

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

AGRICULTURE COMMITTEE

Thursday, December 3, 2009
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, Curt Hofstad, Dennis Johnson, Keith Kempenich, Shirley Meyer, Gerry Uglem, Benjamin A. Vig, John D. Wall; Senators Arthur H. Behm, Bill Bowman, Tim Flakoll, Terry L. Jacobs, Curtis Olafson, Terry M. Wanzek, John Warner

Members absent: Representatives Mike Brandenburg, Mary Ekstrom, Rod Froelich, Richard Holman, Joyce M. Kingsbury

Others present: See attached [appendix](#)

At the request of Chairman Mueller, committee counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

Chairman Mueller welcomed the committee, introduced Terry L. Jacobs--the newly appointed senator from District 31, and said the committee will proceed to examine each section of the current North Dakota Century Code seed law and provide direction as to suggested changes. He said the changes are reflected through amendments and annotations found in the bill draft governing seed laws [\[10015.0100\]](#). He said the bill draft was prepared by Legislative Council staff and provided to committee members for their review prior to today's meeting.

Chairman Mueller said the committee will be assisted in its efforts by Mr. Ken Bertsch, Seed Commissioner; Mr. Steve Sebesta, Deputy Seed Commissioner; and Mr. Joe Magnusson, Regulatory Program Manager, State Seed Department.

SECTION 1. SECTION 4-09-01 (AMENDMENT)

Chairman Mueller said because the word "advertisement" is used only one time in only one section of Chapter 4-09, it should be removed from the definition section and if necessary be included in the section in which it is used.

Chairman Mueller said it is not necessary to include a definition of the word "agent." He said Title 3 deals with agents and agency.

Chairman Mueller said "agricultural seed" is defined as "the seed of grass, forage, cereal, fiber, oil crops, Irish potato seed tubers, and any other kind of seeds commonly recognized within this state as agricultural seed, lawn seed, and mixture of these

seeds." He said the Federal Seed Act (FSA) defines agricultural seeds as "grass, forage, and field crop seeds which the Secretary of Agriculture finds are used for seeding purposes in the United States and which he lists in the rules and regulations prescribed under section 1592 of this title."

Chairman Mueller said the California Seed Act states that agricultural seed is "the seed of any domesticated grass or cereal, and of any legume or other plant that is grown as turf, cover crop, forage crop, fiber crop, or field crop, and mixtures of such seeds." He said the Act goes on to provide that the definition does not include any variety that is generally known and sold as flower seed or vegetable seed.

In response to a question from Representative Kempenich, Mr. Bertsch said the State Seed Department certifies and regulates seed potatoes.

In response to a question from Senator Olafson, Senator Warner said the reference to Irish potatoes is necessary in order to distinguish them from sweet potatoes.

In response to a question from Representative Hofstad, Mr. Bertsch said the State Seed Department regulates all seed. He said that includes organic seed. He said "organic" refers to a process of production.

Chairman Mueller said it is the consensus of the committee that the committee counsel work with the seed commissioner to arrive at a definition of agricultural seed which includes language from both the FSA and the California Seed Act.

Chairman Mueller said a blend is seed that consists of more than one variety of a kind, provided each variety constitutes more than 5 percent of the whole, by weight.

In response to a question from Representative Mueller, Mr. Sebesta said it is proper to include a reference to weight in the definition.

In response to a question from Senator Warner, Mr. Bertsch said the reference to 5 percent refers to the level at which a component must be labeled. He said any amount over 5 percent must be reflected on the label.

Chairman Mueller said "brand" means a word, name, symbol, number, or design used to identify the seed of one person and distinguish it from the seed of another person. He said this definition is not in the Minnesota Statutes.

Mr. Magnusson said North Dakota has variety labeling laws. He said the current definition of brand is both necessary and appropriate.

Chairman Mueller said "certified" means the agricultural seed was randomly inspected and found to meet the rules of the department at the time of inspection. He said this definition does not provide much of a context for understanding what is meant by certified seed. He said the California Seed Act references certification with respect to the variety, purity, quality, type, strain, or other genetic character of agricultural or vegetable seed.

Chairman Mueller said one also could look at defining "certified seed" rather than merely defining "certified" and then clarify what is meant by the different categories of certified seed. He said "certified seed" could be defined as a known variety produced under strict seed certification standards to maintain varietal purity. He said the definition could include a reference to certified seed having to meet specified standards for other crops, inert matter, weed seeds, and germination. He said the definition could state that certified seed is free of prohibited noxious weed seeds. He said there are four classes or generations of certified seed--breeder, foundation, registered, and certified.

Mr. Bertsch said he prefers to retain the current definition of certified seed, which is seed that was randomly inspected and found to meet the rules of the State Seed Department at the time of inspection.

Committee counsel said the definition may be understood within the industry but does not lend sufficient clarity from a statutory perspective. She said this is a particular concern because the phrase "certified seed" references both seed that has met a particular standard and one of four seed classes--breeder, foundation, registered, and certified.

Chairman Mueller said it is the consensus of the committee that committee counsel work with the seed commissioner to define certified seed.

Chairman Mueller said the bill draft defines "commissioner" as the state seed commissioner. He said it might be clearer to remove this term from the definitions and simply refer to the "seed commissioner" as needed.

In response to a question from Representative Mueller, Mr. Bertsch said he is known as the seed commissioner and each member of the State Seed Commission is also called a "commissioner." He said he would like to retain reference to the State Seed Commission.

Chairman Mueller said it is the consensus of the committee that the bill draft reference the State Seed Commission and that committee counsel work with the seed commissioner to determine if it would be appropriate to change the title of the seed commissioner for purposes of avoiding confusion.

Chairman Mueller said the bill draft defines "conditioning" as "drying, cleaning, scarifying, and other operations that may change the purity or germination of the seed." He said the FSA defines

"processing" as "cleaning, scarifying, or blending to obtain uniform quality, and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or variety without cleaning, or the preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed."

In response to a question from Representative Mueller, Mr. Sebesta said the term "conditioning" is more widely used in the industry. He said it would be appropriate to broaden the state definition so that more of the federal language is included.

Chairman Mueller said the bill draft defines "germination" as the "percentage of seed capable of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed under rules established by the association of official seed analysts." He said if germination is the percentage of seed capable of producing "normal" seedlings under favorable conditions, it is not necessary to maintain the current language that provides the percentage does not include "abnormal" seedlings.

Committee counsel said despite the language of this subsection closely paralleling the FSA, it is in fact not a definition of "germination" per se but rather a definition of the "percentage of germination." She said a definition of "germination" might be "the emergence and development from the seed embryo of essential structures that are indicative of the ability to produce a normal plant under favorable conditions."

Mr. Sebesta said germination is a physiological event that takes place within a seed. He said the definition proposed by committee counsel is appropriate.

Chairman Mueller said the current law defines "inert matter" as "all matter not seed and includes the broken seed, a sterile floret, chaff, a fungus body, and a stone." He said the bill draft proposes to define "inert matter" as "anything other than unbroken seeds." He said some states provide that in order to be considered "broken," a seed must be less than one-half of its original size.

Mr. Sebesta said in the industry it is understood that a seed means anything greater than one-half the seed. He said the references to broken seeds, sterile florets, chaff, fungus bodies, and stones are accurate.

Committee counsel said if the definition provides that inert matter means "all matter not seed," it is not necessary to include a statutory list of examples.

Mr. Bertsch said the definition could provide that inert matter means "all matter not seed."

Chairman Mueller said it is the consensus of the committee that the bill draft reflect the concept that inert matter is "all matter not seed."

Chairman Mueller said current law provides that the "labeler" is "the person who furnishes the information required" by the chapter. He said

California defines labeler as "any person whose name and address appears on the label pertaining to or attached to a lot or container of agricultural or vegetable seed, or both agricultural and vegetable seed, for sale and distribution within the state."

Mr. Bertsch said the labeler is the person who markets the product.

In response to a question from Representative Mueller, Mr. Bertsch said the use of the word "furnish" is somewhat unclear. He said the intent of this section is to ensure that the label identifies whose product is being sold.

Chairman Mueller said it is the consensus of the committee that the bill draft clarify the definition.

Chairman Mueller said the bill draft defines "mixture" as "seed consisting of more than one kind, each in excess of five percent by weight of the whole."

In response to a question from Representative Mueller, Mr. Sebesta said it is necessary to reference weight as a standard of measurement, even though the Code of Federal Regulations does not do so.

Chairman Mueller said rather than including a definition of a prohibited noxious weed seed and a definition of a restricted noxious weed seed, the bill draft establishes two categories--prohibited weed seeds and restricted weed seeds. He said a prohibited weed seed is one that is designated as noxious by the Agriculture Commissioner in accordance with Section 4.1-47-05 or one determined by the seed commissioner to be highly destructive and difficult to control by good cultural practices or by the use of herbicides.

Committee counsel said it is important to ensure that confusion is not created with respect to which weeds are on a state noxious weed list. She said the bill draft maintains the state noxious weed list and the concept that all weeds on that list are prohibited in seed. She said the bill draft then allows the seed commissioner to prohibit other weeds, if the commissioner determines that such weeds are highly destructive and difficult to control by good cultural practices or by the use of herbicides.

Committee counsel said the bill draft also proposes to define restricted weed seeds as those determined by the seed commissioner to be objectionable in agricultural crops, lawns, and gardens and by good cultural practices or the use of herbicides. She said the definition of an undesirable grass seed should be removed because it is another category of a restricted weed seed and therefore duplicative.

Mr. Bertsch said he would prefer to maintain a list of the various noxious and restricted weed seeds in the statute.

In response to a question from Representative Mueller, committee counsel said the state noxious weed list is not included in statute. She said the Seed Commissioner is not precluded from including the most up-to-date list of prohibited and restricted weeds on the State Seed Department website and in departmental publications.

In response to a question from committee counsel, Mr. Bertsch said he would prefer to reference both lawns and turf in the definition of restricted weed seeds.

Chairman Mueller said the current law references both an "official seed-certifying agency" and an "officially recognized seed-certifying agency."

Mr. Bertsch said it would be his preference to reference an "official seed-certifying agency."

Chairman Mueller said current law provides that "record" means "all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed." He said unless it is known for a fact that there is nothing else to be included in the definition of a "record," the statute should be changed to provide that a record "includes" the listed material.

Chairman Mueller said current law provides that "treated" means "a seed has received an application of a substance, or a claim has been made that the seed has been subjected to a process." He said the FSA provides that "treated" means the seed has been "given an application of a substance or subjected to a process designed to reduce, control, or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom."

Mr. Sebesta said the broader language of the North Dakota law is preferable because it does not limit the definition of a substance to one for a specific purpose.

Senator Wanzek said the current law provides that treated seed has received an application of a substance. He said we need to know what that substance includes.

Chairman Mueller said it is the consensus of the committee that committee counsel work with the seed commissioner and develop a definition of "treated" for committee consideration.

Chairman Mueller said current law defines "tree and shrub seed" as including "seed of woody plants commonly known and sold as tree and shrub seed." He said because this definition is not particularly helpful, it should be eliminated.

Chairman Mueller said current law defines "type" as "a group of variety so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions." He said this definition parallels that used in the FSA.

In response to a question from Representative Mueller, Mr. Sebesta said the phrase "special conditions" generally refers to laboratory testing. He said the statute is referring to varietal differences that are not readily obvious.

Chairman Mueller said current law defines a "variety" as "a subdivision of a kind that is distinct, uniform, and stable." He said the subsection then goes on to define those terms. He said the bill draft proposes to define "variety" as a subdivision of a kind that:

- a. Can be differentiated by one or more identifiable morphological, physiological, or

other characteristics from all varieties of public knowledge;

- b. Has describable variations in essential and distinct characteristics; and
- c. Will remain unchanged in its essential and distinct characteristics and uniformity when reproduced or reconstituted, as required by the different categories of varieties.

Chairman Mueller said the Minnesota Statutes provide that "variety" means a "subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics by which it can be differentiated from other plants of the same kind."

Mr. Sebesta said he would support the former option using subdivisions a, b, and c.

Chairman Mueller said current law defines "vegetable seed" as "a seed of a crop that is grown in a garden or on a truck farm, and which is generally known and sold under the name of vegetable seed." He said because this definition is not particularly helpful, it is suggested that it be eliminated.

Chairman Mueller said current law defines "weed seed" as "the seed of a plant generally recognized as a weed within this state, including noxious weed seed." He said because the definition does not lend any clarity to a commonly used term, it should be eliminated.

SECTION 2. SECTION 4-09-02 (AMENDMENT)

Chairman Mueller said this section establishes the State Seed Department, requires that it be located at North Dakota State University, and sets forth a number of powers and duties for both the seed commissioner and the State Seed Commission.

In response to a question from Representative Mueller, Mr. Bertsch said the intent of this section was to authorize the establishment of a state seed department.

Mr. Mueller said much of the verbiage in this section needs to be placed in separate sections. He said some of the directives are confusing in terms of priority between the State Seed Commission and the seed commissioner.

Senator Flakoll said the statute should be written to clarify that the seed commissioner functions under the direction of the State Seed Commission.

SECTION 3. SECTION 4-09-02.1 (AMENDMENT)

Chairman Mueller said this section prohibits various political subdivisions from adopting or continuing in effect any ordinance, resolution, initiative, or home rule charter regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. He said this section should be placed in those chapters of the Century Code that pertain to counties, cities, and townships.

Senator Flakoll said this section needs to be moved. He said political subdivisions are not likely to discover it in the seed chapter.

SECTION 4. SECTION 4-09-03 (AMENDMENT)

Chairman Mueller said this section clarifies the membership of the State Seed Commission. He said one of the members is an individual who operates a state-approved seed conditioning plant. He said he wondered if it was necessary to reference a "state-approved" seed conditioning plant.

Mr. Bertsch said the State Seed Department approves facilities to perform certain functions. He said it would be better to reference a seed conditioning plant approved by the State Seed Department.

Chairman Mueller said under current law, the per diem and reimbursement available under this section is denied to any member who receives compensation or salary as a regular state employee or official. He said this is intended to preclude the Agriculture Commissioner or the director of the Agricultural Experiment Station from being paid twice for the same day's work. However, he said, current law would literally preclude an individual who is a farmer and otherwise legitimately appointed to the commission from obtaining a per diem and reimbursement if that person was employed by the state as a janitor, state trooper, secretary, etc. He said the proposed rewording to exempt the Agriculture Commissioner and the director of the Agricultural Experiment Station addresses this concern.

Chairman Mueller said current law provides that a commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from the absent commission member. He said State Seed Department personnel have suggested that the sentence allowing for proxy voting be deleted.

Mr. Bertsch said he cannot recall a time when it was used.

Senator Behm said if a board or commission member is not interested enough to attend a meeting, the person should not be allowed to vote by proxy.

Senator Flakoll said he is not necessarily in favor of removing the provision. He said he is concerned that with a nine-member commission, only five are necessary for a quorum. He said that means decisions could be made by a majority of a quorum, which is in effect three members of the nine-member commission.

Chairman Mueller said it is not clear whether the reference to a proxy is intended to mean that one member in attendance may cast a vote for another member who is not in attendance or whether one member of the commission may in fact name a "designee" to attend in his or her place.

Chairman Mueller said it is the consensus of the committee that Legislative Council staff research the legality of "proxy voting."

**SECTION 5. SECTION 4-09-04
(AMENDMENT)**

Chairman Mueller said the current law provides that the criminal penalty for misusing the State Seed Department seal is a Class A misdemeanor--one year imprisonment and/or a \$2,000 fine. He said under Section 54-02-01, the penalty for misusing the Great Seal of the state of North Dakota is a Class B misdemeanor--30 days imprisonment and/or a \$1,000 fine.

Senator Flakoll said one explanation for the difference is that, generally, there is no financial gain involved in misuse of the Great Seal of North Dakota. He said there could be economic benefit to one who chooses to misuse the Great Seal.

In response to a question from Representative Meyer, Chairman Mueller said the penalties are maximum penalties, and the prohibited activities are not always subject to prosecution.

Committee counsel said there is no statutory or legal problem with maintaining a higher penalty for misuse of the State Seed Department seal. In fact, she said, because there is one penalty imposed for violation of any provision in the State Seed Department chapter, it would be easier to maintain that provision and perhaps those involved in penalties for misusing the Great Seal could determine if the penalty should be increased.

**SECTION 6. SECTION 4-09-05
(AMENDMENT)**

Chairman Mueller said this section should be repealed. He said Section 28-32-02 already authorizes each administrative agency to adopt rules. He said as for the matter of delegation, it is clearly understood that the head of an agency is not expected to personally carry out each statutory directive but rather to ensure that the directives are carried out.

**SECTION 7. SECTION 4-09-05.1
(AMENDMENT)**

Chairman Mueller said this section authorizes the seed commissioner to add to or delete from the list of noxious weed seeds defined in Section 4-09-01. He said in the definition section, it was proposed that prohibited weed seeds include those designated as noxious by the Agriculture Commissioner and any others that the seed commissioner determines to be highly destructive and difficult to control by good cultural practices or the use of herbicides. He said this accomplishes the same end but does not engender the confusion that could be created by two official state noxious weed lists.

**SECTION 8. SECTION 4-09-06
(AMENDMENT)**

Chairman Mueller said the proposed rewording of this section is a simplification of the authority that current law appears to grant. He said it was

suggested by the State Seed Department that a reference to "record inspections" should be included in the proposed rewording of this section.

In response to a question from Senator Flakoll, Mr. Bertsch said there is no requirement that "records" be kept onsite. He said the most important concern for the State Seed Department is that it has access to the records. He said the State Seed Department does not take original records. He said the department always makes copies.

In response to a question from Senator Wanzek, Chairman Mueller said Section 4-09-25 provides that the following are exempt from Section 44-04-18:

1. Records of any plant or seed analysis or testing and variety or disease determination conducted by the State Seed Department on a fee-for-service basis for nonpublic entities or persons; and
2. Information received by the State Seed Commission under Chapters 4-09, 4-10, or 4-42 from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.

Chairman Mueller said current law provides that any person involved in any way in the handling, transportation, storage, planting, buying, or selling of seed shall cooperate with the commissioner and shall render all possible assistance to aid the commissioner in the carrying out and enforcement of this chapter. He said it is recommended that this subsection be removed because it appears to require self-incrimination. He said under Section 12.1-08-01, a person may be guilty of a Class A misdemeanor for intentionally obstructing, impairing, impeding, hindering, preventing, or perverting the administration of law or other governmental function. He said a person does not, however, have to "provide all possible assistance."

**SECTION 9. SECTION 4-09-06.1
(AMENDMENT)**

Chairman Mueller said this section pertains to the issuance of phytosanitary certificates. He said originally State Seed Department personnel indicated that this provision should be placed in Chapter 4-10. However, he said, there is some uncertainty about whether this provision needs to remain in this chapter. He said additional work will be done on this section and presented to the committee at a future meeting.

**SECTION 10. SECTION 4-09-07
(AMENDMENT)**

Chairman Mueller said this section provides that if a report or certificate relating to the findings and determinations made in a laboratory is issued and signed by the commissioner, the document must be accepted as prima facie evidence of the statements contained in the document. He said there is some uncertainty about whether this provision should be limited only to findings made in a laboratory. He said

additional work will be done with the Attorney General to ensure that the intent of this section is appropriately reflected.

Chairman Mueller said subsection 2 merely authorizes the publication of reports, materials, and lists. He said unless this activity is to be a mandate, nothing currently precludes the commissioner from publishing such documents, i.e., the language is not necessary.

SECTION 11. SECTION 4-09-08 (AMENDMENT)

Chairman Mueller said this section requires the seed commissioner to accept samples submitted for testing and determine the types of tests to be conducted on the samples. He said it would be helpful to indicate what is meant by "samples." He said the section also provides that the commissioner shall establish and charge fees for laboratory tests and services.

Mr. Bertsch said it would be appropriate for the statute to ask that people indicate what the purpose is for their test request and allow the State Seed Department to determine which tests need to be conducted.

Chairman Mueller said it is the intent of the committee that this section be clarified.

SECTION 12. SECTION 4-09-09 (AMENDMENT)

Chairman Mueller said this section authorizes the seed commissioner to adopt rules governing the size and nature of the sample of seed or plants submitted to the laboratory as may be necessary to make a reliable or official test, analysis, description, or determination of grade, quality, or condition of disease infection. He said this authorization already exists in Chapter 28-32. He said the question is whether the section is in fact trying to provide that the seed commissioner may not perform tests unless the samples submitted meet certain rules.

Mr. Bertsch said he would prefer that the section authorize the performance of tests, provided the samples that are submitted meet certain specifications.

SECTION 13. SECTION 4-09-10 (AMENDMENT)

Chairman Mueller said this section provides that containers must be labeled if they are sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for planting purposes in this state. He said the FSA requires a label for seeds that are transported or delivered for transportation in interstate commerce.

Chairman Mueller said there also is some confusion about the difference between a product being offered for sale and one that is exposed for sale. He said the State Seed Department needs to determine which activities must be included in the

statute and which are duplicative or otherwise unnecessary.

Chairman Mueller said this section provides that if seed is offered in bulk, the label must be properly delivered. He said the section does not indicate what is meant by "properly delivered."

Mr. Bertsch said he believes the term is defined in the State Seed Department rules.

Chairman Mueller said if seed has been treated, current law allows the use of a separate label. He said current law also provides that in the case of a mercurial or other similarly toxic substance, there must be a statement or symbol indicating poison. He said the FSA requires both the poison symbol and a statement indicating that the seed has been treated with poison.

Mr. Sebesta said this section should match the federal law.

Chairman Mueller said while state law references the date beyond which an inoculant is not to be considered effective, the FSA references the date beyond which an inoculant is "claimed" not to be effective.

Mr. Sebesta said this section should match the federal law.

Chairman Mueller said current law provides that "[f]or each container of agricultural seed, the label must contain The seed container is hermetically sealed." He said this is not a misprint.

Mr. Bertsch said there is no general provision requiring that a seed container be hermetically sealed. However, he said, if the container is hermetically sealed, that fact should be included on the label.

Chairman Mueller said the law also requires that the label contain a disease test result for seedborne diseases.

Mr. Magnusson said this is not done or required and therefore recommends that the reference be eliminated.

SECTION 14. SECTION 4-09-10 (CONTENT CONTINUED AS NEW LANGUAGE)

Chairman Mueller said current law provides that additional label requirements must be placed on seed containers of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat.

In response to a question from committee counsel, Chairman Mueller said even though durum is wheat, the colloquial usage in the industry merits referencing both durum and wheat.

Chairman Mueller said current law provides that seed listed in this subsection may be sold by brand if the true variety name or number is clearly stated on the label in a type size equal to or greater than the brand.

Mr. Bertsch said this concept must be retained because it is the condition under which people are permitted to sell seeds by brand in this state. He said it might be appropriate to consider placing it in a separate section authorizing such sale rather than in a section referencing label content.

SECTION 15. SECTION 4-09-10 (CONTENT CONTINUED AS NEW LANGUAGE)

Chairman Mueller said current law provides that the label on each container of canola seed must contain a statement indicating that the seed has been certified by the seed commissioner as meeting the standards of this chapter or certified by another state or province having canola certification standards that meet or exceed standards adopted by this chapter.

In response to a question from Chairman Mueller, Mr. Bertsch said Mr. Magnusson determines whether other standards equal the standards adopted by North Dakota. He said the section is intended to prohibit the sale of canola seed that has not been certified.

Chairman Mueller said it is the intent of the committee that committee counsel continue to work with the State Seed Department staff, make the changes requested by the committee, and apply the requested changes to sections of the chapter that have not yet been reviewed by the committee, as appropriate.

OTHER MATTERS

Senator Bowman said last winter the State Veterinarian tested some cattle for tuberculosis (TB). He said the federal law was followed and there was some animal loss. He said it would be helpful to have the rancher and the State Veterinarian each present what happened and then let the committee decide if there is anything that could be done legislatively.

Representative Johnson said some wheat farmers are concerned about discounts being imposed as a result of protein issues. He said someone like Mr. Steve Strege could be invited to explain the rationale behind this practice.

Chairman Mueller said this is an issue that is perhaps beyond the purview of this committee's interim assignment. He said another approach might be to involve the Agriculture Commissioner in discussions surrounding discounts.

Senator Wanzek said it is an issue and a very frustrating one from the farmers' perspective. However, he said, this is a market issue which does not lend itself to resolution by means of legislative intervention.

Representative Johnson said protein is an issue in North Dakota. He said it is not an issue in other states. He said he believes this needs to be examined.

Chairman Mueller said he is reluctant to add to the interim committee's workload.

Representative Meyer said the grain dealers need to be able to stand up and explain the discounts to the farmers and the legislators. She said if we do not pursue the issue, changes will not be made.

Representative Vig said he has been told that low protein is not an issue for the millers. He said he would like to know who is behind the discounts and why.

In response to a question from Chairman Mueller, committee counsel said the committee has not yet

committed to expanding its study directives. However, she said, if time is going to be taken to further examine this issue and then determine whether a request for permission to expand the committee's duties should be filed with the chairman of the Legislative Management, that time expenditure will impact time available for other studies that have already been assigned. She said the committee might wish to consider having the Agriculture Commissioner or one of the farm organizations take the lead on this issue and then provide a brief update to the committee at a later time.

Chairman Mueller said it is the wish of the committee that he, in his role as chairman, contact the Agriculture Commissioner to see if the commissioner is interested in pursuing this issue, and if the commissioner is not, additional information will be presented to the committee at its meeting in January 2010.

Senator Olafson said before the committee goes down the road of trying to expand its study directives, the committee needs to determine whether or not the committee can effect any change in the situation.

With the permission of Chairman Mueller, Dr. Susan Keller, State Veterinarian, said that in the fall of 2008 a TB positive animal was found at a packing plant in Minnesota. She said the animal was traced to an operation in southwestern North Dakota. She said the complaint was filed not by the owner of that operation but by one of the four neighbors who was required under federal law to have his herd tested.

Dr. Keller said the herd in question was tested in February 2009. She said the rancher subsequently claimed that a couple of cows had aborted and one cow had died as a result of the TB testing that was done. A local veterinarian has confirmed that the cow had died as a result of intestinal torsion and not TB testing. She said there are risks associated with working cattle and running them through chutes.

Dr. Keller said the rancher is looking for compensation. She said neither the state nor the federal agencies involved in TB testing have such resources available. She said a tort claims or indemnity fund would take an act of the Legislative Assembly. She said if such a fund would be created, it would be necessary to include the criteria under which a rancher would be deemed eligible for compensation, who would decide that eligibility, what would be the period of time during which a loss would be acknowledged, and what level of compensation would be paid.

Senator Olafson said creating an indemnity fund would subject the state to a variety of unforeseen claims.

Senator Bowman said this individual was forced by law to have his herd tested, and he believes he should be compensated for losses incurred as a result.

Chairman Mueller said perhaps at a future meeting the rancher who incurred the loss could be given an opportunity to address the committee.

No further business appearing, Chairman Mueller adjourned the meeting at 4:30 p.m.

L. Anita Thomas
Committee Counsel

ATTACH:1