

1999 SENATE AGRICULTURE  
SB 2415

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2415

Senate Agriculture Committee

Conference Committee

Hearing Date 2/4/99

Tape Number	Side A	Side B	Meter #
1		X	2300-END
2	X		0-2110
2/4	2	X	2530-3188
Committee Clerk Signature <i>Tricia Jorgensen</i>			

Minutes:

Senator Wanzek called the meeting to order, roll call was taken, 1 member was absent.

Senator Wanzek opened the hearing on SB 2415.

Senator Kelsh introduced the bill. This bill will basically set up state brand board. South Dakota has this system and it works pretty well.

James Billey from Ellendale spoke in favor of the bill. Testimony enclosed.

Senator Wanzek: You are aware of the other bill?

James Billey: I am aware of it but I don't know anything about it.

Wade Moser from the ND Stockmen's Association spoke in opposition of the bill. He went through the bill and stated their likes and dislikes. He also handed out testimony from Gene Harris which is enclosed.

Senator Sand: The stockmen are happy with the present situation?

Wade Moser: We have not had many complaints.

Senator Wanzek: Are the board of animal health the ones who set the brand recording and inspection fees?

Wade Moser: Our board of directors is responsible for the financial end of it, we have to take that to the board of animal health and justify the reasons for the increase in those fees.

Senator Wanzek: So the board of animal health has the final say.

Wade Moser: Yes.

Senator Wanzek: Never been reprimanded.

Wade Moser: We have not, have provided audit on annual basis.

Senator Solberg spoke in opposition of the bill. If it isn't broke don't fix it. Won't find a better inspection system anywhere. Never had a problem with audits from NDSA.

Richard Tocesh, President of NDSA spoke in opposition of the bill. This would be a big step backwards.

Jack Chase, retired Chief Brand Inspector, spoke in opposition of the bill. ND is the envy of many states in brand inspecting. The only state that operates as a private industry. Cheapest by far, all other states are under government control. No politics, every one treated fairly. ND has greatest brand inspection in the world.

Senator Wanzek closed the hearing on SB 2415.

FEBRUARY 4, 1999

Discussion was held.

Senator Klein made the motion for a Do Not Pass.

Senator Sand seconded.

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Senate Agriculture Committee  
Bill/Resolution Number Sb 2415  
Hearing Date 2/4/99

ROLL CALL: 7 Yes, 0 No

CARRIER: Senator Wanzek

# FISCAL NOTE

Resolution No.: SB 2415 Amendment to: \_\_\_\_\_

Requested by Legislative Council Date of Request: 1-27-99

- Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

**Narrative:** The bill will change the responsibilities of carrying out chapter 36-09 of the century code. The bill will transfer the responsibilities to a state brand board instead of the North Dakota Stockmen's Association. The five-member brand board will be responsible for the administration of the brand programs listed in 36-09. The brand board may enter into contacts to perform the service of brand inspection.

The cost of the program would include: the operating expenses of the newly created board, salary of a state brand inspector, and costs of recording and inspecting brands as required in 36-09. The expense figures are the projected expenses of the present program as administered by the North Dakota Stockmen's Association plus an additional \$25,000 for the operating and administrative cost of the board.

Revenue generated by this bill includes: fees charged to producers to register the brands, monies received by the inspection of livestock and stray funds. The revenue figures are the projected revenues of present program administered by the North Dakota Stockmen's Association.

- State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				1,800,000		
Expenditures				1,825,000		

- What, if any, is the effect of this measure on the budget for your agency or department:
  - For rest of 1997-99 biennium: 0 (0)  
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
  - For the 1999-2001 biennium: 0 (0)  
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
  - For the 2001-03 biennium: 0

- County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

Signed: \_\_\_\_\_  
 Typed Name: Jeff Welspenning  
 Department: Agriculture  
 Phone Number: 328-2231  
 Date Prepared: 1-29-99

Date: 2/4  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2415

Senate Agriculture Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken Do Not Pass

Motion Made By Klein Seconded By Sand

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroepflin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Wanzek

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

REPORT OF STANDING COMMITTEE (410)  
February 4, 1999 5:07 p.m.

Module No: SR-23-1970  
Carrier: Wanzek  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2415: Agriculture Committee (Sen. Wanzek, Chairman)** recommends **DO NOT PASS**  
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2415 was placed on the  
Eleventh order on the calendar.

1999 TESTIMONY

SB 2415



February 4, 1999

Mr. Chairman, Members of the Senate Agriculture Committee.

My name is James Billey and I live on a farm southeast of Ellendale in Dickey County. For the last 30 years I have been in the livestock business. Ten years in backgrounding and feeding cattle and the last twenty years raising sheep and feeding lambs. From 1983 to 1993 I was privileged to serve as the sheep industry representative on the Board of Animal Health.

I am here today to support Senate Bill 2415 because I believe it can be the basis for enacting required statutory changes. Exactly one year ago to the day, I had the "once in a lifetime" experience of being an appellee in the North Dakota Supreme Court. The Court was hearing oral arguments in the appeal of the North Dakota Stockman's Association in the case of Billey/Peterson vs. North Dakota Stockman's Association.

If you are not familiar with this case, the District Court Judge found certain sections of the Century Code in violation of the North Dakota Constitution by declaring brand inspection, brand registration and estray funds public monies. Because of this determination, the District Court found that these funds could not be deposited in the private bank account of the Stockman's Association and that they had to be accounted for as required by our Constitution. The North Dakota Supreme Court affirmed the District Court decision with implementation of the decision held until the adjournment of this Legislative Session. This delay was granted to allow you the opportunity to correct the errors made by your predecessors in 1949, and repeated in 1993, when brand recording was moved from the State Agriculture Department to the Stockman's Association. If you are wondering, I opposed that bill in this body and with the Governor for the same reasons.

North Dakota government has some unique characteristics which when challenged have been held inviolate by our citizens. This includes provisions for initiative and referendum; the state ownership of a bank and mill and elevator; the requirement for a balanced budget; the requirement for voting up or down on every legislative bill; the strict provisions for accounting on the expenditures of public monies; and the ban on aid or assistance with public funds to any private organization. The Court decisions in our case focused on the last two aforementioned areas of our laws.

Senate Bill 2415 proposes the establishment of a State Brand Board consisting of five members appointed by the Governor. This new Board would assume the statutory responsibility for the functions of brand registration, brand inspection, publishing a brand book and handling estrays currently held by the North Dakota Stockmans' Association. It will require that all related funds be deposited with the State Treasurer in a state brand fund as required by our Constitution. The accounting for these funds then would be handled by the Office of Management and Budget like funds for any other state agency or board.

One of the best features of this bill is the proposed new Section 11 on p. 4 which allows the State Brand Board to contract with any person to perform the inspection function. I believe one of the downfalls of the present system is the lack of a competitive or negotiated contract between the State and the Stockman's Association. In 1993 the cry was heard on the floor of the House of Representatives for "privatization" but shouldn't that require a bidding process and a written contract for services provided? Doesn't the Department of Transportation have contracts with providers of road construction services and for sellers of license tabs and titles in local communities?

Another excellent feature of this bill is in Section 17 at p.7 relating to police powers. This section designates the chief brand inspector and two fieldman investigators, state employees, to have the police power. There has always been a question about the current statute giving police powers to the employees of a private organization.

Some areas that may need to be examined by this Committee include the relationship between the proposed State Brand Board and the Board of Animal Health. The Board of Animal Health has the court approved authority to set the brand recording, inspection, and brand book fees and certain rule making authority which may be better placed with the Brand Board. Another option could be to give all of the proposed Brand Board authority to the Board of Animal Health.

The revision of the statutes relating to brands and marks is timely because of several factors beyond your control. First, the interest in hot iron branding is diminishing because of economic loss from damage to the hide. Second, new identification systems are coming into use such a electronic ID. Third, consumer insistence for identification of traditional and non-traditional large animals in the food chain from the producer to the rail in the cooler. Fourth, the increase in non-traditional large animals compared to stable or lower cattle numbers. With these changing trends and looking to the needs of the next century, planning for new systems of identification would be appropriate at this time.

Your work with the statutes cited in our court case will not be judged by Mr. Peterson or myself, but will be viewed by the livestock producers in your district. If the Court stops the North Dakota Stockman's Association from doing brand inspections of cattle and horses at the end of the legislative session, your constituents will be faced with the prospect of not selling or committing a class B misdemeanor under Section 36-09-23 for selling without inspection.

I urge you to give this bill your serious consideration. Thank you for giving me this opportunity, Mr. Chairman.

James Billey  
PO Box 726  
Ellendale, ND 58436

## Testimony on S.B.2415 From Gene Harris District 36

Members of Senate Ag Committee, this bill is adding a layer of beaucracy which is not needed. Before the brand inspection system was put in place the biggest beaucratic decision was which tree do we hang the cattle rustlers from. Justice was served very efficiently and effectively. Today justice is served differently but the brand inspection system is still the same efficient, effective, responsible program it was then. The N.D. Stockmen's Association has operated this program for many years without a problem. I believe it would be reckless to turn the brand inspection system over to any other organization or agency. Brand Inspectors who are employees of the N.D. Stockmen's Association identify ownership on millions of dollars worth of livestock annually. The N.D. Stockmen's Association also returns thousands of dollars worth of estray livestock to there rightful owners. A job as important as this should be left in the hands of those with experience. The N.D. Stockmen's Association has operated this program in a very efficient, effective, responsible manner. I urge you to kill this bill!

*Thank you for your time*

*Gene Harris*

*Killedeer ND*

NDCC, 36-22-09

TEXT  
NORTH DAKOTA CENTURY CODE  
TITLE 36. LIVESTOCK  
CHAPTER 36-22. ESTRAY INSPECTION

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Current through End of 1997 Reg. Sess.

36-22-09 Audit of stockmen's association.

It is the duty of the board of directors of the North Dakota stockmen's  
association to provide for an audit at least once every two years by a  
certified public accountant or licensed public accountant. Two copies of each  
audit report must be submitted to the state auditor's office.

CREDIT

Source: S.L. 1949, ch. 231, § 9; R.C. 1943, 1957 Supp., § 36-2209; S.L. 1959,  
ch. 372, § 42; 1989, ch. 430, § 1.

NDCC 36-22-09

ND ST 36-22-09

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