

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## AGRICULTURE COMMITTEE

Tuesday, December 7, 1999  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative John M. Warner, Chairman, called the meeting to order at 9:10 a.m.

**Members present:** Representatives John M. Warner, Michael D. Brandenburg, Rod Froelich, Lyle Hanson, Gil Herbel, James Kerzman, Phillip Mueller, Jon O. Nelson, Dennis J. Renner, Earl Rennerfeldt, Arlo E. Schmidt; Senators Bill L. Bowman, Meyer Kinnoin, Herb Urlacher

**Members absent:** Representatives James Boehm, Thomas T. Brusegaard, April Fairfield, Keith A. Kempenich, Ed Lloyd, Shirley Meyer, Eugene Nicholas, Robert E. Nowatzki, Ray H. Wikenheiser; Senator Terry M. Wanzek

**Others present:** See attached appendix

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

### AGRICULTURAL MARKETING STUDY

#### Agriculture Commissioner

Mr. Roger Johnson, Agriculture Commissioner, testified on the marketing functions of the Department of Agriculture, on the cooperation among states and provinces as it relates to multistate marketing, and the World Trade Organization meeting in Seattle.

#### Department of Agriculture Marketing Programs

Commissioner Johnson said on the international front, the department has sent representatives to foreign countries to provide information about this state's products. On the domestic front, he said, the department aids companies in this state in participating in trade shows. He said the Pride of Dakota program is the centerpiece of the marketing division's domestic activities. He said a major activity of the Pride of Dakota program is the holiday showcase events. He said the *www.shopnd.com* program is about a year old and is partly funded by the United States Department of Agriculture. He said sales are modest but have been doubling each month for the last three months. He said this increase is due to the increased marketing of the site. He said marketing of the site is done by focusing on advertisements in in-state publications that are sent to out-of-state addresses.

In response to a question from Representative Kerzman, Commissioner Johnson said the department generally has a close relationship with smaller commodity groups. He said the relationship with larger groups is not as close. He said the department works to promote products, whereas commodity groups focus on commodities.

In response to a question from Representative Kerzman, Ms. Shannen Bornsen, Department of Agriculture, said commodity groups engage in generic promotion of a commodity and cannot focus on one company. She said the department can focus on one company.

#### Multistate Marketing Groups

Commissioner Johnson said the Mid-America International Agri-Trade Council is a 12-state group, including North Dakota, which engages in joint marketing activities. He provided a handout on the Mid-America International Agri-Trade Council. A copy of this handout is on file in the Legislative Council office. He said Governor Schafer has investigated the potential for joint marketing activities between the Canadian Wheat Board and our state farmers. He said the Industrial Commission has contracted for an analysis of the potential of a state wheat pool. He provided information on the Northern Plains Producer Conference in which his counterparts from Minnesota, South Dakota, Saskatchewan, and Manitoba discussed trade issues and trade opportunities. He provided handouts entitled *Economic Analysis of the Proposed North Dakota Wheat Pool - Summary and Grains of Truth About U.S.-Canada Wheat Trade* and a draft of the issues discussed at the Northern Plains Producer Conference. A copy of these handouts is on file in the Legislative Council office.

#### World Trade Organization Meeting and International Trade

Commissioner Johnson said he attended the World Trade Organization meeting in Seattle. Although no agenda was agreed upon at the meeting, he said, agriculture will be a key component when an agenda is adopted.

In response to a question from Representative Schmidt, Commissioner Johnson said genetically modified products are a major issue for a few

countries, especially in the European Union. He said genetically modified products are a nonissue for Third World countries. He said the three major agricultural issues that will most likely be on the World Trade Organization agenda are genetically modified food, export subsidies and programs, and market access.

In response to a question from Representative Mueller, Commissioner Johnson said the one issue at the World Trade Organization meeting was to identify an agenda. He said it is better that they did not agree on an agenda without the right issues on it than rush into an agreement on an agenda. He said the meeting will most likely be repeated next year so as to develop an agenda. He said the divisive issues were numerous. He said a main issue of the Europeans was multifunctionality. He said multifunctionality states that low-cost production is not the only issue in trade, and issues concerning the environment, the beauty of the countryside, and income to producers should be considered as well as price. He said there are other countries that see price as the only issue. He said this line of thinking can be attributed to the Cairns Group. He said the Cairns Group is made up of 15 agricultural exporting countries including Argentina, Australia, Brazil, Canada, Chile, Columbia, Fiji, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, and Uruguay. He said the World Trade Organization has not considered noneconomic issues in the past.

In response to a question from Representative Rennerfeldt, Commissioner Johnson said most of the protesters in Seattle were peaceful and well organized. He said most problems were caused by a few anarchists. He said the issues raised by the protesters need to be considered in the context of trade and that price is not the only issue.

In response to a question from Representative Nelson, Commissioner Johnson said although Europe disagrees, one major area of agreement within the World Trade Organization is that export subsidies should be eliminated for fair trade.

Commissioner Johnson said he has heard economists say there will be no food shortages in the future. He said he has heard that one-third of the land in production could be retired and there would still be enough land to provide food. He said there are arguments that large geographical areas should be taken out of production regardless of the productivity of an individual farmer in that area as compared to other farmers in that area. He said food production is an issue of national security. He said countries have an obligation to feed the people within their borders. He said the challenge to the World Trade Organization is to design a system that allows countries to feed themselves but not overproduce and dump the excess on the world market.

In response to a question from Representative Nelson, Commissioner Johnson said certain concessions given by China are based on China's

acceptance into the World Trade Organization. He said the addition of China into the World Trade Organization will provide new markets for North Dakota producers. He said the acceptance of China into the World Trade Organization was not an issue in Seattle.

In response to a question from Senator Bowman, Commissioner Johnson said China recently discovered it has one-third more acres in production than what was previously thought. He said before this discovery, it was thought that average yields were higher than they are; hence, there is a greater potential for increased production than was previously thought.

In response to a question from Senator Urlacher, Commissioner Johnson said this country has trade sanctions against Cuba, North Korea, and Iraq.

In response to a question from Representative Hanson, Commissioner Johnson said this country exports 55 percent of its wheat, 50 percent of its soybeans, and 18 percent of its corn.

In response to a question from Representative Nelson, Commissioner Johnson said over approximately the last five years there has been an increase in exports in wheat, corn, and soybeans; however, the value has gone down.

A copy of Commissioner Johnson's testimony is on file in the Legislative Council office.

### **Marketing of Beef**

Mr. Bill Bowman, Kansas Cattlemen's Association, presented information on a program for producers to profit from every stage in the marketing of beef from producer to consumer. He said one reason for the need for the program is because of the concentration of ownership in the meatpacking business. A copy of his presentation is on file in the Legislative Council office.

In response to a question from Representative Warner, Mr. Bowman said the program requires that a computer chip be placed in the ears of the cattle so that information may be retained and used to assure quality and increase profitability.

In response to a question from Representative Warner, Mr. Bowman said he did not know how much the program would cost. He said he is looking for a \$45 million meatpacking facility for the program.

In response to a question from Representative Kerzman, Mr. Bowman said the reason that Northern Plains Premium Beef failed is because it was not capitalized. He said small feedlots like his program. He said small feedlots are losing their profitability due to the concentration of meatpacking facilities.

In response to a question from Representative Kerzman, Mr. Bowman said payment under the program is based on how well a rancher's cattle perform. Because of the information in the computer chips, he said, ranchers will be able to compare their

cattle to other cattle, and ranchers will be able to choose the genetics that are the most profitable.

### **CREDIT-SALE CONTRACT PROTECTION**

Mr. Jon Mielke, Executive Secretary, Public Service Commission, provided testimony on the preparation of a brochure to be distributed by the Agricultural Extension Service which provides information on producers' rights and duties in selling grain. The brochure includes information on credit-sale contracts. A copy of his testimony and a draft brochure are on file in the Legislative Council office.

In response to a question from Representative Herbel, Mr. Mielke said there have been two insolvencies this year. He said one insolvency involved an unlicensed entity that had no bond coverage. He said creditors were paid eight cents on the dollar. He said a processor in Carrington was insolvent and had a \$100,000 bond. He said of the \$700,000 to \$800,000 in claims, one-third were not credit-sales. He said creditors may get up to 90 cents on the dollar returned because of capital provided from Cenex-Harvest States.

In response to a question from Representative Mueller, Mr. Mielke said 40 to 60 percent of transactions are credit-sale contracts.

In response to a question from Representative Warner, Mr. Mielke said the bond for a state-licensed facility is based on the physical capacity of the facility. He said a federally licensed entity must have a grain buyer's license and a bond that is based on volume handled. He said bond levels are set by rule. He said the Public Service Commission may consider higher bonds for processors because they handle a high volume of grain.

In response to a question from Representative Rennerfeldt, Mr. Mielke said approximately six elevators voluntarily provide insurance or bond for credit-sale contracts.

In response to a question from Representative Schmidt, Mr. Mielke said the Public Service Commission may impose fines up to \$5,000 and fine money goes to the general fund.

In response to a question from Representative Herbel, Mr. Mielke said sometimes the Public Service Commission has advance warning of an insolvency because patrons will call with questions about their rights. He said a farmer that is not being paid can force a company into an involuntary insolvency proceeding.

In response to a question from Senator Urlacher, Mr. Mielke said Harvest States facilities are federally licensed and state law requires each facility to have a grain buyer's license.

In response to a question from Representative Mueller, Mr. Mielke said if an elevator were required to keep 90 percent of the unpaid balance of a credit-sale on hand in cash or grain, it may impact elevators by decreasing their available line of credit.

In response to a question from Representative Brandenburg, Mr. Mielke said if an elevator is on hard times and the elevator's bank knows, the bank may take control so as to protect the bank's interest. He said this results in injury to farmers. When a failing elevator is bought out, he said, generally the new company will make good on old debts so as to keep the customer base. He said this payment is not guaranteed but is generally done as good business.

### **DAMAGE CAUSED BY WILD ANIMALS**

#### **Prairie Dogs**

Mr. Dan Uresk, Forest Service Division, United States Department of Agriculture, provided testimony on the relationship between livestock and prairie dogs. He said there is direct competition between cattle and prairie dogs in the range of four to seven percent. He said prairie dogs have been reduced 99 percent from historical highs because of poisoning. He said prairie dog population increases when there is heavy grazing by cattle. He said it takes nine years to get a change in the grass component after poisoning. He said poisoning is not economical. He said many birds and small mammals have prairie dog towns as their habitats. He said prairie dog towns are biological hotspots.

In response to a question from Representative Warner, Mr. Uresk said prairie dogs increase in population in the presence of cattle because prairie dogs like short vegetation. He said prairie dogs like short vegetation because they eat it and because they can see farther. When vegetation is over six inches high, he said, prairie dogs generally do not expand into that area.

In response to a question from Representative Froelich, Mr. Uresk said the highest productivity level of plants is when there is a prairie dog town. He said these plants are not necessarily edible to prairie dogs or livestock. He said there is an increase of 30 to 40 percent in wildlife around prairie dog towns.

Mr. Dan Svingen, Wildlife Botanist, Forest Service Division, United States Department of Agriculture, provided information on the Dakota Prairie Grasslands plan as it relates to black-tailed prairie dogs. He said the plan will be reassessed in 10 to 15 years or if prairie dogs occupy more than five percent of potential habitat. He said the objective of alternative three of the plan is to establish two or more colony complexes within 10 to 15 years. He said a colony complex is 1,000 acres of prairie dog towns scattered between 10 or more towns. He said he predicts in 10 years there will be an increase of prairie dog towns from 2,860 acres to 5,100 acres. A copy of his presentation is on file in the Legislative Council office.

In response to a question from Senator Urlacher, Mr. Svingen said there are 1.1 million acres in the Little Missouri Grasslands. He said there are 731,000 acres of potential habitat for prairie dogs. He said five percent of 731,000 acres is approximately

37,000 acres. He emphasized the goal is to get to only 5,100 acres of prairie dog towns.

In response to a question from Senator Urlacher, Mr. Svingen said if prairie dogs begin to invade private land from public land, the Forest Service would make a buffer through poisoning.

In response to a question from Senator Kinnoin, Mr. Svingen said the Forest Service will increase towns by burning or overgrazing. He said this will provide the historical habitat that was once provided by the bison.

In response to a question from Senator Bowman, Mr. Dalton Ellis, Forest Service Division, United States Department of Agriculture, said if a producer overgrazes, the Forest Service will make adjustments because overgrazing is inappropriate. He said there has been change in the management plan because of public opinion.

Senator Bowman said the "public" is not the public that lives in the areas around the national grasslands because they do not want a change. He said there is a double standard because if a producer destroyed as much as prairie dogs did, the rancher would be in trouble. He said prairie dog expansion is being done in this state and not in large urban areas in which prairie dog habitat is being destroyed through urban sprawl.

In response to a question from Senator Bowman, Mr. Ellis said the term "public" included the national public and those who make laws. He said there has been a drastic historical decrease in prairie dog population, but the decrease has not been recent.

In response to a question from Senator Bowman, Mr. Ellis said in deciding what to do about prairie dog habitat, the Forest Service first reviews federal law, which requires that there be a viable population of native species. He said there is some discretion in rulemaking; however, there is little discretion with threatened or endangered species.

In response to a question from Representative Brandenburg, Mr. Ellis said nothing in the law says the Forest Service should not increase prairie dog population because of the economic impact on ranchers.

In response to a question from Senator Bowman, Mr. Ellis said under the Bankhead Jones Act, there is no preference for grazing. He said the *Congressional Record* said the land would be used for parks, recreation, or other public use. He said grazing is mentioned once.

In response to a question from Representative Rennerfeldt, Mr. Ellis said the Forest Service selects areas for prairie dog towns based upon historical occupancy and present resources. He said the Forest Service will meet only 40 percent of the recovery plan for prairie dogs. He said a mass reduction in livestock is not going to happen.

Mr. Wade Moser, North Dakota Stockmen's Association, said the Game and Fish Department surveyed

the number of acres of prairie dog towns in this state and discovered a significant increase in acres. He said facts that apply nationwide do not necessarily apply to this state.

## Deer

### Deerproof Hay Yard Program

Mr. Roger Rostvet, Deputy Director, Game and Fish Department, reviewed the contract used in the deerproof hay yard program. Under the contract, he said, the landowner agrees not to enter any big game lease or fee hunting operations for 15 years. If the landowner enters into a lease or fee hunting arrangement, he said, the landowner must reimburse the department for the actual cost of the fence materials and delivery based on a 15-year depreciation schedule that subtracts seven percent of the value per year. A copy of the contract is on file in the Legislative Council office.

In response to a question from Representative Herbel, Mr. Rostvet said the cost of depreciation is based on the invoice price.

In response to a question from Senator Urlacher, Mr. Rostvet said the cost of a standard minimum-sized hay yard is \$1,700 if purchased in high quantities. He said the same hay yard may cost up to \$2,000 if purchased individually.

In response to a question from Representative Brandenburg, Mr. Rostvet said \$300,000 has been set aside in the Game and Fish Department budget for the deerproof hay yard program.

In response to a question from Representative Schmidt, Mr. Rostvet said sportsmen have a concern over landowners who receive a hay yard but do not allow hunting.

In response to a question from Representative Hanson, Mr. Rostvet said some access must be allowed under the contract because the contract requires "reasonable public access for deer hunting." He said it is difficult to enforce this provision.

In response to a question from Representative Froelich, Mr. Rostvet said landowners have been prosecuted for shooting deer to prevent depredation.

In response to a question from Representative Mueller, Mr. Rostvet said it is rare when a landowner contributes to the depredation. He said deer depredation is mainly controlled by the deer.

In response to a question from Representative Herbel, Mr. Rostvet said the choice to enter the deerproof hay yard program is that of the landowner. He said requests from landowners are prioritized based upon need. The determination of need includes a documented history of depredation.

In response to a question from Senator Bowman, Mr. Rostvet said the deerproof hay yard program is a cooperative effort that requires the labor of the landowner and materials from the Game and Fish Department. He said it is labor prohibitive for a landowner to

erect a deerproof hay yard for a small depredation problem.

In response to a question from Representative Schmidt, Mr. Rostvet said protection of the winter feed supply for livestock is the focus of the deerproof hay yard program.

In response to a question from Representative Warner, Mr. Rostvet said the Game and Fish Department does provide some assistance to commercial nurseries, although this assistance is usually through the provision of information.

In response to a question from Representative Warner, Mr. Rostvet said he is not aware of anyone who has ever had to pay for the materials provided by the Game and Fish Department or who has opted out of the contract.

In response to a question from Representative Nelson, Mr. Rostvet said the department makes the provisions relating to the payback very clear. He said the principle of being against governmental interference with property rights keeps some people from signing the contract.

#### **Bill Draft**

Committee counsel presented a bill draft that would prohibit the Game and Fish Department from discriminating against or penalizing a landowner in the deerproof hay yard program for entering a hunting for compensation agreement.

In response to a question from Representative Herbel, Mr. Rostvet said the Game and Fish Department opposes the removal of the provision of the contract which requires a landowner to pay for the materials if the landowner engages in a lease or fee hunting arrangement. He said it is not fair for a landowner to actively promote deer on the landowner's land and get a free fence to keep those deer away from the landowner's hay or feed. He said the removal of this provision would provide for a subsidy for businesses by the Game and Fish Department.

Mr. Moser provided testimony in support of the bill draft. He said the problem is that the property of the state (deer) is causing damage to the property of ranchers, yet the Game and Fish Department requires ranchers to sign an agreement to take care of the Game and Fish Department's problem. He said there are very few ranchers involved in fee hunting. He said there are very few ranchers that do not allow any hunting. He said it would be worth the good will to remove the payback provisions.

Representative Warner said there is a philosophical difference between deer being owned by the public or being a force of nature. He said the damage done by deer is not the same as damage done by cattle but is more like damage done by wind or hail.

#### **Geese**

Committee counsel presented a memorandum entitled *Nonresident Goose Hunting Season* -

*Legislative History.* He said much of the legislative history as it relates to the arguments for and against having more or fewer nonresident hunters has remained the same throughout the years. He said the main division is between individuals who do not want nonresidents leasing large tracts of land, thereby preventing residents from hunting, and individuals in the hospitality and service industries who want nonresident hunters to come to their communities and spend money on services. He said the conflict was between in-state goose hunters and local merchants and service providers. He said the confrontation between these groups has lessened, and in 1999 the legislative history for House Bill No. 1459, which allowed a nonresident waterfowl hunter to purchase a license that is valid for seven consecutive days and is valid statewide, did not reveal any opposition to the bill. He said nonresident waterfowl licenses have increased from under 5,000 hunters in 1988 to almost 20,000 hunters in 1998. He said current law allows a nonresident hunter a choice between a 14-day license in a zone, two 7-day licenses in zones, or a seven-day statewide license.

In response to a question from Representative Hanson, committee counsel said the relation of the nonresident waterfowl hunting season to a proper area for study for the committee is its relation to the study of the extent of, and remedies for, damages caused to landowners from depredation by waterfowl. He said increased hunting of waterfowl may lessen goose populations and thereby lessen depredation.

In response to a question from Representative Mueller, Mr. Rostvet said the spring goose hunting season does not have time restrictions.

In response to a question from Representative Brandenburg, Mr. Rostvet said the department is flexible with nonresident hunters. He said the department allows changes in the second seven-day period before that period arrives. He said last hunting season over 400 licenses were allowed to be changed to a different time.

#### **Committee Discussion**

##### **Nonresident Goose Hunting Season**

Representative Schmidt said he wants there to be an extension of the duration of the season if geese are not present in the state during the time originally chosen by the nonresident hunter.

Representative Hanson said this state's nonresident goose hunting season is quite liberal in allowing nonresident hunters. He said the limited season was enacted for a reason, to prevent nonresidents from leasing land and from taking hunting opportunities away from this state's residents.

Representative Nelson said nonresident hunters come to this state because of the high number of geese. He said the number of nonresident hunters will most likely drop because of poor populations of

geese in the last two years. He said there needs to be more flexibility.

Representative Herbel said most goose hunters are nonresidents. He said most farmers want more waterfowl hunting to decrease depredation. He said nonresident hunters would pay for more flexibility, i.e., the cost of the license is not an issue.

#### **Bill Draft**

Representative Nelson said there appears to be situations in which a landowner may have a fee hunting operation on one portion of the landowner's land and have a depredation problem on another. He said he supported a solution in the middle ground between the Game and Fish Department contract and the bill draft.

Representative Nelson said the bill draft was too extreme and would be difficult to pass.

#### **Prairie Dogs**

Chairman Warner asked for comments about the statement in opposition to the expansion of prairie dog habitat in the national grasslands program as was requested by the committee at the last meeting.

Senator Bowman said increased prairie dog populations have an impact on the economy. He said people in southwest North Dakota are fighting for survival, and an animal should not take priority over the survival of people. He said he did not want the black-footed ferret introduced into this state because it would result in the complete loss of control of the area by the people in the area.

Representative Froelich said if the black-footed ferret were to move from public lands to private lands,

the private landowner would not be able to do what he wants with that landowner's land.

Representative Kerzman said because government takes a long time to change, the plan should be incremental so the prairie dog population does not get out of control before there can be a response.

Representative Froelich said prairie dogs cause erosion and are a health risk. He said the residents near prairie dog towns should have more to say about the prairie dogs than people in the rest of the nation.

Senator Bowman said people who comment to the Forest Service that they want more prairie dogs may have signed a letter presented to them by a special interest group and may not have had all the facts presented before signing the letter. He said the support for these special interest groups is not as strong as the volume of comments would indicate.

Representative Brandenburg said the ads on television to save our national grasslands are misleading.

Senator Bowman said natural burning to increase prairie dog habitat poses a danger to surrounding private lands.

No further business appearing, Chairman Warner adjourned the meeting at 3:10 p.m.

---

Timothy J. Dawson  
Committee Counsel

ATTACH:1