

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2136

2005 SENATE AGRICULTURE

SB 2136

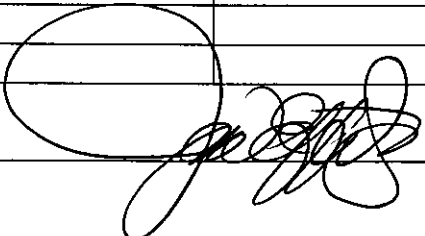
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2136

Senate Agriculture Committee

☐ Conference Committee

Hearing Date January 6, 2005

Tape Number	Side A	Side B	Meter #
1	x		1,247 - 3573
Committee Clerk Signature 			

Minutes:

**Chairman Flakoll** opened the hearing on SB2136 a bill relating to licensing of roving grain buyers; relating to licensing and monthly reports of grain buyers; relating to notification to the public service commission of the destruction of a facility operated by a facility-based grain buyer.

All members were present.

**Bill Binek**, Chief Counsel for the Public Service Commission, testified in favor of the bill.

(written testimony) meter 1322

**Senator Flakoll** asked if this bill would apply to a horse stable in Moorhead that wanted to buy a load of oats in West Fargo?

**Mr. Binek** said no, if a buyer purchased grain for their own use, they are not considered to be a grain buyer.

**Senator Flakoll** asked if the stable was feeding horses for others, would they be a grain buyer?

Mr. Binek said no, as long as they were buying grain for use in their own business. (meter 1720)

**Senator Seymour** asked what revenue is involved with this bill.

**Mr. Binek** said there would be fees for licensing, there is a \$200 license fee.

Senator Taylor asked how the size of the bond is determined.

**Mr. Binek** said the bond is established by rule or statute. It is based on volume.

**Sue Richter**, from the Public Service Commission staff, stepped to the podium. The first year's bond is based on projected volume. The second year the bond is based on the actual first year business. Ultimately, the bond is based on a three year rolling average. (meter 2152)

**Senator Urlacher** asked what a bond would cost.

**Mr. Binek** said the cost would depend on the size of the bond. He does not have those specific figures.

**Senator Urlacher** asked how this would affect the number of licenses.

**Mr. Binek** said they do not anticipate it would change the numbers of licenses very much.

**Senator Flakoll** said this is reflected in the fiscal note.

**Senator Flakoll** asked what recourse the Public Service Commission has in the event a grain buyer is not licensed since they can't pull the license. (meter 2286)

**Mr. Binek** said they could issue a cease and desist order, file a complaint and assess a penalty of up to \$5000.

**Senator Klein** said in a recent case in Wells County a business who they believed was doing business appropriately was told by the Public Service Commission that they needed to be licensed as a grain buyer. They were milling grain and passing it on the next market. They have been told they needed to be licensed and bonded and this has become difficult for a struggling little company. How does this apply?

**Mr. Binek** said they are a processor and processors are required to be licensed as a grain warehouser under the law.

**Senator Klein** asked if this is true even if they don't own the grain.

**Mr. Binek** said yes. He added that this company has since become licensed. (meter 2321)

**Senator Flakoll** asked if companies with limited storage space who might lease storage in another state, are they outside the jurisdiction of the Public Service Commission with this out of state storage?

**Mr. Binek** said if an elevator has accepted the grain, they must have licensed storage for the grain which can include on the ground storage. Some elevators have farm storage and it must be licensed.

**Senator Flakoll** asked if this is true if the storage is out of state.

**Sue Richter** came to the podium to say that elevators can restore grain out of state and they must notify the Public Service Commission and must provide coverage. Many of these questions pertain to grain warehousing which is another portion of the law. In this case the Public Service Commission is concerned about more "fly by night" operators, who don't have facilities in the state. A Kansas buyer currently owes a North Dakota elevator \$50,000 and the same buyer also owes a South Dakota elevator over \$100,000.

**Senator Klein** asked if it is the responsibility of the elevator to ask to see the license of a roving grain buyer.

**Mr. Binek** said yes. They can also contact the Public Service Commission to see if they are licensed.

**Senator Urlacher** asked if they could obtain a list of the roving grain buyers from the Public Service Commission. (meter #3158)

**Sue Richter** said there is a list of licensed roving grain buyers in the office and on the Internet that is updated every other month. They get calls for this information from elevators and producers.

**Chairman Flakoll** closed the hearing on SB2136. (meter #3192)

**Senator Klein** moved a Do Pass on SB 2136.

**Senator Erbele** seconded the motion.

**Senator Seymour** asked why the fiscal note shows no income.

**Senator Flakoll** said it is because they do not expect there to be much of a change in the number of licensees.

**Senator Urlacher** said there is no way for them to estimate the change in the number of licenses.

The motion passed on a roll call vote 6-0-0. Senator Seymour will carry the bill.

The Senate Agriculture Committee moved on to other committee business.

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/05/2005

**REVISION**

Bill/Resolution No.: SB 2136

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Under this bill, the PSC hopes to license additional roving grain buyers, since one of the objectives of this bill is to increase the scope of the licensing requirement. However, the PSC does not expect the number of additional licensees to be great enough to result in a significant fiscal impact.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

A very small, insignificant, revenue increase is expected due to the issuance of additional licensees.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No expenditures are anticipated.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No appropriation is necessary.

<b>Name:</b>	Illona Jeffcoat-Sacco	<b>Agency:</b>	PSC
<b>Phone Number:</b>	701-328-2400	<b>Date Prepared:</b>	01/05/2005

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/23/2004

Bill/Resolution No.: SB 2136

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Under this bill, the PSC hopes to license additional roving grain and hay buyers, since one of the objectives of this bill is to increase the scope of the licensing requirement. However, the PSC does not expect the number of additional licensees to be great enough to result in a significant fiscal impact.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

A very small, insignificant, revenue increase is expected due to the issuance of additional licensees.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No expenditures are anticipated.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No appropriation is necessary.

<b>Name:</b>	Illona Jeffcoat-Sacco	<b>Agency:</b>	PSC
<b>Phone Number:</b>	701-328-2400	<b>Date Prepared:</b>	01/03/2004



Date: 1/6/05  
Roll Call Vote # 1

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2136**

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Senator Klein Seconded By Senator Erbele

Senators	Yes	No	Senators	Yes	No
Senator Flakoll	✓		Senator Seymour	✓	
Senator Erbele	✓		Senator Taylor	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Seymour

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

**REPORT OF STANDING COMMITTEE (410)**  
January 6, 2005 11:13 a.m.

**Module No: SR-03-0121**  
**Carrier: Seymour**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2136: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2136 was placed on the  
Eleventh order on the calendar.

2005 HOUSE AGRICULTURE

SB 2136

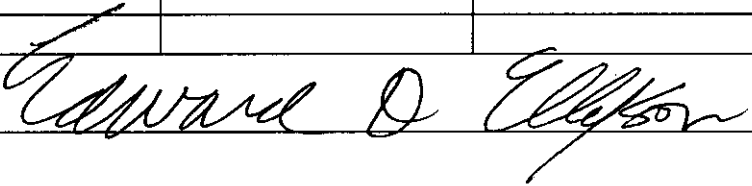
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2136

House Agriculture Committee

☐ Conference Committee

Hearing Date 2---24---05

Tape Number	Side A	Side B	Meter #
TWO	A		5.6 TO 20.3
Committee Clerk Signature 			

Minutes:

VICE CHAIRWOMAN KINGSBURY: Committee Members we will open on SB 2136.

ILLONA A. JEFFCOAT-SACCO: EXECUTIVE SECRETARY PUBLIC SERVICE

COMMISSION. MRS. CHAIRWOMAN AND COMMITTEE MEMBERS, MY NAME IS

ILLONA JEFFCOAT-SACCO.. The commission asked me to appear here today to testify in support of Senate Bill 2136 introduced at our request.

[[ILLONA PASSED OUT PRINTED TESTIMONY WHICH SHE READ FROM....PLEASE READ]]. THE BILL DEALS WITH ROVING GRAIN BUYERS. THE BILL CLARIFIES.

ILLONA: Offered to answer questions at the end of her printed testimony.

REPRESENTATIVE HEADLAND: If we did it for the warehouse we should do it for the grain buyers.

REPRESENTATIVE DAMSCHEN: AS TO SELL TO CANADA.

ILLONA: In regard to your question as to roving grain buyers buying canola If a farmer takes

His grain out of state, makes a contact in Canada, wants to sell canola to Canada then he would have to abide by the laws in Canada. But if the Canadian buyer is taking delivery in ND then he would be required to have a license. If a Canadian is soliciting without a license then he is operating illegally.

REPRESENTATIVE MUELLER: Please explain how it works. What is the minimum bond and maximum.

ILLONA: The minimum bond for a roving grain buyer is \$50,000.00. That authorizes a grain buyer to purchase up to 100,000.00 bushels of grain. For each fraction the bond would increase by \$20,000.00 dollars. Once you get to 500,000 thousand bushels the bond increases in \$5,000.00 increments.

REPRESENTATIVE MUELLER: I am not sure that is even close to what is needed.

ILLONA: You are correct. Fifty thousand dollars is not a lot. That is what is required.

We do have a number of Canadian grain buyers that are licensed in N.D. We are working with a number of Canadian Companies.

REPRESENTATIVE KINGSBURY: Any other questions. Do you want to take action on this bill.

**REPRESENTATIVE MUELLER MADE A MOTION FOR A DO PASS ON 2136.**

**REPRESENTATIVE FROELICH SECONDED THE MOTION.**

**THE CLERK WILL TAKE THE ROLL.**

**THERE WERE 10 YES 0 NO 3 ABSENT**

**REPRESENTATIVE MEULLER WILL CARRY THE BILL.**

**MADAM CHAIR WOMAN KINGSBURY CLOSED ON SB 2136**

15B 2136  
Date: 2-24-05  
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House HOUSE AGRICULTURE COMMITTEE

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

DO PASS

Motion Made By

Mueller

Seconded By

Arndt

Representatives	Yes	No	Representatives	Yes	No
REP. EUGENE NICHOLAS CHAIRMAN			REP. TRACY BOE	✓	
REP. JOYCE KINGSBURY VICE CHAIRMAN	✓		REP. ROD FROELICH	✓	
REP. WESLEY BELTER			REP. PHILLIP MUELLER	✓	
REP. M. BRANDENBURG	✓		REP. KENTON ONSTAD	✓	
REP. CHUCK DAMSCHEN	✓				
REP. CHAIG HEADLAND	✓				
REP. GARY KREIDT					
REP. GERALD UGLEM	✓				
REP. JOHN WALL	✓				

Total (Yes) 10 No 0

Absent 3

Floor Assignment

Mueller

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

**REPORT OF STANDING COMMITTEE (410)**  
February 24, 2005 12:49 p.m.

**Module No: HR-34-3563**  
**Carrier: Mueller**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2136: Agriculture Committee (Rep. Nicholas, Chairman) recommends DO PASS**  
**(10 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2136 was placed on the**  
**Fourteenth order on the calendar.**

2005 TESTIMONY

SB 2136



## **S.B. 2136**

**Presented by:** Bill Binek  
Chief Counsel  
Public Service Commission

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

**Date:** 6 January 2005

### **TESTIMONY**

Chairman and committee members, my name is Bill Binek. I am Chief Counsel for the Public Service Commission. The Commission asked me to appear here today to testify in support of Senate Bill 2136.

Section 1 of this bill proposes no substantive changes. The only changes are housekeeping changes, including moving the roving grain buyer language to a separate section.

Section 2 of this bill broadens the roving grain buyer license requirement. Currently, anyone in the state who sells grain to an out-of-state buyer may ship the grain out-of-state to that buyer, or have the buyer come into North Dakota to pick up the grain. We believe that any out of state grain buyer who comes into North Dakota to pick up grain should be licensed as a roving grain buyer.

A number of states do not require their grain buyers to be licensed or bonded. If a North Dakota seller sells grain to an unlicensed out of state grain buyer, the seller would have no recourse if the buyer defaults on payment. In many states grain buyer licenses may not extend to any seller

outside the state where the buyer is licensed, or may not cover a seller whose grain was not received in the state of the licensee.

Additionally, any company soliciting in North Dakota to buy grain should be licensed. Currently, the law requires that grain buyers who merchandise grain for compensation must be licensed. Many grain buyers may be soliciting to buy grain in the state but are not actually merchandising, or bringing buyers and sellers together, and therefore don't believe the law applies to their business practices. This bill would clarify that buyers who solicit must be licensed.

All grain sold to out of state grain buyers is grain that is not being delivered and sold to our local elevators. Unlicensed grain buyers have an unfair advantage over our licensed warehouses when they are in North Dakota buying grain without obtaining the required grain buyer license and corresponding bond.

This past fall a Minnesota grain buyer who bought grain from ND sellers became insolvent. There were a number of North Dakota patrons who sold grain to the Minnesota grain buyer for pick up in North Dakota. Unfortunately, these patrons were left with no bond coverage, even though that grain was not delivered to Minnesota but was picked up by the buyer in North Dakota. If the proposed changes were law at the time, that roving grain buyer would have been required to have a license and bond, which would have been available to cover patrons' losses.

Section 2 includes language identifying when a roving grain buyer license expires, the license fee, and the penalty for roving grain buyers who file late. This language was previously included in the law under section 1.

Section 3 removes the current requirement that the Commission not reissue licenses to any grain buyers who fail to file monthly reports.

Making this sanction discretionary would make it less harsh, and provide the Commission with more flexibility. Licenses are needed for businesses to operate and the failure to file a report does not seem to merit the loss of a license.

Section 4 repeals the current requirement to notify the Commission of destruction of facilities. Notification is not necessary for two reasons. Facility-based grain buyer licenses are based on grain purchases and are not tied to physical capacity. Therefore, even if there is a change in capacity resulting from some type of destruction, the destruction of facilities will not affect the bond requirement. Ultimately, a loss of space could result in a licensee handling fewer bushels and that change would then decrease the amount of required bond. When there is destruction at a facility, the licensee has important tasks to handle. A requirement to notify the Commission within 24 hours seems like an unreasonable and unnecessary burden on facility-based grain buyers faced with the larger problems of destruction due to fire or storm.

This completes my testimony. I will be happy to answer any questions you may have.

## **S.B. 2136**

**Presented by:** Illona A. Jeffcoat-Sacco  
Executive Secretary  
Public Service Commission

**Before:** Agriculture Committee  
Honorable Eugene Nicholas, Chairman

**Date:** 24 February 2005

### **TESTIMONY**

Mr. Chairman and committee members, my name is Illona Jeffcoat-Sacco. I am Executive Secretary for the Public Service Commission. The Licensing Division administers the Commission's jurisdiction over grain buyers in North Dakota. The Commission asked me to appear here today to testify in support of Senate Bill 2136 introduced at our request.

Section 1 of this bill proposes no substantive changes. The only changes are housekeeping changes, including moving the roving grain buyer language to a separate section.

Section 2 of this bill broadens the roving grain buyer license requirement. Currently, anyone in the state who sells grain to an out-of-state buyer may ship the grain out-of-state to that buyer, or have the buyer come into North Dakota to pick up the grain. We believe that any out of state grain buyer who comes into North Dakota to pick up grain should be licensed as a roving grain buyer.

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grain buyer, the seller would have no recourse if the buyer defaults on payment. In many states grain buyer licenses may not extend to any seller outside the state where the buyer is licensed, or may not cover a seller whose grain was not received in the state of the licensee.

Additionally, any company soliciting in North Dakota to buy grain should be licensed. Currently, the law requires that grain buyers who merchandise grain for compensation must be licensed. Many grain buyers may be soliciting to buy grain in the state but are not actually merchandising, or bringing buyers and sellers together, and therefore don't believe the law applies to their business practices. This bill would clarify that buyers who solicit must be licensed.

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