

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

AGRICULTURE AND NATURAL RESOURCES COMMITTEE

Thursday, February 4, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Kenton Onstad, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Kenton Onstad, Roger Brabandt, Bob Hunsakor, Dennis Johnson, Dwight Kiefert, Diane Larson, Wayne Trottier; Senators Bill L. Bowman, Robert Erbele, Larry Luick, Joe Miller, Philip M. Murphy

Others present: Representative Marvin E. Nelson, Rolla, member of the Legislative Management
John Walstad, Legal Division Director, Legislative Council
See [Appendix A](#) for additional persons present.

It was moved by Senator Bowman, seconded by Representative Johnson, and carried on voice vote that the minutes of the December 3, 2015, meeting be approved as distributed.

OPENING COMMENTS BY THE CHAIRMAN

Chairman Onstad requested that copies of all bill drafts to be discussed and reviewed by the committee be placed in a binder for each committee member so they can keep track of each version of the bill drafts and keep notes for reference at future meetings. Mr. Walstad said the Legislative Council could accommodate the request.

OVERSIGHT OF CHARITABLE RAFFLES BY THE ATTORNEY GENERAL'S OFFICE

Chairman Onstad called on Ms. Deb McDaniel, Director of Gaming, Attorney General's office, for testimony ([Appendix B](#)) regarding the oversight process of charitable raffles.

In response to a question from Chairman Onstad, Ms. McDaniel said the Attorney General's office does not license or request any information from big game raffles because those types of raffles occur as a result of gubernatorial proclamations and fall under the authority of the Game and Fish Department. She said an audit by the Attorney General's office of big game raffles has never occurred.

In response to a question from Representative Nelson, Ms. McDaniel said any game of skill is not considered gambling. She said in order to be considered gambling there must be consideration and a chance to win a prize. She said fishing tournaments and coyote hunting are games of skill that would not be considered gambling. However, she said, raffles held in conjunction with games of skill fall under charitable gaming because they reintroduce consideration and a chance to win a prize into the event.

In response to a question from Representative Trottier, Ms. McDaniel said a charitable organization can legally allow a second charitable organization to gamble under their gambling permit as long as the original organization that holds the permit is the one conducting the game, keeping the necessary records, paying the gaming tax, and reporting the required information to the Attorney General's office. She said an example of this is when an organization that holds a gambling permit allows a second charitable organization to hold a poker tournament on their premises.

In response to a question from Chairman Onstad, Ms. McDaniel said under a local permit the city and the county would determine whether an organization applying for a gambling permit is "public-spirited," not the Attorney General's office. She said if the organization exceeds the primary prize limitation of \$6,000, or the total prize limit of \$12,000 per year that is allowed under a local permit, then the organization must apply to the Attorney General's office to become a licensed charitable gaming organization.

In response to a question from Mr. Walstad, Ms. McDaniel said the information that is reported to the Attorney General's office by licensed charitable gaming organizations, such as how much money was made and how it was spent, is retained for 3 years and is public record that is accessible by anyone.

STUDY OF GAME AND FISH DEPARTMENT SPECIAL ALLOCATION HUNTING LICENSES

The Legislative Council staff presented Game and Fish Department administrative rules governing special allocation hunting licenses ([Appendix C](#)), as requested by the committee at the previous meeting held on December 3, 2015.

Chairman Onstad called on Mr. Scott Peterson, Deputy Director, Game and Fish Department, for testimony regarding how the administrative rules are applied to special allocation hunting licenses and the procedures that organizations must follow under the rules. Mr. Peterson first provided a brief summary of information disseminated at the last meeting of the Agriculture and Natural Resources Committee regarding the type and number of special allocation hunting licenses that are available through North Dakota Century Code provisions as well as the revenues generated by the raffles or auctions for those licenses.

Mr. Peterson said the most recent administrative rule governing special allocation hunting licenses was approved in January 2016 and addresses an elk license that will be provided to Annie's House at Bottineau Winter Park. He said under the administrative rule, the organization is to provide an overall plan of the raffle procedures to the Director of the Game and Fish Department for approval. The raffle must be organized and conducted in accordance with Century Code Chapter 53-06.1 and North Dakota Administrative Code Article 99-01.3. The department asks for a detailed accounting statement, within 30 days of the completion of the raffle, raffle expenses, gross and net raffle income, number of tickets sold and unsold, and documented proof that no more than 10 percent of the gross raffle proceeds were used to promote the raffle. The Administrative Code provisions also require a financial report be filed with the department for all projects funded with raffle proceeds and the balance of unspent funds.

In response to a question from Chairman Onstad, Mr. Peterson said the overall plan required by the administrative rule must be submitted to the Game and Fish Department by the organization that plans to hold the raffle or auction for the special allocation hunting license.

Chairman Onstad said the discussion is meant to evaluate the process by which organizations and causes receive special allocation hunting licenses for fundraising purposes. He said currently the decision is being made through the legislative process, at which point the Game and Fish Department is tasked with determining the details and management of the special allocation hunting licenses and raffles. He said it may be better to allow the department to have the decisionmaking authority in order to remove any political influences in the decisionmaking process.

Representative Hunskor said the decisionmaking authority currently belongs to the legislature. He said another possibility is to turn all of the authority over to the Game and Fish Department and take the decisionmaking authority out of the political arena. He said a third possible option between the legislature and the department is to create a separate commission. He said he believes South Dakota has a commission separate from their game and fish department that makes decisions on special allocation hunting licenses. He said it may be useful to get additional information from surrounding states regarding how they address the authority and oversight of special allocation hunting licenses. He said North Dakota could potentially house the authority to govern special allocation licenses with the department, or a separate commission, and still have legislative oversight.

In response to questions from Representative Johnson, Mr. Peterson said the Game and Fish Department has developed rules pertaining to fishing tournaments which require a portion of the proceeds of the tournament be returned to the department. He said the department is responsible for administering fishing tournament rules.

In response to a question from Representative Hunskor, Mr. Peterson said the Game and Fish Department has had several conversations regarding a hypothetical scenario in which the department is given the authority over special allocation hunting licenses since the issue was raised last session. He said it is difficult to determine which organizations are worthy of special licenses because there are many good causes. He said if the authority is turned over to the department they would draft rules that require organizations receiving special allocation hunting licenses be based or founded in North Dakota. He said the department would like guidance from the Legislative Assembly on the number of tags to be issued each year. He said the department would require a portion of the proceeds be returned to the department or that the proceeds be used to fund conservation projects in North Dakota. He said the department would draft rules which require any nonconservation organization that received a special allocation hunting license to wait 5 years before being eligible to apply again. He said the department would likely implement a lottery system to determine which conservation organizations were awarded special allocation hunting licenses each year.

In response to a question from Senator Murphy, Mr. Peterson said the Game and Fish Department would be willing to draft rules and guidelines to regulate the special allocation hunting license process for approval by the Legislative Assembly each year if the authority is given to the department. He said that would allow the department to have the authority while still allowing for legislative oversight of the process.

In response to questions from Senator Bowman, Mr. Peterson said the Game and Fish Department would like to incorporate as much science as possible into the process of determining how many special allocation hunting licenses are to be made available each year. He said the department would like to be able to use the population data of each species to justify the number of licenses available each year.

Senator Bowman said it may be useful to draft language stating the number of special allocation hunting licenses made available each year needs to be justified based on the population data available for each species.

In response to a question from Representative Hunskor, Mr. Peterson said whether future special allocation hunting licenses will be taken out of the number available through the general lottery or in addition to those licenses depends on the population numbers for each species every year. He said allowing 1 or 2 percent of the available licenses for a species to be used for special allocation licenses would not likely be considered "biologically significant." However, he said, allowing an additional license be used for special allocation for rare species, such as bighorn sheep, that may only have four or five licenses available each year would be considered "biologically significant" because it constitutes 25 percent of the total licenses available.

Representative Larson commented that in her experience, the Game and Fish Department employees are very friendly, professional, and do a great job.

Chairman Onstad said, by way of recap, the discussion is meant to determine whether the legislature, or another body, is best suited to have authority over special allocation hunting licenses, and how organizations should go through the process of attempting to obtain a license. He said the Game and Fish Department is in charge of game management and it would make sense for the department to have authority over special allocation hunting licenses. He said applications for special allocation hunting licenses would be submitted to the department for review. He said the department would then make a recommendation on each application to the Legislative Assembly for final approval or denial.

Representative Hunskor requested the Legislative Council staff conduct research into how bordering states handle the authority and process of special allocation hunting licenses in order to determine if the bordering states do things in a manner that North Dakota may want to emulate.

Chairman Onstad requested the Legislative Council staff to conduct research into how bordering states authorize, handle, and regulate special allocation hunting licenses.

In response to a question from Chairman Onstad, Mr. Peterson said the Game and Fish Department did a very informal survey of how surrounding states address special allocation hunting licenses. He said South Dakota, Wyoming, and Montana all administer special allocation hunting licenses through a commission that has administrative and statutory authority. He said North Dakota currently has an advisory board that only has advisory authority.

In response to questions from Representative Nelson, Mr. Peterson said the Game and Fish Department would like licenses currently being made available for nonraffle purposes, such as wounded warriors and terminally ill children, to be grandfathered in under any new system or authority. He said any new requests would be administered as raffles through nonprofit organizations. He said he did not believe the department governs or creates rules for predator hunts. He said the department issues hunting permits because most predators, such as coyotes, do not have a closed season in North Dakota and can be hunted year round without restriction.

Chairman Onstad requested the Legislative Council staff work with the Game and Fish Department to draft legislation allowing special allocation hunting licenses to originate with and be under the authority of the Game and Fish Department. He said entities currently authorized by statute for a special allocation hunting license will be grandfathered into the new system. He said additional licenses made available to new entities will be based in part on the population numbers available from the department. He said the applications will originate with the department. He said the department will then make a recommendation for final approval or denial of an entity to the Legislative Assembly. He said if the department approves an entity for a license they would introduce a bill draft to the Legislative Assembly to make the entity eligible for a license by statute.

Senator Bowman said he hopes that if the plan is to create flexibility to add additional licenses in years when the population justifies it, the plan also creates the ability to eliminate special allocation hunting licenses in years when the population of various species is reduced. He said the Game and Fish Department is in a better position than the Legislative Assembly to make determinations on requests for special allocation hunting licenses. He said the department has a better sense of how many licenses a species can handle on a yearly basis based on the population counts.

Senator Murphy said the Game and Fish Department already has much of that flexibility. He said the department sets the limits, sets the season, and has the ability to not hold a season for various species when the population is reduced. He said he did not think flexibility under a potential new system will be an issue.

Mr. Peterson said the Game and Fish Department would like to have the authority to declare a moratorium on additional special allocation hunting licenses in years where the population is reduced.

Mr. Walstad commented that drafting legislation that reduces the number of available licenses is not difficult. However, he said, adding additional licenses for entities that have a set number of licenses provided by statute will require language providing for an escalator or a different mechanism to allow for additional tags of certain species based on population counts.

Representative Hunskor said ultimately entities that get turned down will be upset whether the decision is made by the Game and Fish Department or the Legislative Assembly. He said it makes more sense to base those decisions on the science and populations counts provided by the department, than to have the Legislative Assembly decide. He said regardless of who makes the decision the bottom line is somebody has to make a decision to determine who gets a special allocation hunting license and who does not, and the committee needs to determine who that should be.

Senator Luick said the science determining new licenses to be made available should be the responsibility of the Game and Fish Department. However, he said, maybe the entities potentially being grandfathered in under a new system need to be evaluated and altered as well.

Representative Nelson said maybe instead of creating statutes for special allocation hunting licenses for various organizations, the committee should consider allowing entities to apply for a regular license through the general lottery drawing and if they are awarded a license, they can then raffle or auction the license if they choose to do so. He said doing so would require the Game and Fish Department to decide on the number of licenses available based on population counts, and not on any other special considerations.

Chairman Onstad said it is against the rules for an individual who receives a tag through the general lottery to raffle or transfer it to another organization, so attempting to do what Representative Nelson suggested would also currently be against the rules.

Representative Trottier said he is unsure whether there is anything wrong with the system that is currently in place. The committee may be trying to fix something that is not broken.

AGRICULTURE REWRITE PROJECT

Mr. Walstad said the Legislative Council staff has been doing a lot of work on bill drafts. He said some of the bill drafts have been reviewed by the committee once before and some are new drafts to be reviewed for the first time. He said normally when the Legislative Council staff drafts bills for this project, they first contact the entities affected by the bill draft and ask for input prior to presenting the bill draft to the committee. He said the hope is once a bill draft comes before the committee for review a second time, if it appears that the bill draft is as the committee likes, it will no longer need to be placed on the agenda and may be placed in a separate folder to be introduced during session. He said the Legislative Council staff also hopes, because the rewrite project may produce 40 or more bill drafts, the committee will consider consolidating bills together into five or six bill drafts so the number of introduced bills to be addressed during the legislative session will be a manageable number.

Eggs

The Legislative Council staff presented a bill draft 17.0021.02000 ([Appendix D](#)) on eggs. Mr. Walstad said this is the second time the committee is looking at this bill draft. He said there is a division of rulemaking authority in this chapter between the Agriculture Commissioner and the State Department of Health. As a result, he said, although there were no substantive language changes made to this bill draft, the portion of the chapter that addresses the Agriculture Commissioner is being moved into the new agriculture title, and the portion of the chapter that addresses the rulemaking authority of the State Department of Health is being left in the title on food.

At the previous meeting the committee had requested information regarding the meaning of "ultimate consumer" in the chapter on eggs. Mr. Shaun Quissell, Livestock Development Division Director, Department of Agriculture, said the department's legal counsel advised that "ultimate consumer" means an individual who buys a product after it has passed through all the stages of production, with the intent to consume or use the product. He said it is the person or entity who actually consumes or makes use of the product. He said it is not necessarily the consumer, buyer, or shopper who might only be a purchasing agent or buying agent for the actual consumer. He said an "ultimate consumer" is the person or organization who buys a product to consume it or use it, rather than to sell it to someone else.

Chairman Onstad requested the Legislative Council staff to write the bill draft in final form and place into a separate folder to be recommended to the Legislative Management.

Interstate Compact on Pest Control

The Legislative Council staff presented a bill draft [[17.0020.03000](#)] on pest control. Mr. Walstad said after some research it was determined the compact addressed by this chapter is no longer functioning. As a result, he said, the bill draft was prepared in final form to be recommended to the Legislative Management and eliminates the chapter addressing the compact.

Chairman Onstad requested the Legislative Council staff place the bill draft in a separate folder to be recommended to the Legislative Management.

Poultry

The Legislative Council staff presented a bill draft 17.0022.02000 ([Appendix E](#)) on poultry. He said this is the second time the committee has reviewed this bill draft. He said the definition of "poultry" was amended to better reflect the definition suggested by the Department of Agriculture, as well as the definition of poultry in other chapters of Century Code.

In response to a question from Representative Larson, the Legislative Council staff said he would double check the definition of "poultry" elsewhere in Century Code to verify whether the definitions are now consistent. He said the definition in this bill draft is an accurate reflection of suggestions made by the committee and the Department of Agriculture at the last committee meeting.

The Legislative Council staff said references to the "poultry division" were removed because that division no longer exists. He said the rest of the bill draft consisted of cleanup language already discussed by the committee at the previous meeting.

Chairman Onstad requested the Legislative Council staff to write the bill draft in final form and place in a separate folder to be recommended to the Legislative Management.

Industrial Hemp

The Legislative Council staff presented a bill draft [[17.0023.03000](#)] on industrial hemp. He said this is the second version of the bill draft to be reviewed by the committee. He said this bill draft is being brought back before the committee in final form to be recommended to the Legislative Management. He said the only change from the previous bill draft is the language "viable kernels of" which was included on page 1, line 16, changed at the suggestion of the Department of Agriculture. He said the rest of the language is the same and the chapter is being moved into the new agriculture Title 4.1.

In response to a question from Chairman Onstad, the Legislative Council staff said the content of this chapter duplicates some federal guidelines regarding industrial hemp, but he would check with the Department of Agriculture to verify.

Senator Luick commented he was curious how the enforcement of the state industrial hemp chapter applies to reservations. He asked if it was legal to transport industrial hemp seeds from North Dakota onto a reservation, or across state lines.

Chairman Onstad said he believed that reservations are sovereign nations not subject to state jurisdiction regarding industrial hemp.

Representative Nelson said, as the Chairman of the Tribal and State Relations Committee, he has some knowledge of the topic. He said he is almost certain the state does not have jurisdiction over a tribal member on tribal land. However, he said, the state probably has jurisdiction over a nontribal member on tribal land. He said tribes have the option to recognize state laws, licenses, and permits, but are not required to do so.

Chairman Onstad requested the Legislative Council staff place this bill draft in a separate folder to be recommended to the Legislative Management.

Meat Inspection

The Legislative Council staff presented a bill draft 17.0024.02000 ([Appendix F](#)) on meat inspection. Mr. Walstad said the committee looked at this bill draft at the prior meeting. He said after speaking with the Department of Agriculture, this bill draft should have resolved all of the issues and concerns that were raised in the first bill draft. He said language was added on page 1, lines 18 and 19, in which the term "adulterated" applies to an animal product condemned by reason of disease that existed at the time of slaughter. He said an inspector may allow time for a disease to be remedied prior to slaughter. In instances where that occurs, he said, the animal product would not be considered to be "adulterated."

Mr. Walstad said that the definition of "poultry" in this bill draft now matches the definition that was placed in the poultry bill draft discussed earlier this meeting.

Chairman Onstad requested the Legislative Council staff write the bill draft in final form and place into a separate folder to be recommended to the Legislative Management.

County Extension Agent

The Legislative Council staff presented a bill draft 17.0028.03000 ([Appendix G](#)) on county extension agents. Mr. Walstad said this bill draft was presented to the committee at the last meeting. He said there have since been some significant changes made to the bill draft. He said this bill draft is not being moved into the new agriculture title under 4.1. He said this chapter is instead being moved into Title 11, which is the title for counties. He said although this chapter is related to agriculture, the county extension agent is a county officer. He said the county administers this chapter in conjunction with the extension division. He said it is more logical and appropriate to move this chapter under the title that deals with counties.

Mr. Walstad said Section 4 of this bill draft, regarding the selection of an extension agent, was revised considerably upon the recommendation of the North Dakota Association of Counties and the extension division. He said the language contained in the revised bill draft reflects the current practice of selecting an extension agent. He said the language regarding the filling of a vacancy was previously housed in a separate section within the chapter. He said this bill draft consolidates that information into a single section.

Mr. Walstad said Section 9 of the bill draft regarding budgeting was also revised considerably upon recommendations. He said the underscored language in Section 9 is new language not in current law. Once again, he said, this language change was made to make the statute accurately reflect current practice. He said this section addresses the salary of the agent, but not additional staff and office expenses.

Mr. Walstad said a considerable amount of language was removed from Section 10 on page 6 of the bill draft. He said this language was not removed entirely, but rather moved to a new section within the bill draft on page 8 because it addresses a separate subject.

In response to a question from Chairman Onstad, Mr. Terry Traynor, Assistant Director, Policy & Programs, North Dakota Association of Counties, said the Extension Service and the County Commissioners Organization sat down a number of years ago to work out a model agreement regarding who pays the budget for county extension agents. Typically, he said, the budget is split 50/50 between the North Dakota State University Extension Service and the counties for the professional staff and the agents. He said the budget for support staff and operating expenses are the responsibility of the counties. He said expenses for certain types of training required by North Dakota State University are paid for by the Extension Service. He said expenses for equipment are shared. He said the budget overall is a very dynamic sharing situation. He said if the Extension Service believes that the 4 percent budget reduction needs to come out of salaries, it will be very challenging for the counties to make up the 4 percent due to a decrease in their own budgets. He said he thinks the current bill draft updates the language in Century Code to be reflective of current practices.

Chairman Onstad requested the Legislative Council staff place this bill draft in a separate folder to be recommended to the Legislative Management.

General Livestock Provisions

The Legislative Council staff presented a bill draft 17.0029.02000 ([Appendix H](#)) on livestock. He said this is the second time this bill draft has been before the committee. He said this chapter was slated to be moved into the new Title 4.1 at the last meeting. Following some discussion and recommendations, he said, this bill draft was left in Title 36 in order to maintain a separation of agriculture and livestock. He said the majority of language changes made in this bill draft were already discussed at the previous meeting.

The Legislative Council staff said Section 36-21-05 on page 2 has been completely overstruck with the intention of repealing that section following the committee's recommendation and directive at the previous meeting.

Representative Larson commented she is unsure why Section 5 regarding prima facie evidence of negligence could not just be repealed at this point. She said the state already has laws governing negligence in Century Code. She said the law in this chapter appears to be redundant and unnecessary.

Senator Bowman commented he would be interested to know what the reasoning was for the law to be enacted in the first place. He wanted to know whether the responsibility to fence the land and keep the cattle off the railroad was the responsibility of the landowner or the railroad. He believes the responsibility is different from state to state.

Mr. Walstad said the directive of the committee is to make changes for the rewrite project without making substantive changes to the law, or to eliminate obsolete provisions. He said this provision may fall into the obsolete category. He said he has not had an opportunity to research the reasoning behind the law at this point. He said his inclination is the provision was written at a time when there was a large portion of open range and trains traveled at 25 miles per hour. However, he said, this statute may no longer represent current railroad practices.

In response to a question from Senator Luick, Larry Kingman, Livestock Producer, said he believes it is the responsibility of the railroad to fence their property, so the railroad would be liable for damages to livestock that get out of the fence and onto the track.

In response to a question from Senator Miller, Mr. Kingman said he is unsure whether this law was possibly written to protect a farmer or rancher from the railroad company who may have otherwise sued the farmer or rancher.

Representative Nelson said that statutes addressing railroad fencing occur in Chapter 49-11. Under those laws, he said, if a landowner has land on both sides of the railroad, he can require the railroad to build and maintain a fence. He said it is the obligation of the railroad to build and maintain the fences to keep livestock off the railroad tracks. He said prima facie evidence does not necessarily mean that the rancher can collect if he brings suit, but damage to livestock is evidence the railroad is at fault. He said the railroad can still come back with evidence of their own in defense against the claims.

Representative Larson commented that maybe in certain situations a neighbor decides to cut a fence to get across the railroad tracks to the other side. He said it seems there are already laws in place covering who is responsible in these types of situations. She said it does not seem logical to automatically place the evidence against the railroads. She said she prefers this section be repealed because the language seems archaic and unnecessary.

Senator Miller commented that prima facie translated into English means "at face value."

In response to a question from Senator Luick, Mr. Walstad said prima facie simply shifts the burden of proof from the plaintiff to the defendant. Normally, he said, the burden of proving a legal claim is on the plaintiff to show that the defendant caused them harm. He said, under prima facie, the plaintiff no longer has that burden. Rather, he said, the burden is on the defendant to prove that they did not cause the harm claimed by the plaintiff. He said prima facie is a substantial advantage for a plaintiff.

Senator Murphy commented he is not in favor of removing a safeguard that has been placed in Century Code for the purpose of protecting the owner of livestock.

Representative Johnson said removing the provision would be detrimental to the livestock industry, which is a big industry in the state. He said even if the language is archaic he would prefer to leave the provision in Century Code for the time being.

Following discussion, there was no committee opposition to keeping Section 5 in the bill draft. Chairman Onstad requested the Legislative Council staff leave Section 5 in the bill draft.

Senator Erbele commented that the committee should review Section 8 of the bill draft to determine whether that section reflects current practices.

Mr. Trevor Graff, Communications Director, North Dakota Stockmen's Association, said Section 8 dealing with livestock market financial transactions is no longer accurate with current practices. He said in North Dakota the brand inspectors have the responsibility of providing title to livestock. He said the process of determining whether a person has credit or is a viable purchaser is not taken into account during the inspection by the brand inspector. He said the last line in the section says the livestock market can hold the title to livestock. He said that is not what actually occurs. Under current practices, the brand inspector inspects cattle at the time of purchase and provides a market clearance that transfers the ownership of cattle to the new purchaser. He said the bill draft needs to ensure the sale bonds and auction markets are still protected financially under the law while making clear that there is a distinction in the process that the title is coming from a brand inspector who may or may not know whether a buyer is credit worthy at the time of purchase.

In response to a question from Chairman Onstad, Mr. Graff said the issue does not lie with the cleanup language, but rather with the fact current law does not accurately reflect current practices under this section of the bill draft.

In response to a question from Senator Luick, Mr. Graff said current law is not correct as it stands now and needs some clarification. He said the clarifications may require a substantive change to the law and may need to be addressed during session.

Senator Erbele commented although the language in this bill draft has been cleaned up, it still does not reflect current practices. He said he believes amending the Century Code provision to reflect current practices would be a substantive change and would need to be addressed through a separate bill draft during session.

Mr. Walstad said he believes clarifications to make the law reflect current practices can be made in the bill draft because the committee directive was to cleanup obsolete language and get the law up to date. He said in the case of the extension agent bill draft, recommendations came from interested third parties who will be affected by the bill draft. He said based on those recommendations, the bill drafts were amended so the law was reflective of current practices.

Chairman Onstad said if it is in the directives of the committee to allow bill draft legislation to be written to amend the law and make it more reflective of current practices, he would like to do that and place notice that there will be discussion and comments at the next meeting.

Chairman Onstad requested the Legislative Council staff approve the rewrite for final approval and then bring a bill draft to the next meeting to reflect the current practice of the law included in Section 8 of the bill draft. He requested the Legislative Council staff work with the North Dakota Stockmen's Association and independent beef producers on the bill draft.

Northern Crops Institute

The Legislative Council staff presented a bill draft 17.0031.03000 ([Appendix I](#)) on the Northern Crops Institute. Mr. Walstad said this bill draft is before the committee for review for the second time. He said the last bill draft suggested this chapter be moved into the higher education title of Century Code near the chapters dealing with North Dakota State University. He said the Northern Crops Institute requested the chapter be left in the agriculture title because most of their work is with the agriculture commodity groups. He said this bill draft accommodates the request and moves this chapter into the new agriculture title under Title 4.1.

Mr. Walstad said other than the location of where the chapter will be placed, nothing else was changed from the last time the bill draft was before the committee.

Chairman Onstad requested the Legislative Council staff write the bill draft in final form and place into a separate folder to be recommended to the Legislative Management.

Agricultural Products Utilization Commission

The Legislative Council staff presented a bill draft [[17.0032.02000](#)] on the Agricultural Products Utilization Commission. He said this is the second time the committee has seen this bill draft. He said no changes were made from the prior bill draft. He said this bill draft has been placed in final form for consideration by the committee.

Mr. Walstad said this chapter is now in Title 4 under agriculture. He said this bill draft would place it in Title 54, by the chapter governing the Department of Commerce where it most logically fits.

In response to a question from Senator Murphy, the Legislative Council staff said this bill draft has been placed in proper format to be recommended to the Legislative Management. He said all notes have been removed. He said all overstruck and underscored language where changes were made have been removed because, in order to be introduced as a new chapter, all the language must appear as new law in the new chapter and the old chapter must be repealed.

Chairman Onstad requested the Legislative Council staff move the bill draft to the approved folder to be recommended to the Legislative Management.

Dairy Regulations

The Legislative Council staff presented a bill draft 17.0019.01000 ([Appendix J](#)) on dairy regulations. Mr. Walstad said this is the first of the new bill drafts the committee is seeing for the first time.

Mr. Walstad said a number of definitions in Section 1 of the bill draft are no longer referenced anywhere in the chapter following revisions that removed the references to the words defined. As a result, he said, the definitions which no longer reference anything in the chapter are unnecessary and can be removed.

Mr. Walstad said that "peddler," which is defined on page 5 of the bill draft, is peculiar. It only occurs in one section of the chapter and it requires someone to obtain a license for a place of business. However, he said, a "peddler" by definition does not have a fixed place of business.

Mr. Walstad said although this is a long bill draft, the majority of the changes are just minor cleanup language changes.

Mr. Walstad said on page 9, line 8, some language was rewritten to improve sentence structure. However, he said, the words "due to a complaint" on line 8 were accidentally left in the bill draft and need to be overstruck.

Mr. Walstad said starting on page 20, there are a number of sections which allow the Agriculture Commissioner to adopt rules and regulations regarding various topics. He said those sections are unnecessary because Section 59 of the bill draft allows the commissioner to adopt rules to implement the chapter, which covers all topic areas for which the commissioner may need to adopt rules. As a result, he said, the sections allowing rules on various topics have been eliminated.

Chairman Onstad said although the definition of "transfer station" has been removed from the bill draft, he believes such stations do still exist.

Mr. Walstad said at one point there would have been a statute within this chapter that included "transfer station" references. However, he said, that statute has since been repealed. As a result, he said, there is no need to keep the definition in this chapter.

Mr. Quissell said the definition of "transfer station" does not need to be maintained in this chapter because it is still covered under the pasteurized milk ordinance.

Chairman Onstad requested the Legislative Council staff make the desired changes to the bill draft and bring it back for committee review at the next meeting.

Pesticides

The Legislative Council staff presented a bill draft 17.0038.01000 ([Appendix K](#)) on pesticides. He said this is the first time the committee is looking at this bill draft. He said this bill draft is large because it contains the rewrite of Chapter 4-35 on the pesticide act, Chapter 4-35.1 on chemigation regulation, and Chapter 19-18 on pesticide registration.

The Legislative Council staff said Sections 1 and 3 of the bill draft were repealed because sections dealing with short titles and intent statements are discouraged in Century Code. He said Section 2 was also repealed because it is redundant with Section 6 of the bill draft and is unnecessary. He said the Legislative Council staff forgot to overstrike the caption on page 1, line 9. He said the Legislative Council staff needs to go back and amend Section 2 to overstrike the caption.

The Legislative Council staff said the majority of this bill draft is minimal cleanup language changes. He said cross references throughout the bill draft have been amended to reflect the new location of many of the chapters and sections in Century Code.

The Legislative Council staff said in several sections within the bill draft, such as on page 9, sections were broken down into smaller subsections for the purpose of enhancing the readability of the section.

The Legislative Council staff added the language "during business hours" in Section 14, page 11. However, he said, after discussing with the Department of Agriculture, it was determined the language should be "during open hours." He said prior to the language change the section read as though someone needed to be on the premises 24 hours per day. He said the intent behind the language change was to make it so someone only needed to be on the premises during hours of business operation. He said the department indicated that "business hours" implies standard 8-5 hours. However, he said, farmers do not always work within those hours, so "open hours" is a more accurate reflection of hours of operation that cater to farmers. He said if the committee directs them to do so, the Legislative Council staff will need to amend the language to reflect the recommendation of the department.

The Legislative Council staff made a language change on page 18, line 10, and the Department of Agriculture recommended a different language change. He said, in this instance, the Legislative Council staff overstruck the word "land" and inserted "property." However, he said, the department recommended that it be left as "land" because that word has a specific definition. He said changing the word to "property" may limit the intent of the original drafters.

The Legislative Council staff made a language change on page 40, line 12, and the Department of Agriculture requested it to be left as originally stated. He said the Legislative Council staff overstruck "irrigation" and replaced with "ground or surface." He said the department requested the language be left as "irrigation" because changing the language may expand the section beyond the original intent.

In response to a question from Representative Trottier, the Legislative Council staff said if the committee recommends it, the Legislative Council staff will change "property" back to "land" on page 18, line 10, at the request of the Department of Agriculture.

Chairman Onstad requested the Legislative Council staff make the requested changes to the bill draft and place it in final approval format.

Anhydrous Ammonia

The Legislative Council staff presented a bill draft 17.0040.01000 ([Appendix L](#)) on anhydrous ammonia. He said the Legislative Council staff wanted to point out that in Section 1 the statute references "1989 American national standard safety requirements." He said the Legislative Council staff did not amend that reference. However, he said, there have been more recent updates to those safety requirements the committee may wish to consider adopting under Century Code for this section.

Mr. Eric Delzer, Fertilizer Program Manager, North Dakota Department of Agriculture, said current policy changes that affect the anhydrous ammonia industry were brought forth by the Occupational Safety and Health Administration (OSHA). He said the policy changes would affect every anhydrous ammonia retail facility in the state. He said the Agriculture Commissioner has been very outspoken in opposition against the policy changes. He said in December, language was inserted into the federal omnibus spending bill draft to stop OSHA from implementing their policy changes during the 2016 fiscal year. However, he said, OSHA responded by saying they would wait to implement the policy changes until the 2017 fiscal year.

The Legislative Council staff said Section 3 of the bill draft was repealed, but the content of that section was moved into Section 4. He said Sections 3 and 4 both address similar subject matter so it made sense from a drafting standpoint to combine the two sections into a single section.

The Legislative Council staff made a language change on page 7, lines 11 and 12, upon which the Department of Agriculture had a differing viewpoint. He said the Legislative Council staff removed "farm transportation wagon or vehicle" and replaced it with "conveyance." He said the original language sounded antiquated and in need of being updated. However, he said, the Department of Agriculture requested that instead of "conveyance," the language be changed to "implement of husbandry" as it is the current standard industry terminology used.

In response to a question from Representative Larson, the Legislative Council staff said according to the Department of Agriculture "implement of husbandry" is the standard terminology used and is the best language to be inserted in this bill draft to adequately reflect current practices. Mr. Pete Hanebutt, Director, Public Policy, North

Dakota Farm Bureau, said although "implement of husbandry" sounds antiquated, it is a term accepted across the country to reflect things being towed down the road.

Mr. Delzer said the Department of Agriculture would like to make recommendations ([Appendix M](#)) to the committee for changes to the safety standards within the chapter which are no longer up to date. He said the department also has recommendations to certain sections within the chapter that may amount to substantive language changes.

In response to a question from Senator Bowman, Mr. Delzer said he has the recommended language changes prepared in his written testimony.

Chairman Onstad requested the Legislative Council staff work with the Department of Agriculture to address the anhydrous ammonia chapter rewrite to amend the relevant sections and bring them up to current practices and safety standards and bring the amended bill draft back at the next meeting. He said changes that would amount to substantive language changes will have to be addressed in a separate bill draft during session.

Crop Protection

The Legislative Council staff presented a bill draft 17.0041.01000 ([Appendix N](#)) on crop protection. He said the majority of this bill draft is just minor cleanup language changes. He said he wanted to make the committee aware that Sections 1 and 2 of this bill draft were also included in the bill draft on pesticides referenced earlier. He said it was decided to defer to the committee's directives on the matter.

Chairman Onstad requested the Legislative Council staff leave the sections in this bill draft and remove them from the pesticides bill.

Fertilizer

The Legislative Council staff presented a bill draft 17.0042.01000 ([Appendix O](#)) on fertilizer. Mr. Walstad said this chapter was in relatively good shape and did not require a lot of update. He said subdivisions b and c on page 4 were overstruck because they are included in subdivision d and there was no reason to be redundant.

Mr. Walstad said Section 13 on page 12 was restructured and broken out into subsections to accurately reflect the drafting practices of the Legislative Council and to make the section easier to read. He said the Legislative Council staff forgot to include the words "canceling or" prior to the underscored "refusing" on line 19. He also said following "registration or" the words "revoking a" should be removed as well. He said those changes will be applied.

Mr. Walstad said changes were made regarding subsection 2 of Section 8 on page 9 of the bill draft. He said further discussion with the Department of Agriculture is needed to determine the best language to be used in that subsection as "the Journal of the AOAC" no longer appears to exist.

Mr. Delzer said the AOAC stands for the Association of Analytical Chemists. He said the organization no longer exists under that name. He said the organization has been globally harmonized and now exists as the Association of the AOAC International. He said the Department of Agriculture would recommend leaving the reference in the section, but update it to reflect the AOAC International name. He said the Department of Agriculture has recommendations ([Appendix P](#)) regarding potential substantive changes to the law.

In response to a question from Senator Luick, Representative Trottier said "avoirdupois" means a system of measuring weight based on the fact that 16 ounces equals 1 pound, as opposed to a metric system that measures in grams of weight.

Chairman Onstad requested the Legislative Council staff work with the Department of Agriculture to address recommended changes and bring the bill draft back before the committee at the next meeting. He said substantive changes need to be addressed in a separate bill draft during session.

State Fair

The Legislative Council staff presented a bill draft 17.0046.01000 ([Appendix Q](#)) on the State Fair Association. Mr. Walstad said the bill draft would move the chapter dealing with the State Fair Association out of the agriculture title and into Title 54 regarding state government. He said at this point, the State Fair Association appears to deal with more tourism than agriculture-related issues.

Mr. Walstad said Section 2 is being removed because it deals with the initial membership of the association. He said the initial membership occurred over 50 years ago and is no longer relevant.

Mr. Walstad said a change was made in Section 7 on page 5 regarding special meetings, which may be considered substantive in nature. He said language was added regarding notice of meetings being given by "electronic mail" if consent has been given to receive notice through that method. He said it is technically a substantive change, but it removes the obsolete method of using "telegrams" and inserts a method that is a widely used current practice in society today.

Mr. Walstad said he added a list of the functions of the treasurer in Section 11 on page 8 of the bill draft. He said a list of functions already existed in a single sentence within the section. He said the list has been broken into individual points and the language clarified.

Mr. Walstad said the Legislative Council staff spoke with the Office of Management and Budget (OMB) regarding Section 15 of the bill draft. He said OMB indicated that much of the language in the section no longer reflects current practices. As a result, he said, the section was amended to reflect current practices and obsolete language was removed upon the recommendation of OMB.

Mr. Walstad said the Legislative Council staff would like someone at the State Fair Association to review the bill draft and give recommendations.

Chairman Onstad said the bill draft should be sent to Ms. Renae Korslien, Manager, North Dakota State Fair Association.

Mr. Walstad said Section 22 of the bill draft may no longer be necessary because the dates of the state fair are typically advertised far in advance of the deadline to file with the Agriculture Commissioner. Representative Larson requested the Legislative Council staff research whether Section 22 of the bill draft can be repealed.

Chairman Onstad requested the Legislative Council staff to discuss the necessity of Section 22 with Ms. Korslien.

Representative Nelson said he has a concern with how membership is chosen in this chapter. He said there are at least several counties within the state that no longer have county fair boards.

Chairman Onstad requested the Legislative Council staff to research the membership selection process with Ms. Korslien and bring the bill draft back at the next meeting.

County Fairs

The Legislative Council staff presented a bill draft 17.0047.01000 ([Appendix R](#)) on county fairs. Mr. Walstad said references to how a measure should appear on a ballot were left in the bill draft, but the sections were updated to reflect current practices and funding methods for a county fair.

Mr. Walstad said there is an issue on page 4. He said there are three different lengths of time for which a county fair can lose authorization. He said language regarding the "consecutive year" requirement was added because it did not make sense a fair could lose authorization if the county fair association fails to hold a fair after a certain number of nonconsecutive years. He said that on page 5, a county fair can no longer receive money from a county if funding was received in the past but failed to hold a fair.

Senator Miller said the county commission should provide enough oversight to make sure a dissolution of a county fair is conducted correctly. He said he is not sure it is necessary for the Legislative Assembly to provide extensive detail on how to do that through statute.

Representative Nelson said under the statute the board of county commissioners may dissolve a fair if it is not held for 2 years, and they shall dissolve the fair if it is not held for 5 years. He said if a fair is not held for 10 years the county fair board loses their authorization to hold a fair and another entity can incorporate and become the county fair board. He said the Legislative Assembly is not going to be able to give the county commissioners the authority to dissolve corporations unilaterally.

In response to a question from Chairman Onstad, Mr. Walstad said county fair associations are required to file with the Secretary of State as a nonprofit organization. He said Section 12 on page 7 was removed because it describes what a nonprofit organization is, and the section is unnecessary because there is already a whole chapter within Century Code that covers nonprofit organizations.

Chairman Onstad requested the Legislative Council staff work with the North Dakota Association of Counties to get clarification on the issues brought up in this bill draft and bring the bill draft back at the next meeting.

Agriculture Experiment Station

The Legislative Council staff presented a bill draft 17.0053.02000 ([Appendix S](#)) on the Agriculture Experiment Station. He said this chapter is being moved into Title 15 dealing with education because the Agriculture Experiment Stations are controlled and administered by the State Board of Higher Education. He said the majority of this chapter is just minor language cleanup.

Senator Erbele said language should be added to Section 17 of the bill draft to require a status report to the Budget Section of the Legislative Management on a biennial basis.

Mr. Walstad said regarding the membership of the board on page 7, the agriculture consultation board no longer exists and that reference needs to be removed from the bill draft on lines 21 and 23.

In response to a question from Chairman Onstad, Mr. Mike Beltz, Chairman, State Board of Agricultural Research and Education, said the agriculture consultation board was a precursor to the State Board of Agricultural Research and Education. He said the reference to the consultation board is no longer necessary and the State Board of Agricultural Research and Education can be substituted.

Chairman Onstad requested the Legislative Council staff make the desired changes and bring the bill draft back at the next meeting.

Agricultural Development Act

The Legislative Council staff presented a bill draft 17.0054.01000 ([Appendix T](#)) on the Agricultural Development Act. Mr. Walstad said this chapter may be obsolete. He said the Legislative Council staff is currently waiting on a response to determine if that is actually the case.

Chairman Onstad requested the Legislative Council staff to determine whether this chapter is still in use and whether it is necessary for discussion at the next meeting.

Discrimination in the Purchase of Farm Products

The Legislative Council staff presented a bill draft 17.0061.01000 ([Appendix U](#)) on discrimination in the purchase of farm products. He said the definition of "person" in this chapter is more narrow than the definition elsewhere in Century Code. He said the committee should consider possibly broadening the definition in the chapter to reflect what it says elsewhere in Century Code. He said the majority of the chapter was minor cleanup language, sentence restructuring, and cross-reference changes.

In response to a question from Representative Trottier, Representative Nelson said Section 2 likely goes back to trade practices in the past where larger businesses paid higher prices for commodities in order to attempt to put smaller competition out of business.

Senator Erbele said he is curious whether Section 2 is still relevant. He said he was not sure the events in Section 2 still occur under current practices.

Representative Nelson said he thinks this section is still necessary because if it is eliminated, it is open game and entities can potentially try to discriminate and price each other out of the market.

Senator Erbele said he does not understand why beef is left out of the definition of a "farm product" in this chapter.

Senator Bowman said there needs to be some flexibility in pricing and marketing in these situations, otherwise it eliminates a lot of the incentives for buyers and sellers.

Mr. Walstad said this chapter was created in 1907 and it was amended to add multiple sections in 1933. He said there has not been much legislative action regarding this chapter since that time.

Representative Trottier said it appears that Sections 2 and 3 of the bill draft do the exact same thing.

Chairman Onstad requested the Legislative Council staff conduct further research into the history and questions regarding this chapter and bring the bill draft back at the next meeting.

Agriculture in the Classroom

The Legislative Council staff presented a bill draft 17.0062.01000 ([Appendix V](#)) on agriculture in the classroom. Mr. Walstad said this chapter could be condensed into a single section of law. He said this bill draft condenses the chapter into a single section of law and places the section into Title 4.1 under the chapter dealing with the Agriculture Commissioner. He said the chapter does not yet exist, but it will as soon as the current chapter on the Agriculture Commissioner is rewritten as part of the rewrite project at a future meeting. He said placing the section into that chapter is the most logical location because the Agriculture Commissioner administers the agriculture in the classroom program.

Chairman Onstad requested the Legislative Council staff bring this bill draft back at the next meeting in final form.

COMMENTS

Chairman Onstad thanked the Legislative Council staff for their hard work on this rewrite project to date. He asked if the next meeting could be held in early April.

The Legislative Council staff said in order to draft properly and to present the bill drafts to the proper interested parties prior to the meeting, April should work for a next meeting. He said any earlier would make it difficult to finish the workload on time.

In response to a question from Senator Miller, Mr. Walstad said there would not be a lot of benefit to holding 2-day meetings closer together, as opposed to the current 1-day meetings further apart. He said the length of the meeting is not an issue. Rather, he said, the issue becomes how much time is needed to draft and review each proposed bill draft in between each meeting. He said the current structure will work the best for the Legislative Council staff to manage the workload required to complete the rewrite project on time.

No further business appearing, Chairman Onstad adjourned the meeting at 3:40 p.m.

Dustin Assel
Counsel

ATTACH:22