

Chairman Mueller said it is the consensus of the committee that the recommended changes be accepted.

SECTION 63-01.1-05.1

Committee counsel said NDCC Section 63-01.1-05.1 requires the Agriculture Commissioner to consult with the director of the Agricultural Experiment Station and the director of the Extension Service and then adopt rules governing certification categories for county and city weed officers. She said there was confusion regarding what was meant by this directive. Likewise, she said, the section requires the Extension Service to establish a program to provide educational instruction to weed officers. She said it is not known

what kind of program and what kind of instruction was intended. She said the section was rewritten to require that all weed control officers meet the certification requirements governing the application of pesticides.

Commissioner Johnson asked if the committee would be amenable to referencing "pesticide certification" rather than just "certification." He said he knows doing so is redundant, but he believes it would be clearer to those who might need to reference the section.

Chairman Mueller said it is the consensus of the committee the section be accepted with the proposed change.

SECTION 63-01.1-06

Committee counsel said at the time the first draft was prepared, there were varying opinions as to the intent of this section. She said it appears the intent was to provide that the county weed board can decide on its own that it needs a levy of up to two mills. She said this is not negotiable. She said the board of county commissioners has to levy that tax. She said it then appears that the board of county commissioners can decide on its own to levy up to two more mills, on top of what the county weed board has already levied--again, for noxious weed control. She said this potentially brings the total to four mills. She said if this is in fact the intent, she would like the committee's authorization to clarify the language accordingly.

Committee counsel said the remainder of the section provides that the commissioner shall allocate state appropriations to the county weed boards based on a formula developed by the commissioner in consultation with the county weed boards. She said it also provides that a county weed board may not receive more than half of its cost-share expenditures, unless the Agriculture Commissioner determines that a noxious weed is seriously endangering areas of the county. She said there is no provision for redistributing any of the money that is leftover. She said there is also a landowner assistance cost-share program. She said funding under this program is available only if a county levies at least three mills for noxious weed control. Again, she said, there is no provision for redistributing any money that is leftover. She said it appears that if a county pays for noxious weed control out of its general fund, rather than from a separate levy, the county would be ineligible for any landowner assistance cost-share, because it is not levying at least three mills as required by current law.

Committee counsel said the final subsection of current law provides that if a program involves landowner participation, the landowner must contribute at least 20 percent of the total cost. She said it is not clear if this is targeted to the landowner assistance program or to any program requiring landowner participation. She said it is also not clear if the contribution must be in cash or if it could involve some sort of payment in kind.

In response to a question from Representative Mueller, Mr. Junkert said the Agriculture Commissioner's budget contains funding for a noxious weed program. He said there is a line item that contains money to be distributed to the local weed boards.

Ms. Carlson said in the past the Legislative Assembly had authorized grant programs for saltcedar and for new invasive weeds. She said the funding has stayed in the grant line but the enabling legislation is no longer there. She said 70 percent of this money has been dedicated to the landowner assistance program. She said a distribution formula was created in the 1990s and was dependent upon the amount of money a county spends on weed control and on its mill levy for weed control. She said for this biennium the commissioner allocated one-third of the money available for the landowner assistance program in accordance with the old formula, one-third in accordance with the percentage of weed acres reported to the commissioner, and one-third in accordance with the percentage of agricultural land mass in the county. She said if a county had a higher percentage of leafy spurge acreage, it could receive more money. She said a larger county could receive more money.

Ms. Carlson said the other 30 percent of the grant line is distributed according to a formula that does not have a minimum levy requirement. She said the commissioner developed a technical assistance grant (TAG) formula. She said each county can submit a short description of its needs. She distributed a document entitled *Targeted Assistance Grant (TAG) Program 2007-2009 Guidelines* ([Appendix D](#)).

Mr. Junkert said the grant line for the 2007-09 biennium is \$1.7 million. He said \$390,000 of that amount has been dedicated to the TAG program. He said the remainder of the grant line is distributed through the landowner assistance program.

In response to a question from Representative Mueller, Ms. Carlson said city weed boards could receive state funding for weed control but only if they levied three mills. She said no cities currently levy three mills for weed control.

Mr. Junkert said the issue regarding the appropriateness of the three-mill requirement has been a long ongoing discussion between Commissioner Johnson, the Weed Control Association, and the local weed boards. He said Commissioner Johnson's amendment contains suggestions for simplifying and clarifying the language of this section. However, he said, Commissioner Johnson understands the Weed Control Association has strong feelings about retaining the three-mill levy.

Representative Mueller said a county weed board can levy two mills. However, he said, if the weed board would like to access state funds, it needs to convince the board of county commissioners to levy at least one more levy for weed control.

Mr. Junkert said there is no minimum mill levy requirement for a county to receive TAG funds. He

said the three-mill minimum levy applies only to the landowner assistance program. He said the TAG funding plan came about because Commissioner Johnson believed prior distributions were too prescriptive. He said the current program allows a county to determine how best to address its weed issues, devise a program, and then ask the commissioner for monetary assistance to carry out its program. He said the TAG program allows accessing state funds by counties that do not meet the minimum mill levy requirements and by counties that have specific problems and specific plans to address those problems.

In response to a question from Representative Mueller, Mr. Junkert said the money for weed control comes from the environment and rangeland protection fund.

Mr. Dieterle said the North Dakota Century Code requires that counties levy at least three mills in order to access state funds. Without this requirement, he said, many counties would not impose a three-mill levy on their property owners.

Chairman Mueller said this section needs further discussion regarding minimum levies, formulas, and what cost-sharing requirements actually entail. He said it is the consensus of the committee that the Legislative Council staff meet with the commissioner and members of the Weed Control Association, address the issues, and then present another rewrite of this section for committee consideration.

Committee counsel said current law provides that in order to receive state funds, a county must levy at least three mills. However, she said, the law also allows counties to pay for weed control using its general fund. She said it appears that if a county pays for weed control using its general fund, it would not be eligible to receive state funds. She said it would be helpful to determine if that is in fact the intended result or an oversight.

Ms. Carlson said Commissioner Johnson would prefer not to have a three-mill minimum levy requirement. She said there is variation from county to county in how cost-share requirements work. She said it is the intent of Commissioner Johnson to simplify the process for distributing funds to counties.

Chairman Mueller said this issue should also be discussed within the previous directive.

SECTION 63-01.1-07.1

Committee counsel said in addition to counties, cities also are able to establish their own weed boards. She said much of the language in NDCC Section 63-01.1-07.1 parallels what was done for the county weed boards. She said the issues involve whether a three-member board should be allowed, in addition to the current five-member or seven-member boards, and who should pay the secretary and the treasurer if those two individuals are not members of the city weed board.

Chairman Mueller said it is the consensus of the committee that this section be revised to parallel the earlier section pertaining to county weed boards.

SECTION 63-01.1-07.2

Committee counsel said NDCC Section 63-01.1-07.2 lists the duties of the city weed board and brings up two issues. She said the first is the removal of the requirement that the city weed board "cooperate" with other control authorities and the second is the requirement for an "annual inspection" to determine the progress of weed control activities within the city.

Chairman Mueller said it is the consensus of the committee that this section be revised to parallel the earlier section pertaining to county weed board duties.

SECTION 63-01.1-07.3

Committee counsel said NDCC Section 63-01.1-07.3 sets forth the powers of a city weed board. She said the rewrite eliminates the requirement that a city weed board authorize the city weed officer to cooperate with law enforcement because of the confusion it raises if authorization is not forthcoming.

Representative Mueller said this section parallels the earlier section pertaining to county weed board powers.

Committee counsel said the section also addresses the issue of "control" versus "eradication." She said under current law a city weed board is authorized to expend money if it determines that the extent of noxious weed infestation on certain land is so severe, "eradication" would place an extreme financial burden on the person liable for the expense. She said the issue was addressed by the committee with respect to county weed boards.

Chairman Mueller said it is the consensus of the committee that this section parallel the earlier section pertaining to county weed board powers.

SECTION 63-01.1-07.4

Committee counsel said NDCC Section 63-01.1-07.4 provides that a city weed board may develop and compile its own list of noxious weeds provided the list includes all weeds determined to be noxious by the Agriculture Commissioner. She said the city weed list apparently does not have to reflect weeds deemed to be noxious by the county in which the city is located. She said the city weed board is not required to consult with anyone. She said it also is not required to notify anyone. She said if the Agriculture Commissioner learns a weed has been placed on a city list, the commissioner may consult with the city weed board and with the Extension Service and require the city weed board to remove the weed from its list.

Committee counsel said the suggestion in the rewrite is that the city weed board may designate as noxious certain weeds that are not on the state or

county list. She said this implies, first of all, that the county list is applicable to the city even if the city has its own weed control program. She said if this is not the intent, then language is needed to address the issue. She said in order to add a weed to its own list, the city weed board would be required to consult with the Extension Service and obtain the approval of the Agriculture Commissioner. She said there is no current requirement regarding the longevity of a weed on a weed list. She said there is no provision for any kind of review regarding its continued appropriateness and no language indicating how a weed should be removed from the list.

Chairman Mueller said it is the consensus of the committee that the changes requested by the committee with respect to county weed lists should be paralleled in this section.

In response to a question from Representative Mueller, Mr. Dieterle said if a city wishes to have its own weed list, and that list is different than the county list, the Weed Control Association would not have a problem with that.

Mr. Junkert distributed a document entitled *County and City Listed Noxious Weeds* ([Appendix E](#)). He said the document shows weeds that are not on the state noxious weed list but are on the noxious weed lists of counties and cities.

In response to a question from Representative Mueller, Mr. Junkert said it is important that the state list not become diluted by becoming too extensive.

Representative Mueller said the periodic review of noxious weed lists, as discussed by the committee, will help to ensure that inappropriate weeds do not stay on a list forever.

Mr. Junkert said we need a transparent process for adding to and subtracting from noxious weed lists. He said transparency should be required for all entities having weed lists. He said he does not believe an Agriculture Commissioner has ever exercised the authority to remove a noxious weed from a county or a city weed list.

In response to a question from Representative Kingsbury, Mr. Junkert said the Agriculture Commissioner uses the rulemaking process under NDCC Chapter 28-32 to add or remove weeds from the state noxious weed list.

Mr. Dieterle said a local noxious weed list is needed because if there is a local weed problem, the only way that funds can be procured to address the problem is if the weed in question is in fact a noxious weed.

In response to a question from Representative Mueller, Mr. Dieterle said if a person wants a weed to be placed on a noxious weed list, the county weed board or the city weed board follows the directive in the North Dakota Century Code.

SECTION 63-01.1-07.5

Committee counsel said NDCC Section 63-01.1-07.5 requires that a city weed control officer "cooperate" with all weed control authorities, county

extension agents, land users, and others to further this chapter. She said the language was removed because the individual sections specify what must and may not be done.

Committee counsel said current law also requires a city weed control officer to "investigate" all complaints regarding noxious weeds within the city. She said this parallels the earlier discussion regarding discretion of the county weed control officer.

Chairman Mueller said it is the consensus of the committee that this section parallel the earlier section pertaining to county weed officer duties.

SECTION 63-01.1-07.6

Committee counsel said it is recommended that NDCC Section 63-01.1-07.6 be reviewed to ensure it parallels the provisions for funding county weed control programs.

Chairman Mueller said it is the consensus of the committee that this section parallel the earlier section pertaining to county weed control programs.

SECTION 63-01.1-08

Committee counsel said NDCC Section 63-01.1-08 addresses what happens if a landowner does not control noxious weeds. She said both current law and the rewrite begin with a generic authorization for a weed control officer to enter upon land, perform duties, and exercise powers. She said consent for entry is not required and there is no action for trespass or damages, as long as reasonable care is undertaken. She said under current law the rest of the section is divided into two long paragraphs. She said one deals with land in a city and the other deals with land outside of a city. She said the rewrite tries to clarify the multiple steps in the process and order them chronologically.

Committee counsel said the rewrite starts with the city weed control officer making a determination that land contains noxious weeds. She said a notice is served on the landowner directing the weeds be controlled within a time certain. She said the notice needs to:

1. Specify the minimal remedial requirements;
2. Specify the time within which those minimal remedial requirements must be met;
3. Specify that there may be penalties if the landowner does not comply;
4. Include a statement of what it will cost the landowner if the city weed officer has to come in and control the weeds; and
5. Provide that the landowner may put a temporary halt to the process by requesting a hearing in front of the governing body of the city.

Committee counsel said this is how the rewrite differs from current law. She said buried in current law is a sentence providing that the "landowner may request additional time from the city weed board." Later in the section, she said, there is the following

statement: "If the city weed board intends to control or eradicate the noxious weeds, the notice must include a statement informing the landowner that the landowner may request that the city weed board not control or eradicate the noxious weeds. If the landowner requests that the city weed board not control or eradicate the noxious weeds, the board may not control or eradicate the noxious weeds until control or eradication is authorized by a majority vote of the city governing body."

Committee counsel said there is uncertainty with respect to these two quoted sections and how they operate. She said it is not clear whether the request to be oral or written, when it must be filed, and whether the landowner has the right to appear before the weed board or the city governing board and plead his case.

Committee counsel said in the rewrite the landowner is authorized to stay the efforts by the city weed officer by requesting in writing that the governing body of the city hold a hearing on the matter. Presumably, she said, the landowner would make this request before the city weed officer undertakes weed control on the property but, in order to be clear, there should be a time period within which the landowner may do this. She said if after the hearing the governing body of the city directs the city weed officer to go in and control the weeds, the expenses are charged against the land. She said if it is so desired, one could have a hearing and a decision by the weed board and then an appeal to the governing board of the city.

Committee counsel said these same provisions are paralleled for land outside the limits of a city with a weed control program, i.e., for counties.

Representative Froelich said if he were growing marijuana or had a still on his land, a law enforcement officer would have to get a search warrant before going on his property. However, he said, if the offense is growing leafy spurge, a weed control officer can enter his property without a search warrant.

Mr. Junkert said the Legislative Assembly has given the commissioner latitude with respect to entering property to enforce agricultural laws.

Representative Mueller said the provision authorizing the entering of land without a search warrant is not new law.

Mr. Junkert said Commissioner Johnson would like an amendment ensuring he also has the authority to enter land. He said this is an issue both if the Agriculture Commissioner is to enforce the law in the absence of a weed board's willingness to do so and if the Agriculture Commissioner is to impose a quarantine.

Chairman Mueller said it is the consensus of the committee that this authority be provided to the commissioner.

Committee counsel said there is a need to clarify the language regarding an appeal. As rewritten, she said, the section allows for an appeal to the governing body of a city or, in the case of a county, it allows for

an appeal to the board of county commissioners. She said the question is whether the first hearing should be held by the local weed board and then, if that result is not satisfactory to an individual, allow for a further appeal to the local governing board.

Mr. Junkert said it would be the preference of Commissioner Johnson to have a hearing first by the local weed board and then have the opportunity to appeal the decision to the local governing body.

Chairman Mueller said it is the consensus of the committee that the first hearing be held before the weed board and that an appeal be provided to the local governing board.

SECTION 63-01.1-09

Committee counsel said NDCC Section 63-01.1-09 authorizes the county weed board to control or eradicate noxious weeds along county and township roads and highways and to pay costs incurred from funds obtained under Section 63-01.1-06. She said with the exception of the issue regarding control and/or eradication, no substantive changes were made to this section. She said the Weed Control Association asked it to be made clear that the county responsibility is for county and township roads and for county highways but not for state and federal highways.

Mr. Dieterle said the Department of Transportation has been very cooperative in working with the county weed boards. He said the Department of Transportation frequently enters into contracts to have the local weed boards spray for weeds. He said the requested change would just more clearly reflect the current understanding of the parties' responsibilities.

Chairman Mueller said it is the consensus of the committee that the section be amended to reflect the parties' responsibilities.

SECTION 63-01.1-10.1

Committee counsel said NDCC Section 63-01.1-10.1 authorizes the governing body of any city having a population of 3,000 or more to establish and administer a program for the control of noxious weeds. She said the committee earlier indicated its desire to maintain the reference to a minimum required population. She said the other issue with respect to this section is that it needs to be relocated within the chapter. She said authorization for the establishment of a weed control program should logically come before the details of powers, duties, compensation, weed lists, etc. She said it is proposed that in a future rewrite this section be moved to reflect a more logical placement.

SECTION 63-01.1-12

Committee counsel said under NDCC Section 63-01.1-12 the Agriculture Commissioner is required to publish a list of the possible methods by which noxious weeds or their propagating parts can be disseminated. She said when, where, and how often

are not addressed. She said the completeness of the list is limited only by the imagination of the author or authors. For this reason, she said, it is suggested that current subsection 1 be removed.

Chairman Mueller said it is the consensus of the committee that the subsection be removed as recommended.

Committee counsel said subsection 2 of the current law requires all operators of tillage, seeding, and harvesting equipment to clean their equipment in order to prevent the spread of noxious weeds by seed or other propagating parts before moving their equipment on public highways, airways, waterways, or by any other means of conveyance, public or otherwise. She said the challenge with this subsection is that it is vague with respect to what constitutes the cleaning of equipment. She said we have no indication of how thorough the cleaning must be nor who will determine when that threshold has been reached. Because of the enforceability issue, she said, it is recommended that this language be removed.

Ms. Carlson said the committee needs to ensure that this section prohibits people from spreading weed seeds during the transportation of plants, forage, screenings, dirt, and other articles.

Representative Mueller said current law is quite limited in its reference to only grain screenings.

Committee counsel said an alternative might be to prohibit the transportation of any material in a manner that disseminates noxious weeds.

Chairman Mueller said it is the consensus of the committee that the section be amended to prohibit the transportation of any material in a manner that disseminates noxious weeds.

In response to a question from Representative Mueller, committee counsel said if the section is amended to prohibit the transportation of any material in a manner that disseminates noxious weeds, it appears that the concerns about references solely to grain screenings are eliminated.

Representative Mueller said the references in this section to "scattering and dumping" material containing noxious weeds are confusing, given common agricultural practices. He said if a farmer discs a slough, the farmer has probably buried some noxious weeds. He said that act certainly does not eliminate the weeds. He said the committee wants to ensure that the language requires people to attend to their noxious weeds, while at the same time not being unreasonable in its requirements.

Senator Wanzek said it appears that a person who spreads manure might be guilty of disseminating noxious weeds. He said just because a seed has gone through a ruminant does not mean the seed has been destroyed.

Chairman Mueller said the committee will review this section and the changes requested to ensure that common farming practices are not being made illegal.

SECTION 63-01.1-12.1

Committee counsel said under NDCC Section 63-01.1-12.1 if a county or city weed board or weed officer determines that an area is infested with noxious weeds and if materials or farm products from that area are liable to spread noxious weeds into other areas to the injury of others, the commissioner shall declare a quarantine. She said the commissioner has no option. She said current law goes on to provide that the commissioner shall declare a quarantine when requested to do so through a resolution adopted by a two-thirds majority of the weed board having jurisdiction. She said it is not known whether resolution is to be separate from the prior language or whether the resolution is a condition required for a quarantine. She said the current language is just not clear. She said current law does not address enforcement of the quarantine or when and how the quarantine is to be lifted. She said current law likewise does not recognize that people's livelihood might be affected and, consequently, an argument could be made for due process proceedings.

Committee counsel said the rewrite makes an attempt to address some of these concerns. She said the rewrite provides that if a local weed board or weed officer believes that a quarantine is in order, that person or entity needs to contact the Agriculture Commissioner. She said if the commissioner believes that a quarantine might be necessary, the commissioner must hold a public hearing. She said after receiving input, the commissioner may then order a quarantine and the order must spell out the date by which or the circumstances under which the quarantine will be lifted.

Committee counsel said if the situation is an emergency, the commissioner is authorized to impose a quarantine for up to 14 days. She said 14 days is simply a time period for the committee to consider. She said the duration can be shorter or longer. During that period, she said, the commissioner must hold a hearing and determine whether a normal quarantine order should be imposed.

Committee counsel said the committee may wish to consider the addition of enforcement provisions. She said there is currently no criminal penalty for violating a quarantine and none was added to this section.

Mr. Junkert said Commissioner Johnson was approached twice this year to impose a quarantine. He said the commissioner has issued several quarantines over the last several years. He said the current law is not clear with respect to lifting the quarantine or whether anyone should hold due process hearings. He said staff in the Attorney General's office have indicated that even though the law requires the commissioner to impose a quarantine, literally upon request, the commissioner has to ensure that the action would not be considered arbitrary.

Mr. Junkert said the imposition of a quarantine is a severe regulatory action. He said it is important for

the commissioner and his staff to have clear statutory language with respect to how a quarantine should be imposed and it is equally important that those affected have an opportunity to voice their positions.

In response to a question from Representative Solberg, Mr. Dieterle said if there is a complaint, it needs to be addressed by the local weed board.

In response to a question from Representative Solberg, Mr. Junkert said a quarantine restricts the movement of materials and farm products. He said it does not require that all farming operations cease.

Representative Mueller said the proposed language imposes a process that the Agriculture Commissioner must go through prior to imposing a quarantine. He said it includes a due process hearing, whereas none is required by current law.

Mr. Junkert said it is always preferable to encourage resolution of an issue at the local government level.

Mr. Dieterle said the Weed Control Association has no opposition to the quarantine language proposed by the rewrite.

In response to a question from Representative Mueller, Mr. Junkert said the 14-day requirement was a quick turnaround time, but he thought it would be manageable.

Mr. Junkert said Commissioner Johnson would like to retain the current language that authorizes the imposition of a quarantine if noxious weeds are likely to be introduced into the state by the importation of materials or farm products.

Committee counsel said the proposed language provides broad authority for the commissioner to impose a quarantine. If an emergency exists, she said, the proposed language allows for the imposition of an immediate quarantine and requires the commissioner to hold a hearing thereafter.

Mr. Junkert said Commissioner Johnson is in agreement with the proposed language.

Chairman Mueller said it is the consensus of the committee that the section be accepted as proposed.

SECTION 63-01.1-12.2

Committee counsel said NDCC Section 63-01.1-12.2 authorizes the Agriculture Commissioner to adopt rules for certifying that gravel, scoria, or sand surface mining operations and hay land are not contaminated with weeds. She said it then provides that the rules shall identify tolerances. She said weed boards are authorized to certify the listed operation or land is not contaminated with weeds. She said the current law also references consultation by the commissioner with the Extension Service and consultation by weed boards with the Extension Service. She said the purpose is not clear.

Committee counsel said the rewrite charged the Extension Service with developing a program of training for county and city weed officers so they may be credentialed to certify that certain land, forage, and products, including sand, gravel, and scoria, are within the tolerances for noxious weeds established by the

North American Weed Management Association (NOMA) or within the tolerances for noxious weeds established by the commissioner. She said the rewrite maintains the requirement that the commissioner set the fees that may be charged for certifying that products are within the stated tolerances.

Dr. Lym said the Extension Service is concerned about such a mandate being put into the statute. He said the Extension Service does not have anyone who could do this right now. He said the Extension Service is not certain it could even certify that materials like scoria, hay, or gravel are weed-free. He said the source of the material could be certified as being weed-free but not the products themselves. He said NOMA is literally a group of weed managers and the tolerances established by that group would not have any governmental weight. He said the Extension Service is not in support of the proposed language in the rewrite.

In response to a question from Representative Mueller, Dr. Lym said the Agriculture Commissioner is authorized to adopt rules under NDCC Section 63-01.1-12.2. He said that is not handled by the Extension Service.

Senator Taylor said to go into a state or national park, one is required to have certified weed-free hay.

In response to a question from Senator Taylor, Ms. Carlson said the Department of Agriculture staff provides training to and certification of weed officers and private individuals. She said she believes it is the weed boards that are supposed to be doing the certification under this section. She said the role of the Agriculture Commissioner is very unclear under current law.

Mr. Dieterle said under current law the weed boards are authorized to provide certification and the Agriculture Commissioner is directed to adopt rules governing the certification.

Ms. Carlson said she believes that under current law the Agriculture Commissioner is to adopt rules addressing the manner in which certification is to be accomplished by the weed boards and setting fees for the service. She said Commissioner Johnson has not adopted such rules.

Mr. Dieterle said this section came about because people going to state and national parks needed to have certified weed-free hay. He said in many instances they had to purchase hay that was not as high in quality as what they themselves had, but the hay was certified as not having any viable noxious weed seeds or propagating parts. He said the purchased hay met NOMA standards, even though it was of a lower quality. He said the responsibilities of the Agriculture Commissioner and the weed boards with respect to the certification has never been clear. He said Commissioner Johnson conducts annual training and there is a voluntary certification process in place.

Dr. Lym said to make this work, one would need a program similar to pesticide certification. He said one

would need to have on board a person who knew the law, knew the regulations, and went around the state training the weed officers to perform these duties. He said this is not something that could be done at one or two meetings. He said the training would be significant because one needs to be able to identify all the weed seeds, not only on the state noxious weed list but also on the NOMA list. He said weed seed identification is much more time-consuming and difficult than looking at an adult plant.

Dr. Lym said this provision was added just a few years ago and he is not certain that the provision even belongs in the noxious weed law. He said perhaps it could be put in the pesticide certification chapter or it could be linked to the inspection of other commodities. He said he does not believe the weed officers would be able to take the time to do this.

Mr. Dieterle said a number of the weed officers have already received training to provide certification under this section. He said some do it as a side job rather than as part of their weed control officer duties.

Senator Wanzek said he wondered if the State Seed Department should be given this duty. He said department staff could be looking at sites when it does its seed inspections.

Dr. Lym said the pesticide inspectors could also do this when they inspect the pesticide facilities. He said it will take those kinds of people and that kind of training to properly do what is anticipated by this section.

Mr. Dieterle said when this section was enacted, there was discussion about assigning it to the State Seed Department. He said staff from that department indicated that the issues of time and available personnel precluded them from undertaking this additional duty.

Representative Mueller said it appears that this section is not a perfect fit for any existing entity.

Ms. Carlson said in some areas the weed officers have no interest in doing the certification and that is why private individuals have become the certifiers. She said she is not certain this is legal. She said the NOMA standards require inspection of the alfalfa as it is grown. She said the NOMA standards include much more than the state noxious weed list. For instance, she said, NOMA standards require that four different types of brome grass be recognized. She said brome grass is not a noxious weed. However, she said, it is an invasive species that the parks do not want.

Senator Taylor said the law already requires people to control noxious weeds on their lands and the law already prohibits the transportation of products containing noxious weeds. Therefore, he said, we should not have any weeds being moved around the state.

Mr. Dieterle said from an association's perspective, it would just as soon not deal with the certification of hay. He said the certification of gravel and scoria is a different issue.

Chairman Mueller said it is the consensus of the committee that Commissioner Johnson and representatives of the Weed Control Association meet with the Legislative Council staff to determine if there is an alternative that could be offered for committee consideration.

SECTION 63-01.1-13

Committee counsel said NDCC Section 63-01.1-13 requires the Agriculture Commissioner to "attempt" to "arrange" a noxious weed control or eradication program with all state and federal agencies and, similarly, it requires weed control officers to "attempt" to "arrange" a noxious weed control or eradication program with those political subdivisions owning or controlling public land within their jurisdiction. She said the rewrite deletes this language. She said the Agriculture Commissioner and the local weed boards and weed officers can still try to arrange such programs. She said the deletion simply recognizes that a statutory directive calling for an "attempt" is a nebulous standard.

Committee counsel said current law also requires each federal agency to develop a management plan for controlling or eradicating noxious weeds on land under the agency's jurisdiction and if it fails to do so, the Agriculture Commissioner may hold a public hearing. She said this language is deleted because the state is without authority to direct such action on the part of the federal government. She said if the Agriculture Commissioner wishes to hold a public hearing on this or any other matter, he may certainly do so. She said statutory authority is not required.

Mr. Junkert said Commissioner Johnson would like to retain the authority to hold a public hearing if it is found that a federal agency failed to control or eradicate its noxious weeds. He said according to staff from the Attorney General's office, the Agriculture Commissioner has virtually no authority to force federal agencies to control their noxious weeds. He said if the Agriculture Commissioner cannot hold a hearing, what else can he do. He said landowners are very upset about the lack of weed control on federal land.

In response to a question from Representative Uglem, committee counsel said the Agriculture Commissioner can hold a public hearing on any matter at any time he chooses. She said there is no need to include specific authority in the North Dakota Century Code.

Representative Mueller said everyone shares the frustration with the lack of noxious weed control by the federal agencies.

Chairman Mueller said it is the consensus of the committee that the section be accepted as rewritten.

SECTION 63-01.1-14

Committee counsel said NDCC Section 63-01.1-14 provides that the Highway Patrol, county sheriffs, and the Truck Regulatory Division shall cooperate with a

weed control authority and may enforce subsection 2 of Section 63-01.1-12 if machinery, commodities, or articles being moved on state and federal highways or on county or township roads are contributing to the dissemination of noxious weeds. She said this section directs that only certain elements of law enforcement cooperate with weed control authorities. She said it would be more appropriate to reference "all law enforcement personnel" so that city law enforcement officers are not precluded from cooperating with weed control authorities.

Senator Erbele said it would be appropriate to reference "all law enforcement personnel."

Committee counsel said the section goes on to provide that those certain elements of law enforcement "may" enforce subsection 2 of NDCC Section 63-01.1-12 if in fact the prohibited actions are occurring. She said there is a concern regarding whether the enforcement should be discretionary. She said Section 39-03-03 provides that the Highway Patrol "shall" enforce the laws of this state relating to the protection and use of highways and "shall" patrol the highways and cooperate with sheriffs and police in enforcing the laws regulating the operation of vehicles and the use of highways. She said having "may" in Section 63-01.1-14 appears to be creating a conflict with the mandatory enforcement provision in Section 39-03-03.

Senator Erbele said if the activity is prohibited, the law should be enforced. He said he supports replacing "may" with "shall" in this section.

Committee counsel said the reference to the Truck Regulatory Division was removed because that division's duties were assigned to the Highway Patrol in 1983.

Committee counsel said perhaps most importantly, this section highlights the need to evaluate the upcoming penalty section. She said law enforcement can be called upon for assistance if a crime is being committed. She said if there is no penalty or punishment for an act, like breaking a quarantine order, there is often not much incentive for law enforcement to get involved.

SECTION 63-01.1-15

Committee counsel said under NDCC Section 63-01.1-15 a custom or commercial operator of tillage, seeding, and harvesting equipment who violates subsection 2 of NDCC Section 63-01.1-12 is guilty of a Class B misdemeanor. She said that subsection references the failure to clean equipment as well as the construction and covering of trucks and the scattering and dumping of material containing noxious weed seeds or propagating parts. Apparently, she said, if these same acts are performed by someone other than a custom or commercial operator, it is not a crime. She said there may be an issue of equal protection in that the prohibited activity is the same, but the wrongdoers are treated differently, depending on their commercial status. On the other hand, she

said, there may be a compelling state reason for treating the commercial operators differently.

Representative Mueller said current law subjects custom operators to penalties not imposed on other farmers.

Senator Taylor said he has seen signs in other states that apply to the cleaning of equipment. He said it does not matter whether the operator of that equipment is a custom operator or not.

Representative Johnson said at the port of entry into some states, personnel from their agriculture department will inspect the equipment. If it is clean, he said, a sticker is received and if it is not, the equipment must be returned to the state from which it came to be cleaned. He said it is not easy to find someone's field in which to do that. He said custom operators have more volume and, therefore, probably constitute a greater risk for disseminating noxious weeds. However, he said, a noxious weed is a noxious weed regardless of whose equipment the weed is on, so if there is a law to prohibit the dissemination of noxious weeds, that law should apply to all people without discrimination.

Ms. Carlson said Commissioner Johnson supports having any person who violates the respective section being subject to the criminal penalty. By keeping the criminal penalty, she said, local law enforcement officials are more inclined to become involved. She said even though a person may also be subject to a civil penalty, the accumulated penalties are a lien against property and, in the case of custom operators, they often do not own property in the state.

Chairman Mueller said it is the consensus of the committee that the criminal penalty be extended to all persons and not just custom operators.

In response to a question from Representative Mueller, Ms. Carlson said Commissioner Johnson wishes to retain the criminal penalty and make it applicable to all persons.

Committee counsel said guidance is also needed on whether the violation of a quarantine should be subject to a criminal penalty.

Committee counsel said under current law any penalties collected have to go to the weed control and eradication fund in the political subdivision in which the penalty originated. She said the rewrite maintains this concept but spells it out. She said if the county weed board institutes an action or has one instituted on its behalf, the penalty goes to the county weed fund. She said a similar situation applies to the cities.

SECTION 63-01.1-18

Committee counsel said NDCC Section 63-01.1-18 is known as the conflict of interest section. She said it was added in 2005 to provide state-level oversight if a person believed that a local weed board was not adequately addressing a complaint regarding the control of noxious weeds. She said the current law authorizes the Agriculture Commissioner to investigate the matter and, if appropriate, to enforce the chapter.

Committee counsel said the current law carries with it several practical concerns regarding enforcement--does the Agriculture Commissioner function in place of the weed officer or the weed board; may the Agriculture Commissioner expend local funds in that capacity; must the Agriculture Commissioner provide this service at state expense; and if a local governmental entity fails to perform its statutorily mandated duties, are there other responses that could be used, i.e., recall petitions, writs of mandamus, the electoral process, etc. She said earlier drafts tried to better address this issue but consensus among the affected entities could not be reached. She said guidance from the committee is necessary.

Mr. Junkert said the section is cumbersome. He said under current law there are a lot of steps in the process between the local level and an appeal to the Agriculture Commissioner. He said weed boards have told him they have adequate authority to do their jobs.

Ms. Carlson said Commissioner Johnson recommends removing the conflict of interest provision.

Mr. Dieterle said the Weed Control Association is also supportive of removing the conflict of interest provision.

Representative Mueller said the section could be amended to allow consideration of the matter by a local weed board with an appeal to a local governing board.

Mr. Junkert said weed boards do have the bulk of the authority and they have the ability to deal with the situations that arise.

Chairman Mueller said the suggestion that the matter be left at the local level addresses the concerns regarding the Agriculture Commissioner's

role. He said it is the consensus of the committee that the section be amended to provide for a hearing by the local governing board and to remove the Agriculture Commissioner from any role as set forth in the current language.

SECTIONS 63-01.1-19 THROUGH 63-01.1-25

Committee counsel said NDCC Sections 63-01.1-19 through 63-01.1-25 pertain to pest control. She said current law parallels much of the weed control language in authorizing weed boards to address pests as well. If maintained, she said, it is recommended that the pest control sections be placed in their own chapter. However, she said, it appears there is the opportunity to eliminate much of the ensuing verbiage. She said it is believed one could simply authorize local governing boards to direct that their weed control boards engage in the control of pests, or specifically in the control of prairie dogs, if they wish. She said one might also want to clarify how any costs associated with this expansion of duties are to be met.

Mr. Dieterle said the Weed Control Association would be supportive of the proffered suggestion.

Mr. Junkert said Commissioner Johnson likewise would be supportive of the proffered suggestion.

No further business appearing, Chairman Mueller adjourned the meeting at 4:00 p.m.

L. Anita Thomas
Committee Counsel

ATTACH:5