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LEGISLATIVE UPDATE, 1983

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Table of Contents

| | Page |
|---|------|
| I. BILLS | 1 |
| A. Agriculture Research Appropriations | 1 |
| B. Promotional Assessments on Agricultural Products | 1 |
| C. Dairy Industry | 2 |
| D. Bees | 2 |
| E. Livestock | 3 |
| F. Beginning Farmers | 3 |
| G. Elevators, Etc. | 3 |
| H. Taxation | 4 |
| I. Uniform Commercial Code | 5 |
| J. Corporate Farming | 6 |
| K. Natural Resources | 6 |
| L. Miscellaneous Bills | 8 |
| 1. Weed Control | 8 |
| 2. Weather Modification | 9 |
| 3. Weight Restrictions | 9 |
| 4. Drainage | 9 |
| 5. Fuel Tax Fund | 9 |
| 6. Hail Insurance | 9 |
| II. RESOLUTIONS | 10 |

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Publications of the joint research program are available on family estate planning, land use controls, drainage, water rights, condemnation, easements, and father/son partnerships. Please see your county Cooperative Extension Service Agent or write the Department for a free copy.

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Legislative Update, 1983

by

Julie Krenz, Jerome E. Johnson, and Owen L. Anderson*

This legislative update summarizes selected bills and resolutions concerning agriculture passed by the 1983 session of the North Dakota Legislature. The effective date of new laws is July 1, 1983, unless otherwise stated. This report discusses newly passed laws, and amendments to existing laws, of special interest to North Dakota farmers and ranchers.

I. BILLS

A. Agriculture Research Appropriations

The legislature appropriated \$60 million of general and other funds for the Agricultural Experiment Station, Cooperative Extension Service and Northern Crops Institute. Thirty-two million dollars was approved for the experiment stations for the 1983-85 biennium, up from \$28.4 million for the previous two-year period. This accounts for about 3.5 percent of the state budget. Better crop and soil management research needs were stressed and an agronomy program will be initiated at Hettinger. The existing agronomy program at Langdon will be expanded. The new Central Grasslands Research Station at Streeter will enhance its livestock and range management program. The needs for research on seed potato diseases will be partially satisfied by redirecting existing resources.

The Northern Crops Institute at North Dakota State University was appropriated \$625,000. The Institute provides an international dimension to the marketing and promotion of northern crops, involving education, demonstration, and domestic sales development.

B. Promotional Assessments on Agricultural Products

The legislature authorized producers to spend more on "check-offs" to further the promotion and marketing of their own commodities. Check-offs effective July 1, 1983 include 5 mills per bushel for the State Wheat Commission, up from 3 mills; a 5-mill check-off for the new State Barley Council; and \$.50 per head for the State Beef Commission, up from \$.25. The assessment on turkeys delivered for processing was raised from one-half cent to \$.01 for turkeys weighing less than 10 pounds and from \$.01 to a maximum of \$.02 for turkeys weighing more than 10 pounds. The only check-off increase not accepted by the legislature was for sunflower.

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Commodity groups use the money collected from the automatic deduction to advertise and promote their products. For example, when a farmer sells wheat, the elevator automatically withholds from the price paid an amount equivalent to 5 mills and remits that amount to the Wheat Commission.

Except for the assessment on dairy products, the farmer or rancher can, upon request, obtain a refund of the money paid to the commodity group by contacting such group.

C. Dairy Industry

Four bills addressed the dairy industry. First, assessments imposed on dairy products produced in North Dakota will be mandatory, and refunds can no longer be claimed after July 1, 1983. However, the mandatory assessment provisions require producer approval or disapproval upon a referendum (election) to be held prior to January 1, 1984.

A second bill provides for civil penalties not to exceed \$500, or the seizure of dairy products, or both, for violations of state dairy laws or regulations. This bill removes the requirement that dairy business must post a summary of state dairy laws along with their license of all dairy businesses.

The third bill deletes the requirement that the dairy commissioner consult with other state entities prior to adoption of department rules. It allows the dairy commissioner to appoint two additional staff positions within the dairy department to act as the state milk sanitation rating and sampling surveillance officer and the milk laboratory evaluation officer.

A fourth bill raises the minimum requirement for total solids in Grade A milk to be at least 8.50 percent and the butterfat content to be at least 3.25 percent.

D. Bees

A new law replaces the state's beekeeping laws. It requires a \$5 license fee to accompany each beekeeper's license application. A beekeeper will have to pay an additional assessment fee for disease prevention for each classification of beekeeper--hobby, sideliners or commercial.

Beekeepers will benefit from a modification of a two-mile radius limitation on beekeeping colonies. Commercial beekeepers were required to keep their colonies two miles apart prior to July 1, 1983. The new law permits colonies to be closer together when owned by the same commercial operator. However, commercial apiaries (24 or more colonies) still have to be at least two miles from commercial apiaries operated by another beekeeper.

The two-mile radius restriction does not apply to a property owner's apiary if the property owner owns and personally manages the bees and the equipment. It does not apply to a noncommercial apiary established by either a hobby or sideline operator. A commercial operator is not allowed to maintain a noncommercial apiary.

The new law also transfers the responsibility for inspecting honey houses to the State Laboratories Department from the Agriculture Department and requires the registration and identification of all apiaries. Beekeepers who establish apiaries on another's land must have written permission from the landowner. Penalties for violation of beekeeping laws or department rules may be either civil or criminal in nature, or both.

E. Livestock

The fee for ranchers registering cattle brands with the Agriculture Department has been increased from \$5 to \$10 for a five-year brand registration. The fee is charged for each place or position on the livestock. The fee charged for brand books, a record of all registered brands in the state is increased from \$5 to \$15 effective July 1, 1985.

Another bill requires that a seller of livestock must either own the registered brand on the livestock or deliver a bill of sale executed by the owner of the registered brand and endorsed by the seller. These bills of sale must bear the date, signature, and residence of the seller, together with other information.

Butchers, including those engaged in custom slaughtering, are now required to keep records regarding the source of animals butchered, including a description of any and all brands. The records are open to inspection by the Livestock Sanitary board but need no longer be reported monthly to the commissioner of agriculture.

A bill effective March 10, 1983 requires compliance with USDA requirements for brucellosis vaccinations. If any cattle are brought into the state without complying with the vaccination requirements, the State Livestock Sanitary Board may either order that the cattle be returned to the state of origin or that the cattle be destroyed.

F. Beginning Farmers

The \$2 million guaranteed loan fund set up for beginning farmers during the 1981 session, was modified by the 1983 legislature. That fund has not been used because of a technical language problem with the original bill. Now the Bank of North Dakota will administer the program instead of the State Industrial Commission.

A second beginning farmer loan program consisting of \$5 million was also created. The new appropriation will be accumulated in a revolving loan fund from operating profits of the Bank of North Dakota, and used by beginning farmers for land purchase loans.

G. Elevators, Etc.

The legislature passed several bills relating to grain warehousemen (elevator operators). One bill allows the public service commissioner upon an

elevator bankruptcy, to take possession of the grain and administer a trust fund so all creditors, including farmers, have a fair opportunity to be paid. Insolvency is defined as an inability to redeem receipts through payment for the stored grain or redelivery of the grain. Prior to July 1, 1983, insolvency occurred only if a receipt was actually dishonored by the grain warehouse.

Individual actions against the warehouse are barred if the Public Service Commission is appointed as trustee. The commission will try to possess all relevant books, records and outstanding receipts of the warehousemen. If the commission cannot ascertain the names and addresses of all receipt holders, they will publish a notice in a legal newspaper in the county where the warehouse is located for three successive weeks. Unsurrendered receipts are barred if no claim against the fund is filed within 60 days after notice to the receiptholders.

Another "elevator" bill increases license fees for roving grain and hay buyers from \$30 to \$50, and increases their minimum bond requirements from \$15,000 to \$50,000. Roving grain buyers are allowed to participate in credit sale contracts only if they meet statutory requirements. The law also provides for a new complaint procedure.

Another bill on grain warehouse licensing requires that credit sale contracts relating to grain must be in writing and cannot extend for a longer period than one year after execution of the contract. Warehousemen are required to notify customers by no later than June 1 of the intent to sell grain to pay storage charges. The failure to do so will result in a loss of storage charges to the warehousemen. The bill requires that stored grain be insured against physical destruction for the benefit of customers.

People who operate grain drying operations will now be able to collect from farmers who fail to pay their grain drying bills by establishing a lien against the farmer's grain. A similar law already protects custom combiners.

A bill allows condominium warehousing of grain. The law permits farmers to go together to build storage facilities, generally at an elevator site, and to contract with the elevator to manage the space. This assures participating farmers of space at the elevator, increases the elevator's capacity without any capital outlay by the elevator itself, and provides added tax advantages for the farmers. The bins can be opened to other farmers and the law allows the elevator and bin owners to contract at a lower storage rate than an elevator is allowed to charge for use of its own storage space.

H. Taxation

The valuation formula for property tax assessment of agricultural land was adjusted. The "annual gross return" for sugarbeet and potato land is set at 20 percent of annual gross income produced (down from 30 percent used in 1982).

The annual gross return for grazing land is set at 25 percent of the annual gross income potential of the land (down from 50 percent used in 1982). The use of the hay equivalent to value grazing land (annual gross income potential of the land which would be produced if the land were used for growing

hay) is discarded, and valuation based on animal unit carrying capacity of the land is substituted. The weighting formula to determine "average annual gross return" for each county is discarded and replaced by a simple average of four of the six most recent years.

The capitalization rate for agricultural land valuation remains at 7.5 percent through 1983. For years after 1983, the capitalization rate will be one-half of one percentage point less than a 10 of 12-year average of the gross Federal Land Bank mortgage rate of interest for North Dakota. The capitalization rate may not increase or decrease more than three-tenths of one percentage point in any two-year period.

The tax on motor vehicle fuels and special fuel was increased by \$.05 per gallon. Agriculturally-derived fuels will be taxed at a lower rate per gallon according to a timetable outlined in the bill. The proceeds representing \$.01 per gallon of the tax imposed are dedicated to township road uses. Organized townships must provide 50 percent matching funds to receive a distribution of the fuel tax revenues.

Another bill increased the rate of sales and use taxes and motor vehicle taxes from 3 percent to 4 percent except sales and use taxes on mobile homes, farm machinery and irrigation equipment. On these items the rate of sales and use taxes was increased from 2 percent to 3 percent. This legislation took effect on April 1, 1983.

A bill removed the property tax exemption for a farm residence occupied by an active farmer who had nonfarm income, including a spouse's income, of more than \$20,000 during each of the three preceding calendar years. The income limitation does not apply to a person retired from farming due to illness or age.

Individual income tax rates were increased from 7.5 percent to 10.5 percent on the short form. Individual income tax rates on the long form were increased in each bracket with a maximum of 9 percent. Income tax rates on corporations were increased in each bracket by 50 percent to a maximum rate of 10.5 percent. The \$100 energy cost relief credit was repealed. This act is effective until 1985. Income tax rates after 1985 for individuals and corporations and the energy cost relief credit provisions will revert to those in effect on December 31, 1982.

I. Uniform Commercial Code

A controversial bill passed this session modifies the liability of a merchant who purchases or a commission merchant who sells farm products which are the subject of a security interest. The bill requires the buyer to get information from the farmer or rancher by requiring him to execute a certificate of ownership. The certificate will identify the owners of the products for the previous five years and disclose the names of any parties who have security interests against the farm products. A felony penalty will be imposed for failing to disclose debts of more than \$500. The register of deeds is authorized to provide information about mortgages to the grain or cattle buyer.

Prior to July 1, 1983, if a farmer or rancher misrepresented his financial situation and had spent the payment he received when there were outstanding secured interests, the secured interest holder would go to the buyer for the money. The new legislation allows the merchant who complies with the requirements of the bill to take the farm products free of any security interest created by the seller.

The merchant complies with the requirements by obtaining a certificate of ownership or checking with the register of deeds, and maintaining records sufficient to support a criminal proceeding against a fraudulent seller. A merchant must not have knowledge at the time of the transaction that any security interest exists.

J. Corporate Farming

Changes in the corporate farming law during the 1983 session allow a single farmer to incorporate his farm and allow nonprofit organizations which are exempt from taxation and certain trusts to own farmland.

The 1981 corporate farming law required three shareholders to incorporate a family farm. Now, a bachelor or husband and wife can incorporate.

Nonprofit organizations which are exempt from taxation, such as churches and specified types of trusts, now may own farm and ranch land. However, they must lease the land to someone who could otherwise legitimately own it if they do not farm it themselves.

All organizations which receive farmland by gift or by will after January 1, 1983 must divest that land within 15 years. However, land received prior to January 1, 1983 can be held by these nontaxable groups indefinitely, when necessary to honor wills and estates made in good faith before.

The subsection of the law which requires all nonprofit groups who receive land after January 1, 1983, to divest that land within 15 years expires in two years. This is because a legislative interim study has been approved. The resolution directs the Legislative Council to study how the corporate farming law relates to nonprofit corporations and trusts.

Another bill allows corporations which are not in the business of farming to own or lease farmlands when its business is conducting surface coal mining operations or related energy conversion, providing the owning of that land is "reasonably necessary" to that business.

The legislation also allows certain corporations to own farmland adjacent to metropolitan areas if it will be used for urban development.

K. Natural Resources

Companion bills were passed with regard to mineral conveyances and reservations. Effective July 1, 1983, a conveyance of "minerals" includes all minerals of any nature, including compounds and byproducts, but the conveyance

does not include gravel, clay or scoria unless those minerals are specifically included in the conveyance. Prior to this law, no conveyance of mineral rights conveyed any interest in gravel, coal, clay or uranium unless the intent to convey such interest was specifically set forth in the conveyance. For example, if X conveyed "oil, gas and all other minerals" to Y before July 1, 1983, X would retain ownership of gravel, coal, clay and uranium. Y would own oil, gas, scoria and all other minerals. If X conveyed "oil, gas and all other minerals" to Y after July 1, 1983, X would retain ownership of gravel, clay and scoria. Y would own oil, gas, coal, uranium and all other minerals.

The companion bill establishes a rule of construction for mineral reservations in conveyances of surface estates executed after June 30, 1983. A conveyance which includes a reservation of "minerals" will be construed to mean all minerals of any nature, except that gravel, clay and scoria, shall be transferred with the surface estate unless those minerals are specifically reserved by name in the conveyance. Prior to July 1, 1983 the use of the word "minerals" was construed to mean only those minerals specifically named in the deed, grant or conveyance and their compounds and byproducts.

For example, if X conveyed land to Y and reserved "oil, gas and all other minerals" before July 1, 1983, only oil and gas would be reserved because those were the only minerals specifically named in the conveyance. Y would own all minerals except for oil and gas.

If X conveys land after July 1, 1983, and reserves "oil, gas and all other minerals," the reservation of minerals will mean all minerals of every nature except gravel, clay and scoria. X no longer has to specifically name every mineral he wants to reserve in the conveyance.

Another bill provides that the owner of an unleased mineral interest in a pooled mineral development spacing unit is entitled to a cost-free production royalty equal to the average royalty paid for tracts in the unit. The mineral interest owner will receive a cost bearing working interest in the balance of the production.

An information statement is now required to be provided with royalty interest payments, so that the interest owner can determine the amount and purpose of each deduction.

Several bills were passed affecting control of gas and oil resources. One bill allows the Industrial Commission to regulate restoration of production and drilling sites by entering into contracts for plugging and reclamation of abandoned well sites. The bill establishes a special fund to finance these restoration contracts and appropriates \$100,000 for the biennium for the purpose of entering into these contracts. The commission will restore only those wells in which the original operator cannot be found or legally bound to finance the restoration.

Three bills were passed relating to the plugging of seismic drill holes. One bill provides that a surety bond will cover all geophysical exploration by the bondholder for one year after the issuance of the bond, and if not renewed, the surety's liability under the bond ceases six years after the date geophysical exploration and reclamation ceased. The law prior to this bill stated that the surety's liability ceased one year after exploration or reclamation.

A second bill requires seismic companies to provide written 24-hour notice of intent to plug or abandon a seismic drill hole. It requires plugging of all drill holes, restoration of the surrounding area to its original condition, and specifies the type of plug to be used and the procedure of plugging to be followed. The seismic company is liable for all damages resulting from noncompliance.

Finally, a bill requires a person to obtain a permit from the county commission prior to engaging in geophysical exploration activities. At least three days prior to entering the land, the permit holder must give the land operator or owner notice of the approximate time and place of the planned activity, unless the permitholder and land operator or owner waive the notice requirement.

Two bills were passed relating to compensation for oil and gas production damages. The surface owner may seek actual and punitive damages in a court of proper jurisdiction if a mineral developer fails to give lawful notice of drilling operations. The other bill includes seismic activities as part of a drilling operation under the coverage of surface owner protection laws. The bill provides that a mineral owner is liable to the landowner for the loss of use and access to the land, provides for a waivable 20-day notice period prior to commencement of drilling activities, and allows for interest on compensation awarded by a court for oil and gas production damages.

A few bills affected surface mining and reclamation activities. One bill authorizes the auger method of mining coal to maximize recovery of coal and to minimize adverse environmental and safety hazards. Other bills relate to permit application fees and procedures for requesting and scheduling informal conferences on the issuance of a notice of violation of the Surface Mining and Reclamation Operations Act. New legislation also removed the Public Service Commission's discretionary power to refund excess permit filing fees and replaces the \$250 minimum variable permit application fee with a set fee of \$500, plus \$10 for each acre included in the permit application.

One bill provides for the termination of dormant mineral interests and the vesting of those interests in the surface owner. A "mineral interest" will vest in the surface owner in absence of developmental activity or failure of the mineral interest owner to file a proper claim of interest within a specified period of time.

L. Miscellaneous Bills

1. Weed Control

If the weed control officer determines a complaint concerning the eradication of noxious weeds is justified, he will issue written notice to the landowner. If the land is leased, the renter will also be notified. A landowner residing in North Dakota has five days, and an out-of-state landowner has 15 days (reduced from 35 days), to comply with county weed board orders to control or eradicate the weeds.

The bill also requires the Department of Agriculture to contribute to city and county weed board funds in addition to those amounts authorized by mill levies imposed for the costs of leafy spurge treatment programs. Funds will also be allocated for a cannabis control program pursuant to a formula adopted by the commissioner. However, no county weed board or city can receive over one-third of its actual expenditures for noxious weed control.

2. Weather Modification

Weather modification received a budget of \$1.7 million.

3. Weight Restrictions

Farmers and ranchers who have hauling to do can exceed gross weight restrictions on roads by 10 percent from December 1 to March 7.

4. Drainage

Maximum levy for cleaning out and repairing a drain has been increased from \$1.00 to \$1.50 per acre on any agricultural lands in the drainage district.

Only an affected landowner can file a complaint with the Water Resource Board concerning flooding or adverse effects to land caused by an unauthorized drain constructed prior to July 1, 1975. Complaints about unauthorized drains constructed after that date may be filed by any person.

5. Fuel Tax Fund

The agriculturally derived fuel tax fund is expanded from the promotion of agriculturally derived alcohol and methanol fuel to include all agriculturally-derived fuel, chemicals and other agricultural products. The bill increases the tax to be withheld from the motor vehicle fuel tax fund for agricultural or industrial purposes from one-eighth cent per gallon to one-half cent per gallon, retroactive to January 1, 1983.

6. Hail Insurance

Two bills relating to hail insurance coverage were passed. The first bill states that a crop hail insurance policy will now take effect at the time and on the date specified on the application for the insurance coverage, without a waiting period.

A second bill addresses refunds on hail insurance policies. If an insurance policy containing provisions regarding refund of premiums has been filed and approved by the commissioner of insurance, an insured person is entitled to a return on the premium when the insured surrenders the policy. The amount of premium to be refunded will correspond to the unexpired time of

the policy remaining after deducting any claim for loss or damage that has accrued under the policy.

II. RESOLUTIONS

Thirteen resolutions relating to agriculture were passed by the Legislative Assembly. The following are a few resolutions that were approved:

- HCR 3019--Urges the Congress of the United States to adopt federal tax incentives to assist beginning farmers.
- HCR 3024--Urges the U.S. Secretary of Agriculture to include barley as an eligible commodity for participation in the federal payment-in-kind acreage reduction program.
- SCR 4032--Urges the President of the United States to negotiate a long-term grain trade agreement with the Soviet Union.
- HCR 3022--Directs a study of adopting a model state soil conservation law in North Dakota.
- HCR 3020--Urges the U.S. Secretary of Agriculture to place a moratorium during 1983 on farm foreclosures by the Farmers Home Administration (FmHA).
- HCR 3034--Urges the FmHA to develop a farm credit payment plan that would allow farmers who use U.S. Department of Agriculture credit to repay their loans with farm produce.