

2009 SENATE AGRICULTURE

SB 2350

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2350

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8090

Committee Clerk Signature

*CASSIE KROH*

Minutes:

**Sen. Flakoll** opened the hearing on SB 2350, a bill to provide an ethanol council; to provide a penalty; and to provide a continuing appropriation. All members (7) were present.

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

**Sen. Wanzek**- What this bill does, putting it very simply is establish a ethanol council and the intent without getting into detail is to basically pattern some of the other commodity councils that we already have in place.

**Shane Goettle**, Commissioner ND department of commerce, testified in favor of the bill. See attachment #1.

**Randy Schneider**, President of the ND ethanol producers association, testified in favor of the bill.

**Randy Schneider**- This bill is patterned after HB 1025. Our industry is maturing, we have had our ups and downs but there is a lot of opportunity within this state and to advance those we feel that we needed to establish this council. We think there is an advantage of having the blessing of the state and that is why we are looking at advancing the establishment of this council. The goal would be to envelop the activities of the ND ethanol association into the ethanol council and then that be the advocate for our industry in the efforts that we are trying to

pursue. With the ethanol council since it is modeled after the other councils we have the opportunity for ethanol producers that are not happy with what the council is doing they have the opportunity to get their dollars back and I think that is an important part of the bill.

**Sen. Behm-** can you tell me the difference in good corn and low grade corn when it comes to the production of ethanol?

**Randy Schneider-** a quality corn is essential as to any commodity production as to the maximum that can be produced. It boils down to test weights, moisture content those are all critical elements of defining what a good product is. Again depending on what the ethanol plant did with what price they were charging I would think that it afforded the farmers in that area another market for something that we wouldn't traditionally have a quality grade of corn.

**Sen. Taylor-** Do you think that it is the intent that you would have a funded executive position?

**Randy Schneider-** you are right, to date the efforts that our industry has undertaken has all been voluntary, we feel right now that those efforts need to continue to be voluntary because we feel there is greater opportunity in funding projects. We may revisit that if we get an opportunity to find a part or full time executive director we would take a look at that.

**Sen. Flakoll-** with respect to the refund assessment, that doesn't prohibit them from being on the council does it?

**Randy Schneider-** yes that is my understanding.

**Sen. Flakoll-** I see that this bill on the last page has the class B misdemeanor, is that necessary?

**Randy Schneider-** again this bill is drafted the same way all the bills are drafted and that is why it is that way.

**Sen. Miller-** why do you have to be put in statute, why do we have to have this council?

**Randy Schneider-** I just believe that it is significant in having the blessing of the state. It shows that this industry is important in this state and that we are supporting this industry and again to allow the establishment of that and to be part of the ND century code.

**Sen. Miller-** how many other states do this if there are any?

**Randy Schneider-** there are states that have organizations that support the industry, I am not aware of the exact number.

**Mik Miller,** treasurer and CEO of Red Trail Energy, testified in favor of the bill.

**Mik Miller-** I stand in support of this bill, with working with other ethanol producers I think that we have all come to the same conclusion that it is very important that we have collaborative efforts to continue to promote and maintain the use of our product in the state of ND. Retro-energy loads about 40 ethanol tankers per week, that is about 55 million gallons of ethanol per year most of that product goes to the pacific northwest.

**Sen. Wanzek-** how low of a test weight can you go and still convert corn to ethanol?

**Mik Miller-** somewhere between 50 and 52lbs corn is what we would like to see.

**Tom Lilja,** ND corn growers association and the corn utilization group, testified in favor of the bill.

**Tom Lilja-** we stand in support of this bill. The conversion rate is 1 bushel of corn equals 2.8 gallons of ethanol. As corn growers we will have the supply as of now and into the future and we look forward to upgrading.

No opposition to the bill.

**Sen. Flakoll** closed the hearing.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2350

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 29 2009

Recorder Job Number: 8166

Committee Clerk Signature

*CASS W. FLAKOLL*

Minutes:

**Sen. Flakoll** opened the discussion on SB 2350, all members present (7).

**Sen. Wanzek** motioned to adopt amendments and was seconded by **Sen. Taylor**, vote 7 yea, 0 nay, 0 absent and not voting.

**Sen. Behm** motioned for a Do Pass as amended and to rerefer to appropriations and was seconded by **Sen. Miller**, vote 7 yea, 0 nay, 0 absent and not voting.

**Sen. Wanzek** was designated to carry the bill to the floor.

**Sen. Flakoll** closed the discussion.

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/04/2009

Amendment to: SB 2350

**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	\$190,800	\$0	\$190,800
<b>Expenditures</b>	\$0	\$0	\$0	\$190,800	\$0	\$190,800
<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
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**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).*

This bill creates a North Dakota Ethanol Council which is funded through assessments from each of the ethanol producers in the state.

**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.*

Section 7 creates an assessment of three one-hundredths of one cent per gallon of ethanol produced in this state.

Section 12 establishes a continuing appropriation to the North Dakota Ethanol Council from an ethanol fund, which includes the moneys raised from the assessment in Section 7.

**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.*

We project an ethanol production capacity of about 318 million gallons annually, for a total of 636 million gallons during the 2009-2011 biennium. Assuming all of the production capacity is utilized, the 636 million gallons of ethanol produced has the potential to generate assessments totalling up to \$190,800. This also assumes that producers won't apply for a refund of their assessment as outlined in Section 10 of the bill.

**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.*

The North Dakota Ethanol Council would have the authority to expend the total amount raised through the ethanol production assessment, which could total up to \$190,800. As noted in Section 6, the uses of these funds could include funding of research, education programs, promotion and market development efforts; as well as support of entities that promote ethanol utilization.

**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.*

This bill creates a continuing appropriation to the North Dakota Ethanol Council from the newly established ethanol

fund.

<b>Name:</b>	Justin Dever	<b>Agency:</b>	Department of Commerce
<b>Phone Number:</b>	328-7258	<b>Date Prepared:</b>	02/09/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/21/2009

Bill/Resolution No.: SB 2350

**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	\$190,800	\$0	\$190,800
<b>Expenditures</b>	\$0	\$0	\$0	\$190,800	\$0	\$190,800
<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
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**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).*

This bill creates a North Dakota Ethanol Council which is funded through assessments from each of the ethanol producers in the state.

**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.*

Section 7 creates an assessment of three one-hundredths of one cent per gallon of ethanol produced in this state.

Section 12 establishes a continuing appropriation to the North Dakota Ethanol Council from an ethanol fund, which includes the moneys raised from the assessment in Section 7.

**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.*

We project an ethanol production capacity of about 318 million gallons annually, for a total of 636 million gallons during the 2009-2011 biennium. Assuming all of the production capacity is utilized, the 636 million gallons of ethanol produced has the potential to generate assessments totalling up to \$190,800. This also assumes that producers won't apply for a refund of their assessment as outlined in Section 10 of the bill.

**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.*

The North Dakota Ethanol Council would have the authority to expend the total amount raised through the ethanol production assessment, which could total up to \$190,800. As noted in Section 6, the uses of these funds could include funding of research, education programs, promotion and market development efforts; as well as support of entities that promote ethanol utilization.

**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.*



This bill creates a continuing appropriation to the North Dakota Ethanol Council from the ethanol fund.

<b>Name:</b>	Justin Dever	<b>Agency:</b>	Department of Commerce
<b>Phone Number:</b>	701-328-7258	<b>Date Prepared:</b>	01/28/2009

Date: Jan 29, 09'  
 Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2350

Senate Agriculture Committee

Check here for Conference Committee

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

Action Taken More amendment

Motion Made By Wanzek Seconded By Taylor

Senators	Yes	No	Senators	Yes	No
Tim Flakoll-Chairman	X		Arthur Behm		
Terry Wanzek-Vice Chairman	X		Joan Heckaman	X	
Jerry Klein	X		Ryan Taylor	X	
Joe Miller	X				

Total (Yes) 7 No 0  
 Absent 0

Floor Assignment \_\_\_\_\_

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

Date: Jan 29, 09'  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2350

Senate Agriculture Committee

Check here for Conference Committee

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

Action Taken Do pass as Amended rerefer 2 Apps.

Motion Made By Behm Seconded By muller

Senators	Yes	No	Senators	Yes	No
Tim Flakoll-Chairman			Arthur Behm	X	
Terry Wanzek-Vice Chairman	X		Joan Heckaman	X	
Jerry Klein	X		Ryan Taylor	X	
Joe Miller	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Wanzek

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

**REPORT OF STANDING COMMITTEE**

**SB 2350: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2350 was placed on the Sixth order on the calendar.

Page 1, line 1, after the first semicolon insert "to amend and reenact section 4-24-09 of the North Dakota Century Code, relating to the agricultural commodity assessments funds;"

Page 1, line 4, after "in" insert "sections 1 through 13 of"

Page 1, line 6, replace "an" with "and"

Page 1, line 8, after "use" insert "in"

Page 2, line 11, after "to" insert "sections 1 through 13 of" and replace "chapter" with "Act"

Page 2, line 14, after "out" insert "sections 1 through 13 of" and replace "chapter" with "Act"

Page 2, line 15, after "under" insert "sections 1 through 13 of" and replace "chapter" with "Act"

Page 2, line 17, after "administer" insert "sections 1 through 13 of" and replace "chapter" with "Act"

Page 2, line 20, after "under" insert "sections 1 through 13 of"

Page 2, line 21, replace "chapter" with "Act"

Page 3, line 11, replace the first "the" with "this"

Page 3, line 16, after "with" insert "sections 1 through 13 of" and replace "chapter" with "Act"

Page 3, line 26, after "to" insert "sections 1 through 13 of"

Page 3, line 29, after "under" insert "sections 1 through 13 of"

Page 3, line 30, after "out" insert "sections 1 through 13 of"

Page 4, line 1, after "violating" insert "sections 1 through 13 of"

Page 4, after line 2, insert:

**"SECTION 14. AMENDMENT.** Section 4-24-09 of the North Dakota Century Code is amended and reenacted as follows:

**4-24-09. Agricultural commodity assessments funds - Investment income allocation.** The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, dry bean fund, dry pea and lentil fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, ethanol fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund

to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund."

Renumber accordingly

2009 SENATE APPROPRIATIONS

SB 2350

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2350

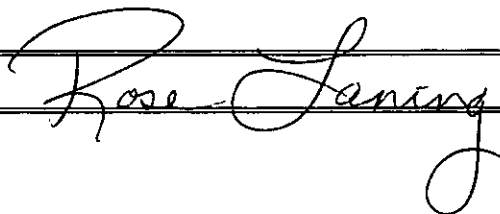
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: February 10, 2009

Recorder Job Number: 9138

Committee Clerk Signature



Minutes:

**Chairman Holmberg** called the committee hearing to order on SB 2350 to provide for the creation of an ethanol council.

**Randy Schneider**, President of the North Dakota Ethanol Research Association, spoke in favor of SB 2350. This bill has a fiscal note, of \$190,800, attached to it. Those dollars would come from the North Dakota Ethanol Producers Association. This is a vehicle that would allow us to fund certain activities of the ethanol industry in North Dakota. We think it is a good piece of legislation and hope that you support it.

**Senator Warner**, I am not entirely clear with the distinction between this and an industry charity group. Why do you need the government's involvement in this? It seems like it is entirely voluntarily.

**Randy Schneider** We feel that there is some credibility that the government brings to the organization. The state of North Dakota feels that this is an industry that contributes to the economic role of North Dakota.

**Senator Christmann** What does an ethanol plant pay to the state in terms of taxes?

**Randy Schneider** An ethanol plant basically pays income taxes, depending upon what format the entity is structured as. They will also pay property taxes. In today's world we are spending

about two dollars per gallon of production. We would be paying taxes just like any other business would.

**Senator Grindberg** is this proposal similar to other states with large volumes of crop corn?

**Randy Schneider** absolutely, this is kind of modeled after some of the other commodity groups in North Dakota. It is also modeled after some of the other states.

**Senator Grindberg** to your knowledge do other states support these councils with tax payer money?

**Randy Schneider** it is my understanding that in most cases the industry supports itself.

**Senator Grindberg** so the vision of this council is not to lay the ground work for future state support.

**Randy Schneider** absolutely not, this is to create an infrastructure on a per gallon charge so we can advocate an advance in North Dakota.

**Ryan Rauschenberger**, Manager of Energy Development in the Department of Commerce, spoke in favor of SB 2350, see attached testimony #1.

**Chairman Holmberg** closed the discussion on SB 2350.

**Senator Warner** moved Do Pass.

**Senator Krauter** seconds the motion.

**Senator Wardner** I kind of agree Senator Warner. I think they would be better off if they just had group without a state blessing.

The bill received a Do Pass on a vote of 13 to 0.



Date: 2-10-09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2350

Senate \_\_\_\_\_ Committee

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Sen. Warner Seconded By Sen. Krauter

Representatives	Yes	No	Representatives	Yes	No
Senator Wardner	✓		Senator Robinson	✓	
Senator Fischer	✓		Senator Lindaas		
V. Chair Bowman	✓		Senator Warner	✓	
Senator Krebsbach	✓		Senator Krauter	✓	
Senator Christmann	✓		Senator Seymour	✓	
Chairman Holmberg	✓		Senator Mathern	✓	
Senator Kilzer	✓				
V. Chair Grindberg	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment back to ag committee

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

*Wang*

REPORT OF STANDING COMMITTEE (410)  
February 11, 2009 8:29 a.m.

Module No: SR-27-2346  
Carrier: Wanzek  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

SB 2350, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2350 was placed on the Eleventh order on the calendar.

2009 HOUSE AGRICULTURE

SB 2350

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2350

House Agriculture Committee

Check here for Conference Committee

Hearing Date: February 27, 2009

Recorder Job Number: 9866

Committee Clerk Signature

*ReMae Kuehn*

Minutes:

**Senator Wanzek, Sponsor:** This bill establishes an Ethanol Producers Council. It is very similar to all the other commodity councils. It's meant to be consistent with how they operate. Collecting an assessment would be on ethanol that would be produced. The amount would be 3/100ths of 1 cent/gallon. The amendment on back puts it into the State Treasurer's domain. The ethanol industry has a lot of promise. The State Agriculture World Leaders conference in January had sessions on the Sustainability in the Future of Ethanol. I always carry this newspaper headline with me, "Seed Companies Look to Increase Corn Yields." This is why I think there is a future in this industry. The ethanol industry is at the Model T stage. There is so much growth ahead of us. The national corn yield back in the 60's was in the mid 40 range. Last year the national corn yield average was almost 154 bushels. Seed companies are predicting by 2030 that the national average will be 300 bushels/acre. Pioneer Hybrid Seed in this article states they are working on corn varieties especially geared to the ethanol industry. In other words, genetically designed in a sense that they are more efficiently converted to ethanol. Seed companies are also looking at ways to increase the content of protein or improve digestibility of distiller's grains to help the cattle feeding industry. Mansanto in this

Article expects the U.S. to eventually achieve 10% ethanol use because there is no other alternative at this time.

**Representative Mueller:** Would you clarify the 3/100ths of 1 cent/gallon goes on where and who pays it?

**Senator Wanzek:** I am hoping someone from the industry can better answer that.

**Shane Goettle, Commissioner of ND Dept. of Commerce: (Written testimony #1)**

**Randy Schneider, President of ND Ethanol Producers: (Written testimony #2)**

There is value to having the State of ND bless our industry through the council and allows us to have a formal structure to gather those dollars to fund the efforts important to our industry. In answer to how we collect it, the 3/100ths of 1 cent is calculated on the gallons of production at each of the ethanol plants in ND.

**Representative Holman:** \$190,000 is in the budget. 3/10ths of a mill per gallon—how many gallons are being produced?

**Randy Schneider:** With VeraSun up and running, we are looking at about \$100,000. With new plants coming on, we will get closer to the fiscal note of \$190,000.

**Representative Belter:** Are there any provisions in the law that precludes you from political activities? I'm very much concerned about the new breed of renewables and they are bypassing corn in exchange for moldy corn stalks and wet bales of hay. Would these funds be available for U.S. producers to talk about the future of using corn as a viable base and look for new things?

**Randy Schneider:** I can't speak for the council. I can assure you of two things. We will follow the law and represent the ethanol producers of ND. They have a tool to make sure we do accommodate their wishes and that is they can ask for their money back.

**Representative Uglem:** Is this just another check-off for corn?

**Randy Schneider:** I would beg to differ. Let's assume we take some of the council dollars and we help fund the establishment of blender pumps. We spend about 20 cents/gallon moving ethanol, which is produced in the state of ND, out to other parts of the country. If we get the ability to keep 10 million gallons of ethanol in ND at 20 cents/gallon, that's \$2 million of additional revenue they don't have to spend in transportation. That is more money to pay for good quality of corn. So I think the exact opposite effect will happen with this.

**Representative Vig:** Section 1 talks about the producer and the membership of the council. How many producers are over the one million gallons in ND? How many council members are on this ethanol council?

**Randy Schneider:** All ethanol plants are over that threshold. Therefore each plant would have a member on the council.

**Representative Vig:** So how many members on the council?

**Randy Schneider:** VeraSun, Tharoldson Ethanol in Casselton, Red Trail in Richardton, Blue Flint in Underwood, if Grafton gets set up, and Walhalla—six total.

**Jeff Zueger, Manager of Blue Flint Ethanol:** There is a lot of positive that we in the industry feel can come from the joint effort of this group.

**Vice Chairman Brandenburg:** What is the biggest issue to get it to the pumps?

**Jeff Zueger:** Public perception and misinformation? We need to educate the public on the benefits of ethanol. This council can focus on these areas.

**Mick Miller, President of Red Trail Energy in Richardton:** As others have covered most of the information, we all have great ideas on how we can work together to build demand.

**Representative Schatz:** There are six facilities that produce over a million gallons? Walhalla, Richardton, Underwood, and where were the other three?

**Mick Miller:** Yes, there are six facilities that are currently built in ND. Four are running at this time: Red Trail Energy, Blue Flint Ethanol, Theraldson Ethanol in Casselton, and Walhalla.

The plants in Grafton and Hankinson are not operational.

**Opposed:** None

**Vice Chairman Brandenburg:** Closed the hearing.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2350

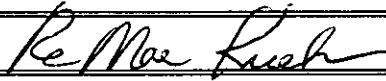
House Agriculture Committee

Check here for Conference Committee

Hearing Date: March 12, 2009 (**Committee Work**)

Recorder Job Number: 10847

Committee Clerk Signature



Minutes:

**Representative Uglem:** I have some concern about this because it is not a primary product off the farm which all our other councils are. However after talking to Shane Goettle, he said the ethanol people have requested this. They have gotten participation from everybody so far and they wanted to be sure that anyone who opened a plant in the future would be encouraged to participate. I see no harm in doing it.

**Representative Mueller:** Do we have any place in this bill that says if they do a check off that they show up and present their case to us early in the session?

**Representative Kingsbury:** Section 7 has an assessment.

**Representative Mueller:** We could look at the other commodity groups and how it is worded.

**Representative Boe:** We could probably put that into duties.

**Chairman Johnson:** (Asking Anita Thomas, Legislative Council) Do we need language to report to us like other commodity groups at the joint committee meeting with Senate Ag at the beginning of the session?

**Anita Thomas:** Yes, you do need that language. There is a statute that addresses that.

**Representative Mueller:** I will follow up on that.

**Chairman Johnson:** We will wait with this bill until tomorrow to get that amendment.



## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2350

House Agriculture Committee

Check here for Conference Committee

Hearing Date: March 13, 2009 (**Committee Work**)

Recorder Job Number: 10934

Committee Clerk Signature



Minutes:

**Representative Mueller:** Moved the amendments.

**Representative Vig:** Seconded.

**Voice Vote taken.** Passed.

**Representative Vig:** Section 1 I had a note that it would be a council of six members. If a new plant went on line, would they add a member?

**Chairman Johnson:** They would have to come back to the legislature in two years.

**Representative Vig:** Could the council be reduced if some plants close?

**Representative Rust:** I have in my notes there are six members if two plants restart.

**Vice Chairman Brandenburg:** **Moved Do Pass as amended and rereferred to**

**Appropriations**

**Representative Wall:** Seconded.

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

**Representative Mueller will carry the bill.**

VR  
3/13/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2350

Page 1, line 2, replace "section" with "sections" and after "4-24-09" insert "and 4-24-10"

Page 1, line 3, after "funds" insert "and a report to the legislative assembly"

Page 4, after line 22, insert:

**"SECTION 15. AMENDMENT.** Section 4-24-10 of the North Dakota Century Code is amended and reenacted as follows:

**4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents.** Between the first and tenth legislative day of each regular legislative session, the North Dakota ethanol council, the North Dakota potato council, the North Dakota oilseed council, the North Dakota dry bean council, the North Dakota dry pea and lentil council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk marketing board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North Dakota beekeepers association and the North Dakota turkey federation, must also include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years."

Renumber accordingly

Date: 3/13/09

Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2350

House Agriculture Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep. Mueller Seconded By Rep. Vig.

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

*Vote  
Amendment  
passed*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Bill Carrier \_\_\_\_\_

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

*Report back to joint  
House + Senate Ag.  
Committees*

Date: 3/13/09

Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2350

House Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number 90910-0201

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep. Brandenburg Seconded By Rep. Wall

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

Total (Yes) 11 No 0

Absent 2

Bill Carrier Rep. Mueller

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

*Refers to Appropriation*

**REPORT OF STANDING COMMITTEE**

**SB 2350, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2350 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "section" with "sections" and after "4-24-09" insert "and 4-24-10"

Page 1, line 3, after "funds" insert "and a report to the legislative assembly"

Page 4, after line 22, insert:

**"SECTION 15. AMENDMENT.** Section 4-24-10 of the North Dakota Century Code is amended and reenacted as follows:

**4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents.** Between the first and tenth legislative day of each regular legislative session, the North Dakota ethanol council, the North Dakota potato council, the North Dakota oilseed council, the North Dakota dry bean council, the North Dakota dry pea and lentil council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk marketing board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North Dakota beekeepers association and the North Dakota turkey federation, must also include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years."

Re-number accordingly

2009 HOUSE APPROPRIATIONS

SB 2350

## 2009 HOUSE STANDING COMMITTEE MINUTES

SB 2350

House Appropriations Committee

Check here for Conference Committee

Hearing Date: March 25, 2009

Recorder Job Number: 11521

Committee Clerk Signature

*Carmen Hart*

Minutes:

Chm. Svedjan called the Full House Appropriations Committee to order.

Rep. Dennis Johnson approached the podium. SB 2350 would establish an ethanol council.

You will see an appropriation of \$190,800. That monies is going to be derived from a check off on ethanol that is produced at these plants. There is an assessment fee of 1/100 of 1 cent per gallon to be taken off the ethanol at the plant before it goes to the retailer. Throughout the bill it tells how they are going to come up with their membership for this council. There is one from each plant.

Chm. Svedjan: The fiscal note indicates revenues of \$190,800. That is still the same. That was drawn back in early February.

Rep. Johnson: That was projected with the capacity of 318 million gallons annually and 636 million gallons drained in 09-11 biennium.

Chm. Svedjan: Did this bill receive strong support from your committee?

Rep. Johnson: It was unanimous.

Rep. Delzer: 5:36. It looks like most members are employees of the plant.

Rep. Johnson: They could draw from their membership of employment at the plants.

Rep. Delzer: Who pays them from the day they go? And how many are going to take a pay cut?

Rep. Johnson: They could be paid up to \$135 a day to be on this council. It would be at their discretion if they are, sort of speak, double dipping it.

Rep. Delzer: What's this council going to do that's not already being done by the industry?

Rep. Johnson: To bring continuity between the plants that are in North Dakota.

Rep. Delzer: This is entirely different from commodity councils. This is promoting a byproduct of the grains. I see that as being very different and not requiring the same need for a council.

Rep. Johnson: It is their industry and they felt they wanted this as a tool to sell their product and come back and report like the rest of the commodity groups every session we meet as to what is happening in their world.

Rep. Skarphol: What do you think the public perception would be if we authorize a council like this for the oil industry in North Dakota? I am talking about the refineries and the producers.

This smacks of collusion.

Rep. Johnson: They're earmarking our commodities and they are reporting back along with the rest of the commodity groups.

Chm. Svedjan: This creates another continuing appropriation and makes all the money available to them and would pay their per diem and they wouldn't be able to exceed that amount.

Rep. Berg: Can a producer receive a refund if they request a refund of this?

Chm. Svedjan: That was my question. It says on the Fiscal Note that it is assumed that no producer will request a refund so that tells me the bill must indicate that refunds could be requested.

Rep. Berg: Section 10 addresses that.



Rep. Johnson: Section 10 does address refund provision. It is set up the same way as all the other commodity groups as far as the procedure of the 60 days and the 90 days to receive the refund.

Rep. Berg: How many producers are we anticipating to have?

Rep. Johnson: We have five producers and four are active right now.

Rep. Nelson: If it is appropriate, I move a Do Pass.

Rep. Meyer seconded the motion.

Rep. Wald: Section 13, Penalty. It's a Class D misdemeanor. That looks like a heavy penalty.

Rep. Johnson: That's the provision in all the commodity groups I believe.

Chm. Svedjan: Explain to us how that violation would occur. Many of these sections define the duties and the powers and so on. What is it that they would be violating?

Rep. Johnson: It spelled out what their duties are and if they violate any of those duties, wouldn't they be in violation of them?

Chm. Svedjan: I could see the possibility of the council itself violating something like this, but I am not sure about individuals.

Rep. Wald: It looks like there is additional penalty in Section 9 for 30 days. It goes on in Subsection 1 and 2.

Rep. Johnson: Section 9 is similar in all reporting procedures.

Rep. Delzer: Most of these we've got ethanol subsidies set up. You used to have to show a loss. If the plant is showing a loss, can they get out of paying this three cents a gallon? Maybe three cents a gallon is wrong.

Rep. Johnson: It is 3/100 of one cent per gallon.

Rep. Delzer: That is what we heard in the past that these were all losing money. For a couple of years here they did real well. I don't know exactly how they are doing right now.

Rep. Johnson: The way the bill was brought into us they were doing well and wanted to invest their investment here as far as being able to sell products.

Rep. Delzer: Is our ethanol fund being used in the state?

Rep. Berg: What we're doing now is a program that is counter cyclical. It is really geared to kick in at times when corn prices are high and ethanol is low. Up until the last six months I don't think there has been any kick in of that in the last six months.

Rep. Nelson: Prior to the session, had it not been for the fact that VeraSun filed Chapter 11, the ethanol fund would have been completely deleted.

Rep. Delzer: If you only have five producers and two ask for it back, what is going to happen to the council? I would imagine if they asked for the refund back, they probably won't want be part of the council either.

Rep. Johnson: When there are not that many involved it would be significant if there is one or two that don't want to participate. I don't foresee why two would not want to participate when they brought the bill forward.

Chm. Svedjan: The producers were there and testified in favor of this?

Rep. Johnson: The folks that introduced this bill did it for the producers that wanted this bill.

Rep. Delzer: I have a continuing appropriations list here. It shows for the ethanol production incentive fund estimate, 07-09 beginning balance was right around \$2 million. Revenues and transfers were \$3,500,000. Total available expenditures is \$5,500,000. Ending balance would be 0, 09-11 beginning balance is 0. Revenues and transfers of \$3,500,000 and expenditures of \$3,500,000.

A roll call vote was taken on a Do Pass motion to SB 2350. That motion fails. 11 Yeas, 11 Nays, 3 Absent and Not Voting.

Rep. Johnson: We have the prime sponsor here if you would like to hear any comments from him. The producers came to him. It is their money. They are the ones that wanted it.

Rep. Berg: Rep. Delzer hit the nail on the head. If oil prices stay low and corn prices stay high, counter cyclical will kick in and burn through that money. In the past we have had producers coming at the legislature from a lot of different directions and it would seem to me that it might be appropriate to pull these producers together so there is kind of one point again to address what our role is going to be in ethanol next legislative session. I think there is some merit from policy so we have one point to deal with in the future.

Rep. Meyer: Was there any indication that any producers would request a refund?

Sen. Terry Wanzek, District 29: They have no intentions to ask for a refund. Whether you pass this bill or not won't have any bearing on the counter cyclical fund. It's a way to pull their thoughts together. As far as the penalties or fines, it's the same language with all commodities.

Chm. Svedjan: What is the status of the counter cyclical fund?

Sen. Wanzek: This is a new industry. The ethanol industry is at the Model T stage – and I mean that in a good way. There is tremendous potential in the future for this industry.

Rep. Nelson: One of the difficulties with the industry is transportation. Ethanol has not been able to use the pipeline. Truck or rail is the means of transportation that has to be used. What exactly will this council be doing that is not being done today?

Sen. Wanzek: I think there are a lot of challenges ahead. This puts a tax on their product and it's meant to be used for research and promotion.

Rep. Nelson: With that information before us I would try a Do Pass again.

Rep. Meyer seconded the motion.

Rep. Skarphol: Are they subject to the same open records laws as other parts of state government.

Sen. Wanzek: My answer would be yes.

Rep. Skarphol: Can anybody answer that with any degree of great certainty?

Sen. Wanzek: Like any other commodity organization I would expect that

Rep. Skarphol: We also have had a great inability to not get information from commodity groups if they didn't want to cooperate. How would you feel about with the removal of Section 10, the refund portion to where they were not capable of getting the refund? I realize you tried to organize this in the same fashion as other commodity groups, but it is an issue.

Sen. Wanzek: We drafted this to mirror what any other commodity organization would do. I personally do not have a problem, but the producers are not here.

Rep. Skarphol: Is a member required to have a plant in operation or could a member of the council have ownership of a plant that is not in operation?

Sen. Wanzek: I would believe the intent is you have to be in operation.

Chm. Svedjan: I think that is correct.

Rep. Kroeber: Section 1 says the producers must produce 1 million gallons annually.

Rep. Onstad: Don't you think that if more plants come on we are setting up a structure for the future? Try to get them all on board with participation.

Sen. Wanzek: Yes, that is how I would see it.

Rep. Wald: Page 4, Line 17, 20 percent goes to the state treasury. Is that interest off the fund or is that 20 percent of their revenue from the checkoff?

Sen. Wanzek: That's investment income added in the Senate to provide consistency with how the other commodity checkoff funds are handled under the state treasurer.

Rep. Berg: In response to Rep. Skarphol's question, whatever fee is collected becomes General Fund money. Therefore, everything that group does is subject to Open Record.

A roll call vote was taken on the second Do Pass motion to engrossed SB 2350.

**DO PASS. 20 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING. Rep. Mueller** is the carrier of this bill.

Date: 3/25/09  
 Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2350**

**Full House Appropriations Committee**

Check here for Conference Committee

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

*Failed*

Action Taken Do Pass

Motion Made By Nelson Seconded By Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan		✓			
Vice Chairman Kempenich		✓			
Rep. Skarphol		✓	Rep. Kroeber	✓	
Rep. Wald		✓	Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein		✓			
Rep. Martinson		✓			
Rep. Delzer		✓	Rep. Glassheim		
Rep. Thoreson		✓	Rep. Kaldor	✓	
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom		
Rep. Bellew		✓	Rep. Kerzman	✓	
Rep. Kreidt		✓	Rep. Metcalf		✓
Rep. Nelson	✓				
Rep. Wieland					

Total (Yes) 11 No 11

Absent 3

Floor Assignment \_\_\_\_\_

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

Date: 3/25/09  
 Roll Call Vote #: 2

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2350**

**Full House Appropriations Committee**

Check here for Conference Committee

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

Action Taken No Pass

Motion Made By Nelson Seconded By Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer		✓	Rep. Glassheim	✓	
Rep. Thoreson		✓	Rep. Kaldor	✓	
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom		
Rep. Bellew		✓	Rep. Kerzman	✓	
Rep. Kreidt	✓		Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland					

Total (Yes) 20 No 3

Absent 2

Floor Assignment Rep. Mueller

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

**REPORT OF STANDING COMMITTEE (410)**  
March 25, 2009 1:45 p.m.

**Module No: HR-54-5781**  
**Carrier: Mueller**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2350, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman)**  
recommends **DO PASS** (20 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING).  
Engrossed SB 2350 was placed on the Fourteenth order on the calendar.



2009 TESTIMONY

SB 2350

Attachment #1

DEPARTMENT OF COMMERCE TESTIMONY ON SB 2350  
JANUARY 29, 2009, 10:15 A.M.  
SENATE AGRICULTURE COMMITTEE  
ROOSEVELT PARK ROOM  
SENATOR TIM FLAKOLL, CHAIRMAN

Same  
to  
House

SHANE GOETTLE – COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the committee, my name is Shane Goettle, Commissioner of the North Dakota Department of Commerce. I also serve as chairman of the EmPower North Dakota Commission.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and its members were appointed by the Governor. It is an industry lead effort that allows all of our energy industries, both renewable and traditional, to have a voice into the state's energy policy. Their effort resulted in the creation of a revised EmPower North Dakota policy document which consists of 21 goals, 40 policy statements, and 98 recommended action items.

One of the EmPower North Dakota Commission's recommendations was the creation of a North Dakota Ethanol Utilization Council for the promotion of ethanol that would be funded by check-off dollars from ethanol plants. SB 2350 would accomplish this recommendation and provide funds from the ethanol producers themselves that could be used to promote the use of ethanol in this state.

I would also like to mention that the Department of Commerce has been involved in other recent efforts to promote ethanol. The GoE marketing campaign was launched in 2004 and included radio and television ads, billboards, and other promotional efforts for a total investment of \$500,000. Also, a proposal has received approval for \$167,764 from the Renewable Energy Program to be used in promoting ethanol in North Dakota. SB 2350 would build on these efforts using funds raised from ethanol producers.

Mr. Chairman and members of the Agriculture Committee, I ask for your support of SB 2350. That concludes my testimony and I am happy to entertain any questions.

/

**DEPARTMENT OF COMMERCE TESTIMONY ON SB 2350**  
**FEBRUARY 10, 2009, 5:15 P.M.**  
**SENATE APPROPRIATIONS COMMITTEE**  
**HARVEST ROOM**  
**SENATOR RAY HOLMBERG, CHAIRMAN**

**RYAN RAUSCHENBERGER – MANAGER OF ENERGY DEVELOPMENT, ECONOMIC  
DEVELOPMENT & FINANCE DIVISION, ND DEPARTMENT OF COMMERCE**

Good evening, Mr. Chairman and members of the committee, my name is Ryan Rauschenberger, Manager of Energy Development in the Department of Commerce.

I am here today to speak in favor of SB 2350 on behalf of Shane Goettle, Commissioner for the Department of Commerce who serves as the chairman of the EmPower North Dakota Commission.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and its members were appointed by the Governor. It is an industry lead effort that allows all of our energy industries, both renewable and traditional, to have a voice into the state's energy policy. Their effort resulted in the creation of a revised EmPower North Dakota policy document which consists of 21 goals, 40 policy statements, and 98 recommended action items.

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I would also like to mention that the Department of Commerce has been involved in other recent efforts to promote ethanol. The GoE marketing campaign was launched in 2004 and included radio and television ads, billboards, and other promotional efforts for a total investment of \$500,000. Also, a proposal has received approval for \$167,764 from the Renewable Energy Program to be used in promoting ethanol in North Dakota. SB 2350 would build on these efforts using funds raised from ethanol producers.

Mr. Chairman and members of the Appropriations Committee, I ask for your support of SB 2350. That concludes my testimony and I am happy to entertain any questions.

RANDY M SCHNEIDER  
PRESIDENT  
NORTH DAKOTA ETHANOL PRODUCERS ASSOCIATION

(#2)  
Randy Schneider  
2350  
2/27/09

For the record my name is Randy Schneider, President of the North Dakota Ethanol Producers Association and I am here in support of Senate Bill 2350 which establishes the North Dakota Ethanol Council.

North Dakota ethanol producers have many projects that they would like to pursue that will advance the industry in North Dakota. To pursue these efforts requires funding mechanism. We feel that Senate Bill 2350 provides for that vehicle.

This bill will allow us to help fund corn variety research, blender pump infrastructure, new ethanol production technology all efforts to help all ethanol producers be more profitable and allow the industry to grow stronger in North Dakota.

PROPOSED AMENDMENTS TO SB 2350

Page 1, line 2, replace "section" with "sections" and after "4-24-09" insert "and 4-24-10"

Page 1, line 3, remove "and" and after "appropriation" insert "; and to require a report to the legislative assembly"

Page 4, after line 22 insert:

**SECTION 15. AMENDMENT.** Section 4-24-10 of the North Dakota Century Code is amended and reenacted as follows:

**4-24-10. Agricultural commodity promotion groups to report to legislative assembly – Report contents.** Between the first and tenth legislative day of each regular legislative session, the North Dakota ethanol council, the North Dakota potato council, the North Dakota oilseed council...