

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

AGRICULTURE COMMITTEE

Thursday, July 22, 1999
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative John M. Warner, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives John M. Warner, James Boehm, Thomas T. Brusegaard, Rod Froelich, Lyle Hanson, Gil Herbel, James Kerzman, Shirley Meyer, Phillip Mueller, Jon O. Nelson, Eugene Nicholas, Robert E. Nowatzki, Dennis J. Renner, Earl Rennerfeldt, Arlo E. Schmidt, Ray H. Wikenheiser; Senators Bill L. Bowman, Herb Urlacher, Terry M. Wanzek

Members absent: Representatives Michael D. Brandenburg, April Fairfield, Dale L. Henegar, Keith A. Kempenich, Ed Lloyd; Senator Meyer Kinnoin

Others present: See attached appendix

Chairman Warner announced he had appointed Senator Herb Urlacher to serve as vice chairman of the committee.

At the request of Chairman Warner, committee counsel reviewed the Legislative Council's supplementary rules of operation and procedure.

DAMAGE CAUSED BY HUNTERS AND WILD GAME

At the request of Chairman Warner, committee counsel reviewed a memorandum entitled *Damage Caused By Wild Game and Hunters - Background Memorandum*, which concerns the damage done to crops and feed supplies by deer, waterfowl, and turkeys and the remedies for damage done by hunters to roadways.

At the request of Chairman Warner, Mr. Wade Moser, North Dakota Stockmen's Association, provided testimony to the committee. He said there needs to be state action taken to address the damage caused by wild animals. He said landowners should have the right to protect their property or be compensated for damage to it. He said the committee could consider requiring the Game and Fish Department to enter an insurance program to insure depredation costs.

Deer

At the request of Chairman Warner, Mr. Dean C. Hildebrand, Director, Game and Fish Department, provided information on deer depredation. In the early history of the United States, he said, it was commonly held that wild game belonged to the people and could be hunted at any time. He said this

philosophy virtually decimated deer and elk populations. At one time, he said, there were approximately 6,000 deer in North Dakota. He said there are now over 90,000 deer licenses issued each year and hunting has become a big business in North Dakota. He said part of the management philosophy of the department is to balance the interest of hunters and landowners to sustain a level of deer that provides hunting opportunities and does not provide a financial hardship on landowners.

At the request of Chairman Warner, Mr. Roger Rostvet, Game and Fish Department, presented information on the history of the depredation efforts in this state and current departmental policy and programs relating to deer depredation. Before 1977, he said, there were no special funds set aside for depredation. He said a tough winter in 1977 started depredation management in this state. He said in 1997 the Game and Fish Department received an appropriation to initiate an aggressive deerproof hay yard program. He said the deerproof hay yard program is used for chronic problem areas as a long-term solution to depredation. He said the department avoids feeding wildlife because this trains deer to concentrate in the area of feeding. He said the main manner in which the deer population is managed is through hunting. He provided information on the department's response to depredation reports, depredation expenditures, revenues received by the department, deer hunter density, and turkey permits and turkey population.

In response to a question from Senator Bowman, Mr. Rostvet said the department reviews the plans being considered for the management of the national grasslands and makes written comments to the United States Forest Service. He said it cannot be assumed that a decrease in the number of livestock on national grasslands will increase the number of deer, thereby increasing depredation. He said this may be true if there were no hunting season. He said habitat is not a limiting factor for the deer population in this state. He said hunting is the major limiting factor and the level of hunting is set so as to have a reasonable level of acceptance of the number of deer in this state.

In response to a question from Representative Schmidt, Mr. Hildebrand said there are certain areas of highway in which a large number of deer are killed. He said these areas are called killing zones and the

damage caused goes into the equation of what population of deer will be tolerated by the public.

Geese

Mr. Rostvet said there are at least 5,000 pairs of resident geese in this state. He said the early September hunt for geese being considered for the southeast corner of the state may have to be expanded because of the growth in the resident goose population. A copy of his presentation is on file in the Legislative Council office.

In response to a question from Senator Wanzek, Mr. Hildebrand said the Game and Fish Department provides money to the United States Department of Agriculture, Wildlife Services, because that agency addresses certain depredation issues, and if this state performed the same functions there would be an unnecessary duplication.

Representative Rennerfeldt said there has been an explosion of resident geese in the Williston area. He said when grain is swathed the geese damage the harvest. He said there needs to be landowner support before there is the introduction of new or more of the same species.

In response to a question from Representative Rennerfeldt, Mr. Rostvet said the number of resident geese is increasing in this state, and because of the high water level they are in closer proximity to crops. In recognition of this increase, he said, the department will try to increase the number of birds taken during the hunting season or expand the hunting season. He said the number of geese in Williston has reached its toleration level.

In response to a question from Representative Rennerfeldt, Mr. Hildebrand said the department controls the goose population through hunting. He said an early September hunting season may inconvenience farmers by having hunters present during the harvest season and in some cases harvesting would be completed by the time of the early season, thereby providing no immediate benefit to farmers.

Hunters

In response to a question from Representative Kerzman, Mr. Rostvet said the violation statistics in the background memorandum are based upon the number of arrests and convictions. He said the support of local law enforcement in enforcing game and fish violations in this state is at various levels. He said the damage to roads in the southwest corner of this state is a large concern to the department. He said he has not heard a good solution for providing extra funding for these roads.

Committee Discussion

Representative Kerzman said if the use of hunting fees is not allowed to provide revenue for townships and counties, the committee should pursue some sort of revenue enhancement.

Representative Herbel said if hunters create a problem by damaging roads, they should bear the cost for repairing the roads. He said this is a fairness issue.

Senator Urlacher said depredation appears to happen in high concentrations in distinct areas. He said the department could agree with landowners in this area to pay for feed for these animals in return for allowing hunting on this land.

Representative Froelich said all state agencies and the federal government should support farmers and ranchers in this state in decisions agencies make as to certain environmental issues, especially prairie dogs.

Representative Meyer said landowners should be allowed to sell licenses to hunt deer and turkey on their land in certain circumstances.

Representative Nowatzki said the committee should explore the level of funding for enforcement of game and fish laws and the level of coordination between local and state officials in enforcement.

CREDIT-SALE CONTRACT PROTECTION

At the request of Chairman Warner, committee counsel reviewed a memorandum entitled *Credit-Sale Contract Protection for Farmers - Background Memorandum*, which describes credit-sale contracts and possible protection for farmers, including requiring a bond, creating an indemnity fund, or having certain contract provisions.

At the request of Chairman Warner, Mr. Jon Mielke, Executive Secretary, Public Service Commission, presented testimony on credit-sale contracts and the number of insolvencies in this state. He said non-credit-sale contracts are cash sales and warehouse receipts. He said the decline in grain elevator insolvencies may be related to the growth in credit-sale contracting. With more transactions being made without bond protection, he said, there are fewer elevator patrons eligible to seek payment under the insolvency provisions of state law. In addition, he said, this state's high bond requirements are contributing to the low number of insolvencies. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Urlacher, Mr. Mielke said farmers with a credit-sale contract are unsecured creditors and have to collect through a bankruptcy proceeding or a private action.

In response to a question from Senator Wanzek, Mr. Mielke said if the Public Service Commission is trustee in an insolvency proceeding, credit-sales are not a valid claim. He said the commission would use the grain on hand and the bond to pay cash and warehouse receipt customers. He said the amount of bond would only cover these sales and any extra amount would not go to credit sales. He said insolvency and bankruptcy proceedings are mutually exclusive.

In response to a question from Representative Rennerfeldt, Mr. Mielke said he knows of no state that has outlawed or placed controls on delayed pricing contracts.

At the request of Chairman Warner, Mr. Steve Strege, North Dakota Grain Dealers Association, Fargo, provided testimony to the committee. He said when someone takes over for an elevator that is in financial trouble, they take over the old obligations as a matter of good business practice. He said there does not appear to be any losses for farmers from credit-sale contracts.

In response to a question from Representative Warner, Mr. Strege said consolidation of elevators is based on business decisions, and he would hope the consolidation would not result in a heavily leveraged entity that had increased vulnerability to insolvency.

In response to a question from Representative Brusegaard, Mr. Strege said he assumes that elevators make decisions based upon sound business judgment and that an indemnity fund would not encourage irresponsibility in elevators by having too many outstanding credit-sale contracts.

In response to a question from Representative Mueller, Mr. Strege said the added protection of an indemnity fund may result in a stronger selling point.

Representative Mueller said one downside of an indemnity fund is that the producer will pay for the fund.

Senator Urlacher said he is concerned with the consolidation of elevators because in his area all of the elevators are owned by one company. He said there is no practical choice as to which elevator to use.

In response to a question from Representative Brusegaard, Mr. Strege said the number mentioned by the Public Service Commission of credit-sale contracts being 40 percent or more of the business of elevators is approximate and appears to be valid.

In response to a question from Representative Warner, Mr. Mielke said there are two major railroad car auction programs. In one program, major grain companies lease the cars they own in exchange for capacity from the railroads. The large grain companies then lease the extra capacity to third parties. The second auction program is held by railroads. They hold a monthly auction of car capacity up to six months in advance of the provisions of that capacity. He said provision of that capacity is guaranteed by the railroad and elevators pay a premium for that guarantee. He said the Public Service Commission and others monitor the auction program to assure that it is not manipulated or that artificial shortages are not created by the railroads.

In response to a question from Representative Rennerfeldt, Mr. Mielke said the premium paid to railroads for auctioned cars is hardly any amount if there is a grain shortage. He said the premium may rise between \$300 and \$400 per car when there is a large

demand for cars. He said the auction is not truly free market because the railroad sets a minimum bid.

Representative Schmidt said there appears to be a certain amount of unfairness in the car auctioning process for small elevators because they do not have as much money as large elevators, thereby limiting the lots on which they can bid.

In response to a question from Representative Kerzman, Mr. Mielke said cooperative and investor-owned warehouses need a license and bond. He said grain processors are less likely to have full coverage of debts than warehouses.

In response to a question from Representative Mueller, Mr. Mielke said credit-sales may have an effect of lessening state insolvencies because credit-sales are not part of the state insolvency proceedings.

REPORT BY AGRICULTURAL RESEARCH AND EDUCATION BOARD

At the request of Chairman Warner, Mr. Jerry Doan, State Board of Agricultural Research and Education, presented testimony on the board's activities as to research and expenditures and biotechnology crops. He said the board had \$239,000 cut from its budget from the time it was sent to the Governor. As a result, he said, certain programs have been eliminated. He said the board approved the biotechnology initiative and will look at markets before research is done.

At the request of Chairman Warner, Mr. Dave Lambert, Chairman, Agricultural Economics, North Dakota State University, presented testimony on the biotechnology initiative. He said 55 percent of all soybeans and 40 percent of all corn are biotechnology modified.

Representative Nowatzki said biotechnology crops are in their stages of infancy and by using technology there will be less demand for pesticides. He said this will be appealing to consumers. He said the land grant system should be funded by public moneys as to avoid the appearance of being controlled by private interests.

In response to a question from Representative Brusegaard, Mr. Lambert said the European Union has been slow in approving biotechnology corn. He said Europe grows a lot corn. He said there has been no restrictions on soybeans. He said Europe does not grow many soybeans. He said the Food and Drug Administration does not have to go through the procedure to determine if biotechnology crops are fit for human consumption because they are a combination of naturally occurring plants and not chemicals.

In response to a question from Representative Meyer, Mr. Lambert said there have been petitions against genetically modified crops, and there was controversy over genetically modified crops having an organic label. He said over one-half of the American public think their food is free of genetically modified

products; however, 60 percent of food products have some genetic modification.

In response to Representative Kerzman, Mr. Lambert said the state is conducting leafy spurge research.

Representative Froelich said the state should look at biotechnology research as a substitute for chemicals as an approach to control leafy spurge.

MULTISTATE AGRICULTURAL MARKETING COMMISSION

At the request of Chairman Warner, committee counsel reviewed a memorandum entitled *Multistate Agricultural Marketing Commission - Background Memorandum*, which catalogs state marketing efforts, reviews previous state efforts to create large marketing entities, and discusses major marketing issues affecting price, including the concentration of facilities and issues with Canada.

Senator Bowman said the cost of production has risen and prices have not. He said farmers are taking great risks each planting season and not receiving any reward from increased consumer prices. He said the committee should invite the governors and agriculture commissioners from the surrounding states to be involved in this study. He said the committee should invite representatives from Washington, D.C., to a committee meeting to speak on trade policy and trade procedure at the federal level. He said the committee should invite commodity groups to testify on any difficulties they are having in marketing products and compare their answers with what is said by the federal representatives. He said the committee should talk with processors and handlers to see how they profit from agriculture. He said the committee should review the regulations affecting the transportation of commodities. He said the committee should focus on what can be done to enhance marketing instead of production.

Representative Rennerfeldt said that supply and demand and the value of the American dollar are what affects the market price. He said the policy activities of a few states would not have a major impact on the price of commodities.

Chairman Warner called on Mr. Neal Fisher, Wheat Commission, to answer questions from the committee. In response to a question from Representative Meyer, Mr. Fisher said the Wheat Commission will have representation at the World Trade Organization meeting in Seattle in December.

In response to a question from Representative Warner, committee counsel said there are limitations on what this state and other states may do in marketing agricultural products. He said federal law, including trade agreements, may preempt state law and the compact clause of the United States Constitution may be a consideration.

Representative Warner said for states to work together to affect the market they may have to create mandatory pools and this would not appear to be a popular idea.

Representative Nelson said there is successful marketing in the confection sunflower business without any government assistance. He said there may be some parallels that may be useful for the marketing of other commodities.

Representative Nowatzki said the study of the sale of the logo and trade name of the State Mill and Elevator was not prioritized. He said this would have been a way to collect money from processors. He said historically there has been a price difference of 10 percent between wheat and flour. He said wheat prices have been going down and bread prices have been going up. He said the money being made in agriculture is being made in processing.

Chairman Warner said the committee should start this study at the local level and move toward the national and international levels.

Chairman Warner adjourned the meeting at 2:45 p.m.

Timothy J. Dawson
Counsel

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