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**Testimony of Roger Johnson
Agriculture Commissioner
House Bill 1026
Agriculture Committee
Peace Garden Room
11:00 a.m., Thursday, January 8, 2009**

Chairman Johnson and members of the House Agriculture Committee, I am Agriculture Commissioner Roger Johnson. I am here today in support of House Bill 1026, which would rewrite North Dakota's noxious weed control law.

Noxious weed law was the first area of agriculture law that the Interim Agriculture Committee reviewed. It has been my pleasure to work with the interim committee, chaired by Representative Phil Mueller. I am pleased to testify in support of this bill and have a couple of suggested amendments which I think will improve upon a very good bill.

At the first interim committee hearing, held on October 16, 2007, I testified that my goal in working with the Interim Agriculture Committee was to have easily understood law that

maximizes state and local efforts to control weeds. I also identified several areas in the law that needed further clarification or revision, including:

1. **Responsibility for controlling weeds** – House Bill 1026 appropriately clarifies that it is the duty of each person to control the spread of noxious weeds (Page 3, Section 3, lines 1-2). Current law (NDCC § 63-01.1-01) requires that every person in charge of or in possession of land in this state, whether as landowner, lessee, renter, or tenant, shall control or eradicate noxious weeds on those lands. This bill broadens the responsibility of controlling weeds to include any person conducting activities that may spread noxious weeds; including, but not limited to, construction activities, seed sales, custom combining, and haying.
2. **Enforcement** – During the interim process, I testified in support of clarifying and strengthening the noxious weed enforcement authority for the agriculture commissioner (NDCC § 63-01.1-03). House Bill 1026 provides authority for the agriculture commissioner to enter onto land in order to assess situations and take samples without being subject to any action for trespass or damages (Page 3, Section 4, lines 3-7).

House Bill 1026 also revises the following enforcement authorities:

- **Enforcement responsibilities of other agencies** (Page 12, Section 28, lines 23-25) – It provides a general statement that law enforcement agencies “shall” cooperate with weed control authorities to enforce the noxious weed law. Current law (NDCC § 63-01.1-14) directs the state patrol, county sheriffs, and the truck regulatory division to cooperate with weed control authorities and includes a provision that these law enforcement agencies “may” enforce NDCC § 63-01.1-12(2) if machinery, commodities, or articles are being moved on highways and roads and are contributing to the dissemination of noxious weeds.
- **Quarantine** (Page 15, Section 30, lines 15-31, continuing on page 16, lines 1-2) – This bill clarifies quarantine authority and provides for the imposition of an emergency quarantine and a penalty for any person violating a quarantine order. It also clarifies due process. Current law (NDCC § 63-01.1-12.1) only provides the agriculture commissioner with authority to declare a quarantine when requested to do so through a resolution adopted by two-thirds majority vote of the weed board having jurisdiction. In fact, current law seems to “direct” the agriculture commissioner to declare the quarantine, before even determining if sufficient grounds exist to do so.
- **Preventing the dissemination of noxious weeds** (Page 16, Section 31, lines

3-12) – The bill also provides for a penalty and clarifies restrictions on transporting material or equipment that may disseminate noxious weeds.

Current law (NDCC § 63-01.1-12) has no specific penalty for individuals who willfully transport or dispose of materials that disseminate noxious weed seeds or propagating parts.

- **Action on complaints** (Page 17, Section 33, lines 4-29) – The bill further establishes the board of county commissioners or the governing body of the city as the final authority regarding noxious weed complaint investigations. Current law (NDCC § 63-01.1-18) provides for a cumbersome appeals process potentially involving weed boards, county or city commissions, and the agriculture commissioner.

3. **Funding** – I encouraged the Interim Agriculture Committee to keep the law describing funding simple, equitable, and with sufficient flexibility to direct funds to address the needs of local officials struggling to control weeds. The current bill clearly separates law authorizing the Targeted Assistance Grant (TAG) (Page 7, Section 16) and the Landowner Assistance Program (LAP) (Page 8, Section 17).

The TAG Program targets local weed control needs and provides a cost-share opportunity to county and city weed boards to meet those needs. TAG proposals describe a noxious or invasive weed problem within the county or city weed

boards' jurisdiction and proposes a management strategy.

LAP provides weed boards with cost-share assistance for landowner noxious weed control. Weed boards must levy at least three mills for noxious weed control or eradication to be eligible to receive LAP funds. Historically, a majority of weed boards have provided landowners with herbicide cost-share assistance with these funds. Eligible county and city weed boards are responsible for developing a LAP cost-share program for their areas.

Attached are proposed amendments which would do two things: 1) they would specifically provide for the use of our funds for controlling "invasive" weeds; and 2) they would eliminate the three mill requirement.

1. **TAG Program funding to include control of invasive species** – The addition of the invasive species definition would provide weed control authorities flexibility in receiving funding through the TAG Program to provide for early detection and rapid response of invasive species. Current law (NDCC §§ 63-01.1-06, 63-01.1-07.6) only allows state funds to control noxious weeds. We need to have the ability to quickly and aggressively attack invasive weeds that pose a threat to the control of noxious weeds. We also need to have the ability to quickly and

aggressively attack invasive weeds that pose a threat to the environment and/or human health. This amendment will allow county and city weed boards to request TAG funds to control invasive weeds without going through the time-consuming process of placing weeds on their county or city lists or for my office to place the weeds on the state noxious weed list. My intent is to eliminate the bureaucratic red tape and provide a rapid response to invasive weed problems (see attached amendments: note: the proposed definition of “invasive species” is taken from the USDA National Invasive Species Information Center).

2. **LAP funding to eliminate the mill levy requirement** - Current law requires counties and cities to levy at least three mills to access LAP funding (NDCC §§ 63-01.1-06, 63-01.1-07.6). The mill levy is a long-standing requirement, serves no purpose at the state level, and creates a barrier preventing many landowners in the state from being able to qualify for herbicide cost-share depending on whether a county or city commission has “dedicated” at least three mills for noxious weed control.

I understand that supporters of retaining the three mill levy requirement use this to gain local political support for noxious weed control funding. Current bill language (Page 8, Sections 17, lines 18-25) allows weed boards to designate an amount equal to the revenue that could be raised by a levy of three mills. This

change reflects a compromise with those who advocate for the three mill provision, but it only partly addresses the problem.

There is a fundamental fairness issue for landowners not being able to qualify for LAP funding depending on county or city determined mill levies dedicated to noxious weed control. All landowners across North Dakota should have the same opportunity to access noxious weed control funds. Further, there is a perverse incentive for counties that are not eligible for LAP to develop TAG proposals in an effort to get around this “requirement” (see attached amendments).

4. **Noxious weeds: definitions, purpose, and listing** – I also support the current bill’s provisions which provide for a review of the state, county, and city weed lists and provides the authority for the agriculture commissioner to approve all listings (Sections 11 and 22, pages 5 and 10). Current law (NDCC §§ 63-01.1-04.4, 63-01.1-07.4) only provides the agriculture commissioner with the authority to remove weeds from a list but doesn’t provide for a periodic review of all state, county, and city weed listings. This bill appropriately does so.

Chairman Johnson and committee members, I urge the House Agriculture Committee to adopt the amendments as presented and urge a “do pass” recommendation for HB 1026.

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I appreciate your hard work as you move forward in strengthening weed control efforts across the state. I would be happy to answer any questions.

**Testimony and amendments submitted by:
Roger Johnson
Agriculture Commissioner**