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2007 SENATE AGRICULTURE

SB 2331

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3211

Committee Clerk Signature

Cassie Krow

Minutes:

Sen. Flakoll opened on the hearing on SB 2331, a bill relating to authority of the state department of health to regulate health and environmental impacts of animal feeding and agricultural operations. Members (6) present, absent (1)-**Sen. Heckaman**.

Sen. Erbele, district 28, testified in favor of the bill.

Sen. Erbele- I am here to introduce this bill, it is a bill that I see as a animal agriculture promotion and also a agriculture protection bill as I view it. The bill is going to clarify what is already in code, what duty would belong to the local government and what duty would belong to the state health department. I believe that we are on the cusp of some very exciting things in ND when it comes to agriculture. The intent of this bill is not to restrict local governments at all in any way, it doesn't take from them what is already in code. Local governments can and should determine the nature scope and location of their Ag enterprises and this does not diminish that in any way. I view this strongly as a Ag promotion and protection bill and I ask for your full consideration.

Sen. Wanzek, district 29, testified in favor of the bill.

Sen. Wanzek- The only thing that I would like to say is that it is my belief that this is only trying to firm what I believe is already law. I am hopeful that it will do just that.

Rep. Heller, district 33, testified in favor of the bill.

Rep. Heller- I realize the importance of having uniform rules governing environmental health regulations regarding animal feeding. This is very important to the future of ND economy.

Rep. Brandenburg, district 28, testified in favor of the bill. See attached newspaper article.

Rep. Brandenburg- I stand in support of this bill, if we are on the threshold now of ethanol and bio diesel plants coming online it is like a 3 legged stool in order for those to survive we need to deal with animal agriculture and the by products that come off those plants.

Lance Brower, NDSU extension center, testified in favor of the bill. See attached testimony.

Pam Brekke, county commissioner from Ramsey county, testified in favor of the bill. See attached testimony.

Paul Ivesdahl, farmer, testified in favor of the bill. See attached testimony.

Wes Klein, livestock producer, testified in favor of the bill. See attached testimony.

Jerry Jeffers, representing himself, testified in favor of the bill. See attached testimony.

Sen. Wanzek- as a zoning board member do you understand that the current state law basically limits the township and counties authority to zone only location based on size?

Jerry Jeffers- I do understand that and I don't feel that in my capacity that I have the authority or the expertise to do anything else so I am glad that that regulation is there.

Sen. Klein- what I am hearing today is that some confusion has come in and with this we can help straighten that out, is that what your hope is with this bill?

Jerry Jeffers- yes, I really hope that this will help us.

Dan Plemel, farmer, testified in favor of the bill.

Dan Plemel- I come to support this bill, it is to easy for a township or county board to get high-jacked by one or two people if the state doesn't take the lead on this. I ask for a do pass.

Sen. Wanzek- it appears that Ramsey county has somewhat gone outside the counties of state law, have you sought any kind of relief through the courts?

Dan Plemel- that is what we are in the process of doing now.

Jim Givens, farmer, testified in favor of the bill.

Jim Givens- Dealing with our farm we are finding that it is extremely difficult to obtain permits and find locations where we can expand our business. We would like to get a permit to expand our nursery sight, we find that it is impossible because of delays as they study environmental issues. I feel that they are not really doing the study that is more or less just a way to put us off. We have developed a working relationship with the health department, we find that they are fair and concise but they are pretty firm in their convictions. I think that we are well regulated and I would ask that you do a do pass on this bill.

Sen. Klein- has technology given you the opportunity to improve the smell problem?

Jim Givens- there is a certain amount of odor with any animal agriculture, I think that there is ways that the odor problem can be made less obvious but they are not going to be totally eliminated.

Sen. Klein- would you say that the odor comes more from the pigs then the cows?

Jim Givens- probably.

Sen. Taylor- how has your experience been as far as your township and county officials in zoning or are you just working under state regulation without any increase regulation on the local level?

Jim Givens- the local level has a comprehensive zoning law now passed. We are in the 2nd 6 months of the environmental issues that they are supposedly studying.

Paul Thomas, farmer, testified in favor of the bill. See attached testimony.

Wade Moser, ND stockmen's association, testified in favor of the bill.

Wade Moser- We do support this bill, we think that as this bill and others that have been introduced are trying to clarify the responsibilities not take any authority or responsibility away from anyone. Keep in mind in our industry we live where we work and we depend on the environment being healthy and safe for our children. I also want to remind the committee that I don't think that there is a legislative district that did not campaign on some type of property tax issues this time around. If you start issuing responsibilities to the health department and then you issue some responsibilities to the counties or townships, if they are going to take that authority they have to take the responsibility to regulate it which would include adding more staff and time. We have yet to see or hear of any examples where the health department has failed to do their job, I think that is important as we go through this that we need to clarify that.

Brian Kramer, representing NDFU, testified in favor of the bill. See attached testimony.

Sen. Klein- I think you highlight the nature and scope of what we are bringing forth here, do want to just kind of give use an example of what you are looking for and why we need to have that clarity?

Brian Kramer- I think there has been some misunderstanding by some of the counties and townships out there as to what scope and nature really mean. Scope is defined as the size of an operation and nature is the type of animal, basically that is what is placed in the bill that you have before you. I think there has been some misconceptions as to what those things are out there and if we can find it very closely like that both the counties and the townships along with the health department will know what those terms mean and therefore will be able to adjust their ordinances accordingly.

Kent Albers, representing Ag Coalition, testified in favor of the bill. See attached testimony.

Testimony was also submitted in favor of the bill by **Scott Nelson**, **Tracton Lewis**, and **Gordon Nelson**, see attached testimony.

Harvey Hope, county commissioner, testified in opposition to the bill. See attached testimony.

Barb Price, organizer for Dakota Resource Council, testified in opposition of the bill. See attached testimony.

Ken Teubner, Towner county commissioner and the current president of the ND association of Counties, testified in opposition of the bill. See attached testimony.

Sen. Erbele- you talk about county official knowing that large animal feeding operations are not properly sited, how do you know when they are not properly sited?

Ken Teubner- if they go out of business or something like that.

Sen. Erbele- but the siteing had nothing to do with them going out of business?

Ken Teubner- no.

Sen. Wanzek- I think that if you would go in the record and read the current law it basically narrows it down to the county and township having some say so on the location, I am trying to understand how this is going beyond what the current law is.

Ken Teubner- the only thing that I could say on that is that we leave a crack in the door for that kind of thing to happen, let the health department have a little bit of territory, pretty soon then the door will go wide open and they will have full control and the local people will not have anything to say about what is going on out there and that is the biggest concern that I am hearing out there from the people out in our area and around the state.

Sen. Klein- how is the county going to provide the kind of information I hear you say that you are going to be doing?

Ken Teubner- we don't want the health department to not have any part of this, we know that we need them to work in the water area we don't have the expertise in that area but NDSU does with the waste and soils and those sort of thing. We just want to make sure the counties and the townships still have the ground floor on this issue.

Sen. Erbele- what do you have at the county level if you want to have something different then geological science and soil surveys, do you have that type of expertise, do you want to hire a staff to do that?

Ken Teubner- at this time we have contacted an individual to do some of that study for us, he was an animal scientist at NDSU. At this time we haven't had to put any of that in place.

Sen. Taylor- do you currently as a county require bonds for any cleanup?

Ken Teubner- the two that we have in the county right now were grandfathered in so we don't have any control of what is going on with them right now.

Sen. Taylor- and you feel that under 23.31 you would be recluded from doing that?

Ken Teubner- it is a possibility that it could happen I think.

Joe Belford, Ramsey county commissioner, testified in opposition of the bill. See attached testimony.

Sen. Klein- do you really think that it needs to be studied and why do they think that it needs to be studied more?

Joe Belford- I think because all areas are different and that it needs different language to protect different areas.

Sen. Klein- even with a 5 year renewal wouldn't that make it very difficult to get financing when you don't know if you are going to be around after the 5 years?

Joe Belford- that was part of a committee of our planning and zoning recommendation of the commission, you are very possibly right.

Sen. Wanzek- I am still trying to figure out how what it says in the century code is different to the bill?

Joe Belford- I work everyday with the health department, they are understaffed with what is happening in the state they need more people.

Ken Yantes, executive secretary of the ND township officers association, testified in opposition to the bill. See attached testimony.

Richard Schlosser, NDFU, testified in opposition to the bill. See attached testimony.

Sen. Wanzek- do you think the local people do not have enough say so even though they have the ability to determine the location?

Richard Schlosser- the question our mind is if you can determine location or what purpose, apparently this bill says they can not site environmental or health reasons in using those particular criteria, that is what a question in our mind.

David Glatt, chief of the Environmental health section for the ND department of Health, testified in opposition to the bill. See attached testimony.

Sen. Erbele- is there nothing in this bill that would restrict the compatible use component of the local governments is there?

David Glatt- I don't see that, we would still have to go to the counties to do the nature, scope and location.

Sen. Wanzek- I am still struggling with where does the county get the resources and if they have the ability to zone location we give them a lot. Do you think that you have the resources to provide expertise to counties or if not maybe we should be funding more money to the health department.

David Glatt- even though we go through our environmental review process the county can come up and say this is not compatible land use and we don't have that expertise and local knowledge of what is going on and that is very critical for that to happen and that has to happen. So that is where we work hand and hand with them. The second issue there is that if it is sited appropriately geologically and it is engineered appropriately the issues regarding environmental contamination are minimized greatly, so the siting is critical in that portion. On

our larger facilities we do annual inspections. If we are going to double the number of facilities we have we may have to see how our resources are being used so that we can make sure that we can still go out and do those inspections.

Sen. Klein- was the operation in Ramsey county that we focusing on, was that permitted by the health department?

David Glatt- we did permit it under our regulations, it wasn't allowed to go forward cause the local zoning was still the critical portion that had to happen.

Sen. Klein- don't you take in every consideration as you are moving this forward?

David Glatt- the health department does have concern regarding the lake, that has not been an easy issue. We do take that into consideration into our rules as it related to the protection of surface and ground water quality. As we get into odors, that is where the set backs came back and that was very important for us to have that set back.

Sen. Taylor- would you instigate monitoring if there was local complaints, would you treat that like you would an odor complaint, what is the process there?

David Glatt- we have required monitoring in those cases and a lot of time the operator is more then happy to do that cause it shows that the operation is working well. Again it goes back to the siteing.

Testimony was also submitted in opposition to the bill by **Gayle Jastrzebski, Ginny Botz-Taylor, and Barbe Botz-Thompson.** See attached testimony.

Sen. Flakoll closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3221

Committee Clerk Signature

Missi Krow

Minutes:

Sen. Flakoll opened discussion on SB 2331.

Sen. Erbele- I have some potential amendments to the bill. (passed out and went over amendments for the committee to review) I also will pass out an unofficial document so that we can kind of see what is going on in the house too that somewhat has something to do with this bill.

Sen. Flakoll- so these are the Erbele amendments then? So the counties and townships can't determine where something is going to be at?

Sen. Erbele- yes they can.

Sen. Klein- that was one of the issues with the townships, the last sentences that seemed to conflict with a different part of the language.

Sen. Erbele- by placing the word solely up at the top would pretty well address the lines 15-17.

Sen. Flakoll- Sen. Erbele you probably have the most knowledge on what is going on in the house with this, what is thinking as far as reconciling these two?

Sen. Erbele- there have been discussions on that, on the onset we thought there would be parts where both bills would need to merge and we would come out with one bill but as we got into the process they are dealing strictly in sections in the code that deal with townships and

county regulation and the other deals with department of health regulations. We just felt that is better to have two separate bills both being very clear in their statements.

Sen. Flakoll- when they introduced them at first were they exactly the same?

Sen. Erbele- they were very similar, they have done some major changes to it which have moved it away from the similarities from this bill.

Sen. Wanzek- I received a note from the attorney generals office that their recollection is exactly in line of what I have been saying. This bill originally started out 8 years ago as a animal agriculture right to farm, and against the sponsors at that time it moved more to the middle where it did allow the townships and counties to have some zoning authority if animal feedlot reached a certain size only in the area of location. The intent was to make sure that counties and townships could not restrict or prohibit the development of confined animal feedlot. We did give them authority to do some zoning based on location. In my opinion we are not taking powers away from them. I think it was a compromise at that time to somehow allow the development of these projects by still giving some control to the local people and determining where they might be located. It wasn't the intent when we drafted it to allow them to throw a whole bunch more stuff in there.

Sen. Klein- I think that once the law and things are put in effect they see how things work or don't work and that is why the changes are being brought up.

Sen. Taylor- I think amendment changes would be good. As you read I wonder if we need the scope and location in 23.01 cause it already says that in 11.33 and 58.03. As far as cleaning this bill up I think that we could lose another sentence there.

Sen. Erbele- it doesn't hurt to leave it there cause when you open the code book then we can say that it says counties and townships and then that is a trigger to go back to the county township section of the code. I think it just helps to tie the two together.

Sen. Taylor- did the legislative council say anything about where it says that the state department is responsible, I think that it is kind of clear that we could say is solely responsible. But is one more clear then the other or do they both say the same thing?

Sen. Erbele- I think that we keep it here to make it more clear.

Sen. Wanzek- certainly I think that we all understand the issue of local control and on the other hand I would sure like to see our state move forward in some type of unified way. I am thinking that when we get into the power to control location that we are giving them above and beyond, the state can even say that environmentally that site is adequate and will work but the county or the township can say wait a minute we have some other interests here that would concern us with that site and if they can lay their case out. I go back and that was the compromise and I think that they misinterpret the law to say more then that.

Sen. Taylor- I think that it is good that 14.20 goes into 11.33 or 58.03 and defines location, I think that is important. In general I think some things that will help animal agriculture is what we want to do. There are going to be parts of the state that are gong to zone in such a way that they are going to be very attractive to these operations and I think that maybe the market would kind of settle it out too.

Sen. Behm- we want to move ahead and create more jobs in the state, especially in agriculture. I don't think that we are taking that much away from either one of them.

Sen. Wanzek- I think that there is incentive on a developers part to want to do this, they don't want to get down the road and face lawsuits and such. I don't believe that anyone is pushing or promoting or trying to force responsible type projects on to anybody. There is a good reason why those developers want to do it right as well.

Sen. Flakoll closed the discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3287

Committee Clerk Signature

Cassu Krow

Minutes:

Sen. Flakoll opened discussion on SB 2331.

Sen. Erbele- after talking with Sen. Taylor, do understand what he was saying. I think there would be better clarification if we took out the lines starting on line 11 starting with the word counties all the way to the end. Then we have a short bill and what we are saying is very clearly stated.

Sen. Behm- what is the reasoning that you are taking this out?

Sen. Erbele- it is already clearly stated in a bill in the house.

Sen. Klein- that should really make it better cause that is a problem that I was hearing concerning the townships and counties.

Sen. Heckaman- when my counties are emailing me and saying do not pass this bill are they going to like what is left here or to not like it.

Sen. Flakoll- it depends on who you talk to in the county.

Sen. Heckaman- what they are concerned about are the clean up costs afterwards, is that an issue in this bill?

Sen. Erbele- I don't see cleanup being addressed anywhere.

Sen. Behm- didn't i hear someone yesterday say that if the hog operation would bust the county could be responsible for cleaning it up?

Sen. Klein- I don't think that it was brought out whose responsibility that was but I think that the whole issue surrounds the fact that the counties have the option of telling them that this isn't a good location, they are still going to have that option. I think the whole discussion is, is the health department in charge of the health regulations in the state of ND. So they in turn will be monitoring these projects to make sure the ground is good or if a liner will be required and such. The bonding side I thought the state was responsible for some of that, but I don't think so.

Sen. Behm- I thought that somebody said that the townships did not want that responsibility, and then this morning all my emails are opposite they said don't take the local authority out of it, so I don't know what I should do.

Sen. Taylor- on the amendment, regardless of where you land on this issue it is good for the bill. The intent of the bill is still there with the language that is left, the amendment should be adopted for the clarity of the bill. On the bonding issue I think that is another point for the bill itself.

Sen. Wanzek- as far as who is responsible, the developer would be responsible. Where we are getting confused with nature and scope is what we wanted to do when we passed this law in 1999, once a feedlot got to a certain size and nature that triggered the ability of the local subdivision to only zone the location. The law clearly states in ND that no subdivision can pass a regulation or law zoning out ranching, feeding etc. but if it reaches a certain size or scope then they can at least zone location.

Sen. Taylor- the section that we are dealing with here is the state health departments section of the code, I think the location nature scope does belong.

Sen. Flakoll- one of my concerns is if it is in the house bill it could get killed on the floor and then we would be back at square one.

Sen. Erbele- if you look at the unofficial from the house that I handed out yesterday on page 2 when it is referencing section 58 and then I draw your attention to the very last line, which is the section of the code that we are dealing with in this bill. Whatever it says in 58 is referencing back to 23 and essentially ties it all together.

Sen. Klein- to get back to the original intent of the bill is to clarify what the counties and townships can or cant do. I think the whole issue and why it came forward is because that the counties saw things out there that they thought they could do that we believe that they never had that opportunity to do and that we never gave them that regulation and that they don't have the expertise in that area. When we are starting to allow the counties to try to figure out what the health issue should be, I was disappointed that they did not think that the health department wasn't doing their job because they are short handed, I thought that was kind of a slap at them. I think in the bill we are just trying to clarify who does what, this doesn't change anything. We are not doing anything different then what the law is it is just more clearly so that everyone knows whose job is what, isn't that what we are doing?

Sen. Erbele- yes.

Sen. Taylor- I haven't followed the lawsuit but isn't the lawsuit pending also going to clarify what is already in code when we talk about reasonable regulations from the county level?

Sen. Wanzek- I know that the intent was only to give them the opportunity to zone or regulate locations once a project reaches certain nature and scope. Somehow that all got twisted around. I would like to put in there that they are limited to location of animal feeding operations based on their nature and scope.

Sen. Flakoll-it seems like we are talking about a lot of things that are out of our league.

Sen. Behm- the purpose for not being able to zone anyone until they reach a certain size is because then they would become a commercial operation right?

Sen. Wanzek- when this was all percentage less and we studied the laws it was at the time it basically being that ND is an agricultural state and farmers sometimes are sacred code it stated that in the law that no local subdivision can zone out any form of agriculture. Now we are faced with these new larger feedlots and we thought at the time that with the nature and scope of these type of feedlots and the size we should at least give some regulatory authority over zoning their location. I think that once we realize what the current law is and what the original intent of it was then we can either move one direction or the other.

Sen. Flakoll closed the discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

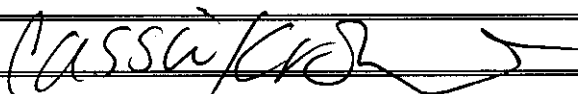
Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3288

Committee Clerk Signature



Minutes:

Sen. Flakoll opened discussion on SB 2331.

Sen. Flakoll asked **Anita Thomas** from legislative council to come to the podium to answer questions for the committee.

Sen. Taylor- on this bill we have been discussing the language from halfway into line 11 on down, here we are in 23.01 which is the health department section and we are getting into definitions and responsibilities for counties and townships, which some of this I think is already existing language in either 11.33 or 58.03 our discussion is to remove some of this particularly line 13 on down. My main question is, is it appropriate to have all this county and township language here in 23.01?

Anita Thomas- it makes it somewhat confusing when you start looking at what one agency is suppose to do and vary those directives, so if you are looking at powers and duties of counties and townships it would be much more appropriate to go into that particular area of the law and say this is what a county can and can not do and this is what a township can and can not do.

The same thing if there is something specific that you want to health department to do or not to do. We would be happy to work with you in terms of the content and then find an appropriate placement if you wish to go that route.

Sen. Klein- so striking from after the chapter quotation on line 11 and taking all those lines out would kind of clean this up? Because those are the lines that reference the counties and townships responsibilities but I believe are also listed in some other section of the code.

Anita Thomas- that is correct and likewise in my recollection the chapters that are listed between lines 10 and 11 that is already stated as what the health department is suppose to do.

Sen. Klein- one other question is that there is a lawsuit in Ramsey county and whatever we would do here today doesn't have any varying on what the courts would look at what the law was does it?

Anita Thomas- in a normal situation the facts are by the law as it was at the time, this particular case I don't know how they are looking at that but normally it would be the law that it was on the time.

Sen. Heckaman- we had gone around about maybe taking out the work agricultural operations on line 3 and line 8, what impact does that have on agricultural operations?

Anita Thomas- I think it goes back to my earlier comment if you already have sections of the law that are titled then you should leave the material in those titles.

Sen. Flakoll closed the discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3290

Committee Clerk Signature

CASSA KROH

Minutes:

Sen. Flakoll opened discussion on SB 2331.

Sen. Flakoll called Lyle an assistant attorney general to the podium to answer questions for the committee.

Lyle- I have been working on these issues for a number of years so if you have questions I will be happy to answer them.

Sen. Wanzek- in my mind before we act on anything we need to establish what the intent was back in 1999 and why we had the bill before us. As I recall the intent was first to make sure that no local subdivision could rule out animal agriculture of any sort. The second issue was, well we accepted that once they reach a certain size in nature and scope that maybe there should be some rights of the local subdivisions to do some zoning but only in determining the location. That is how I remember it. The law before that said that no local subdivision had any authority to zone out any agriculture. We are just trying to clarify that when it comes to these confined animal feed lots we want to make sure that they can not zone them out, they can not deny them from being in that county, however we do recognize that they might need to have some power to determine where the location is because of their nature and scope. Is that how you recall it?

Lyle- yes, that is how I recall it. (handed out papers for the committee and went over them with the committee, see attached)

Sen. Erbele- if the intent of this bill is field preemption then we can go all the way down to line 13 and then from there on we can over strike cause those are just definitions which aren't really compatible with HB1420's attempts at definitions, but we the are saying that the health department does the environmental thing and then we do that disclaimer by restating that the counties cant do nature?

Lyle- I think that if you do mean field preemption because there are some environmental considerations that are part of locations so you have to make sure that you say we are preempting you from that field but we are not saying by doing that that you can not consider those things under that authority that we are giving you whether it is narrow or broad because if you use general language like nature then they are going to say well you can interrupt what nature means if the legislator says nature then the county says that we can exercise the discretion within that narrower scope defined by the legislator. So those are the basic concepts you need to keep in mind when you are drafting, amending and working on this language.

Sen. Taylor- on that same issue the language that you see on the bill that we were starting to cross things out, rather than define or even say nature, scope and location would you just prefer the health department having authority accept what is granted counties and townships in 11.33.02 and 58.03.11, would you actually site that the code rather sits to make it clearer?

Lyle- I would think so but that is up to you. If you don't define nature, scope or location then the issue of whether that language on how broadly that language can be interpreted by counties and townships. But if you don't know if HB1420 is going to pass or not and you want to make clear on that and you want to make that change then you probably need to put that

definition in here until you know what happens to that bill. So when you do find out where you stand on all of those bills you better make sure that at the end you square it up and make sure that everything is consistent otherwise you are creating not regulatory certainty and clarity but more issues about it.

Sen. Wanzek- I can see where even in the county chapter that there is a little confusion. I do believe that the intent at the time was to give them the ability to zone location. Doesn't that give them quite a bit of power, even at saying that they can go above the environmental rules when we say that they can zone location and say that the area wont work because of a number of others.

Lyle- zoning is all about location so what you are trying to do is to get compatible uses where you get you maximum value for everybody out of that property.

Sen. Flakoll- you said the set back was in 23.25.11?

Lyle- there was a set back that was put in there by the last session for any area where a county has not established zoning. So we were having a problem where a lot of areas didn't have set back distances, that wasn't a preemptive law that was something that goes in place in the absence in the action of the county or township, that is a law that only takes effect when the counties or townships have an act that is opposite.

Sen. Flakoll closed the discussion.

