



ndfb 

**2019 NDFB
REVIEW OF THE
LEGISLATIVE ASSEMBLY**

2019 NDFB Legislative Assembly Review

North Dakota Farm Bureau was extremely successful at the 2019 Legislative Assembly. We had a few disappointments, but when focused on real pocketbook issues for production agriculture in North Dakota, NDFB enjoyed an outstanding general session of the legislature.

Dark clouds loomed on the horizon heading into the session: The Association of Counties, at their October annual meeting, passed a policy to do away with the farm home exemption; the governor in his State of the State address, proposed increased spending in a number of areas, and it appeared government spending would be on the rise. Realistically, some increases in budgets could be justified as funding for infrastructure, research and other projects had been cut back as budgets tightened under declining state revenues with recent Legislative Assemblies.

Considering these factors, we also knew the 2019 Session held great opportunities for the future of agriculture. New leadership in the House Republican caucus held great potential for rural North Dakota and the motivated leadership of Majority Leader Rich Warder, (R) Dickinson in the Senate gave us hope for frugal investments in some infrastructure needs throughout the state and within our university systems, while being mindful of the public desire to keep taxes low.

During the first month of the 2017 Assembly a number of extenuating circumstances seemed to disproportionately influence a number of the policy makers. The DAPL protest was still going strong and the recent memory of oil price drops left legislators conflicted over which crisis to address first. These circumstances were all dealt with in good time and the regular responsibilities of the Assembly were eventually brought to the surface. In January this year, questions of how leadership and the governor would interact and how new leadership in the House would operate dominated the discussion. We were fortunate to have Representative Chet Pollert (R), New Rockford and his leadership team shepherding the House from his Majority Leader position. Our overwhelming success this session is due in no small part to his outstanding leadership in his first term as House Leader.

Early Session Success

NDFB hit the ground running this Session with early defeats of a few bills which would have been harmful, not only to agriculture, but the general public as well. Some of these bills were fostered by special interests from outside of our state while others came from the bureaucracy within our state government. While these bills were short lived, their very presence highlights the need for vigilance, and reminds us why the founding fathers distrusted government in general.

Animal Cruelty

House Bill 1445 authored by Representative Mary Adams (D), Grand Forks, failed quickly, giving NDFB one of its first victories of the session. This was a typical Humane Society of the United States bill seeking to expand animal cruelty statutes and limit animal ownership. The bill died 9-80 on the House floor. (*NDFB Policies #201.01, 201.02, 201.08*)

Water Issues that Dried Up

Water is typically a slippery issue, and this session was no different. House Bill 1086 was proposed by the state engineer. While the intention may have been honorable, the bill was so poorly written and so vague in scope, it made most legislators very leery. The name, “Waters of the State” being attached to the measure did not help and attempts to correct the bill through amendments only increased the confusion. This bill died in the House 0-91.

In the 2017 session, improvements were made to water management laws. The conversation resurfaced with two very different bills: Senate Bill 2220 muddied the process with confusing mitigation language, increased fees, and longer application approvals. A defensive bill was proposed in the House in response to SB 2220. House Bill 1514 would have removed permitting requirements for drain tiling, mirroring California’s tiling laws. Both bills died in their respective bodies and the positive legislation we passed last session remains intact. (*NDFB policy #711.03*)

Our Greatest Successes

Livestock

Perhaps our greatest success came with the passage of SB 2345, livestock zoning. NDFB worked with legislators to codify a Supreme Court ruling from 2008. Counties are inconsistent in their zoning, occasionally overstepping their authority based on personal animosities or parochial interests. This has led to private property owners having their rights ignored or trampled for reasons having nothing to do with sound science or state statute. There are instances of counties zoning out all animal feeding facilities or making rules so ambiguous it is almost impossible to get a permit. Litigation is the only solution to overcome these delaying tactics, but producers will rarely pursue this lengthy process since it is unlikely financiers will want to invest in a project that will take 3 years or more simply to get the okay to continue the project. Court precedent has already established that local authorities can zone for “nature, scope, and location” and this bill puts that into code. Both House Ag Committee Chair Dennis Johnson (R), Devils Lake, and Senate Ag Committee Chair Larry Luick (R), Fairmount, were instrumental in getting this legislation passed. This is a huge victory for animal agriculture in North Dakota. (*NDFB policies #703.01, 203.05, 203.06, 203.11*)

Corporate farming

We had great success in the passage of HB 1388 with the inclusion of second cousins to the list of family members able to farm together in a corporation. Many family farming operations are incorporated businesses, but those farms are also in their fourth or fifth generation which causes our farm families to have to choose to either break-up the family business or reorganize the business under a different structure. John Galegher and his family from Grand Forks County are examples of current cousins farming in partnership, and their descendants being harmed by the inability to maintain the family farm as it currently operates. NDFB will continue to ask why our state is in the practice of telling legitimate businesses which type of business structure they must choose. (*NDFB policy #405.04*)

Farm Home Tax Exemption

At the beginning of the session, we feared the loss of the farm home exemption as groups had come out opposed to the exemption. It was preserved and strengthened in SB 2360 which changed the tax exemption calculation to match the IRS definition of a farmer. In order to qualify for the exemption, a farmer must have 66% of his gross income from farming activities. This change will more accurately capture the true farmer who may lose their exemption because of custom work income, land rent income, or sale of equipment (now considered “income” by federal tax change). Farmers and ranchers pay a substantial amount in property tax and this small exemption on the home provides some relief to those living in rural areas paying a disproportionate amount of property tax. (*NDFB policies #502.01, 502.02*)

Directly from the NDFB House of Delegates Floor

House Bill 1383 came directly from the discussion on the NDFB House of Delegates floor to address several problems with the siting process for wind energy, but in many cases deeper ramifications for agriculture and rural property owners. Many of you will remember the discussion regarding the Public Service Commission and Game & Fish activities where a wind developer paid a wildlife group hundreds of thousands of dollars to “resolve” concerns about siting. The N.D. Ag Commissioner called this process extortion at an interim study committee. It boiled down to Game & Fish offering non-science-based advice to the PSC on siting and suggesting the problem could be solved through mitigation, profiting certain wildlife groups. Senate Bill 2261 also provides a tool for mitigation by stating “may not require an applicant to provide payment to any person for the mitigation of any assessed adverse direct or indirect environmental or wildlife impact.” (*NDFB policies #705.01, 406.02, 707.10*)

Fake Meat

House Bill 1400 defined meat as the edible flesh of an animal, grown and harvested for human consumption. The bill preserves the labeling right, which is basic truth in advertising, to real meat rather than lab-grown nomenclature produced by those who believe they are saving the world by decreasing livestock demand. The common sense nature of this bill allowed it to pass both chambers with only one vote in opposition.

Private Property

Another session theme involved private property rights. Much of the private property legislation came from rural landowners and farmers and many of the bills were *opposed* by various law enforcement officials. Abuses may not happen often but as the divide between rural and urban grows, it is important to ensure basic property rights are protected. Many of these bills did not survive final passage because of opposition or other factors, but we highlight them to show how it often takes years to get a good idea codified.

House Bill 1290 would have prohibited law enforcement from searching private property without permission. Expectation of privacy should extend to all private lands and out-buildings for our rural business owners, the same protections offered to business owners in town. Law enforcement was the strongest opposition to the bill. The bill passed the House with ease but failed in the Senate. (*NDFB policy #802.05*)

“No Peeping Tom” legislation would have prohibited drones and UAVs to take pictures of people and property without permission. The original intent of HB 1493 was to focus on privacy for farms and ranches, but the discussion quickly evolved to show there are obviously other issues with drone misuse around private homes and yards. The bill passed the House on its first vote, but the drone industry and law enforcement lobbied hard, bringing the bill back for reconsideration and was killed in the House. (*NDFB policies 802.04, 802.08*)

Turf debates over eminent domain continue and political subdivisions have a strong sway with the “rare emergency circumstance” argument which keeps this *taking* in place. Three bills would have made changes to the process: HB 1184 eliminated quick take eminent domain, HB 1302 required the sale of land purchased through eminent domain be offered back to the seller at the purchase price, and SB 2238 prohibited state entities from acquiring private property through eminent domain without prior approval from the county. None of these changes were adopted this session. (*NDFB policies #802.01, 802.02, 802.03 802.07 802.09, 802.10*)

Posted land

Our only significant disappointment the entire session was the loss of SB 2315, the private property bill. Last session, a similar bill to honor private property rights and rein in trespassing died early in the Senate. Countless hours went into this bill and this year, it passed out of the Senate and the House, but unfortunately it got bogged down in the conference committee process and after repeated assaults from sportsmen's groups, the bill died in the House on final passage. There is a study committee planned (AGAIN) on this issue, and it will undoubtedly remain a topic of discussion going forward. (*NDFB policies #704.05 and 802.05*)

Civil Forfeiture

The passage of HB 1286 may be counted as a partial success for civil forfeiture. The original bill attempted real, lasting, and legitimate reform of this practice, but after amendments and minutia from law enforcement interests, the final passage was a pyrrhic victory at best. The bill's original author, Representative Rick Becker (R), Bismarck, has been a true champion for NDFB, and in the end he gave an impassioned speech against passage of the final product. It is hoped the opportunity for real reform of civil forfeiture will present itself in 2021, but the 55-37 vote to

pass the watered-down version of this bill may weaken resolve for further meaningful reform next session. (*NDFB policy #405.24*)

Trail Cams

We had success with the passage HB 1503 addressing issues with hunters using trail cameras on private property without permission. During testimony, a rancher showed the committee a 5-gallon bucket of trail cams he discovered on his land. With the passage of HB 1503, a landowner has the right to know who is surveilling their land and all game cameras are required to have an affixed label and registration number issued by Game and Fish. (*NDFB Policy #802.04*)

Other Victories for NDFB and Agriculture

Animal and Livestock Producers

Animal Seizure

The animal seizure process is more transparent with SB 2177, requiring the chief brand inspector to conduct an ownership inspection if a seizure occurs. The owner of the seized animal is entitled to a hearing before the ruling on the disposition of the animal. (*NDFB policies #202.01 and 203.01*)

Commercial Feed

Majority Leader Chet Pollert's bill, HB 1134 clarified some language regarding labeling and quality of commercial feed. Those in the cottage pet food industry may sell pet food and feed directly to an end consumer. (*NDFB policy #203.12*)

Rabies

The Health Department brought forward SB 2092 this session relating to rabies control. What was supposed to be a code cleanup bill contained a concerning animal seizure component. After three weeks of work, driven by the Veterinary Medical Association and the State Veterinarian, the bill was improved considerably and eventually passed both the Senate and the House with ease.

Rabbits

House Bill 1146 opens meat inspection to include rabbits. Our members have long had policy to expand all of the livestock industry in North Dakota and this is a "hop" in that direction. Rabbits may never represent a large portion of the meat industry, but the bill points out the need for code to sometimes change in response to emerging segments of industry. (*NDFB policies # 203.11, 203.12*)

Freeze branding

House Bill 1166 recognizes freeze brands as an official brand on livestock. Freeze brands were previously recognized on equines but they will now be recognized on all livestock.

Milk Marketing Board

The Milk Marketing Board's authority to set maximum and minimum retail price on milk would have been removed with HB 1527. No individual from the retail or milk industry testified in favor of the bill, and the House Ag committee saw no need for changes to the current system.

Soil and Crop Producers

Noxious Weed Certification

House Bill 1149 gave weed boards authority to certify gravel pits upon request. Certification provides added value to gravel pits and helps ensure noxious weeds are not spread. (*NDFB policy #713.01*)

Soil Conservation Districts

House Bill 1026 requires all soil conservation district supervisors to have annual training to ensure all districts are on the same page. The department is working to make the training technologically accessible to alleviate travel. (*Legislative Task Force Conversation*)

Pesticides

Senate Bill 2335 would have made negative changes to the process of notification and reimbursement for those claiming harm from pesticide drift. The bill failed quickly in the Senate after our current system was discussed and reviewed by ag department officials during Senate Ag Committee hearings.

Commodity Group Elections

The Dry Bean Council and the Ethanol Council have asked for changes in board make-up or term limits as both groups apparently struggle to find candidates and keep board members. With SB 2144, the threshold for petitions required for nominations to the Dry Bean Council will decrease from ten to four. Senate Bill 2207 removes the term limits for members of the Ethanol Council and allows a N.D. employed member to live out of state.

Mobile Anhydrous Storage Containers

Senate Bill 2152 allows a producer to use a large anhydrous storage tank to transport ammonia and fill nurse tanks in the field. A producer must acquire a license and certification for this mode of transportation. (*NDFB Policy #303.01*)

Grain Warehouse Inspection Program

The Grain Warehouse Inspection program has been beefed up and transferred from the Public Service Commission to the agriculture commissioner. This transfer has been attempted in previous years as legislators have been concerned the program is not a top PSC priority. As it stands now the PSC will resolve the insolvency case involving a charlatan roving grain buyer in the Devils Lake area from December, but this issue is what created an atmosphere for the change in oversight of the program.

There was a lot of tension during the process; the PSC argued nothing could have been done to prevent the insolvency under current law and requests for more resources and authority have been denied by the Legislature. The ag commissioner was neutral towards the transfer but believes his office could conduct the grain inspection program similar to their well-respected livestock sale barn inspection program. The two agencies will work together to transition the program to the ag commissioner.

General Ag Issues

Whiskey for my men, beer for my horses

House Bill 1154 failed which would have exempted ridden animals from criminal traffic offenses such as DUIs.

Sale of Eggs

House Bill 1081 defines “eggs” to include all poultry and not just chicken eggs and also clarifies that eggs sold directly to an end consumer are not under commercial regulations.

Semi-Trailer Licensing

House Bill 1291 will allow operators to pay \$120 for the permanent registration of their trailer or semitrailer. For those who do not wish to pay for a permanent registration, they may continue to pay the annual \$20 fee.

Ag Liens

House Bill 1220 originally placed a time restriction on ag suppliers filing a super lien on a crop. The House Ag Committee turned the bill into a study to consider using the state’s central indexing system to notify lenders when a super lien is filed on the collateral of a secured lender.

Artificial Lights and Coyotes

For many years NDFB has had policy to allow artificial lights for night-time predator control, and HB 1412 fulfills this longtime policy. (*NDFB policy #706.01*)

Farmer Program Loans

In line with two NDFB priority issues, SB 2197 became a law which uses the Bank of N.D. to provide an option for a ten-year fixed interest rate for two of BND’s family farmer loan programs. (*NDFB policy #101.01, 101.02*)

Cottage Food

Last session sweeping changes to what has become the Cottage Food business were passed and many have been frustrated by action or lack of action from the department. Senate Bill 2269 was attempted as an addendum to the 2017 legislation, but the Conference product was unpalatable to many in the House and the bill failed 65 to 26 with threats of lawsuits from some parties if the health department tries to make rules. (*NDFB policy #203.12*)

Horses Racing

Horse racing made an ill-fated appearance in HB 1443. This expansion of the horse industry was primarily attacked by established gaming interests fearing competition. The bill failed in the Senate although it did garner more support in the House this session and we expect to see its return. (*NDFB policy #203.13*)

Right to Repair

House Bill 1305, a “right-to-repair” legislation opened several cans of worms regarding intellectual property, “lemon laws” and basic liability within the used equipment business. Everyone wants to feel like they have the ability to repair any equipment they purchase, but problems start when equipment is modified and then resold. This bill died quickly, gaining little support in the House. (*NDFB policy #405.12*)

Extension Budget

Extension and research is generally a hot topic, and this session was no different. The previous Assembly reduced funding for all universities due to the downturn in oil revenue and the tight state budget. This year funding was restored in a number of areas and several priorities addressed. In the end the final product of HB 1020 was characterized by one NDSU staff member as “something we can live with.” (*NDFB policies #103.01, 103.03, 103.05*)

Helping Future DVMS

Farm Bureau members are familiar with our Section 604 policies relating to reciprocity for higher education as well as our policy to increase the number of licensed veterinarians in our state. Funding for these issues was included in the university system budget, HB 1003. Unfortunately, a less-than helpful repayment provision was added to HB 1003 in the final days of the session. NDFB is already working to address the repayment program in the next legislative assembly. (*NDFB policies #604.01, 604.03*)

APUC Transfer

Senate Bill 2328 transfers the Agricultural Products Utilization Commission from the Department of Commerce to the Department of Agriculture. Committee members think the program is running well but believe it is an afterthought for the Department of Commerce and will be a greater priority under the ag commissioner.

Industrial Hemp

In recent years, legislation has passed every session to further industrial hemp. HB 1349 is the least regulative legislation to date allowing anyone to grow hemp so long as they acquire a license and pass a background check. The bill also defines marijuana and distinguishes it from industrial hemp.

Code Updates

Occasionally there is legislation that passes easily which has little to do with policy. Several sessions ago, legislative council was directed by the Legislature to rewrite and update language in the code. The rewrite process happens from time to time to ensure the code is consistent throughout and is up to date. Agencies also occasionally sponsor legislation to update portions of the code to meet federal standards. Senate Bill 2079 updated the definition of pasteurized milk to 2017 FDA revision and SB 2080 updated meat inspection standards to the 2018 federal meat inspection revision and passed easily at the request of the ag department. At the request of the Department of Trust Lands, SB 2082 repealed language for part of the cultivated lands summer fallow portion of code which was no longer applicable.

General Policy Issues

Outdoor Heritage Fund

Senate Bill 2054 was an effort to change the makeup of the Outdoor Heritage Fund board and weaken the position of agriculture on the board. This bill failed on the Senate floor in February 14-33.

Speed Limit

Does speed kill, or does a proposed change in state speed limits kill bills? HB 1264, introduced by a host of legislators, to allow increases in state speed limits on certain roads, died for lack of a constitutional majority. *(This relates to NDFB policy #405.01 which says our current speed limits are adequate for the needs of our residents.)*

Road Train

Senate Bill 2176 will provide for a road train pilot program and a legislative management study of a road train pilot program. These “truck trains” have been used for years in Australia and other countries, and North Dakota may be the optimum low population state to study this issue. *(NDFB Policy #303.03)*

Agencies Sponsoring Legislation

The issue of limiting the powers of the executive branch to introduce legislation without a legislative sponsor came forward this session in HB 1145 and died in the Senate but we expect to see this issue again. *(NDFB policy #406.08)*

Income Tax - Legacy Fund Buydown

House Bill 1530 was a proposal by Representative Craig Headland (R), Montpelier, to create the “legacy income tax rate reduction fund.” Everyone has an idea on how to spend the interest of the states’ Legacy Fund and this bill would use interest from the Legacy Fund to buy down income taxes. What to do with legacy earnings is still a question for many and this idea of a buydown is intriguing to us. Wouldn’t Farm Bureau members love to see a buydown mechanism for property tax that would protect Legacy Fund interest from being used to fund special projects? HB 1530 did not survive the Session, but it may be conceptually appealing for future Legislatures.

Ethics and Constitutional Amendments

Bills were brought forward this session to address concerns about our constitutional amendment process. This was in large part due to the passage of Measure 1 which created what many call “a fourth branch of government” in the form of an ethics commission (and previously with the passage of medicinal marijuana). Out-of-state money poured in to get these constitutional amendments passed, revealing how easy it is to amend our state constitution relative to the U.S. Constitution which is protected by Article V. The Legislature reacted to the hijacking of our constitutional amendment process in SCR 4001 which was a delicate way of fulfilling some need to keep the process pure without necessarily being at odds with our policy relating to the initiated measure process. SCR 4001 passed both chambers and will now go to the ballot to be voted on by the people. If passed, much of the amending process will be the same. If a constitutional amendment is approved by the people, it will be voted on by the Legislature. If the amendment is approved, it will be ratified. If it fails, the measure will go back to the ballot for another vote by the people. If the people approve the amendment again, the constitution will be amended.

Corporate Farming Marijuana Carve-Out

Since the passage of medical marijuana, Measure 5 in 2016, the Legislature has been reconciling the measure's language (which was copied from another state's administrative code) and North Dakota law. Measure 5 requires all marijuana producers to incorporate and be licensed by the state. Horticulture is defined as farming in North Dakota, yet our corporate farming laws prohibit any farms from incorporating except those owned by families. Senate and House leadership, with support from the Secretary of State, sponsored SB 2200 to exempt the growing of marijuana from the definition of farming. The Legislature carved marijuana out of the corporate farming law to suffice both the medical marijuana laws and the corporate farming law. It is certainly interesting to see the hypocrisy of our anti-corporate farming statute revealed through the ease of this bill passing without opposition, while HB 1388 on second cousins being part of a family corporate farming structure, was opposed by many.

Final Comments

In the final analysis of the 2019 session, NDFB members can be proud of our accomplishments, but more importantly proud of their own collective work. None of our legislative successes could happen without engaged members. Membership engagement, starting with the policy development process, gives our organization the grassroots driven directive to accomplish policy goals. Few other groups can claim the truly member driven process Farm Bureau has in every state; this structure gives our organization credibility at the local, state and national level which is the envy of other membership organizations. Coupling good policy from our members with political engagement through our PAC, NDFB has the opportunity to leverage our influence over the legislative process at the North Dakota Assembly. Policy development and political engagement lead to policy implementation on behalf of our members.