

1999 HOUSE AGRICULTURE
HB 1156

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1156

House Agriculture Committee

Conference Committee

Hearing Date 1-14-99

Tape Number	Side A	Side B	Meter #
ONE HB1156	Jon Mielke		9.9 to 55.0
		x	
Committee Clerk Signature <i>Arlin Hansen</i>			

Minutes:

Tape# 1 Side A: Mr Jon Mielke, Ex sec of Public Service Comm. He explained the bill and what its purpose is. Companion to SB 2153 This bill creates a new section to the century code relating to warehousemen and settling disputes, bonding and storage contracts, hay buyers and repeal sections relating to warehouse charges on grain owned by the US. Became necessary when the Fed Govt. (check Federal pre-emption provision in written testimony (page 2)).

Tape# 1 Side A: Mr. Jarvis Haugeberg, Director and Leg Chairman of Grain Dealers Assoc suggested they get together this week-end while the Grain Dealers were having there convention and discuss the amendments that are needed. Would like to have action on bill held open until after convention next week. (Written testimony attached to minutes.)

Rep Brandenburg Has any elevators gone broke in the past?

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Jarvis Haugeberg No usually another company comes in and buys it out or takes it over.

Rep Mueller Have you put to-gether any amendments for this bill to do what you want it to do.?

Jarvis Haugeberg Last page of the testimony lists what needs to be done.

Chm Nicholas appointed a sub-committee consisting of Chm Pollert, Brandenburg, and Mueller

Asked them to work with Grain Dealers and PSC to figure out what needs to be done to make this a more workable bill for the people affected by it.

Rep Pollert: sub committee report,, they had talked to both FU and FB. Do our farmers want this kind of protection, such as credit sales contracts, at their expense? That's the reason we suggest some kind of a study commission be set up. The grain boards and farmers need to get the ball going to accomplish this. Proposed amendments attached.

Motion by Rep Pollert DO PASS as AMENDED Second by Rep Herbel

Carried 15 to 0

Carrier: Rep Pollert

V/R
1/29/99

House AMENDMENTS TO HOUSE BILL NO. 1156

Page 1, line 1, remove "a new section to chapter 60-02 and"

Page 1, line 4, remove "60-02-19.1,"

Page 1, line 5, remove "bonding and"

Page 1, remove lines 9 through 23

House Amendments to HB 1156

House Ag

1-29-99

Page 2, remove lines 1 through 19

House Amendments to HB 1156

House Ag

1-29-99

Page 4, line 21, replace "The" with "If required to obtain United States department of agriculture approval of the commission's warehouse inspection program, the"

Page 4, line 22, replace ", subject to consideration" with ". A financial statement furnished under this section is a confidential trade secret and is not a public record."

Page 4, remove line 23

House Amendments to HB 1156

House Ag

1-29-99

Page 6, remove lines 7 through 31

House Amendments to HB 1156

House Ag

1-29-99

Page 7, remove lines 1 through 4

Re-number accordingly

Date: 1-21-89
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1156

House Agriculture Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken No pass as Amended

Motion Made By Rep Pollert Seconded By Rep Herbel

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chaiman	✓		Bob Stefonowicz	✓	
Dennis E. Johnson, Vice Chm	✓				
Thomas T. Brusegaard	✓				
Earl Rennerfeldt	✓				
Chet Pollert	✓				
Dennis J. Renner	✓				
Michael D. Brandenburg	✓				
Gil Herbel	✓				
Rick Berg	✓				
Myron Koppang	✓				
John M. Warner	✓				
Rod Forelich	✓				
Robert E. Nowatzki	✓				
Phillip Mueller	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep Pollert

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1156: Agriculture Committee (Rep. Nicholas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1156 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new section to chapter 60-02 and"

Page 1, line 4, remove "60-02-19.1,"

Page 1, line 5, remove "bonding and"

Page 1, remove lines 9 through 23

Page 2, remove lines 1 through 19

Page 4, line 21, replace "The" with "If required to obtain United States department of agriculture approval of the commission's warehouse inspection program, the"

Page 4, line 22, replace ", subject to consideration" with ". A financial statement furnished under this section is a confidential trade secret and is not a public record."

Page 4, remove line 23

Page 6, remove lines 7 through 31

Page 7, remove lines 1 through 4

Renumber accordingly

1999 SENATE AGRICULTURE

HB 1156

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1156

Senate Agriculture Committee

Conference Committee

Hearing Date 3/5/99

Tape Number	Side A	Side B	Meter #
1	X		1495-END
2		X	5000-END
Committee Clerk Signature <i>Melicia Jorgensen</i>			

Minutes:

Senator Wanzek called the meeting to order, roll call was taken, all were present.

Senator Wanzek opened the hearing on HB 1156.

Jon Mielke from the Public Service Commission spoke in support of the bill. Testimony enclosed.

Senator Wanzek: Why wasn't that regulated in the first place?

Jon Mielke: I don't recall how that really came out.

Jarvis Haugeberg from the ND Grain Dealers spoke in support of the bill. They are opposed to section 4 but have no objections to the rest of the bill.

Senator Wanzek: Are there many situations like in section 5?

Jarvis Haugeberg: Yes.

Senator Mathern: What was some of the thoughts of the people against section 4?

Jarvis Haugeberg: Going to get confusing.

Joseph O'Brien spoke in support of the bill. Testimony enclosed.

Senator Sand: 2500 feet means there maybe couldn't be an elevator in some small towns.

Joseph O'Brien: The elevator I am talking about has a lot of land.

Senator Wanzek: Have you talked to anyone else that this has happened to?

Joseph O'Brien: This is sort of a one of a kind deal but it has happened.

Senator Wanzek: To put on a restriction like this would put almost every elevator in ND out of business.

Joseph O'Brien: The EPA regulations call for regulations if they are going to use fumigants.

Senator Urlacher: Did the health department ever run any tests?

Joseph O'Brien: When they came they went to the far NW corner and were too far away.

Senator Klein: Do you have any neighbors that this affects?

Joseph O'Brien: The neighbors are far enough away that they aren't affected.

Jarvis Haugeberg added a few comments.

Senator Wanzek closed the hearing.

MARCH 18, 1999

Discussion was held.

Senator Kroepflin proposed an amendment to add vomitoxin after dockage.

Senator Kroepflin made the motion to adopt the amendment.

Senator Mathern seconded.

Motion carried.

Senator Mathern moved to adopt the amendments proposed by Jon Mielke.

Page 3
Senate Agriculture Committee
Bill/Resolution Number Hb 1156
Hearing Date 3/5/99

Senator Klein seconded.

Senator Klein made the motion for a Do Pass as amended.

Senator Mathern seconded.

ROLL CALL: 7 Yes, 0 No

CARRIER: Senator Klein

PROPOSED AMENDMENT TO HB 1156

Amendment to Provide Trade Secret Protection to Volume Reports

Page 5, after line 3, insert the following new section:

SECTION 5. AMENDMENT. Subsection 1 of section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the commission, which report shall contain or be verified by a written declaration that it is made under the penalties or perjury. Such report may be called for more frequently if the commission deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public document. This information is available for use by governmental entities but may not be released by them in a manner that jeopardizes the confidentiality of individual licensees. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public document. The commission may make this information available for use by other governmental entities but it may not be released by them in a manner that jeopardizes the confidentiality of individual licensees.

Renumber accordingly.

Date: 3/18
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1156

Senate Agriculture Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass amendment

Motion Made By Kroeplin Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

pg. 2 line 5

Date: 3/18
Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1156

Senate Agriculture Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendments

Motion Made By Mathern Seconded By J Klein

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/18
Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1156

Senate Agriculture Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Klein Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1156, as engrossed: Agriculture Committee (Sen. Wanzek, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1156 was placed on the Sixth order on the calendar.

Page 1, line 3, after the fourth comma insert "subsection 1 of section 60-02-24, sections"

Page 2, line 5, after "dockage" insert ", vomitoxin"

Page 5, after line 3, insert:

"SECTION 5. AMENDMENT. Subsection 1 of section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the commission, ~~which~~. The report shall ~~shall~~ must contain or be verified by a written declaration that it is made under the penalties of perjury. ~~Such~~ The report may be called for more frequently if the commission deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commission may make the information available for use by other governmental entities, but the commission may not release the information in a manner that jeopardizes the confidentiality of individual licensees."

Renumber accordingly

1999 HOUSE AGRICULTURE

HB 1156

CONFERENCE COMMITTEE

VR
4/6/99

CONF COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1156 AG 4-6-99

That the Senate recede from its amendments as printed on page 1012 of the House Journal and pages 838 and 839 of the Senate Journal and that Engrossed House Bill No. 1156 be amended as follows:

Page 1, line 3, after the fourth comma insert "subsection 1 of section 60-02-24, sections"

CONF COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1156 AG 4-6-99

Page 2, line 5, after "dockage" insert ", vomitoxin level"

Page 2, line 12, after "dockage" insert ", vomitoxin level"

CONF COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1156 AG 4-6-99

Page 5, after line 3, insert:

"SECTION 5. AMENDMENT. Subsection 1 of section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the commission, ~~which.~~ The report shall must contain or be verified by a written declaration that it is made under the penalties of perjury. Such The report may be called for more frequently if the commission deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commission may make the information available for use by other governmental entities, but the commission may not release the information in a manner that jeopardizes the confidentiality of individual licensees.

Renumber accordingly

(Bill Number) HB 1156 (, as (re)engrossed):

Your Conference Committee

For the Senate:	<i>Amended</i>	For the House:	<i>Yes</i>
X <u>Sen Klein</u>	<i>X</i>	X <u>Rep Pollert</u>	<i>X</i>
<u>Sen Sand</u>		X <u>Rep Renner</u>	<i>X</i>
X <u>Sen Kroepflin</u>	<i>X</i>	X <u>Rep Nowatzki</u>	<i>X</i>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 S724/H726 S723/H725
the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

and place _____ on the Seventh order.
727

, adopt (further) amendments as follows, and place
_____ on the Seventh order:

having been unable to agree, recommends that the committee be discharged
and a new committee be appointed. 690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the
calendar.

DATE: 4 / 06 / 99

CARRIER: _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

(Bill Number) HB 1156 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Sen Klein X
Sen Sand
Sen Kroeplin X

For the House:

Rep Pollert X
Rep Renner X
Rep Nowatzki X

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 5724/B726 5723/B725
the (Senate/House) amendments on (SJ/HJ) page(s) 1612 - _____

and place _____ on the Seventh order.
727

, adopt (further) amendments as follows, and place
MB1156 on the Seventh order:

having been unable to agree, recommends that the committee be discharged
and a new committee be appointed. 690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the
calendar.

DATE: 4 / 06 / 99

CARRIER: _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

1999 TESTIMONY

HB 1156

H.B. 1156

**Presented by: Jon Mielke, Executive Secretary
Public Service Commission**

**Before: House Committee on Agriculture
Representative Eugene J. Nicholas, Chairman**

Date: January 14, 1999

TESTIMONY

Chairman Nicholas and committee members, my name is Jon Mielke. I am the executive secretary of the Public Service Commission. I also serve as the director of the Commission's Licensing Division. The Licensing Division is directly responsible for licensing and regulating grain elevators and grain buyers in North Dakota.

The Public Service Commission introduced this bill after several meetings with grain industry associations, farm and commodity groups, and legislators. We urge your favorable support of the bill but we also recognize that some amendments may be necessary. We would be happy to work with your committee and other groups to draft amendments that may be deemed appropriate.

Before discussing the specific provisions of this bill, I would like to provide you with some background information concerning the need for this bill and the thought process that went into it.

Federal Preemption. This bill is a companion to S.B. 2153. That bill proposes the creation of a new chapter of state law to define and regulate grain buyers. H.B. 1156 is proposing related changes that would apply to state licensed grain warehouses. The Commission's goal is to ensure that farmers receive adequate levels of protection against insolvency and discriminatory practices, regardless of whether they are dealing with a state licensed grain warehouse or a grain buyer with a federal warehouse license.

S.B. 2153 became necessary when the U.S. Department of Agriculture notified the Commission that federal law and related court decisions preempt state law and forbid North Dakota from requiring that federally licensed grain warehouses obtain a state warehouse license. That action left patrons of federally licensed warehouses unprotected against elevator insolvency unless their grain was held on a warehouse receipt.

S.B. 2153 addresses this situation but it also proposes a number of changes that address changes that have taken place in the way that grain is merchandised. In addition, it also attempts to reduce some of the differences that exist between federal and state licensing procedures.

H.B. 1156 proposes similar changes that would apply to state licensed grain warehouses. As I said earlier, the goal of these two bills is to ensure that farmers receive the same degree of protection against insolvency and discriminatory practices, regardless of whether they are dealing with a state licensed grain warehouse or a grain buyer with a federal warehouse license.

Mr. Chairman, unless you or members of your committee have any preliminary questions, I will “walk through” this bill’s major provision.

Section 1 – Credit-Sale Contract Bonds. This section of the bill addresses bond coverage to protect credit-sale transactions. It is undoubtedly the most discussed and controversial item in this bill. It would require that grain warehousemen obtain bond coverage to protect farmers who are selling grain using a credit-sales contract. S.B. 2153 proposes a similar requirement that would apply to state licensed grain buyers.

State law defines a credit-sale contract as a sale in which the selling price is to be paid more than thirty days after the grain is delivered or released for sale. Deferred payment and no-price-established contracts are common forms of credit-sales.

State warehouse laws currently do not require any form of bond protection for credit-sale transactions. If the warehouse becomes insolvent, the farmer is not afforded any protection in the insolvency proceeding. These farmers are unsecured creditors.

The Commission has noticed a substantial increase in the use of credit-sale instruments in recent years. The Commission has not conducted a formal survey, but it is our belief that credit-sale transactions have risen from less than ten percent of the industry’s sales volume to between forty and sixty percent.

Much of this increase is transportation-related. Warehouses need to hold title to grain so they can have grain on hand to make use of rail transportation that has been purchased up to six months in advance under programs like BNSF’s COT car auction program.

This dramatic growth in the use of credit-sale instruments has greatly increased the exposure that farmers are facing. The Commission feels an obligation to bring this matter to the Legislature's attention to see if there is continuing legislative intent to leave these transactions unprotected.

There are two obvious flaws with this section's provision to require that grain buyers obtain credit-sale bond coverage. First, not all grain warehousemen will be able to obtain the required coverage. This would make it impossible for these warehousemen to use credit-sales legally. Given the need for and the popularity of these instruments, this fact could force many buyers out of business.

Cost is the second problem with mandated credit-sale bond coverage. For warehousemen who could get coverage, costs could approach five to six cents per bushel (see attached bond premium cost estimate). This would be an extremely expensive form of insurance. The cost could well out-weigh the benefits.

Warehouses and grain buyers operate on very thin margins. They would not be able to absorb this cost and would, in all likelihood, pass the cost on to their patrons. Farmers are simply not in a position to see grain prices drop by five or six cents per bushel.

In recognition of these shortcomings, the Commission has been visiting with industry and farm groups about a protection mechanism that is used in a number of grain-producing states. Many states have established indemnity funds to build cash reserves to protect farmers against grain buyer and warehouse insolvency.

Funding for these indemnity funds often comes in the form of what North Dakota typically refers to as a "check-off." Grain buyers

collect either a set amount per bushel or a percentage of the selling price and remit these collections to the state for deposit in an insurance fund to help pay farmers if the buyer becomes insolvent. Collections normally cease when the fund builds up to a pre-established limit and start again if the fund's balance drops below a pre-determined amount.

We have reviewed the provisions of the indemnity funds used by other states and developed a conceptual outline of what we consider the most desirable or workable provisions of each. This outline is attached as the last page of our testimony.

We have visited with several industry, farm, and commodity groups about the indemnity fund approach since this bill was drafted. It is an option that the Legislature may want to consider.

Ultimately, the farm community and the Legislature must decide what level of protection should be provided to farmers who decide to sell their grain via credit-sale. The underlying question hinges on how much farmers are willing and able to pay for protection against warehouse and grain buyer insolvency.

Section 2 – Definitions. This section proposes three changes in the definitions that are contained in 60-02-01. The first of these changes involves the definition of “grain.” State law currently limits the term to “domestic” grain or grass seed. This distinction has been the subject of an Attorney General’s opinion. The Commission believes and the Attorney General’s opinion suggests that the Legislature intended that all farmers be treated fairly by warehousemen, regardless of whether the grain involved is “domestic” or not. This change is intended to insure fairness.

This section also addresses the federal preemption issue discussed earlier. It changes the definition of “public warehouse” to provide that it does not include federally licensed entities. These entities will, however, be licensed under the grain buyer provisions proposed in S.B. 2153.

Finally, Section 2 also proposes to clarify that processors who buy grain from the public are warehousemen and that they do need a corresponding license and bond. Based on a 1987 Attorney General’s opinion, the Commission has been requiring that processors obtain a warehouse license. Section 2 of this bill puts this requirement in the statute. This change will eliminate further misunderstandings and will make it clear that people who sell grain to processors are to be provided with bond protection.

Section 3 – Housekeeping Citation. N.D.C.C. 60-02-05 outlines how disputes between farmers and warehousemen are to be handled. This statute contains a reference to the federal Grain Standards Act. Section 3 of this bill merely updates state law to reflect the federal law’s new citation.

Section 4 – Financial Statements. This section proposes to give the Commission the ability to require that grain warehousemen submit financial reports. This change would reduce the differences that exist between state and federal warehouse laws. This point may be critical if the USDA moves ahead to discontinue portions of its existing warehouse inspection program and to turn those activities over to acceptable state programs. The provisions of this section are only permissive; the Commission may choose not to require the filing of these reports if it finds that they are unnecessary.

Section 5 – Storage and Handling Charges. State law currently prescribes what warehousemen may charge for receiving, storing, and redelivering grain. Storage charges equal about three cents per bushel per month while handling charges total twelve cents per bushel. These handling charges are collected only if the owner takes redelivery rather than selling the grain to the warehousemen.

These charges do not apply to dry edible beans or to grain owned by the federal government. Warehousemen may file a different storage rate for application to federal grain. These rates are typically lower than those charged farmers.

The storage and handling rates on beans are also deregulated to the extent that warehousemen may set their own rates. These rates must, however, be filed with the Commission, posted at the warehouse, and listed on the warehouse receipt.

Section 5 of this bill proposes to treat grain the same way that state law treats the storage and handling of beans. This change should be good for farmers and should eliminate the provision of preferential storage rates to the federal government. It should also discourage elevators from pursuing a federal license in order to avoid having to charge statutory storage and handling rates.

Section 6 – Credit-Sale Contract Language. This section of H.B. 1156 proposes to modify N.D.C.C. 60-02-19.1 to provide that credit-sale contracts do not need non-coverage disclaimers if the warehousemen has obtained bond coverage that is sufficient to cover the full value of all outstanding credit-sale contracts. State law currently provides that the disclaimer may be omitted even if only

partial bond coverage is in place. In such cases, the contract would have to state what level of protection is available under the bond.

Section 7 – Federal Grades. This section addresses the use of federal grading standards. At the present time, state law requires that all non-bean transactions be based on federal grades. This bill proposes to allow the use of non-federal standards if both the buyer and the seller agree to use some other standards.

Section 8 – Destruction of Facilities. State law currently requires that warehousemen must notify the Commission within twenty-four hours if their facilities are destroyed. The law requires that this notice come by telephone and registered or certified mail. The Commission suggests that this statute be changed to simply require notice, by any means, within twenty-four hours.

Section 9 – Insolvency Assets. State law identifies assets that are available to the Commission to help satisfy patron claims in warehouse insolvency cases. In most cases, these assets are limited to the value of grain on hand and the proceeds of the warehouseman's bond.

This bill proposes to expand this list of assets to include a few other items, but only if they are not being claimed by any other creditor. These items would include accounts receivable for grain sold, equity in grain hedging accounts, and grain product assets.

In some instances, this change may make it possible to make fuller payments to elevator patrons in insolvency proceedings.

Section 10 – Repeal of Federal Preference. As I discussed earlier, state law currently allows warehousemen to give the federal government preferential treatment in terms of grain storage rates.

Without this ability, the federal government had indicated that it would remove much of its grain from storage in North Dakota because lower storage rates were available elsewhere.

This bill's proposal to eliminate statutory storage rates eliminates the need to have a law that gives warehousemen the ability to charge something other than the statutory rate to the federal government. Farmers and the federal government should be treated the same when it comes to the storage of grain in a warehouse.

Mr. Chairman, that concludes our testimony on this bill. Before responding to questions, I want to publicly thank all of the individuals, groups, and associations that worked with the Commission on this bill. I think we have come a long way towards developing a consensus on most of the major issues. We are anxious to work with all of these parties and the Legislature to develop a regulatory system that is workable for industry and that provides the degree of protection that our farm community requires.

Thank you, Mr. Chairman. I would be happy to respond to questions from you and members of your committee.

Credit-Sale Contract Bonds

Estimated Costs

On a "Per Bushel" Basis

(Based on Premiums @ \$18 / \$1000 Coverage)

Coverage @ \$3 / bushel	5.4 cents / bushel
Coverage @ \$2 / bushel	3.6 cents / bushel
Coverage @ \$1 / bushel	1.8 cents / bushel
Coverage at same rate as current warehouse bonds (\$1 per bushel on first 500,000 bushels and 20 cents per bushel thereafter):	
100,000 bushel volume	1.8 cents / bushel
250,000 bushel volume	1.8 cents / bushel
500,000 bushel volume	1.8 cents / bushel
1 million bushel volume	1.32 cents / bushel
2 million bushel volume	1.08 cents / bushel
3 million bushel volume	.720 cents / bushel
4 million bushel volume	.600 cents / bushel
5 million bushel volume	.504 cents / bushel

Producer Funded Indemnity Fund

An Alternative to Credit-Sale Bond Coverage

Nine states currently have a state indemnity / insurance fund that provides protection to producers who sell grain to warehouses or grain buyers by credit-sale. The following list identifies significant considerations and presents possible approaches that might be built into such a program in North Dakota.

Size and Method of Payment	Producer pays one cent per bushel at time that credit-sale contract is executed. Payments are collected by the buyer and remitted to the state.
Fund Level	Cap at \$5 million. Resume collections if fund falls below \$3 million. Interest earned remains in fund.
Coverage	Available to sellers via valid credit-sale contracts. 90% of first \$10,000; 75% thereafter to max. of \$100,000. If fund balance is insufficient to satisfy claims, available funds are prorated among valid claimants.
Claims	In warehouse insolvency cases or by order of district court in civil cases. Must initiate complaint within 12 months of date that grain is priced.
Failure to Remit	Warehousemen face Class A misdemeanor, pay monies owed, fine, & loss of license.
Administration	Funds remitted to Bank of North Dakota. Funds used to cover cost of administering program, insolvency cases, and compliance audits.



NORTH DAKOTA GRAIN DEALERS ASSOCIATION

✓STEVEN D. STREGE, Executive Vice President
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GRAIN DEALERS TESTIMONY ON HB 1156

January 14, 1999 – House Ag Committee – Rep Gene Nicholas, Chmn.

Good morning Mr. Chairman and members of the committee. My name is Jarvis Haugeberg. I am a Director and Legislative Chairman of the North Dakota Grain Dealers Association. NDGDA is an 87-year-old voluntary membership organization in which more than 90% of the state's grain elevators hold membership. We are here to offer some comments on HB 1156.

The Public Service Commission is likely to point out in its testimony that the federal preemption of North Dakota Warehousing Law brings about the need for some statutory review here at the state level. We agree. This bill and SB 2153 are those reviews.

The Public Service Commission is likely to also point out that the use of credit-sale contracts has increased in recent years. We agree. We do however question the need for and practicality of providing farmer protection on these contracts. North Dakota farmers have demonstrated confidence in their elevators by entering into such contracts with the full knowledge that no bond protection exists. A disclaimer to that effect is required by law to be printed in bold and prominent type immediately above the seller's signature line on these contracts.

Section 1 of the bill requires bond protection for credit-sale contracts. This would be very expensive at a meaningful level, if available at all. For instance, a \$100,000 bond would cost \$1,800. A \$500,000 bond would cost \$9,000. With the increasing use of credit sales, many elevators have more dollar value outstanding than even those two figures. Full coverage is impossible to provide. Partial coverage may mislead the farmer to think he is covered. As the situation exists today, farmers are well aware that they are not covered, except in those cases where something special has already been done.



nd
gda

The need for greater use of credit-sale contracts has been brought about by railcar ordering programs, which require ordering several months in advance. Elevators must have grain to ship when those cars arrive, but can not legally dip into warehouse receipted obligations.

Even though the present warehouse bond does not cover credit-sale contracts, it still serves as the financial screening device as before. Bonding companies simply won't write substantial bonds on companies with serious financial problems. However, this is less the case under a federal warehouse bond because the bond requirement is only 20% of the state's.

There has been thought of an indemnity fund for credit-sale contracts. Here again there is the matter of cost, cost to the farmer, administration cost of the fund and any claims management, and cost to the elevator of collecting another checkoff. At our convention in the next several days we will no doubt be discussing this concept in greater detail.

Section 4 of the bill amends 60-02-07 to allow the PSC to require elevators to submit financial statements. PSC doesn't require financial statements under the current warehouse bond concept and shouldn't need them under the concept of a bond for credit sales, as is currently in the bill. If an indemnity fund for credit sales is created through another checkoff, the PSC really doesn't need financial statements anymore than the Wheat Commission or Barley Council would need financial statements for purposes of administering their checkoffs. The PSC does not have a staff of expert grain accounting auditors to go over these financial statements. So of what use will they be made?

Then there is the matter of confidentiality. Few if any of us in this room want our financial affairs disclosed to more people than is absolutely necessary. We don't think state law should unnecessarily compromise the confidentiality of elevator financial statements. Therefore we are suggesting an amendment to delete lines 21 through 23 on page 4 of HB 1156. If absolutely necessary, the PSC can review an elevator's financial statement when conducting inspections, without requiring everyone to file a copy.

Our Association has not yet taken a position on deregulation of storage and handling charges, as contained in Section 5 of the bill. State-set rates have added some stability to elevator income over the years. The 1981 increase from 2 cents to 3 cents per bushel per month, in a bill sponsored by Representative Nicholas, brought millions of dollars into North Dakota during the big federal

storage programs of the mid and late 80s and some into the early 90s. Elevators were able to operate on slimmer margin because they had storage income. But now the situation has changed; there is little government grain to be stored and we are more into credit-sale contracts. An argument can be made that deregulation of storage and handling rates will give elevators more flexibility to respond to market conditions and compete with the federal warehouses. A resolution on whether our Association supports continuing the statutory rate or going to a deregulated rate will be brought to our convention Annual business meeting next Tuesday. We ask that the hearing on this Bill be held open so that what is decided there gets in the record here.

Section 9 of the Bill adds to the list of assets meant to satisfy claims in an elevator insolvency. It is necessary that these be only unencumbered assets so that these can still be used as collateral for lines of credit with commission firms and other financiers.

That concludes our formal testimony at this time. I'd be happy to respond to any questions.

Joseph F. Quinn

Mr. Chairman and committee members,

I appear before you, to ask, for a amendment to either H. B. 1156 or H. B. 1439, that storage bins, storing grain, be at least 2500' from a residence, in rural areas, unless the owner of the residence also owns the storage bins.

The bins next to our residence were built in 1986, and some of the first grain into them was out condition, and their chemicals, ~~over~~ fumes, filch and polluted air have caused problems ever since.

We have been threatened by their attorney for complaining to the health department, and the agriculture department, who have not cleaned up the problem.

E. P. A. covers the employees of companies who use chemicals, but the residents and the public near these bins are not protected against the chemicals escaping from the bins.

It is 305' from our house to the first bin. They are located to the north, northwest, so the prevailing wind brings everything there between the front of the house and garage. Hallway filch gathers on the front sidewalk. I don't know if 2500' is far enough, but it would help. Low levels can cause blindness and problems on nerve ends.

88
E. P. A.
H. B. 1156
H. B. 1439
5/13/87

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500

DENVER, COLORADO 80202-2405

JUL 23 1991

Ref: 8AT-TO

MEMORANDUM

TO: Al Yorke, Chief
Toxic Substances Branch

FROM: Suzanne Wuerthele, Ph.D. *Suzanne Wuerthele for*
Regional Toxicologist

SUBJECT: Review of complaint regarding aluminum phosphide and malathion fumigants from grain bins near a North Dakota residence.

I have reviewed the material regarding the complaint from Mr. Joel O'Brien of Valley City North Dakota, in which Mr. O'Brien alleged that the use of fumigants at grain storage bins near his residence is the cause of his health problems and was the cause of his wife's death. I have also reviewed the toxicological literature on aluminum phosphide, malathion and their use in fumigation. Some of the supporting information on aluminum phosphide is attached. My conclusions address the inherent hazard of fumigating with these chemicals near a residence assuming that they are used according to label instructions. As you know, health effects information on many pesticide labels is usually designed with the applicators, mixers and loaders in mind, and often does not contain appropriate instructions to protect the health of persons near the pesticide application.

THE CHEMICALS IN THE AIR IRRITATED MY LIPS, AND I HAD TO HAVE A CANCER REMOVED FROM MY LOWER LIP AND THEY ALSO DISCOVERED
In summary, it is not possible to definitely attribute Mr. O'Brien's symptoms or his wife's death to exposure to the pesticides used at the bins. *PROSTATE CANCER*
Deaths have occurred in exactly this situation however, and Mr. O'Brien's symptoms are consistent with both malathion and phosphine gas exposure. Fumigating in such a way that nearby residents may be exposed to phosphine and malathion, even if such fumigation does not violate label instructions, is extremely dangerous and could result in serious injuries, including fatalities.

My recommendations are: (1) Any action which increases the potential for exposure to phosphine gas or malathion in this situation should be strictly avoided, including the placing of more bins near residences; (2) Current operations should be adjusted so that the potential for exposure is completely eliminated. This would logically include aerating bins only when wind direction is away from residences, and advance notification of aeration; (3) Bins should be made air tight when they are not intentionally aerated; (4) Mr. O'Brien should be notified of

symptoms of organophosphate and aluminum phosphide poisoning which indicate life threatening exposures so that should this occur he can seek emergency medical attention; (5) the local physician from whom he would normally get emergency attention should be given health effects information on malathion and aluminum phosphide; and (6) The labels used in this application should be reviewed. If necessary EPA's Pesticide Program Registration Division should take steps to make sure the label prohibits use of the pesticide in any manner which exposes any persons including those other than the granary workers or pesticide applicators. These conclusions and recommendations are based on the following:

1. The distance from Mr. O'Brien's house to the grain bins is 1/8 of a mile (660 feet); the closest bin is ~~250~~ feet. The prevailing winds are in the direction of Mr. O'Brien's house. 305'
2. It is not clear how well-sealed the bins are. Some monitoring has taken place, which has not produced evidence of fumigant release to the air. Photographs of the bins indicate that liquids escape from the bottom. The bins are mechanically aerated as part of routine operations.
3. The facility is large, consisting of ~~eleven~~ ^{fourteen} bins, each with a capacity of 28,000 bushels. There is a proposal to build more bins in the area. ~~30,000~~
4. Grain in the bins is fumigated with aluminum phosphide (Gastoxin), mercaptosuccinic acid and mercaptosuccinic acid diethyl ester (Malathion), an organophosphate. At this time we do not have labels from the specific products used at the facility.
5. The phosphine generating capacity of the facility is considerable:
 - a. Aluminum phosphide tablets use approximately 60% formulation, and 40% ammonium carbonate. Each 1 gram tablet therefore represents 0.6 grams of formulation.
 - b. Applications were of 150-300 tablets /1,000 bushels.
 - c. There were 28,000 bushels in each of 11 bins, for a total of 308,000 bushels.
 - d. $308,000 \text{ bu} \times 150\text{-}300 \text{ tablets}/1,000 \text{ bu} = 46,200\text{-}92,400$ tablets used with each fumigation.
 - e. $46,200 - 92,400 \text{ tablets} \times 0.6 \text{ g formulation} = 27,720 - 55,440$ grams formulation (assuming 1 gram tablets were used).

- f. Every 3 grams of formulation releases 1 gram of phosphine gas.
- g. $27,720 - 55,540 \text{ grams formulation} / 3 = 9240 - 18,513 \text{ g}$
(20.4 - 40.8 pounds) phosphine gas released with each fumigation.
- h. Aluminum phosphide comes in 1, 2 or 3 gram tablets. Potential phosphine production might have been three fold higher than this estimation, which is based on 1 gram tablets.
6. Fumigation is frequent; it took place at least 37 times between March 14, 1989 and December 10, 1990.
7. The cause of ^{CARDIAC ARREST} Mrs. O'Brien's death is unclear, but is reportedly a ~~heart attack~~. There is no other evidence of her symptoms at the time of death or her medical history. Mr. O'Brien suffers from respiratory problems but has no allergies. It is not known if he is or was a smoker, and there is a possible diagnosis of farmer's lung (pulmonary fibrosis related to the inhalation of organic dust and spores of thermophilic actinomycetes, an organism which grows on damp hay). Mr. O'Brien was taken to the hospital and a possible diagnosis of organophosphate poisoning was made. Mr. O'Brien has also reported symptoms of loss of peripheral motor control (uncontrollable shakiness of the hands and feet), diarrhea, headache, burning gums, lips and teeth, skin irritation, dry mouth and throat and watering eyes. Onset of symptoms is roughly associated with operation of the aerators at the bins and a "rotten" smell. Mr. Chuck McDonald of the Department of Health also experienced eye irritation while in the O'Brien home. ^{NON SMOKER}
8. Like other mercaptans, malathion (mercaptosuccinic acid ^{he WAS NOT IN THE HOUSE, HE WAS ON THE DRIVEWAY} diethyl ester) has a rotten odor. Symptoms of malathion exposure include headache, dizziness, watering eyes, muscle twitching, muscle weakness, tightness in the chest, wheezing, and gastrointestinal disturbances including nausea and diarrhea. The only symptom reported by Mr. O'Brien but not consistent with malathion exposure is dry mouth.
9. Serum or red blood cell cholinesterase is an insensitive indicator of organophosphate exposure. Large variations in this parameter are found in unexposed individuals and conversely, large exposures may or may not be accompanied by significant changes in the test measurement. Cholinesterase inhibition may be useful as a marker of general exposure to organophosphates if a baseline value is taken and it is monitored frequently.

MY FAMILY DOG ALSO DIED OF SYMPTOMS OF CHEMICAL EXPOSURE

10. Phosphine gas, which is evolved during fumigation from the chemical reaction of aluminum phosphide with moisture, has the odor of decaying fish. The odor threshold of pure phosphine is about 2 ppm (8 mg/m³), but contaminants may lower the threshold to 0.02 ppm.
11. EPA considers aluminum phosphide to be as toxic as phosphine gas, because the gas is liberated so easily from the pesticide. Phosphine is an extremely potent toxicant, roughly of the same order as hydrogen cyanide gas. It is readily absorbed via the lungs. Symptoms of exposure, which may be delayed, include eye, skin and respiratory irritation, or burns; headache, dizziness, motor disturbances, paresthesia (prickling or burning sensations, usually in the extremities), and restlessness or excitement; thirst, cough, dry burning throat, shortness of breath and gastrointestinal problems, including nausea. Cause of death upon inhalation is usually pulmonary edema. Concentrations between 0.25 - 2.5 ppm (1 - 10 mg/m³) produce respiratory symptoms, headache, vertigo, nausea, vomiting and psychomotor abnormalities. Because of delayed pulmonary edema secondary to pulmonary damage, 2 ppm (8 mg/m³) is considered the IDLH (immediately dangerous to life and health) concentration. There are a number of deaths reported in the literature at residences near granaries where aluminum phosphide was used as a fumigant. Respiratory, and neurological symptoms may result from chronic as well as acute exposure. *A lady from Lidgerwood, N. DAK. some years back stored*
12. The workplace standard for phosphine, which is designed for *grain* healthy workers, is 0.3 ppm (1.2 mg/m³). This does not *near her residence* protect persons with sensitivities due to preexisting respiratory or other conditions, or the elderly.
13. There is no reliable medical monitoring, including blood concentrations of aluminum, which can identify or confirm phosphine poisoning. Anemia, reduction of bromsulphophthalein secretion and albuminuria have been noted in laboratory studies.
14. There is no treatment for phosphine gas poisoning except life support measures. Respiratory and neurological disease secondary to acute and/or chronic poisoning with phosphine gas may consist of permanent deficits.

Enclosures

H.B. 1156

Presented by: Jon Mielke, Executive Secretary
Public Service Commission

Before: Senate Committee on Agriculture
Senator Terry M. Wanzek, Chairman

Date: March 5, 1999

TESTIMONY

Chairman Wanzek and committee members, my name is Jon Mielke. I am the executive secretary of the Public Service Commission. I also serve as the director of the Commission's Licensing Division. The Licensing Division is directly responsible for licensing and regulating grain elevators and grain buyers in North Dakota.

The Public Service Commission introduced this bill after several meetings with grain industry associations, farm and commodity groups, and legislators. With one change that I will discuss later, we urge your favorable support of the bill.

This bill is a companion to S.B. 2153. Together, these bills propose revisions in state law to recognize the federal government's preemption of North Dakota's grain warehouse laws and changes that have taken place in the way that grain is being marketed. The goal of these two bills is to ensure that farmers receive adequate

levels of protection against insolvency and discriminatory practices, regardless of whether they are dealing with a state licensed grain warehouse or a grain buyer with a federal warehouse license.

Mr. Chairman, unless you or members of your committee have any preliminary questions, I will “walk through” this bill’s major provision.

Section 1 – Definitions. This section proposes three changes in the definitions that are contained in 60-02-01. The first of these changes involves the definition of “grain.” State law currently limits the term to “domestic” grain or grass seed. This distinction has been the subject of an Attorney General’s opinion. The Commission believes and the Attorney General’s opinion suggests that the Legislature intended that all farmers be treated fairly by warehousemen, regardless of whether the grain involved is “domestic” or not. This change is intended to insure fairness.

This section also addresses the federal preemption issue discussed earlier. It changes the definition of “public warehouse” to provide that it does not include federally licensed entities. These entities will, however, be licensed under the grain buyer provisions proposed in S.B. 2153.

Section 1 also proposes to clarify that processors who buy grain from the public are warehousemen and that they do need a corresponding license and bond. Based on a 1987 Attorney General’s opinion, the Commission has been requiring that processors obtain a warehouse license. Section 2 of this bill puts this requirement in the statute. This change will eliminate further

misunderstandings and will make it clear that people who sell grain to processors are to be provided with bond protection.

Section 2 – Housekeeping Citation. N.D.C.C. 60-02-05 outlines how disputes between farmers and warehousemen are to be handled. This statute contains a reference to the federal Grain Standards Act. Section 2 of this bill merely updates state law to reflect the federal law’s new citation.

Section 3 – Financial Statements. This section proposes to give the Commission the ability to require that grain warehousemen submit financial reports. This ability is “triggered” only if doing so is required to make the state’s regulatory program acceptable to the U.S. Department of Agriculture.

Section 4 – Storage and Handling Charges. State law currently prescribes what warehousemen may charge for receiving, storing, and redelivering grain. Storage charges equal about three cents per bushel per month while handling charges total twelve cents per bushel. These handling charges are collected only if the owner takes redelivery rather than selling the grain to the warehousemen.

These charges do not apply to dry edible beans or to grain owned by the federal government. Warehousemen may file a different storage rate for application to federal grain. These rates are typically lower than those charged farmers.

The storage and handling rates on beans are also deregulated to the extent that warehousemen may set their own rates. These rates must, however, be filed with the Commission, posted at the warehouse, and listed on the warehouse receipt.

Section 4 of this bill proposes to treat grain the same way that state law currently treats the storage and handling of beans. This change should be good for farmers and should eliminate the provision of preferential storage rates to the federal government. It should also discourage elevators from pursuing a federal license in order to avoid having to charge statutory storage and handling rates.

It is important to note that storage rates are, in effect, already partially deregulated. There are approximately 75 federally licensed grain warehouses in North Dakota. These firms already have the ability to raise and lower their storage rates. If the Legislature does not make the changes proposed in Section 4 of this bill, state-licensed elevators will have their hands tied when it comes to competing with federally licensed warehouses for the ability to store farmers' grain.

Section 5 – Federal Grades. This section addresses the use of federal grading standards. At the present time, state law requires that all non-bean transactions be based on federal grades. This bill proposes to allow the use of non-federal standards if both the buyer and the seller agree to use some other standards.

Section 6 – Destruction of Facilities. State law currently requires that warehousemen must notify the Commission within twenty-four hours if their facilities are destroyed. The law says that this notice must come by telephone and registered or certified mail. The Commission suggests that this statute be changed to simply require notice, by any means, within twenty-four hours.

Section 7 – Insolvency Assets. State law identifies assets that are available to the Commission to help satisfy patron claims in

warehouse insolvency cases. In most cases, these assets are limited to the value of grain on hand and the proceeds of the warehouseman's bond.

This bill proposes to expand this list of assets to include a few other items, but only if they are not being claimed by any other creditor. These items would include accounts receivable for grain sold, equity in grain hedging accounts, and grain product assets.

In some instances, this change may permit fuller payments to elevator patrons in insolvency proceedings.

Section 8 – Repeal of Federal Preference. As I discussed earlier, state law currently allows warehousemen to give the federal government preferential treatment in terms of grain storage rates. Without this ability, the federal government said that it would remove much of its grain from storage in North Dakota because lower storage rates were available elsewhere.

This bill's proposal to eliminate statutory storage rates eliminates the need to have a law that gives warehousemen the ability to charge something other than the statutory rate to the federal government. Farmers and the federal government should be treated the same when it comes to the storage of grain in a warehouse.

New Section – Volume Reports. When your committee deliberated on S.B. 2153, the Commission and the grain industry suggested an amendment that would give trade secret protection to volume reports that are submitted by individual grain buyers. The Senate adopted that amendment.

We made the same recommendation to the House Committee on Agriculture concerning H.B. 1156. Unfortunately, the amendment

did not reach them in time and it is not a part of the bill that is currently before you.

We are, therefore, recommending that the Senate amend this bill to include the same amendment that you attached to S.B. 2153. This action will further insure that grain elevators and grain buyers are treated the same. A corresponding amendment is attached to our testimony.

Mr. Chairman, that concludes our testimony on this bill. I would be happy to respond to questions from you and members of your committee.

NDCC, 60-02-17.1

TEXT

NORTH DAKOTA CENTURY CODE
TITLE 60. WAREHOUSING AND DEPOSITS
CHAPTER 60-02. GRAIN AND SEED WAREHOUSES

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Current through End of 1997 Reg. Sess.

60-02-17.1 Warehouse charges for grain owned by the United States.

Notwithstanding any other provision of this chapter, the commission may establish charges by rule for the storage, receipt, and redelivery of grain owned by the United States or its agencies when necessary to allow public warehousemen to store that grain, recover their costs, and obtain a reasonable return. A warehouse receipt issued to the United States or its agencies must identify the charges established by the commission. Unless otherwise prohibited or limited by the commission, the charges may remain effective after assignment of the grain by the United States for such time as agreed to by the warehouseman after which time the grain is subject to the charges prescribed by this chapter.

CREDIT

Source: S.L. 1991, ch. 696, § 5.

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