

2009 SENATE AGRICULTURE

SB 2125

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2125

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 15, 2009

Recorder Job Number: 7034

Committee Clerk Signature

*Cassie Krohn*

Minutes:

**Sen. Flakoll** opened the hearing on SB 2125, a bill relating to the seed department's revolving fund and to the functions and responsibilities of the seed commission. Members present (6), Absent (1)- **Sen. Behm**.

**Ken Bertsch**, State Seed Commissioner, testified in favor of the bill. See attached testimony, attachment #1.

**Sen. Wanzek**- I understand for the need for the clarity and the law in stating that it is the soul responsibility of the laborer but to some degree does that diminish somewhat the certification, because we are kind of calling in the state seed department to affirm what this labeler is saying is correct or that it is what the label says it is, could you help me a little on understanding?

**Ken Bertsch**- that is a reasonable question because you could see that statement as crippling the responsibility of what we do as a result of what you do, the problem that you run into in any certification is as a producer if you are producing seed and we come out to the fields and do inspections upon harvest the producer sends in the samples we test them and we come upon a analysis that becomes the information that goes on a seed label. Yes we do all the testing that goes on that label but the problem is in the federal seed act we don't have a snapshot

view of what happens there, we see it in the field and we see it in the lab with the sample that is provided and then we send out the labels and we don't know what those labels are put on.

**Sen. Miller-** would you say that that is kind of like saying that it is impossible for the seed department to inspect every bag of seed so therefore there is a liability thing, is that what you are getting at?

**Ken Bertsch-** it is not so much a liability because it is on such a brood scale, we can not inspect every bag to make sure that it is labeled correctly. Our regulatory program spot checks growers, warehouses, retailers and many others to make sure that they are doing it right. But we can only do that to a certain number of samples.

**Sen. Flakoll-** on the section one stuff where they take Latin names, how do they go about changing those names?

**Ken Bertsch-** I can't answer that question.

No opposition to the bill.

**Sen. Flakoll** closed the hearing.

**Sen. Klein** motioned for a Do Pass and was seconded by **Sen. Wazek**, vote 6 yeas, 0 nay, 1 absent and not voting-**Sen. Behm**. **Sen. Miller** was designated to carry the bill to the floor.

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/23/2008

Bill/Resolution No.: SB 2125

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Agency bill that amends various policy issues in NDCC. No fiscal impact.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

None

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

None

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

None

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

None

<b>Name:</b>	Ken Bertsch	<b>Agency:</b>	State Seed
<b>Phone Number:</b>	701-231-5415	<b>Date Prepared:</b>	12/29/2008



**REPORT OF STANDING COMMITTEE (410)**  
January 15, 2009 2:19 p.m.

**Module No: SR-08-0381**  
**Carrier: Miller**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2125: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS**  
**(6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2125 was placed on the**  
**Eleventh order on the calendar.**

2009 HOUSE AGRICULTURE

SB 2125

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2125

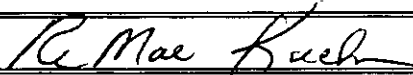
House Agriculture Committee

Check here for Conference Committee

Hearing Date: March 5, 2009

Recorder Job Number: 10230

Committee Clerk Signature



Minutes:

**Ken Bertsch, Seed Commissioner with the State Seed Dept., Fargo:**

**(Written testimony attached #1)**

We had one issue that we have been nipped on a couple of times in audits. While we are in there, we have a few other amendments to take care of some things that we felt couldn't wait until 2011.

**Representative Boe:** Section 4: Is there any way to reference "the most current" instead of changing the date every time.

**Ken Bertsch:** I've asked that question and was told "no." That could be looked at during the interim. **(Continues with testimony)** Section 9 is the reason we brought the bill in front of you. We had some inconsistent language in our chapters dealing with continuing appropriations language vs. appropriated agency language. We've been nipped on this by our auditors a couple of times. They check the code to see if the agency is run as the code states.

**Representative Mueller:** If we were able to determine to put "current" some place in here, and that would be Okay with Legislative Council, would you have an opposition to that.

Otherwise you are going to have to come back every two years to update that.

**Ken Bertsch:** No. Last time we did an update, we missed a section.



**Representative Mueller:** Page 3, Lines 24 & 25. If somehow the Seed Dept. messed up, when that information goes back to the labeler, how would that labeler be held responsible when it is a legitimate mistake on the part of the Seed Dept.?

**Ken Bertsch:** I don't think that changes the situation we are in now. We have the very same kind of dispute at the present time. The first thing to ask is "Whose responsibility is it?"

If in a legal dispute it was found the Seed Dept. failed in its duty to give the correct analysis, then that would happen with or without this statement. This would be the same as before the change. The problem we run into is the label is from a test sample but it could be different in the bin. We print that label and send it out to a grower who applies that label to a lot of seed and we don't know which lot of seed it is applied to. A certification agency can only do certain things. A labeler has full control of that seed throughout the process. They can send us a sample of anything they want to and apply the label to anything they want to. We can only do certain things and that is to test the sample provided or look at the field it is applied.

**Representative Mueller:** I have a concern with the first four words "The correctness and accuracy." If there is a problem with the Seed Department's process in determining that it is correct and accurate, this says that it is not your fault.

**Ken Bertsch:** The term "correctness and accuracy" comes from someplace else in the code. So we replicated this statement from another section. If you chose to remove that, it would mean the same either way. The reason it reads so precisely is because that language exists somewhere.

**Opposition:** None

**Chairman Johnson:** Closed the hearing.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2125

House Agriculture Committee

Check here for Conference Committee

Hearing Date: March 19, 2009 (**Committee Work**)

Recorder Job Number: 11284

Committee Clerk Signature



Minutes:

**Representative Mueller:** Some of the committee members and I had a concern on page 3, line 24 with "correctness and accuracy is the sole responsibility of the labeler under state and federal seed laws." The same language appears on page 4. The discussion revolved around, what if there is a problem with the work being done at the State Seed Dept.? In meeting with Anita Thomas of Legislative Council and Ken Bertsch, in code it didn't matter. It is still the labeler's problem even if the problem is at the Seed Dept. I have an issue with that. I think this is an area that will be looked at when it comes time for a rewrite that we can clean it up. The amendment (**LC #98087.0101**) before you strikes Section 5 and Section 8. It is striking the new language that is underlined and the rest is covered elsewhere in code.

**Representative Mueller:** Moved the amendments.

**Representative Boe:** Seconded the amendments.

**Vice Chairman Brandenburg:** Do we still need the bill after we remove that language. There is only one section left.

**Representative Mueller:** Yes we do need the bill. There are some definitions that are changed around in it. Page 2 there is some underlining "designated as the official seed certification agency of the state."

**Vice Chairman Brandenburg:** I see there are some dates that extend some sunsets too.

**Chairman Johnson:** Page 1, lines 2 & 3, those are the code numbers of the sections you are removing?

**Representative Mueller:** That is correct.

**Representative Boe:** We have an exact duplication of this in the law?

**Representative Mueller:** That is my understanding. I asked Legislative Council staff. It is already in code. It only changes and drops out the sole responsibility being that of the labeler.

**Representative Uglem:** To make that clear, we are only taking out the amendment so the existing language stays in the law. That section remains in law as is with no amendments.

**Representative Mueller:** Correct.

**Voice Vote taken on amendment LC #98087.0101.**

**Passed.**

**Representative Froelich: Moved Do Pass as amended.**

**Representative Uglem: Seconded.**

A Roll Call vote was taken. **Yes: 11, No: 0, Absent: 2**, (Representatives Belter and Schatz).

**Representative Kingsbury will carry the bill.**

PROPOSED AMENDMENTS TO SENATE BILL NO. 2125

Page 1, line 2, remove "4-09-17,"

Page 1, line 3, remove "4-10-14,"

Page 1, line 4, replace the comma with "and the"

Page 1, line 5, remove ", and seed labelers"

Page 3, remove lines 14 through 25

Page 4, remove lines 15 through 25

Renumber accordingly

VK  
3/19/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2125

Page 1, line 2, after the second comma insert "and" and remove "4-09-17,"

Page 1, line 3, remove "4-10-14,"

Page 1, line 4, replace the comma with "and the"

Page 1, line 5, remove ", and seed labelers"

Page 3, remove lines 14 through 25

Page 4, remove lines 15 through 25

Renumber accordingly



Date: 3/19/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2/25

House Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number 98087.0101

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep. Froelich Seconded By Rep. Uglem

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	✓	
Mike Brandenburg, Vice Chair	✓		Rod Froelich	✓	
Wesley R. Belter	AB		Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust	✓		Benjamin A. Vig	✓	
Mike Schatz	AB				
Gerry Uglem	✓				
John D. Wall	✓				

Total (Yes) 11 No 0

Absent 2

Bill Carrier Rep. Kingsbury

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

**REPORT OF STANDING COMMITTEE**

**SB 2125: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2125 was placed on the Sixth order on the calendar.

Page 1, line 2, after the second comma insert "and" and remove "4-09-17,"

Page 1, line 3, remove "4-10-14,"

Page 1, line 4, replace the comma with "and the"

Page 1, line 5, remove ", and seed labelers"

Page 3, remove lines 14 through 25

Page 4, remove lines 15 through 25

Re-number accordingly



2009 SENATE AGRICULTURE

CONFERENCE COMMITTEE

SB 2125

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2125

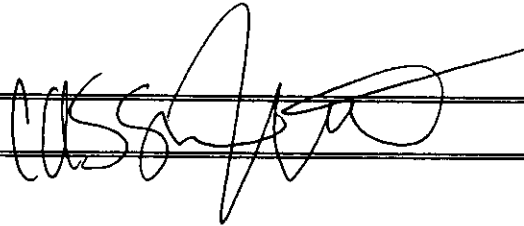
Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: April 16, 2009

Recorder Job Number: 11901

Committee Clerk Signature



Minutes:

**Sen. Wanzek** opened the conference committee on SB 2125 senators **Sen. Miller, Heckaman** and House **Rep. Uglem, Kingsbury** and **Mueller** were present.

**Rep. Uglem**- concern was brought up that if the seed department makes a mistake and they cast the labelers sole responsible even though they didn't make the mistake. So what the house did is take the added line out.

**Sen. Heckaman**- when I look at our testimony that we got from the state seed department it says that each entity whether it is a seed company or a grower who acts as the labeler is the unquestioned party of record, so it is not an individual? It is more like the company for the growers it is not the person that puts the label on right?

**Sen. Wanzek**- there are situations where maybe a grower grows certified seed for a company or there are individual farmers who grow certified seed and label it and market that themselves.

**Rep. Uglem**- that is the exact reason why we made that change on those 2 lines.

**Sen. Miller**- if you are going to be in the business of certified seed you have a certain responsibility to verify that accuracy too. You cant put the state on the hook for mislabeling something.

**Rep. Mueller-** I visited with Ken Bertsch at great length about this and he wants this and I understand that and why he wants it but at the end of it all he said that he thought this wasn't entirely the way it should read, there is nothing else in the code that says that if the seed department screws up than it is the seed departments problem. He inferred that is how it would work but that is not what the law was saying, that is why we struck out those two sections. In the rewrite one of the big things that needs to happen is to look at the seed departments rules and regulations.

**Sen. Wanzek-** what if you take the word sole out? Maybe that is a question for legislative council? I just wonder if it wouldn't be worth our time to do that.

**Rep. Kingsbury-** yeah I think that might be good to take sole out.

**Sen. Miller-** I would say that particularly in section 8, that language that was added that is specifically referring to the actual branding. If we could come up with some sort of language that would say, when the testing is inaccurate than the seed department has some sort of responsibility but the actual process of labeling is the responsibility of the labeler.

**Rep. Mueller-** I think unless we want to rewrite this thing with a whole lot of stuff in this, and I know eventually it needs to happen like in the rewrite, that part needs to say what the seed department's responsibilities in terms of the correctness of the label. And the growers responsibility in attaching the label.

**Sen. Wanzek-** I would like to get some legal advice on some questions that I have here.

**Sen. Wanzek** closed the discussion.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2125

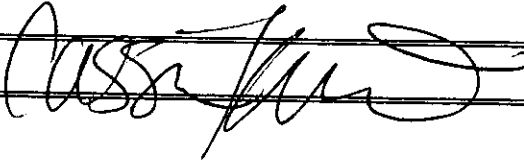
Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: April 21, 2009

Recorder Job Number: 12033

Committee Clerk Signature



Minutes:

**Sen. Wanzek** opened the conference committee on SB 2125, members **Sen. Wanzek, Miller** and **Heckaman** and **Rep. Uglem, Kingsbury** and **Muller** were present.

**Sen. Wanzek**- I talked to legislative council and we are comfortable with the amendments that are offered.

**Sen. Heckaman** motioned to accede to the house amendments and was seconded by **Sen. Miller**.

Vote 6 yea 0 nay.

**Sen. Wanzek** closed the conference committee.

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 2125 (, as (re)engrossed):

Date: April 16th, 09

Your Conference Committee Senate Agriculture

**For the Senate:**

**For the House:**

		YES / NO				YES / NO	
Sen.	Wanzek	x	x	Rep.	Iglem	x	
Sen.	Miller	x	^	Rep.	Kingsbury	x	
Sen.	Heckaman	x		Rep.	Mueller	x	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ -- \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: \_\_\_\_\_

SECONDED BY: \_\_\_\_\_

VOTE COUNT    \_\_\_ YES    \_\_\_ NO    \_\_\_ ABSENT

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 2125 (, as (re)engrossed):

Date: April 21, 09

Your Conference Committee Sen. Agriculture

For the Senate:

For the House:

YES / NO			YES / NO		
Sen. Wanzek	x	X	Rep. Uglem	x	X
Sen. Miller	x	X	Rep. Kingsbury	x	X
Sen. Heckaman	x	X	Rep. Mueller	x	X

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_

X, and place 2125 on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 2125 was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Heckaman

SECONDED BY: Miller

VOTE COUNT 6 YES 0 NO 0 ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**SB 2125:** Your conference committee (Sens. Wanzek, Miller, Heckaman and Reps. Uglem, Kingsbury, Mueller) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 950-951 and place SB 2125 on the Seventh order.

SB 2125 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2125





North Dakota State  
***NDSSD***  
Seed Department

1313 18<sup>th</sup> St. N.,  
P.O. Box 5257  
Fargo, ND 58105-5257  
Phone: (701) 231-5400  
Fax: (701) 231-5401  
Web: [ndseed.com](http://ndseed.com)

*Kenneth J. Bertsch*  
State Seed Commissioner

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**Testimony  
SB 2125**

**Senate Agriculture Committee  
January 15, 2009**

Good morning Chairman Flakoll and members of the Senate Agriculture Committee. For the record my name is Ken Bertsch and I serve as State Seed Commissioner and administrator of the State Seed Department based on the campus of NDSU in Fargo. I appear today to provide information on SB 2125, which originated as an agency bill approved by the State Seed Commission.

SB 2125 was drafted to provide for revisions to Chapters 4-09, 4-10 and 4-11 governing programs of the Seed Department. We had originally intended to propose all of these amendments through the re-write of agriculture code during the 2007-2009 interim. Since the interim committee was unable to review our chapters, we are proposing amendments that will satisfy a State Auditors recommendation, and other issues that should be updated earlier than the 2011 legislative session.

With your consent I will review the intent of the amendments in each section.

**Section 1**

Section 1 comprises a portion of the definitions section of Chapter 4-09. The amendments simply update the scientific names of the noxious weeds listed in the prohibited and restricted noxious weed lists of the Chapter. The scientific names of some plant and animal species change periodically by any number of means as knowledge expands and species lists are reorganized. The amendment makes the nomenclature in North Dakota lists parallel to federal lists.

**Section 2**

The Section 2 language designates the Seed Department as the state's official certification agent.

We are asked periodically to reference the code language that shows the Seed Department as the designated authority for seed certification, usually in cooperative ventures involving federal agencies who often assume the agriculture department is in this role.

North Dakota is one of few states with a seed agency, one that certifies and tests all crops including potatoes. The amendment will provide a clear point of reference in situations where a federal agency may assume that a department of agriculture, a university foundation seed program or another state designated certification entity (such as a crop improvement association) is the state's designated certification authority.

### **Section 3**

This amendment updates and simplifies the statutory reference of the NDSU appointee to the Seed Commission.

The historical intent of the appointment is to have the Director of the Experiment Station serve as a Commission member, regardless of reorganization within the NDSU structure. In fact, the current Director of the Experiment Station, Dr. Ken Grafton, is the Dean of Agriculture, not the Associate Dean. This amendment simply decouples the academic title from the appointment, a move that will work for the future as well.

### **Section 4**

The amendment updates the Century Code reference to the most recent version of the Federal Seed Act regarding weed tolerances. This amendment is offered whenever the opportunity presents itself through legislation. If the code does not refer to the current Federal Seed Act, we must apply the version which is listed in statute; in the case of Section 4, the 2005 version. This is the only section that still contains the 2005 reference; all others have been updated to 2007.

### **Section 5**

The Section 5 amendment is intended to provide clear, unambiguous language for labeling responsibility under federal and state law.

The Federal Seed Act contains implied intent in many of its sections that the responsibility for label claims rests with the labeler. The Federal Seed Regulatory and Testing Branch (FSRTB), the federal agency responsible for seed regulatory issues, recognizes that the labeler has full and complete control of the seed lot both prior to and after a seed lot has been tested. Each entity, whether a seed company or individual grower who acts as a labeler of seed is the unquestioned party of record, and while federal law does not state this function explicitly, the FSRTB is clear on this point. The FSRTB also encourages state regulatory authorities to create this reference in state law.

Many state regulatory agencies have begun to publish or codify a labeling responsibility statement in order to clarify the federal language. We have been repeatedly advised by legal counsel to make all statements related to labeling as clear as possible, and to codify requirements whenever the opportunity exists. This amendment serves to create a reference point in code that we can use in educating and notifying persons involved in the seed industry, whether buyers or sellers.

### **Section 6**

The amendment is the same as in Section 4, updating the Plant Variety Protection Act section of Chapter 4-09.

### **Section 7**

The amendment attempts to clarify the types of records and/or examinations that may be protected by the exemption to open records requirements. The term "plant or seed analysis" is a fairly broad statement, and applies (in my interpretation) to any and all field inspections and testing completed in our seed laboratory. Again, our legal counsel suggests that clear terminology is necessary and that defining what a "plant or seed analysis" means is prudent.

## **Section 8**

The amendment is the same as in Section 5, updating language in Chapter 4-10 that deals with the labeling of seed potatoes.

## **Section 9**

Lastly, the Section 9 amendment provides consistency in appropriations language for the agency. The State Auditor discovered, during the course of statutory review in our 2007 audit, that Chapter 4-09 and 4-10 contained references to appropriated funds, while Chapter 4-11 is continuing appropriations language. The amendment only eliminates this inconsistency.

This concludes my comments on SB2125. I would be happy to answer any questions Committee members may have.



North Dakota State  
**NDSSD**  
Seed Department

#1  
Ken Bertsch  
3/5/09

1313 18<sup>th</sup> St. N.,  
P.O. Box 5257  
Fargo, ND 58105-5257  
Phone: (701) 231-5400  
Fax: (701) 231-5401  
Web: [ndseed.com](http://ndseed.com)

*Kenneth J. Bertsch*  
*State Seed Commissioner*

**Testimony**  
**SB 2125**

**House Agriculture Committee**  
**March 5, 2009**

Good morning Chairman Johnson and members of the House Agriculture Committee. For the record my name is Ken Bertsch and I serve as State Seed Commissioner and administrator of the State Seed Department based on the campus of NDSU in Fargo. I appear today to provide information on SB 2125, which originated as an agency bill approved by the State Seed Commission.

SB 2125 was drafted to provide for revisions to Chapters 4-09, 4-10 and 4-11 governing programs of the Seed Department. We had originally intended to propose all of these amendments through the re-write of agriculture code during the 2007-2009 interim. Since the interim committee was unable to review our chapters, we are proposing amendments that will satisfy a State Auditors recommendation, and other issues that should be amended before the 2011 legislative session.

With your consent I will review the intent of the amendments in each section.

**Section 1**

Section 1 comprises a portion of the definitions section of Chapter 4-09. The amendments simply update the scientific names of the noxious weeds listed in the prohibited and restricted noxious weed lists of the Chapter. The scientific names of some plant and animal species change periodically by any number of means as knowledge expands and species lists are reorganized. The amendment makes the nomenclature in North Dakota lists parallel to federal lists.

**Section 2**

The Section 2 language designates the Seed Department as the state's official certification agent.

We are asked periodically to reference the code language that shows the Seed Department as the designated authority for seed certification, usually in cooperative ventures involving federal agencies who often assume that a state agriculture department is in this role.

North Dakota is one of few states with a seed agency, one that certifies and tests all crops including potatoes. The amendment will provide a clear point of reference in situations where a federal agency may assume that a department of agriculture, a university foundation seed program or another state designated certification entity (such as a crop improvement association) is the state's designated certification authority.

### **Section 3**

This amendment updates and simplifies the statutory reference of the NDSU appointee to the Seed Commission.

The historical intent of the statute and appointment is to have the Director of the Experiment Station serve as a Commission member, regardless of the NDSU organizational structure. In fact, the current Director of the Experiment Station, Dr. Ken Grafton, is the Dean of Agriculture, not the Associate Dean. This amendment simply decouples the academic title from the appointment and will satisfy the intent for the future as well.

### **Section 4**

The amendment updates the Century Code reference to the most recent version of the Federal Seed Act regarding weed tolerances. This amendment is offered whenever the opportunity presents itself through legislation. If the code does not refer to the current Federal Seed Act, we must apply the version which is listed in statute; in the case of Section 4, the 2005 version. This is the only section that still contains the 2005 reference; all others have been updated to 2007.

### **Section 5**

The Section 5 amendment is intended to provide clear, unambiguous language for labeling responsibility under federal and state law.

The Federal Seed Act contains implied intent in many of its sections that the responsibility for label claims rests with the labeler. The Federal Seed Regulatory and Testing Branch (FSRTB), the federal agency responsible for seed regulatory issues, recognizes that the labeler has full and complete control of the seed lot both prior to and after a seed lot has been tested, which is the point when label information is set.

Each entity acting as a seed labeler is the unquestioned party of record regarding label claims. While federal law does not state this function explicitly, the FSRTB is clear on this point and encourages state regulatory authorities to create this reference in state law.

Many state regulatory agencies have begun to publish or codify a labeling responsibility statement in order to clarify the federal language. We have been repeatedly advised by legal counsel to make all statements related to labeling as clear as possible, and to codify requirements whenever the opportunity exists.

This amendment serves to create a reference point in code that we can use in educating and notifying persons in the seed industry as to labeling responsibilities. The amendment does not relieve the Department of responsibilities regarding inspections, testing, analysis or seed regulatory functions.

### **Section 6**

The amendment is the same as in Section 4, updating the Plant Variety Protection Act section of Chapter 4-09.

### **Section 7**

The amendment attempts to clarify the types of records and/or examinations that may be protected by the exemption to open records requirements.

The term "plant or seed analysis" is a fairly broad statement, and applies (in my interpretation) to any and all field inspections and testing completed in our seed laboratory. Again, our legal counsel suggests that clear terminology is necessary and that defining what a "plant or seed analysis" means is prudent.

### **Section 8**

The amendment is the same as in Section 5, updating language in Chapter 4-10 that deals with the labeling of seed potatoes.

### **Section 9**

Lastly, the Section 9 amendment provides consistency in appropriations language for the agency. The State Auditor discovered, during the course of statutory review in our 2007 audit, that Chapter 4-09 and 4-10 contained references to appropriated funds, while Chapter 4-11 is continuing appropriations language. The amendment only eliminates this inconsistency.

This concludes my comments on SB2125. I would be happy to answer any questions Committee members may have.