Report of the

NORTH DAKOTA LEGISLATIVE COUNCIL

Submitted to the

North Dakota Secretary of State

Under North Dakota Century Code Section 16.1-01-17

Thursday, September 30, 2010

BACKGROUND

In 2004 the electorate of this state approved a constitutional amendment to Article III, Section 2, of the Constitution of North Dakota which authorized the Legislative Assembly to provide by law for a procedure through which the Legislative Council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

In 2005 the Legislative Assembly enacted North Dakota Century Code Section 16.1-01-17, which requires the Legislative Management to hold hearings, receive public testimony, and gather information from agencies, institutions, or departments on the estimated fiscal impact of an initiated measure. At least 30 days before the public vote on the measure, the Legislative Council is to submit a statement of the estimated fiscal impact of the measure to the Secretary of State. Within 30 days of the close of the first complete fiscal year after the effective date of an initiated measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the Legislative Council are to submit a report to the Legislative Council on the actual fiscal impact for the first complete fiscal year resulting from the provisions of the initiated measure and a comparison to the estimates provided to the Legislative Council, and the Legislative Council is to issue a report of the actual fiscal impact of the initiated measure.

One initiative measure qualifies for the ballot for the general election on Tuesday, November 2, 2010--an initiated statutory measure relating to prohibiting fee hunting of captive exotic and native game animals.

The Legislative Council followed the procedure required by statute, which is similar to the procedure for obtaining fiscal impact information which the Legislative Assembly follows during legislative sessions--those state agencies determined to have either the best information on the impact of a measure or the primary responsibility for compiling and maintaining the information that is needed were invited to prepare fiscal notes and present their findings at a meeting held by the Legislative Management on Thursday, September 30, 2010.

INITIATED MEASURE REGARDING PROHIBITING FEE HUNTING OF CAPTIVE EXOTIC AND NATIVE GAME ANIMALS

This initiated measure, Initiated Statutory Measure No. 2 on the general election ballot, adds a new section to Chapter 36-01, which relates to prohibiting fee hunting of captive exotic and native game animals. As summarized by the Secretary of State:

> This initiated measure would add a new section to chapter 36-01 of the North Dakota Century Code effective November 1, 2012, providing that a person, other than an authorized government employee or agent, is guilty of a crime if the person obtains payment for the killing or attempted killing of privately owned big game species or exotic mammals in or released from a man-made enclosure.

The State Board of Animal Health presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the board is attached as Appendix A. The Game and Fish Department also commented on the fiscal impact, a copy of which is attached as Appendix B.

Statement of Estimated Fiscal Impact of the Measure

The fiscal note prepared by the State Board of Animal Health states "[t]here are currently a total of 103 cervid farms in the state; however, we regulate all facilities the same and do not differentiate between those that offer fee hunting and those that do not, or between those that might sell animals to those that offer fee hunting and those that do not. As a result, it is indeterminable how many of the Nontraditional Livestock or Farmed Elk premises will be impacted, should Measure 2 pass, and what the economic impact will be to the farmed cervid industry."

"Should Measure 2 pass, it is unclear whether the Board would be responsible for enforcement or whether local law enforcement would handle the matter. The level of enforcement expected would determine the cost to the State. If the Board were expected to enforce this measure, it would require additional personnel resources. In order to be relatively confident that the activities mentioned in Measure 2 are not occurring, the Board would need several additional field staff members to regularly perform on-site monitoring and inspection of facilities. Furthermore, how the prohibited activities are defined would affect what resources are necessary for enforcement."

The Game and Fish Department indicated there would be little or no fiscal impact to the department if the measure were passed.

ATTACH:2

SEP 2 2 2010

APPENDIX A

STATE BOARD OF ANIMAL HEALTH
ND Department of Agriculture
600 E. Boulevard Ave. Dept. 602
Bismarck, ND 58505-0020
(701) 328-2655
1-800-242-7535
FAX (701) 328-4567
Equal Opportunity in Employment and Services

September 20, 2010

John Walstad, Code Revisor
North Dakota Legislative Council
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0360

Dear Mr. Walstad,

The North Dakota State Board of Animal Health regulates all nontraditional livestock and farmed elk facilities in accordance with the rules in North Dakota Administrative Code 48-12-01.1 and 48-14, respectively. Importation requirements, facility requirements and inventory reporting requirements for cervids (and other species) are in those sections of the North Dakota Administrative Code. There are no specific requirements for 'hunting' operations or 'game animal' operations.

There are currently a total of 103 cervid farms in the state; however, we regulate all facilities the same and do not differentiate between those that offer fee hunting and those that do not, or between those that might sell animals to those that offer fee hunting and those that do not. As a result, it is indeterminable how many of the Nontraditional Livestock or Farmed Elk premises will be impacted, should Measure 2 pass, and what the economic impact will be to the farmed cervid industry.

Should Measure 2 pass, it is unclear whether the Board would be responsible for enforcement or whether local law enforcement would handle the matter. The level of enforcement expected would determine the cost to the State. If the Board were expected to enforce this measure, it would require additional personnel resources. In order to be relatively confident that the

activities mentioned in Measure 2 are not occurring, the Board would need several additional field staff members to regularly perform on-site monitoring and inspection of facilities. Furthermore, how the prohibited activities are defined would affect what resources are necessary for enforcement.

Dr. Beth Carlson, Deputy State Veterinarian, or I would be glad to answer any questions which Legislative Council may have.

Sincerely,

Susan J. Keller DVM

Susan J. Keller, DVM
State Veterinarian

SJK:tlc

cc: State Board of Animal Health Members
Commissioner Doug Goehring

Enc: Copy of Request for information from ND Legislative Council

ND GAME AND FISH DEPARTMENT
TESTIMONY RELATED TO FISCAL ANALYSIS OF THE INITIATED MEASURE TO PROHIBIT "HIGH-FENCE HUNTING"

Legislative Management Committee
September 30, 2010

Initiated Statutory Measure No. 2

SECTION 1. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Fee killing of certain captive game animals prohibited -- Penalty -- Exception. A person is guilty of a class A misdemeanor if the person obtains fees or other remuneration from another person for the killing or attempted killing of privately-owned big game species or exotic mammals confined in or released from any man-made enclosure designed to prevent escape. This section does not apply to the actions of a government employee or agent to control an animal population, to prevent or control diseases, or when government action is otherwise required or authorized by law.

The Board of Animal Health (BOARD) under N.D.C.C. § 36-01-08 and N.D.C.C. § 36-01-08.4 is charged with the oversight and regulatory responsibility of both Non-traditional Livestock (NTL) and Farmed Elk facilities. The BOARD's administrative rules define "Nontraditional livestock" as any wildlife held in confinement or an animal that is physically altered to limit movement and facilitate capture. Farmed elk were removed from the NTL category by the Legislature in the early 1990's, receiving their own domestic designation and separate statutes but still remained under the BOARD's authority. The BOARD's administrative rules address the specific requirements associated with inventory, health status, disease testing, movement, identification, housing, and welfare of NTL and Farmed Elk.

The North Dakota Game and Fish Department (DEPARTMENT), on the other hand, has permitting authority over the possession, propagation, and domestication (PPD) of protected game species, as per N.D.C.C. § 20.1-02-04 and N.D.C.C. § 20.1-09-02.

Only the "big game species" specified and encompassed in Measure No. 2. would be encompasses by the DEPARTMENT's oversight since N.D.C.C. § 20.1-02-02 states "big game" means deer, moose, elk, bighorn sheep, mountain goats, and antelope. Because of their domestic status, Farmed Elk no longer fall under the DEPARTMENT's PPD responsibility. In addition, "exotic mammals" do not fall within the DEPARTMENT'S authority. It is assumed the BOARD's regulatory oversight would encompass all "privately-owned big game species or exotic mammals confined in or released from any man-made enclosure designed to prevent escape" as specified by Measure No. 2.

The DEPARTMENT and BOARD sign a memorandum of understanding each biennium. One of the services provided in this MOU is a "one-stop" application for producers raising NTL species. Producers apply to the BOARD to get their NTL permit (which again addresses inventory, health status, disease testing, movements, identification, housing and welfare). If the species in question is a "protected" wildlife species, the BOARD then sends the application over to the DEPARTMENT for PPD approval (addresses possession, propagation, & domestication); thereby, becoming a PPD permit, as well. The DEPARTMENT, at times, assists and serves as agents of the BOARD to conduct facility inspections or other compliance and enforcement activities since they do not have field staff.

Although the possession, raising, propagation, housing, movement, welfare, etc. of privately-owned game animals are regulated, neither agency regulates, monitors, or has oversight over the "high-fence hunting" aspect of these operations. Therefore, of the approximately 115 farmed deer and elk producers in our state, there is no tracking of those conducting fee hunts or an accounting of the revenues they obtain from those services. Based on information provided by DEPARTMENT field staff, it is estimated that approximately a dozen farmed deer and elk operations in the state provide fee hunts.

It is believed there would be little to no fiscal impact to the DEPARTMENT if Measure No. 2 was passed. The DEPARTMENT has incurred costs of nearly $50,000 over the last decade to removal wild deer and elk posing a threat to or gaining entry into farmed deer and elk operations, as well as dealing with escapes by farmed deer and elk into the wild. These activities are associated with game farm facilities whether they provide fee hunts or not. In addition, there is no way to determine if these facilities would continue to operate and raise game animals without fee hunts or if they would fold and liquidate altogether.