

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### **PUBLIC SERVICES COMMITTEE**

Thursday, September 9, 2004  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator Aaron Krauter, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Aaron Krauter, Jerry Klein; Representatives Randy Boehning, Rod Froelich, Chet Pollert, Arlo E. Schmidt, Mike Timm, John Warner

**Others present:** See attached appendix

**It was moved by Representative Timm, seconded by Representative Warner, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.**

#### **SURETY BONDS STUDY**

Mr. Craig Burns, Insurance Department, provided two handouts on the market share-and-loss ratio for companies that issue surety and fidelity bonds in this state. A copy of each handout is on file in the Legislative Council office.

In response to a question from Senator Krauter, committee counsel said a surety bond is a three-party agreement in which the issuer of the bond--the surety--joins with the second party--the principal--in guaranteeing to a third party--the obligee--the fulfillment of an obligation on the part of the principal. He said a fidelity bond is designed to guarantee honesty and usually covers losses arising from employee dishonesty and indemnifies the principal for losses caused by the dishonest actions of the principal's employees.

In response to a question from Senator Krauter, Mr. Burns said the list includes companies licensed in this state. Whether there is one or many agents for the company is unknown. He said some of these companies are licensed but may not be actively seeking new customers.

In response to a question from Senator Krauter, Mr. Burns said there are 106 companies that issue fidelity bonds in this state, with \$2.2 million in premiums written. He said there are 149 companies that issue surety bonds in this state, with \$8.83 million in premiums written.

In response to a question from Representative Schmidt, Mr. Burns said the loss ratio does not include administration or the percentage of the premium that goes to the agent.

Representative Schmidt said of all the companies listed, there is only one that is domiciled in

North Dakota and there are many domiciled in Minnesota. He said encouraging these companies to domicile in North Dakota would be good economic development.

Senator Krauter said the only fidelity or surety bond company in this state is Dakota Fire Insurance.

Representative Froelich said when he needs to get a surety bond, the only company he can find that issues bonds is Western Surety Company.

Representative Pollert said not many companies offer surety bonds for grain elevators.

Representative Schmidt said that Western Surety Company in South Dakota had premiums written in 2003 of \$1,067,000. He said Western Surety had losses of \$72,000. He said the business appears quite profitable.

Representative Schmidt said surety bonds became an issue with auctioneers when Western Surety increased rates a few years ago.

Senator Klein said the rate of \$200 to cover an auctioneer and clerk seems to be a minimal amount to protect the public.

Representative Schmidt said he would rather pay into a special bonding fund for North Dakota auctioneers than pay money to an out-of-state company.

Representative Froelich said bonds are usually in an amount less than the amount of money handled under the bond. He said this is particularly true in cattle auctions.

Mr. Larry Maslowski, Insurance Department, provided testimony on the handouts. He said a bonding company looks at a customer as a risk. He said the issuance of a bond is similar to a bank issuing a letter of credit. He said there should not be any claims on a bond if the surety company does a good review before issuing a bond. He said insurance companies expect a loss.

In response to a question from Senator Krauter, Mr. Maslowski said the loss ratio for bonding companies in North Dakota is 11.6 percent.

In response to a question from Representative Schmidt, Mr. Maslowski said he does not know if bonding companies review the continuous bond of an auctioneer on an annual basis.

Ms. Sue Richter, Public Service Commission, provided written testimony from the commission on total revenues and expenses for the commission's

Testing and Safety Division, companies that provide bonds to auctioneers, including a list of these companies, and the bill draft regarding an alternative to a bond for auctioneers and auction clerks. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Senator Krauter, Ms. Richter said there are 21 companies that provide bonds to auctioneers and auction clerks; however, Western Surety and Merchants Bonding Company are the most common.

At the request of Chairman Krauter, committee counsel reviewed a bill draft [50057.0100] to provide auctioneers and auction clerks the option of providing insurance instead of a bond.

In response to a question from Senator Krauter, committee counsel said both errors and omissions and liability insurance are needed in lieu of a bond.

In response to a question from Representative Timm, Representative Schmidt said he does not have errors and omissions coverage. He said there are younger auctioneers that are real estate agents and have errors and omissions coverage.

Mr. Todd D. Kranda, CNA Surety, presented the written testimony of Mr. William Peterson, Vice President, Public Affairs, Western Surety Company, in opposition to the bill draft. He said surety bonds provide coverage if a dishonest act occurs, while insurance policies do not provide this coverage. He said allowing an insurance policy to substitute for surety bonds could leave some customers without any recovery if a dishonest act occurs. He said premiums for surety bonds are largely a service charge for weeding out unqualified candidates and for issuing the bonds. He said this process provides consumers a degree of certainty that they are operating with a reputable business. A copy of his testimony is on file in the Legislative Council office.

Representative Schmidt said the state needs consumer protection but auctioneers do not need to pay for something to keep them honest.

In response to a question from Representative Schmidt, Mr. Kranda said the commission for an agent is 20 to 40 percent and \$100 is the minimum amount charged by Western Surety for a bond.

In response to a question from Senator Klein, Mr. Kranda said the cost of insurance would exceed the cost of a bond under the bill draft; however, comparing the two is unfair because they are different products.

In response to a question from Representative Timm, Ms. Richter said the Public Service Commission requires bonds of auctioneers, auction clerks, grain elevators, and hay and grain buyers.

In response to a question from Representative Schmidt, Ms. Richter said the Public Service Commission changed from a yearly bond to a continuous bond for auctioneers for purposes of administrative convenience.

Representative Schmidt said not many auctioneers will use the option created by the bill draft because of the high cost.

Senator Klein said the committee had a good discussion concerning surety bonds and maybe something better can result if the bill draft is forwarded to the 59th Legislative Assembly.

**It was moved by Representative Schmidt, seconded by Representative Froelich, and carried on a roll call vote that the bill draft relating to an option for auctioneers and auction clerks to provide insurance instead of a bond be approved and recommended to the Legislative Council.** Senators Krauter and Klein and Representatives Boehning, Froelich, Schmidt, Timm, and Warner voted "aye." Representative Pollert voted "nay."

At the request of Chairman Krauter, committee counsel presented a second draft of a bill draft [50059.0200] creating an application procedure under the state bonding fund. He said the sole change in the second draft was adding a sentence that coverage for a state legislative or judicial branch agency may be determined by the Legislative Council or Supreme Court, respectively. He said the addition of this sentence confirms that legislative and judicial branch agencies are included in the bonding fund and respects concerns over separation of powers.

Mr. Jeff Bitz, Insurance Department, provided testimony in support of the bill draft. He said all state agencies and political subdivisions are bonded or get bonded when informed about bonding. He said the language on page 9, lines 13 and 14, which requires the application to include a list of conditions covered under the bond, beyond the basic blanket bond conditions, would be difficult for most agencies and political subdivisions to compile. He said this list of conditions may make the application procedure administratively burdensome for the person completing the application and for the Insurance Department by having to answer questions about the list of conditions.

In response to a question from Representative Timm, committee counsel said most governmental entities are bonded because there is no premium charge for the bond and because political subdivisions, for instance counties, purchase a blanket bond that covers every county employee. He said the language on page 9, lines 14 through 16, exempts state agencies and political subdivisions from the application procedure if another statute places the bond within the discretion of that state agency or political subdivision.

In response to a question from Representative Boehning, Senator Krauter said the money in the state bonding fund is invested and generally has increased the value of the fund. He said the Legislative Assembly periodically has taken money from the fund. He said there is a statutory procedure for replenishing the fund through premiums.

In response to a question from Representative Boehning, Mr. Bitz said the premiums are set by the commissioner but may not be less than \$2.50 per employee of the bondholder. He said premiums are triggered when the bond fund goes below \$2 million and continue in effect until the bond fund is in excess of \$3 million.

**It was moved by Representative Warner, seconded by Senator Klein, and carried on a voice vote that the sentence on page 9, lines 13 and 14, which states "The application must include a list of conditions covered under the bond beyond the basic blanket bond conditions provided in this chapter." be removed from the bill draft.**

**It was moved by Representative Schmidt, seconded by Representative Pollert, and carried on a roll call vote that the bill draft, as amended, relating to the creation of an application procedure under the state bonding fund be approved and recommended to the Legislative Council.** Senators Krauter and Klein and Representatives Boehning, Pollert, Schmidt, Timm, and Warner voted "aye." No negative votes were cast.

### SEED DEPARTMENT STUDY

At the request of Chairman Krauter, committee counsel reviewed a bill draft [50058.0100] transferring the regulation of wholesale potato dealers from the State Seed Department to the Public Service Commission. He said the bill draft previously had been opposed by the State Seed Department and the Public Service Commission; however, both agreed to work on the issue.

Mr. Ken Bertsch, Seed Commissioner, State Seed Department, provided written testimony on the transfer of the regulation of wholesale potato dealers from the State Seed Department to the Public Service Commission. He said there were a number of meetings between the Public Service Commission and the State Seed Department and one meeting with interested parties. He said as a result of the meetings, both the State Seed Department and the Public Service Commission recommend continuing licensing of wholesale potato dealers through the State Seed Department. He said the department will pursue legislative action to improve producer protection with focus on major processors. A copy of his testimony is on file in the Legislative Council office.

At the request of Chairman Krauter, committee counsel presented a second draft of a bill draft [50027.0200] clarifying state seed law. He said the bill draft clarifies seed law with changes requested by the State Seed Department. He said after the bill draft was printed, the Seed Commissioner requested another change. He said the change is on page 8, lines 17 through 19, which would add the sentence "The commissioner may employ, appoint, or contract

with agents." He said the main reason for this sentence is so that the Seed Commissioner can have an agent sign vouchers. He said a statute defines an agent as a deputy, inspector, analyst, specialist, aide, agent, or employee when acting officially for the commissioner or performing any duty or duties of the Seed Commissioner. He said a duty of the commissioner is to sign vouchers. He said the committee may wish to change the word "approximately" to "appropriately" on page 12, line 10.

Mr. Bertsch said a 1998 audit stated that no one but the commissioner can sign vouchers because there is no specific statute authorizing other people in the office to sign vouchers.

In response to a question from Representative Pollert, Mr. Bertsch said North Dakota Century Code Section 4-09-12 requires each person whose name appears on the label to keep a sample of seed for a period of one year because that is a uniform standard among the states.

**It was moved by Senator Klein, seconded by Representative Pollert, and carried on a voice vote that the bill draft clarifying state seed law be amended to allow the Seed Commissioner to appoint agents to sign vouchers and be amended on page 12, line 10, to replace "approximately" with "appropriately."**

**It was moved by Senator Klein, seconded by Representative Schmidt, and carried on a roll call vote that the bill draft, as amended, relating to the clarification of state seed law be approved and recommended to the Legislative Council.** Senators Krauter and Klein and Representatives Boehning, Pollert, Schmidt, Timm, and Warner voted "aye." No negative votes were cast.

### OTHER BUSINESS

**It was moved by Representative Timm, seconded by Representative Warner, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and the recommended bill drafts to the Legislative Council.**

**It was moved by Senator Klein, seconded by Representative Boehning, and carried that the meeting be adjourned sine die.**

Chairman Krauter adjourned the meeting sine die at 11:00 a.m.

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Timothy J. Dawson  
Committee Counsel

ATTACH:1