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10/16/03
Date

FR

2003 HOUSE AGRICULTURE

HCR 3021

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3021

House Agriculture Committee

Conference Committee

Hearing Date 2--07--03

Tape Number	Side A	Side B	Meter #
ONE	A		00 TO 16.7
Committee Clerk Signature <i>Edward D. Ellison</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee Members, we will start the hearing on HCR 3021.

REP. MUELLER : I am here this morning to talk to you about HCR 3021. I am Phil Mueller, Dist. 24. I farm in that part of the world. This Bill is about Federal licensing of grain warehouses. In the state of ND. And across the country for that matter. The reason the United States supported the Agr. Action ruled that if grain warehouses had a Federal License, they were not required to have a state license. N.D. Requires that state license for all grain warehouses and elevators in our state. That ruling is not in affect as yet. HCR asks that the congressional and the USDA to rescind that ruling and that is now why we want to do it. There are a number of reasons. The USDA through the commodities credit corporation come out and works with Federally licensed warehouses. Were we not in a position to protect cash grain sales. As one example. We are not in a position to protect cash gain sales/ We don't have a down home

La Costa Richard
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10/16/03
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House Agriculture Committee
Bill/Resolution Number HCR 3021
Hearing Date 2-7-03

mechanism to inform farmers about there rights in case of elevator insolvency's. There are all kinds of issues. I think what the PSC has done is to be involved with elevator insolvency's There is going to be less protection and less trust funds resources in the case of elevator insolvency's if the USDA is sole license. The PSA is in a position to those licensees, grain elevators on a day to day basis. I would submit that the Kansas City and the USDA dose not quite as well as the ND PSA. Wimbelton Grain had both a State license and a Federal license. They chose to have a Federal license. In the end the ND PSA put about \$750,000.00 Back into the hands of the producers and the community of Wimbelton through there efforts. The \$750,000.00 dollars involved bounced checks, unsigned contracts, forged contracts, credit sale types, thirty day cash sales and I guess I would ask John what he gets here. Talked about 30 day cash sales. That was new stuff for all of us. USDA and there licensee and there involvement with the Wimbelton situation did not want any thing to do with that stuff. They could not wait to get back to Kansas City. I am not trying to be critical. They did what they thought they had to do. The NDPSC had a lot to do with resolving those issues. They did what the law allowed them to do. In conclusion I think that if we continue to have dual licensing Of elevator warehouses grain warehouses in our state. Some mechanism needs to be put in place. The Resolution says don't come in the ND and tell us that you don't have to be licensed by the state. That is what the Federal preemption is attempting to do.

CHAIRMAN NICHOLAS: We have dealt with these issues over a period of time and we have the new bill that you and Rep. Pollert. What were the losses experienced in your community. What was recovered and what was the actual loss? In a nut shell there were about \$4,000,000.00 million dollars out there that was in question when the elevator went insolvent.

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Through the efforts of the PSC and I will say USDA about \$3,000,000.00 million dollars came back to stored grain people. Cash sale things etc. In that process, what happens in an insolvency the group that comes in, in this case the USDA we are going to have a sale here the seventh of January. What ever the date is. So you kind of have a fire sale. Even for those who considered themselves to be the luck ones in the community, they did not come out all that well I represent a group that were not so lucky. We have in excess in one million dollars that did not come back to the farmers because of credit sales. It is not yet resolved. We are going to the supreme court. Be care full with credit sales.

TONY CLARK: PSC {{{{{{HANDED OUT TESTIMONY}}}}} I am testifying for the NDPSC. Please read testimony. Testified in SUPPORT OF THE BILL.

I passed out a NEW RELEASE AS TO USDA. TESTIMONY case read New Release.

CHAIRMAN NICHOLAS: Any questions of Mr. Clark? Rep. Mueller.

REPRESENTATIVE MUELLER: Who is footing the Bill. The Farmers in the end.

TONY CLARK: In the end it is always the farmers. In elevator that chooses to enter one of there contracts. Within these licensing contracts, they want the elevators to first there will be a miximum assessment amount that they may pay at the end of the year. If there is a Federal elevator insolvency in Wimbelton. What they would do is asses all the other Federal elevators around the country an amount to make up for that loss. There is a maximum amount that these elevators could be made to pay at end of year. If that dose not cover it there is also going to be another fee that will be tacked on regatrldless. The fee will buy an umbrella insurance policy.

CHAIRMAN NICHOLAS : Any other questions. Thank you Tony.

JOHN MILKEN: EXECUTIVE SECRETARY OF THE PUBLIC COMMISSION

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House Agriculture Committee
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Hearing Date 2-7-03

John passed out testimony of Roger Johnson's testimony. {{{{PLEASE READ
TESTIMONY}}}} Commissioner Johnson is in support of the Resolution.

CHAIRMAN NICHOLAS: Any questions of John?

REP. MUELLER : Talk about the thirty day cash window. Sales.

JOHN MILKEN: Right now state law that applies to credit sales contracts is any contract
any kind of agreement where payment will or may be made thirty days after title passes.

If we have a sale that is taking place in lets say Dec. 5 with a payment to be made on Jan. 2
that is not a credit sale contract. In Wimbelton we ran into a situation where farmers were
signing deferred payment contracts on Dec 5 and the contract says the payment will be made
between Jan 2 and Jan. 12, so we got into a situation there where the warehouseman had the
latitude to extend the payment option beyond 30 days. Farmers in that case were hoping that it
was going to be 30 days or less but the elevator had the latitude to go over 30 days. Those were
determined to be credit sales contracts. They were on those window of opportunity contracts.

CHAIRMAN NICHOLAS: Any other support for this Resolution?

CLYDE KREBS: Executive Vice President of the NDGDA. I own and operate an elevator in
Glen Ullin. Four years ago the legislature reworked our grain warehousing to accomrnodate
the Federal Laws. Now they want to eliminate any state jurisdiction whatsoever for Federally
licensed grain warehouses. I am distributing a copy of a Resolution that unanimously
adopted at our convention opposing the Federal preemption. It says we urge USDA to rescind
this rule and corrective action is not taken soon we urge Congress to act to restore the states
right in this regard. Earlier this week as John Milke mentioned they did come out with a plan if
you can call it that the silver gap coverage for farmers at Federal Warehouses. We are not

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Hearing Date 2-7-03

overly impressed with the way this is written. We like our State Law much better. Had the PSC not had jurisdiction at Wimbelton through the state grain buyer law farmers would have received about \$775,000.00 dollars less in payments. Most elevator managers and farmers in ND would much rather deal with the PSC. In Bismarck then someone in KANSAS City.

Attaching this Resolution send a message to the Fed's that state government is united in keeping Some state control for all of it's grain buyers.

CHAIRMAN NICHOLAS: Any more testimony in support of this Bill. Any opposition?

THE COMMITTEE WILL CLOSE THE HEARING ON HCR 3021

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10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3021

House Agriculture Committee

Conference Committee

Hearing Date 2--07--03

Tape Number	Side A	Side B	Meter #
ONE		B	TO END
Committee Clerk Signature	<i>Edward J. Clayton</i>		

Minutes:

CHAIRMAN NICHOLAS: Committee Members we will open on HCR 3021

The chair will entertain a motion on HCR 3021. REPRESENTATIVE KREIDT MADE MOTION FOR DO PASS IT WAS SECONDED BY REPRESENTATIVE BOE THE ROLL WAS TAKEN THERE WAS 12 YES 0 NO 1 ABSENT
NICHOLAS CARRIED THE BILL.

Colineta Richardson
Operator's Signature

10/16/03
Date

HCR 3021
2-7-03

Date:
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House AGRICULTURE COMMITTEE

Check here for Conference Committee

UNANSWERED

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By KREIDT Seconded By Boe

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS	✓				
VICE CHAIRMAN POLLERT	✓				
REPRESENTATIVE BELTER					
REPRESENTATIVE BOEHNING	✓				
REPRESENTATIVE KELSCH	✓				
REPRESENTATIVE KINGSBURY	✓				
REPRESENTATIVE KREIDT	✓				
REPRESENTATIVE UGLEM	✓				
REPRESENTATIVE WRANGHAM	✓				
REPRESENTATIVE BOE	✓				
REPRESENTATIVE FROELICH	✓				
REPRESENTATIVE MUELLER	✓				
REPRESENTATIVE ONSTAD	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment NICHOLAS

Yolanda Richardson 10/16/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 7, 2003 2:41 p.m.

Module No: HR-24-2048
Carrier: Nicholas
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HCR 3021: Agriculture Committee (Rep. Nicholas, Chairman) recommends **DO PASS**
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3021 was placed on the
Tenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-24-2048

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2003 SENATE AGRICULTURE
HCR 3021

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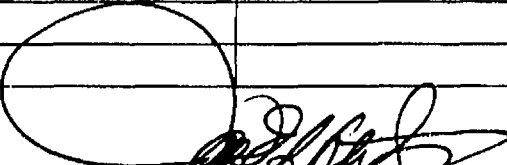
2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3021

Senate Agriculture Committee

Conference Committee

Hearing Date 03/07/03

Tape Number	Side A	Side B	Meter #
1	x		18 - 2565
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the hearing on HCR 3021. All members were present.

Representative Mueller introduced the resolution. He also invited the members of the committee to attend the 66th Annual Winter Show, March 7 - 16 in Valley City and distributed a schedule of events.

Representative Mueller said the resolution refers to the federal licensing of grain warehouses.

The USDA wants to do a federal preemption of North Dakota licensing requirements. Currently,

North Dakota law requires a state license for grain warehouses and a federal license is optional.

The USDA has recently changed its regulation so if a grain warehouse has a federal license, it

would not need a state license. Twelve states have gone on record against this change in the

federal regulations. This resolution is asking not to carry through with this preemption.

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Senate Agriculture Committee
Bill/Resolution Number HCR 3021
Hearing Date 03/07/03

Representative Mueller said the recent experience with the insolvency of Wimbledon Grain showed the USDA cannot adequately protect cash sales. They have no mechanism to inform producers about their rights in case of an insolvency.

Wimbledon grain had both a federal and state warehouse license. At the end of the process, the Public Service Commission made sure \$750,000 was returned to producers while USDA just wanted to get out of town and would have left \$750,000 on the table. The community is still short \$1.1 million which affects all businesses in town.

Senator Klein asked if the elevator had been only licensed by the federal government, would producers still be out \$750,000? (meter # 615)

Representative Mueller said yes. USDA did not consider outstanding checks, unsigned credit sale contracts or forged credit sale contracts. The Public Service Commission worked to resolve these issues while USDA did not care. The Public Service Commission ruled credit sale contracts within a 30 day window were cash sales and USDA did not care about this issue.

Senator Klein asked if someone was going to jail over this situation?

Representative Mueller said it is a foggy issue and probably no one will go to jail. The producers mostly wanted their money.

Senator Seymour asked why not just write a letter instead of introducing a resolution?

Representative Mueller said he will but a resolution shows the state's support. Twelve states have already passed resolutions on this matter.

Senator Urlacher asked about the forged contracts, who were they forged by? (meter # 912)

Representative Mueller said they were forged by management. Public Service Commission regulations require a credit sales contract for all such transactions. When an audit is upcoming,

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Senate Agriculture Committee
Bill/Resolution Number HCR 3021
Hearing Date 03/07/03

management has to match grain with its classification. When a farmer has authorized a credit sale over the phone but hasn't been in to sign a contract, there is sometimes a temptation by management to sign the contract for the farmer if the auditors were coming or because he knew the producer had authorized the transaction.

Senator Nichols asked why an elevator would want both a federal and state license if there is such a problem? (meter # 1113)

Representative Mueller said there isn't a problem unless there is an insolvency. They might want the added protection, there is a bond on the federal license too.

Senator Nichols asked if both licenses with both bonds make the situation better?

Representative Mueller said it does offer more bonding coverage. However, in the case of Wimbledon Grain, the bonds have not been tapped to date. State law and the bonding company attorney says there is not a liability.

Tony Clark, Public Service Commissioner, testified in favor of the bill (written testimony) (meter # 1382) He said there are three types of grain transactions at warehouses: warehoused grain (stored for the producer), cash sale grain (sold to the elevator and paid for within 30 days) and credit sale grain (delayed price or deferred price, paid for in more than 30 days). There has been a bipartisan effort to stop the preemption by USDA of the authority of states to protect their farmers with grain warehousing licenses. He distributed testimony from Roger Johnson, Commissioner of Agriculture who was unable to attend today. He also distributed a USDA news release describing the proposed changes.

Senator Flakoll said it is too bad we can't get closer to the Packer and Stockyards requirement of making payment within 48 hours. He asked Mr. Clark to forward a copy of the supreme court

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Senate Agriculture Committee
Bill/Resolution Number HCR 3021
Hearing Date 03/07/03

decision regarding the access of the trust fund the Senate Agriculture Committee when it is made.

Senator Seymour asked what is a federal warehouse?

Mr. Clark said he refers to a federal warehouse, one who has a federal license for its warehouse operation and who has a North Dakota grain buyers license for its cash sale grain. There are about 100 such elevators in North Dakota.

Senator Nichols asked why USDA would want to take away protection from farmers?

Mr. Clark said this is a mystery. There is speculation that large interstate companies don't like dealing individually with 50 different states for licensing requirements and procedures. USDA says that is not the reason, they say the reason is the result of a court case that says they will have more liability. Its difficult to get a straight answer from USDA.

Senator Flakoll said testimony from Steve Strege, North Dakota Grain Dealers Association in support of the resolution and who was unable to attend the hearing has been distributed..

Brian Kramer, North Dakota Farm Bureau, testified in favor of the resolution. He said the National Farm Bureau has been instumental in getting the stay. (meter # 2364)

Mark Sitz, North Dakota Farmers Union, testified in support of the resolution. It has been well described in testimony today. (meter # 2436)

Paul Thomas, North Dakota Ag Coalition, testified in support of the resolution.

Lance Hagen, North Dakota Grain Growers, testified in favor of the resolution.

Senator Flakoll closed the hearing on HCR 3021.

It was moved by Senator Erbele, seconded by Senator Nichols and passed on a roll call vote that the Senate Agriculture Committee take a Do Pass action on HCR 3021. Voting yes were

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Senate Agriculture Committee
Bill/Resolution Number HCR 3021
Hearing Date 03/07/03

Senator Flakoll, Senator Erbele, Senator Klein, Senator Urlacher, Senator Nichols and Senator Seymour. Senator Flakoll will carry the resolution to the floor.

Chairman Flakoll moved on to other business of the committee.

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10/16/03
Date

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Date: 3/7/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3021

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen Erbele E Seconded By Sen Nichols

Senators	Yes	No	Senators	Yes	No
Senator Flakoll, Chairman	✓		Senator Nichols	✓	
Senator Erbele, Vice Chairman	✓		Senator Seymour	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Flakoll

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

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REPORT OF STANDING COMMITTEE (410)
March 7, 2003 12:45 p.m.

Module No: SR-41-4230
Carrier: Flakoll
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HCR 3021: Agriculture Committee (Sen. Flakoll, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3021 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-41-4230

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2003 TESTIMONY

HCR 3021

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10/16/03

H.C.R. 3021

Presented by: Tony Clark, Public Service Commissioner
Before: House Agriculture Committee
Honorable Eugene Nicholas, Chairman
Date: February 7, 2003

TESTIMONY

Mr. Chairman and members of the Committee, I am Public Service Commissioner Tony Clark, I hold the Commission's grain elevator licensing portfolio and I am testifying in support of HCR 3021 on behalf of the Public Service Commission.

In North Dakota, an elevator can choose to be wholly state licensed and bonded, which gives farmers protection over both their warehoused and sold (non-credit sale) grain. It also has the option of being licensed by the federal USDA for its warehousing activities. The federal government, however, does not protect the cash sales of farmers. Consequently, many states, like North Dakota, require some form of additional state licensure and bonding of the federal elevators, so farmers' cash sales can be protected regardless of which type of elevator they sell to. The idea is that there should be no incentive or disincentive to any particular elevator or farmer based on the type of protection granted by different levels of government.

Inexplicably, however, the USDA proposed late last summer a new rule that would preempt the authority of any state to protect farmers' cash sales to federal elevators. At the same time, they indicated they wouldn't offer any protections themselves. While they have delayed their timetable a bit and have attempted to address some of the concerns, the fact remains that the USDA still indicates it has

every intention of preempting the authority of states to protect their farmers. While the USDA's most recent proposal is still sketchy, and does appear to offer some level of protection for farmers cash sales, the fact is that the USDA proposal is still, in most respects, an inferior level of protection for farmers when compared to our North Dakota statutes.

State executive branch officials and congressional offices from around the nation have been vigorously opposing the USDA proposal. All three Public Service Commissioners, the Attorney General and the Agriculture Commissioner have signed on to a letter to the US Secretary of Agriculture urging her to end this preemption attempt. We hope the legislature will look favorably on this resolution to do the same.

Thank you Mr. Chairman, I would be happy to answer any questions you may have.

Salveta Rickford
Operator's Signature

10/16/03
Date

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



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600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

**Testimony of Roger Johnson
Agriculture Commissioner
House Concurrent Resolution 3021
House Agriculture Committee
Peace Garden Room
February 7, 2003**

Good morning Chairman Nicholas and members of the House Agriculture Committee. I am Roger Johnson and I appear before you today as North Dakota's Agriculture Commissioner and as a member of the National Association of State Departments of Agriculture Warehouse Taskforce. Jon Mielke, with the Public Service Commission, served as my representative on the NASDA Taskforce.

I am here to offer my support for HCR 3021, which relates to grain warehouse regulations and United States Department of Agriculture's attempt to preempt state's rights with respect to the regulation of grain merchandising.

The United States Warehouse Act (USWA) was revised in November of 2000 and USDA published the final rule in August of this past year without the opportunity to comment on language that was added in subsection (c), Part 735.1 which reads, "Compliance with state laws relating to the warehousing, grading, weighing, storing, merchandising or other similar activities

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is not required with respect to activities engaged in by a warehouse operator in a warehouse subject to a license issued in accordance with this part."

I just returned from the mid-year meeting of the National Association of State Departments of Agriculture (NASDA) mid-year meeting in Washington, D.C. where this issue was given a great deal of attention by my counterparts from around the country. Specifically, NASDA adopted an "Action Item" which calls for three things:

1. USDA should withdraw the USWA rule to provide for additional negotiations with states and allow for a comment period for drafting a new rule.
2. USDA should develop a cooperative federal-state regulatory system and refrain from adopting a federal pre-emptive program.
3. Congress should work through legislation to resolve this grain regulation issue in the event that a mutual resolution with USDA cannot be achieved.

NASDA also adopted the following policy language regarding warehouse regulation (original adoption 10/02, amended 2/03):

"The U.S. Warehouse Act should not preempt state authority to provide protection to producers doing business with federally licensed warehouses. NASDA endorses the immediate formation of a task force to resolve issues while USDA observes a 90-day moratorium on issuance of new federal warehouse licenses, except peanuts. Appropriate legislative action to amend the U.S. Warehouse Act should be pursued, based on Board approval.

Mandatory state warehouse programs have been established in many states to both adequately serve agricultural commodities and to protect farmers from suffering financially if a warehouse experiences inventory shortages or financial insolvency. The optional federal warehouse program also serves agricultural commodities, but lacks many protections for farmers.

All warehouses that store agricultural commodities for the public are licensed either by the USDA via the United States Warehouse Act (USWA) or by the respective state in which the warehouse operates. Further, 23 states also regulate the merchandising of grain through grain dealer laws. These state programs serve the agricultural community well in terms of cost efficiencies and regulatory oversight.

USDA has never regulated the merchandising of grain and they claim they do not want to, however, the USDA has taken the position that the USWA covers the merchandising of agricultural commodities and that the industry is not required to follow state law. States are very concerned about the USDA's interpretation that the federal law supersedes state law in the area of merchandising. This interpretation could not only lead to zero protection for farmers who merchandise agricultural commodities at a warehouse licensed under the USWA, but also put in jeopardy state programs where commodity producers have chosen to pay into indemnity funds for their own protection.

USDA has drafted changes to the USWA which include among other things the allowance of issuing electronic warehouse receipts. The states are supportive of the concept of electronic warehouse receipts and agree that there should be a standard format; however, the states would like to provide input into this process to assure that the state needs and requirements are being

addressed. Further, this USWA rewrite needs to address the old concept of cooperative agreements between states and the USDA. A cooperative agreement between the state and the USDA would benefit the producer, the industry, and most importantly the taxpayer.

NASDA believes that the USDA should cooperate with the state departments of agriculture in the regulation of agricultural commodities' warehouse activities to provide producers with the best protection possible while subjecting the industry to the minimum amount of regulatory oversight necessary at the least cost to the taxpayer.

NASDA believes that legislation should be passed which supports a policy or plan of insurance that includes quality loss adjustment coverage. Under this legislation samples shall be taken and analyzed by a grain grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act or the Uniform Grain and Rice Storage Agreement, or by a laboratory approved by the USDA Risk Management Agency.

NASDA urges the administration and the U.S. Congress to direct the USDA to collaborate with state agencies and to recognize the states authority to license and regulate grain dealer and merchandising activities of federally licensed grain warehouses and examine all agricultural warehouses within their states irrespective of their license status under the U.S. Warehouse Act."

Earlier this week, USDA announced new actions aimed at rectifying this situation.

Unfortunately those actions do not go far enough and I believe that in the absence of appropriate

Salvatore Rickford
Operator's Signature

10/16/03
Date

action by USDA, Congress must act to address this issue to ensure that states' rights are protected.

HCR 3021 provides the opportunity for this legislative assembly to send a message – the right message – to USDA and Congress that this preemptive rule must be changed. Chairman Belter and committee members, I urge a do pass on HCR 3021.

5

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USDA NEWS RELEASE

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Washington, DC 20250-1307 • Voice: (202) 720-4623 • Email: oc.news@usda.gov • Web: <http://www.usda.gov>

Release No. 0047.03

Alisa Harrison (202) 720-4623

USDA IMPROVES PRODUCER PROTECTION IN FEDERALLY LICENSED GRAIN WAREHOUSES

WASHINGTON, Feb. 5, 2003 – The U.S. Department of Agriculture today announced actions to increase producer protection in federally licensed grain warehouses under the U.S. Warehouse Act. The changes to the federal license requirements for grain warehouse operators result from collaborative efforts in recent months between USDA and various stakeholder groups. The changes are intended to improve producer protection requirements already in place for grain storage obligations and extend, for the first time ever, protection to producers who sell grain to federal licensees.

USDA also officially extended the moratorium on accepting new federal license applications under the U.S. Warehouse Act through February 14, 2003. The extension has provided the time needed to implement the enhancements to the federal licensing program.

The enhanced federal licensing program coverage provides that in the event of a warehouse insolvency:

- For producers and other entities (depositors) who hold title to grain stored in a federally licensed warehouse, continued 100% coverage for these storage obligations;
- For producers with non-credit type sales contracts where grain has been delivered but payment has not been received, 80% coverage; and
- For producers with credit type sales contracts, where grain has been delivered but payment has not been received, 80% coverage on the first \$25,000 and 50% coverage on the balance.

USDA also modified the existing financial requirements for federal licensees in order to lower the risks and enhance protection for producers and depositors:

- Increase the basic net worth requirement a warehouse operator must have to qualify for a license from the current \$50,000 to \$150,000; and
- Increase the level of auditing required of the warehouse operator's financial statements by an independent certified public accounting firm.

In the event of an insolvency of a federal licensee, USDA will first dispose of stocks and use the liquidation proceeds to compensate depositors and producers with these sales contracts. Producers with storage obligations will be paid first. If the liquidation proceeds are insufficient to cover producers with storage obligations losses or are insufficient to cover producers with sales contract losses, the losses up to \$5 million will be paid from funds obtained from an assessment levied on all grain federal licensees. For losses in excess of \$5 million but less than \$15 million, payments to producers will come from a nation-wide insurance policy funded by federal licensees. No federal funds will be used to make these payments.

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Salvatore Richard
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10/16/03
Date

As a condition of obtaining a federal license, each federal licensee agrees to pay this assessment based upon a combination of licensed capacity and producer contract volume. For the additional \$10 million in coverage, USDA will obtain a comprehensive insurance policy on behalf of the federally-licensed grain warehouses to losses in between \$5 and \$15 million. Federal licensees will pay a proportionate share of the insurance policy premium as an additional licensing fee.

USDA's primary objective in making these modifications is to provide a consistent program of improved producer protection nationwide. USDA designed this approach to be the least disruptive to existing state programs, taking into account the need for USDA to have a uniform policy for all producers who deal with federally-licensed warehouses.

The federal license agreement or federal examinations will not regulate certain activities in federally licensed grain warehouses. Those activities such as security interests, the calibration and testing of scales conducted by state weights and measures officials, producer-funded commodity promotion and research programs, producer-funded indemnity funds and environmental programs will be specifically exempted in the licensing agreement.

USDA worked in recent months with a task force composed of representatives of National Association of State Departments of Agriculture (NASDA) and National Grain and Feed Association (NGFA). USDA officials also had numerous consultations with producer organizations, the warehouse industry and others to discuss the Warehouse Act and USDA proposals. These consultations will continue with these groups as implementation proceeds.

USDA will provide the new licensing agreement to current federal licensees this month with a 30-day window for review and return to USDA. USDA will complete the compliance program by the end of April. Beginning February 17, 2003, after expiration of the moratorium, USDA will begin accepting applications for new federal licenses.

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HCR 3021

**Presented By: Tony Clark
Public Service Commissioner**

**Before: Agriculture Committee
Senator Tim Flakoll, Chairman**

Date: March 7, 2003

TESTIMONY

Mr. Chairman and members of the Committee, I am Public Service Commissioner Tony Clark, I hold the Commission's grain elevator licensing portfolio and I am testifying in support of HCR 3021 on behalf of the Public Service Commission.

In North Dakota, an elevator can choose to be wholly state licensed and bonded, which gives farmers protection over both their warehoused and sold (non-credit sale) grain. It also has the option of being licensed by the federal USDA for its warehousing activities. However, the federal government does not protect the cash sales of farmers. Consequently, many states, like North Dakota, require some form of additional state licensure and bonding of the federal elevators, so farmers' cash sales can be protected regardless of which type of elevator they sell to. The idea is that there should be no incentive or disincentive to any particular elevator or farmer based on the type of protection granted by different levels of government.

Inexplicably, however, the USDA proposed late last summer a new rule that would preempt the authority of any state to protect farmers' cash sales to federal elevators. At the same time, they indicated they wouldn't offer any protections themselves. While they have delayed their timetable a bit and have attempted to address some of the concerns, the fact remains that the USDA still indicates it has every intention of preempting the authority of states to protect their farmers. While the USDA's most recent proposal is still sketchy and does

appear to offer some level of protection for farmers cash sales, the fact is that the USDA proposal is still, in most respects, an inferior level of protection for farmers when compared to our North Dakota statutes.

State executive branch officials and congressional offices from around the nation have been vigorously opposing the USDA proposal. All three Public Service Commissioners, the Attorney General, and the Agriculture Commissioner have signed on to a letter to the US Secretary of Agriculture urging her to end this preemption attempt. We hope the legislature will look favorably on this resolution to do the same.

Thank you Mr. Chairman, I would be happy to answer any questions you may have.

Roger Johnson
Agriculture Commissioner
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**Testimony of Roger Johnson
Agriculture Commissioner
House Concurrent Resolution 3021
Senate Agriculture Committee
Roosevelt Park Room
March 7, 2003**

Good morning Chairman Flakoll and members of the Senate Agriculture Committee. I am Roger Johnson and I appear before you today as North Dakota's Agriculture Commissioner and as a member of the National Association of State Departments of Agriculture Warehouse Taskforce. Jon Mielke, with the Public Service Commission, served as my representative on the NASDA Taskforce.

I am here to offer my support for HCR 3021, which relates to grain warehouse regulations and United States Department of Agriculture's attempt to preempt state's rights with respect to the regulation of grain merchandising.

The United States Warehouse Act (USWA) was revised in November of 2000 and USDA published the final rule in August of this past year without the opportunity to comment on language that was added in subsection (c), Part 735.1 which reads, "Compliance with state laws relating to the warehousing, grading, weighing, storing, merchandising or other similar activities

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is not required with respect to activities engaged in by a warehouse operator in a warehouse subject to a license issued in accordance with this part."

I attended the mid-year meeting of the National Association of State Departments of Agriculture (NASDA) in Washington, D.C. earlier this winter where this issue was given a great deal of attention by my counterparts from around the country. Specifically, NASDA adopted an "Action Item" which calls for three things:

1. USDA should withdraw the USWA rule to provide for additional negotiations with states and allow for a comment period for drafting a new rule.
2. USDA should develop a cooperative federal-state regulatory system and refrain from adopting a federal pre-emptive program.
3. Congress should work through legislation to resolve this grain regulation issue in the event that a mutual resolution with USDA cannot be achieved.

NASDA also adopted the following policy language regarding warehouse regulation (original adoption 10/02, amended 2/03):

"The U.S. Warehouse Act should not preempt state authority to provide protection to producers doing business with federally licensed warehouses. NASDA endorses the immediate formation of a task force to resolve issues while USDA observes a 90-day moratorium on issuance of new federal warehouse licenses, except peanuts. Appropriate legislative action to amend the U.S. Warehouse Act should be pursued, based on Board approval.

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Mandatory state warehouse programs have been established in many states to both adequately serve agricultural commodities and to protect farmers from suffering financially if a warehouse experiences inventory shortages or financial insolvency. The optional federal warehouse program also serves agricultural commodities, but lacks many protections for farmers.

All warehouses that store agricultural commodities for the public are licensed either by the USDA via the United States Warehouse Act (USWA) or by the respective state in which the warehouse operates. Further, 23 states also regulate the merchandising of grain through grain dealer laws. These state programs serve the agricultural community well in terms of cost efficiencies and regulatory oversight.

USDA has never regulated the merchandising of grain and they claim they do not want to, however, the USDA has taken the position that the USWA covers the merchandising of agricultural commodities and that the industry is not required to follow state law. States are very concerned about the USDA's interpretation that the federal law supersedes state law in the area of merchandising. This interpretation could not only lead to zero protection for farmers who merchandise agricultural commodities at a warehouse licensed under the USWA, but also put in jeopardy state programs where commodity producers have chosen to pay into indemnity funds for their own protection.

USDA has drafted changes to the USWA which include among other things the allowance of issuing electronic warehouse receipts. The states are supportive of the concept of electronic warehouse receipts and agree that there should be a standard format; however, the states would like to provide input into this process to assure that the state needs and requirements are being

addressed. Further, this USWA rewrite needs to address the old concept of cooperative agreements between states and the USDA. A cooperative agreement between the state and the USDA would benefit the producer, the industry, and most importantly the taxpayer.

NASDA believes that the USDA should cooperate with the state departments of agriculture in the regulation of agricultural commodities' warehouse activities to provide producers with the best protection possible while subjecting the industry to the minimum amount of regulatory oversight necessary at the least cost to the taxpayer.

NASDA believes that legislation should be passed which supports a policy or plan of insurance that includes quality loss adjustment coverage. Under this legislation samples shall be taken and analyzed by a grain grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act or the Uniform Grain and Rice Storage Agreement, or by a laboratory approved by the USDA Risk Management Agency.

NASDA urges the administration and the U.S. Congress to direct the USDA to collaborate with state agencies and to recognize the states authority to license and regulate grain dealer and merchandising activities of federally licensed grain warehouses and examine all agricultural warehouses within their states irrespective of their license status under the U.S. Warehouse Act."

Last month, USDA announced new actions aimed at rectifying this situation. Unfortunately those actions do not go far enough and I believe that in the absence of appropriate action by USDA, Congress must act to address this issue to ensure that states' rights are protected.

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John Costa Richardson
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HCR 3021 provides the opportunity for this legislative assembly to send a message -- the right message -- to USDA and Congress that this preemptive rule must be changed. Chairman Flakoll and committee members, I urge a do pass on HCR 3021.

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March 7, 2003

*Steve
Strege*

TO: Senate Ag Committee
RE: HCR 3021

The Grain Dealers Association supports HCR 3021. We are definitely not in favor of the feds preempting state warehouse and grain buyer law. We have worked with the PSC and other organizations to keep this from happening. Right now Congress has slapped on a six-month delay in new fed regs announced Feb 5 that supposedly solve the problems, but unfortunately do not. The following resolution was unanimously adopted at our convention in January.

Whereas: USDA has adopted a rule to preempt states' rights to regulate grain merchandising activities at federally licensed warehouses, and

Whereas: USDA does not have in place anything to replace the protections of these state programs, and

Whereas: State licensing systems have served well in the past, offering farmers better protection in many cases and a more local contact point for both the grain elevators and farmers,

Therefore be it resolved the North Dakota Grain Dealers Association urges USDA to rescind this rule, and if corrective action isn't taken soon urges Congress to act to restore states' rights in this regard.

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