

2013 SENATE INDUSTRY, BUSINESS, AND LABOR

SB 2360

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2360
February 6, 2013
Job Number 18359

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

An Act to provide for a legislative management study regarding the mitigation of risk involved in prepaying for agricultural seed, fertilizer and various crop protection products

Minutes:

Chairman Klein: Opened the hearing.

Senator Wanzek: Introduced the bill and talked about the aspects of farming that are protected and explained the risk involved in prepayment of seed and fertilizer (.40-4:23).

Senator Sorvaag: Commented that he farmed for many years and did prepay. It was made very clear to him that this wasn't covered under any bonding. He was totally at risk for those prepaid dollars, even though the entity was required to have the product in-house, if he was going to use tax benefits. Isn't that part of managing a business and you are making that decision of whether or not you want to risk that dollars by investing. People invest in a lot of different things. You are pre-paying for a financial advantage; therefore you are taking a risk and why should the government cover you on that.

Senator Wanzek: Said he can't disagree with him and that he has often felt the same way. That is why he has mentioned the possibility of identifying a private solution, which might take legislative action to authorize the insurance department to allow something of this nature, a product. He is looking for a solution that enables farmers and the industry to find a solution in helping manage risk (5:15-7:40).

Scott Rising, North Dakota Soybean Growers Association: Said they are looking for an opportunity to take a hard look at the question. The advantage of the study is that it puts some weight behind bringing the right group of folks to the table to at least examine it. No one is looking for a government solution.

Chairman Klein: Closed the hearing.

Senator Laffen: Moved a do pass.

Senator Sinner: Seconded the motion.

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Roll Call Vote: Yes - 7 No - 0 Absent: 0

Floor Assignment: Senator Unruh

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2360**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Laffen Seconded By Senator Sinner

| Senators | Yes | No | Senator | Yes | No |
|----------------------|-----|----|----------------|-----|----|
| Chairman Klein | x | | Senator Murphy | x | |
| Vice Chairman Laffen | x | | Senator Sinner | x | |
| Senator Andrist | x | | | | |
| Senator Sorvaag | x | | | | |
| Senator Unruh | x | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Unruh

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

REPORT OF STANDING COMMITTEE

SB 2360: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2360 was placed on the Eleventh order on the calendar.

2013 HOUSE AGRICULTURE

SB 2360

2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

SB 2360
March 21, 2013
Job #20293

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To provide for a legislative management study regarding the mitigation of risk involved in prepaying for agricultural seed, fertilizer, and various crop protection products

Minutes:

Senator Wanzek, Sponsor: This bill is meant to study the practice of prepaying for agriculture seed and fertilizer and how we treat it when there is an insolvency of an entity. The farmer or the individual who prepays for fertilizer, seed, etc., and has not taken delivery, is the one left holding the bag when there is an insolvency. Prepaying is for tax reasons or the seed is not ready to deliver.

We are a bonded and licensed warehouse. We sell seed to other farmers. I hope you don't assume we are talking about a government solution. The commissioner has researched about private solutions.

As a producer I try to minimize my risk by buying from several businesses. We had farmers from Falkirk that had lost their money and had to buy their seed again.

Chairman Dennis Johnson: Those producers lost their money because they paid the elevator?

Senator Wanzek: They bought dry edible bean seed from the elevator that became insolvent. They are at the end of the line. We tried to give them some standing with the secured creditors but that would violate federal bankruptcy laws. If you delivered grain, you are covered under the bonding or the indemnity fund or a number of other places. If you are the secured creditor, you have secured assets to offset the risk. But the ones making the deposit are unsecured at the end of the line. They had no way of collecting any money.

Chairman Dennis Johnson: Are you aware of product that insurance companies have for that protection?

Senator Wanzek: We visited with the Insurance Department. The commissioner will have something to share.

Representative Headland: Any time you hedge against risk there is a cost. It would take a lot of participation to have an effective product. Would any solution from a study be an option or a mandate?

Senator Wanzek: It would take economies of scale to make it affordable, but I don't like being mandated. I prefer a solution that would be voluntary.

(8:20)

Randy Christmann, Public Service Commissioner, Speaking as a Private Citizen: Having been a Falkirk customer, I can explain this situation. I want an option for farmers to protect themselves.

Anhydrous can't be stored on the farm so it can't be delivered when paid. For tax purposes people prepay. Also small elevators can't order until they have the money. So we have a system where they give discounts if they prepay so they can have the product on hand.

Bonds only cover cash sales. The indemnity fund is for credit sales. When the indemnity fund was created, the tax to fill it was controversial. I think we can find a free market solution where people are not mandated but have an option to protect themselves. I think we are close to having a product that is available. Maybe the creditor laws need to be changed so the farmers have a better standing as opposed to the lenders.

Because we have had an elevator go down, the potential for fraud--our system encourages that lender to have a big sale for fertilizer and entice the farmers to come in and prepay. That gives a big influx of cash and the lender gets theirs. There is an enticement to fleece the farmers out of their cash.

I think a legislative study would be a tool to air it out and get it right the first time.

(14:39)

Representative M. Nelson: Since you were a customer of Falkirk, I've heard it is a personal responsibility to buy at a reputable company. Did you know that Falkirk was in financial trouble?

Randy Christmann: I didn't. I am more of a cow guy. I didn't attend meetings. I heard second hand that they were in the process of a merger. In the merger talks the farmers who attended were assured that everything was good.

Opposition:

(16:36)

Eric Aasmundstand, North Dakota Farm Bureau and Chair of Nodak Mutual Board of Directors:

We don't need a legislative study to protect us from ourselves. For the benefits of prepay, you need to assume some risk. You need to know who you are doing business with. We see this as a study of what are the fiduciary responsibilities as a board of directors. Their first duty is a duty of care. Somebody didn't practice their duty care in the case of Falkirk.

When farmers buy an insurance policy, that company takes 1/12 of the premium as earned income. The rest is held as a liability. That is statutory accounting. Prepaying seed or fertilizer is no different. If I buy from someone who is keeping their books right, he is taking that income but it is offset by a liability of what is owed to me. Some didn't practice good accounting. The legislature doesn't need to study that.

Products to insure this type of loss would be limited and expensive. You have to have involvement to bring the price down.

(20:22)

Representative M. Nelson: In a case like Falkirk, the redress is to go after the board of directors through their director insurance and personal property?

Eric Aasmundstad: Yes, that is one avenue. I don't know if it would work or not.

Representative Rust: What is the harm in doing a study?

Eric Aasmundstad: There is no harm but do we need to take time studying something that is obviously poor business practice. We don't want mandates coming out of it.

We need to move to statutory accounting for these companies. The grain dealers don't want to deal with that because it is expensive.

(22:34)

Representative Headland: Would a more appropriate study be to study grain marketing. The risk of marketing grain involved with the same risk of prepaying for seed, etc. I don't know a company selling fertilizer collecting money and then going broke. In the case at Falkirk it was the marketing of grain that got the elevator into trouble. Is there a way to separate the two business mechanisms? Maybe the study should look at a way to balance the risk of one enterprise against the other enterprise within the same company.

Eric Aasmundstad: We go back to statutory accounting requiring companies to keep their accounts separate. That is what insurance companies do.

Representative Trottier: Since the dealers and suppliers have a suppliers' lien to protect them, why wouldn't that work for farmers? They come first ahead of the banks.

Eric Aasmundstad: Common sense is not too common. I don't know how the law addresses those things.

Senator Wanzek: In answer to Representative Trottier's question, that is what we were looking at—is there a way for a farmer to be in a position of security? In insolvency the federal bankruptcy laws are in place. That was an idea, if the farmers could file a lien and protect themselves.

Chairman Dennis Johnson: Closed the hearing

Representative Belter: Moved Do Not Pass

Representative Headland: Seconded the motion

Representative Belter: This is similar to what we had before. If you are going to get protection you have to pay a premium. To come up with an across-the-board program, it doesn't warrant a study.

Representative Trottier: I would disagree with the last comment. I think we could come up with something with some common sense. I will resist the Do Not Pass.

A Roll Call vote was taken: Yes 8, No 4, Absent 1. (Rep. Haak)

Do Not Pass carries.

Representative Belter will carry the bill.

Date: 3/21/13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2360**

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Belter Seconded By Rep. Headland

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|---------------------|-----|----|
| Chairman Dennis Johnson | X | | Rep. Joshua Boschee | | X |
| Vice Chairman John Wall | X | | Rep. Jessica Haak | AB | |
| Rep. Wesley Belter | X | | Rep. Marvin Nelson | | X |
| Rep. Alan Fehr | X | | | | |
| Rep. Craig Headland | X | | | | |
| Rep. Joe Heilman | | X | | | |
| Rep. Dwight Kiefert | X | | | | |
| Rep. Diane Larson | X | | | | |
| Rep. David Rust | X | | | | |
| Rep. Wayne Trottier | | X | | | |
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Total Yes 8 No 4

Absent 1

Floor Assignment Rep. Belter

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

REPORT OF STANDING COMMITTEE

SB 2360: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). SB 2360 was placed on the Fourteenth order on the calendar.