

## About the National Animal Identification System (NAIS)

### Part 22: Farmers – Papers, please!

By Bruno Schmidt

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Mark this date: April 5, 2007. On this day, with a 97-0 vote approving Senate Bill 5204, Washington state's House of Representatives joined the Senate's prior 48-0 vote and all but abolished your freedom to use public roads to transport livestock, and will now dictate the conditions under which you buy and/or sell animals. Moreover, the state gains complete oversight and say-so over all such activities including private-treaty arrangements.

This bill will go into effect 90 days after its enactment. It legalizes the setup of permanent and posted check points, as well as random vehicle stops, where anybody transporting livestock must present whatever health certificates, permits, or other documents ("papers") the state requires, and also submit to warrant-less inspections of animals and vehicles. Additionally, the State Veterinarian is being given sweeping rule-making authority regarding animal health, animal identification, animal inspection, veterinary certification, proof of ownership, movement permits, record keeping etc.

Any violation of the state's animal-related laws or rules may be fined with a "civil" penalty of up to \$1,000 for each separate violation. Anybody who "aids" and/or "abets" any such violation – either directly or indirectly – may also be assessed the same civil penalty. All penalties are due and payable within 14 days from assessment. Moneys collected under this authority must be deposited in the state's general fund. These civil penalties can be appealed in local district court only. Unless appealed within 14 days from assessment, such penalties become delinquent (a misdemeanor) on the 15<sup>th</sup> day. Moreover, an animal found to be in violation (for example a missing tag, or certificate) can be "held" by the State Veterinarian for up to 14 days and/or quarantined indefinitely, at the owner's expense.

Having learned of this draconian bill, many of the state's farmers went on record opposing it by way of emails, letters and phone calls. A mere 3 weeks ago, the State Veterinarian had to endure public outrage against this bill at the public hearings the department held to receive comments on new and updated rules proposed for animal importation, inspection, identification, disposal and disease reporting.

Did the lawmakers know there was massive opposition? Did they listen to it, or review the written testimony? Did they even read the bill, or contemplate the drastic impact it will have on every farmer, every livestock-owner or – caregiver in this state? Did they realize at all that this law – ultimately – will make lawbreakers out of many ordinary, law-abiding citizens? What were the lawmakers (see sidebar) thinking when they unanimously voted in favor of it?

A review of the bill's past 2 weeks of activities (Mar. 21 – Apr. 5) shows that it was evidently railroaded through the House using a variety of tactics, such as:

#### ESB 5204

#### Enforcing Animal Health Laws

#### House Vote:

3<sup>rd</sup> Reading on Final Passage, 4/5/2007

Yeas: 97 Nays: 0 Absent: 0 Excused: 1

**Voting Yea:** Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Buri, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Curtis, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Hailey, Haler, Hankins, Hasegawa, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Linville, Lovick, McCoy, McCune, McDermott, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schual-Berke, Seaquist, Sells, Simpson, Skinner, Sommers, Springer, Strow, Sullivan, B., Sullivan, P., Sump, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Williams, Wood, and Mr. Speaker Chopp

#### Voting Nay:

**Absent:**

**Excused:** Representative Eickmeyer

#### Senate Vote:

3<sup>rd</sup> Reading & Final Passage, 3/8/2007

Yeas: 48 Nays: 0 Absent: 0 Excused: 1

**Voting Yea:** Senators Benton, Brandland, Brown, Carrell, Clements, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein, and Zarelli

#### Voting Nay:

**Absent:**

**Excused:** Senator Berkey

- scant, if any, advance notice of public hearings held by the House committees (Agriculture, Appropriations, Rules)
- written opposition not mentioned in the bill’s House and Senate reports
- committee action taken on short notice, if any
- suspension of House rules moving the bill along in an expedited way
- leapfrogging the bill to its 3<sup>rd</sup> and final reading in both the Senate and House

In light of the foregoing tactics, the “consent of the governed” no longer seems to matter to our lawmakers. By their conduct and vote, their collective actions circumvent the clear mandates of Article I, Section 1, of the state’s Constitution, to wit:

*“All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.”*

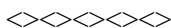
Rather than “to protect and maintain [the] individual rights” of the state’s farmers, this bill effects a broad transfer of such rights to the state: the right to transport livestock over public roads and the conditions under which a change of ownership may take place. Ultimately, this bill abolishes a farmer’s right to Private Treaty. In general, most of the bill’s provisions could be challenged under the “void for vagueness” doctrine. Important terms such as “inspections”, “points of inspection”, “vehicles transporting”, “reasonable cause”, “valid” health certificates etc. are not clearly spelled out, thus leaving room for misinterpretation and – potentially – abuse by the state’s enforcement officers.

Because this bill legitimizes blanket “inspections” of animals and vehicles solely based on an unqualified and unprecedented “reasonable cause” standard, and waives the constitutional requirements for a search warrant that is based on “probable cause”, supported by oath or affirmation, it unlawfully circumvents the protections provided by the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> Amendments to the Federal Constitution. Moreover, since this bill reemphasizes the state’s existing laws of exempting any animals brought into the state for immediate slaughter, the provisions of the “Equal Protection” clause of the Federal Constitution’s 14<sup>th</sup> Amendment are being circumvented as well.

Rather than dissecting and refuting every detail of this bill’s provisions, perhaps we need to take a broader look at how and what this bill purports to support: the state’s animal-health protection missive. As we look back, this bill was introduced on Jan. 12, 2007, at the request of the state’s Department of Agriculture, and was supported by a few, heavily-lobbied special interests. The bill’s official objective was to enable the state’s “enforcement of animal health laws” that were in fact already being enforced – each and every day – with undeniable success and provable results. The unofficial objective, however, is revealed not by the bill’s language but rather by the initial and then “Final Bill Report”, paragraph 2:

*“The [WSDA Animal Health] program is responsible for emergency management planning for tracing and controlling diseases. **It cooperates with the U.S. Department of Agriculture in a national program designed to identify where affected animals have been within 48 hours of confirmation of a disease outbreak or other health event.**”* (Emphasis added)

The foregoing “program” is better known as the “National Animal Identification System” (NAIS), declared to be “voluntary at the Federal level”. Therefore, this bill constitutes the state’s covert attempt at subjecting its farmers to the very animal-identification and -movement reporting imposed by the NAIS, without labeling it as such, and accomplishing this under the Ag department’s rule making authority.



*Bruno & Charlene Schmidt are co-authors of the self-published “Farmer’s Field Guide to the NAIS”. They have spent in excess of 1500 hours over the past four years researching the National Animal Identification System including applicable laws, regulations and rules. For more information and latest updates, please visit*  
**www.FarmersFieldGuide.com**

