

2023 HOUSE AGRICULTURE

HB 1153

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1153
1/27/2023

Relating to corn council contract services.

Vice Chairman Beltz called the meeting to order at 8:00 AM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Christy, Finley-DeVille, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Reserves
- Policy
- Council and growers
- Research
- Federal changes
- Audit findings
- Individual contracts
- Sponsorship
- Advertising
- Request for dollars
- Education

In favor:

Representative Mike Brandenburg, District 28, Primary bill sponsor, #17457 and proposed amendment #17462

Doug Goehring, Commissioner, ND Agriculture Commissioner, #17459

Bart Schott, Retired farmer, Kulm ND, #17357

Andrew Mauch, President, ND Corn Growers Association, #17360

Jeff Enger, Former ND Corn Utilization Council board member, #17350

Rob Hanson, Corn grower, Wimbledon, ND, #17358

Brenda Elmer, ND Corn Growers Association

Opposed:

Heidi Haugo on behalf of Tysen Rosenau, Chairman, ND Corn Utilization Council, #17368

Jean Henning, Executive Director, ND Corn Utilization Council, #17366, 17461

Jason Rayner, Board member, ND Corn Utilization Council, #17369

Additional written testimony:

Anthony Mock, Corn grower, Kintyre, ND #17359

Kevin Skunes, Corn producer, Aurther, ND, #17375

Terry Wehlander, Vice Chairman, ND Corn Utilization Council, #17367

Robert Thompson, Corn Grower, Page, ND, #17279

Dwight Enockson, Corn Grower, Washburn, ND, 17345

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Vice Chairman Beltz adjourned the meeting at 9:29 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1153
2/16/2023

Relating to corn council contract services.

Chairman Thomas called the meeting to order at 8:39 AM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Christy, Finley-DeVille, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Federal policy
- Check-off dollars

Representative Olson moved to adopt amendment LC #23.0594.01001
Representative Tveit seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Craig Headland	AB
Representative Donna Henderson	Y
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	Y
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	N

Motion passed 11-1-1

Representative Beltz moved a do pass as amended.
Representative Olson seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y

Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Craig Headland	AB
Representative Donna Henderson	N
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	Y
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	N

Motion passed 10-2-1

Representative Prichard will carry the bill.

Chairman Thomas adjourned the meeting at 8:49 AM

Diane Lillis, Committee Clerk

23.0594.01001
Title.02000

Prepared by the Legislative Council staff for
Representative Brandenburg
January 17, 2023

BR
121
2-16-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1153

Page 1, line 7, replace "the North Dakota corn growers association" with "an organization dedicated to serving North Dakota corn producers and improving farm and corn regulatory policy"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1153: Agriculture Committee (Rep. Thomas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1153 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "the North Dakota corn growers association" with "an organization dedicated to serving North Dakota corn producers and improving farm and corn regulatory policy"

Renumber accordingly

2023 SENATE AGRICULTURE AND VETERANS AFFAIRS

HB 1153

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1153
3/24/2023

A bill relating to corn council contract services.

10:35 AM Chairman Luick called the meeting to order. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Weston, Senator Weber. Members absent: Senator Hogan.

Discussion Topics:

- Check off dollars
- Corn growers' membership
- Grower education
- Staffing
- Funding

10:35 Representative Mike Brandenburg, District 28, introduced HB 1153 and testified in support. #26566 and #26567.

10:48 AM Representative Terry Wansik, District 29, testified in support of HB 1153. No written testimony.

10:53 AM Andrew Mauch, Executive Director of North Dakota Corn Growers Association, testified in support of HB 1153. No written testimony.

11:14 AM Dwight Enockson from Washburn, North Dakota, a member of the Corn Grower Board, testified in favor of HB 1153. No written testimony.

11:19 AM Drew Courtney, Oaks, ND, a member of the Corn Growers Board and farmer, testified in support of HB 1153. No written testimony.

11:21 AM Anthony Moch, Director at large of ND Corn Growers, testified in support of HB 1153. #26542

11:23 AM Tyler Rosenau, Chairman, ND Corn Utilization Council, Carrington, ND and Lifetime member of ND Corn Growers Association, testified opposed to HB 1153. No written testimony.

11:35 AM Jean Henning North Dakota Corn Utilization Council, testified opposed to HB 1153 as written, and presented a proposed amendment to HB 1153. #26565

11:47 AM Jason Rainer, Board member of Corn Growers Association, testified in opposition of HB 1153. No written testimony,

Senate Agriculture and Veterans Affairs Committee

HB 1153

March 24, 2023

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11:58 AM Sherry Neas, Procurement Manager, OMB, testified neutral. No written testimony

Additional written testimony:

Rob Hanson, #26557

Andrew K. Mauch, #26534

Bart Schott, #26536

Dwight Enockson, #26539

Greg Amundson, #26491 and #26492

12:04 PM Chairman Luick adjourned.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1153
3/30/2023

A bill relating to corn council contract services.

10:27 AM Chairman Luick called the meeting to order. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Committee action

10:27 AM Brian Leier, Vice Chairman, North Dakota Corn Growers Association introduced a proposed amendment to HB 1153 and gave informational testimony on HB 1153. #27177

10:35 AM Senator Myrdal moved to adopt amendment LC 23.0594.02001 and emergency clause.

10:35 AM Senator Lemm seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0 Motion passed.

10:37 AM Senator Myrdal moved to DO PASS HB 1153 AS AMENDED.

10:38 AM Senator Lemm seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0- Motion passed.

Senator Myrdal will carry the bill.

10:39 AM Chairman Luick closed the meeting

Brenda Cook, Committee Clerk

Note: Committee reconsidered actions on March 31, 2023 at 9:18 AM.

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1153
3/31/2023

A bill relating to corn council contract services.

9:18 AM Chairman Luick opened the meeting. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Committee action

9:18 AM Senator Myrdal moved to reconsider previous committee action on HB 1153.

9:19 AM Senator Lemm seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0 Motion PASSED TO RECONSIDER HB 1153

9:19 AM Samantha Vangsness, Government Relations Liaison, North Dakota Corn Growers Association, discussed proposed amendments to HB 1153.

9:22 AM Senator Myrdal moved to adopt an amendment to HB 1153. LC 23.0594.02001 and remove section 3.

9:22 AM Senator Weber seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0 Motion to ADOPT AMENDMENT TO HB 1153.

9:22 AM Senator Weber moved to DO PASS HB 1153 AS AMENDED.

9:22 AM Senator Myrdal seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0 Motion DO PASS HB 1153 AS AMENDED.

Senator Myrdal will carry the bill.

9:26 AM Chairman Luick adjourned.

Brenda Cook, Committee Clerk

Note: Committee reconsidered HB 1153 on April 6, 2023 at 9:03 AM.

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1153
4/6/2023

A bill relating to corn council contract services.

9:03 AM Chairman Luick called the meeting to order. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Weston, Senator Weber. Members absent: Senator Hogan.

Discussion Topics:

- Emergency clause
- Appeal process
- Committee action

9:03 AM Samantha Vangsness, Government Relations Liaison, ND Corn Growers Association, introduced a proposed amendment to HB 1153. LC 23.0594.02001 No written testimony.

9:06 AM Andrew Mauch, President, ND Corn Growers Association, testified virtual and asked if the committee had any questions for him. #26534

9:07 AM Legal Intern Victoria Christian explained the amendments to the bill HB 1153. No written testimony.

9:07 AM Senator Myrdal Moved to Reconsider HB 1153.

9:08 AM Senator Weston seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	A
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 5-0-1 MOTION PASSED TO RECONSIDER HB 1153

9:08 AM Senator Myrdal moved to adopt the amendment to HB 1153. LC 23.0594.02004

9:08 AM Senator Weston seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	A
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 5-0-1 DO PASS to ADOPT AMENDMENT TO HB 1153. LC 23.0594.02004

9:09 AM Senator Myrdal moved DO PASS HB 1153 AS AMENDED.

9:09 AM Senator Weston seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	A
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 5-0-1 DO PASS HB 1153 AS AMENDED

Senator Myrdal will carry the bill.

9:10 AM Chairman Luick closed the meeting.

Brenda Cook, Committee Clerk

AG
4-6-23
(1-2)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1153

In lieu of the amendments adopted by the Senate as printed on pages 1363 and 1364 of the Senate Journal, Engrossed House Bill No. 1153 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 4.1-04-08 and 4.1-04-09 of the North Dakota Century Code, relating to the duties and powers of the corn council; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

4.1-04-08. Council - Powers.

The council may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
4. Contract with any person for any purpose related to this chapter, including research, education, publicity, promotion, and transportation;
5. Establish a grant program and guidelines to provide funding to corn-related programs and organizations that benefit North Dakota corn producers, consistent with this chapter;
6. Sue and be sued; and
- 6.7. Do all things necessary and proper to enforce and administer this chapter.

SECTION 2. AMENDMENT. Section 4.1-04-09 of the North Dakota Century Code is amended and reenacted as follows:

4.1-04-09. Council - Duties.

1. The council shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, corn policy development, promotion, and market development efforts, as well as participation in programs under the auspices of other state, regional, national, and international promotion groups.

2. The council shall develop and disseminate information regarding the purpose of the corn assessment and ways in which the assessment benefits corn producers.

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4-6-23
(2-2)

3. The council shall hold two public input meetings per year with organizations dedicated to serving North Dakota corn producers to discuss recommendations for the use of moneys received under this chapter.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1153, as engrossed: Agriculture and Veterans Affairs Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1153 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

In lieu of the amendments adopted by the Senate as printed on pages 1363 and 1364 of the Senate Journal, Engrossed House Bill No. 1153 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 4.1-04-08 and 4.1-04-09 of the North Dakota Century Code, relating to the duties and powers of the corn council; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

4.1-04-08. Council - Powers.

The council may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
4. Contract with any person for any purpose related to this chapter, including research, education, publicity, promotion, and transportation;
5. Establish a grant program and guidelines to provide funding to corn-related programs and organizations that benefit North Dakota corn producers, consistent with this chapter;
- ~~6.~~ Sue and be sued; and
- ~~6-7.~~ Do all things necessary and proper to enforce and administer this chapter.

SECTION 2. AMENDMENT. Section 4.1-04-09 of the North Dakota Century Code is amended and reenacted as follows:

4.1-04-09. Council - Duties.

1. The council shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, corn policy development, promotion, and market development efforts, as well as participation in programs under the auspices of other state, regional, national, and international promotion groups.
2. The council shall develop and disseminate information regarding the purpose of the corn assessment and ways in which the assessment benefits corn producers.
3. The council shall hold two public input meetings per year with organizations dedicated to serving North Dakota corn producers to

discuss recommendations for the use of moneys received under this chapter.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

TESTIMONY

HB 1153

ND House Agriculture Committee

House Bill 1153

Subject: Do Pass H1153

Robert Thompson, Corn Grower, Page, ND

January 27, 2023

I am writing to provide information about the ND Corn Growers and the ND Corn Utilization Council both established in 1987 and 1990 respectively.

The ND Corn Growers testified at congressional hearings in Minot and Fargo concerning the Canadian Countervailing duty on Corn. In the late 1980's the market was Canada and Montana. The acres of Corn were expanding in ND and our market was not. Ethanol was a drop in a bucket. We were desperate so the ND Corn Growers was established. The US Government introduced the Farmer Owned Reserve which created huge surpluses driving the price of Corn below the cost of production.

The ND Corn Growers needed the clout of the National Corn Growers in expanding markets for corn in food, fuel, ethanol, and industrial uses.

Corn Growers organizations in the other states are provided funds by the Utilization Councils for the purpose of providing information to and for the growers.

Please give **House Bill 1153 a Do Pass**. Thank you.

701.238.1511

Email: tsi@ictc.com

Testimony in Support of HB 1153
Dwight Enockson, Washburn, ND Corn Grower
January 27, 2022

Shortly after the ND Corn Growers were organized I, Dwight Enockson, was asked by its President Robert Thompson to come onto the board in late 1988. As a board we soon realized that we needed more resources beyond the membership fees to service the interests of our members. There was a need for promotion, education, research, etc. We then initiated proposed legislation to form the ND Corn Council which was successful.

From the very beginning we intended for the ND Corn Growers and the ND Corn Growers to work very closely including meeting at the same time together. In order for these organizations to function effectively there needs to be complete coordination between the two groups. After all both organizations serve the same growers.

As a member organization the ND Corn Growers represents the views and needs of the growers in North Dakota. The funding by the ND Corn Council needs to reflect what the needs and wants of the growers. The ND Corn Growers need adequate funding from the Corn Council to education growers, legislators, congressional delegations and work with the National Corn Growers Association. To that end I support HB1153.

Dwight Enockson, former North Dakota Corn Utilization Council Board Member

enocksond@westriv.com; 7014609956; 424 20th Ave SW, Washburn, ND 58577

Testimony from Jeff Enger
In Support of HB 1153
January 27, 2023

Good morning Chairman Thomas and members of the House Agriculture Committee. For the record my name is Jeff Enger, I am a farmer from the Marion, North Dakota area I am a former North Dakota Corn Utilization Council board member elected and served for eight years, two of those years I was the chair of the board.

I am in the process of expanding my livestock operation to 3200 head capacity in my upgraded feedlot. I feed 200,000 bushels of corn per year and use 5,200 tons of dried distillers grains from the ethanol plant a year. My county, Barnes County produces about 20 million bushels of corn per year.

We own and operate Enger Grain and Livestock, a partnership with my brother, Delray, his son Brandon, my son Justin, and me. We have two full time employees, one with an animal science degree; as well as two more part-time employees at seeding and harvest. We grow corn, soybeans, wheat, and barley. During my time on the Corn Council, we recognized the important work of the Growers Association to advance issues that definitely made the corn growers of the state more profitable. As a farmer now I see the following policy matters important to our operation:

1. Maintain reliable ethanol industry for DDG's
2. Crop insurance
 - A. LRP – Livestock Revenue Protection
 - B. Utilizing wet acres or prevent plant to plant forage crop without penalty
 - C. Utilizing CRP acres every three years for forage
3. Maintaining road infrastructure capabilities
4. Road restriction exemptions for livestock haulers
5. Farm Bill policy
6. AG PACE that works for modern animal agriculture.

This is important work that is among the best return on investment for our states ag producers. It is not different than the Ag Commissioner meeting with the EPA on pesticide regulations or the State Department on border issues that impede our trade with Canada and other policy issues he works on. I'd like to see the Growers Association share with the Council, the corn tax revenues growers pay to make them more productive and successful corn producers in our state.

I am in strong support of HB 1153 and ask for your yes vote. Thank you for your time. I stand for any questions you may have.

701.320.0628
Jvkenger@drtel.net

Testimony from Bart Schott

In Support of HB 1153

January 27, 2023

Good morning chairman Thomas and members of the House Agriculture Committee. For the record. My name is Bart Schott. I am a retired farmer and my son and he has taken over my farm near Kulm, ND. I'm also a past chairman of the North Dakota Corn Utilization Council board and served as a director for region six for North Dakota Corn Growers Association board. My past includes being a member of the National Corn Growers Association board of directors and also president of the National Corn Growers Association. I'm here in support of house bill 1153.

Corn producers across the state of North Dakota have been a part of some big changes.

- 1 - Revenue crop insurance for all corn producers in every county.
- 2 - Supportive of ethanol producing plants.
- 3 - Have use the expanded farm service agency farmer green been programs.
- 4 - Together with our DC champions, help write the prevented plant clause.

These are just a few of the changes North Dakota Corn Growers Association has been a part of to make corn the highest value crop grown anywhere in North Dakota. Today the North Dakota Corn Growers Association needs your help in passing house bill 1153 to meet the future for this organization to help its farmer growers. Like a new Farm Bill reauthorization, Waters of the US, changes in risk management agency (RMA) to name a few. We can and will make a difference with the increased funding that is from the corn growers of this state for the growers benefit.

The current North Dakota Corn Growers Association board members are young family, farmers, who are among the brightest and most hard-working in North Dakota. I ask for your DO PASS on House Bill1153. Thank you for your time. I stand available for any questions you may have.

HB 1153 SUPPORT

January 27, 2023

Rob Hanson, Wimbledon, ND

Good morning chairman Thomas and members of the House Agriculture Committee. For the record my name is Rob Hanson. I am a corn grower from Wimbledon, ND where I farm with my family. I'm a past President of the North Dakota Corn Growers Association board and current at-large board member. I've served on the board for eight years. I'm here in support of house bill 1153.

As a Corn leader, I personally attempted to resolve the growing divide among the Growers Association and the state agency, the Corn Council. I brought the two board leaderships together just last year to try to mediate to common ground without success. It's been difficult to get them to meet with us.

This bill will allow the Growers to move forward to achieve great things for the growers of the state.

I ask for your DO PASS on House Bill1153. Thank you for your time. I stand available for any questions you may have.

HB 1153 SUPPORT

January 27, 2023
Anthony Mock, Kintyre, ND

Good morning chairman Thomas and members of the House Agriculture Committee. For the record my name is Anthony Mock. I am a corn grower from Kintyre, ND where I farm with my family. I'm a current at-large member of the North Dakota Corn Growers Association board. I'm here in support of house bill 1153.

I have been very involved in the ethanol market development in the state, and have also served on one of the three national ethanol organizations in the country. Ethanol has been a game changer for the corn grower in the last 20 years, developing value added agriculture and better demand and prices for corn.

With the electric vehicle market emerging, ethanol as a sustainable fuel available widely and right now, being at the table is critical. The North Dakota Corn Utilization Council is no longer involved in any of the three ethanol organizations and has chosen not to serve on any of the National Corn Grower Association Action teams for the last couple of years including the one on Ethanol. The Growers Association needs the resources necessary to fill this gap, to provide an important service for our state's corn growers. Otherwise we are missing the opportunity to develop new markets on the rise, like sustainable aviation fuel.

I ask for your DO PASS on House Bill 1153. Thank you for your time. I stand available for any questions you may have.



Testimony of Andrew Mauch, President of the North Dakota Corn Growers Association

In SUPPORT of HB 1153

January 27, 2023

Thank you Chair Thomas and members of the House Agriculture Committee. For the record, my name is Andrew Mauch and I am the President of the North Dakota Corn Growers Association and I am speaking in support of HB 1153. I farm with my family near Mooreton, ND where we grow corn, soybeans, and sugarbeets.

While the Corn Growers Association did not request or initiate this legislation, we have been brought into the discussion by default as we are at a crossroads as this is a significant determination of our future. As has been stated by other supporters, the genesis of HB 1153 was the coming together of former board members and leaders of the state's corn industry, both from the Growers Association and the North Dakota Corn Utilization Council.

A little background for committee members who are not familiar with the role of checkoffs or grower associations and the corn checkoff in North Dakota in particular. The North Dakota Corn Growers Association was founded in 1987 by a handful of state corn growers concerned about counter prevailing tariffs on corn in Canada. We are a non-profit, having just celebrated 35 years last fall, in which the Governor declared it North Dakota Corn Growers Association Day, the Agriculture Commissioner and U.S. Senator John Hoeven attended and spoke at our anniversary program that day. They noted the unique and critical value the Growers Association has brought to them as elected officials over the years providing education to them. Congressman Armstrong plans to be at our Northern Corn and Soybean Expo in Fargo February 14 to be on a panel about the upcoming Farm Bill. Our state's congressional delegation works with us regularly, and more intensely when critical issues come up like the development of a disaster program, how it will impact our famers. We have alerted them to ag problems in the law of which public officials were not aware. We represent the more than 13,000 corn growers of the state, have the most interaction at the grass roots level and are the face of North Dakota Corn.

Four years later in 1991, the North Dakota Corn Growers leaders approached the state legislature to ask them to approve a check-off, an assessment on all corn marketed and sold in the state at ¼ of 1 percent

of the value per bushel. The state agency, the North Dakota Corn Utilization Council was established to receive the revenue and administer how it is spent. At today's corn prices, it is about 1.5 cents per bushel. In the last fiscal year, this generated about \$5 million in corn assessment revenue. The stated purpose of the funds in state century code is for "research, education programs, and market development efforts as well as participation in programs under the auspices of other state, regional, national, and international promotion groups."

Until the last six to seven years, the Association and the Council boards worked closely together to serve the same constituency, the corn growers of the state. It is imperative that we continue to do so as we need each other.

We currently have contracts for services with deliverables from the Council. We help them to communicate with the growers of the state by publishing their content which communicates how they spend the corn check off dollars and some advertising and promotion. We have a contract with them for leadership and education of growers that we do not utilize very much because it is difficult to get the Council's approval on a case-by-case basis for each use. In the most recent fiscal year, we receive about 6 percent of the checkoff in this manner. Our current budget is about \$522,000 and we employ two full-time employees.

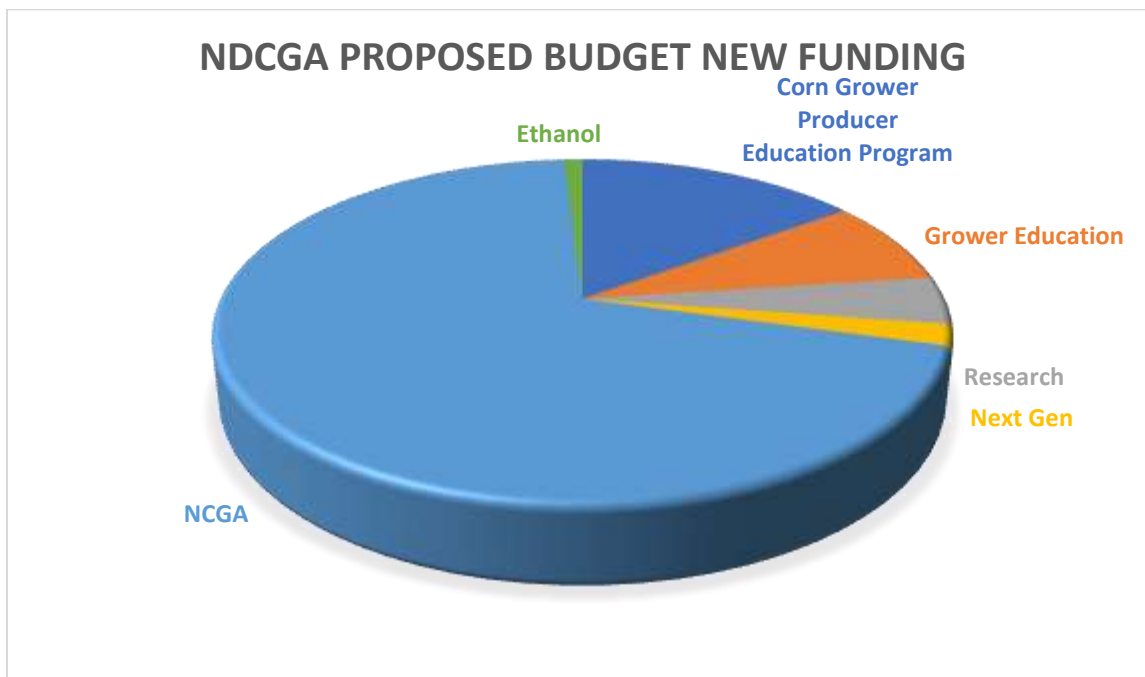
But what is missing is that we need agreements for educating public officials on issues that affect our corn growers' bottom lines. Over and over again we hear from growers that of any use of the corn tax that growers pay, the **best return on investment** is educating our federal and state officials on issues critical to grower success like the upcoming Farm Bill and funding of USDA nutrition programs, crop insurance, Environmental Protection Agency regulations, Waters of the U.S., the use of ethanol and biofuels in automobiles, and the list goes on and on. In fact, growers already assume that is how it is used. In other states, they use their corn check offs to educate in this matter, other commodities in this state do so too. This legislation will allow the Growers a more equitable way of sharing these revenues paid by our growers to benefit them.

NDCGA would seek input from its Board and growers of the state at large, but preliminarily we propose that the growers share of the corn funds be used for:

1. Corn producers from North Dakota would **educate elected and appointed public officials** on issues important to growers on matters including Farm Bill farm and nutrition programs, Waters of the U.S. (WOTUS), EPA, ethanol and more. We will go out to ND communities around the state to get input and direction directly from growers who invest in the corn check off.
2. **Next generation leadership** for post-secondary students in agriculture: developing the next generation of ag leaders is important so that they will know how to engage with public officials to advance North Dakota agriculture. This is increasingly a lost art.
3. Partnerships with **National Corn Growers Association**: This would be the largest part that is most likely more appropriately placed with the growers because NCGA is so focused on policy. Currently about \$700,000 is paid by the ND Corn Council to the national association for various programming including work on risk management, market development, ethanol, sustainability

and education of public officials. We will take on a large percentage that would shift from the Council to the Growers.

4. **Grower education:** Lunch and learn style education opportunities for in person and virtual education of growers on topics of most interest at the time, to growers in ND
5. **Ethanol:** Currently the Council is not a member of any of the three national ethanol groups and there is much happening like working with auto manufacturers on a next generation fuels act to diversify our fuel supply and take greater advantage of low-cost, low-emission, and high efficiency ethanol to give drivers affordable choices as we decarbonize and clean up transportation.
6. **Research:** We see the need for more economic research as it relates to corn that more directly relates back to policy.



In sum, these proposed uses of the corn assessment are in keeping with the original purpose of the check off in North Dakota Century Code and that is largely EDUCATION. It will bring the ag producers of the state, the corn growers, back to the table to determine their priorities for the use of these funds they pay.

We ask for your support of HB 1153 and a “do-pass” recommendation. I stand for any questions you may have. Thank you.



**Testimony of Jean Henning
On behalf of the North Dakota Corn Utilization Council
January 27, 2023
In Opposition of 1153**

Chairman Thomas and members of the House Agriculture Committee,

My name is Jean Henning, I am the Executive Director of the North Dakota Corn Utilization Council (Council). I have been at the North Dakota Corn Utilization Council since 2015. At that time, I was hired as the financial director for both the North Dakota Corn Utilization Council and the North Dakota Corn Growers Association (Association). I have served as the Executive Director of the Council since 2019. On behalf of the ND Corn Utilization Council, I express opposition to HB 1153.

The financial relationship between the Association and the Council has been complicated since the day I started. The Council had multiple audit findings. We had the Attorney General's Office threatening Council members and the Executive Director at the time with legal action. We were here before this very committee defending ourselves in 2017 and legislation asked us to increase space between the Council and the Association. We have since made the necessary changes to satisfy that request. We have worked hard to bring integrity back to the checkoff and have cleaned up all audit issues.

HB 1153 will reduce checkoff monies to be used for research, education, promotion and market development. We have used research funds to support corn diseases, pests, noxious weeds, soil health and many others. This research is critical to farmers in the state when issues arise on the farm. These projects not only support our universities but also provide opportunities for graduate students. If HB 1153 is passed, the Council will not be able to sustain the current research budget of \$1M-\$1.5M per year. We will use our reserves to honor all commitments to our research universities but going forward this budget will have to be significantly reduced. We have also received a proposal from NDSU Animal Sciences to fund a new swine facility on campus. The Council will not be able to support this facility or other important future projects at our universities due to a lack of funds.



HB 1153 requirement to purchase services is counter to the State of North Dakota's procurement laws, open meeting laws and transparency laws. Additionally, once these funds have left the corn fund, they will no longer be subject to state transparency and open meeting requirements. These funds will be deposited into a Bell Bank Account in Fargo. Who will oversee that financial controls are in place to make sure that the farmers money is being used for the purpose that you have described in this action? The ND Corn Utilization Council will maintain its financial controls and full transparency. How will the other half of the checkoff be held to these same laws?

Thank you for your time and consideration.



**Testimony of Terry Wehlander
North Dakota Corn Utilization Council Vice Chairman
On behalf of the North Dakota Corn Utilization Council
January 27, 2023
In Opposition of HB 1153**

Chairman Thomas and members of the House Agriculture Committee,

For the record, my name is Terry Wehlander and I serve as the Vice Chairman of the North Dakota Corn Utilization Council (Council). I farm in DeLamere, ND. I am a check-off paying corn producer and I am also a dues-paying member of the North Dakota Corn Growers Association (Association).

I am speaking in opposition of HB 1153 on behalf of the Council.

The Council works alongside many national and international organizations to develop corn markets and enhance trade. For example, the Council has four members participating on Advisory Teams for the U.S. Grains Council. I have participated in Corn Quality Roll-out Seminars where I have had the opportunity to speak with buyers of U.S. corn, ethanol, and dried distillers grains. Because of the positive relationship between the U.S. Grains Council and the North Dakota Corn Council we have also seen an increase in international trade teams to North Dakota to speak to producers about our production practices. For example, 209,000 metric tons of corn and 156,000 metric tons of dried distillers grains were purchased after trade teams visits in October 2022 alone. North Dakota corn producers are directly impacted by market development efforts like these that are funded with their checkoff dollars.

We have also worked hard to provide ethanol education to our tech schools and the North Dakota State University farm management program. As a part of the Council's continuing effort to grow awareness around the benefits of ethanol, these programs work to dispel common misconceptions about ethanol and educate future automotive technicians and mechanics. The increase in appreciation for ethanol has a positive impact for North Dakota corn producers as approximately 50% of the corn grown in North Dakota is used in ethanol production.



Additionally, the Council has provided ethanol, carbon, and trade education to North Dakota corn producers.

The Council values producer support of their efforts and the investment that farmers are making into these programs. These programs are directed and guided by the 7 elected Council members working on behalf of 13,000 farmers statewide. These dollars invested by farmers into Council programs help grind more corn, increase profitability and grow new markets.

As a member of the Council executive committee, I have been involved in extensive efforts to get the Association to engage in conversations that would bring the issue at the heart of HB 1153 to resolution. Our chairman, Tysen Rosenau, has had multiple discussions regarding possible programming and compromise. Unfortunately, the Association prefers to have this issue addressed through legislative action.

I am proud of the work that the Council has accomplished over the last 8 years and I am proud to be a part of this organization. I will be terming off of the Council board at the end of March, and I hope that my predecessor will find their time on the Council as rewarding as I have.

However, I am concerned that the progress I have witnessed and the success of the Council will be diminished in the future should HB 1153 pass. For these reasons, I am asking the committee for a "no" vote on HB 1153.



**Testimony of Tysen Rosenau
North Dakota Corn Utilization Council Chairman
On behalf of the North Dakota Corn Utilization Council
January 27, 2023
In Opposition of HB 1153**

Chairman Thomas and members of the House Agriculture Committee,

My name is Tysen Rosenau and I serve as the Chairman of the North Dakota Corn Utilization Council (Council). I farm with my family in Carrington, ND. Not only am I a check-off paying corn producer, but I hold a lifetime membership to the North Dakota Corn Growers Association (Association).

I am speaking in opposition of HB 1153 on behalf of the Council. It is important that administration of check-off funds remains transparent and that the direction for that administration comes from the 7 Council members that have been elected by their peers to do so. These elected officials are trustees of public funds and focus on responsibly managing corn producers check-off dollars.

Research that is funded through the Council with check-off dollars plays a major role in the betterment of corn farmers across the state by solving on farm problems and creating market access for North Dakota corn, ethanol, and DDGs. It is also important for the support of impactful projects at NDSU like the Peltier Complex and an upcoming swine research facility. These projects and others like them are critical in keeping NDSU and other North Dakota Universities at the fore front in agricultural research and making our universities a desirable institution for faculty and prospective students. Should HB 1153 pass, the significant reduction in Council budget will be detrimental to the funding of these meaningful programs and projects.

To continue to bring corn research to the fore front and to provide the data needed to help farmers make critical financial decisions and to better manage their farms, it is imperative that the ND corn check-off dollars remain entrusted to those 7 Council members who have been elected by their districts to represent them. For these reasons, I am asking you to vote against HB 1153.



**Testimony of Jason Rayner
On behalf of the North Dakota Corn Utilization Council
January 27, 2023
In Opposition of HB 1153**

Chairman Thomas and members of the House Agriculture Committee,

My name is Jason Rayner and I serve as a board member of the North Dakota Corn Utilization Council (Council), serving farmers in District 2. I farm with my family in Finley, ND. Not only am I a check-off paying corn producer, but I am member to the North Dakota Corn Growers Association (Association).

I am speaking in opposition of HB 1153 on behalf of the Council. Prior to serving on the Council, it was my understanding that the dollars being assessed at the first sale of my grain in North Dakota were being entrusted to elected officials and used for research, education, promotion, and market development. When I became a Council member, I was pleased that these funds were being used as intended. The Council works diligently to seek out projects and partnerships, both nationally and internationally, with a proven return for the North Dakota producer.

The spending of check-off funds is transparent and deliverables are provided to check-off paying producers in a variety of ways, including through the publication of an annual report and year-in-review. The 7 elected Council members have a fiduciary responsibility to manage these funds as intended by law.

I am proud to be a Council member and to be able to share the success stories of ND checkoff dollars, especially to those farmers in District 2 who elected me to represent them. Success stories I am proud of include the expansion of ethanol pump infrastructure statewide through the Unleaded88 Grant Program, which provides funding to retail stations looking to convert fuel pumps to Unleaded88. I am also proud of the efforts made to provide training through an agriculture based teacher education program. These teachers each make an impact on thousands of students per year, creating positive outcomes for the agricultural industry. With a reduction in Council funding due to HB 1153, programs like these would disappear.



It is my belief that should HB 1153 pass, the North Dakota corn check-off dollars will no longer be used solely for priorities as intended by the 13,000 corn producing farmers in this state and refunds of these assessment dollars will increase.

I urge you to vote "no".

Chairman Thomas and members of the House Ag Committee.

My name is Kevin Skunes and I am a corn producer from Arthur, ND.

Thank you for allowing me to testify before this committee this morning.

I speak in favor of House Bill 1153.

Having served on the North Dakota Corn Utilization Council with 3 years as Chairman, I now am a Board Member of the North Dakota Corn Growers Association. I am also a past President of the National Corn Growers Association.

I have devoted many years working for Agriculture, I have seen first hand how important it is to advocate for the corn producers and corn industry of North Dakota and the nation.

The Corn Checkoff is important to all of the producers in North Dakota.

The Corn Growers and the Corn Council have done an excellent job over the years, and I believe this bill will allow for even greater things,

The Corn Growers Association is the Policy side of our united group, working on such issues as WOTUS, Wetland issues and Wetland mitigation, helping to shape the current and prior Farm Bills as well as working on the new farm bill as a safety net for all producers, including Federal Crop Insurance, we also worked alongside NCGA to help mitigate fertilizer prices this past year!

The list is long and very important.

Having sufficient funding has been an ongoing issue. The Corn Council has done a fine job over the years, but the requests to be creative with the council contracts, and even to raise more Corporate sponsorship to pay the bills has the ND Corn Growers going in the wrong direction. I believe this bill will take pressure off of the Corn Council to make sure that the Checkoff funds are spent correctly.

Having the funds readily available to send our growers leaders here to Bismarck to meet with all of our great Representatives is a top priority as well as meetings in DC with our Federal Representatives. There are so many ways that the North Dakota Corn Growers Association can work for our corn producers! We are only limited by our own imagination if we our properly funded.

Thank you for your time.



NORTH DAKOTA OFFICE OF THE STATE AUDITOR

State Auditor Joshua C. Gallion

North Dakota Corn Utilization Council

Audit Report for the Two-Year Period Ended June 30, 2022

Client Code 614



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Independent Auditor's Report

Members of the Legislative Assembly

Members of the North Dakota Corn Utilization Council

Jean Henning, North Dakota Corn Utilization Council Executive Director

Report on the Audit of the Financial Statement

Opinion

We have audited the accompanying Comparative Statement of Revenues and Expenditures of the North Dakota Corn Utilization Council Fund, for the two years ended June 30, 2022, and the related notes to the financial statement, as listed in the table of contents.

In our opinion, the accompanying financial statement referred to above present fairly, in all material respects, the revenues and expenditures for the North Dakota Corn Utilization Council Fund, for the two-year period ended June 30, 2022, in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statement section of our report. We are required to be independent of the North Dakota Corn Utilization Council and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Emphasis of Matter

As discussed in Note 1, the financial statement presents only the North Dakota Corn Utilization Council Fund's revenues and expenditures, and does not purport to, and does not present fairly

the financial position of the state of North Dakota as of June 30, 2022 and 2021, for the years then ended in accordance with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

As discussed in Note 1, the financial statement is presented and audited in accordance with North Dakota Century Code 4.1-44-04. This financial statement is not intended to be a complete presentation of the North Dakota Corn Utilization Council Fund's assets and liabilities. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Financial Statement

Management is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statement that is free from material misstatement, whether due to fraud or error.

Auditor's Responsibilities for the Audit of the Financial Statement

Our objectives are to obtain reasonable assurance about whether the financial statement as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgement made by a reasonable user based on the financial statement.

In performing an audit in accordance with GAAS and *Government Auditing Standards*, we

- exercise professional judgment and maintain professional skepticism throughout the audit.
- identify and assess the risks of material misstatement of the financial statement, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statement.
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the North Dakota Corn Utilization Council's internal control. Accordingly, no such opinion is expressed.
- evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statement.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Other Reporting Required by the Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated September 20, 2022 on our consideration of the North Dakota Corn Utilization Council’s internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the North Dakota Corn Utilization Council’s internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the North Dakota Corn Utilization Council’s internal control over financial reporting and compliance.

/S/

Joshua C. Gallion
State Auditor
Bismarck, North Dakota
September 20, 2022

Comparative Statement of Revenues and Expenditures

For the Years Ended June 30, 2022 and 2021

<u>REVENUES:</u>	<u>June 30, 2022</u>	<u>June 30, 2021</u>
Corn Assessments (net of refunds of \$166,047 and \$99,994)	\$ 4,969,476	\$ 3,348,015
Miscellaneous General Revenue	17,338	11,390
Interest on Investments	11,608	26,551
Total Revenues	\$ 4,998,422	\$ 3,385,956
<u>EXPENDITURES:</u>		
Grants, Benefits & Claims	\$ 3,458,961	\$ 2,014,422
Operating Fees and Services	362,937	352,803
Professional Development	257,600	206,410
Salaries - Permanent	177,780	159,634
Travel	94,115	17,126
Fringe Benefits	68,367	65,811
Rentals/Leases - Building/Land	49,965	50,147
Miscellaneous Supplies	16,901	11,687
Printing	15,987	18,209
Supplies - IT Software	13,395	13,116
Postage	5,643	7,516
Office Supplies	4,554	1,883
Office Equipment & Furniture under \$5,000	3,937	1,104
Utilities	3,810	4,678
IT Equipment under \$5,000	3,527	3,162
IT Communications	1,838	1,453
Building, Grounds, & Vehicle Supplies	1,756	1,023
Insurance	910	968
IT Data Processing	434	434
IT Contractual Services and Repairs		1,250
Supply/Material - Professional		776
Professional Fees and Services		8,415
Other Equipment under \$5,000		2,918
Total Expenditures	\$ 4,542,417	\$ 2,944,945
Revenues Over Expenditures	\$ 456,005	\$ 441,011

Notes to the Financial Statement

NOTE 1 | SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The responsibility for the financial statement, the internal control structure, and compliance with laws and regulations belongs to management of the North Dakota Corn Utilization Council (Council). A summary of the significant accounting policies follows:

A. REPORTING ENTITY

For financial reporting purposes, the Council includes all funds, programs, and activities over which it is financially accountable. The Council does not have any component units as defined by the Government Accounting Standards Board. The Council is part of the state of North Dakota as a reporting entity.

The Council was established with the authority to contract and cooperate with any person for market maintenance and expansion, utilization research, transportation, and education; accept donations of funds, property, services or other assistance from any source; and provide educational and informational materials. This is accomplished through the levying of an assessment on all varieties of corn grown in the state, except sweet corn and popcorn, sold to a designated handler. The amount of the levy is one-quarter of one percent of the value of a bushel.

The Council has a close working relationship with the North Dakota Corn Growers Association (Association). This relationship is further explained in Note 2 to the financial statement. The comparative statement of revenues and expenditures includes only activities of the Council, which is one department that has one division. The Council is responsible for and is funded under a continuing appropriation.

B. REPORTING STRUCTURE

The financial statement includes all activities of the reporting entity as defined above. These activities are funded from fund 270, the Corn Council Fund. The comparative statement of revenues and expenditures is a combined statement to give the users an overview of the agency's activity.

C. BASIS OF PRESENTATION

North Dakota Century Code 4.1-44-04 requires certain commodity promotion groups to prepare a report for the legislative assembly. As part of this report the applicable commodity groups are required to prepare a single-page uniform statement of revenues and expenditures.

Revenues and expenditures on the comparative statement of revenues and expenditures are reported on the modified accrual basis of accounting which is generally accepted accounting principles (GAAP) for governmental fund types.

Under the modified accrual basis of accounting revenues are recognized when susceptible to accrual (i.e. measurable and available). Measurable means the amount can be determined, available means due and collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period. Revenues are considered available if they are collected within a year after fiscal year end. Expenditures are recorded when goods or services are received. Exceptions include: principal and interest expenditures which are recorded when due and compensated absences which are recorded when paid.

D. GAAP REPORTING DIFFERENCES

GAAP financial statements would include a balance sheet. GAAP financial statements would also provide additional note disclosures.

NOTE 2 | RELATED PARTIES

The North Dakota Corn Growers Association (Association) is a related party of the Council. For fiscal years 2022 and 2021, the Council paid the Association \$323,608 and \$301,421, respectively, for advertising contracts, leadership education and training contracts, and sponsorships.

As noted in Note 1, the Council is an agency of the state of North Dakota; as such other agencies of the state and their respective related parties are considered related parties of the Council. This includes North Dakota State University, North Dakota State University Foundation, University of North Dakota, the North Dakota Soybean Council, the North Dakota Ethanol Utilization Council, and Lake Region State College. For fiscal years 2022 and 2021, the Council made payments to North Dakota State University for corn research project contracts of \$762,509 and \$819,958, respectively. For fiscal years 2022 and 2021, the Council made payments to North Dakota State University Foundation for sponsorships of \$1,460,000 and \$20,000, respectively. For fiscal years 2022 and 2021, the Council made payments to University of North Dakota for corn research project contracts of \$130,343 and \$149,709, respectively. For fiscal years 2022 and 2021, the Council made payments to the North Dakota Soybean Council for shared expenditures of \$54,840 and \$28,801, respectively. For fiscal years 2022 and 2021, the Council made payments to the North Dakota Ethanol Utilization Council for corn promotion of \$17,500 and \$25,500, respectively. For fiscal year 2022, the Council made a payment to Lake Region State College for a sponsorship of \$10,000.

The Council also has a particularly close working relationship with the U.S. Grains Council, and the North Dakota Livestock Alliance. For fiscal years 2022 and 2021, the Council paid the U.S. Grains Council for promotional, marketing and development contracts of \$367,507 and \$379,050, respectively. For fiscal years 2022 and 2021, the Council paid the North Dakota Livestock Alliance for corn promotion of \$60,500 and \$50,000, respectively.

NOTE 3 | OTHER SIGNIFICANT ITEMS

Council has cash and investment reserves of \$6,720,784 and \$6,398,764 at June 30, 2022 and June 30, 2021, respectively. Based on the average monthly expenditures for fiscal years 2022 and 2021, this amount represents approximately 18 and 26 months of expenditures, respectively.



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**Report on Internal Control Over
Financial Reporting and on Compliance and Other Matters Based
on an Audit of Financial Statements Performed in Accordance
With Government Auditing Standards**

Independent Auditor's Report

Members of the Legislative Assembly

Members of the North Dakota Corn Utilization Council

Jean Henning, North Dakota Corn Utilization Council Executive Director

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the Comparative Statement of Revenues and Expenditures of the North Dakota Corn Utilization Council, for the two-year period ended June 30, 2022, and the related notes to the financial statement and have issued our report thereon dated September 20, 2022.

Report on Internal Control Over Financial Reporting

In planning and performing our audit of the financial statement, we considered North Dakota Corn Utilization Council's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statement, but not for the purpose of expressing an opinion on the effectiveness of the North Dakota Corn Utilization Council's internal control. Accordingly, we do not express an opinion on the effectiveness of the North Dakota Corn Utilization Council's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statement will not be prevented, or detected and corrected on a timely basis. *A significant deficiency* is a deficiency, or a combination of deficiencies,

in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that have not been identified.

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the North Dakota Corn Utilization Council's financial statement is free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statement. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

/S/

Joshua C. Gallion
State Auditor
Bismarck, ND
September 20, 2022



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Governance Communication

September 20, 2022

North Dakota Corn Utilization Council

Legislative Audit and Fiscal Review Committee

We have audited the financial statement of the governmental activities, of the North Dakota Corn Utilization Council for the two-year period ended June 30, 2022 and have issued our report thereon dated September 20, 2022. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards and *Government Auditing Standards*, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated August 3, 2022. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Matters

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the North Dakota Corn Utilization Council are described in Note 1 to the financial statement. No new accounting policies were adopted, and the application of existing policies was not changed during the two-year period. We noted no transactions entered into by the North Dakota Corn Utilization Council during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statement in the proper period.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. No known or likely misstatements were identified during the audit.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statement or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated September 20, 2022.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the North Dakota Corn Utilization Council's financial statement or a determination of the type of auditor's opinion that may be expressed on that statement, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the North Dakota Corn Utilization Council's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of the North Dakota Corn Utilization Council, management of the North Dakota Corn Utilization Council, and the Legislative Audit and Fiscal Review Committee, and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,



Robyn Hoffmann, CPA
Audit Manager



NORTH DAKOTA STATE AUDITOR
JOSHUA C. GALLION


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Testimony of Doug Goehring
Agriculture Commissioner
House Agriculture
Room 327C
January 27, 2023

Chairman Thomas and members of the House Agriculture Committee, I am Agriculture Commissioner Doug Goehring. I am here today in support of HB 1153, which will allow corn council to contract with the corn growers association.

There is a need to provide support for advocacy, policy development, promotion, and education. These funds could support ongoing efforts to address Farm Bill issues, federal rules and regulation that have a detrimental impact on corn producers. This is essential to combat activist and federal government overreach. It also, allows the association to participate in promoting policy and projects that have a positive effect on the corn industry.

Chairman Thomas and committee members, thank you for your time. I urge a do pass on HB 1153. I would be happy to answer any questions you may have.



North Dakota State Treasurer * Certificates of Deposit
 Report Period: 01/01/2023 thru 01/31/2023

STATE TREASURER
 Thomas Beadle

Investment Group Label: Corn Utilization Council

Maturity Date	Purchase Date	Financial Institution	CD Number	Rate	Purchase Amount	Term in Days
01/27/2023	01/27/2022	First Western Bank and Trust, Minot	1235080	0.300%	\$ 249,000.00	365
01/27/2023	01/27/2022	Heartland State Bank, Edgeley	797165	0.300%	\$ 247,000.00	365
01/28/2023	01/28/2022	First Community Credit Union, Jamestown	91235-23	0.250%	\$ 249,000.00	365
03/28/2023	03/28/2022	Dakota Community-Mandan, Mandan	1000330369	0.450%	\$ 100,000.00	365
04/27/2023	04/27/2022	Hometown Community Bank, Page	1102270	0.400%	\$ 249,000.00	365
04/27/2023	04/27/2022	Dakota Heritage Bank of North Dakota, Harvey	22839	0.300%	\$ 249,000.00	365
04/27/2023	04/27/2022	Union State Bank- Hazen, Hazen	39242	0.600%	\$ 249,000.00	365
05/18/2023	05/18/2022	Dakota Community-Mandan, Mandan	1000330735	0.500%	\$ 99,000.00	365
07/26/2023	07/26/2022	Starion Bank, Bismarck	80032926	1.600%	\$ 200,000.00	365
08/22/2023	08/22/2022	First State Bank, Grand Forks	453803	1.500%	\$ 200,000.00	365
08/23/2023	08/23/2022	Plains Commerce Bank, Bismarck	1200011377	2.000%	\$ 249,000.00	365
09/28/2023	09/28/2022	Stock Growers Bank, Napoleon	17892	2.500%	\$ 200,000.00	365
10/27/2023	10/27/2022	Bravera Bank, Bismarck	130009056	2.500%	\$ 249,000.00	365
12/28/2023	12/28/2022	North Star Community Credit , Maddock	11672	3.850%	\$ 100,000.00	365
Investment Group Total:					<u>\$ 2,889,000.00</u>	

NDCUC/NDCGA Budgets 2018-2022

	<u>FY2018</u>		<u>FY2019</u>		<u>FY2020</u>		<u>FY2021</u>		<u>FY2022</u>	
Assessments	\$	3,576,203	\$	3,576,574	\$	2,993,833	\$	3,232,835	\$	4,940,595
Refunds	\$	(149,048)	\$	(130,732)	\$	(123,084)	\$	(99,994)	\$	(159,298)
Net Assessments	\$	3,427,155	\$	3,445,842	\$	2,870,749	\$	3,132,841	\$	4,781,297
Research	\$	447,200	\$	595,088	\$	899,111	\$	943,068	\$	2,409,266
National Organizations	\$	803,000	\$	901,750	\$	1,028,200	\$	983,650	\$	1,034,999
State Organizations	\$	136,000	\$	95,180	\$	135,806	\$	72,002	\$	101,958
Promotion & Education	\$	478,911	\$	484,903	\$	539,281	\$	563,386	\$	588,428
Administration	\$	494,637	\$	448,122	\$	374,824	\$	343,886	\$	414,514
Net Income	\$	1,067,407	\$	920,799	\$	(106,473)	\$	226,849	\$	232,132
NDCGA Budgets	\$	468,473	\$	333,423	\$	367,730	\$	406,844	\$	494,517
NDCUC Support										
Truck	\$	50,000	\$	50,000	\$	50,000	\$	50,000	\$	50,000
Magazine	\$	185,000	\$	190,500	\$	230,000	\$	240,000	\$	260,000
*Leadership & Education	\$	31,540	\$	13,434	\$	-	\$	9,436	\$	19,608
Sponsorships	\$	1,000	\$	1,000	\$	1,000	\$	1,250	\$	1,000
Subsidized Office Rent & Utilities	\$	27,000	\$	27,000	\$	27,000	\$	27,000	\$	27,000
Total NDCUC Support to NDCGA	\$	294,540	\$	281,934	\$	308,000	\$	327,686	\$	357,608
% of checkoff sent to NDCGA		9%		8%		11%		10%		7%
% of NDCGA's budget that is checkoff		63%		85%		84%		81%		72%

*Leadership & Education Grant is budgeted at \$50,000/year

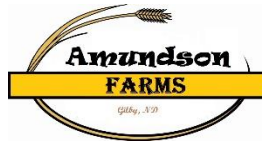
23.0594.01001
Title.

Prepared by the Legislative Council staff for
Representative Brandenburg
January 17, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1153

Page 1, line 7, replace "the North Dakota corn growers association" with "an organization dedicated to serving North Dakota corn producers and improving farm and corn regulatory policy"

Renumber accordingly



**Testimony of Greg Amundson
ND Corn Growers Association Board Member, Farmer
Questions Pertaining to the ND Corn Council
March 20, 2023**

1. Is the ND Corn Council a true state agency bound by state procurement laws??
-If so, I bring to question this past year's agreement with 10 Acre marketing for Marketing Services related to common ground, where was the bidding??
- A new office has been secured, was that put out for bids??
2. Pertaining to testimony given in January pertaining to HB 1153, How as a state agency can they testify as opposed?? Don't they have to remain neutral??
3. As a State Agency, ND corn council would be subject to open records??? How is it as a state agency, the Council and all Board Members are not required to have a state email and all correspondence on the state servers??
4. Do any and all contracts have to go through procurement and the AG's office?? Why then does a contract with the Corn Growers Association subject to this scrutiny when contracts with NCGA, the head corn growers Association does not??

These are just a couple of questions pertaining to the council that have yet been answered and would like clarification on, there are many, more issues and questions that still need to be answered about the way they conduct business and seem to pick and choose when they want to be a state agency and when they don't. During this whole process it has become clear who runs the council and that is the state executive director, correspondence I have had tells me the board members had little contact and little knowledge of what's actually going on. The current board is told what she wants them to know and hear and that is it

Thank You

Greg Amundson
2444 32nd St NE
Gilby, ND 58235
218-791-2009



**Testimony of Greg Amundson
ND Corn Growers Association Board Member, Farmer
In Support of HB 1153**

March 20, 2023

Senator Luick and members of the Senate Agriculture and Veterans Affairs Committee

Thank you for the privilege and the opportunity to testify in favor of HB 1153 pertaining to contract services with the Corn Council. It has been my honor to serve the corn growers of North Dakota as a current board member of the Corn Growers Association.

There are Many things to be proud of in North Dakota and the work the Association does is one of many of those. Throughout the years there have been ups and downs in the corn industry, always making everyone involved in corn production but nothing has compared to what we as Farmers are going to encounter in the near future. Whether that is the Farm Bill or EPA overreach, NDCGA has always been on the forefront fighting for the Farmers in North Dakota that raise corn, regardless of membership.

This bill is unfortunately a necessary step that is needed to ensure that NDCGA stays active and vibrant to be able to confront future issues affecting ND Corn head on. As things are currently, we(as association) have no guarantee of funding that will allow us to function. In the past the two groups, the Association and the Council have worked hand in hand in the ongoing efforts to promote corn. Sadly to say this is no longer the case, and the two organizations are drifting farther and further apart. It has gotten to the point we; the association have been told we are nothing but a burden to the Council. As a farmer, association board member, and someone who currently pays into the checkoff, this is very concerning. I want all parties involved to work together for the betterment of North Dakota Corn as a whole.

The Association has in good faith, tried numerous times to salvage the situation to no avail. As recently has up to this current week, the Association has been trying to come to an agreement and to come to an agreement both parties can work with. To this point we have been stonewalled and the Council has not negotiated in good faith and are unwilling to make things work.

For the many reasons I have highlighted while only scratching the surface and for the continued prosperity of the North Dakota Corn Industry, I urge a yes vote on HB 1153.

Thank You

Greg Amundson
2444 32nd St NE
Gilby, ND 58235
218-791-2009



Testimony of Andrew Mauch, President of the North Dakota Corn Growers Association

In SUPPORT of HB 1153

March 24, 2023

Thank you Chair Luick and members of the Senate Agriculture Committee. For the record, my name is Andrew Mauch and I am the President of the North Dakota Corn Growers Association and I am speaking in support of HB 1153. I farm with my family near Mooreton, ND where we grow corn, soybeans, and sugarbeets.

While the Corn Growers Association did not request or initiate this legislation, we have been brought into the discussion by default as we are at a crossroads as this is a significant determination of our future. The genesis of HB 1153 was the coming together of former board members and leaders of the state's corn industry, both from the Growers Association and the North Dakota Corn Utilization Council, some of each will testify in support together.

A little background for committee members who are not familiar with the role of checkoffs or grower associations and the corn checkoff in North Dakota in particular. The North Dakota Corn Growers Association was founded in 1987 by a handful of state corn growers concerned about counter prevailing tariffs on corn in Canada. We are a non-profit, having just celebrated 35 years last fall, in which the Governor declared it North Dakota Corn Growers Association Day, the Agriculture Commissioner and U.S. Senator John Hoeven attended and spoke at our anniversary program that day. They noted the unique and critical value the Growers Association has brought to them as elected officials over the years providing information and education to them on how public issues affect . Congressman Armstrong plans to be at our Northern Corn and Soybean Expo in Fargo February 14 to be on a panel about the upcoming Farm Bill. Our state's congressional delegation works with us regularly, and more intensely when critical issues come up like the development of a disaster program, how it will impact our famers. We have alerted them to ag problems in the law of which public officials were not aware. We represent the more than 13,000 corn growers of the state, have the most interaction at the grass roots level and are the face of North Dakota Corn.

Four years later in 1991, the North Dakota Corn Growers leaders approached the state legislature to ask them to approve a check-off, an assessment on all corn marketed and sold in the state at ¼ of 1 percent

of the value per bushel. The state agency, the North Dakota Corn Utilization Council was established to receive the revenue and administer how it is spent. At today's corn prices, it is about 1.5 cents per bushel. In the last fiscal year, this generated about \$5 million in corn assessment revenue. The stated purpose of the funds in state century code is for "research, education programs, and market development efforts as well as participation in programs under the auspices of other state, regional, national, and international promotion groups."

Until the last six to seven years, the Association and the Council boards worked closely together to serve the same constituency, the corn growers of the state. It is imperative that we continue to do so as we need each other.

We currently have contracts for services with deliverables from the Council. We help them to communicate with the growers of the state by publishing their content which communicates how they spend the corn check off dollars and some advertising and promotion. We have a contract with them for leadership and education of growers that we do not utilize very much because it is difficult to get the Council's approval on a case-by-case basis for each use. In the most recent fiscal year, we receive about 6 percent of the checkoff in this manner. Our current budget is about \$522,000 and we employ two full-time employees.

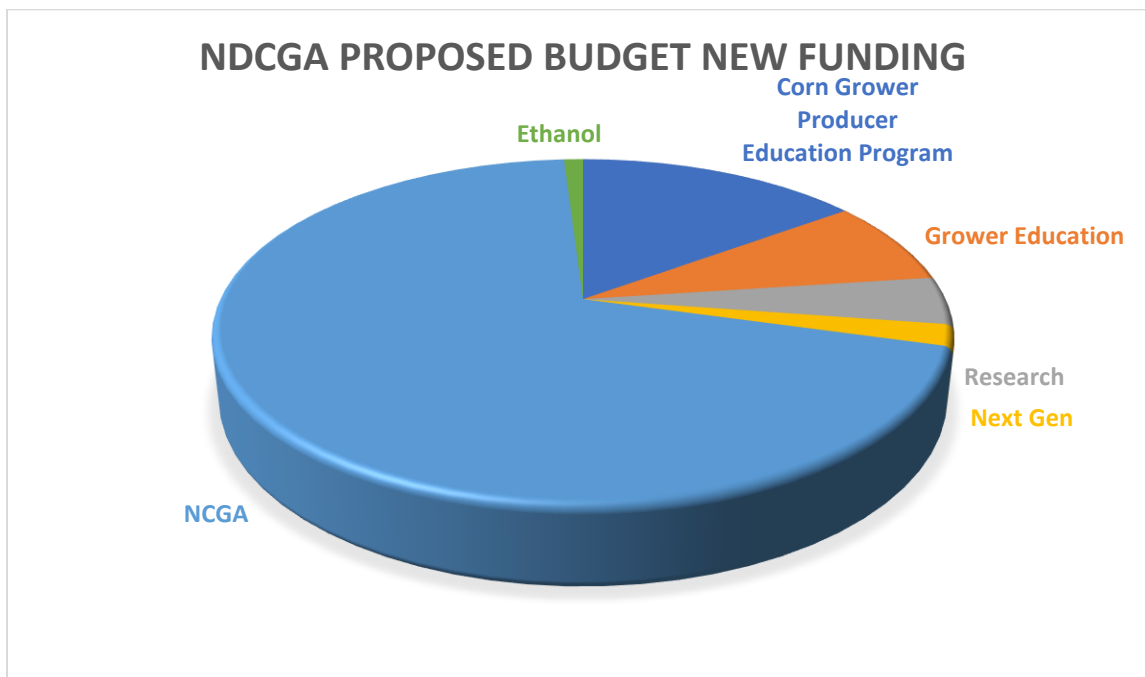
But what is missing is that we need agreements for educating public officials on issues that affect our corn growers' bottom lines. Over and over again we hear from growers that of any use of the corn tax that growers pay, the **best return on investment** is educating our federal and state officials on issues critical to grower success like the upcoming Farm Bill and funding of USDA nutrition programs, crop insurance, Environmental Protection Agency regulations, Waters of the U.S., the use of ethanol and biofuels in automobiles, and the list goes on and on. In fact, growers already assume that is how it is used. In other states, they use their corn check offs to educate in this matter, other commodities in this state do so too. This legislation will allow the Growers a more equitable way of sharing these revenues paid by our growers to benefit them.

NDCGA would seek input from its Board and growers of the state at large, but preliminarily we propose that the growers share of the corn funds be used for:

1. Corn producers from North Dakota would **educate elected and appointed public officials** on issues important to growers on matters including Farm Bill farm and nutrition programs, Waters of the U.S. (WOTUS), EPA, ethanol and more. We will go out to ND communities around the state to get input and direction directly from growers who invest in the corn check off.
2. **Next generation leadership** for post-secondary students in agriculture: developing the next generation of ag leaders is important so that they will know how to engage with public officials to advance North Dakota agriculture. This is increasingly a lost art.
3. Partnerships with **National Corn Growers Association**: This would be the largest part that is most likely more appropriately placed with the growers because NCGA is so focused on policy. Currently about \$700,000 is paid by the ND Corn Council to the national association for various programming including work on risk management, market development, ethanol, sustainability

and education of public officials. We will take on a large percentage that would shift from the Council to the Growers.

4. **Grower education:** Lunch and learn style education opportunities for in person and virtual education of growers on topics of most interest at the time, to growers in ND
5. **Ethanol:** Currently the Council is not a member of any of the three national ethanol groups and there is much happening like working with auto manufacturers on a next generation fuels act to diversify our fuel supply and take greater advantage of low-cost, low-emission, and high efficiency ethanol to give drivers affordable choices as we decarbonize and clean up transportation.
6. **Research:** We see the need for more economic research as it relates to corn that more directly relates back to policy.



In sum, these proposed uses of the corn assessment are in keeping with the original purpose of the check off in North Dakota Century Code and that is largely EDUCATION. It will bring the ag producers of the state, the corn growers, back to the table to determine their priorities for the use of these funds they pay.

We ask for your support of HB 1153 and a “do-pass” recommendation. I stand for any questions you may have. Thank you.

March 24, 2023

IN FAVOR OF HB 1153

Good morning Chairman Luick members of the Senate AG Committee

For the record my name is Bart Schott. I am a retired farmer and my son Andy has taken over my farm. We grow Corn soybeans and barley. I'm also a past chairman of North Dakota Corn Utilization Council (NDCUC) and served as a director for region 6 for ND Corn Growers Association (NDCGA). My past includes serving as a member of National Corn Growers Association (NCGA) Corn Board and I served as president of NCGA.

I'm here in support of HB1153. Corn producers across the state of North Dakota have been a part of some big changes:

1. Adding revenue crop insurance for all corn produces in every county;
2. Supporting of the ethanol producing plants;
3. Using the expanded FSA farmer grain bin programs;
4. Together with our DC champions writing the prevented plant clause in the Farm Bill.

Theses as just a few of the changes NDCGA has been a part of to make Corn the highest value crop grown anywhere in North Dakota.

Today NDCGA needs your help in passing HB 1153 to meet the future for this organization help its farmer growers. Transferring funds has been nearly impossible between the ND Corn Council and the NDCORN growers because of leadership in the NDCUC.

Like new farm bill, Waters of the U.S. (WOTUS), changes in RMA to name a few. We can and will make a difference with the increased moneys.

The current NDCGA board members are young family farmers who are the brightest and most hardworking in North Dakota. These leaders leave their farm and families to serve all the Corn Growers across North Dakota.

March 24, 2023

Ladies and Gentlemen of the Senate Ag Committee,

I am Dwight Enockson and I farm northeast of Washburn, ND

Thank you for the opportunity to speak to the committee regarding HB1153 which I **support**.

My interest in this bill stems from my involvement with the ND Corn Growers Association and the ND Corn Utilization Council during the years of 1989 through 2002. During those years I served as an officer in both the Growers Association and the Council including being the state president of the growers association.

Shortly after the ND Corn Growers was organized I was asked to be on the board of directors by Robert Thompson who was the first president of the growers association.

During those early years we came to realize that the Association needed more resources than was coming from membership and industry support and the decision was made to ask the legislature to form the ND Corn Utilization Council. I was personally involved in testifying for the bill to establish the Council and contacting several legislators.

From the very beginning it was intended for the ND Corn Growers and the ND Corn Utilization Council to work together. In order for these organizations to function effectively there needs to be complete coordination between the two groups. **After all, both entities serve the same growers.** During that time we established committees called action teams which included members from both entities as well as other grower members. In order to save on administration costs the staff served both entities. If one were to view the functioning of similar organization is South Dakota and Minnesota you would find them working very closely together.

As a member organization the ND Corn Growers represents the views and needs of the corn growers in North Dakota and is the entity designed for action and administration. The accountability comes through having members and policy meetings where growers can provide their views.

The funding by the ND Corn Council needs to reflect the needs and wants of the North Dakota corn growers which the growers association is able to provide. In order to do so the ND Corn Growers need adequate funding from the Corn Council serve the needs of corn growers and to oversee all programs.

The provisions of this bill will restore the funding needs for the Growers Association.

HB 1153 in SUPPORT

March 24 2023

Anthony Mock, Kintyre, ND

Good morning Chair Luick and members of the Senate Agriculture Committee. My name is Anthony Mock. I am a corn grower from Kintyre, ND where I farm with my family. I'm a current at-large member of the North Dakota Corn Growers Association board. I'm here in support of house bill 1153.

I have been very involved in the ethanol market development in the state, and have also served on one of the three national organizations in the country. Ethanol has been a game changer for the corn grower in the last 20 years, developing value added agriculture and better demand and prices for corn.

With the electric vehicle market emerging, ethanol as a sustainable fuel available widely and right now, being at the table is critical. The North Dakota Corn Utilization Council is no longer involved in any of the three ethanol organizations and has chosen not to serve on any of the National Corn Grower Association Action teams for the last couple of years including the one on Ethanol. The Growers Association needs the resources necessary to fill this gap, to provide an important service for our state's corn growers. Otherwise we are missing the opportunity to develop new markets on the rise, like sustainable aviation fuel.

There are dozens of other examples of significant gaps in priorities of the state's corn producers not being addressed by this public agency and they have been increasingly been operating in a vacuum, not communicating with the corn growers, removing us from their meeting agendas, refusing to come to joint advisory committees long established. The Corn Council executive director even told our former president when he was president that "you growers are nothing but a burden to us." She told the Growers executive director that the Growers Association is "no different that other vendors we have."

They talk about being elected by their peers, but it is often nothing more than their outgoing board member hand picking their replacement to show up at a county extension meeting that is sparsely attended, sometimes having no one show up at all. Last year when the Growers staff simply contacted one county to find out when that meeting would be held, the Council executive director fired off a terse email telling her to stay in her own lane, and "don't interfere with the elections are per state law."

This is a classic example of a state agency, run by a state employee who controls the finances by fear and intimidation to maintain her control over this pot of money and we have been trying for six to seven years to resolve this but cannot get through to their board that simply doesn't know what is going on other than what their staff tells them at their meetings three or four times a year.

I ask for your DO PASS on House Bill1153. Thank you for your time. I stand available for any questions you may have.

HB 1153 SUPPORT

March 24, 2023

Rob Hanson, Wimbledon, ND

Good morning Chairman Luik and members of the Senate Agriculture Committee. For the record my name is Rob Hanson. I am a corn grower from Wimbledon, ND where I farm with my family. I'm a past President of the North Dakota Corn Growers Association board and current at-large board member. I've served on the board for eight years. I'm writing to you in support of house bill 1153.

As a Corn leader, I brought the two executive leadership teams of both boards together multiple times during my two years as president and we had a lot of agreements but never came to a final agreement in the end, so I think this legislation needs to happen to allow the Growers to be able to come to the table and move forward to achieve great things for the growers of the state.

I ask for your DO PASS on House Bill 1153. Thank you for your time and attention to this important issue.

Version 7 – 3/24/23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1153

Page 1, line 2, replace “contract services” with “grant funding”

Page 1, replace lines 6-11 with:

Grant funding for trade associations.

1. The council shall develop a grant program to provide funding for no more than two trade associations that are incorporated in this state dedicated to serving North Dakota corn producers, improving farm and corn regulatory policy and advocacy, corn grower education, and other corn-related program and services that benefit North Dakota corn producers.
2. The amount of funds for the trade association grant shall be at least fifty percent of the money deposited in the corn fund, after consideration of funds needed for administration and operations and any refunds of assessment requested under 4.1-04-13.

SECTION 2. AMENDMENT. Section 4.1-04-09 of the North Dakota Century Code is amendment and reenacted as follows:

4.1-04-09. Council – Duties.

1. The council shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, market development efforts, as well as participation in programs under the auspices of other state, regional, national, and international promotion groups. Funds may also be used for corn policy development, policy-maker education and advocacy, promotion, and support to agricultural trade associations representing corn producers.
2. The council shall develop and disseminate information regarding the purpose of the corn assessment and ways in which the assessment benefits corn producers.
3. The council shall meet at least twice per year with organizations representing corn growers to discuss recommendations for uses of moneys raised under this chapter.



Comparative Statement of Revenues and Expenditures
For the Years Ended June 30, 2022 and 2021

<u>REVENUES:</u>	<u>June 30, 2022</u>	<u>June 30, 2021</u>
Corn Assessments (net of refunds of \$166,047 and \$99,994)	\$ 4,969,476	\$ 3,348,015
Miscellaneous General Revenue	17,338	11,390
Interest on Investments	11,608	26,551
Total Revenues	<u>\$ 4,998,422</u>	<u>\$ 3,385,956</u>
 <u>EXPENDITURES:</u>		
Grants, Benefits & Claims	\$ 3,458,961	\$ 2,014,422
Operating Fees and Services	362,937	352,803
Professional Development	257,600	206,410
Salaries - Permanent	177,780	159,634
Travel	94,115	17,126
Fringe Benefits	68,367	65,811
Rentals/Leases - Building/Land	49,965	50,147
Miscellaneous Supplies	16,901	11,687
Printing	15,987	18,209
Supplies - IT Software	13,395	13,116
Postage	5,643	7,516
Office Supplies	4,554	1,883
Office Equipment & Furniture under \$5,000	3,937	1,104
Utilities	3,810	4,678
IT Equipment under \$5,000	3,527	3,162
IT Communications	1,838	1,453
Building, Grounds, & Vehicle Supplies	1,756	1,023
Insurance	910	968
IT Data Processing	434	434
IT Contractual Services and Repairs		1,250
Supply/Material - Professional		776
Professional Fees and Services		8,415
Other Equipment under \$5,000		2,918
Total Expenditures	<u>\$ 4,542,417</u>	<u>\$ 2,944,945</u>
Revenues Over Expenditures	<u>\$ 456,005</u>	<u>\$ 441,011</u>

②

Revenues and expenditures on the comparative statement of revenues and expenditures are reported on the modified accrual basis of accounting which is generally accepted accounting principles (GAAP) for governmental fund types.

Under the modified accrual basis of accounting revenues are recognized when susceptible to accrual (i.e. measurable and available). Measurable means the amount can be determined, available means due and collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period. Revenues are considered available if they are collected within a year after fiscal year end. Expenditures are recorded when goods or services are received. Exceptions include: principal and interest expenditures which are recorded when due and compensated absences which are recorded when paid.

D. GAAP REPORTING DIFFERENCES

GAAP financial statements would include a balance sheet. GAAP financial statements would also provide additional note disclosures.

NOTE 2 | RELATED PARTIES

The North Dakota Corn Growers Association (Association) is a related party of the Council. For fiscal years 2022 and 2021, the Council paid the Association \$323,608 and \$301,421, respectively, for advertising contracts, leadership education and training contracts, and sponsorships.

As noted in Note 1, the Council is an agency of the state of North Dakota; as such other agencies of the state and their respective related parties are considered related parties of the Council. This includes North Dakota State University, North Dakota State University Foundation, University of North Dakota, the North Dakota Soybean Council, the North Dakota Ethanol Utilization Council, and Lake Region State College. For fiscal years 2022 and 2021, the Council made payments to North Dakota State University for corn research project contracts of \$762,509 and \$819,958, respectively. For fiscal years 2022 and 2021, the Council made payments to North Dakota State University Foundation for sponsorships of \$1,460,000 and \$20,000, respectively. For fiscal years 2022 and 2021, the Council made payments to University of North Dakota for corn research project contracts of \$130,343 and \$149,709, respectively. For fiscal years 2022 and 2021, the Council made payments to the North Dakota Soybean Council for shared expenditures of \$54,840 and \$28,801, respectively. For fiscal years 2022 and 2021, the Council made payments to the North Dakota Ethanol Utilization Council for corn promotion of \$17,500 and \$25,500, respectively. For fiscal year 2022, the Council made a payment to Lake Region State College for a sponsorship of \$10,000.

The Council also has a particularly close working relationship with the U.S. Grains Council, and the North Dakota Livestock Alliance. For fiscal years 2022 and 2021, the Council paid the U.S. Grains Council for promotional, marketing and development contracts of \$367,507 and \$379,050, respectively. For fiscal years 2022 and 2021, the Council paid the North Dakota Livestock Alliance for corn promotion of \$60,500 and \$50,000, respectively.

Teigen v. State, 749 N.W.2d 505 (2008)
2008 ND 88

749 N.W.2d 505
Supreme Court of North Dakota.

James TEIGEN, Deb Lundgren, Greg Svenningsen,
Farmer's Educational and Co-operative Union
of America, North Dakota Division, d/b/
a North Dakota Farmers Union, and Dakota
Resource Council, Plaintiffs and Appellants
and
Casey Wells, Plaintiff
v.
STATE of North Dakota, Defendant and Appellee.

No. 20070134.
|
May 15, 2008.

Synopsis

Background: Individual taxpayers, farmers union, and resource council brought action against the state to declare trade association clause in wheat commission's tax levy statute unconstitutional as a special law, as a law granting special privileges and immunities, and as a law making a gift. The District Court, Burleigh County, South Central Judicial District, *Thomas J. Schneider, J.*, determined that only the individual taxpayers had standing to address the claims, and then entered summary judgment against the taxpayers and in favor of the state. Individual taxpayers, farmers union, and resource council appealed.

Holdings: The Supreme Court, *Carol Ronning Kapsner, J.*, held that:

- [1] the trade association clause did not create a "special law" as prohibited by the state constitution;
- [2] the clause was not a law granting "special privileges and immunities" as prohibited by the state constitution; and
- [3] the clause did not constitute a "gift" as prohibited by state constitution.

Affirmed.

Dale V. Sandstrom, J., filed an opinion concurring specially.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (18)

[1] **Appeal and Error** — Statutory or legislative law

Whether a statute is unconstitutional is a question of law, which is fully reviewable on appeal.

11 Cases that cite this headnote

[2] **Constitutional Law** — Presumptions and Construction as to Constitutionality

Constitutional Law — Clearly, positively, or unmistakably unconstitutional

All regularly enacted statutes carry a strong presumption of constitutionality, which is conclusive unless the party challenging the statute clearly demonstrates that it contravenes the state or federal constitution.

8 Cases that cite this headnote

[3] **Constitutional Law** — Inquiry Into Legislative Judgment

In reviewing the constitutionality of a statute, the justice, wisdom, necessity, utility and expediency of legislation are questions for legislative, and not for judicial determination.

4 Cases that cite this headnote

[4] **Constitutional Law** — Judicial Authority and Duty in General

The Supreme Court exercises the power to declare legislation unconstitutional with great restraint. Const. Art. 6, § 4.

3 Cases that cite this headnote

[5] **Appeal and Error** — Statutory or legislative law

Statutory interpretation is a question of law, fully reviewable on appeal.

10 Cases that cite this headnote

[6] **Statutes** ➤ Intent

The primary purpose of statutory interpretation is to determine legislative intent.

4 Cases that cite this headnote

[7] **Statutes** ➤ Extrinsic Aids to Construction

Statutes ➤ Plain, literal, or clear meaning; ambiguity

If the language of a statute is ambiguous, a court may resort to extrinsic aids, including legislative history, to interpret the statute. NDCC 1-02-05.

4 Cases that cite this headnote

[8] **Agriculture** ➤ State and local aid

Statutes ➤ Taxation

Trade association clause in wheat commission's tax levy statute, which indicated that two mills of wheat taxes were to go toward contracts for activities related to domestic wheat policy issues that the wheat commission could form with no more than two trade associations incorporated in the state "which have as their primary purpose the representation of wheat producers" did not create a "special law," as prohibited by the state constitution, although challengers argued that it had the effect of requiring contracts with two specific trade associations; no specific associations were named in the law, and the law did not contemplate a closed class of trade associations or preclude further accession into the class. Const. Art. 4, § 13; NDCC 4-28-07(4), 4-28-07.1(4).

[9] **Administrative Law and Procedure** ➤ Deference to Agency in General

Administrative Law and Procedure ➤ Erroneous or unreasonable construction; conflict with statute

Although an administrative construction of a statute is ordinarily entitled to some deference

if that interpretation does not contradict clear and unambiguous statutory language, the interpretation of a statute is a question of law that is fully reviewable by a court.

13 Cases that cite this headnote

[10] **Agriculture** ➤ Constitutional and statutory provisions

Trade association clause in wheat commission's tax levy statute, which indicated that two mills of wheat taxes were to go toward contracts for activities related to domestic wheat policy issues that the wheat commission could form with "no more than two trade associations" did not impliedly repeal the law for state purchasing practices; there was no language in the trade association clause or state purchasing law that exempted the purchase law's competitive bidding requirements from the procurement of contractual services by the wheat commission. NDCC 4-28-07(4), 4-28-07.1(4), 54-44.4-01 et seq.

[11] **Statutes** ➤ Implied Repeal

Statutes ➤ By inconsistent or repugnant statute

Implied repeals of statutes are not favored, and to overcome a presumption against an implied repeal, a conflict between two statutes must be irreconcilable. NDCC 1-02-07.

[12] **Agriculture** ➤ State and local aid

Constitutional Law ➤ Public contracts

Constitutional Law ➤ Public contracts

Trade association clause in wheat commission's tax levy statute, which indicated that two mills of wheat taxes were to go toward contracts for activities related to domestic wheat policy issues that the wheat commission could form with no more than two trade associations incorporated in the state, created a classification of trade associations bearing a rational relationship to a legitimate government interest of promoting activities related to domestic wheat policy issues,

wheat production, or promotion and sales, and therefore, was not a law granting “special privileges and immunities” as prohibited by the equal protection clause of the state constitution. [Const. Art. 1, § 21](#); NDCC 4-28-07(4), 4-28-07.1(4).

[13] **Constitutional Law** — Differing levels set forth or compared

Under state constitutional equal protection analysis, the standard of review depends on the type of classification: when a classification involves a fundamental interest or is inherently suspect, courts analyze the classification under strict scrutiny; when there is an important substantive right involved in the classification, courts apply an intermediate standard of review; if there is no fundamental or important substantive interest involved, courts analyze the classification under a rational basis standard and sustain the legislation unless it is arbitrary and bears no rational relationship to a legitimate governmental interest. [Const. Art. 1, § 21](#).

[14] **Constitutional Law** — Economic or social regulation in general

Under a state constitutional equal protection analysis, the rational basis standard of review is generally applied when statutory classifications involve economic and social matters and do not deprive a class of plaintiffs from access to the courts. [Const. Art. 1, § 21](#).

[15] **Constitutional Law** — Statutes and other written regulations and rules

In the context of a state constitutional equal protection analysis, under the rational basis standard, a legislative classification will be sustained unless it is arbitrary and bears no rational relationship to a legitimate governmental interest. [Const. Art. 1, § 21](#).

2 Cases that cite this headnote

[16] **States** — Limitation of use of funds or credit

Trade association clause in wheat commission's tax levy statute, which indicated that two mills of wheat taxes were to go toward contracts for activities related to domestic wheat policy issues that the wheat commission could form with no more than two trade associations incorporated in the state did not constitute a “gift” as prohibited by state constitution, although only two specific trade associations had ever sought such contracts; the clause contemplated a contract for services and did not preclude competitive bidding with entities meeting the qualifications imposed. [Const. Art. 10, § 18](#).

1 Case that cites this headnote

[17] **Contracts** — Benefit to promisor

Contracts — Detriment to promisee

In the context of a contract, consideration means any benefit conferred or detriment suffered.

[18] **Contracts** — Adequacy

If consideration for a contract exists, courts generally will not inquire into the adequacy or value of the consideration.

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Opinion

KAPSNER, Justice.

[¶ 1] James Teigen, Deb Lundgren, Greg Svenningsen, the North Dakota Farmers Union, and the Dakota Resource Council (collectively “plaintiffs”) appeal from a summary judgment dismissing their declaratory judgment action.

Plaintiffs challenge the constitutionality of language in N.D.C.C. §§ 4-28-07(4) and 4-28-07.1(4) requiring the North Dakota State Wheat Commission to expend at least two mills of a wheat tax for “contract[s] for activities related to domestic wheat policy issues, wheat production, promotion, and sales” and providing “[t]he contracts may be with no more than two trade associations that are incorporated in [North Dakota] and which have as their primary purpose the representation of wheat producers.” The plaintiffs claim the statutes effectively require the Wheat Commission to contract with two specific entities, the North Dakota Grain Growers Association and the Durum Growers Association of the United States, and violate state constitutional provisions prohibiting special laws, gifts, and special privileges and immunities. We hold the statutes do not violate the state constitutional provisions, and we affirm.

I

[¶ 2] The plaintiffs sued the State to declare the underscored “trade association *508 clause” language of N.D.C.C. §§ 4-28-07(4) (effective from July 1, 2005, through June 30, 2009) and 4-28-07.1(4) (effective after June 30, 2009) unconstitutional as a special law, as a law granting special privileges and immunities, and as a law making a gift:

The [wheat] commission shall expend an amount at least equal to that raised by two mills of the levy provided for in this section to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. *The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers.* The contracts must require that any trade association receiving money under this section pay from that money all dues required as a condition of the trade association's membership in any national trade association. The contracts also must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership

in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.

The plaintiffs alleged the trade association clause effectively required the Wheat Commission to contract with only two entities, the North Dakota Grain Growers Association and the Durum Growers Association of the United States, and prohibited the Wheat Commission from contracting with any other potential service providers.

[¶ 3] The district court decided the individual plaintiffs, as taxpayers, had standing to challenge the trade association clause, but the Dakota Resource Council and the North Dakota Farmers Union lacked standing to challenge the clause because they did not pay the wheat tax, they had never attempted to contract with the Wheat Commission, there was no indication they would qualify for, or receive, a contract with the Wheat Commission, and they had not suffered a threatened or actual injury. The court subsequently granted the State's motion for summary judgment dismissing the individual plaintiffs' claims, concluding the trade association clause was not unconstitutional as a special law, as a law granting special privileges and immunities, and as a law making a gift.

II

[¶ 4] The plaintiffs argue the North Dakota Farmers Union and the Dakota Resource Council have organizational standing to challenge the constitutionality of the trade association clause, because those entities have an interest in the action in a representative capacity. The plaintiffs also argue the Farmers Union and the Dakota Resource Council have direct standing to challenge the constitutionality of the trade association clause.

[¶ 5] We need not decide if the Farmers Union and the Dakota Resource Council have standing to challenge the constitutionality of the trade association clause, however, because it is sufficient to confer standing if at least one of the plaintiffs have standing to challenge the constitutionality of the clause, and here, the State does not dispute that the individual plaintiffs have standing. See *International Printing Pressmen & Assistants Union v. Meier*, 115 N.W.2d

18, 20 (N.D.1962). See also *Bowsher v. Synar*, 478 U.S. 714, 721, 106 S.Ct. 3181, 92 L.Ed.2d 583 (1986); *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 264 n. 9, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). Any opinion by this Court regarding standing is not necessary for the disposition of the individual plaintiffs' constitutional challenges, and we therefore do not *509 address the standing issue. E.g. *State v. Hansen*, 2006 ND 139, ¶ 7, 717 N.W.2d 541 (stating Supreme Court does not render advisory opinions).

III

[¶ 6] The plaintiffs argue the trade association clause violates state constitutional provisions prohibiting special laws, special privileges and immunities, and gifts.

[1] [2] [3] [4] [¶ 7] Whether a statute is unconstitutional is a question of law, which is fully reviewable on appeal. *Best Products Co., Inc. v. Spaeth*, 461 N.W.2d 91, 96 (N.D.1990). “ ‘All regularly enacted statutes carry a strong presumption of constitutionality, which is conclusive unless the party challenging the statute clearly demonstrates that it contravenes the state or federal constitution.’ ” *In re P.F.*, 2008 ND 37, ¶ 7, 744 N.W.2d 724 (quoting *Olson v. Bismarck Parks and Recreation Dist.*, 2002 ND 61, ¶ 11, 642 N.W.2d 864). “ ‘The justice, wisdom, necessity, utility and expediency of legislation are questions for legislative, and not for judicial determination.’ ” *Manikowske v. North Dakota Workmen's Comp. Bureau*, 338 N.W.2d 823, 825 (N.D.1983) (quoting *Asbury Hosp. v. Cass County*, 72 N.D. 359, 7 N.W.2d 438, 442 Syllabus ¶ 11 (1943)). This Court exercises the power to declare legislation unconstitutional with great restraint. *MCI Telecomms. Corp. v. Heitkamp*, 523 N.W.2d 548, 552 (N.D.1994). Under N.D. Const. art. VI, § 4, this Court “shall not declare a legislative enactment unconstitutional unless at least four of the members of the court so decide.”

A

[¶ 8] The special law provision of N.D. Const. art. IV, § 13, prohibits the legislature from enacting local or special laws and provides, in relevant part:

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

[¶ 9] The plaintiffs claim the effect of the trade association clause is to create a special law. They argue the district court failed to apply a searching analysis of the effect of the trade association clause under this Court's special law jurisprudence and incorrectly decided the trade association clause was not a special law because it applied to all trade associations incorporated in North Dakota. They contend that although the trade association clause is written in neutral language, the language constitutes artful drafting masking what is, in fact, a special law. They assert the Wheat Commission's administrative construction of the trade association clause establishes it is a special law, because that construction authorizes contracts with only the Grain Growers Association and the Durum Growers Association. They also argue the legislative history for the trade association clause establishes the wheat checkoff was intended to go to only those two entities. They further claim the trade association clause does not require competitive bidding for the contracts and is an implied repeal of North Dakota's state purchasing practices' law in N.D.C.C. ch. 54–44.4, which also establishes the clause is a special law.

[¶ 10] The State responds the trade association clause is not ambiguous and does not create a special class; rather, the statute directs the Wheat Commission to contract with two trade organizations that have as their primary purpose the representation *510 of wheat producers. The State argues the comments of individual legislators and others during legislative deliberations do not establish legislative intent and the best evidence of the legislature's intent is the statutory language itself, which does not explicitly apply to the Grain Growers Association and the Durum Growers Association. The State also argues the statute does not repeal the state purchasing practices' law and does not violate the special

laws provision because the legislature may make reasonable classifications.

[¶ 11] One court has cogently explained “the proscription against special laws was ‘adopted for a very simple and understandable purpose—to put an end to the flood of privileged legislation for particular localities and for private purposes which was common in’ ” the latter part of the nineteenth century. *Harrisburg Sch. Dist. v. Hickok*, 563 Pa. 391, 761 A.2d 1132, 1135–36 (2000) (quoting *Haverford Twp. v. Siegle*, 346 Pa. 1, 28 A.2d 786, 788 (1942)). See 2 Norman J. Singer, *Sutherland Statutory Construction* § 40:1 (6th ed. 2001).

[¶ 12] In *MCI*, 523 N.W.2d at 552, we discussed the difference between general and special laws:

“ ‘A statute relating to persons or things as a class is a general law; one relating to particular persons or things of a class is special.’ ” *Vermont Loan & Trust Co. v. Whithed*, 2 N.D. 82, 92–3, 49 N.W. 318, 320 (1891) (quoting Sutherland’s *Statutory Construction* ¶ 121). Special laws are made for individual cases of less than a class, due to peculiar conditions and circumstances. *Id.* We have recently said that the special laws language of our state constitution constrains laws relating “ ‘only to particular persons or things of a class, as distinguished from a ‘general law,’ which applies to all things or persons of a class.’ ” *Best Products Co., Inc. v. Spaeth*, 461 N.W.2d 91, 99 (N.D.1990) quoting *State v. First State Bank*, 52 N.D. 231, 202 N.W. 391, 399 (1924). A statute is not special, but general, if “ ‘[i]t operates equally upon all persons and things within the scope of the statute. It operates alike on all persons and property similarly situated.... In other words, it operates alike in all cases where the facts are substantially the same.’ ” *Bellemare v. Gateway Builders, Inc.*, 420 N.W.2d 733, 739 (N.D.1988), quoting *State v. First State Bank*, 52 N.D. 231, 202 N.W. 391, 399 (1924).

In *MCI*, 523 N.W.2d at 552–53, we said a statute about local telephone exchange services, on its face, appeared to be a general law applicable to all companies “providing local exchange service,” which were similarly situated to each other but not similarly situated with long distance companies that did not provide local exchange service. See also *Bouchard v. Johnson*, 555 N.W.2d 81, 88 (N.D.1996) (skiing responsibility act operates alike to all similarly situated persons operating a skiing facility within the state,

which is permissible class; if statute applied only to named ski resort, statute would treat member of class differently and would be unconstitutional special law). We further concluded the classification regarding local telephone exchange services was reasonable and did not violate the special laws provision of our state constitution. *MCI*, at 553–54.

[¶ 13] In *Best Products*, 461 N.W.2d at 99, a case involving a special law challenge to a Sunday closing law, we said the standard of review of a classification under our special laws provision is reasonableness, and a statutory classification is reasonable, if it “ ‘is natural, not arbitrary, and standing upon some reason having regard to the character of the legislation of which it is a feature.’ ” *Id.* (quoting *Miller v. Norton*, 22 N.D. 196, 132 N.W. 1080, 1091 (1911)). *511 We further explained a classification is “reasonable if ‘[i]t bears alike upon all persons and things upon which it operates and it contains no provision that will exclude or impede this uniform operation upon all citizens, subjects and places within the state provided they are brought within the relations and circumstances specified in the statute.’ ” *Best Products*, at 99 (quoting *Northwestern Bell Tel. Co. v. Wentz*, 103 N.W.2d 245, 256 (N.D.1960)). We concluded the Sunday closing law implemented a legislative purpose of rest and recreation and regulated activity in a manner to achieve a universally accepted legitimate governmental purpose that did not violate the special laws provision of our state constitution. *Best Products*, at 99.

[¶ 14] In assessing whether a challenged law violated the special laws provision of our state constitution, this Court’s early decisions recognized the effect of the challenged law was an appropriate consideration. *McDonald v. Hanson*, 37 N.D. 324, 338–40, 164 N.W. 8, 12–13 (1917); *Angell v. Cass County*, 11 N.D. 265, 270, 91 N.W. 72, 73 (1902); *Edmonds v. Herbrandson*, 2 N.D. 270, 279, 50 N.W. 970, 973 (1891). See 2 *Sutherland Statutory Construction*, at § 40:5 (stating characterization of statute depends on its substance and not its form; statute may be special in fact though general in form).

[¶ 15] In *Edmonds*, 2 N.D. 270, 50 N.W. at 970 Syllabus ¶ 1, this Court held a statute regulating procedures for relocating county seats violated the prohibition on special laws, because it arbitrarily classified counties by putting into one class all counties having a courthouse and jail worth more than \$35,000 when the statute was enacted and forever putting other counties into another class. In *Edmonds*, the class was

closed on the date the statute was enacted because the statute forever classified counties based on value of the courthouse and jail on that date, and this Court said if “the legislature [had] not closed the door against accessions to the class of counties having a court-house and jail exceeding \$35,000 in value, the classification would have been proper[, b]ut an arbitrary time [was] fixed, after which no county coming within the same conditions which characterize the class can gain admittance to such class.” ¶ 2 N.D. at 275, 50 N.W. at 972. See *Best Products*, 461 N.W.2d at 99 (citing *Edmonds* as case involving classification based on time and stating the “reason for the classification, time, bore no relationship to the statutory purpose, preventing waste”). In *Edmonds*, this Court explained the class became closed when the statute was enacted and the closed class was arbitrary under the special law provision of the constitution:

But, when the act in express terms prevents any further accession to the class, it is apparent that the classification stands, not upon a reasonable ground based on difference in population, but is purely arbitrary. The act might as well have expressly named the particular objects included, to the exclusion of all others. So far as this particular provision of the constitution against special legislation is concerned, it is immaterial that the act is general in form. The question is always as to its effect. Any other doctrine would render nugatory the prohibition of the fundamental law against special legislation. Under the guise of statutes general in terms, special legislation, in effect, could be adopted with no inconvenience, and the evil to be extirpated would flourish unchecked. Statutes general in terms have been adjudged void as special legislation, because they could operate only upon a part of a class.

¶ 2 N.D. at 278–79, 50 N.W. at 973.

[¶ 16] In ¶ *Angell*, 11 N.D. at 269–72, 91 N.W. at 73–74, this Court applied established *512 rules of construction to a 1901 statute relating to the collection of unpaid real estate taxes, which authorized counties within a class to institute judicial proceedings to collect unpaid taxes upon certain real estate and precluded other counties from instituting judicial proceedings to collect unpaid taxes for the same years. This Court said the express terms of the statute had the appearance and characteristic of a general law. ¶ *Id.* at 269, 91 N.W. at 72–73. This Court stated, however, the statute “masquerade [d] as a general law,” and concluded the classification was arbitrary and violated the proscription against special laws because it was “in fact and in its practical operation a special law for the collection of taxes” on certain real estate in certain counties only. ¶ 11 N.D. at 269–72, 91 N.W. at 73–74. This Court explained the challenged statute effectively created a closed class because the right of any county to use the tax collection remedies provided by the challenged statute depended on whether the county had failed to collect unpaid taxes under a prior 1897 law. ¶ *Id.* at 270–72, 91 N.W. at 73–74. If a county was in the closed class of commonly known counties that had not used the 1897 law to collect unpaid taxes, the 1901 law gave those counties “especial privileges” in the form of judicial remedies to also collect taxes for additional years when taxes could not have been collected under the 1897 law. ¶ *Id.* Counties that had used the 1897 law, however, could not use the judicial remedies of the 1901 law to collect taxes for those same additional years. ¶ *Id.* Although the challenged 1901 statute was written in general terms, it effectively gave counties that had failed to proceed under the 1897 law greater remedies to collect unpaid taxes than the counties that had used the 1897 law to collect unpaid taxes. ¶ *Id.* The class was closed because it was based on a past occurrence—whether or not the county had failed to use the 1897 statute to collect unpaid taxes.

[¶ 17] In ¶ *McDonald*, 37 N.D. at 338–40, 164 N.W. at 12–13, this Court construed a statute providing two methods of organizing new school districts from existing school districts and held the statute was a general law, operating uniformly throughout the State upon all school districts under the same circumstances and conditions. The classifications in the challenged statute were based upon minimum qualifications for admission into the class and did not preclude future admission to the class. ¶ *Id.* at 336–40, 164 N.W. at 11–13. This Court upheld the challenged statute, but recognized a law “general in its form, but special in its operation, violates a

constitutional inhibition of special legislation as much as if special in form.’ ” *Id.* at 338–39, 164 N.W. at 12. This Court said, however, the challenged statute, as construed in that case, was general in its form and also general in its operation throughout the state to every school district similarly situated, and this Court held the statutory classification was reasonable and not arbitrary. *Id.* at 338–40, 164 N.W. at 12–13.

[¶ 18] The common inquiry in our special law cases is whether statutory classifications are written in general terms, rather than applying to particular persons or things, and if written in general terms, whether the classification “close[s] the door against accessions to the class.” *Edmonds*, 2 N.D. at 275, 50 N.W. at 972. See 2 *Sutherland Statutory Construction*, at § 40:6 (stating most authorities agree it is not necessary that every entity be included in the coverage of an act, but none can be excluded so as to preclude qualification for legislative classification; classification must be prospective and permit future entry into class when qualifications met). Under our special law jurisprudence, the standard of review of a classification is *513 reasonableness and a classification will be upheld if it “ ‘is natural, not arbitrary, and standing upon some reason having regard to the character of the legislation of which it is a feature.’ ” *Best Products*, 461 N.W.2d at 99 (quoting *Miller*, 22 N.D. at 222, 132 N.W. at 1091). Our cases recognize the analysis of a special law challenge necessarily involves the interpretation of the challenged statute. See *Bouchard*, 555 N.W.2d at 83–88; *McDonald*, 37 N.D. at 338–40, 164 N.W. at 12–13; *Angell*, 11 N.D. at 269–72, 91 N.W. at 73–74.

[5] [6] [7] [¶ 19] Statutory interpretation is a question of law, fully reviewable on appeal. *In re P.F.*, 2008 ND 37, ¶ 11, 744 N.W.2d 724. The primary purpose of statutory interpretation is to determine legislative intent. *Estate of Elken*, 2007 ND 107, ¶ 7, 735 N.W.2d 842. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined by statute or unless a contrary intention plainly appears. N.D.C.C. § 1–02–02. Statutes are construed as a whole and are harmonized to give meaning to related provisions. N.D.C.C. § 1–02–07. If the language of a statute is clear and unambiguous “the letter of [the statute] is not to be disregarded under the pretext of pursuing its spirit.” N.D.C.C. § 1–02–05. If the language of a statute is ambiguous, however, a court may resort to extrinsic aids, including legislative history, to interpret the statute. *Stutsman County v. State Historical Soc’y*, 371 N.W.2d 321, 325 (N.D.1985). It is well established that we construe

statutes to avoid constitutional infirmities. *City of Belfield v. Kilkenny*, 2007 ND 44, ¶ 8, 729 N.W.2d 120; *In re G.R.H.*, 2006 ND 56, ¶ 15, 711 N.W.2d 587; *Kjolsrud v. MKB Mgmt. Corp.*, 2003 ND 144, ¶ 7, 669 N.W.2d 82.

[8] [¶ 20] The plain language of the trade association clause does not specially refer to the Grain Growers Association or to the Durum Growers Association; rather, the statute is phrased in general terms that the “contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers.” The plain language of the trade association clause does not contemplate a closed class and does not preclude other organizations from further accession into the class if they meet those qualifications. See *Souris River Tel. Mut. Aid Corp. v. State*, 162 N.W.2d 685, 691 (N.D.1968) (statutory classification not invalid because it involves one person or corporation if classification is broad enough to apply to others if they exist). The plain language of the trade association clause is similar to the situation in *Bouchard*, 555 N.W.2d at 88, in which we construed a statute for operating a skiing facility and said that statute operated alike for all similarly situated persons and did not apply only to one named ski resort, and to *MCI*, 523 N.W.2d at 552–53, in which we said a statute, on its face, appeared to be a general statute applying to all companies providing local exchange service. The trade association clause operates alike for all similarly situated entities that satisfy the statutory requirements for a contract. The plaintiffs’ reliance on *International Printing Pressmen*, 115 N.W.2d at 20, is misplaced, because the statute at issue in that case limited the award of public contracts to an entity with employees from a specifically named union. The trade association clause does not explicitly refer to a specific entity, and the statutory qualifications do not preclude further accession into the class if those qualification are met.

[9] [¶ 21] Some statements in the legislative history for the trade association clause and some statements in minutes from meetings of the Wheat Commission *514 may suggest the clause requires the contracts to be awarded to the Grain Growers Association and to the Durum Growers Association. However, those broad statements are contrary to the plain language of the statute. Although an administrative construction of a statute is ordinarily entitled to some deference if that interpretation does not contradict clear and unambiguous statutory language, the interpretation of a statute is a question of law that is fully reviewable by a court. *Victor v. Workforce Safety & Ins.*, 2006 ND 68, ¶

12, 711 N.W.2d 188. We conclude the language of the trade association clause is clear and unambiguous, and we need not resort to legislative history or to administrative interpretation to construe the plain language of that statute.

[10] [11] [¶ 22] Contrary to the plaintiffs' claim about an implied repeal of the law for state purchasing practices, N.D.C.C. ch. 54–44.4, there is no language in the trade association clause or N.D.C.C. ch. 54–44.4 that exempts the competitive bidding requirements from the procurement of contractual services by the Wheat Commission. We construe statutes to harmonize them. N.D.C.C. § 1–02–07; *Lawrence v. North Dakota Workers Comp. Bureau*, 2000 ND 60, ¶ 19, 608 N.W.2d 254. Implied repeals of statutes are not favored, and to overcome a presumption against an implied repeal, a conflict between two statutes must be irreconcilable. *Walsvik v. Brandel*, 298 N.W.2d 375, 377 (N.D.1980). The plaintiffs have cited no provisions establishing an irreconcilable conflict between the trade association clause and N.D.C.C. ch. 54–44.4, or excluding these contracts from the state purchasing practices' law, and we have found none. See N.D.C.C. §§ 54–44.4–02.1; 54–44.4–05; 54–44.4–12. Although the applicability of the competitive bidding process is not necessary to sustain the constitutionality of the trade association clause under the special law provision as long as the class is not closed, the competitive bidding process is the mechanism for awarding contracts under the clause. During oral argument to this Court, the State acknowledged the applicability of the state purchasing practices' process if more than two qualified trade associations sought a contract from the Wheat Commission for activities related to domestic wheat policy issues, wheat production, promotion, and sales. This record does not show that more than two trade associations have sought such a contract, and issues about potential violations of the competitive bidding process are not before us.

[¶ 23] On this record, we conclude the trade association clause is a general law that operates alike on all entities similarly situated. We further conclude the general classification for trade associations incorporated in North Dakota and which have as their primary purpose the representation of wheat producers is reasonable in view of the contractual services sought by the Wheat Commission. In our view, the required qualifications for procurement of a contract do not impose arbitrary conditions on entities seeking contracts related to domestic wheat policy issues, wheat production, promotion,

and sales. We therefore hold the trade association clause does not violate N.D. Const. art. IV, § 13.

B

[12] [¶ 24] The plaintiffs argue the trade association clause is unconstitutional as a law granting special privileges and immunities under N.D. Const. art. I, § 21, which provides:

No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or *515 immunities which upon the same terms shall not be granted to all citizens.

[13] [14] [¶ 25] Article I, § 21, N.D. Const., the privileges and immunities clause, is this State's equal protection clause. *Bouchard*, 555 N.W.2d at 87. Under equal protection analysis, the standard of review depends on the type of classification. *Id.* When a classification involves a fundamental interest or is inherently suspect, we analyze the classification under strict scrutiny. *Id.* When there is an important substantive right involved in the classification, we apply an intermediate standard of review. *Id.* If there is no fundamental or important substantive interest involved, we analyze the classification under a rational basis standard and sustain the legislation unless it is arbitrary and bears no rational relationship to a legitimate governmental interest. *Id.* The rational basis standard of review is generally applied when statutory classifications involve economic and social matters and do not deprive a class of plaintiffs from access to the courts. *Id.*

[15] [¶ 26] The plaintiffs do not dispute the trade association clause involves social and economic legislation regarding the wheat industry, and we conclude the rational basis standard is the appropriate level of scrutiny for the plaintiffs' challenge. Under the rational basis standard, a legislative classification will be sustained unless it is arbitrary and bears no rational relationship to a legitimate governmental interest. *Bouchard*, 555 N.W.2d at 87; *Best Products*, 461 N.W.2d at 96.

[¶ 27] We conclude it is not unreasonable for the legislature to classify trade associations incorporated in this state and having as their primary purpose the representation of wheat producers from other groups for purposes of contracting for activities related to domestic wheat policy issues, wheat production, promotion and sales. We conclude the legislature's classification of trade associations bears a rational relationship to a legitimate government interest of promoting activities related to domestic wheat policy issues, wheat production, promotion and sales. We therefore hold the trade association clause satisfies the rational basis standard of scrutiny, and the clause does not violate N.D. Const. art. I, § 21.

[16] [¶ 28] The plaintiffs argue the trade association clause is unconstitutional because it constitutes a gift in violation of N.D. Const. art. X, § 18, which provides:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.

[¶ 29] The plaintiffs argue the trade association clause constitutes a gift to the Grain Growers Association and the Durum Growers Association, because that statute eliminates competitive bidding and the money paid to the two entities is unrelated to the services provided. Relying on *Herr v. Rudolf*, 75 N.D. 91, 25 N.W.2d 916 (1947) and *Solberg v. State Treasurer*, 78 N.D. 806, 53 N.W.2d 49 (1952), the plaintiffs claim there is no correlation between the value received by the State and the funds paid by the State for the services, in part, because the amount of the final payment from collection of the wheat tax is not known when the contract is executed.

*516 [17] [18] [¶ 30] Under our interpretation of the trade association clause, however, the competitive bidding process is applicable to contracts awarded under the statute. This record does not reflect that more than two trade associations have sought a contract and issues about potential violations of the competitive bidding process are not before us. We agree with the State that this statute does not contemplate a gift; rather it contemplates a contract for services and does not preclude competitive bidding with entities that meet the qualifications imposed by the statute. *Herr* and *Solberg* involved statutory provisions for specifically identified classes of individuals to buy back foreclosed land from the State, *Herr*, 75 N.D. at 95–96, 25 N.W.2d at 918–19, or to buy back mineral interests from the State, *Solberg*, 78 N.D. at 809–10, 53 N.W.2d at 50–51. In both *Herr*, 75 N.D. at 102–03, 25 N.W.2d at 922, and *Solberg*, 78 N.D. at 813–17, 53 N.W.2d at 53–55, this Court concluded the respective statutes violated the gift provision of the constitution. However, neither of those cases involved contracts for services, and we conclude they do not control the resolution of this issue. In the context of a contract, consideration means any benefit conferred or detriment suffered. *Harrington v. Harrington*, 365 N.W.2d 552, 555 (N.D.1985); *Gulden v. Sloan*, 311 N.W.2d 568, 572 (N.D.1981). If consideration exists, courts generally will not inquire into the adequacy or value of the consideration. *Harrington*, at 555; *Gulden*, at 572.

[¶ 31] The record before us indicates the Wheat Commission regularly enters into written contracts with entities qualified under the statute. Those written contracts specifically identify the services to be performed by the entity, restrict the use of funds received from the Wheat Commission to the performance of those services, and impose record-keeping and reporting requirements on the use of the funds. We also note the competitive bidding process helps ensure the State receives a substantial benefit for its contracts and the successful bidders incur a detriment. See *Adams County Record v. Greater North Dakota Ass'n*, 1997 ND 116. ¶ 10, 564 N.W.2d 304 (stating a quid pro quo exists in contract when State receives benefits it seeks and organization is entitled to promised monetary consideration). Although the amount of the payments under the contracts is uncertain because the statute is based on a per bushel mill assessment, there is a rational relationship between larger payments attributable to an increased number of bushels of wheat and the activities and services provided because of that

increased quantity of wheat. On this record, we conclude the trade association clause does not violate N.D. Const. art. X, § 18. However, if that amount of money becomes too disproportionate to the services required under the contract, we are not precluded from revisiting this issue. See *Bismarck Pub. Sch. Dist. v. State*, 511 N.W.2d 247, 276 (N.D.1994) (VandeWalle, C.J., dissenting in part).

IV

[¶ 32] We affirm the judgment.

[¶ 33] GERALD W. VANDE WALLE, C.J., MARY MUEHLEN MARING, and DANIEL J. CROTHERS, JJ., concur.

SANDSTROM, Justice, concurring specially.

[¶ 34] To the extent that dicta in Part III C of the majority opinion could be read as suggesting that any consideration, no matter how minimal, would be sufficient to defeat the

North Dakota Constitution, art. X, § 18, prohibition on gifts, I disagree.

*517 [¶ 35] I respectfully reject the idea that private-contract consideration is the appropriate standard for determining whether or not there has been a gift of public funds. The standard contractual consideration between private parties for a valid contract reflects that it is only persons who are sought to be bound. The North Dakota constitutional limitation on gifts is the action of the people in general to restrain the government actors from gifting public funds or property.

[¶ 36] Under an any-consideration-no-matter-how-minimal standard, a public entity could agree to pay \$40,000 for a standard wooden pencil and it would not be a gift. Such cannot be the law. See *Adams County Record v. Greater North Dakota Association*, 529 N.W.2d 830, 839 (N.D.1995) (VandeWalle, C.J., concurring in the result).

[¶ 37] Dale V. Sandstrom

All Citations

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FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1153

Introduced by

Representatives Brandenburg, Grueneich, Headland, D. Johnson, Kempenich, Mitskog,
Nelson, Weisz

Senators Erbele, Klein, Wanzek, Weber

1 A BILL for an Act to create and enact a new section to chapter 4.1-04 of the North Dakota
2 Century Code, relating to corn council contract services; and to amend and reenact sections
3 4.1-04-08 and 4.1-04-09 of the North Dakota Century Code, relating to the duties and powers of
4 the corn council.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 4.1-04-08 of the North Dakota Century Code is
7 amended and reenacted as follows:
8 **4.1-04-08. Council - Powers.**
9 The council may:
10 1. Expend moneys collected pursuant to this chapter for its administration;
11 2. Employ, bond, and compensate necessary personnel;
12 3. Accept gifts, grants, and donations of money, property, and services to carry out this
13 chapter;
14 4. Contract with any person for any purpose related to this chapter, including research,
15 education, publicity, promotion, and transportation;
16 5. Establish a grant program and guidelines to provide funding to corn-related programs
17 and organizations that benefit North Dakota corn producers, consistent with this
18 chapter;
19 6. Sue and be sued; and
20 ~~6.7.~~ Do all things necessary and proper to enforce and administer this chapter.
21 **SECTION 2. AMENDMENT.** Section 4.1-04-09 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **4.1-04-09. Council - Duties.**

2 1. The council shall determine the uses for which any moneys raised under this chapter
3 may be expended. The uses may include the funding of research, education
4 programs, and market development efforts, as well as participation in programs under
5 the auspices of other state, regional, national, and international promotion groups.

6 2. The council shall develop and disseminate information regarding the purpose of the
7 corn assessment and ways in which the assessment benefits corn producers.

8 3. The council shall hold two public input meetings per year with organizations dedicated
9 to serving North Dakota corn producers to discuss recommendations for the use of
10 moneys received under this chapter.

11 **SECTION 3.** A new section to chapter 4.1-04 of the North Dakota Century Code is created
12 and enacted as follows:

13 **Contract services.**

14 The council shall contract with an organization dedicated to serving North Dakota corn
15 producers and improving farm and corn regulatory policy for assistance with corn policy
16 development, corn grower education, and other corn-related programs and services that benefit
17 North Dakota corn producers at an amount equal to at least fifty percent of moneys deposited in
18 the corn fund each year.