Agricultural Update
North Dakota 1993 Legislature

North Dakota’s 1993 legislative session is the first in the state’s history during which rural representatives did not comprise a majority of the membership. This shift is due to the reapportionment that followed the 1990 census and reflects the continuing west-to-east and rural-to-urban movements of the state’s population. This pamphlet reviews some of the issues considered by the legislators that hold major implications for rural areas and agriculture. In this pamphlet, a bold face bill number indicates it was adopted by the legislature; regular print indicates that the bill was introduced but did not pass.

Budget Considerations

The 1993 legislature focused on the budget. New programs or proposals that would cost money to implement were virtually assured of being defeated. The budget constraint also was responsible for the longest session in the state’s history. The frugal attitude of legislators and their lowered expectations reduced the number of agricultural bills. The decrease also may be attributed to a somewhat improved farm economy and the shift in balance from rural to urban legislators.

The urban-rural struggle was probably most evident in the debate over funding for primary and secondary education. A district court decision had mandated changes in the funding formula so it would be more responsive to property valuation per student. Generally, the court decision would adversely affect rural school districts because of their low population and large property base. Even though the district court decision will be appealed to the North Dakota Supreme Court, the legislature responded with House Bill 1003, which mandates that the funding formula for education be studied before the 1995 session.

Funding for primary and secondary education will be a major issue during the interim and next session. The outcome will impact North Dakota school districts in the future in terms of quality of education and the tax burden borne by property owners. The prospect of a shift in the school funding burden from state general revenue to local property taxes prompted efforts to prohibit property tax increases (House Bill 1371) or limit the annual increase in budgets that property taxes fund to three percent. The final result was Senate Bill 2024, which allows a three percent budget increase in 1993 and a two percent increase in 1994.

Pesticides and Weed Control

Regulating the use of pesticides continues to be an issue for the state due to the nationwide concern over their environmental impact and the widespread use of pesticides in North Dakota. Senate Bill 2436 establishes state preemption over political subdivisions in regulating pesticides. This means that no county, township, municipality, or other political subdivision can implement restrictions beyond those the state imposes.

Senate Bill 2139 requires the certification of pesticide dealers. As a result, anyone who distributes or sells restricted-use pesticides within the state must have a person at the sales location who has been certified by the North Dakota State University Extension Service. Out-of-state dealers

*This report was prepared as part of the joint agricultural law/economics research project between the Department of Agricultural Economics, North Dakota State University, Fargo, 58105-5636 and the School of Law, University of North Dakota, Grand Forks, 58202-9003. The authors are Rick Maixner, a former state legislator who served during the 1993 session as a legislative intern from the School of Law, and David M. Saxowsky, an associate professor of Agricultural Economics.
who sell in North Dakota also are required to be certified.

The legislature did not pass House Bill 1232, which would have required commercial applicators to post signs around any property on which restricted-use pesticides have been used, including flower or vegetable gardens. The signs would warn that a chemical had been used and that children and pets should be kept out until the safe-entry date posted on the sign. Although this bill did not pass, the Environmental Protection Agency is implementing federal requirements to post agricultural lands when specified pesticides are applied to the field of a farmer who employs hired laborers.

Two other proposals to regulate pesticide usage did not pass. House Bill 1428 would have required anyone intending to apply a restricted-use pesticide to obtain written permission from the owner or occupant of any dwelling within one-quarter mile of the area to be sprayed. House Bill 1471 would have required commercial applicators to either be bonded or have no less than $25,000 in liability insurance. These proposals reflect the continuing concern for the safety of individuals in or adjacent to areas that have been treated with pesticides.

Senate Bill 2387 extends the North Dakota Agriculture Department's pesticide and pesticide container disposal program. The program will be continued on a trial basis for two years, with a requirement that the Agriculture Commissioner file legislation for 1995 to fully implement the program if the commissioner determines that the program should be continued.

Senate Bill 2523 allows county weed boards to levy up to four mills to control weeds and allow the weed control officer, in cooperation with law enforcement officials, to stop and inspect vehicles suspected of carrying noxious weed-infested materials. The bill also requires federal agencies to control weeds on federal lands. House Bill 1054 allows political subdivisions to appropriate money to control pests, which are defined as insects that damage plants or their produce. The bill also provides for local financing of weed and pest control efforts, using general and emergency funds.

Senate Concurrent Resolutions 4062 and 4023 and House Concurrent Resolution 3049 authorize the study of the state's noxious weed laws. Specific questions include whether purple loosestrife should be declared a noxious weed in North Dakota, as it has been in Minnesota, and whether the state should establish a noxious weed trust fund, similar to that existing in Montana.

Land Use

House Bill 1361 would have required any landowner of tilled land to ensure that 30 percent of a field surface is covered with plant residue or an annual cover crop, that the protection remain until immediately before planting, and that the cover would increase to 50 percent in the year 2000. An alternative to the cover would have been shelterbelts or other planted barriers, protecting no more than 15 times the height of the barrier. This bill was not adopted.

One reason given by many farmers and ranchers for not allowing others to enter and use of their land for recreational purposes has been the threat of lawsuits for injuries from an existing hazard. House Bill 1059 limits the liability of a landowner or tenant for injuries to a recreational user unless the failure to guard or warn against a dangerous condition is both willful and malicious. To be willful and malicious, the failure to warn must be intentional and with knowledge that injury will result. This protection applies only when the farmer or rancher does not charge for using the land for recreation.

Environmental Concerns

House Bill 1338 reflected the ongoing controversy over waste disposal, particularly waste from outside North Dakota. This bill, had it been passed, would have allowed county commissioners to hold a special election on siting a waste disposal facility in the county. The results would have been binding on the state Department of Health and
Consolidated Laboratories. The contents of this bill, with some modifications, were added as amendments to House Bill 1005, an appropriation bill, late in the session. As a result, any company whose application to operate a solid waste disposal facility is not completed before July 1, 1994 will be subject to the optional county vote provisions. In some cases, a multi-county vote will be required.

House Bill 1382 would have levied a tax on facilities that handle more than a specified quantity of waste. The threshold would have specified a quantity such that only those facilities importing waste from outside the state would have triggered the tax. This bill was not enacted.

House Concurrent Resolution 3008 continues the study of solid waste management and solid waste management districts in North Dakota. This study and its resulting legislation have been among the most controversial to face the legislature. Although most legislation is in place, this committee will perform an oversight function to determine if changes are needed in the adopted policies.

Senate Bill 2006 mandates a study of creating a new department in state government to oversee the regulatory functions of the Department of Health and Consolidated Laboratories. This would separate the regulatory functions from the testing and analysis functions of the department.

Senate Bill 2288 provides a property tax exemption for pollution control improvements. The exemption applies only to the actual value of the pollution control improvement, not to improvements unnecessary for pollution abatement. The exemption does not include land. Waste ponds, industrial waste facilities, and pollution control equipment are intended to be within the exemption.

House Bill 1270 strengthens the reclamation statute pertaining to sand and gravel pits. The agreement between the landowner and operator of the pit must specify

+ the amount of topsoil to be saved and replaced,

+ which party is responsible for the reclamation,

and

+ that the site be restored, as nearly as possible, to its original contour and productivity.

Recent court decisions in lawsuits for environmental damage by farmers and others have held lenders liable for the environmental damage done by previous owners, such as their borrowers. House Bill 1377 removes the liability of lenders for environmental damage of another party as long as the lender does not knowingly cause the damage or allow it to happen during a period when the lender owns the property.

Lenders’ Rights

North Dakota’s antideficiency judgment statute, in place since 1937, is a product of the Great Depression. The law protects debtors by generally prohibiting creditors who hold a real estate mortgage from collecting more than the amount received through foreclosure, even though a portion of the debt would remain unpaid. Creditors have attacked this statute for several years. Since attempts to repeal it have failed, creditors are expected to continue efforts to dismantle the statute by expanding exceptions. According to some farm advocates, the following three bills are a warning that the antideficiency statute is in jeopardy.
+ Senate Bill 2411 allows holders of a second mortgage on residential property of four or fewer units to proceed against the mortgagor personally if the mortgagor has waived the anti-deficiency provisions.

+ House Bill 1258 provides for deficiency judgments against commercial property.

+ Senate Bill 2429 follows a court decision, which held that personal guarantees by partners are subject to the statute. This bill reverses the court decision by specifying that personal guarantees of partners, stockholders, members of partnerships, corporations, and limited liability companies are not protected by the anti-deficiency judgment statute. The change was made by amending statutes that address guarantees and partnership law rather than by amending the anti-deficiency judgment law.

Credit and Lending Practices

Beginning Farmer loans from the Bank of North Dakota will have a lower equity requirement and interest rate as a result of House Bill 1114. Loans may be made for as much as 80 percent of the value of the property being mortgaged; the previous limit was 70 percent. The interest rate will be 1 percent below the Bank of North Dakota base rate, but not more than 6 percent for the first 5 years of the loan and not more than 8 percent for the next 5 years.

House Bill 1113 allows AGPACE loans to be made for a business located off the farm if the farmer can demonstrate 1) an economic need to locate the business off-farm and 2) that the business will not have an unfair economic advantage over other businesses located in the community. AGPACE, originally enacted in 1991, provides low interest loans for family farmers to vertically integrate their farm operation.

Under Senate Bill 2153, the interest rate for Family Farmer Loans in which the Bank of North Dakota participates may not be more than 1 percent over the bank’s base rate and may float during the term of the loan. The Bank may participate in up to 90 percent of the loan or $75,000, whichever is less. Family farms are those on which the farmer and the farmer’s family furnish a majority of the labor.

House Bill 1177 replaces the restriction on the proportion of real estate loans that banks may hold with a requirement that the real estate be appraised by either a certified appraiser as required by federal law or an independent appraiser. This bill will allow rural banks more flexibility in managing their loan portfolios but may allow less flexibility on individual real estate loans.

House Bill 1172 prohibits "money broker fees." No one may charge an advance fee for arranging a loan, except for the actual cost of the credit check and appraisal.

House Bill 1212 increases the fees for using the central filing system and imposes a surcharge of $2.50 for filing documents. The fee will be deposited into the general fund. Farm borrowers will likely find this increase incorporated into their cost of acquiring capital.

The legislature did not pass House Bill 1375 in which retailers attempted to repeal the service charge cap of 1 1/2 percent per month on the outstanding balance of revolving accounts.

Livestock Industry

Senate Bill 2245 privatizes livestock brand registration by moving registration from the Department of Agriculture to the North Dakota Stockmen’s Association. The Stockmen’s Association has conducted brand inspection for many years, but registration had remained with the Agriculture Department. At stake was $200,000 in brand registration fees due over the next 2 years as brands are required to be reregistered.

House Bill 1091 allows unvaccinated female cattle to be imported into North Dakota for breeding from states that do not require North Dakota cattle to be bangs vaccinated for
importation. The bill also authorizes the Board of Animal Health to provide exceptions to this policy.

House Bill 1182 grants additional authority and flexibility to the Commissioner of Agriculture or designee to implement and enforce dairy product laws so long as the standards are not lower than the federal minimum standards.

Senate Bill 2088 and House Bill 1297 modify several provisions pertaining to the production of exotic animals. Captive wildlife will be referred to as nontraditional livestock and the definition of domestic animals will include llamas and alpacas. Growers of certain nontraditional livestock will have to acquire a license from the State Board of Animal Health and pay a fee according to the schedule set forth in the legislation. The state board also will be responsible for preventing the escape or release of any animal injurious to agriculture or to the health of livestock or wild animals.

Senate Bill 2498 names the Nakota horse the North Dakota honorary equine.

Grain Industry

Senate Bill 2220 allows the licensing of grain receiving stations that are co-located with grain warehouses. The receiving station must 1) have facilities to keep grain separate from warehoused grain, 2) not commingle the grain, 3) issue a receipt for the grain, and 4) cover it under the warehouseman’s bond. This bill was introduced to simplify the procedures for elevators that receive beans for buyers who already are licensed as a warehouse. The beans will be covered under the warehouse bond and need not be covered by a separate bond at the receiving station.

House Bill 1133 repealed the requirement that the Public Service Commission publish a schedule of fees to be charged for the official weighing of grain at elevators.

Seed dealers and those who only buy grain to process and sell as seed are, as a result of Senate Bill 2334, exempt from having to be licensed as roving grain and hay buyers and warehousemen. House Bill 1134 changed the definition of roving grain and hay buyer to include those who purchase for processing as well as those who buy for resale. The bill exempts on-farm feedlots from the definition, in addition to the former exclusion of those who only purchased to fill out a load of their own product.

Agricultural commodity groups will have a continuing appropriation of their respective checkoff funds, rather than having to seek legislative approval every 2 years as a result of House Bill 1203. The groups will be required to submit a biennial report to the Agriculture Committee chair in both the House and Senate, however. Groups included are potato, oilseed, edible beans, barley, soybean, corn, honey, turkey, Milk Stabilization, dairy promotion, wheat, and beef.

Senate Bill 2414 places the Northern Crops Institute more firmly in the control of the Northern Crops Council, and reduces the authority of the president of North Dakota State University over the director of the institute. The council, rather than the president of North Dakota State University, will hire, set the salary, and discharge the director.

Senate Concurrent Resolution 4031 implements a study of the problems associated with selling farm commodities by contract. Of particular
interest are the sale of specialty crops and their associated contracts.

**Beekeepers**

The legislature considered two proposals to alter the regulation of the state's beekeeping industry. One was passed; the other was defeated.

Senate Bill 2275, had it been enacted, would have given the state Department of Agriculture broad authority to prevent the introduction into North Dakota of Africanized honey bees or any other race of bees determined to be a threat to the general public or the beekeeping industry. Senate Bill 2320 removes much of the authority of the Agriculture Department to inspect bees and prevent their movement into the state. This bill also eliminates many of the former reporting requirements. Beekeepers will no longer have to report ownership of bees, furnish a copy of the lease with the landowner, or possess a health certificate. Leases with landowners need not be in writing as previously required.

These two bills represent a change in the direction for the legislature from one of increased regulation to one of minimal restrictions on beekeeping operations. They are a major step toward eliminating regulation of the beekeeping industry in the state.

**Business Organizations**

Several proposals to amend the state's corporate farming law were defeated. The subject of major opposition by several farm organizations, Senate Bill 2402 would have allowed incorporation of "value-added" agriculture or of industries which use agricultural byproducts. The bill was opposed by persons concerned about the introduction of large corporate livestock feeding operations into the state. House Bill 1386 would have limited nonprofit corporations from acquiring any parcel of land larger than 40 contiguous acres. House Bill 2467 would have removed the requirement that farm corporations annually report their ownership to the Secretary of State. Senate Bill 2522 would have defined aquaculture as agriculture and set up protections for fish farms and consumers. The bill ran into trouble when it was discovered that the language would probably bring one large existing fish farm under the corporation farming statute.

**Senate Bills 2222 and 2223** establish a new business tool for North Dakota farmers. Known as the limited liability company, the entity is essentially a hybrid business structure with the advantages of a corporation and a partnership. The limited liability company is taxed as a partnership; that is, it is not taxed as an entity, but its members pay taxes on income they receive from the company. However, members of the company have the same limited liability protection as shareholders of a corporation. The legislation contains the same restrictions for limited liability companies as those for corporations engaged in agriculture, reflecting again the legislature's preference for restrained incorporation in agriculture.

**House Bill 1509** adds reporting requirements for limited partnerships, particularly foreign limited partnerships. The principle place of business is added to the filing requirements, and any subsequent change in either the name of the limited partnership or its principle place of business must be reported. Foreign limited partnerships are subject to the same requirements, but also must report

+ change in the name of the partnership,
+ change of a general partner if that partner is a corporation, and
+ change in the principle place of business if a general partner is a corporation.

**Water and Drainage**

**House Bill 1053** changes the procedure for obtaining a water permit. In addition to notifying all landowners within one mile of the permit location, the applicant must also notify all permit holders within one mile of the requested permit and all municipal and public water use facilities in the county. At the request of two or more public or municipal users, the state engineer must hold a local public hearing in the county seat before granting the
permit. Applicants for permits to draw water from the same source as other users, such as nearby cities, may face additional opposition at local public hearings in the future.

House Bill 1143 removed the requirement that only the legislature can forfeit water permits held by state agencies. State agencies will now be subject to the same statute that applies to individuals; that is, if a permit is not used for three successive years, that state engineer can declare it forfeited.

House Bill 1148 allows the state water commission to order consolidation or boundary changes between water resource districts if a majority of the boards of both districts and 50 percent of the landowners in each district approve the changes.

House Bill 1142 places control of the federal "section 404 dredged and fill" enforcement with the state engineer. Section 404 requires that a permit be acquired before soil or other materials are placed into rivers, lakes, wetlands, or other waterbodies. Even moving surrounding soil into a wetland could be a violation if no permit has been obtained from the state engineer. Previously, the Corps of Engineers held this authority.

House Bill 1110 changes the state water bank program. The Commissioner of Agriculture is granted additional flexibility in dealing with landowners wishing to enroll wetlands in the program and in dealing with minor violations of the agreements covering wetland conservation. The section of the law requiring that the commissioner be notified of denied drainage applications is repealed. A state assessment team composed of technical experts is established to assist the commissioner evaluate parcels submitted for consideration for the water bank program.

Under Senate Bill 2305, county commissioners are authorized to create, after a public hearing, a temporary weather modification authority. The temporary authority will last up to 4 years and be operated by the water resource district. After 4 years, the authority will cease unless it is made permanent under the weather modification laws.

House Bill 1379 allows the county commission to appoint a flood irrigation board; but if the commission appoints such a board, it must appoint a board for each flood irrigation district in the county. Members of the board have to be landowners within the district. Flood irrigation is the farming practice of flowing water over the land or fields, rather than to using a sprinkler system to apply the water. This bill was introduced to give control of the irrigation decisions to those who are taxed within a district.

Tort Reform

Senate Bill 2351 was the carrier of the controversial "tort reform" legislation. Most of the provisions were first passed in 1987, but had a sunset clause attached that would have terminated the changes this year. This bill extended the reforms indefinitely, and imposes additional restrictions on the ability to recover damages. This bill generally limits the opportunity to recover damages for personal injury or property damage, such as an injured farmer would seek from a manufacturer of farm machinery. Exemplary damages are limited to two times the compensatory damages or $250,000, whichever is greater.

Agricultural Employment

Although minors engaging in farm labor and domestic service are exempt from most provisions of House Bill 1436, agricultural employers need to be careful of the type of work minors are performing. This legislation changes the exemption from employer-focused to occupation-focused. This means that a farmer employing a minor for tasks other than farm labor or domestic service will not
be exempt from complying with state labor laws. For example, working in an on-farm food processing plant will not be considered farm labor, and therefore, will not be an exempt occupation. In addition, farmers are prohibited from employing minors under the age of 14 years during school hours even though the activity is farm labor or domestic service.

Miscellaneous

House Bill 1288 requires that county commissioners set the deadline date for mowing county road ditches, the minimum width of the cut, and the maximum height of the remaining stubble. These standards must be advertised in the county newspaper.

The 1991 legislature had repealed the county commissioner duty of "fence viewing." However, the 1993 legislature found a continuing need to settle fence and property line disputes, and enacted House Bill 1501 that specifies a procedure to meet that need. Under the procedure, a landowner could file a request with the district court for a survey of a property line. After a hearing, the surveyor may be appointed, and the report of the surveyor is presumptive evidence of the facts. The court will apportion the cost of the survey between the adjoining landowners.

House Bill 1461 would have dealt with the substantial increase in property taxes that occurs on agricultural land which borders a city when it is platted for development. The proposal would have required the land to be valued for tax purposes as agricultural property until sale or actual construction begins on the land.

Senate Bill 2534 provides that any trailer or vehicle being towed in excess of 25 miles per hour on a highway must be connected by safety chains adequate to control it and bring it safely to a stop in the event of uncoupling.

For the second time in as many sessions, the legislature did not eliminate county extension agents and impose those duties on regional extension service centers (Senate Bill 2233).

Conclusion

The debate over the interrelationship among concerns about the environment, agriculture and economic development continued during the 1993 session. Pesticide regulation, wetland preservation, waste disposal, reclamation of surface-mined areas, and pollution control were addressed. The outcome was a careful balance between protecting the environment and promoting economic development. The trend was generally toward more local and state control, rather than awaiting federal action.

Even though it appears too soon to tell what direction state policies will take in the future, urban legislators will not ignore the dominant role agriculture holds in the state. But at the same time, rural leaders are recognizing that they can no longer rely on the political clout of being the majority. They will have to spend more time educating their colleagues about rural issues and needs. They will have to work harder to develop coalitions among themselves and with urban leaders. Their strategy will become one of informing and convincing, whether the issue is funding education, regulating waste disposal, protecting water and soil resources, or managing pesticide usage. It is a change that it will motivate the state's leaders and citizens to more openly communicate and collectively consider policies that are in the best interest of the state.

End Notes

