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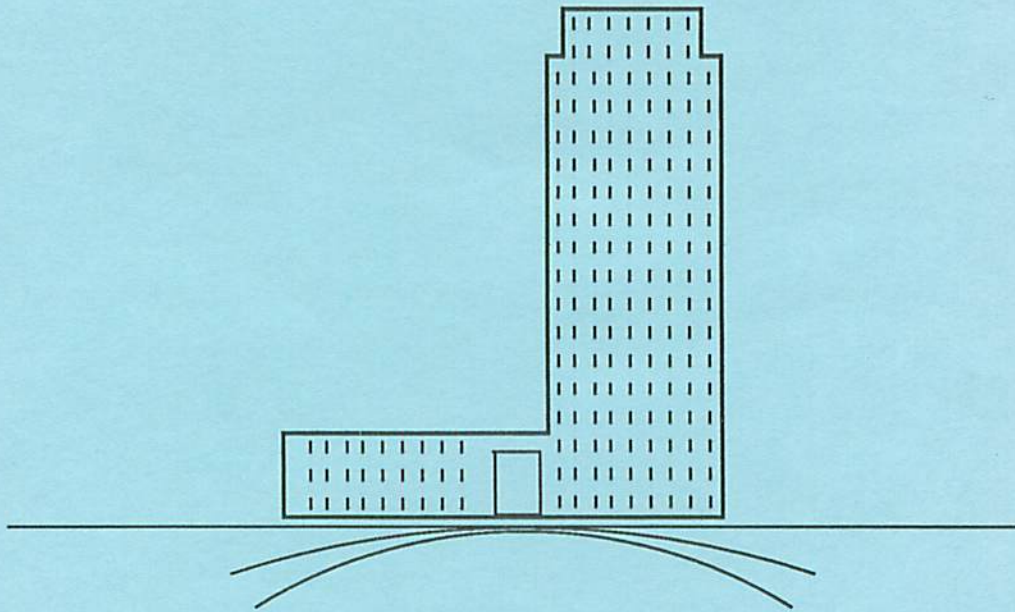
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The 1989 North Dakota Legislature-- Agricultural Update



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Preface

This report is a product of a joint research venture between the University of North Dakota School of Law and the North Dakota State University Department of Agricultural Economics. The Agricultural Law Research Program studies and publishes information on topics of importance to agriculture in North Dakota. Issues researched recently include the farm products rule, state remedies for financially stressed farmers, real estate mortgages, and North Dakota's Confiscatory Price Statute. This joint effort is part of Agricultural Experiment Station Project ND 1384.

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Highlights

The 1989 North Dakota Legislature enacted numerous statutes that impact various aspects of the state's agricultural industry. A partial listing of these topics includes agricultural credit, debtor-creditor issues, marketing of agricultural commodities, concerns about the environment and natural resources, and promoting the use of agricultural products.

The state reduced its role in providing capital to agriculture by eliminating its interest subsidy for loans to agribusinesses. However, the beginning farmer loan program received more funding from the Legislature in 1989 than it had in 1987. State efforts to temper strained relations between delinquent farm borrowers and their creditors will primarily focus upon providing a third party to mediate a dispute, rather than offering substitute credit. The Legislature also authorized state banks as well as the Bank of North Dakota to participate in the federally initiated effort of establishing a secondary market for farmland mortgages.

Savings and loan associations as well as credit unions have been added to the list of financial institutions that may acquire crop liens in North Dakota. Similarly, the 1989 Legislature expanded the definition of crop (for the purposes of a lien) to include proceeds from the sale of the crop and crop insurance. Crop liens will be renewable in the future, but they can encumber only those crops explicitly mentioned in the security agreement. Creditors with a lien securing future advances will have priority over subsequent encumbrances. A financing statement that encumbers farm equipment will need to be filed not only in the county where the debtor resides but also with the secretary of state. Nonowners will no longer be named in the public notice of a pending foreclosure.

The 1989 Legislature established the Board of Animal Health to replace the Livestock Sanitary Board. It also requires livestock dealers and auction markets that receive nonsufficient fund checks to notify the commissioner of agriculture of the nonpayment. The Legislature authorized establishment of livestock satellite video auction market and defined dairy animal to include both cows and goats.

Grain warehouses will have 30 days (rather than 20) to convert scale tickets to cash, a sale contract, or a warehouse receipt. Disputes over moisture and protein content of grain can be arbitrated by a mutually-agreed upon third party, rather than a federal grain inspector. The Legislature also established a board to mediate a non-binding resolution for disputes arising from seed transactions.

Several bills related to water and environmental issues may impact the state's agricultural industry. For example, an abbreviated procedure was approved for acquiring land by eminent domain necessary for the Southwest Pipeline water project. Similarly, the water resource board must be notified before fill material is placed or removed from an area within 200 feet of a

waterbody. State law authorizes and requires the health department to regulate the degradation of plastic used in liquid containers and ring devices that link beverage containers. Raw agricultural commodities will be considered misbranded if a pesticide residue is present but not mentioned on the label. Finally, the Waterbank program was granted some funding, and the "no net loss" wetlands law was not repealed.

Commercial applicator and pesticide dealer certificates will be effective for three years and expire on April 1. Each applicator must be certified, rather than relying on the supervisor's certificate. Chemigation is defined to include nonfarm as well as farm irrigation systems. Standards also were established for labelling and replacing anhydrous ammonia hoses.

The agricultural products utilization commission was modified to emphasize researching new uses for agricultural commodities and the development of businesses that process agricultural commodities. Similarly, the sunflower council was expanded to encompass several oil seeds including safflower, canola, crambe, and flax. The Legislature also is requiring state agencies and institutions to increase their usage of inks and plastic that are derived from agricultural products.

THE 1989 NORTH DAKOTA LEGISLATURE--AGRICULTURAL UPDATE

Jon W. Backes, Katherine Logan, and David M. Saxowsky*

The North Dakota Legislature convened on January 4, 1989 for the 51st legislative session. It adjourned 75 days later, tying the record for the longest meeting of a North Dakota Legislature. During that time, more than 1100 pieces of legislation were introduced and discussed, many of them involving or impacting the state's agricultural industry. This publication summarizes selected statutes passed by the Legislature and signed by the Governor, that pertain to agriculture or affect farmers and ranchers. Some of the bills discussed enact new law whereas others amend or repeal existing statutes.

Enactments reviewed in this report are categorized into eight subject areas. These subject areas, as well as the bills discussed in each area, are listed in the appendix. The identification number includes a prefix specifying whether the bill was introduced in the House of Representatives (HB) or the Senate (SB). Also listed in the appendix are sections of the North Dakota Century Code (N.D.C.C.) affected by the enactment. The effective date for most enactments is July 1, 1989, unless otherwise noted. Discussion of some enactments briefly reviews state law as it existed prior to 1989 to clarify the implications of the latest legislative changes.

This report is an overview of new legislation and is not intended as a substitute for competent legal advice. An attorney or other professional should be consulted if further information is desired about the impact of these enactments.

Agricultural Financial Assistance Programs

The financial stress experienced by much of the agricultural industry during the 1980s continued to be a matter of concern and attention for the 1989 Legislature. Several bills were passed to assist the state's agriculture industry and farmers.

Financial Assistance for Farmers and Agribusinesses--HB 1211

The 1989 Legislature amended the Family Farm Survival Act of 1985 by narrowing its applicability and changing the method by which interest is calculated. Initially, the Family Farm Survival Act of 1985 authorized the Bank of North Dakota to participate with private lending institutions that offered short-term (operating) loans to farmers and agribusinesses. HB 1211 altered four provisions of this assistance program.

First, the 1989 amendments eliminate the Bank of North Dakota's authority to participate in operating loans to agribusinesses. Accordingly, only

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the state's farm operators will directly benefit from the program in the future. Second, the amendments change the interest rate on loans to farmers from a fixed rate of eight percent to a variable rate one percent lower than the Bank's base rate. This change not only reduces the cost of the program to the state during periods of high interest rates, but it also benefits borrowers when the market rate of interest falls. Third, crop or hail insurance will no longer be required for a farmer to qualify for the program. Instead, the primary lender will determine what insurance must be purchased by the farm borrower. Fourth, the law will no longer mandate that the loan be evidenced by one master note.

Financial Assistance for Family Farmers--HB 1181

The 1989 legislature also amended the statute that authorizes the Bank of North Dakota to participate in loans to family farmers for 1) acquiring or improving farm land, 2) purchasing farm equipment or livestock, and 3) consolidating farm business loans. Prior to the 1989 amendments, a farm had to be capable of producing income sufficient to support the farmer and the farmer's family to qualify for a loan under this program. However, HB 1181 eliminates the income requirement and thereby broadens the availability of such loans. The new amendments also delete the mandatory insurance requirement, and instead, provides that the lender shall determine what insurance will be necessary. This is similar to the insurance provision contained in HB 1211, described above.

The 1989 amendments increase the maximum amount the Bank of North Dakota can loan to a borrower to the lesser of \$75,000 or 90 percent of the loan amount. Previously, the program had a maximum loan of \$50,000 meaning the state's participation could be no more than \$45,000 (90% of \$50,000).

The new legislation also changes the maximum interest rate that can be charged for loans under this program. Rather than an eight percent interest rate for the duration of a loan, the law now specifies that after the first five years of the loan, the interest rate changes from a fixed rate of eight percent to a variable rate one percent less than the Bank's base rate. However, the variable rate cannot exceed 11 percent. Finally, the amendments provide that loan proceeds may be used for restructuring operating debt carryover, but can no longer be used for leasing farm land.

This bill was passed as an emergency measure, and took effect upon the governor's signature.

Beginning Farmer Real Estate Loan--SB 2204 and SB 2501

The 1989 Legislature enacted two bills that impact the beginning farmer loan program. The first bill (SB 2204) raises the limit on loans to beginning farmers from 50 percent of the appraised value of the real estate to 65 percent of the appraised value. This amendment also limits the maximum term of the loan to 10 years; previously the commissioner of agriculture could extend the loan for five years. In addition, the industrial commission is now responsible for contracting with a public accounting firm to audit the Beginning Farmer Loan Fund.

The second bill (SB 2501) requires the Bank of North Dakota to transfer \$1.5 million of the Bank's profit from the preceding year to the Beginning Farmer Revolving Loan Fund. This transfer is to be completed each July 1, from 1989 to 1992.

Bank Investment in the Federal Agricultural Mortgage Corporation--SB 2317

The Agricultural Credit Act of 1987, passed by Congress in early 1988, authorized the creation of the Federal Agricultural Mortgage Corporation in an effort to create a secondary mortgage market for notes secured by farm land mortgages. The corporation initially offered \$20 million of common stock to lending institutions in order to accumulate the capital needed to initiate the secondary market.

In response to this federal law, the 1989 North Dakota Legislature enacted SB 2317 allowing financial institutions under the jurisdiction of the state banking board to invest in stock and equity instruments of the Federal Agricultural Mortgage Corporation. This enactment also authorizes the Bank of North Dakota to make agricultural real estate loans in order to participate in the agricultural mortgage secondary market. Finally, the legislation empowers the industrial commission to establish a trust for the purpose of participating as an agricultural mortgage marketing facility.

Agricultural Mediation Services--HB 1444

Prior to the 1989 legislative session, the commissioner of agriculture was required to establish a farm credit counseling program to disseminate information to farmers concerning farm credit problems and to provide advice and counseling for farm operators who were experiencing financial difficulties. The commissioner also was required to hire staff and negotiators to mediate between a farmer and the farmers creditors.

The 1989 Legislature changed the name of the Farm Credit Counseling Program to the North Dakota Agricultural Mediation Service. This bill also allows the credit review board to charge farmers and each of the farmer's creditors a reasonable service fee but not more than \$25 per creditor for each hour spent in mediation sessions. In addition, the enactment raises the board members fee from \$50 to \$65 for each day of official service.

The program was amended to permit creditors, as well as farmers, to request assistance in mediating a debt settlement. The new statutory language also provides that upon the consent of the farmer and the creditors, a negotiator or mediator will assist the farmer and the creditors reach a voluntary settlement. Other new provisions:

- 1) allow the board to defer or waive payment, restructure payment, or enter into other reasonable loan servicing options with a farmer who has received an interest subsidy if the farmer can prove financial hardship or show that after the restructure he has the ability to meet all financial responsibilities regarding the change in payments,

2) exempt information created, collected, and maintained by the North Dakota Agricultural Mediation Service regarding the finances of specific farmers and creditors from the open records requirements (NDCC 44-04-18), and

3) authorize the commissioner of agriculture to receive and expend any federal, private, or other funds that become available for the purpose of defraying the expenses of the agricultural mediation service.

This bill was enacted as an emergency measure and was effective immediately upon the governor's signature.

Debtor/Creditor Issues

Security Agreement In Growing Crops--HB 1287

North Dakota law previously prohibited the taking of a security interest in growing crops. However, the statute was amended over the years to permit certain financial institutions, as well as the United States, the State of North Dakota, the Bank of North Dakota, and banks to acquire such security interests.

HB 1287 continues to expand this exemption to encompass "financial institutions" which are defined as state and national banks, state or federally chartered savings and loan, and state and federally chartered credit unions as long as they are insured by their respective federal insurance authority. Consequently, all federally insured banks, savings and loans, and credit unions are now allowed to take security interests in growing crops.

Defining Crops for Security Agreements--SB 2281

North Dakota law invalidates any security agreement that encumbers both a crop and other personal property of the debtor. The scope of this provision is clarified by SB 2281 which defines a crop as including crop proceeds and products, supplementary price payments and payments made in lieu of crop proceeds, including crop insurance payments. The new statutory language also is explicit that crops do not include diversion payments or third-party payments made to producers which are not directly related to crop production or proceeds. Consequently, lenders may use one security agreement to encumber crops and proceeds derived from the crop, but must have a separate security agreement to encumber expected diversion payments or other personal property of the borrower.

Renewing Financing Statements Covering Crops--SB 2339

North Dakota law, as it existed prior to the enactment of SB 2339, mandated that a financing statement covering crops would lapse at the expiration of five years from the date of filing, unless terminated prior to the expiration of the five year period. The 1989 Legislature repealed this statutory language, thereby permitting financing statements that pertain to crops to be renewed and effective beyond the initial five year period.

Limiting Crop Liens--HB 1607

HB 1607, like SB 2339 (discussed in the preceding paragraph), amended the statute that limits the taking of a security interest in crops. This provision, however, favors borrowers rather than creditors, by providing that a financing statement encumbering a crop cannot be used to seize control of crop other than the one listed in the security agreement. The bill also provides that a court may award reasonable court costs and attorney's fees to a producer if the court finds that a lender has willfully violated this provision.

Priority of Liens Securing Future Advances--SB 2319

This enactment provides that a lien with a written provision securing repayment of future advances will give the lienholder priority over subsequent encumbrances. The priority applies to the original loan amount, all future advances, and interest. This provision is effective whether or not the lender is obligated to make the future advance.

Real estate mortgagees already had similar protection except that a subsequent encumbrance has priority over a future advance if the second mortgagee provides written notice of the mortgage to the first mortgagee before additional funds are loaned (N.D.C.C. 6-03-5.1). By comparison, SB 2319 does not include a provision whereby the priority of a future advance can be negated. Accordingly, the new law offers more protection to lienholders than existing law does for mortgagees. A possible implication is that a secured creditor may have considerable leverage over a borrower, and that other lenders may be reluctant to extend credit if their security interest is inevitably subordinated. On the other hand, the first creditor to be secured may be more willing to extend additional credit after this law takes effect.

SB 2319 is more encompassing than the current law because it applies to all liens. In case of conflict between the existing law for real estate mortgages and the 1989 enactment, the previous law should apply since it is less general than the new statute (N.D.C.C. 1-02-07). As a result, the 1989 enactment will primarily impact liens other than real estate mortgages.

Financing Statements Encumbering Farm Equipment--HB 1466

North Dakota law, prior to enactment of HB 1466, specified that a creditor had to file a financing statement in the county of the borrower's residence to perfect a security interest in farm equipment. This rule also applied to farm products, growing crops, and proceeds resulting from the sale of farm products.

HB 1466 changes the place for filing a security interest in farm equipment. In the future, a creditor will need to file both with the register of deeds in the county where the debtor resides and the secretary of state. In addition, the enactment provides that a security interest in farm equipment filed in a wrong county is nevertheless effective if the creditor perceived that county to be the debtor's residence and the creditor had filed with the secretary of state.

Filing Fees--HB 1165 and HB 1147

A creditor is required to pay a fee when a security interest or lien is filed or terminated. HB 1147 increases the fee for filing federal liens from \$3 to \$5. Both pieces of legislation assess an additional fee of \$5 per filing plus \$1 per page if the document being filed is not a standard statement. These changes establish a consistent fee schedule for federal liens, Uniform Commercial Code financing statements, and nonstandard statements. Borrowers are likely to feel the impact of these changes since financial institutions often explicitly charge their customers the filing fees.

Nonowners Names in Public Notice of Foreclosure--HB 1051

North Dakota law, prior to enactment of HB 1051, required that a notice of foreclosure be published in the county newspaper prior to sale of the property and that the notice list the names of all defendants in the action. However in foreclosure actions, nonforeclosing creditors secured by the property being foreclosed and individuals who are secondarily responsible (for example, co-signed the note) are considered defendants along with the debtor. The list of defendants in the public notice, consequently, could be misperceived as indicating that persons are delinquent borrowers when they are unpaid creditors or secondarily responsible for paying the obligation. To minimize the potential for misinterpretation, HB 1051, while not changing the public notice requirement, allows names of nonowner defendants to be omitted from the public notice. The enactment also requires that a copy of the notice be sent at least 10 days prior to sale date to all nonowner defendants omitted from the public notice. The statute specifies that service by mail is complete upon mailing.

Livestock

Board of Animal Health replaces Livestock Sanitary Board--SB 2257 and HB 1121

The Livestock Sanitary Board was renamed the Board of Animal Health by SB 2257. The executive officer for the new Board will be the state veterinarian, as was the case for the predecessor board.

This executive officer is authorized by HB 1121 to execute all duties and responsibilities of the state veterinarian, as well as those duties and responsibilities authorized by the Board of Animal Health that are necessary to fulfill the Board's purposes. The bill also authorizes the Board of Animal Health to enforce tuberculin or brucellosis testing of all cattle in an area established by the board for eradication of the disease.

HB 1121 also changes the authorities to receive reports of domestic animals suspected of being affected by a contagious disease. Prior to this enactment the authorities to report to were 1) any member or representative of the livestock sanitary board, or 2) township clerk or supervisor in which the infected animal was located. In the future, the proper authorities to report to will be 1) any member of the board of animal health, 2) the state veterinarian, 3) any agent or representative of the board of animal health, or 4) any county or

city law enforcement officer in the jurisdiction where the animal is present. Notice of an order to kill an diseased animal must be sent to the owner or keeper of the animal by registered or certified mail, or delivered by a law enforcement officer or a representative of the board.

North Dakota law will now prohibit the feeding of garbage to swine. Garbage, for the purpose of this prohibition, is defined as "animal and vegetable waste matter resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts of animal carcasses, except that dairy products from a licensed creamery or dairy is [sic] not considered garbage. . ."

Nonsufficient Funds Checks Received by Livestock Dealers and Auction Markets--HB 1180

HB 1180 requires a livestock dealer or livestock auction market to notify the commissioner of agriculture within 48 hours after receiving a check for the purchase of livestock which is returned unpaid with a notation that payment was refused due to insufficient funds. Failure to notify the commissioner is grounds for revocation of the dealer or auction market's license.

Satellite Video Livestock Auction Markets--SB 2085

The 1989 Legislature provided for the establishment of satellite video livestock auction markets in SB 2085. Satellite video livestock auction markets will be permitted to operate in the state if they operate through a licensed representative, such as a licensed livestock dealer who resides in the state or a livestock market that is licensed to operate in North Dakota. The bill sets forth requirements for licensure of a satellite video auction market and provides for initial and renewal license fees of \$100.

Livestock sold through a satellite video auction market will have to be inspected at the time and place of initial delivery by a trained brand inspector and a veterinarian licensed in North Dakota. The bill also provides that livestock sold by weight through a satellite video livestock auction market will be based on the weight of the livestock on the day of delivery. Payment for animals sold by means of a satellite video auction must be in United States currency, with an instrument payable upon demand, and drawn on a financial institution regulated by state or federal government. An alternative payment procedure is to electronically transfer funds from a financial institution regulated by state or federal government.

Fees for Livestock Dealers Licenses, Auction Market Licenses, and Brand Recording--SB 2239

SB 2239 increases the annual fee for a livestock dealers license from \$25 to \$50. The bill also increases the annual license fee for a livestock auction market from \$100 to \$200 and the fee for recording and rerecording of brands from \$10 to \$15.

Recording Standards for Livestock Brands--HB 1182

HB 1182 details standards that must be met if a livestock brand is to be registered by the Commissioner of Agriculture. The standards specify permissible letters, numbers, and symbols and how they may be used. The bill also provides that the commissioner not record a brand if the standards are not met. However, brands that were recorded prior to the enactment will be allowed to be rerecorded.

Audit of Records of Stockmen's Association--HB 1114

Responsibility for auditing the North Dakota stockmen's association is transferred from the state auditor to the board of directors of the association by HB 1114. This legislation also requires that the board of directors provide for an audit at least once every two years by a certified public accountant or licensed public accountant, and that copies of the audit report be submitted to the state auditor's office.

Defining Dairy Animal and Labeling Milk Products--SB 2325

SB 2325 defines dairy animal as "any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products." This definition includes cows and goats. The bill also provides that a container holding milk or milk products derived from a dairy animal other than a cow must designate the kind of animal that produced the milk.

This bill was passed as an emergency measure.

Membership on the North Dakota Dairy Promotion Commission--HB 1420

Prior to enactment of HB 1420, the North Dakota Dairy Commission had nine voting members consisting of:

- * two producers appointed by the governor
- * two processors appointed by the governor
- * North Dakota Dairy Commissioner
- * head of the Animal Science Department at North Dakota state university
- * president of the American Dairy Association of North Dakota
- * president of the National Dairy Council of North Dakota
- * a state executive committee member of the American Dairy Association of North Dakota.

In the future, the commission will consist of seven voting and two nonvoting members. The voting members will be:

- * two producers appointed by the governor
- * one processor appointed by the governor
- * two members of the Milk Producers Association of North Dakota, to be elected by that organization
- * president of the American Dairy Association of North Dakota
- * president of the Dairy Council of North Dakota

In addition, the agriculture commissioner and the head of the animal science department at North Dakota state university will serve as nonvoting members.

Thus, the agriculture commissioner replaces the dairy commissioner, while two members of the Milk Producers Association replace one processor and the state executive committee member of the American Dairy Association. The bill also authorizes the commissioner of agriculture and the head of the animal science department to each designate a representative to fill their positions on the commission.

Release of Dairy Processor's Records--SB 2528

SB 2528 relates to the gathering and sharing of information used to determine the financial integrity of dairy processors. The bill authorizes the dairy commissioner to inspect the books and records of dairy processors, but provides that such information is confidential and may only be used by the agriculture department unless the department is required to divulge the information due to an appearance in an administrative hearing, proceeding before the milk stabilization board, or any court proceeding in which the department is a party. The bill also allows the milk stabilization board to divulge information gained on regular audits to the agriculture and dairy commissioners for the purpose of determining whether a licensee's financial condition reasonably assures prompt payment to the milk producers.

In the future, the department will be allowed to provide personal notice to producers affected by a processor's default in payment. This notice may be by registered mail or personal notice; in the past, the notice was published. Similar to present law, a producer who does not file a claim within 45 days after notice will not be allowed to share in any assets of the processor that are assembled by the department.

This act was passed as an emergency measure and took effect upon the governor's signature.

Grain, Hay, and Seed

Grain Warehouse--SB 2159

North Dakota law requires public grain warehouses (grain elevators) that operate in the state to be licensed and bonded. Responsibility for issuing licenses and generally overseeing public warehouses has been delegated to the public service commission.

SB 2159 provides that public warehouse licenses will now expire July 31 of each year and require annual renewal. In addition, the legislation states that a surety furnishing a bond for a public warehouse will be released from future liability on that bond 90 days after notifying the public service commission that the bond has been cancelled (unless the surety specifies a later date). The bill also requires that a warehouse file a new bond at least 30 days before the present surety bond expires, otherwise the public service commission will

suspend the warehouse's license. In addition, warehouses must now maintain continuous insurance coverage for grain stored in its facility.

Another provision of SB 2159 extends the maximum time from 20 days to 30 days after grain is delivered for a warehouse to convert scale tickets to cash, a credit-sale contract, a noncredit-sale contract, or a warehouse receipt. The bill also provides that a public warehouse is liable to redeliver to the owner the same kind, grade, quantity and quality of grain specified in the warehouse receipt. Prior to enactment of SB 2159, a warehouse was required to return grain of the same kind, grade, and quantity, but not necessarily the same quality. In addition, the bill provides that unless otherwise agreed to by the parties, the value of any difference in kind, grade, quality, and quantity must be settled at the price of the local market on the day the warehouseman receives written request for delivery.

Resolving Grain Disputes--SB 2031

This legislation amends the procedure whereby a public warehouse and persons delivering grain to the warehouse can resolve disputes involving grade, dockage, and moisture or protein content. Prior to this legislation, disagreements over moisture and protein content were not within the scope of the law.

The amendment provides that a mutually-agreed upon third party may resolve the dispute rather than a federal licensed inspector. Results of the inspection will be binding on the parties and used as the basis for calculating the amount to be paid for the grain. A provision for appealing a determination also has been added to the statute. Cost of the inspection will be paid by the person requesting the determination. The legislation mandates that public warehouses post a notice outlining the procedure for resolving a grain dispute.

Roving Grain or Hay Buyers--HB 1502

The bond for a roving grain or hay buyer is increased from \$50,000 to \$100,000 except if cash is paid for 90 percent of the purchase at time of delivery and the remaining 10 percent is paid within 24 hours. The law also requires that a credit-sale contract used by a roving grain or hay buyer explain that the contract is not protected by the buyer's regular bond and that the buyer is required by law to obtain an additional bond. The amount of the additional bond is increased to \$100,000. A credit-sale contract is a written agreement whereby the sale price for the grain or hay will or may be paid more than 30 days after delivery.

In addition, the bill establishes a procedure for the public service commission to act as trustee if a roving grain or hay buyer becomes insolvent. This procedure includes establishing a trust fund, notifying claimants, collecting and depositing trust assets, seeking court approval of a plan for distributing the assets, and objecting to a distribution plan. The amendments change the penalty for violating these requirements from an infraction to a Class B misdemeanor.

State Seed Mediation Board--HB 1598

This bill establishes a five-member seed mediation board for resolving disputes involving seed transactions. Board membership will consist of the commissioner of agriculture, director of the agriculture extension service, director of the North Dakota agricultural experiment station, chairman of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the commissioner of agriculture. An authorized designee may substitute for each of the members.

The mediation process is initiated when a seed labeler and customer petition the commissioner of agriculture for a hearing. Within 30 days after the hearing, the board will present a nonbinding recommendation to the parties. The cost of the mediation, including compensation for the board members, will be paid by the disputing parties.

Noxious Weeds and Weed Seeds Limits in Seed--SB 2111

The 1989 Legislature continued to classify noxious weeds as either restricted or prohibited; however, it added five weeds to the latter category. These include absinth wormwood, hemp, musk thistle, spotted knapweed, and hoary cress. In addition, the state seed commissioner is empowered to add or delete weeds from these lists. Furthermore, it is now unlawful to sell any seed in the state if there are more than 90 restricted noxious weed seeds per pound of crop seed, or if the weight of all weed seeds exceed one percent.

This bill defines "foundation seed," "registered seed," and "certified seed" as seed that has been produced and labeled in accordance with the procedures and rules of an officially recognized seed-certifying agency. It also authorizes the seed commissioner to conduct free germination tests on sunflower and alfalfa seed for North Dakota residents.

Environmental and Water-related Issues

Degradable Plastic Products, Soybean-based Inks, and Starch-based Plastics--HB 1262

This bill requires the state department of health to adopt rules regarding the required rates of degradation and allowable byproducts from degradation of plastic products. Furthermore, all plastic bottles (capacity from 16 ounces to five gallons) and rigid plastic containers (capacity from eight ounces to five gallons) sold after December 31, 1991, must have a label indicating the kind of plastic resin used to produce the container. The legislation also outlaws the sale of containers bound together by plastic rings unless the plastic is degradable and bears a symbol indicating the rate of degradation.

This bill includes a provision addressing the utilization of products derived from agricultural commodities. That provision is explained in a subsequent section.

Adulterated and Misbranded Food and Drugs--SB 2169

This legislation adds several definitions to adulterated food, misbranded food, and misbranded drugs and devices. One provision declares raw agricultural commodities as misbranded if it bears a pesticide and the shipping container does not include a label noting the presence of the chemical. Such a label is not required, however, after the commodity has been removed from its container so that it can be displayed for retail sale.

Condemnation by the State Water Commission or Water Resource Board--HB 1188

Whenever a right-of-way is to be taken by condemnation as part of the Southwest Pipeline Project, the state water commission may take possession of the right-of-way after making a written offer to purchase the property and depositing that amount with the clerk of the district court in the county where the property is located. Similarly, a water resource board may also acquire immediate possession of property that will be acquired through the exercise of eminent domain. In either case, the owner must be provided notice of making the deposit and taking possession, in addition to having the right to appeal the action within 30 days of the notice.

Removal or Replacement of Fill Adjacent to a Watercourse--HB 1260

Any person removing or placing fill within two hundred feet of the bank of a waterbody (as determined during normal flow) is required to provide written notice to the water resource district. This notice will have to describe the amount and type of fill and location of the activity. This requirement, however, does not apply to surface coal mining and reclamation operations for which a permit has been secured from the public service commission.

Permit to Operate a Disposal System--SB 2167

State law no longer requires that plans, specifications, and other data be submitted to the state water commission when applying for a permit to operate a waste disposal system. Instead, the information will only need to be presented to the state health department. This change in the law is likely to affect a few North Dakota farmers because a permit to operate a waste disposal system is necessary not only for municipalities and industrial plants, but may also be mandatory for some livestock feedlots.

Water Permits for Domestic Use--HB 1129

Persons applying for a water permit must provide notice by certified mail to all landowners within a one-mile radius of the proposed water-usage site. However, this bill clarifies that notice to the governing authority of the township or rural subdivision fulfills this requirement if the one-mile radius encompasses a rural subdivision with lots less than 10 acres, or if a tract of land has more than 10 owners. Failure to prove with an affidavit that notice has been given will cause the state engineer to delay the date of the application until an affidavit is properly filed. This delay may result in the applicant's water right, if granted, to be subordinate to an intervening application. The bill also grants the state engineer authority to order immediate cessation of water use if such

use is unauthorized or if continued use will damage the rights of prior appropriators.

Waterbank Program--HB 1130

The waterbank program, enacted in 1981, authorizes the commissioner of agriculture to enter into agreements with landowners for the conservation of wetlands. However, the program has had very limited funding in the past. HB 1130 now establishes a waterbank fund for all monies received by the commissioner of agriculture for the implementation of this program. This legislation also requires that the waterbank fund and the interest earned from it are used solely for the purpose of implementing the waterbank program.

"No net loss" Wetland Statute

The "No net loss" wetland law is significant, not because of what the 1989 Legislature passed, but because the 1989 Legislature did not amend or repeal it. Enacted by the 1987 Legislature with an effective date of July 1, 1989, this law requires that when a person applies for a permit to drain a wetland, arrangements must be made to replace it. This is a controversial statute enacted to a large extent in response to the "swampbuster" provisions of the 1985 farm bill [Food Security Act of 1985, Pub. L. 99-198 (Dec. 23, 1985)].

The "No net loss" wetland statute was passed by the 1987 Legislature as a compromise wherein persons supporting a ban on wetland drainage would work for modification of the swampbuster provisions if their opponents (persons who prefer laws to permit drainage) would back a state statute that somewhat restricts drainage. The presumption was that the 1989 Legislature would have an opportunity to repeal the state law limiting drainage before it took effect if the federal provision was not amended.

The federal law was not modified between the 1987 and 1989; however, attempts to repeal the state law during the 1989 legislative session were not successful. The following paragraphs summarize the 1987 drainage legislation that is effective for North Dakota on July 1, 1989.

For more than a decade, North Dakota statutory law has required any person who proposes to drain a wetland that is part of a watershed of more than 80 acres, obtain a permit from the state engineer. The 1987 Legislature augmented this procedure by requiring the state engineer and game and fish commissioner to find equal acreage of replacement wetlands before issuing a drainage permit.

The replacement wetland may be either a restored natural wetland or man-made wetland but may not be acquired through the exercise of the right of eminent domain. Approximately 50 percent of the replacement wetlands must be located in the county where the drainage will take place or in contiguous counties. The other 50 percent may be located anywhere in the state as long as the replacement wetland is in the same biotic area.

Any offer to acquire replacement wetlands must adequately compensate the landowner, and the amount of compensation should be periodically re-evaluated. The statute also requires that persons applying for a permit to drain a wetland have to pay 10 percent of the cost of providing the replacement, but may choose to pay more. The other 90 percent can be paid by either federal, state, or private interests. Furthermore, a purchaser of land for wetlands replacement (whether a private organization or a governmental agency) is responsible for paying the amount of money that would otherwise be received in taxes if the land had not been removed from the tax base.

The statute requires the game and fish commissioner and state engineer establish a "wetland bank" that can be debited if a permit to drain a wetland is granted without arranging for a replacement area. Conversely, any land added to wetlands will be a credit to the bank. Whenever net debits reach 2,500 acres, permits to drain will not be granted. In that case, the alternative for the applicant would be to pay the entire cost of acquiring replacement wetland if there is no entity willing or able to assist in providing a replacement.

Wetlands drained during surface coal mining may not be charged as a debit against acreage credit balances. The law also mandates that a uniform wetlands classification system be established by the state engineer and the game and fish commissioner.

Agricultural Chemicals and Pesticides

Certification of Pesticide Applicators--HB 1475

Commercial applicators and pesticide dealers are required to be certified (rather than licensed) before they apply or sell agricultural chemicals. These certificates will be effective for three years and expire April 1. Previously, the licenses needed to be renewed annually. A commercial applicator's certificate will be renewed if the applicator completes an approved seminar or successfully completes an examination required by the pesticide control board.

This bill is effective January 1, 1990.

Pesticide Application and Chemigation--SB 2508

This enactment eliminates language authorizing a person to apply pesticides if directly supervised by a certified commercial applicator. Instead, each applicator must now be certified, rather than relying on the supervisor's certification. In addition, chemigation is redefined to include the application of any chemical, fertilizer, or pesticide by means of *any* irrigation system. Previously, chemigation was defined to include only farm irrigation systems.

Pesticide Registration--SB 2170

State law prohibits the sale and distribution of any pesticide in North Dakota unless it has been registered with the department of health. This bill adopts and defines the term "pesticide" to replace "economic poison." A pesticide is any substance intended to prevent, destroy, repel, or mitigate any pests, or

any substance intended for use as a plant regulator, defoliant, or desiccant. The statute also defines plant regulator as not including nutrient mixtures or soil amendments intended to improve or maintain plants, rather than destroy pests. In addition, unreasonable adverse effects on the environment is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide."

One aspect of registering a pesticide is that it is properly labelled. Accordingly, a pesticide is misbranded if:

- 1) the label does not include an ingredient statement, except if the size or form of the container makes it impractical to display the statement, or if the ingredient statement appears on another part of the immediate container or outside wrapper;
- 2) the label does not state the use classification of the pesticide;
- 3) the label does not clearly present the name and address of the producer, the name, brand or trademark of the pesticide, the weight or measure of the content, or any registration number assigned to the pesticide by the state;
- 4) the pesticide contains a substance highly toxic to man but the label does not include a skull and crossbones, the word poison, and a statement of first aid in case of poisoning.

The statute also requires that an application for pesticide registration include information about the substance's efficacy, toxicity, residue, and other data necessary to determine if it will perform its intended function without unreasonable adverse environmental affects. The application must include the current label of a pesticide, and a copy of a material safety data sheet.

Anhydrous Ammonia Transfer Hose Requirements--HB 1476

This bill imposes several requirements for hoses used to transfer anhydrous ammonia. First, the hose must be labelled with 1) the words "ANHYDROUS AMMONIA," 2) its maximum working pressure, 3) name of the manufacturer, and 4) date of manufacture or expiration. Second, the law provides that the hose must be replaced if 1) it has deteriorated so the inner white cord is visible, 2) the expiration date has passed by more than one year, or 3) the hose was manufactured more than 3, 5 or 7 years earlier, depending on whether it is rayon, nylon, or steel reinforced, respectively.

Agricultural Products, Marketing, and Promotion

The 1989 Legislation considered numerous proposals to promote the state's agricultural products. This section summarizes some of the ideas that were adopted as law.

Fee for Honey Promotion--SB 2074

SB 2074 authorizes the North Dakota Beekeepers Association to "charge fees for items sold to promote honey." Presumably, the intent of the law is to assess a fee on the sale of honey products expecting to use the proceeds to promote honey.

Agricultural Products Utilization Commission--HB 1200

North Dakota law previously provided for an Agricultural Products Utilization Commission whose purpose was to assist in the construction, operation, and maintenance of agricultural processing plants in North Dakota for the manufacture and marketing of agriculturally derived fuel, chemicals, and other agricultural products. HB 1200 changes the purpose of the commission to providing necessary assistance for the research and marketing needs of the state by developing new uses for agricultural products, byproducts, and seeking more efficient systems for the processing and marketing of agricultural products. The agricultural products utilization commission continues to be funded by the agriculturally derived fuel tax fund although the name of the fund has been changed to the agricultural fuel tax fund. The agricultural motor fuel tax refund is reduced from 3.5 cents to 2 cents per gallon with the money to be deposited in an agricultural fuel tax fund.

Seventy-five (75) percent of the funds available to the commission, after subtracting necessary administrative expenses, must be made available for basic and applied research investigating uses and processing of agricultural products and byproducts. The remaining 25 percent of the funds are to be available for utilization and marketing efforts. The commission must approve all research efforts and marketing proposals.

HB 1200 also changes the composition of the commission by expanding it from seven to nine members. Six members are appointed by the governor. Four of the members appointed by the governor must be actively engaged in farming whereas the other two must be actively engaged in business in the state. The other three members of the commission are the president of North Dakota state university, the commissioner of agriculture, and the director of the economic development commission. These three members formerly comprised an advisory committee to a commission that HB 1200 eliminates.

Oilseed Council--HB 1485

HB 1485 establishes the North Dakota Oilseed Council to replace the North Dakota Sunflower Council. The new entity will be more encompassing by including not only sunflowers, but also safflower, rapeseed (canola), crambe, and flax. Council membership is expanded by adding:

- * one participating safflower grower, appointed by the governor,
- * one participating rapeseed or canola grower, appointed by the governor,
- * one participating flax grower, appointed by the governor, and
- * one member appointed by the director of the agricultural experiment station.

The bill increases the assessment on sunflowers from one cent to two cents per hundred weight and initiates a checkoff of two cents per hundredweight for safflower, crambe, and rapeseed, as well as assessing a checkoff of two cents per bushel on flax.

Degradable Plastic Products, Soybean-based Inks, and Starch-based Plastics--HB 1262

This bill encourages state agencies and institutions to specify that printers use soybean-based inks whenever possible when purchasing newspaper printing services. The bill also provides that by July 1, 1991, 15 percent of the garbage can liners purchased by state agencies must be starch-based, and that this percentage increase by five percent each year until 50 percent of the purchased can liners are starch-based.

This bill also addresses the degradation of plastic containers and plastic rings which bind containers together. These provisions are reviewed in a preceding section.

Miscellaneous

Licensing Beekeepers and Maintaining Bees--SB 2154

A beekeeper, as defined in SB 2154, is any person who owns or leases at least one colony of bees and maintains the bees in this state. Formerly, persons were beekeepers if they managed a colony of bees even though they did not own or lease it. Commercial beekeeper also has been redefined to include anyone who maintains more than 100 colonies. In the past, beekeepers were not considered commercial unless they operated more than 250 colonies.

Persons applying for a beekeeper's license have to specify the owner of the bees, if the applicant is not the owner, and all persons responsible for maintaining the bees. Each of these persons will also need to sign the application. A copy of the lease must accompany the application if the bees are leased by the applicant. In addition, all applicants for a beekeeper's license are required to specify an identification that will distinguish their colonies.

The bill shifts responsibility from the property owner to the beekeeper to properly maintain bees on pollination locations; that is, additional apiaries established for the purpose of pollinating a crop. The legislation also authorizes the department of agriculture to cancel any apiary locations that are unoccupied and not listed as vacant on the apiary registration. The registration is cancelled by giving written notice to the operator. A commercial operator has 15 days to request a hearing after receiving notice that a location has been cancelled.

Interference with Rights of Hunters--HB 1387

North Dakota law generally prohibits individuals from intentionally interfering with the lawful hunting of wildlife on public or private land. However, HB 1387 provides that the statute does not prohibit activities of landowners or operators which incidentally interfere with hunters.

Operating Irrigation Equipment Near Roadways--HB 1281

This bill provides that any person who willfully allows water from irrigation equipment to fall or flow on any highway, street or road or any person who places, erects, or operates irrigation equipment upon or across any highway, street or road is guilty of an infraction. The bill does not apply to the transportation of irrigation equipment on a highway, street or road.

This Act is an emergency measure.

Appendix

This appendix lists the 1989 North Dakota Legislative bills discussed in this report. Chapters or sections of the North Dakota Century Code changed by these enactments are indicated.

	<u>Bill Number</u>	<u>NDCC</u>
Agricultural Financial Assistance Programs		
Financial Assistance for Farmers and Agribusinesses	HB 1211	6-09.9
Financial Assistance for Family Farmers	HB 1181	6-09.11
Beginning Farmer Real Estate Loan	SB 2204 SB 2501	6-09-15.5, 6-09
Bank Investment in Federal Agricultural Mortgage Corporation	SB 2317	6-03, 6-09-15, 54-17
Agricultural Mediation Service	HB 1444	6-08.1
Debtor/Creditor Issues		
Security Agreement In Growing Crops	HB 1287	35-05-01
Defining Crops for Security Agreements	SB 2281	35-05-04
Renewing Financing Statements Covering Crops	SB 2339	35-05-01.1
Limiting Crop Liens	HB 1607	35-05-01.1
Priority of Liens Securing Future Advances	SB 2319	35-01
Financing Statements Encumbering Farm Equipment	HB 1466	41-09-40
Filing Fees	HB 1165 HB 1147	41-09-42 41-09-43 35-29-05
Nonowners Names in Public Notice of Foreclosure	HB 1051	28-23-04

Livestock

Board of Animal Health replaces Livestock Sanitary Board	SB 2257 HB 1121	4-13.2, Title 36, 49-18-31 54-07-01.2 Title 36
Nonsufficient Funds Checks Received by Livestock Dealers and Auction Markets	HB 1180	36-04, 36-05
Satellite Video Livestock Auction Markets	SB 2085	Title 36
Fees for Livestock Dealers Licenses Auction Market Licenses, and Brand Recording	SB 2239	36-04-07, 36-05-03, 36-09-13
Recording Standards for Livestock Brands	HB 1182	36-09
Audit of Records of Stockmen's Association	HB 1114	36-22-09
Defining Dairy Animal and Labeling Milk Products	SB 2325	4-30-01, 4-30-45
Membership on the North Dakota Dairy Promotion Commission	HB 1420	4-27-04
Release of Dairy Processor's Records	SB 2528	4-30, 4-18.1-14
Grain, Hay, and Seed Grain Warehouse	SB 2159	60-02, 60-04-09
Resolving Grain Disputes	SB 2031	60-02
Roving Grain or Hay Buyers	HB 1502	60-03
State Seed Mediation Board	HB 1598	4-09
Noxious Weeds and Weed Seeds Limits in Seed	SB 2111	4-09, 4-25

Environmental and Water-related Issues Degradable Plastic Products, Soybean-based Inks, and Starch- based Plastics	HB 1262	
Adulterated and Misbranded Food and Drugs	SB 2169	19-02.1
Condemnation by the State Water Commission or Water Resource Board	HB 1188	61-02, 61-16.1-09
Removal or Replacement of Fill Adjacent to a Watercourse	HB 1260	61-16.1
Permit to Operate a Disposal System	SB 2167	61-28-04, 61-28-06
Water Permits for Domestic Use	HB 1129	61-04
Waterbank Program	HB 1130	61-31-10
"No net loss" Wetland Statute		61-32
Agricultural Chemicals and Pesticides Certification of Pesticide Applicators	HB 1475	4-35
Pesticide Application and Chemigation	SB 2508	4-35, 4-35.1
Pesticide Registration	SB 2170	19-18
Anhydrous Ammonia Transfer Hose Requirements	HB 1476	19-20.2-06
Agricultural Products, Marketing, and Promotion		
Fee for Honey Promotion	SB 2074	4-12.1-03
Agricultural Products Utilization Commission	HB 1200	57-43.1, 4-14.1
Oilseed Council	HB 1485	4-10.2, 4-14.2, 4-24

Degradable Plastic Products, Soybean-based Inks, and Starch- based Plastics	HB 1262	54-44.4
Miscellaneous		
Licensing Beekeepers and Maintaining Bees	SB 2154	4-12.2
Interference with Rights of Hunters	HB 1387	20.1-01-31
Operating Irrigation Equipment Near Roadways	HB 1281	61-14