

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

AGRICULTURE COMMITTEE

Wednesday and Thursday, September 29-30, 2010
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, Rod Froelich, Richard Holman, Joyce M. Kingsbury, Gerry Uglen, Benjamin A. Vig; Senators Bill Bowman, Tim Flakoll, Terry L. Jacobs, Curtis Olafson

Members absent: Representatives Mary Ekstrom, Curt Hofstad, Dennis Johnson, Keith Kempenich, Shirley Meyer, John D. Wall; Senators Arthur H. Behm, Terry M. Wanzek, John Warner

Others present: See attached [appendix](#)

It was moved by Representative Uglen, seconded by Representative Kingsbury, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

Chairman Mueller welcomed Mr. Ken Bertsch, Seed Commissioner; Mr. Steve Sebesta, Deputy Seed Commissioner; and Mr. Joe Magnusson, Regulatory Program Manager; State Seed Department, Fargo.

BILL DRAFT - SEED LAW REWRITE

Chairman Mueller said the committee will begin by considering a bill draft [\[10015.0300\]](#) that rewrites as new law provisions of North Dakota Century Code Chapter 4-09, taking into account recommendations for changes that the committee had made at its previous meetings and suggestions for change that the Seed Commissioner and staff of the Seed Commission have offered. He said, as before, the committee will focus on the notes that follow the respective sections and make any recommended changes. He said the recommended changes are based on the general consensus of the committee. He said when the bill draft is in its final form, the committee will take a formal vote with respect to recommending the bill draft to the Legislative Management.

Section 4. Seed Commission - Membership

Chairman Mueller said this section sets forth the membership of the Seed Commission. He said it is to include one individual who is a member of the North Dakota Potato Council, appointed by the North Dakota Potato Council.

In response to a question from Representative Mueller, committee counsel said other subsections in this section refer to an individual being appointed by a

specific association. She said they do not require the individual to be a member of a specific association. She said there is an assumption, for instance, that the North Dakota Dry Edible Bean Seed Growers Association will appoint, as a representative, an individual who is sympathetic to their interests. She suggested that in the interest of consistency, subsection 5 could reference an individual appointed by the North Dakota Potato Council.

Representative Kingsbury said the North Dakota Potato Council could be counted on to select its appointee from its membership.

Chairman Mueller said it is the consensus of the committee that subsection 5 be amended to read "an individual appointed by the North Dakota Potato Council."

Section 9. Seed Commissioner - Powers

Chairman Mueller said current law authorizes the Seed Commissioner to cooperate and enter agreements with a variety of public and private entities for a list of matters, including protection, inspection, analysis, testing, registering, and certifying of North Dakota seed, as well as the promotion and protection of the interests and welfare of North Dakota seed growers and crop producers. He said rather than including a long list of general matters that may be the subject of such contracts, Seed Department personnel suggested it would be appropriate to authorize the Seed Commissioner to "contract with any person for any lawful purpose." He said that language, which currently appears in Section 4-09-19, has been included in this section setting forth the general powers of the Seed Commissioner.

Section 10. Seed Commissioner - Duties

Chairman Mueller said subsection 3, which gives the Seed Commissioner the duty to employ and compensate necessary personnel, is a new addition. He said current law requires the Seed Commissioner to make semiannual reports to the Seed Commission. He said this has been rewritten to direct that the Seed Commissioner make periodic reports to the Seed Commission regarding the management and operation of the Seed Department. He said this change came at the request of Seed Department personnel.

Section 11. Stop-Sale Order - Issuance - Enforcement - Appeal

Chairman Mueller said current law provides that the stop-sale order "shall prohibit further sale, conditioning, and movement of the seed." He said because such prohibitions might not be appropriate in all cases, it was recommended by Seed Department personnel that the Seed Commissioner be authorized to attach terms and conditions that must be fulfilled in order for the stop-sale order to be lifted.

Section 17. Agricultural Feed - Additional Label Requirements - Limited Applicability

Chairman Mueller said this section sets forth additional label requirements for containers of barley, canola, dried beans, durum, field peas, flax, oats, rye, soybeans, and wheat seed offered for sale or sold in this state. He said this section, as current law, also provides that the requirements are not applicable to agricultural feed labeled as being for vegetative cover only.

Mr. Bertsch said that the term "vegetative cover" was inserted into the code years ago because there used to be a problem with treated seed that was lying around and not used. He said that while Seed Department personnel understand what should be done with seed initially intended to come under this parameter of being for vegetative cover only, there has been significant discussion about cover crops and whether they were intended to be included. He said after lengthy discussions among Seed Department personnel, it was determined that the phrase "vegetative cover" actually creates an undesirable loophole in the law. He said that, in effect, if certain seed is low germ or otherwise unusable, there would be the ability to label it as being for vegetative cover only and then sold. He said this is a loophole that does not need to exist. He said practically, there is no problem with disposing of seed. He said if seed is labeled properly, it can be used for any legitimate purpose.

Mr. Sebesta said this reference basically allows someone to make one's own determination as to what constitutes "vegetative cover." He said that would allow for the circumvention of Plant Variety Protection Act requirements. He said it would even allow for circumvention of state labeling laws.

In response to a question from Representative Mueller, Mr. Sebesta said if the seed is not treated, it could be disposed of in a variety of ways. He said such seed could be disposed of in a landfill or it could go to alternative markets, such as feed or food supplies.

Chairman Mueller said it is the recommendation of the committee that page 10, lines 1 and 2, be removed.

Section 19. Canola Seed - Additional Label Requirements

Chairman Mueller said current law provides that in seed of canola, the label must contain a statement that the seed is certified by the Seed Commissioner as meeting the standards of this chapter or certified by another state or province having certification standards for canola which meet or exceed standards adopted by this chapter. He said rather than setting forth with what must be on the label, this section has been reworked to provide that canola seed must be certified and that the label must indicate that the certification requirements have been met.

Mr. Sebesta asked that page 10, line 23, be removed. He said if the canola seed has been certified, it has met the label requirements, and, therefore, the line is no longer necessary.

Section 20. Agricultural Seed Components - Label Requirements - Mixture or Blend - Designation

Committee counsel said this section provides that if more than 10 percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding 5 percent of the whole, the label must include each component in excess of 1 percent of the whole named together with percentage by weight of each. She said each component must be listed in order of its predominance. She said if more than one component is named, the word mixture or blend must be stated. She said there was concern expressed at the last meeting with respect to the interaction between this section and the definition of blend and mixture as contained in Section 1 of this bill draft. She said it was originally thought that perhaps the definition needed to have a cross-reference section so that blends or mixtures included not only the definitional verbiage but also the type of mixture that would result from the application of Section 20.

Mr. Bertsch said this language is acceptable to the Seed Department in its current form. He said it is a complicated issue but applies mainly to the laboratory areas.

Mr. Magnusson said if more than 10 percent of the whole consists of components, none of which exceeds 5 percent, seed must be labeled accordingly.

Mr. Bertsch said this section is very confusing. He said anything that consists of two or more crops must be labeled as a blend, if any of the components consist of more than 5 percent of the whole. He said if seed consists of 90 percent one component and 10 percent a second component, that must be labeled a blend.

Mr. Magnusson said if more than 10 percent of the lot consists of those components that are less than 5 percent, they have to be labeled.

Mr. Bertsch said if at the end of the day we are trying to statutorily articulate what needs to be labeled as a blend, this language does that.

In response to a question from Representative Mueller, Mr. Bertsch said the seed companies generally call the Seed Department to ask what the label requirements are for a blend, and Seed Department personnel tell them what needs to be on the label. He said this language achieves that.

Section 21. Agricultural Seed - Sale of Small Quantities - Container Labeling Requirements

Chairman Mueller said Section 4-09-11 provides that the labeling requirements for vegetable seed in containers of more than one pound are deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser. He said at an earlier meeting this committee determined that the provision should be kept and extended to agricultural seed, in part to accommodate the sale of grass seed. He said Seed Department personnel recommended that the referenced quantity be extended from one pound to five pounds. He said this has been done in the section.

Section 32. Treated Flower Seed - Additional Requirements

Chairman Mueller said that the label requirements applicable to treated agricultural and vegetable seed may be placed on a separate label. He said at an earlier meeting this committee extended the concept of a second label to flower seed as well. He said that has been accomplished in this section.

Section 33. Labeling Requirements for Tree Seed and Shrub Seed

Chairman Mueller said Section 4-09-11.2 provides that the labeling of seed supplied under a contractual agreement may be by invoice or by an analysis tag attached to the invoice. He said Seed Department personnel suggested that an invoice does not contain sufficient labeling information and further suggested that the option therefore be removed. He said the section as it stands provides that the labeling requirements for tree and shrub seed could be met by an analysis tag attached to the invoice if each container is clearly identified by a lot number stenciled on the container or if the seed is in bulk.

Section 35. Statement of Origin

Chairman Mueller said current law provides that the label requirements for tree seed or shrub seed must contain "[t]he origin for seed collected from the predominantly indigenous stand as identified by the area the trees are growing and collected given by latitude and longitude, geographic description, or political subdivision and for seed collected from other than a predominantly indigenous stand as identified by the place from which the seeds or plants were originally introduced or state origin not indigenous." He said the State Forester, in working with committee counsel, suggested that these concepts could be combined. He said the rewrite proposes that the

labels identify the location of the indigenous stand by latitude and longitude or county or township.

Committee counsel said it would be preferable to make one more change. She said rather than referencing the location of the indigenous stand, the section could simply state "the label of tree seed or shrub seed must identify the location from which the seeds were collected by latitude and longitude or county or township."

Section 42. Prohibited Activities

Chairman Mueller said Section 4-09-14 provides that a person may not "[h]inder or obstruct in any way any authorized person in the performance in the person's duties under this chapter". He said this was not included in the rewrite because Section 12.1-08-01, which is part of the criminal code, makes it a Class A misdemeanor for any person to intentionally obstruct, impair, impede, hinder, prevent, or pervert the administration of law or other governmental function.

Mr. Sebesta said subsection 4 provides that a person may not use the name of the Seed Department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the Seed Department or the official laboratory, except in the case of registered or certified seed. He said he would request that the word "registered" be removed from that subsection because the reference to certified seed, when used in this context, includes registered seed.

Chairman Mueller said it is the recommendation of the committee that the word "registered" be removed from page 20, line 7.

Section 43. Disposal of Protected Varieties

Chairman Mueller said current law provides that a person may not plant any seed labeled "for vegetative cover only" with the intent to harvest for seed or grain. He said after questions were raised regarding the enforceability of that language, Seed Department personnel suggested a provision that would allow a person in possession of uncertifiable seed produced from a variety protected by the Plant Variety Protection Act to dispose of the seed but only as directed by the Seed Commissioner.

Mr. Bertsch said that language could and should be removed. He said disposal of seed is covered within the purview of the labeling laws. He said disposal really gets to issues beyond the scope of the Seed Department's authority. He said the Seed Department focuses on labeling and seed certification. He said the Plant Variety Protection Act covers the use of owners' intellectual property.

Chairman Mueller said it is the consensus of the committee that Section 43 regarding the disposal of protected varieties be removed.

Section 47. Applicability of Chapter

Chairman Mueller said as currently written the section states that this chapter does not apply to

potatoes, seed that is not intended for planting purposes, seed stored or consigned to a seed cleaning or conditioning plant for the purpose of cleaning or conditioning, and it does not apply to a farmer who grows the farmer's own seed and sells only that seed without use of advertising or a third-party agent or broker.

Committee counsel said this chapter applies to seed that is offered for sale or sold in the state. She said that is articulated time and again within the current law and within the rewrite. Therefore, she said, it is not necessary to articulate that the chapter does not apply to seed that is stored by or consigned to a seed cleaning or conditioning plant for the purposes of cleaning or conditioning.

Chairman Mueller said it is the consensus of the committee that subsection 3 of Section 47 be deleted.

Committee counsel said in terms of consistency Section 47 is attempting to list various seeds to which the chapter is not applicable. She said it is therefore inconsistent in subsection 4 to reference a farmer to whom the chapter does not apply. She said it would be much clearer to say that the chapter does not apply to seed grown by a producer and sold by that producer without advertising and without use of a third party as an agent or broker to affect the sale, provided, however, that this exemption is not applicable if the seed is a variety protected by the Plant Variety Protection Act.

Chairman Mueller said the proposed language appears to be in keeping with the intent of Seed Department personnel. He said it is the consensus of the committee that the proposed language be substituted for page 22, lines 8 through 11.

Section 48. Certified Seed - Establishment of Certification System

Chairman Mueller said Section 4-09-18 requires the Seed Department to publish rules for certification of seeds other than potatoes in the department bulletin, and it requires rules for seed potato certification to be published in the department bulletin. He said rules for seed certification are published in the North Dakota Administrative Code. He said rather than requiring that they be duplicated in a departmental publication, Seed Department personnel suggested that the rules for seed certification should be made readily available in electronic and printed formats. He said this provision has been included in the rewrite of Section 48.

Section 49. Requests for Certification - Required Submissions

Chairman Mueller said Section 4-09-16 states that the Seed Commissioner shall "[a]ccept for certification kinds, varieties, selections, and names of seed stocks" He said rather than mandating what the Seed Commissioner must accept for certification, the rewrite provides that others may submit kinds, varieties, selections, and names of seed stocks and

request that the Seed Commissioner consider such for certification.

Mr. Bertsch said several legislative sessions ago Seed Department personnel worked on this section to ensure that the requirements were compatible with federal seed laws and the requirements of the Association of Official Seed Certifying Agencies. He said the department is supportive of the rewrite in its current form.

Mr. Sebesta said this section mirrors the Federal Seed Act with respect to new variety eligibility for certification. He said this is what all of the certifying agencies use.

Senator Flakoll said he wants to be certain that the requirements as reflected in the rewrite do not involve policy changes from current law.

Chairman Mueller said the purpose of the rewrite is to make the law as clear and as good as can be. He said he is comfortable with what the committee has done to this point. He said it will be examined by the next Legislative Assembly. He said if anyone has concerns about the proposed language as opposed to the current language, the sections can be compared. He said each member was given a copy of the current law. He said copies can be found in their packets.

Mr. Bertsch said this section does not contain substantial changes.

Section 51. Seed Certification - Seed Commissioner - Specific Powers

Chairman Mueller said Section 4-09-16 provides that the Seed Commissioner shall cooperate with the managers of seed conditioning plants, commercially established seed firms, or any person within or outside of the state having proper facilities and equipment to store, condition, and otherwise handle seed that is eligible for certification, for the purposes of handling and marketing breeders, foundation, registered, or certified seed. He said in discussions with Seed Department personnel, it appeared that the purpose of this subsection was to authorize the Seed Commissioner to establish standards for seed conditioning facilities and various other entities that handle certified seed. He said that has been reflected in the rewrite.

Chairman Mueller said Section 4-09-16 also authorizes the Seed Commissioner to establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording the seed, and for other work and duties incident to the growing, handling, marketing, and certifying of North Dakota seed. He said this has been omitted because the proposed language of Section 10 of this bill draft gives the Seed Commissioner the authority to establish and charge fees for services, subject to the approval of the Seed Commission.

Section 52. Certified Seed - Use of Certain Terms - Required Authorization

In response to a question from committee counsel, Mr. Sebesta said this section states that a person may not use the terms "breeders," "certified," "foundation," "elite," "pedigreed," or "registered" and may not use substantially equivalent terms in the labeling or the advertising, characterization, or representation of seed unless authorized to do so by the Seed Commissioner. He said the terms "elite" and "pedigreed" are generally not used in the United States but are found on labels from other countries. He said as long as there is a reference to "substantially equivalent" terms in the section, it would be appropriate to delete the references to "elite" and "pedigreed."

Chairman Mueller said it is the consensus of the committee that the words elite and pedigreed be removed, and the phrase substantially equivalent be retained.

Section 53. Plant Variety Protection Act

Chairman Mueller said current law provides that any seed advertised, offered for sale, or sold by a variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act as being for sale only as a class of certified seed must be certified by an official seed-certifying agency in order for the seed to be advertised, offered for sale, or sold by a variety name in the state of North Dakota. He said the source notes in the bill draft term this section incomprehensible.

Committee counsel said this section has been the subject of considerable discussion with Seed Department personnel. She said it appears that the intent of this section is as follows: "If a certificate of plant variety protection issued under the Plant Variety Protection Act specifies that the variety may be sold only as a class of certified seed, that seed must be certified by an official seed certification agency before it can be advertised for sale, offered for sale, or sold."

Mr. Bertsch said that is in keeping with what they believe the intent of the section is.

Chairman Mueller said subsection 2 of Section 53 is retained in the rewrite in the same form that it is found in current law. He said the subsection states that seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with the approval of the owner of the variety. He said the source notes in the bill draft provide at least two ways in which the current language could be read and interpreted.

Mr. Sebesta said there is a third version that the Seed Department would recommend. He said the subsection could simply state: "Seed from a certified lot may be used in a blend or mixture by or with the approval of the owner of the variety." He said Section 17 already requires the seed to be labeled by variety name. He said this essentially states that certified seed may be used in a brand as long as the variety owner permits that use.

Chairman Mueller said it is the consensus of the committee that subsection 2 be amended to reflect Mr. Sebesta's suggestion.

Section 54. Seed Department Fund - Continuing Appropriation

Chairman Mueller said current law refers to a Seed Department revolving fund. He said at the recommendation of Office of Management and Budget personnel, the rewrite clarifies that the Seed Department operates under continuing appropriation authority. He said that by virtue of operating under a continuing appropriation, the Seed Department does not have to seek biennial appropriation authority. However, the Seed Department has indicated its desire to continue appearing before the Appropriations Committees. Therefore, he said, the language of subsection 3 would provide for a report to the Appropriations Committees in the same manner as agricultural commodity groups provide reports to the standing Agriculture Committees during each legislative session.

Mr. Bertsch said it would be appropriate to condense this section even further and allow the Legislative Assembly to decide if it would wish to have the Seed Department report to a standing committee and, if so, to which one. He said the Seed Department is one of, if not the only, self-funded agency that has to have its budget approved by the Appropriations Committees.

In response to a question from Representative Mueller, Mr. Bertsch said he does not have an issue with having to report to the Appropriations Committees. He said as a self-funded agency the statutory requirement appears to be odd. He said he had been told that this mandate is yet another time requirement placed on two very busy committees during the legislative session.

Senator Bowman said he appreciates having Seed Department representatives visit briefly with the Appropriations Committees. He said it helps in their overall understanding of the agricultural scene in North Dakota.

Senator Flakoll said he wondered if there would be any merit to having the Seed Department report during the interim to a budget committee rather than taking the time of the standing House and Senate Appropriations Committees during the legislative session.

Mr. Bertsch said perhaps it would be appropriate to leave the language proposed in the bill draft, and if in the future there is a desire to amend that section, it could be done through the normal channels.

Section 55. Liability of Seed Commission, Seed Department, Seed Commissioner, and Certified or Noncertified Agricultural Seed Producers

Chairman Mueller said this section sets forth warranties that are not made by the Seed

Commission, Seed Department, Seed Commissioner, or various certified or noncertified agricultural seed producers. He said the current law, as is reflected in the rewrite, states the sole warranty made is that the agricultural seeds or other produce were produced, graded, packed, and inspected under the rules of the Seed Department or the rules of the United States Department of Agriculture.

Mr. Bertsch said the language should be amended to provide that the sole warranty made is that the agricultural seeds were inspected under the rules of the Seed Department or the United States Department of Agriculture. He said the Seed Department does not inspect the matter of production, manner of grading, or the manner of packaging agricultural seeds, and the reference of other produce is inappropriate in this particular chapter.

Chairman Mueller said he has some concern that the suggested changes are substantive and perhaps inappropriate given the nature of the rewrite.

Representative Uglem said it would not be a substantive change to eliminate a reference to activities that the Seed Department does not engage in and never has engaged in. He said we are doing nothing other than cleaning up the law. He said he is supportive of Mr. Bertsch's proposed changes.

In response to a question from Representative Mueller, Mr. Bertsch said the terms "grading" and "packing" refer to activities within the potato program. He said the same language will be found in Chapter 4-10, which pertains to the potato program. He said grading is the process of taking out rotten or misshapened potatoes. He said packing is the process of bagging the potatoes or putting them into cartons. He said those processes are not inspected by the Seed Department. He said the Seed Department does shipping point inspections and those are called "grade inspections." However, he said, grade inspections fall under the term "inspected." He suggested "inspected" should be retained in this section. He said there is no problem with warranting that the department has conducted the inspection and that it was conducted under the rules of either the Seed Department or the United States Department of Agriculture.

In response to a question from Representative Holman, Mr. Bertsch said the inspection process involves activities in the field and in the laboratory. He said there are field standards for each crop and laboratory standards for each crop. He said the department also goes through final certification and reviews whether the crop has met the standards in the field and in the laboratory.

Mr. Bertsch said he is very comfortable warranting the inspection process. He said there are rules and regulations that the Seed Department is required to abide by, and there is an expectation that the Seed Department performs those functions correctly. However, he said, it is inappropriate for the Seed Department to warranty activities such as the production, grading, and packing if in fact the

department does not inspect such activities. He said the bottom line is if this language is left in there, the state is liable for activities that the Seed Department does not do.

In response to a question from Representative Mueller, Mr. Bertsch said there is no alternative word or phrase that should be considered. He said the Seed Department does not conduct those activities and should not be statutorily required to warrant activities it does not conduct.

In response to a question from Representative Mueller, Mr. Bertsch said he had not asked for a removal of the phrase "or other produce" because some of those activities are applicable to potatoes.

Committee counsel said Section 47 of this bill draft, which reflects the rewrite of Section 4-09-15, specifically states that this chapter does not apply to potatoes. Therefore, she said, it would be inappropriate to continue the reference to "other produce" if in fact that reference is intended to include potatoes. She said activities pertaining to potatoes should be referenced in the chapter pertaining to potatoes.

In response to a question from Representative Mueller, Mr. Bertsch said the section should state that the sole warranty made is that the agricultural seeds were inspected under the rules of the Seed Department or the United States Department of Agriculture.

Chairman Mueller said it is the consensus of the committee that the warranty be limited to agricultural seeds that were inspected under the rules of the Seed Department or the United States Department of Agriculture.

Chairman Mueller said Section 4-09-21 contains both unnecessary and duplicative language. He said the notes on page 28 of the bill draft address the reasons for eliminating the section. He said it is the consensus of the committee that Section 4-09-21 be eliminated.

Mr. Bertsch said a number of the references pertain to activities conducted under Chapter 28-32. He said he has no difficulty with current Section 4-09-21 not being included. However, he said, he wants to ensure that the Seed Department's ability to hold informal hearings is not impacted.

Chairman Mueller asked committee counsel to ensure that the Seed Department has the authority to continue holding informal hearings as they deem appropriate.

Section 58. Penalty - Criminal - Civil - Exemption

Chairman Mueller said this section does not change the penalty currently found in the law. However, he said, it does clarify that the penalty is applicable when there is a willful violation of the chapter or the rules implementing the chapter.

Chairman Mueller said the rewrite, like current law, provides that a person is not subject to the penalties for having offered for sale or sold any seed that was

incorrectly represented as to kind, variety, or origin and which could not be identified through examination, unless the person failed to obtain an invoice or grower's declaration stating the required information or unless the person failed to take other actions to ensure the seed was properly identified. He said this was the first time there was any reference to a grower's declaration.

In response to a question from Representative Mueller, Mr. Bertsch said a grower's declaration is terminology widely understood in the industry.

Section 60. Seed Arbitration Board - Membership

Chairman Mueller said current law references the chairman of the North Dakota Seed Trade Committee of the North Dakota Agricultural Association. He said Seed Department personnel have indicated that the appropriate reference should be to the chairman of the Seed Trade Division of the North Dakota Agricultural Association. He said this change has been reflected in the rewrite.

Chairman Mueller said current law references a representative of a major North Dakota farm organization. He said the word major is arbitrary and vague and has been omitted from the rewrite. He said if certain parameters are desired to limit the pool of available applicants, those can be appropriately crafted.

Chairman Mueller said current law references a representative of a major North Dakota farm organization appointed by the Agriculture Commissioner or an authorized designee. He said it is not clear whether this is intended to mean that the Agriculture Commissioner or a designee of the Agriculture Commissioner could appoint the individual or whether the individual could be appointed by either the Agriculture Commissioner or a designee of the farm organization.

Committee counsel said it would be clearer to require that the individual be appointed by the Agriculture Commissioner and to eliminate any reference to any authorized designee. She said with respect to the requirement that there be a representative of a major farm organization, perhaps it is the intent that the Agriculture Commissioner appoint a producer, i.e., someone actually involved in production agriculture.

Chairman Mueller said it is the intent of the committee that the reference to an authorized designee on page 30, line 18, be deleted. He said doing so would add clarity to the section.

Mr. Bertsch said the first point of discussion should be focused on the final source note. He said that note asks whether this section should in fact be moved to the portion of the North Dakota Century Code pertaining to the Agriculture Commissioner as opposed to the portion pertaining to the Seed Department. He said the only involvement that the Seed Commissioner has with this particular concept, i.e., the Seed Arbitration Board, is that the Seed

Commissioner is a member of the board. He said it is run out of the Department of Agriculture as part of the mediation service. He said the Seed Arbitration Board is no longer a mandatory tool in addressing conflicts pertaining to seed. He said it is very seldom used.

Chairman Mueller said with respect to what constitutes a major farm organization, he believes most farm organizations would think of themselves as major. He said we should determine whether it is our intent that this be limited to groups such as the Farm Bureau or the Farmers Union or whether it should be more encompassing of different commodity groups.

Mr. Bertsch said he believes that when this was initially enacted, there was an attempt to make a distinction between the more general farm organizations and the commodity groups.

In response to a question from Representative Mueller, committee counsel said it is preferable not to mention specific entities by name in the statutes. She said one option might be to reference farm groups with a particular size of membership.

In response to a question from Representative Mueller, Representative Kingsbury said she believes the Agriculture Commissioner has a good reputation for appointing appropriate people to various boards and commissions. She said she would be satisfied with merely referencing a farm organization and not designating whether it is major or not.

Representative Holman said he believes it is the intent to ensure that a farmer is on that board. He said the other members have very specific job titles. He said subsection 6 is really referring to a producer.

Committee counsel said consideration also should be given to determining when an individual is a "representative" of a farm organization, major or not. She said the committee should clarify whether that implies being a member in good standing, being on the staff of the organization, or being on its governing board. She said the committee should decide whether the point is to have someone with a philosophy linked to a particular organization or whether the intent is to have a producer on the board.

Mr. Bertsch said it is his thought that the intent is to require the Agriculture Commissioner to appoint a producer to the Seed Arbitration Board.

Representative Brandenburg said it is critical to ensure that the individual be an active farmer, i.e., an individual currently engaged in production agriculture, as opposed to an absentee landowner.

Chairman Mueller said it is the consensus of the committee that the wording of subsection 6 reflect the Agriculture Commissioner's authority to appoint a farmer or a producer to the Seed Arbitration Board.

Section 66. Limitation on Authority - Seed

Chairman Mueller said the next three sections state that neither a county, township, nor a city may impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. He said each political subdivision has its own section

and that the directives can be placed in those chapters pertaining to the respective political subdivisions.

BILL DRAFT - COMMODITY GRADES AND INSPECTIONS

Chairman Mueller said the committee will consider a bill draft [10095.0200] that pertains to commodity grades and inspections. He said while this bill draft proposes amendments to clarify existing law, it in essence has only one function. He said that is to authorize the Seed Department to conduct commodity inspections.

Mr. Bertsch said the only thing needed from this bill draft is the authority for the Seed Department to provide commodity grade inspections when requested. He said the Seed Department does not establish commodity grades. He said commodity grades and standards are federal matters. He said most inspection services are done outside the scope of the Seed Department and within the authority of the Federal Grain Inspection Service. He said on occasion someone may need to have a state-issued grade certificate. He said this is occasionally needed when commodities are being prepared for shipment to Canada.

In response to a question from Representative Mueller, Mr. Bertsch said he is unaware of any situation that would require the Seed Department to both establish commodity grades and actually provide the inspection services. He said grade standards and inspection services are provided for by federal law.

Mr. Bertsch said when Section 2, which is the amendment of current Section 4-09.1-02, was redrafted, it was structured so as to list duties of the Seed Commissioner. He said if the committee approves the removal of all sections of this bill draft, except for the authority to provide commodity inspection services, that authority should be prefaced with the word "may" and not "shall."

Chairman Mueller said it is the consensus of the committee that all provisions of the bill draft be removed, except the one authorizing the Seed Commissioner to provide commodity inspection services.

BILL DRAFT - SEED SALES

Chairman Mueller said the committee will consider a bill draft [10096.0100] pertaining to seed sales. He said Section 2 provides that a person may not accept full or partial payment in connection with the sale of agricultural seeds to be delivered to the buyer at a later date, unless the transaction is evidenced by a written contract that includes a variety of information set forth in the section.

Mr. Bertsch said the Seed Department has always looked at this section and wondered about its purpose. He said there is no way for the Seed Department to determine whether or not there is a legitimate written contract between two independent

parties. He said he suspects many years ago an individual had an issue pertaining to a contract for the sale of agricultural seed and asked his legislator to address the problem.

Committee counsel said the current law has another problem. She said the penalty clause applies to the contractual requirements set forth in Section 4-25-02. She said the remainder of the bill draft pertains to a nonresident seed dealer's license. She said it prohibits a person who is not a resident of this state from offering for sale or selling agricultural seed in this state unless the person has obtained a nonresident seed dealer's license. However, she said, the penalty does not apply to this requirement.

In response to a question from Representative Mueller, Mr. Bertsch said if there was a dispute with respect to a contract for the sale of agricultural seed, it would be settled in the court system. He said it would not be within the purview of the Seed Department to determine the legitimacy of a private contract. He said his bigger concern is encountering a situation where parties do everything they are supposed to except that they do not have a contract that meets the provisions of this section. He said Seed Department personnel consider this provision to be nonoperational.

In response to a question from Representative Uglem, Chairman Mueller said on its face it might appear to be a substantive move if the committee were to remove Section 4-25-02. On the other hand, he said, the purpose of the interim step is to clarify and eliminate duplication.

In response to a question from Representative Mueller, committee counsel said that the directive given to the committee is to look at laws that are inconsistent and unclear and those that are not reflective of current practices. She said even though an argument might be made that this is a substantive change, it clearly falls under the study directives.

Mr. Bertsch said even though the study directive refers to sections that are illogically arranged, he hopes it allows the committee to address those sections that are merely illogical.

In response to a question from Representative Mueller, committee counsel said while some aspects of contract law are covered in statute, other aspects are governed by several centuries of court rulings.

Representative Brandenburg said in today's world, if there is a problem with a contract for the sale of agricultural seed, people are going to see their lawyers not the Seed Department.

Chairman Mueller said consideration should be given to amending this bill draft so that it retains Section 4 pertaining to the nonresident seed dealer's license and makes failure to obtain the license a Class B misdemeanor.

Mr. Bertsch suggested that in the final draft this section be incorporated with other like sections pertaining to seed labeling permits.

In response to a question from Representative Mueller, Mr. Bertsch said the Seed Department is

supportive of the language as proposed, including the expiration of the licenses on December 31.

Chairman Mueller said it is the consensus of the committee that Section 4-25-04 and the penalty provided in Section 4-25-03 be retained and that the other sections of the bill draft be removed.

BILL DRAFT - WHOLESALE POTATO DEALERS

Chairman Mueller directed the committee consider a bill draft [\[10109.0100\]](#) pertaining to wholesale potato dealers.

Section 1. Definitions

Chairman Mueller said this section defines insolvency as an unability or unwillingness to provide payment for potatoes purchased by the dealer. He said insolvency is an inability to provide payment. He said it generally involves a declaration of insolvency and placement under an order of liquidation by a court. He said an unwillingness to provide payment is generally a breach of contract.

Chairman Mueller said it is the consensus of the committee that the definition of insolvency be clarified to provide that it is an inability to provide payment for potatoes purchased by the dealer.

Section 3. Amendment of Section 4-11-03

Chairman Mueller said it is proposed that subsection 12 of the current law be rewritten to provide that the application include the name of every state that has refused to issue the applicant a wholesale potato dealer's license, suspended or revoked a wholesale potato dealer's license that had been issued to the applicant, refused to issue a wholesale potato dealer's license to an agent of the applicant, or suspended or revoked a wholesale potato dealer's license that had been issued to an agent of the applicant.

Committee counsel said she is concerned that an individual applying for a wholesale potato dealer's license is required under penalty of law to state whether an individual agent has ever been refused a wholesale potato dealer's license or whether the agent has had a license suspended or revoked. She said she wonders if an individual applying for a wholesale potato dealer's license would have knowledge about refusals, suspensions, or revocations.

Mr. Bertsch said the expectation is that the applicant fills in the information on the application. He said the information is required. He said whether it is relevant or accurate is unknown. He said this is just a requirement that has been in the code for a significant period of time.

In response to a question from Representative Mueller, Mr. Bertsch said the rewrite is clear and does what the Seed Department believes it should do.

Chairman Mueller said it is the consensus of the committee that the recommended language of subsection 12 be included in the next draft.

Section 4. Amendment of Section 4-11-04

Committee counsel said this section provides that as a condition of licensure, the Seed Commissioner may require an applicant to file a current financial statement, a cash bond or a surety bond, or an irrevocable letter of credit. She said she wonders if the appropriate directive would be that the Seed Commissioner "shall" require a current financial statement, a cash bond or a surety bond, or an irrevocable letter of credit.

Mr. Bertsch said "shall" would be appropriate in this case. He said the requirements for a financial statement, a cash bond or a surety bond, or an irrevocable letter of credit are integral to the application process. He said these are requirements that have to be in place. He said the Seed Department always requires a current financial statement, as well as some surety bond or irrevocable letter of credit.

Chairman Mueller said it is the consensus of the committee that page 3, line 8, state that the Seed Commissioner shall require a current financial statement, a cash bond or a surety bond, or an irrevocable letter of credit.

Section 6. Amendment of Section 4-11-06

Chairman Mueller said this section provides that the Seed Commissioner shall establish a fee for a wholesale potato dealer's license.

In response to a question from Representative Mueller, Mr. Bertsch said the amount of the license fee needs to be approved by the Seed Commission. He said as a practical matter, all fee-setting is approved by the Seed Commission.

Section 8. Amendment of Section 4-11-08

Committee counsel said subsection 2 provides that the Seed Commissioner may suspend or revoke a wholesale potato dealer's license if the dealer had a similar license suspended or revoked by another state or if the dealer employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked by another state. However, she said, the section also provides that the Seed Commissioner suspend or revoke a license if the dealer was the "subject" of license suspension or revocation by another state. She said the concern stems from the fact that the dealer might have been exonerated or might have been found in complete compliance with the laws of another state. She said simply being the "subject" of a hearing should not in and of itself give rise to a suspension or revocation by the state of North Dakota.

In response to a question from Representative Mueller, committee counsel said the question before this committee is whether it is appropriate to retain page 5, lines 9 and 10. She said if there is an official revocation or suspension by another state, those instances are already covered by page 5, lines 11 through 14.

Chairman Mueller said he wondered if this language would allow the Seed Commissioner to keep tabs on certain individuals through administrative actions in other states. He said if a potato dealer is the subject of an ongoing hearing in Idaho, perhaps that alerts us in North Dakota that we should be more watchful of this individual's activities in this state.

Senator Olafson said the current law appears to violate the basic principle of innocent until proven guilty.

In response to a question from Senator Bowman, committee counsel said as the law is currently written a suspension or revocation in another state gives the Seed Commissioner grounds to suspend or revoke a license in this state. She said the concern here is not based on another state's action to suspend or revoke, the concern is based on another state merely holding a hearing. She said the determination of that hearing could be that the individual is operating appropriately, and no action should be taken on the individual's license.

Mr. Bertsch said the wholesale potato dealer's license is based for the most part in North Dakota and Minnesota. He said the Seed Department is for the most part aware of all individual players. He said the reality is if an individual was under the threat of suspension in another state, the North Dakota Seed Department would not even know about it. He said his interpretation of this section has been an amalgamation of subdivisions a and b. He said his interpretation is that if there was a hearing and the dealer's license was suspended or revoked by another state, he, as the Seed Commissioner, is authorized to suspend or revoke the license in North Dakota. He said given that interpretation, there is no need to have lines 9 and 10 on page 5.

Chairman Mueller said at the very least it is not clear what is meant by the dealer being the "subject" of license suspension or revocation. He said subdivision b is clear in that it references a dealer who has had the dealer's license suspended or revoked.

Chairman Mueller said it is the consensus of the committee that page 5, lines 9 and 10, be removed.

Committee counsel said another concern with this section is the statutory reference to employees as opposed to agents of wholesale potato dealers.

Mr. Bertsch said in the wholesale potato business, the purchases are conducted by the principal of the business and possibly one or two agents of the principal. He said the purpose of the chapter is to protect potato sellers in their dealings with wholesale potato dealers. He said there may be other employees who grade and package the potatoes and even transport the potatoes to a retailer. He said the agents are the ones that are involved in the purchase of the potatoes from the growers. He said those are the individuals with whom the department is most concerned.

Committee counsel said there are several places throughout this bill draft where it is not clear whether the reference should be to an agent or to an

employee. She said perhaps in the interest of time she could review the pertinent sections with Mr. Bertsch and propose changes for the committee's consideration at the next meeting.

Section 19. Amendment of Section 4-11-19

Chairman Mueller said this section authorizes the Seed Commissioner to adopt rules to implement the chapter; to govern the rates charged by wholesale potato dealers; and to regulate the buying, selling, advertising, and trading practices of wholesale potato dealers. He said the Seed Commissioner already has the authority to adopt rules implementing the chapter. He said that concept does not need to be reiterated. He said the directive to adopt rules governing the rates charged by wholesale potato dealers and to regulate the buying, selling, advertising, and trading practices of wholesale potato dealers should be the subject of discussion. He said depending on what precisely was intended, that directive may amount to an unlawful delegation of legislative authority.

Mr. Bertsch said he does not know what was initially intended by the directive for the Seed Commissioner to adopt rules governing rates charged by wholesale potato dealers. Likewise, he said, he does not know what was intended by the directive to regulate the buying, selling, advertising, and trading practices of wholesale potato dealers.

Chairman Mueller said the directives within this section do not appear to be appropriate for the Seed Commissioner.

In response to a question from Representative Mueller, committee counsel said this language has been in the code since 1931.

Chairman Mueller said it appears that this section should be removed in its entirety. He said even the authorization to adopt rules is not necessary because that is covered under Chapter 28-32.

Chairman Mueller said it is the consensus of the committee that Section 19, which amends Section 4-11-19, be removed.

In response to a question from Representative Kingsbury, Mr. Bertsch said Section 4-11-18 of current law provides that when a shipper, after demand, receives no remittance or report of sale of potatoes, or is dissatisfied with the remittance, sale, or report, the shipper may file a complaint with the Seed Commissioner. He said this allows the Seed Commissioner to create a forum within which disgruntled parties may lay out their complaints. He said the Seed Commissioner can hold a hearing and examine the contracts that were in place. He said in an ideal world, the contracts should cover what each party intended and expected. However, he said, it is often a moot issue because the agreements tend to be oral.

Chairman Mueller said at this point there would be no reason to look at amending Section 4-11-18.

In response to a question from Senator Olafson, Mr. Bertsch said if the Seed Commissioner is unable to make a determination that one party is clearly

correct and the other party is clearly incorrect, the matter generally goes to civil court.

In response to a question from Representative Mueller, Mr. Bertsch said there are still a few issues with this chapter, and he would appreciate having the opportunity to work with committee counsel and address those issues prior to the next meeting of the Agriculture Committee.

In response to a question from Senator Flakoll, committee counsel said every effort will be made to consolidate the changes within one bill draft.

BILL DRAFT - VERIFYING GENETIC IDENTITY

Chairman Mueller asked the committee to consider a bill draft [\[10193.0100\]](#) that relates to the inspection and analysis of seeds and crops for the purpose of verifying genetic identity.

Section 2. Amendment of Section 4-42-02

Chairman Mueller said this section directs the Seed Commissioner to establish procedures for inspecting, analyzing, and verifying the genetic identity or the physical traits of seeds or crops. He said it is recommended that this section be repealed. He said the same directive is included in the amendment of Section 4-42-03.

In response to a question from Representative Mueller, committee counsel said Section 4-42-02 is paralleled in Section 4-42-03. She said it is recommended that the concept not be duplicated. She said Section 4-42-02 also provides that procedures may address the compilation of all necessary documentation and other administrative functions. She said in order to inspect, analyze, and verify the genetic identity or physical traits of seeds or crops, the Seed Commissioner will have to utilize certain protocols and procedures. She said it is not necessary to statutorily list suggestions for such. She said if the Seed Commissioner wishes to create a more formal system, the Seed Commissioner is able to adopt rules to implement the chapter.

Chairman Mueller said current law provides that the Seed Commissioner may procure samples of seed or crop grown in this state, sold in this state, or otherwise situated in this state. He said it is not clear if the intent of this section is to authorize the Seed Commissioner to enter upon private property for the purposes of obtaining a sample.

In response to a question from Representative Mueller, committee counsel said the current law provides that the Seed Commissioner may procure the samples. She said it does not clarify how that procurement is to take place. She said it is not clear whether it is to be interpreted as authorization to enter upon private property for the purposes of obtaining or procuring a sample.

Mr. Bertsch said when the chapter was first created, it was not the intent to authorize the Seed Commissioner to enter private lands. He said the

intent was to authorize the commissioner to receive, obtain, and procure samples that would allow the Seed Department to verify genetic traits. He said it was intended that the Seed Department be authorized to work on crops as well as seeds. He said it is his interpretation that the word obtain or procure should pertain to someone giving samples to the Seed Commissioner rather than the Seed Commissioner actually going out and getting the samples.

Chairman Mueller said what we should be talking about here is the voluntary submission of plant materials to the Seed Commissioner.

Mr. Bertsch said this chapter was never intended to be one of enforcement or confrontation. He said it was intended to allow the Seed Commissioner to help producers through various identity programs.

Chairman Mueller said given how Mr. Bertsch just described the intent of the chapter, it would appear that page 2, lines 10 and 11, should be removed, and page 2, lines 12 and 13, should be retained as the authority for the Seed Commissioner to accept samples from any public or nonpublic entity that owns the seed or the crop.

Mr. Bertsch said it appears that this chapter could be amalgamated with others that exist. He said it appears that the Seed Commissioner could be authorized to do this type of activity within the general powers and duties of the commissioner.

Chairman Mueller said it may be appropriate to have committee counsel work with Mr. Bertsch to determine if this needs to be a separate chapter or if it can be consolidated with other existing sections.

Section 7. Amendment of Section 4-42-07

Chairman Mueller said this section provides that the Seed Commissioner may establish a procedure for the identity preservation and traceability of seeds or crops inspected or analyzed under this chapter. He said it is not clear whether the intent is to authorize the Seed Commissioner to establish a procedure for identity preservation and traceability or to require that the Seed Commissioner utilize such a procedure in certain instances.

Mr. Bertsch said the intent of this chapter was to allow such procedures to be put into place to provide services to the public.

Mr. Bertsch said the important part is authorizing the Seed Commissioner to provide not necessarily procedures, but programs for identity preservation and traceability. He said these programs start with a checklist of requirements that are generally based on a contract the producer has with a willing buyer. He said the Seed Department acts as a third person certifying agency that puts a program together for a customer who, for instance, indicates that he may need a field inspection or a laboratory test of the final product. He said the producer may need an onsite inspection of the product being loaded from the producer's bin into a container. Again, he said, all that is really necessary is the authority to provide such services.

Chairman Mueller said Mr. Bertsch should work with committee counsel to ensure that the purpose of the chapter is accurately reflected in the bill draft.

**RESOLUTION DRAFT -
LEGISLATIVE MANAGEMENT STUDY**

Chairman Mueller asked the committee to consider a resolution draft [[13018.0100](#)] pertaining to the continuation of the agriculture law rewrite. He said this is a very labor-intensive effort, but it needs to be done. He said he would hope that people would be supportive of continuing this effort.

Chairman Mueller said that the resolution draft could be considered at the next meeting, together with the final version of the remaining bill drafts.

No further business appearing, Chairman Mueller adjourned the meeting at 3:45 p.m.

L. Anita Thomas
Committee Counsel

ATTACH:1