

FISCAL NOTE
Requested by Legislative Council
02/07/2017

Amendment to: HB 1126

- 1 A. **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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$(88,622)	\$0	\$(88,622)	\$0
Appropriations	\$0	\$0	\$(88,622)	\$0	\$(88,622)	\$0

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed bill provides grain warehouse and buyer licensing and inspection efficiencies. These efficiencies enable the commission to eliminate 1.25 FTEs, with allocation of only part of the new Compliance Director's salary, resulting in cost savings to the salary line item.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Estimated impact to the salaries line is a reduction of \$88,622, due to elimination of of 1.25 FTEs and allocation of only part of the new Compliance Director's salary.

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.*

No impact on revenue.

- 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.*

Estimated \$88,622 reduction in salary expenditures due to elimination of of 1.25 FTEs and allocation of only part of the new Compliance Director's salary.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Estimated \$88,622 reduction in salary appropriation due to elimination of 1.25 FTEs and allocation of only part of the new Compliance Director's salary.

Name: Illona A. Jeffcoat-Sacco

Agency: PSC

Telephone: 701-328-2407

Date Prepared: 02/08/2017

FISCAL NOTE
Requested by Legislative Council
02/07/2017

Amendment to: HB 1126

- 1 A. **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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
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Expenditures	\$0	\$0	\$(88,622)	\$0	\$(88,622)	\$0
Appropriations	\$0	\$0	\$(88,622)	\$0	\$(88,622)	\$0

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

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Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed bill provides grain warehouse and buyer licensing and inspection efficiencies. These efficiencies enable the commission to eliminate 1.25 FTEs, with allocation of only part of the new Compliance Director's salary, resulting in cost savings to the salary line item.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Estimated impact to the salaries line is a reduction of \$88,622, due to elimination of of 1.25 FTEs and allocation of only part of the new Compliance Director's salary.

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.*

No impact on revenue.

- 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.*

Estimated \$88,622 reduction in salary expenditures due to elimination of of 1.25 FTEs and allocation of only part of the new Compliance Director's salary.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Estimated \$88,622 reduction in salary appropriation due to elimination of 1.25 FTEs and allocation of only part of the new Compliance Director's salary.

Name: Illona A. Jeffcoat-Sacco

Agency: PSC

Telephone: 701-328-2407

Date Prepared: 02/08/2017

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Bill/Resolution No.: HB 1126

- 1 A. **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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$2,600,000	\$0	\$2,600,000
Expenditures	\$0	\$0	\$(250,458)	\$0	\$(250,458)	\$0
Appropriations	\$0	\$0	\$(250,458)	\$0	\$(250,458)	\$0

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Changes the regulatory scheme for grain warehouses and grain buyers, allowing efficiencies in the licensing, inspection, and insolvency processes. These efficiencies enable the commission to eliminate two FTEs, resulting in cost savings to both the salary and operating line items.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Estimated impact to the salaries line is a reduction of \$189,204, due to elimination of 2 FTEs and allocation of only part of the new Compliance Director's salary. Estimated impact to the operating line is a reduction of \$61,254. Total estimated general fund reduction is \$250,458.

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.*

Bill changes how some claims are handled in the event of an insolvency. Rather than paying cash and noncredit sale claims from a trust fund (made up of grain assets and a bond), these will now be partially paid from an indemnity fund as credit sale claims are now paid. The assessment will be reinstated for credit sale contract sales, at a lower rate, and initiated for all other sales, at the same lower rate. The credit sale contract indemnity fund will be renamed the grain indemnity fund, and all assessments will be deposited into this special fund. This will result in revenue to the fund.

The proposed assessment is 2/100ths of 1% of the value of all grain sold via noncredit sale contract, credit sale contract, or for cash. A five year average of all grain sold in 2011 through 2015 was \$6.6 billion. 2/100ths of \$6.6 billion is \$1.3 million. Biennial collections, to be deposited into the grain indemnity fund, are therefore estimated at \$2.6 million. This estimate is dependent on grain values and sales being comparable to the five year average.

- 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.*

Estimated \$189,204 reduction in salary expenditures due to elimination of 2 FTEs and allocation of only part of the new Compliance Director's salary. Estimated reduction in associated operating costs of \$61,254. Total estimated general fund expenditure reduction is \$250,458.

We also anticipate the revised insolvency process will result in simplifying the process and making it more efficient. Consequently, we expect corresponding reductions in the staff time required for processing an insolvency case, associated operating costs, and outside counsel costs. However, these expected savings cannot be quantified at this time because we do not know if there will be an insolvency during the noted time periods, nor how complex a potential insolvency may be.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Estimated \$189,204 reduction in salary appropriation due to elimination of 2 FTEs and allocation of only part of the new Compliance Director's salary. Estimated reduction in associated operating appropriation of \$61,254. Total estimated general fund appropriation reduction is \$250,458.

Name: Illona A. Jeffcoat-Sacco

Agency: PSC

Telephone: 701-328-2407

Date Prepared: 01/11/2017

2017 HOUSE AGRICULTURE

HB 1126

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1126
1/20/2017
Job #27184

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to public warehouse and grain buyer licensing, conditions and attributes of licensure and accepting delivery of grain when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund and the grain indemnity fund

Minutes:

Attachments #1-7

Randy Christmann, Public Service Commission Chairman: (Attachments #1a & 1b)

Further explained definitions (Attachment #1a)

Grain Warehousemen are not grain buyers even though they buy grain.

There are three types of transactions that are covered.

1. Grain Storage is seldom done anymore. It is where the grain is stored and the warehouse charges a fee and the producer still owns the grain.
2. Credit-Sale Contract meets Century Code requirements
3. Noncredit-Sale doesn't meet requirements and is often a cash sale

In 2003 an indemnity fund was created that provides protection for agriculture producers with credit-sale contracts. The fund comes from an assessment on the producers. When insolvencies occur, those producers that have valid credit-sale contracts will receive the lesser of 80% of losses or \$280,000.

Grain includes sunflower seeds but doesn't include grain for reseeding, potatoes, or sugar beets.

(6:40)

(Continues with Attachment #1b)

We license over 450 licensees. Most local elevators are strong. The insolvencies that we had have been mostly processors or specialty crops. There isn't a way to distinguish between, so we deal with them together.

(19:30)

Representative Headland: You talked about when grain is moved out of your jurisdiction. Wouldn't there be ways to protect farmers so they know there is no protection if the grain is moved out of their jurisdiction?

Randy Christmann: We all go in with good intentions and then something happens. We rely on that grain to raise money for the trust fund. We can't touch the grain when it is out of state.

Representative Headland: You mentioned that for two of the insolvencies the farmers received less than 50%. I am assuming we are talking about specialty crops? With this bill we are holding all farmers for all commodities responsible for what a few farmers choose to do.

Randy Christmann: It is the specialty crops and processing facilities where most of the problems occur.

Chairman Dennis Johnson: Was it strictly a sunflower facility or was it dealing in all commodities?

Randy Christmann: It was specifically a sunflower program.

Representative Satrom: How large are the bonds? You are charging \$1 for every 5,000? Is that enough to make the indemnity fund work? It seems not enough. Should the bonds be increased?

Randy Christmann: The bonds were increased last time. They start at \$50,000 all the way up to millions. They are based on capacity. In the first few years of business they pay a higher bond. If they turn over their capacity more than seven times per year, they pay an additional bond. One of the issues of marshalling the assets is if it is turned over every week, we won't likely capture many assets compared to the debt.

The 2/100ths were from grain values in 2011 to 2015. We subtracted potatoes and sugar beets. For those five years it would raise \$1.3 million per year.

There is no distinction for specialty crops because that would be difficult to determine.

Representative Hogan: Would you walk through the fiscal note?

Randy Christmann: The other funds would be the money from the assessments, the \$2.6 million for the biennium or \$1.3 million per year.

The reduction in expenditures is legal costs and staff costs with the reduction of 2 FTEs.

Representative Hogan: So you are proposing a reduction of 2 FTEs?

Randy Christmann: Not on net. Another FTE will be spending time on the program. It's a reallocation.

Representative Schreiber-Beck: If this doesn't pass, it will stay as it is? Is it worthy to have more input from growers?

Randy Christmann: Correct. We feel like we have enough input. We have dealt with a number of insolvencies. We have constant interaction with the businesses.

Representative Satrom: How often do you require financials to be submitted from these operations?

Randy Christmann: We look at financials when we are out doing inspections. If we bring the information back to the commission, it becomes an open record. I don't think it is healthy for these businesses if we pull their financials and advertise them to the world.

Representative Satrom: I have to supply financials to be a contractor in other states. Is there some way we can do this on a yearly basis and seal it so it doesn't become public record?

Randy Christmann: Last session that bill was unsuccessful. We do inspect and the decision is made there.

Representative McWilliams: How many insolvencies have we had in the past year, five years, ten years?

Randy Christmann: We have 11 since 2006/2007. It is one about every 1 and ½ years.

Representative McWilliams: Has the rate stayed the same over a 10 to 20-year period?

Randy Christmann: It has probably increased over the last 10 or 20 years. We have one open that we are working on which was started in 2014. There has not been another in the last two years.

Representative Howe: Would you go over the \$400,000 limit? When there are several contracts out at the time of insolvency, do you just get paid on the one or is it for each contract?

Randy Christmann: A credit-sale claimant would be limited to 80% up to \$400,000. So if they had \$600,000 in one contract or \$600,000 in 20 contracts they would still be capped at \$400,000.

Representative Headland: Would the commission provide us with a list of insolvencies since 2000 or 1990?

Randy Christmann: We'll get that to you?

Representative McWilliams: What is the average insolvency rate? Value?

Randy Christmann: We have had very small ones. Several hundred thousand dollars up to 4 to 5 million dollars. Think of ethanol plants and how quickly they turn it over. They may not have that much storage. Imagine if they go for a time and aren't paying. That could be a large volume. They can load out a shuttle train in 6½ hours. We can go out and do an inspection and 6½ hours later a 110 shuttle train is loaded out. Our inventory measurement isn't accurate for long.

Chairman Dennis Johnson: This bill doesn't cover ethanol plants?

Randy Christmann: If they are licensed and do grain storage.

Chairman Dennis Johnson: The bill we had with the indemnity fund that started at 3 million and then 10 million then we cut it back to 6 million as a cap. How many times has it reached to 3 million to kick in again?

Randy Christmann: The current cap on the indemnity fund is \$6 million. When they hit that then no one pays in. It capped out in 2008 so there have been no collections on it since. If it gets down to \$3 million, the collections resume. So any new producers who started after 2008 are getting protection but never had to pay in. Some retirees paid in and are no longer getting protection.

We didn't put a cap on with this bill. Because of the big licensees, I think the cap should be bigger than \$6 million and should be monitored by the legislature. We don't need to build it into law.

Chairman Dennis Johnson: We picked \$10 million and then reduced it to \$6 million because the fund was growing and not taking much out of it.

Randy Christmann: That fund does grow quickly with two tenths.

Vice Chair Trottier: Does the state's budget problems bring about any of this?

Randy Christmann: That was the catalyst of starting to look into this.

Vice Chair Trottier: How many groups were farmers or dealers that looked at this?

Randy Christmann: We started this fall and worked with the Grain Dealers Association.

Vice Chair Trottier: On the bottom of page 9 and top 10. There are some things crossed out concerning the insolvency fund. Where do those assets go? Do the farmers get them?

Randy Christmann: That is the grain part of the trust fund that we would no longer marshal. If the place is insolvent, there is a shortage of money. People with grain storage could still get their grain back. You could still go through the courts.

Representative Magrum: Has the state been in the bonding business for many years?

Randy Christmann: We don't distribute the bonds but we require them to have bonds from a third party. The reason why they are called grain warehouses is because years ago you couldn't empty out an elevator in a few hours.

Representative McWilliams: Would there be an opportunity for farmers to opt out of the assessment?

Randy Christmann: In having dealt with insolvencies that would cause complications.

Vice Chair Trottier: On the bottom of page 9, is there a structured order as to who gets in line first? Would the bank come before a producer?

Randy Christmann: The producer has the first lien on grain but not on other assets. When there is an insolvency, we request that the court appoint the PSC as a trustee. Then we are able to marshal that away from everyone and sell it and distribute the proceeds.

(50:10)

Sheila Peterson, Director of Fiscal Management, Office of Management and Budget: The state is facing some challenging fiscal times. All agencies were required to submit 90% budget requests for the upcoming biennium. The PSC did an excellent job in meeting that requirement. Reorganizing and streamlining requires statutory changes which are in this bill.

Should this bill not pass, I ask that you be in contact with the house appropriation committee to reinstate staff and dollars for the PSC to continue to operate the way it has.

Representative Hogan: Have the FTEs already been reduced?

Sheila Peterson: That I can't answer.

Representative Satrom: By doing this we are saving money?

Sheila Peterson: Yes.

Vice Chair Trottier: Were there other items looked at to cut?

Sheila Peterson: Each agency did that within their 90% budget.

Representative Headland: This is extraordinary to have a major change in policy. We have a department suggesting that because of money we have to pass a bill. I don't think it's right that we have another government agency testifying in support of this bill.

Representative Skroch: We are cutting 10% out of the PSC's budget but shifting that cost in the form of an assessment to farmers on their grain sales?

Sheila Peterson: The assessment relates more to the indemnity fund to deal with insolvencies.

Chairman Dennis Johnson: Over the years we've added to that budget and created new programs and now we are cutting away.

Representative McWilliams: What percentage of that assessment will go into the indemnity fund?

Sheila Peterson: 100%. None of this is going to the operations of the PSC.

(57:30)

Mike Clemens, Farmer from Wimbledon, North Dakota: We farm 5,000 acres. We haul to three separate elevators. They are all shuttle train loaders. We have one seed processor and also deliver to an ethanol plant.

Our system today is out of date.

The indemnity fund works. We don't have to make a trip to the Supreme Court. The bonds are inadequate to cover cash grain sales. A loaded shuttle train carries \$3 ½ to 5 million per train. When an elevator goes insolvent, you don't know from the day you hauled in the last load until months later that there is a problem.

The bonding companies are the last ones that want to pay.

Referring to the assets on page 10 and 11, many of these elevators also have prepaids. They are also at risk at 100%. We have experienced an elevator insolvency. It was one of the most unpleasant things.

We paid \$73,000 a year for crop insurance and \$40,000 for property and casualty insurance. This is also an insurance payment of \$600 for \$3 million of coverage per year.

It impacts the communities that have a tough time recovering from an insolvency.

Opposition:

(1:03:30)

Representative Pollert: I own a feed plant, fertilizer operation, and grain elevator for almost 40 years.

One of the core things the PSC is supposed to do, which they say is outdated, is the regulation of grain elevators.

Since the start of the credit-sale indemnity fund, we have had bills to cover fertilizer, prepaid seed.

The PSC and OMB do not decide what we do with this bill. The PSC budget is in the Education and Environment section under Representative Monson.

Grain elevator regulation is a core service of the PSC. This bill reduces the regulatory responsibility of the grain elevator industry.

I have a bond. Our grain storage capacity is 116,000 bushels. I know what it is like to be in front of that bonding company. As long as my bonding is in place, I should not have to show my financials.

The PSC is currently the trustee in the insolvency cases. This bill causes that to disappear.

The bill doesn't provide a clear picture of the status of the bond in the event of an insolvency.

Representative Schreiber-Beck: Commissioner Christmann said no fewer inspections? You feel there are fewer inspections?

Representative Pollert: They still come in every year. They go through our scale ticket. There will be shorter inspections.

Representative McWilliams: If there are less rigorous inspections, will there be an increase in the likelihood of insolvency?

Representative Pollert: I wouldn't want to say. It works as a guard at the door. It is less regulation with this bill. You are taking away a moral compass. There is always a small percentage who will be dishonest.

Representative Headland: Can you speak to the amount of the cap of \$400,000? How does that compare to the real risk? Is \$400,000 adequate?

Representative Pollert: A unit train of 100 cars with 350,000 bushels is a million dollars. Someone will be back here and ask for an increase.

Representative Skroch: Is there a connection between the reduction in the budget and the need for these assessments?

Representative Pollert: I do believe the commission came forward because of budget constraints. Is there a relationship between that? Maybe?

Representative Headland: Do you think that it is right to move the indemnity fund into a more general broad protection for everybody?

Representative Pollert: I don't think we should be going there. You have to trust who you are doing business with. A lot of it is special crops.

(1:23:40)

Doug Goehring, Farmer from Menoken: (Attachment #2)

(1:26:45)

Stu Letcher, North Dakota Grain Dealers Association: (Attachment #3)

(1:31:45)

Chairman Dennis Johnson: Do you feel there are warehouses that couldn't get a bond?

Stu Letcher: The bond is used to judge the financial strength of that facility. The bond underwriter knows when the bond is going to pay an insolvency.

Representative McWilliams: Has the question of the bonds been put forth to the bonding companies?

Stu Letcher: Yes. We had a meeting yesterday with our surety company. We posed the questions of the bill. They agreed. It would take some time to see what the jeopardy of the bond would be. If they experience big losses, they will take action on the underwriting side.

The bond premium on a half million is \$4,000. So if a bonding company experiences a loss of that half million, it takes them 125 years to recoup that. It is what the bonding company is willing to bet on the financial strength of the facility.

Representative Headland: Do the Grain Dealers have members that deal with specialty crops?

Stu Letcher: We have a few. The majority of our membership is the country grain elevator type grain warehouse.

Representative Headland: Do you know how many insolvencies have involved members of your association?

Stu Letcher: The information is on the PSC website and goes back to 1975. There have been 41 insolvencies since 1975. Many are smaller companies. The last insolvency that involved our core membership would have been the Falkirk Farmers Elevator. That was settled in 2014. The claimants were paid back 93%.

Representative Headland: Are we trying to create something that covers all commodities and instead should be creating protection for the specialty areas?

Stu Letcher: We have had many discussions with the PSC. Of the 41 insolvencies, four paid back less than 10%. One was unlicensed. One was a roving grain buyer. One was a small soybean processing plant. The last was also small.

Representative Magrum: Do you think specialty crops are just a fad?

Stu Letcher: Edible beans are a specialty crop but they are a large crop in the state. Some of those are flat price commodities so there is no risk protection or futures market to hedge. There are companies that have financial backing and are less risky.

Representative Magrum; You don't like this bill as written. Do you have amendments?

Stu Letcher: That receipt holder's lien is key. The receipt holder's lien captures inventory. Grain elevators have changed. Even though the grain has been shipped and the date of insolvency was before that, the grain that was shipped comes back to the elevator and goes

into the trust fund. If they are determined to be insolvent and grain is moved out of the warehouse, that is fraud.

Representative Magrum: If we would change that part of the bill you would be OK with it?

Stu Letcher: That would be one piece. There are other states that have the indemnity funds. They capture that grain. If they pay claimants a half million, they might be able to capture \$350,000 in grain to replenish the fund. Then your fund only pays \$150,000. If you get rid of that receipt holder's lien, then if the farmer's claim is higher than the \$400,000 he can draw from the indemnity fund. He can join that proceeding and go after that grain. But by that time he will be at the back of the line. In the cases that paid back less than 4%, many were roving grain buyers or small warehouses. One of the warehouses wasn't even licensed so they weren't even bonded.

Maybe we want to look at the cases where some of the grain is stored out of state.

There are other things like the status of the bond needs to be clarified.

Representative Magrum: One wasn't licensed. Did the PSC pay?

Stu Letcher: There was a small amount of grain assets that were captured. The claimants got paid back 6%.

(1:46:52)

Craig Olson, President of North Dakota Soybean Growers Association: (Attachment #4)

Representative Magrum: You sound neutral.

Craig Olson: We are opposing the current stand of the bill. There are a lot of changes in here that will affect us in a bad way.

(1:51:38)

Dan Wogsland, North Dakota Grain Growers Association: (Attachment #5)

Very rarely do you find an industry that says, "Come regulate me." Yet in the warehouse industry that is what they are saying. We should listen.

(1:53:48)

Dane Braun, North Dakota Farmers Union: (Attachment #6)

(1:54:50)

Rachel Grosz, North Dakota Farm Bureau: I echo the comments of the previous speaker. We feel that the PSC changing their responsibility will be harmful for small business and our producers.

(1:55:40)

Gary Knutson, North Dakota Agriculture Association: We would like more clarity and therefore oppose the bill.

(1:57:50)

Scott Rising, North Dakota Soybean Growers: (Attachment #7)

A Credit sale contract is any contract sale over 30 days.

A Non-credit sale contract is anything less than that. It is covered differently.

The 4.3 million (in red print) should be 4.76 million on page 3. That is the fund when it gets down to 3 million, the assessment starts again. They have the option to add to their own bond.

Page 4 shows the impact of this proposed change. There is an error there. Those noncredit sales have a right to both the warehouse bond and the new grain indemnity fund. A credit-sale contract is also covered the same way.

Representative McWilliams: How long is the process of insolvency? How long under the proposed bill?

Randy Christmann: It depends how much people litigate. There is a case that started in 2014 and we will be surprised if it is done this year. Very few agriculture producers can follow all of it.

In the new system, we had a recommendation to the court in the case that is over two years old. The time frame would be shorter.

Representative Magrum: Would this bill help that process to get done faster?

Randy Christmann: That is the key point with this bill. A big part of delay and causes of the litigation is the process of marshalling the assets and marketing them. That is eliminated with the indemnity fund.

Representative Magrum: What would be the ramifications of a Do Not Pass?

Randy Christmann: If this doesn't work, we will figure out something. There is not a cut in budget that no one notices.

We also made significant cuts in our public utilities division. We set out to find what had the least impact on the fewest people.

Due to the frustrations of the very poor payouts or untimely situations--

This will save us money and provide better protection for the agriculture producers.

Chairman Dennis Johnson: Closed the hearing.


2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1124—Committee Work &
HB 1126—Committee Work
1/20/2017
Job #27185

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a public warehouse or grain buyer licensee insolvency

Minutes:

Chairman Dennis Johnson: I don't see what good a written notice does if it isn't acknowledged that the warehouse received written notice.

Representative Skroch: If we refer HB 1126 to a study, maybe we can include HB 1124 with it.

Representative Satrom: We shouldn't be so concerned about them receiving it as the fact that we sent it.

Should we suggest a duplicate copy? The product moves so fast so the date is very critical on whether or not they can seize those assets.

Chairman Dennis Johnson: The grain is moving but whether it is in the warehouse or on the unit train, it is still inventory.

Representative Skroch: Up to 45 days?

Chairman Dennis Johnson: You have so many days to enter in to what type of contract—storage contract or delayed pricing contract. In the old days you could dump a load of grain in August and they probably wouldn't call until November to find out what you wanted to do. Now a good elevator has the paper work ready almost immediately.

Representative Magrum: With the written demand, it should spell out what qualifies.

Chairman Dennis Johnson: They don't want to come with an amendment to address that.

Representative McWilliams: If it was a high importance to the PSC, they would have submitted an amendment. Why don't we make a Do Not Pass on the bill? If they want to resubmit next session with cleaned up language, then we can look at it.

Representative Satrom: Would the Attorney General's office have a better idea?

Chairman Dennis Johnson: This is their agency that requested it. They have lawyers that are dealing with it.

Representative Schreiber-Beck: Isn't the point to protect the producer? It is up to input from producers to have a date. It is for the producers.

Chairman Dennis Johnson: Back to the insolvency in Grand Forks, some producers were paid and others were not paid. So the judge said it should be in writing.

Representative Headland: I don't care for either one of these bills. It is a suggestion coming from an agency. We are the policy makers. It is up to us to pass policy that they carry out. They are trying to address a problem that impacts a small percentage of farmers. But the impacts of what they are suggesting impacts all farmers.

(8:50)

Vice Chair Trottier: If you go in to sell a product, you have three choices. You can take a check that day. You have 45 days to make the decision. Or go with delayed pricing where you are putting a lot of trust into the organization you are dealing with. A good business person would ask for a letter of credit from the financial institution.

Representative Hogan: Should we just roll it into a comprehensive study resolution?

Vice Chair Trottier: This has been studied a lot.

Representative Representative Howe: The only one testifying in support is the PSC and one farmer who is mostly a corn farmer. We didn't have specialty crops come in for whom we are trying to fix the problem.

Representative Skroch: One of their primary concerns is they will be losing oversight due to loss of staff. How do we fix this so there is proper inspection? How do we guarantee that the grain buyers are inspected if we cut staff?

Chairman Dennis Johnson: They won't have the time to do it.

Representative Oliver: They can do them. It is just in an abbreviated version.

Representative McWilliams: With our commodity prices being down, is it a good time to put in a monkey wrench to a system that has been working for decades?

Representative Schreiber-Beck: Is the system working? If it is two or three years and they are still in court. If a license is required, there has to be a means of checking. Researching on a bond is needed which will be passed onto a grower.

Representative Headland: Those of us who are not raising specialty crops are not asking for this extra protection because we don't need it. It is the PSC's responsibility to follow through an insolvency. Don't put it on the backs of those not growing specialties. That is why I asked for a list of insolvencies.

Stu Letcher indicated there were four grain elevators that were insolvent in the last 40 years. The rest are specialty processors outside of the scope of what most farmers do.

Representative Magrum: We are working both bills. Why send a letter back? Usually they give a receipt at the elevator. If you are leery they should get a credit check. I am still suggesting a Do Not Pass on both 1124 & 1126.

Chairman Dennis Johnson: Beans don't have a tool to lock in the futures like other crops.

We will hold this bill until next Thursday.


2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1126
1/26/2017
Job #27450

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to public warehouse and grain buyer licensing, conditions and attributes of licensure and accepting delivery of grain when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund and the grain indemnity fund

Minutes:

Attachment 1

Scott Rising, North Dakota Soybean Growers: (Attachment 1) A chart was handed out on January 20. Page 4 on that chart we did not understand correctly. I went up to the Public Service Commission and now we have it corrected. This chart shows the idea that cash sale tickets went into the insolvency fund which was made up of the warehouse or buyer licensing surety bond. I also had the credit-sale ticket attached to that process. That was incorrect. The credit sale only goes to that new indemnity fund as it currently does.

Substitute Attachment 1 (1/26/17) for the fourth page of Attachment 7 (1/20/17).

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1126
1/27/2017
Job #27536

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to public warehouse and grain buyer licensing, conditions and attributes of licensure and accepting delivery of grain when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund and the grain indemnity fund

Minutes:

Chairman Dennis Johnson: There are items that the Grain Dealers like in that bill. There are items the Public Service Commission would let go of in the bill.

Appointed a subcommittee:

- Representative Schreiber-Beck, Chairman
- Representative Howe
- Representative Boschee

Call on the floor Monday when to meet.

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1126
1/30/2017
Job #27612

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to public warehouse and grain buyer licensing, conditions and attributes of licensure and accepting delivery of grain when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund and the grain indemnity fund

Minutes:

Subcommittee meeting called to order at 4:00 p.m. in the Peace Garden Room.

Members present:

- Representative Schreiber-Beck, Chairman
- Representative Howe
- Representative Boschee

Others present:

Randy Christmann, Public Service Commission Chairman
Scott Rising, North Dakota Soybean Growers
Stu Letcher, North Dakota Grain Dealers Association
Representative Dennis Johnson
Kayla Pulvermacher, North Dakota Farmers Union

Discussion:

Randy Christmann, Public Service Commissioner:

The hearing brought opposition that I didn't expect.

Three main objections that could be pulled from the bill:

1. The new assessment on the producers, 2/100ths of a percent.
2. The increase in the insolvency fund. Now it can pay up to \$280,000. This would have raised it to \$400,000.
3. The commission requested that the insolvencies be handled administratively. We haven't figured out how to do that if we continue to use the grain proceeds as part of our trust fund. At this point we will take out those references and leave it be in a court proceeding.

Remaining good points

1. The references are not necessary but make it more clear to licensees and producers if we made the changes to our new electronic license renewal program.
2. It would be good to leave in the part that the commission take reimbursement for the costs of handling one of these insolvencies. It is a potential loss to the agriculture producers. But this is being done as a protection for the agriculture producers, so should the taxpayers pay for the cost?
3. Eliminating the interest to the claimants. Many times they don't get interest because the place is insolvent so often there is not enough money to even make everyone whole. When there is sufficient money, we pay out interest. The problem is it uses a lot of our time and it becomes an incentive for producers to delay the program because now they can collect 2 ½ to 3% interest.

Two of the repealers at the end were not related to anything else. They had to do with whether they needed our permission to close a satellite elevator. Those two could be eliminated. That is a business decision of the company.

Representative Schreiber-Beck, Chair: With the insolvency of their assets, that is done the old way? The assets that remain are to be sold or how is it done?

Randy Christmann: To make this bill more acceptable to the producers and licensees, is to continue as we have been doing it. All assets are not the same. When an insolvency occurs, the only assets we are able to use are the bond and the value of the grain that we are able to capture. They can have money in their bank account, tractors, equipment, buildings, computers, etc. These are not part of the current trust fund.

(9:31)

Stu Letcher, North Dakota Grain Dealers Association: Most of the above changes we don't have a problem with. On page 1, duties and powers of the commission, we would like that to stay. That way you have more leverage to go after appropriations. Our biggest objection to the whole process is that we are losing an inspector. We feel we need at least two in the field. With two inspectors there is incentive to keep the majority of our industry in compliance.

Representative Howe: The first thing in your testimony, you said this bill removes the duty of the PSC to regulate grain warehouses. Do you feel the changes put back into the bill the PSC's duty to regulate grain warehouses?

Stu Letcher: The whole theory behind the change in the bill was to streamline the process by not having to worry about the grain in the warehouse in the event of an insolvency. If they don't change the way they do insolvencies, that will all remain in the bill. Their inspections will continue to be focused the way they are currently. They still have to be concerned with the inventories because that is what will pay the cash claimants. The problem is the appropriation for two inspectors. One inspector probably won't get to everybody in a licensing period.

Representative Howe: Do you agree having one inspector doing a quick inspection would be better than this current proposal?

Stu Letcher: Yes.

Representative Schreiber-Beck: On 60-02-03, you want the overstrike removed and remove the word "may"?

Stu Letcher: If we take the whole Section 1 out of the bill, it would be the same as before.

The repeals that Randy mentioned, 60-02-39, the warehouse not to be closed without permission from the commission--that is an old part and would clean up the law.

HB 1124 adds the word "written" into the insolvencies. That is added to HB 1126. The reason for the word "written", if we leave it the way it is now, anybody can demand that an elevator is insolvent at any time. That language tries to narrow the date. The advantages outweigh the burden. The Grand Forks bean case date has fluctuated by years. That can mean as much as \$15 per hundredweight.

The date wasn't really a problem before.

Representative Howe: Do you see "written" as a proper form that could be picked up at the elevator or what would you like to see?

Stu Letcher: We would envision email as sufficient notice. A certified letter would be nice.

Randy Christmann: As far as the duties, they could be eliminated. They are also on page 6.

As far as the written, it is the value of the evidence. Something is better than nothing

Representative Boschee: In other forms of business everything is written. Wouldn't it be better to have something more explicit?

Randy Christmann: The more detail, the easier. It is to protect the producer. The claim that you asked for your payment when the commodity was high takes away from producers of a different commodity. We would like clarity.

Scott Rising, Soybean Growers: Our board was not familiar with this issue. Most of them are not covered as well as they thought they were. The electronic licensing program we think is wonderful. Eliminating interest has a very practical reason. The same with elevator closing. We want some oversight.

A suggested concept that needs work in the future, if we could figure a special funding mechanism so producers can participate in this process. The idea that it is only producers impacted by insolvency is not correct. Insolvency impacts the community and surrounding area.

The idea that the PSC is reimbursed for their expenses, I understand the budgetary need for that. The reality is that the impacts go beyond the producer.

HB 1124, to have a "written" notice is only reasonable.

(30:45)

Kayla Pulvermacher, North Dakota Farmers Union:

Our concerns with this bill:

1. Duties of the PSC. We are also concerned about the number of the inspectors.
2. Receipt holders' lien. We would like to make sure producers still have priority. We have concerns about putting producers up against other creditors.

Representative Schreiber-Beck, Chair closed the meeting at 4:35 p.m.

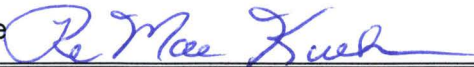
2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1126
2/2/2017
Job #27838

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to public warehouse and grain buyer licensing, conditions and attributes of licensure and accepting delivery of grain when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund and the grain indemnity fund

Minutes:

Attachment 1

Representative Schreiber-Beck, Chair: Subcommittee meeting called to order at 3:00 p.m. in the Peace Garden Room.

Members present:

- Representative Schreiber-Beck, Chair
- Representative Howe
- Representative Boschee

Others present:

Kayla Pulvermacher, North Dakota Farmers Union
Randy Christmann, Public Service Commission Chairman
Scott Rising, North Dakota Soybean Growers
Representative Chet Pollert
Illona Jeffcoat-Sacco, General Counsel, Public Service Commission

Discussion:

Illona Jeffcoat-Sacco, General Counsel, Public Service Commission:

Explained the amendments (Attachment 1)

Representative Schreiber-Beck, Chair: Asked those in attendance for input. Received none.

Will the amendments and fiscal note be ready in the morning for committee work?

Illona Jeffcoat-Sacco: We should talk to legislative council. It is my understanding that an official fiscal note will come when it is engrossed. If you want a hypothetical, I can do that. I just take the original and cross out and write in changes.

Representative Schreiber-Beck: Yes. That would be helpful.

Illona Jeffcoat-Sacco: Amendments may not be completed by morning.

Representative Schreiber-Beck: Closed the meeting at 3:30 p.m.

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1126
2/6/2017
Job #27965

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee Work

Relating to public warehouse and grain buyer licensing, conditions and attributes of licensure and accepting delivery of grain when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund and the grain indemnity fund

Minutes:

Attachments 1-3

Attachments 1 a, b, and c provided by Public Service Commission per committee's request.

Illona Jeffcoat-Sacco, Counsel, Public Service Commission: (Attachments 2 & 3)

The bill is now about public warehouse and grain buyer licensing and insolvencies of public warehouses and grain buyers.

There are only two repealer sections left and those are the two about closures needing commission permission to close. There is no need for a transfer clause.

The commission's duties remain the same.

Page 2—minor edits, grammar corrections, licensing function is more online

Page 3---no change

Page 4—deletes old Section 3 which is the bailment section

Page 5---no change

Page 6—existing statute will stay as is

Page 7—some minor changes. "Issued" is changed to "effective"

Page 8---inclusion of the phrase "electronic communications" for the written demand.

Representative Headland: Define electronic communications.

Illona Jeffcoat-Sacco: My guess is a text or email or fax. It is included in the word "written" which includes electronic communication.

Chairman Dennis Johnson: Anything in code that defines electronic communication?

Illona Jeffcoat-Sacco: I don't recall a specific definition. I know the state of the law, whether case law or contract law, includes it.

Page 9---deletion of change leaving sections of law as they are. We are now in the grain buyer law that deals with insolvencies leaving it as it exists in statute today.

Page 10—more insolvency law for grain buyers that is not going to be changed. Blue is existing words. The only thing we are adding is a reference to credit-sale contract claimants in order to emphasize insolvency proceeding is open. The commission would be dealing with the trust funds and receipt holder claims and also dealing with credit-sale claims and indemnity fund in the same proceeding. They are not part of the trust. They don't have claim to the trust assets but the proceeding will include them both.

Page 11---adding language so credit-sale claims are handled in the same proceeding. Bottom half of page 11 is again putting those sections back to original law.

Page 12—there is one new sentence making it clear that the commission can handle credit-sale contract claims in the same proceeding as it does receipt holder claims. That is the way we have always done it but it was challenged in the case of Grand Forks Bean.

Page 13---going back to the same language for processing the insolvency. Changing the name back to trust fund from insolvency fund.

Chairman Dennis Johnson: Were credit sale claims in the old language?

Illona Jeffcoat-Sacco: They weren't sprinkled throughout. This is an attempt to make it more definite so it couldn't be challenged again.

Page 14--existing law changing the concept to "shall" be paid. The language "as appropriate" was added. If you have an insolvency that is all trust fund you wouldn't take any expenses out of the indemnity fund.

Page 15 and half of page 16 language goes back

Page 17---insolvency sections going back the way they exist today

Page 18--Power of commission to settle claims. That is adding the section allowing settlement of credit-sale claims. The trust money deposited in the Bank of North Dakota goes back to existing statute.

Page 19 & 20 continues. Reference to credit-sale claims has been added in order to make it clear that in that report we can talk about any credit-sale claims.

Chairman Dennis Johnson: By adding these credit-sale claims, how much money are we talking about?

Illona Jeffcoat-Sacco: It doesn't change unless the commission chose to not reimburse. It is not our salaries. It is outside counsel, publication costs, travel.

Chairman Dennis Johnson: Before this we didn't cover credit-sale claims?

Illona Jeffcoat-Sacco: Yes. This is not making them part of the trust. This is saying they can be dealt with in the same proceeding.

Page 20, line 5—this is similar to roving buyers. It talks about the Attorney General being able to employ outside counsel. The cost must be taken out of whichever fund is appropriate.

Page 21, 22—all of the credit-sale contract indemnity fund sections are out of the bill.

Page 23—at the top changing “may” to “must” be reimbursed

Page 24—repealing the two sections on closures and the transfer is taken out.

Representative McWilliams: What is the difference between the bill before and now?

Randy Christmann, Public Service Commissioner:

1. Handling insolvency cases administratively rather than through the courts. We are going back to the old way of doing it through the courts.
2. Creating the assessment on ag. producers—to create a new fund is out of here. The producers will be protected by the bond and whatever grain proceeds are captured.
3. This won't do much as far as warehouse inspectors

What is left of the bill:

1. The connection of making clear we should handle cash and credit-sale contract claimants together in one case rather than two sets of litigation.
2. We would no longer pay interest on claims.
3. Clarifies that we reimburse outside costs from these funds

There are several references to electronic renewals of licensing.

The impact on agency—we spend many man hours looking over paper renewals. The new system wouldn't accept their request until it is complete. Inspectors spend about ¼ of one inspector's time in office. This would free up about ¼ of an inspector's salary. We have two inspectors

Representative Headland: What are we repealing?

Randy Christmann: Currently a licensee has to get our permission to close a facility. We don't see a need for that.

Representative Skroch: Moved the amendments #17.8083.01003

Representative Howe: Seconded the motion.

Voice Vote. Motion Carried.

Representative Boschee: Moved Do Pass as amended.

Representative Schreiber-Beck: Seconded the motion.

A Roll Call vote was taken: Yes 10, No 0, Absent 4.

Do Pass as amended carries. To be referred to appropriations

Chairman Dennis Johnson will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1126

Page 1, line 1, remove "60-02-03,"

Page 1, line 1, remove "60-02-25,"

Page 1, line 2, remove "60-02-44, 60-02.1-03,"

Page 1, line 3, remove "60-02.1-29, 60-02.1-30, 60-02.1-31,"

Page 1, line 3, remove "60-02.1-33, 60-02.1-34,"

Page 1, line 4, remove "60-02.1-36,"

Page 1, line 4, remove "60-04-03, 60-04-03.1, 60-04-03.3, 60-04-03,"

Page 1, line 5, remove "60-04-05, 60-04-06,"

Page 1, line 5, remove "60-04-08,"

Page 1, line 5, remove "60-10-01, 60-10-02, 60-10-04,"

Page 1, line 6, replace "60-10-05, 60-10-06, 60-10-07, 60-10-08," with "and"

Page 1, line 6, remove "60-10-10, 60-10-13, 60-10-14, and 60-10-15"

Page 1, line 7, remove the second comma

Page 1, remove lines 8 and 9

Page 1, line 10, replace "indemnity fund" with "and insolvencies of public warehouses and grain buyers"

Page 1, line 10, remove "60-02-02, 60-02-25.1,"

Page 1, line 10, replace ", 60-02.1-02," with "and"

Page 1, line 11, remove "60-04-03.2, and 60-10-03"

Page 1, line 11, remove "duties of the"

Page 1, line 12, remove "commission, receiptholders' lien,"

Page 1, line 12, remove "closure, grain of insolvent warehouseman as trust"

Page 1, line 13, replace "asset, and suspension of indemnity fund assessments; and to provide for a transfer" with "closures"

Page 1, remove lines 15 through 23

Page 2, remove lines 1 through 5

Page 4, remove lines 9 through 19

Page 6, remove lines 9 through 30

Page 7, remove lines 1 and 2

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2 of 6

Page 8, line 30, after "demand" insert ", including electronic communications."

Page 8, line 31, after "demand" insert ", including electronic communications"

Page 9, remove lines 3 through 31

Page 10, remove lines 1 through 20

Page 10, line 24, remove the overstrike over "~~its appointment~~"

Page 10, line 24, remove "an insolvency"

Page 10, line 26, remove the overstrike over "~~its appointment~~"

Page 10, line 26, remove "the insolvency and the commencement of the"

Page 10, line 27, remove "insolvency proceeding"

Page 11, line 7, remove "or credit-sale contract claimant"

Page 11, line 7, remove the overstrike over "~~participation in the trust fund~~"

Page 11, line 7, remove "payment for"

Page 11, line 8, replace "any amount due" with ", and the credit-sale contract claimant may be barred from payment for any amount due"

Page 11, line 9, remove the overstrike over "~~court~~"

Page 11, line 9, remove "commission"

Page 11, remove lines 10 through 27

Page 12, line 5, remove "and credit-sale contract claimants"

Page 12, line 6, after "4." insert "Settle and compromise any action when it is in the best interests of the credit-sale contract claimants."

5."

Page 12, remove lines 8 through 14

Page 12, line 17, remove the overstrike over "~~of trustee to court - Approval~~"

Page 12, line 17, remove "and order of commission"

Page 12, line 19, remove the overstrike over "~~file with the court~~"

Page 12, line 19, remove "issue"

Page 12, line 20, remove "a notice consistent with chapter 28-32, together with"

Page 13, line 1, remove the overstrike over "~~trust~~"

Page 13, line 1, remove "insolvency"

Page 13, line 1, after "assets" insert "to receiptholders"

Page 13, line 2, after "proposed" insert "credit-sale contract"

Page 13, line 3, remove "receiptholder and"

Page 13, line 3, remove the overstrike over "~~trust~~"

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- Page 13, line 3, remove "insolvency"
- Page 13, line 6, remove the overstrike over "~~court~~"
- Page 13, line 6, remove "commission"
- Page 13, line 6, remove "issue"
- Page 13, line 6, remove "at least"
- Page 13, line 7, remove "forty-five days before the hearing."
- Page 13, line 8, remove the overstrike over "~~be approved~~"
- Page 13, line 8, remove "become final."
- Page 13, line 8, remove "grain indemnity fund"
- Page 13, line 9, remove "payments and"
- Page 13, line 9, replace "insolvency" with "trust"
- Page 13, line 14, remove the overstrike over "~~court~~"
- Page 13, line 14, remove "commission"
- Page 13, line 14, remove the overstrike over "~~the commission,~~"
- Page 13, line 14, remove the overstrike over the second comma
- Page 13, line 17, remove the overstrike over "~~court~~"
- Page 13, line 17, remove "commission"
- Page 13, line 17, remove the overstrike over "~~approve~~"
- Page 13, line 17, remove "adopt"
- Page 13, line 19, remove the overstrike over "~~trust~~"
- Page 13, line 19, remove "insolvency"
- Page 13, line 19, after "fund" insert ", payments from the credit-sale contract indemnity fund"
- Page 13, line 19, remove the overstrike over "~~discharge of the commission from its trust~~"
- Page 13, line 19, remove "payments from"
- Page 13, line 20, remove "the grain indemnity fund"
- Page 13, line 26, remove the overstrike over "~~the action~~"
- Page 13, line 26, remove "any proceeding"
- Page 13, line 27, remove the overstrike over "~~trust~~"
- Page 13, line 27, remove "insolvency"
- Page 13, line 27, replace "grain" with "credit-sale contract"
- Page 13, line 27, after "fund" insert "as appropriate"
- Page 13, line 31, remove the overstrike over "~~trust fund~~"

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Page 13, line 31, remove "insolvency"

Page 13, line 31, replace "grain" with "credit-sale contract"

Page 13, line 31, after "funds" insert "as appropriate"

Page 14, line 5, after "demand" insert ", including electronic communication,"

Page 14, remove lines 7 through 30

Page 15, remove lines 1 through 31

Page 16, remove lines 1 and 2

Page 16, line 6, remove the overstrike over "~~its appointment by the district court~~"

Page 16, line 6, remove "an insolvency"

Page 16, line 8, remove the overstrike over "~~its appointment~~"

Page 16, line 8, remove "the insolvency and the commencement of the insolvency proceeding"

Page 16, line 21, remove the overstrike over "~~court~~"

Page 16, line 21, remove "commission"

Page 16, remove lines 22 through 31

Page 17, remove lines 1 through 20

Page 17, line 29, remove "and credit-sale contract claimants"

Page 18, line 1, after "4." insert "Settle and compromise any action when it is in the best interests of the credit-sale contract claimants."

5."

Page 18, remove lines 4 through 10

Page 18, line 13, remove the overstrike over "~~of trustee to court - Approval~~"

Page 18, line 13, remove "and order of commission"

Page 18, line 14, remove the overstrike over "~~file with the~~"

Page 18, line 15, remove the overstrike over "~~court~~"

Page 18, line 15, remove "issue a notice consistent with chapter 28-32, together with"

Page 19, line 2, remove the overstrike over "~~trust fund assets~~"

Page 19, line 2, remove "bond"

Page 19, line 3, remove "proceeds in the insolvency fund"

Page 19, line 3, remove "an appropriate portion of the"

Page 19, line 4, after "proposed" insert "credit-sale contract"

Page 19, line 5, remove "receptholder and"

Page 19, line 6, remove the overstrike over "~~trust~~"

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Page 19, line 6, remove "insolvency"

Page 19, line 6, remove the overstrike over "fund"

Page 19, line 6, remove the second "claims"

Page 19, line 8, remove the overstrike over "court shall set"

Page 19, line 8, remove "commission shall hold"

Page 19, line 8, remove "at least forty-"

Page 19, line 9, remove "five days before the hearing."

Page 19, line 10, remove the overstrike over "be approved"

Page 19, line 10, remove "become final."

Page 19, line 10, replace "grain" with "credit-sale contract"

Page 19, line 11, replace "insolvency" with "trust"

Page 19, line 11, after "proposed" insert ", and payments from the credit-sale contracts be made as proposed"

Page 19, line 15, remove the overstrike over "court"

Page 19, line 15, remove "commission"

Page 19, line 15, remove the overstrike over "the commission,"

Page 19, line 15, remove the overstrike over the second comma

Page 19, line 18, remove the overstrike over "court"

Page 19, line 18, remove "commission"

Page 19, line 18, remove the overstrike over "approve"

Page 19, line 18, remove "adopt"

Page 19, line 19, remove the overstrike over the comma

Page 19, line 19, remove "from insolvency fund and"

Page 19, line 20, remove the overstrike over "of"

Page 19, line 20, remove "from"

Page 19, line 20, remove the overstrike over "trust"

Page 19, line 20, remove "grain indemnity"

Page 19, line 20, after "fund" insert ", payments from the credit-sale contract indemnity fund"

Page 19, line 20, remove the overstrike over ", and discharge of the commission from its trust"

Page 19, line 27, remove the overstrike over "such"

Page 19, line 28, remove the overstrike over "action"

Page 19, line 28, remove "any proceeding"

Page 19, line 28, after "may" insert "the commission"

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6 of 6

- Page 19, line 29, overstrike "expense" and insert immediately thereafter "expenses"
- Page 19, line 29, remove the overstrike over "~~trust~~"
- Page 19, line 29, remove "grain indemnity"
- Page 19, line 29, replace "insolvency" with "credit-sale contract indemnity"
- Page 19, line 29, after "fund" insert "as appropriate"
- Page 20, line 2, remove the overstrike over "~~trust fund~~"
- Page 20, line 2, remove "insolvency"
- Page 20, line 2, replace "grain" with "credit-sale"
- Page 20, line 2, after "funds" insert "as appropriate"
- Page 20, remove lines 3 through 31
- Page 21, remove lines 1 through 31
- Page 22, remove lines 1 through 15
- Page 22, line 18, remove "**Grain**"
- Page 22, line 21, remove "grain"
- Page 22, remove lines 23 through 31
- Page 23, remove lines 1 through 31
- Page 24, line 1, remove "60-02-02, 60-02-25.1,"
- Page 24, line 1, replace ", 60-02.1-02," with "and"
- Page 24, line 1, remove the fifth comma
- Page 24, line 2, remove "60-04-03.2, and 60-10-03"
- Page 24, remove lines 3 and 4
- Renumber accordingly

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1126**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 17.8083.01003

Recommendation

- Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Skroch Seconded By Rep. Howe

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman Wayne Trottier			Rep. Kathy Hogan		
Rep. Jake Blum					
Rep. Craig Headland					
Rep. Michael Howe					
Rep. Dwight Kiefert					
Rep. Jeffery Magrum					
Rep. Aaron McWilliams					
Rep. Bill Oliver					
Rep. Bernie Satrom					
Rep. Cynthia Schreiber Beck					
Rep. Kathy Skroch					

*Voice Vote
Motion Carried*

Total **Yes** _____ **No** _____

Absent _____

Floor Assignment _____

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

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1126**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 17.8083.01003

Recommendation

- Adopt Amendment
 - Do Pass Do Not Pass Without Committee Recommendation
 - As Amended Rerefer to Appropriations
 - Place on Consent Calendar
- Other Actions:** Reconsider _____

Motion Made By Rep. Boschee Seconded By Rep. Schreiber-Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman Wayne Trottier	X		Rep. Kathy Hogan	X	
Rep. Jake Blum	AB				
Rep. Craig Headland	X				
Rep. Michael Howe	X				
Rep. Dwight Kiefert	X				
Rep. Jeffery Magrum	AB				
Rep. Aaron McWilliams	X				
Rep. Bill Oliver	AB				
Rep. Bernie Satrom	AB				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				

Total **Yes** 10 **No** 0

Absent 4

Floor Assignment Chairman Dennis Johnson

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

REPORT OF STANDING COMMITTEE

HB 1126: **Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1126 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "60-02-03,"

Page 1, line 1, remove "60-02-25,"

Page 1, line 2, remove "60-02-44, 60-02.1-03,"

Page 1, line 3, remove "60-02.1-29, 60-02.1-30, 60-02.1-31,"

Page 1, line 3, remove "60-02.1-33, 60-02.1-34,"

Page 1, line 4, remove "60-02.1-36,"

Page 1, line 4, remove "60-04-03, 60-04-03.1, 60-04-03.3, 60-04-03,"

Page 1, line 5, remove "60-04-05, 60-04-06,"

Page 1, line 5, remove "60-04-08,"

Page 1, line 5, remove "60-10-01, 60-10-02, 60-10-04,"

Page 1, line 6, replace "60-10-05, 60-10-06, 60-10-07, 60-10-08," with "and"

Page 1, line 6, remove "60-10-10, 60-10-13, 60-10-14, and 60-10-15"

Page 1, line 7, remove the second comma

Page 1, remove lines 8 and 9

Page 1, line 10, replace "indemnity fund" with "and insolvencies of public warehouses and grain buyers"

Page 1, line 10, remove "60-02-02, 60-02-25.1,"

Page 1, line 10, replace ", 60-02.1-02," with "and"

Page 1, line 11, remove "60-04-03.2, and 60-10-03"

Page 1, line 11, remove "duties of the"

Page 1, line 12, remove "commission, receiptholders' lien,"

Page 1, line 12, remove "closure, grain of insolvent warehouseman as trust"

Page 1, line 13, replace "asset, and suspension of indemnity fund assessments; and to provide for a transfer" with "closures"

Page 1, remove lines 15 through 23

Page 2, remove lines 1 through 5

Page 4, remove lines 9 through 19

Page 6, remove lines 9 through 30

Page 7, remove lines 1 and 2

Page 8, line 30, after "demand" insert ", including electronic communications."

Page 8, line 31, after "demand" insert ", including electronic communications"

Page 9, remove lines 3 through 31

Page 10, remove lines 1 through 20

Page 10, line 24, remove the overstrike over "~~its appointment~~"

Page 10, line 24, remove "an insolvency"

Page 10, line 26, remove the overstrike over "~~its appointment~~"

Page 10, line 26, remove "the insolvency and the commencement of the"

Page 10, line 27, remove "insolvency proceeding"

Page 11, line 7, remove "or credit-sale contract claimant"

Page 11, line 7, remove the overstrike over "~~participation in the trust fund~~"

Page 11, line 7, remove "payment for"

Page 11, line 8, replace "any amount due" with ", and the credit-sale contract claimant may be barred from payment for any amount due"

Page 11, line 9, remove the overstrike over "~~court~~"

Page 11, line 9, remove "commission"

Page 11, remove lines 10 through 27

Page 12, line 5, remove "and credit-sale contract claimants"

Page 12, line 6, after "4." insert "Settle and compromise any action when it is in the best interests of the credit-sale contract claimants."

5."

Page 12, remove lines 8 through 14

Page 12, line 17, remove the overstrike over "~~of trustee to court – Approval~~"

Page 12, line 17, remove "and order of commission"

Page 12, line 19, remove the overstrike over "~~file with the court~~"

Page 12, line 19, remove "issue"

Page 12, line 20, remove "a notice consistent with chapter 28-32, together with"

Page 13, line 1, remove the overstrike over "~~trust~~"

Page 13, line 1, remove "insolvency"

Page 13, line 1, after "assets" insert "to receiptholders"

Page 13, line 2, after "proposed" insert "credit-sale contract"

- Page 13, line 3, remove "receptholder and"
- Page 13, line 3, remove the overstrike over "~~trust~~"
- Page 13, line 3, remove "insolvency"
- Page 13, line 6, remove the overstrike over "~~court~~"
- Page 13, line 6, remove "commission"
- Page 13, line 6, remove "issue"
- Page 13, line 6, remove "at least"
- Page 13, line 7, remove "forty-five days before the hearing."
- Page 13, line 8, remove the overstrike over "~~be approved~~"
- Page 13, line 8, remove "become final."
- Page 13, line 8, remove "grain indemnity fund"
- Page 13, line 9, remove "payments and"
- Page 13, line 9, replace "insolvency" with "trust"
- Page 13, line 14, remove the overstrike over "~~court~~"
- Page 13, line 14, remove "commission"
- Page 13, line 14, remove the overstrike over "~~the commission,~~"
- Page 13, line 14, remove the overstrike over the second comma
- Page 13, line 17, remove the overstrike over "~~court~~"
- Page 13, line 17, remove "commission"
- Page 13, line 17, remove the overstrike over "~~approve~~"
- Page 13, line 17, remove "adopt"
- Page 13, line 19, remove the overstrike over "~~trust~~"
- Page 13, line 19, remove "insolvency"
- Page 13, line 19, after "fund" insert ", payments from the credit-sale contract indemnity fund"
- Page 13, line 19, remove the overstrike over "~~discharge of the commission from its trust~~"
- Page 13, line 19, remove "payments from"
- Page 13, line 20, remove "the grain indemnity fund"
- Page 13, line 26, remove the overstrike over "~~the action~~"
- Page 13, line 26, remove "any proceeding"
- Page 13, line 27, remove the overstrike over "~~trust~~"
- Page 13, line 27, remove "insolvency"

Page 13, line 27, replace "grain" with "credit-sale contract"

Page 13, line 27, after "fund" insert "as appropriate"

Page 13, line 31, remove the overstrike over "~~trust fund~~"

Page 13, line 31, remove "insolvency"

Page 13, line 31, replace "grain" with "credit-sale contract"

Page 13, line 31, after "funds" insert "as appropriate"

Page 14, line 5, after "demand" insert ", including electronic communication,"

Page 14, remove lines 7 through 30

Page 15, remove lines 1 through 31

Page 16, remove lines 1 and 2

Page 16, line 6, remove the overstrike over "~~its appointment by the district court~~"

Page 16, line 6, remove "an insolvency"

Page 16, line 8, remove the overstrike over "~~its appointment~~"

Page 16, line 8, remove "the insolvency and the commencement of the insolvency proceeding"

Page 16, line 21, remove the overstrike over "~~court~~"

Page 16, line 21, remove "commission"

Page 16, remove lines 22 through 31

Page 17, remove lines 1 through 20

Page 17, line 29, remove "and credit-sale contract claimants"

Page 18, line 1, after "4." insert "Settle and compromise any action when it is in the best interests of the credit-sale contract claimants."

5."

Page 18, remove lines 4 through 10

Page 18, line 13, remove the overstrike over "~~of trustee to court – Approval~~"

Page 18, line 13, remove "and order of commission"

Page 18, line 14, remove the overstrike over "~~file with the~~"

Page 18, line 15, remove the overstrike over "~~court~~"

Page 18, line 15, remove "issue a notice consistent with chapter 28-32, together with"

Page 19, line 2, remove the overstrike over "~~trust fund assets~~"

Page 19, line 2, remove "bond"

Page 19, line 3, remove "proceeds in the insolvency fund"

Page 19, line 3, remove "an appropriate portion of the"

Page 19, line 4, after "proposed" insert "credit-sale contract"

Page 19, line 5, remove "receiptholder and"

Page 19, line 6, remove the overstrike over "trust"

Page 19, line 6, remove "insolvency"

Page 19, line 6, remove the overstrike over "fund"

Page 19, line 6, remove the second "claims"

Page 19, line 8, remove the overstrike over "court shall set"

Page 19, line 8, remove "commission shall hold"

Page 19, line 8, remove "at least forty-"

Page 19, line 9, remove "five days before the hearing."

Page 19, line 10, remove the overstrike over "be approved"

Page 19, line 10, remove "become final."

Page 19, line 10, replace "grain" with "credit-sale contract"

Page 19, line 11, replace "insolvency" with "trust"

Page 19, line 11, after "proposed" insert ", and payments from the credit-sale contracts be made as proposed"

Page 19, line 15, remove the overstrike over "court"

Page 19, line 15, remove "commission"

Page 19, line 15, remove the overstrike over "the commission,"

Page 19, line 15, remove the overstrike over the second comma

Page 19, line 18, remove the overstrike over "court"

Page 19, line 18, remove "commission"

Page 19, line 18, remove the overstrike over "approve"

Page 19, line 18, remove "adopt"

Page 19, line 19, remove the overstrike over the comma

Page 19, line 19, remove "from insolvency fund and"

Page 19, line 20, remove the overstrike over "of"

Page 19, line 20, remove "from"

Page 19, line 20, remove the overstrike over "trust"

Page 19, line 20, remove "grain indemnity"

Page 19, line 20, after "fund" insert ", payments from the credit-sale contract indemnity fund"

Page 19, line 20, remove the overstrike over "~~and discharge of the commission from its trust~~"

Page 19, line 27, remove the overstrike over "such"

Page 19, line 28, remove the overstrike over "action"

Page 19, line 28, remove "any proceeding"

Page 19, line 28, after "may" insert "the commission"

Page 19, line 29, overstrike "expense" and insert immediately thereafter "expenses"

Page 19, line 29, remove the overstrike over "trust"

Page 19, line 29, remove "grain indemnity"

Page 19, line 29, replace "insolvency" with "credit-sale contract indemnity"

Page 19, line 29, after "fund" insert "as appropriate"

Page 20, line 2, remove the overstrike over "trust fund"

Page 20, line 2, remove "insolvency"

Page 20, line 2, replace "grain" with "credit-sale"

Page 20, line 2, after "funds" insert "as appropriate"

Page 20, remove lines 3 through 31

Page 21, remove lines 1 through 31

Page 22, remove lines 1 through 15

Page 22, line 18, remove "**Grain**"

Page 22, line 21, remove "grain"

Page 22, remove lines 23 through 31

Page 23, remove lines 1 through 31

Page 24, line 1, remove "60-02-02, 60-02-25.1,"

Page 24, line 1, replace ", 60-02.1-02," with "and"

Page 24, line 1, remove the fifth comma

Page 24, line 2, remove "60-04-03.2, and 60-10-03"

Page 24, remove lines 3 and 4

Renumber accordingly

2017 HOUSE APPROPRIATIONS

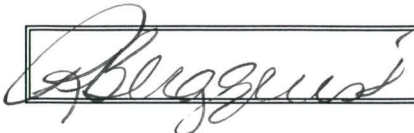
HB 1126

2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1126
2/8/2017
28080


- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to public warehouse and grain buyer licensing and insolvencies of public warehouses and grain buyers; and to repeal sections 60-02-39 and 60-02.1-25, of the North Dakota Century Code, relating to warehouse closures.

Minutes:



Representative Johnson, District 15 Devils Lake: HB 1126 came down from the public service commission, they came to our committee with a bill about don't some drastic changes on how they are inspecting warehouses and they want to create a new entity fund that had no cap on it. It eliminates some inspectors. They brought the bill back down and we ended up getting rid of the indemnity fund, without the cap, and going back to old process that we have now, 3 million to 6 million dollars that kicks in when there's an insolvency to reimburse the contract. It's a check off when you sell grain.

Chairman Delzer: But only if you sign a contract and defer it.

Representative Johnson: When it gets down to 3 million dollars it kicks in again. It hasn't ever kicked in, there's 4.7 million dollars right now. It's a fund that is working, we are keeping the old indemnity fund. The reason we kept the bill is because the grain warehouses liked the fact that we can go to the electronic renewal under licensing, that was one way of trying to save some money up in the public service commission's office. They get their packets of renewal in and they'll have 450 packets laying out on the tables, they miss anything on one line and they all have to be sent back and redone. The machine kicks it out if there's an error so now your packet is done properly and they felt it would have a lot of time and staff.

One thing that I want to talk about, it's going to be an expense that comes out of the indemnity fund to the commission for processing these cases, before it came out of the budget. They said around upwards of 50 thousand dollars per case. Over and above the 80% payback to the farmers involved.

Chairman Delzer: Representative Pollert are you good with everything in this bill?

Representative Pollert: Yes, I was part of it.

Chairman Delzer: It looks like this take 2 FTEs out of the PSC?

Representative Johnson: It's the elimination of 1.25 FTE, that's where the 88 thousand reduction comes from.

Representative Pollert: Well the bill in its original form would have created a lot possibility of fraud in the grain elevator industry. When we changed the bill it keeps this a little more honest. I'm hoping this goes through the E&E, and they make sure that the intention of this bill is that they are still doing inspection of elevators and making sure that the integrity of the business is what's going on.

Representative Kempenich: Who's going to do the investigative work?

Chairman Delzer: Does this all transfer over to the judges then?

Representative Johnson: It does because they put the courts in here but the PSC is still working and representing the growers and the courts would decide who should get what.

Representative Kempenich: PSC is still the investing arms.

Representative Brandenburg: The bank and the PSC and the insolvency are they still going to have their arms wrapped around when they recognize that insolvency so when they pull that checkbook and not let them deplete so there's nothing left for the growers?

Representative Johnson: As soon as it's declared or recognize, that's when everything stops.

Representative Pollert: It was going to take out the language about trust funds which would have taken away the authority of the PSC and so that language is back in there because that would all gone to the grain credit identity fund. Now you'll see on page 9 line 17, it says *trust fund and the credit-sale contract and indemnity fund*, because the courts where not ruling, there was conflicting of what funds were where, this language had to be in there. We thought about killing the bill but once the subsection talked about it they said they needed this language so that the courts could rule.

Further questions? Seeing none. Hearing closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB1126
2/13/2017
28293

- Subcommittee
 Conference Committee

Minutes

Explanation or reason for introduction of bill/resolution:

Relating to public warehouse and grain buyer licensing and insolvencies of public warehouses and grain buyers; and to repeal sections 60-02-39 and 60-02.1-25, of the North Dakota Century Code, relating to warehouse closures.

Minutes:

Chairman Delzer: Opened the meeting to HB 1126. They put in for expended indemnity fund. It seems to me that is out what we do have is electric filing for grain elevators and also inspections for grain elevators.

Representative Monson: After the amendment we were told that they would continue they would keep doing the inspections, probably not the same as before. Governor Dalrymple had taken 2 FTEs out of there budget because he anticipated that they would not need it if they passed this bill as it was with the amendment. Commissioner Christman said that they would still need 1.25 FTEs we took one full FTE out. We have incorporated this into our budget as far as the number of FTEs and the dollars needed.

Rep. Pollert: The Ag. Committee had a subsection put together they did a lot of work with it. We thought that we should kill it but the language about the trust fund and the indemnity language needs to be to be a separate item for some of the court cases dealing with "with" and "solvency". The bill needs to be done.

Chairman Delzer: This doesn't change the bonding requirements that currently exit for noncredit sales?

Representative Pollert: The credit sale indemnity fund said \$350,000 and 80 percent is at 270 or 280,000 is what you can get but only for credit sale instrument type contracts.

Chairman Delzer: This doesn't change the other, because the other is covered by some degree?

Representative Brandenburg: Insolvency is the order still in line as far as it was before?

Representative Pollert: Everything went back to what it was before. That would be wrong because it would be covered by cash sale indemnity fund

Representative Pollert: That would be the cash positions and the bonding.

Chairman Delzer: Nothing for per purchase of it?

Representative Pollert: Nothing for fertilizer, seed or anything like that.

Representative Brandenburg: As far as where the banker sits and where those people with cash all of that is the same as before?

Chairman Delzer: The dangerous part about moving this bill forward is who knows what it will look like when we get it back?

Representative Monson: When I look at this fiscal note I see that they could do get by with 1.25 FTEs less and when they told us after this bill passed over the house Ag they said they needed 1.25 FTEs so that is not the same.

Chairman Delzer: You can find that out tomorrow.

Representative Pollert: I will make a motion for do pass.

Representative Monson: Second.
I will check into this in the morning.

Chairman Delzer: The doesn't change the FTEs at all.

Representative Streyle: We do have him on record saying this is a core mission of PSC.

Chairman Delzer: Further discussion on the motion for a do pass on HB 1126?

A Roll Call vote was taken. Yea: 20 Nay: 0 Absent: 1 Floor Assignment Rep. Johnson
Motion carries.

Date: 2/13/2017
Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1126**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Representative Pollert Seconded By Representative Monson

Representatives		Representatives		Yes	No
Chairman Delzer	X				
Representative Kempenich	X	Representative Streyle	X		
Representative: Boehning	X	Representative Vigesaa	X		
Representative: Brabandt	X				
Representative Brandenburg	X				
Representative Kading	X	Representative Boe	X		
Representative Kreidt	A	Representative Delmore	X		
Representative Martinson	X	Representative Holman	X		
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Pollert	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 20 No 0

Absent 1

Floor Assignment Representative Johnson

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

Motion Carries

REPORT OF STANDING COMMITTEE

HB 1126, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **DO PASS** (20 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1126 was placed on the Eleventh order on the calendar.

2017 SENATE AGRICULTURE

HB 1126

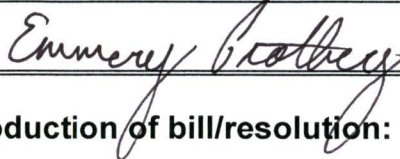
2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1126
3/16/2017
Job # 29294

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to public warehouse and grain buyer licensing, conditions and attributes of licensure and accepting delivery of grain when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund and the grain indemnity fund

Minutes:

Attachments: #1a – 1b

Chairman Luick: Opened the hearing on HB 1126.

Randy Christmann, Public Service Commissioner: Testified in Favor of HB 1126 (See Attachment #1).

(3:00) **Chairman Luick:** So a roving grain buyer could be from another state?

Randy Christmann: That is correct. We just licensed a roving grain buyer from Canada; there are many of them.

Commissioner Christmann went over language definitions (See Attachment #1b). He continued with his testimony (See Attachment #1).

(14:30) It was never our intention to eliminate grain licensing from our portfolio. We had plans that didn't plan our that would have changed the way we do inspections. Some people have seemed to develop a feeling that our goal was eliminate grain licensing and that was never the case. I have heard a lot about inspection of grain as opposed to inspection of grain licensee and whether someone else should be doing this. The responsibilities could be reassigned but if you leave the law the same, they are going to follow the law. If you look at the law, there is one section for grain warehouses and then the same thing in the grain buyers law. The law could not be more clear. If there are disputes, the disputing parties agree on a sample and they send it in to USDA or they can agree on other labs. We require them to post those instructions and part of our inspections are to make sure those are posted. We also have a list of labs we are aware of and so what we are doing regarding this is following the law. We are not shirking any responsibilities in this regard; we are following the law precisely.

(17:45) **Chairman Luick:** You were talking about the testing of Vomitoxin. I have been approached about a possible study of vomitoxin, protein, falling number, equipment. Our last

agriculture study was the century code rewrite and I am thinking there may be a place to do a study in the interim to get a better feeling as to how we can make those pieces of equipment to measure the same so we don't have different facilities coming up with different results. Do you have thoughts about that?

Randy Christmann: Not answering for the commission but I individually would encourage it. I think it would be useful, I think there is a lot of misunderstanding out there, especially with the fact that our grain licensing division often references grain inspection and people conclude that grain inspection as opposed to the grain licensee inspection. I think it would be a learning experience and maybe we would find that there are things we should be doing ourselves. There may be some cost to the state if we decide to do a weights and measures program but they are certainly things that could be talked about and investigated.

Chairman Luick: Would you be opposed to this study being attached to your bill?

Randy Christmann: I wouldn't oppose that.

Senator Klein: I believe we had a study a few years ago but is it time to look at this again if the problem hasn't gone away?

Randy Christmann: I don't specifically recall that although the discussion is familiar. I don't recall if we talked about a study or not.

Senator Klein: What is your current procedure as it relates to expenses in an insolvency?

Randy Christmann: It is unclear because it says that we may collect these expenses. Our tradition has been if the insolvency results in a situation where the farmers are made whole, then from the trust fund or indemnity fund we will take our costs out after the farmers are made whole. In the case where there's both credit sale contract and noncredit sale customers all in the same case, we just split it half and half. The problem has become that as we have fewer but larger producers and litigation drags on more. We used to get these cases and we would issue a determination back to the court and the court would approve it and that would be the end of it. Now we have lenders litigating from one angle, sometimes we will have multiple producers litigating from different angles. The current insolvency we are on has been in the process for over two years and I am quite confident that it will not be done this year. These litigation costs are going up dramatically which is one of the reasons we want to stop paying interest and at least take away that incentive for dragging this out. Costs going up for us as well as a tougher budget situation is why we need to make this change to allow us to put ourselves first and recoup this money from these funds rather than the general fund.

Chairman Luick: How is the indemnity and trust funds funded?

(24:30) **Randy Christmann:** The indemnity fund is just for those credit sale contracts and that can't go higher than six million dollars and it can't go less than three million dollars. I think it is 2/10s of a cent off of their contract.

Chairman Luick: The warehouse's contracts?

Randy Christmann: With a credit sale client. That goes into that indemnity fund and it sits there and when there is an insolvency regarding credit sale contracts, those people are entitled to 80% of their losses, up to \$280,000. If they have a million-dollar contract, the most they can get is \$280,000 but as long as that fund holds out, they are always going to 80% up to \$280,000. In some cases, with better transportation, we can't always count on grain being at the location once they become insolvent. If the grain is in MN, SD, MT, or Canada it doesn't matter to us, it is out of our jurisdiction. The bonds in many cases aren't nearly as much as the liabilities can be. In the case of those noncredit sale claimants, we solved one that paid out about 6% so they aren't guaranteed any minimum but they can get 100% too.

Senator Klein: That is just based on grain. If you prebought your chemicals and fertilizer and they go insolvent, that comes out of the trust fund and we have established nothing for those folks, correct?

Randy Christmann: That is correct. There are producers that have a sense that this place is bonded and licensed by the Public Service Commission so everything is fine to prebuy but if something goes wrong, we are not authorized to license those kinds of things. We deal with their grain dealing and so if that facility goes insolvent, those people are left to go through the court system to pursue it through the bankruptcy case. We do not have anything to do with prepaids, etc. We are grain licensing.

Chairman Luick: Is there a way we can set up a percentage or a small fee like an insurance policy through grain sales themselves so that the farmers could actually purchase this protection?

Randy Christmann: Are you talking about protection on prepaids?

Chairman Luick: Yes.

Randy Christmann: There is an option that at least a couple of facilities in the state were offering where you could buy bond protection for your prepaids but I don't think there are a lot of places that offer it. If people would demand it more, I'm sure more facilities would try to provide it.

Senator Klein: With the Falkirk facility, didn't we make attempts to try to provide something for that? Farmers took quite a hit on that because the percentage they got back was minimal.

Randy Christmann: I don't know what the solution is because it is out of our realm. There are people selling fertilizer that aren't licensed grain dealers so you can't put them at a competitive disadvantage of having to do certain licensing things with us if their competitor doesn't.

Senator Larsen: I thought a couple sessions ago there was some legislation about paying for diesel fuel and spraying cost. Did that go anywhere?

Randy Christmann: I don't recall that specifically; it may have been, but it would be out of our agency.

Senator Larsen: Should the six-million-dollar cap be raised as the facilities have grown?

Randy Christmann: That was part of the previous version but it was not popular in the House. It has worked so far for the most part. However, we have run into people who had more contracts that capped out on their \$280,000 so they didn't get their 80%. If you raise that you are going to need to raise the fund to pay it. As producers get larger, the likelihood of people having more than \$350,000 in contracts will grow. If grain prices go up, it will increase the liability.

Senator Klein: When we established this indemnity fund we didn't have a cap on it and it was later legislation because it seemed to be growing. Currently, we are not assessing credit sale contracts because we reached that cap?

Randy Christmann: There was a cap but it was higher and before it ever got reached, we lowered it to six-million-dollars.

Senator Klein: You are talking about insolvencies you are acting on now. Why haven't we been able to get a handle on insolvencies? Are we working on more than one?

Randy Christmann: That is the only one we have now and I am grateful for that. Sadly, if you look back over every 10-20 years it seems that every year and a half or two years another one goes insolvent. I want to emphasize that it is usually not your traditional grain elevator. The bulk of these are for specialty crops and processors but they are all covered under the same law with the same obligations and licensed the same way. There have been very few traditional local grain licensees go under.

Senator Klein: That also happened to our organic mill in Harvey. So value added is also included in that fund?

Randy Christmann: Correct. Everyone who is buying grain and needs to be licensed by us. The bottom line is that these are commodities and they make long term contracts and sometimes something goes wrong.

Senator Larsen: Do the microbrewery guys have to be licensed?

Randy Christmann: I don't know if there is a quantity minimum but no, we do not license any microbreweries.

Senator Piepkorn: What is the main reason for insolvency?

Randy Christmann: There is not really a pattern; it is typically different things other than the pattern that it is usually the specialty crops and not the traditional grain elevators.

Chairman Luick: If you look at the number of insolvencies in the grain handling position versus businesses of any other sort or farmers who go out of business, we have to be thankful for the few numbers we do have.

Randy Christmann: We have kept track of licensed capacity for more than a century and it is fascinating every year when we evaluate it and they continue to add capacity to serve our Agriculture producers dramatically. I think we have doubled our capacity in the last twelve or thirteen years. I think last year is close to 10% again. There are concerns but the grain dealer industry as a whole is making enormous investments to serve our agriculture producers.

Chairman Luick: We are looking at different ways to make that commodity get the best return possible.

Stu Letcher, Executive Vice President, ND Grain Dealers Association: Testified in Support of HB 1126. We support the changes this bill makes and we think it will streamline the process for licensing and save the commission some money. We also agree that they should be able to recoup their legal costs in an insolvency so we agree if they need to take that out of the trust or indemnity fund. I would like to say a little about that piece: the repeal is old law and should be able to be cleaned up.

Senator Larsen: Are you ok with that study as well for the testing?

Stu Letcher: We are well aware with the issues and we struggle with the same issues. I would say the study would be fine as far as the industry is concerned but keep in mind that any shipments that go out of state are governed by federal grain inspection service. If you look at equipment for doing bond tests, equipment for protein tests, equipment for moisture tests, that is all governed by federal grain inspection and they have approved equipment lists already. As a matter of fact, there was an issue in the state where a few of the elevators were shipping wheat to the west coast and there was a difference in moisture and it cost some elevator in the state a lot of money. Our recourse in a dispute like that across state lines is to go to federal grain and they have a similar procedure to ND except it is done in Kansas City. They discovered there were some issues with some of the models they had approved and there was a workshop here last spring where they brought the manufacturers of both types of moisture meters up and everyone got together to make sure the meters right. IT's no difference for us.

Mr. Letcher talked discussed testing variations.

Chairman Luick: Do you think the equipment is in flux or is it operation of that equipment?

Stu Letcher: Discussed the complexity of variability and how they can influence a testing sample.

(45:18) **Senator Larsen:** Is there an inspector on the equipment that checks grain?

Stu Letcher: Not from federal grain inspection. The equipment is approved by federal grain and as long as they are using that equipment and it is within operating parameters, federal grain inspection accepts that.

Chairman Luick: So there is no year by year calibration methods?

Stu Letcher: I am sure there are some procedures but I am unaware of any official calibration.

Senator Klein: So you are good with the bill?

Stu Letcher: Yes.

Senator Klein: Would it be worth the time to pursue this study from your memberships perspective?

Stu Letcher: Speaking for the industry, I could comfortably say that yes, we want everyone to see that we want an ethical end in our industry.

Mr. Letcher shared his personal experience with testing in a facility.

I think we would behind a study to make sure everyone knows the standards. A lot of the grain grading is not done by the elevators anymore but the grain is graded by an official grain inspection agency and they are appointed by federal grade inspection so when that grade comes, it is an official grade. If you dispute with an official grade, there is a federal inspection process you can go through and that goes through Kansas City to the lab.

Chairman Luick: I think this is a first step to see if we can find a remedy to the problem.

Senator Piepkorn: Agreed that there was value to the study.

Chairman Luick: Closed the hearing on HB 1126.

2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1126
3/23/2017
Job # 29579

- Subcommittee
 Conference Committee

Committee Clerk Signature

Emmery Grothberg

Explanation or reason for introduction of bill/resolution:

Relating to public warehouse and grain buyer licensing, conditions and attributes of licensure and accepting delivery of grain when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund and the grain indemnity fund

Minutes:

Attachments: #1

Chairman Luick: Opened the discussion on HB 1126 and passed out amendments to HB 1126 (See Attachment #1).

(2:25) **Tom Bodine, Deputy Commissioner, Agriculture Commission:** Explained the amendments to the committee. This amendment addresses one of the issues producers have faced. We've had a lot of calls where the producer will take a sample of grain in to different elevators and get different results with the same sample. I think this will be a step in the right direction to be able to make sure the tests are the most accurate they can be. So when a producer takes it in they won't mind a discount as long they have confidence in the testing.

Senator Piepkorn: When would the study begin?

Tom Bodine: It would be up to legislative management to put that together.

Senator Klein: If the study were to pass, it would go with the 142 studies that will probably pass during the session. Legislative management will work their way through and pick 70 because that is all there is time for to do an adequate job. After the June meeting and the selection is made, the various committees will be assigned and begin this fall and next year up until September if there are any changes to be made and if there are any bills to be introduced they need to have a couple readings in the interim committee so they can go forward in the 2019 session.

Senator Osland: What is the process on the federal grain inspection? Does federal grain inspection have standardizations that we are overlapping with?

Tom Bodine: To my understanding, federal grain does have the ability to send samples down and see if they are standardized, but it is not training anyone about the procedures they go through. If I am a producer and I haul grain to an elevator and I see a discount and I want to get a second opinion, I can send that sample on to a federal grain inspection but it is at my cost. There is some collaboration between federal grain inspection and this but it's not as standard that they come out and educate.

Senator Klein: I am under the impression that at NDSU, you can take 12 grain kernels and run the same test and get 12 different results? Can you help us get a handle on how difficult an issue this is?

(7:30) **Dan Wogsland, Executive Director, ND Grain Growers Association:** That is correct. Someone from NDSU has done a test on Barley and he took 100 different kernels and got 100 different results. Vomitoxin is a difficult issue.

Chairman Luick: Are there any new testing methods?

Dan Wogsland: I am not aware now but I know the industry tries to make sure that it is as accurate as possible since it is in everyone's best interest.

Chairman Luick: If we are doing it as exact as we can, that information needs to get out there.

Dan Wogsland: It is in everyone's best interest because we all want it accurate. As farmers we want it accurate, as the industry we want it accurate, as the exporters want it accurate. ND Grain Growers Association would support this study

Senator Piepkorn: Perhaps a study like this might lend itself to something more credible and reliable in the future. This study might lead to new information on if we have better ways of testing so you can get a more reliable result. There could be some unforeseen good consequences we are not looking for.

Dan Wogsland: That could happen.

Senator Osland: Representative Johnson, I think I overheard you talking this morning about testing flour in a flour mill. Does that flour have to be at a certain grade?

Representative Johnson: The cut of for federal inspection is two parts per million. Representative Johnson explained the process and the frustration of the different test results from different elevators.

(15:50) **Chairman Luick:** I'm finding out how crucial those numbers are. We have more specific equipment today so we are going down to the parts per billion and one of my concerns is if it is necessary to do that. Obviously there is a threshold we don't want to go beyond because it is a health concern but is the system using someone else's situation as leverage. We need to find out what that threshold is.

Representative Johnson: We have developed the testing equipment to such a level that is so accurate and fine that we have created something we don't know how to respond to the test results we are getting. I would think that those numbers have always been there but with the testing capabilities we have we are finding that we don't know what to do when we have numbers that don't meet the grade.

Senator Osland: Is there any scientific data on vomitoxin? Where is the cut off?

Representative Johnson: All I have is anecdotal.

Senator Osland: Is there printed science?

Representative Johnson: I don't know.

Senator Klein: At the end of the day, the elevator got rid of it and they had an outlet somewhere. They certainly have ability to figure out ways to market this, correct?

Representative Johnson: They probably do at a discount.

Senator Klein: Moved to adopt amendment 17.8083.02001.

Senator Myrdal: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carried.

Senator Klein: Moved Do Pass As Amended.

Senator Myrdal: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carried.

Senator Larsen will carry the committee's recommendation to the floor.

Committee Discussion: The committee discussed amendments for HB 1433.

Chairman Luick: Closed the discussion on HB 1126.

2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1126
3/28/2017
Job # 29672

- Subcommittee
 Conference Committee

Committee Clerk Signature

Emmey Proberg

Explanation or reason for introduction of bill/resolution:

Relating to public warehouse and grain buyer licensing, conditions and attributes of licensure and accepting delivery of grain when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund and the grain indemnity fund

Minutes:

Chairman Luick: Opened the discussion on HB 1126. Page 7, Line 3 and Line 5 – “Communications” needs to be changed to “communication.”

Senator Klein: Moved to reconsider HB 1126.

Senator Myrdal: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carried.

Senator Piepkorn: Moved to Adopt Amendment 17.8083.02002, to strike the “s” on Page 7, Line 3 and Line 5.

Senator Myrdal: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carried.

Senator Klein: Moved Do Pass on Engrossed HB 1126 As Amended.

Senator Larsen: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Senate Agriculture Committee

HB 1126

3/24/17

Page 2

Motion carried.

Senator Larsen will carry the bill to the floor.

March 20, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1126

Page 1, line 5, remove the second "and"

Page 1, line 6, after "closures" insert "; and to provide for a legislative management study"

Page 12, after line 30, insert:

"SECTION 20. LEGISLATIVE MANAGEMENT STUDY - CONSISTENCY IN GRAIN SAMPLING AND TESTING. During the 2017-18 interim, the legislative management shall consider studying practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Re-number accordingly

March 24, 2017

CJ
3124-2017
1 of 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1126

Page 1, line 5, remove the second "and"

Page 1, line 6, after "closures" insert "; and to provide for a legislative management study"

Page 7, line 3, replace "communications" with "communication"

Page 7, line 5, replace "communications" with "communication"

Page 12, after line 30, insert:

"SECTION 20. LEGISLATIVE MANAGEMENT STUDY - CONSISTENCY IN GRAIN SAMPLING AND TESTING. During the 2017-18 interim, the legislative management shall consider studying practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1126**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 17.8083.02001

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Klein Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3/23
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1126

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Klein Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Larsen

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

Date: 3/24
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1126

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Klein Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3/24
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1126

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 17.8083.02002 - strike "5" on lines 3-5, Page 7

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Piepkorn Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3/24
Roll Call Vote #: 3

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1126

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Klein Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Larsen

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

REPORT OF STANDING COMMITTEE

HB 1126, as engrossed: Agriculture Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1126 was placed on the Sixth order on the calendar.

Page 1, line 5, remove the second "and"

Page 1, line 6, after "closures" insert "; and to provide for a legislative management study"

Page 7, line 3, replace "communications" with "communication"

Page 7, line 5, replace "communications" with "communication"

Page 12, after line 30, insert:

"SECTION 20. LEGISLATIVE MANAGEMENT STUDY - CONSISTENCY IN GRAIN SAMPLING AND TESTING. During the 2017-18 interim, the legislative management shall consider studying practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

2017 TESTIMONY

HB 1126

Grain Warehousemen: Traditional local facilities licensed by PSC.

Grain Buyers: Roving buyers with no facilities or with facilities licensed by USDA.

Storage: Producer maintains ownership of grain and pays warehouse to store it.

Credit-Sale Contract: Contracts for future payment which meet specific requirements detailed in Century Code.

Noncredit-Sale: All sales of grain which do not meet the requirements of a credit-sale contract. (often referred to as a cash sale)

House Bill 1126

Presented by: Randy Christmann
Chairman, Public Service Commission

Before: House Agriculture Committee
The Honorable Dennis Johnson, Chairman

Date: January 20, 2017

TESTIMONY

Mister Chairman and committee members, I am Randy Christmann, Commissioner with the Public Service Commission testifying today regarding House Bill 1126.

HB 1126 is a major re-write of North Dakota's grain licensing laws that will have a significant impact on North Dakota's agricultural producers, grain buying licensees, and the PSC's budget. I will acknowledge that it was the budget constraints that were the catalyst for these changes, but I do believe that our agricultural producers will ultimately be the major beneficiaries. I will get into more details later, but the reality is that our licensees are dealing with commodities so occasional insolvencies are a reality. The evolution that we have seen in agricultural producers, crop choices, transportation alternatives, and the markets have caused a situation where our agricultural producers are no longer receiving the kind of protections they expect when dealing with businesses that are bonded and licensed by the State of North Dakota.

This legislation impacts 52 sections of law, repealing 7 of them. However, it is not really quite as complicated as it appears when you read the bill.

Much of what is being proposed impacts both **Grain Warehousemen** and **Grain Buyers**, so corresponding sections of law are addressed for each. To further complicate things, we are dealing with two separate sections of existing law for the **Grain Warehousemen** but those sections are combined in current law for **Grain Buyers**.

In your bill you will see proposed licensing and insolvency changes for **Grain Warehousemen** in Chapter 60-02 on pages 1-6 and in Chapter 60-04 on pages 14-19. You will see proposed changes for **Grain Buyers** in Chapter 60-02.1 starting on the bottom of page 6 through page 13. Pages 20-23 involve an indemnity fund which affects **Grain Warehouses** and **Grain Buyers**.

Rather than going through all 52 sections and bouncing back and forth, I will instead just explain the proposal and why it was submitted. But be assured I will be glad to address specific sections if you have questions.

At the bottom of page 8 and 14 you can see the change requiring written demand before a business would be deemed insolvent. This change is to remain consistent with HB 1124 as proposed and we would request that you keep this section consistent with whatever final resolution you provide for HB 1124.

On pages 4 and 6 you can see that the new language eliminates the producer's statutory first lien on grain at an insolvent warehouse. That grain, until now, has really been the foundation of the trust fund the PSC uses to provide reimbursement to **noncredit-sale** producers in insolvency cases. What we are sadly finding though is that in many cases the grain has been moved out of our jurisdiction, if it is there it is labor-intensive and expensive for the PSC to get it

marketed, and the entire process causes expensive legal battles and long delays in paying back producers. This section is not addressed in the **Grain Buyer** section because the lien is not currently in the **Grain Buyer** statute.

Changes on pages 9 and 14 allow the PSC to process insolvency cases administratively instead of through the court system. The Commission has the ability to process these cases more quickly and less expensively.

On the bottom of page 9 and on page 15 you can see a major change in the fund that is used to pay **noncredit-sale** claimants. They are currently paid out of the trust fund which consists mainly of the money recovered by selling the grain on hand and the licensee's bond. Under the new law, the PSC will no longer capture the grain, so the fund is being renamed the grain indemnity fund which will be built up by an assessment on grain sales.

The new grain indemnity fund will pay valid claims at a rate of 80% whether the claim is the result of a **credit-sale contract** or a **noncredit-sale**. A cap on these payments will be explained shortly. If the fund becomes exhausted, claimants will be paid proportionately with the balance made up when funds become available through ongoing assessments. A claimant with both a **credit-sale contract(s)** and a **noncredit-sale** claim is eligible for reimbursement to the cap level for each type of claim.

Law is clarified on the bottom of pages 13 and 19 that the PSC's expenses of processing an insolvency will be deducted from the grain indemnity fund. We expect our expenses to be significantly reduced when insolvencies are processed administratively and no longer involve marshalling and marketing of grain assets.

Perhaps the biggest change for agricultural producers is found on page 20. It affects producers whether they are dealing with a **Grain Warehouseman** or a **Grain Buyer**. This is an assessment on every grain transaction in order to build the grain indemnity fund. This assessment will be applied to every transaction. If there is an insolvency regarding *grain storage*, the losses are covered just like other claims except the assessment would be offset from any payment due the claimant.

The assessment is 2/100 of 1%. Stated more clearly, it equals \$1 for every \$5000. While I wish there were another way to provide protection without this assessment, there is not. Assessing the cost to licensees would obviously be passed on to producers anyway as a cost of doing business. Budget constraints are limiting the PSC's ability to use general fund resources to process and litigate these cases when we rely on the grain assets. But what is most heart-breaking though is to go through that long and expensive process only to find that in many cases the *noncredit-sale* claimants recover less than 50% of their losses. Sometimes it is far less than 50%. In two of the last ten cases they have received less than 10% recovery. By building this fund with assessments from producers we can assure that in almost every case valid claimants will receive at least 80% recovery.

That leads us to the last change in the bill as introduced on page 21. The current language in 60-10-06 limits payouts from the current *credit-sale contract* indemnity fund to the lesser of 80% or \$280,000. As has been discussed, this fund is being renamed the grain indemnity fund to protect all claimants. In discussions

with a number of licensees, there seemed to be agreement that the \$280,000 limit was too low. This bill increases that to \$400,000.

A very important change that was not included in the bill but needs to be added would address the bond proceeds in insolvency cases. It is the PSC's intent that the bond proceeds, to the extent they are needed, would be used to make up the difference between 80% recovery and 100% recovery for **noncredit-sale** claimants only, as has been done under current law. The reason **noncredit-sale** claimants would be treated differently is the recognition that **credit-sale** producers consciously choose to delay payments, thus they should accept the greater risk.

This concludes my testimony and I will answer any questions you may have.

H2

Testimony of Doug Goehring
House Bill 1126
Agriculture Committee
Peace Garden Room
Representative Dennis Johnson, Chairman
January 20, 2017

Chairman Johnson and members of the house agricultural committee, I am Doug Goehring a farmer from Menoken. I am here today in opposition to House Bill 1126, which will make changes to the PSC's oversight of our Grain inspection, buyers and public warehouse program.

I am not necessarily opposed to the insolvency fund that the bill wishes to create. I am however, opposed to less inspections that will be done at our elevators, public warehouses and of the grain traders/buyers in the countryside.

Regulatory programs exist for a couple of reasons; first, to prevent fraud, mitigate risk, and minimize harm. Second, they hold accountable those who violate the law and impose penalties for harm or injury to people and or the environment. The latter is a response to damage already done and the insolvency fund may help in that respect.

I believe the best service we can offer to the public is a regulatory program that prevents fraud, deters bad behavior, mitigates risk, minimize damage before there is harm.

I am sympathetic with the PSC's challenge to make cuts and still deliver something meaningful. I also understand that they are dealing with an antiquated model established over 100 years when the grain trade looked and operated much differently. I believe a modified process or new model could be developed that would help to identify concerns with inventory.

Chairman Johnson and members of the Agriculture committee, I thank you for your time. I would be happy to answer any questions you may have.

Testimony of North Dakota Grain Dealers Association on HB 1126
House Agriculture Committee-Rep Dennis Johnson, Chairman
Presented by Stu Letcher, Executive Vice President-January 20, 2017

Good morning Mr. Chairman and members of the House Ag Committee. My name is Stu Letcher. I am the Executive Vice President of the North Dakota Grain Dealers Association. We are here today in opposition to House Bill 1126 as it is currently written.

NDGDA is a 106 year old organization whose purpose is to further the interests of grain elevators and the farmers they serve. We have worked closely with the PSC in the past toward the same goal-A healthy industry serving its customers with efficiency and integrity.

HB 1126 would make wholesale changes to the ND Century Code chapters regarding grain and seed warehouses, insolvent grain warehouseman, and the credit sale contract indemnity fund. This is primarily a producer bill. Producers will receive the protection and producers will pay for it. Grain elevators will collect the assessment as we do currently for commodity checkoffs.

That being said we would like to make the following points:

- ***This bill removes the “duty” of the PSC to regulate grain warehouses.***
As I stated earlier the North Dakota Grain Dealers Association advocates for a healthy industry. We feel that the PSC plays a very important role in making sure the industry stays healthy by ensuring grain warehouses are complying with law. We want to at least keep the current level of industry oversight and this bill indicates a move toward much less oversight in our industry.

- ***House Bill 1126 does not provide a clear picture of the status of the bond in the event of an insolvency.***
Under current law the bond is combined with the warehouse grain assets and other equity to create a trust fund to pay cash claimants. The bond pays secondary to those grain assets. This bill removes those grain assets from the trust fund and would virtually ensure the bond will be in jeopardy in every insolvency, creating more risk for the bond underwriter. The consequences of this action are unknown, but we envision it could result in stricter underwriting which may prevent some elevators from getting bonded and also result in much higher bond premiums. The status of the bond in an insolvency should be clarified.

- ***Section 46 of the bill removes the receiptholder's lien from the statute.***

Our view is that the PSC may be forfeiting a large amount of money by repealing the receiptholder's lien. The receiptholder's lien is the key part of the current law that allows the PSC to capture the grain assets of a warehouse to pay claimants in the event of an insolvency. Removing this lien will mean the elevator creditors will have access to those assets and those assets could be gone before producers are able to place a claim against them. Michigan and Ohio are two states that currently have grain warehouse indemnity funds. In both of those states they retain a lien on the grain warehouse assets so that the grain can be sold to replenish the fund. We're concerned that with this new system a couple of large insolvencies could wipe out the indemnity fund creating longer wait times for claimants to be paid. Capturing the value of the grain assets in the warehouse could be one way to replenish the fund quicker.

- ***Will the new grain indemnity fund assessment be enough?***

The assessment collected will be 20% of the assessment used to create the credit sale contract indemnity fund, but will cover much more grain, perhaps even twice as much.

- ***Will this bill actually streamline the insolvency process?***

If a producer has more than the maximum claim of \$400,000 at stake in an insolvency he may join a bankruptcy proceeding to place a claim against the grain and other assets of the insolvent elevator. Wouldn't that proceeding have to be completed for that producer to know how much of a claim he can place against the grain indemnity fund?

Summary: As stated earlier, NDGDA wants a strong and healthy industry and will support changes for that purpose. Our concerns with HB 1126 bill are many. We feel that the consequences of the changes in this bill won't be fully known until the process is tested in an insolvency proceeding and then it may be too late. We recommend this bill be held over for legislative study to get a better understanding of the impacts these changes will make.

Thank you. I will try to answer any questions.

Good morning Chairman Johnson and House Agricultural Committee members. I'm Craig Olson, President of the North Dakota Soybean Growers Association, and Colfax area farmer and rancher.

I want to take a minute and thank you all for your willingness to serve North Dakota's citizens, contributing both your time and talent to make our state a better place now and into the future.

House Bill 1126 has caused us to pause and reexamine our understanding and desires about the level of risk we accept every day in our marketing practices and choices. Successful marketing is critical to our survival in the farming business.

Our current understanding of HB 1126 is that the PSC would relinquish their statutory duty and authority to provide supervision over public grain and seed warehouses and grain buyers in favor of establishing a larger indemnity fund to increase funds available to offset farmer and rancher losses when the inevitable insolvency occurs. Clearly conducting individual and collective risk assessments has value, however, we are not convinced that the process offered in this proposal will serve North Dakota's farmers well.

We believe strongly that an ounce of prevention is worth a pound of cure. We think that having a regulatory structure that has a strong oversight element is an important deterrent to potential buffoonery.

We also understand that when a regulatory process fails, as it possibly could, it may not be the fault of the Regulator. But having said that, we are also not ready to allow the regulator sole custody of the insolvency process and its resolution. We believe removal of the Court from the process is problematic. We prefer a nonpartisan third party providing oversight of the entire insolvency process.

Third party involvement may ultimately cost more in time and money, but insolvencies are full of abused trust, frustration, and anger by their very nature. Farmers must have this opportunity to feel the process used to

resolve an insolvency is as fair to their interests and concerns as possible regardless of their financial outcome. We are talking about their individual economic survival . . . and in many instances, more.

We have additional concerns normal for impacted people that were not invited to participate in the process of planning these significant changes.

We have a host of potential questions ranging from insolvency notifications; to personal property recovery; to asset allocation processes and priorities; to basic bonding level requirements and payout processes; insolvency payouts limits to individuals and on multiple contracts; and more that are not immediately evident.

We don't know what we don't know . . . so we don't know what to ask.

Thank You for your time and attention. I'll be happy to answer your questions that I can.

Thank You,
Craig Olson
NDSGA President
craig.olson@ndsoygrowers.com
Cell 701.640.4002



#5

Dan Wogsland

Your voice for wheat and barley. www.ndgga.com

North Dakota Grain Growers Association
Testimony on HB 1126
House Agriculture Committee
January 20, 2017

Chairman Johnson, members of the House Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). Through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council NDGGA engages in domestic policy issues on the state and national levels on behalf of North Dakota wheat and barley farmers. NDGGA comes before you today in opposition to HB 1126.

Chairman Johnson, members of the House Agriculture Committee, grain warehouse insolvencies are a nightmare for everyone concerned. It is a nightmare for the grain warehouse, for the farmers and creditors who have engaged in commerce with the entity, for the grain industry and for the regulators, in this case the North Dakota Public Service Commission, who are in charge of regulation and dissolution of the business in question. In the end the goal of HB 1126 should be to improve protection to the public and to stakeholders; in NDGGA's view that goal is not achieved by this legislation.

NDGGA has many concerns regarding policy changes found in HB 1126; specifically these concerns are:

- PSC relinquishment of its regulatory responsibilities over grain warehouses in the state.
- Removal of the receipt holder's lien from the bill which would allow warehouse creditors, not farmers, access to grain and grain products in the warehouse.
- Creation of a new assessment on all commodity sales in North Dakota.
- Allowing the newly created "Insolvency Fund" to grow indefinitely.

In short, HB 1126 would reduce oversight and promote more risk in North Dakota's commodity industry. NDGGA recognizes the budgetary constraints North Dakota state government is facing this legislative session; however at the same time North Dakota agriculture can ill afford reduced regulation and increased risk in the state's grain handling component of the agriculture economy.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

Chairman Johnson, members of the House Agriculture Committee, rarely if ever do you find an industry which invites regulation; the industry most directly involved in PSC regulation is asking the PSC not to diminish the Commission's regulatory efforts. It is the opinion of NDGGA that industry should be listened to. Therefore the North Dakota Grain Growers Association respectfully requests the House Agriculture Committee give HB 1126 a Do Not Pass recommendation.

January 20, 2017

HB 1226

House Agriculture Committee

Chairman Johnson and members of the Committee,

My name is Dane Braun and I'm here to represent the members of North Dakota Farmers Union. We oppose HB 1126.

North Dakota Farmers Union recognizes that farmers are rarely made whole during a grain buyer or warehouse insolvency. However, we believe that reducing the scope of the inspections may cause greater risk of insolvencies.

We are also concerned the farmers will no longer have first lien on their grain. Farmers Union believes that the receipt holder should not have to compete with other creditors for that asset.

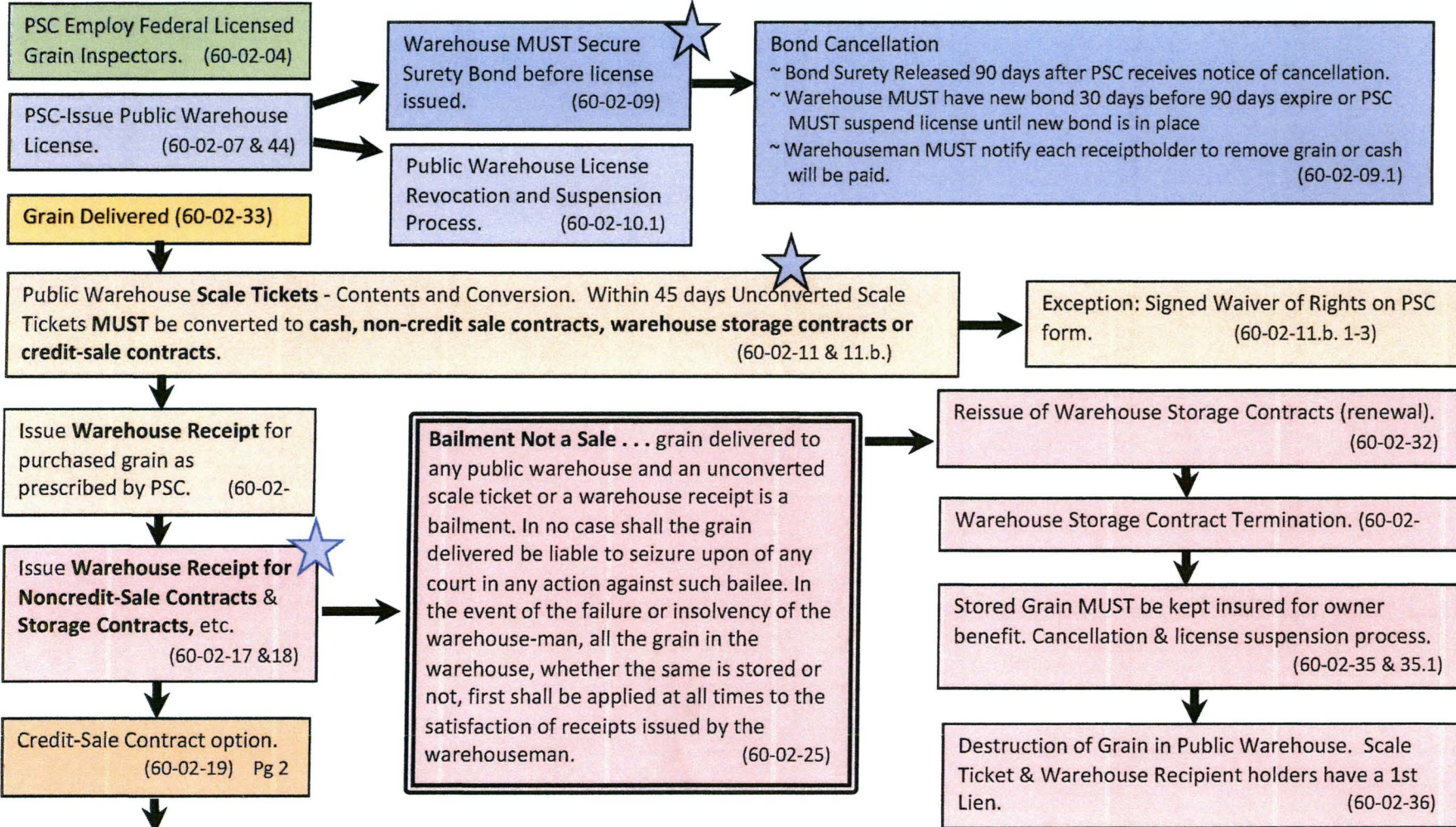
Finally, the proposed assessment will cost the farmers additional dollars to cover the risk of a warehouse or grain buyer becoming insolvent. How much of the insolvency risk should be covered by the farmer and how much by the warehouse or grain buyer? We believe that this is a vital question for the committee to consider.

Because of these concerns we are opposed to the bill, but believe this issue has merit and should be considered for study.

Thank you, and I can take any questions that you may have.

Current Statute = MUST . . . Duties and powers of the commission

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses. (60-02-03.)



HB 1126
 January 20, 2019
 Scott Rising # 7

Important Definitions

Credit-Sale Contract: means a written contract for the sale of grain with the sale price is to be paid more than thirty days after the delivery or release of the grain for sale . . . (60-02-01).

Noncredit-Sale Contract: means a contract for the sale of grain other than a credit-sale contract. (60-02-01).

Credit-Sale Contract option.
(60-02-19) cont.

Warehousemen Liability.
(60-02-22)

Keep required PSC required
Records. (60-02-23)

File required PSC Reports.
(60-02-24)

PSC permission to close
warehouse. (60-02-39)

Credit-Sale Contract option.

- ~ Contract **MUST** be in writing
- ~ Include contract number, sellers name, conditions of delivery, kind of grain delivered, price per unit, payment date, duration, etc.
- ~ Credit-Sale Contracts **are not** covered by the warehouse bond in 20-02-09.
- ~ ~ May be protected by additional bonding beyond the warehouse bond in 20-02-09. (60-02-

Credit-Sale Contract Indemnity Fund

Provisions are found in 60-10, *Credit-Sale Contract Indemnity*

Credit-Sale Contract Indemnity Fund

- ~ **Assessment** = .02 of 1% (\$2.00 on \$10,000) of all gain sold in our state under credit-sale contracts. Submitted to PSC quarterly. (20-10-01)
- ~ **Credit-sale Indemnity Fund** consists of assessments & earned income. When the fund achieves a \$6 million balance, collections are suspended; and restarted when the fund drops below \$3 million.
- Currently the fund balance is approximately \$4.76 Million (60-10-03)
- > **Eligibility for Reimbursement.** Person must have sold grain to a licensed warehouse or grain buyer in ND (1) after August 1, 2003; (2) that buyer-person becomes insolvent; and (3) they do not fully compensate the person in accordance with the credit-sale contract. (60-10-04)
- > **Availability of Indemnity Fund Money.** Upon insolvency and a declaration that the public service commission serve as the trustee, the public service commission shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's credit-sale contract obligations. (60-10-05)
- > **Indemnity Fund Reimbursement Limit .** The lesser of 80% of the amount owed to a person's unsatisfied credit-sale contracts or \$280,000. If claims exceed the available fund balance, claims are prorated. Future assessments continue to be used to satisfy these claims. A future insolvency claims will not be paid until the current claims are satisfied. PSC expenses incurred in administrating the indemnity fund are reimbursable from the fund before other claims are paid.

Important Related Processes

PSC Process for Grain Dispute Resolution. between person delivering grain and the warehouseman. (60-02-5)

PSC Cease and Desist Orders. (60-02-41)

PSC Process for Warehouse Out-of-Business and Receipt Redemption. (60-02-41)

PSC Process to Transfer Warehouse by sale or lease. (60-02-38,&40)

Issues of "Bailment" and "Risk Inequities in Noncredit-Sale Contracts vs. Credit-Sale Contracts"

Current ND Grain Sales and Insolvency Processes
Grain Warehouses, Grain Buyers, etc.

Grain Delivered/Contracted - Scale Ticket
Maximum Duration = 45 Days (60-02-11)

Scale Ticket to Cash Receipholder
(60-02-

OR

Scale Ticket to NonCredit-sale Contract
Receipholder (60-02-

OR

Scale Ticket to Warehouse storage
Receipholder 60-02-

OR

Scale Ticket to Credit-Sale Contract (60-02-19)

Bailment Not a Sale . . .
In no case shall the grain delivered be liable to seizure upon of any court in any action against such bailee. In the event of the failure or insolvency of the warehouse-man, all the grain in the warehouse, whether the same is stored or not, first shall be applied at all times to the satisfaction of receipts issued by the warehouseman. (60-02-25)

Credit-Sale Contract Indemnity Fund
Funded through an assessment = .02 of 1% (\$2.00 on \$10,000) of all gain sold under credit-sale contracts. The fund is capped with collections suspended at \$6 million and restarted when the fund drops below \$3 million. Currently the fund balance is approximately \$4.3 million. ??
Indemnity Fund Reimbursement Limit is the lesser of 80% of the amount owed to a person's unsatisfied credit-sale contracts or \$280,000. If claims exceed the available fund balance, claims are prorated. Future assessments continue to be used to satisfy these claims PSC expenses incurred in administrating the indemnity fund are reimbursable from the fund before other claims are paid.

Plus

Warehouse or Buyer Licensing Surety Bond
(60-02-09)

Plus

Any Additional Warehouse or Buyer Surety Bond established beyond the Licensing Bond (60-02-19)

W

Proposed ND Grain Sales and Insolvency Processes
Grain Warehouses, Grain Buyers, etc.

Grain Delivered/Contracted - Scale Ticket
Maximum Duration = 45 Days (60-02-11)

Scale Ticket to Cash Receiptholder
(60-02-

OR

Scale Ticket to NonCredit-sale Contract
Receiptholder (60-02-11)

OR

Scale Ticket to Warehouse storage
Receiptholder (60-02-11)

OR

Scale Ticket to Credit-Sale Contract (60-02-19)

Concept of bailment vs. a Sale.

Insolvency Fund is Established
Funded is established for the benefit of Noncredit Sale Receiptholders. The fund consists of the following:

Warehouse or Buyer Licensing Surety Bond

Pg 9, Section 14 of HB 1126

Plus

NEW Grain Indemnity Fund
See Below

Plus

Any Additional Warehouse or Buyer Surety Bond established beyond the Licensing Bond (60-02-19)

NEW GRAIN INDEMNITY Fund is Established

Funded through an assessment of all gain sold in ND = .02 of 1% (\$2.00 / \$10,000). There is not capped, with collections suspended. The current Credit-Sale Contract Indemnity Fund ending balance (approximately \$4.76 - Dec 1st, 2016) and FN indicates a growth of about \$1.3 Million per year) is moved into the Insolvency Fund. Insolvency Fund Reimbursement Limit is the lesser of 80% of the amount owed to a person's unsatisfied credit-sale contracts or \$400,000. If claims exceed the available fund balance, claims are prorated. Future assessments continue to be used to satisfy these claims PSC expenses incurred in administrating the indemnity fund are reimbursable from the fund before other claims are paid.
See Pgs 20 - 24 , Sections 35 - 44 & 46. of HB 1126

f

Proposed ND Grain Sales and Insolvency Processes

Grain Warehouses, Grain Buyers, etc.

~~Concept of Failure~~ vs. a Sale.

Grain Delivered/Contracted - Scale Ticket
Maximum Duration = 45 Days (60-02-11)
Receiptholder

OR

Scale Ticket to Cash Receiptholder
(60-02-

OR

Scale Ticket to NonCredit-sale Contract
Receiptholder (60-02-11)

OR

Scale Ticket to Warehouse storage
Receiptholder (60-02-11)

Insolvency Fund is Established
Funded is established for the benefit of Noncredit Sale Receipt holders. The fund consists of the following:

Warehouse or Buyer
Licensing Surety
Bond

Pg 9, Section 14 of HB 1126

Plus

**NEW Grain
Indemnity Fund**

See Below

Scale Ticket to Credit-Sale Contract (60-02-19)

Only

NEW GRAIN INDEMNITY Fund is Established

Funded through an assessment of all grain sold in ND = .02 of 1% (\$2.00 / \$10,000). There is not capped, with collections suspended. The current Credit-Sale Contract Indemnity Fund ending balance (approximately \$4.76 - Dec 1st, 2016) and FN indicates a growth of about \$1.3 Million per year) is moved into the Insolvency Fund. Insolvency Fund Reimbursement Limit is the lesser of 80% of the amount owed to a person's unsatisfied credit-sale contracts or \$400,000. If claims exceed the available fund balance, claims are prorated. Future assessments continue to be used to satisfy these claims. PSC expenses incurred in administrating the indemnity fund are reimbursable from the fund before other claims are paid. See Pgs. 20 - 24 , Sections 35 - 44 & 46. of HB 1126

HB 1126
1/26/17
Scott Rising
①

#1
2/2/17

Illona's Very Quick Review - I will be going thru it again.

17.8083.01001

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1126

Introduced by

Agriculture Committee

(At the request of the Public Service Commission)

delete o/s + noise as noted

1 A BILL for an Act to amend and reenact sections ~~60-02-03~~, 60-02-09, 60-02-17, 60-02-25,
 2 60-02-35, 60-02-38, 60-02-40, 60-02-44, ~~60-02-1-03~~, 60-02.1-08, 60-02.1-26, 60-02.1-28,
 3 ~~60-02.1-29, 60-02.1-30, 60-02.1-31~~, 60-02.1-32, ~~60-02.1-33, 60-02.1-34~~, 60-02.1-35,
 4 ~~60-02.1-36~~, 60-02.1-37, 60-02.1-38, 60-04-02, ~~60-04-03, 60-04-03.1, 60-04-03.3~~, 60-04-04,
 5 60-04-05, ~~60-04-06~~, 60-04-07, ~~60-04-08~~, 60-04-09, 60-04-10, ~~60-10-01, 60-10-02, 60-10-04,~~
 6 ~~60-10-05, 60-10-06, 60-10-07~~, 60-10-08, and 60-10-09, ~~60-10-10, 60-10-13, 60-10-14, and~~
 7 ~~60-10-15~~ of the North Dakota Century Code, relating to public warehouse and grain buyer
 8 licensing, ~~conditions and attributes of licensure and accepting delivery of grain when a licensee~~
 9 ~~is insolvent, the insolvency process, the credit sale contract indemnity fund and the grain~~
 10 ~~indemnity fund~~ ^{ies} and insolvency of public warehouses and grain buyers; to repeal sections
 11 60-02-02, 60-02-25.1, 60-02-39, 60-02.1-02, 60-02.1-25, 60-04-03.2, and 60-10-03 of the North
 12 Dakota Century Code, relating to duties of the commission, receiptholders' lien, warehouse
 13 closure, grain of insolvent warehouseman as trust asset, and suspension of indemnity fund
 14 assessments; and to provide for a transfer.

Duty

15 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

16 —
 17 — ~~SECTION 1. AMENDMENT. Section 60-02-03 of the North Dakota Century Code is~~
 18 ~~amended and reenacted as follows:~~
 19 — ~~60-02-03. Duties and powers of the commission.~~
 20 — ~~The commission shall have the duty and power to may:~~
 21 — ~~1. Exercise general supervision of the public warehouses of this state, including the~~
 22 ~~handling, weighing, and storing of grain, and the management of public warehouses.~~
 23 — ~~2. Investigate all complaints of fraud and injustice, unfair practices, and unfair~~
 24 ~~discrimination.~~

- 1 ~~3.2. Examine and inspect, during ordinary business hours, any licensed warehouse,~~
2 ~~including all books, documents, and records.~~
3 ~~4.3. Require the filing of reports pertaining to the operation of the warehouse.~~
4 ~~5.4. Make all proper rules for carrying out and enforcing any law in this state regarding~~
5 ~~public warehouses.~~

6 **SECTION 1. AMENDMENT.** Section 60-02-09 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **60-02-09. Bond filed by public warehouseman.**

9 Before any license is ~~issued~~ effective for any public warehouseman under this chapter,
10 the applicant for ~~such~~ the license shall file a bond with the commission which ~~shall~~ must:

- 11 1. Be in a sum not less than five thousand dollars for any one warehouse.
12 2. Be continuous, unless the corporate surety by certified mail notifies the licensee and
13 the commission that the surety bond will be canceled ninety days after receipt of the
14 notice of cancellation.
15 3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in
16 ~~such~~ that warehouse.
17 4. Be conditioned:
18 a. For the faithful performance of the licensee's duties as a public warehouseman.
19 b. For compliance with the provisions of law and the rules of the commission
20 relating to the storage and purchase of grain by such warehouseman.
21 5. Specify the location of each public warehouse intended to be covered by such bond.
22 6. Be for the specific purpose of:
23 a. Protecting the holders of outstanding receipts.
24 b. Covering the costs incurred by the commission in the administration of chapter
25 60-04 in the event of the licensee's insolvency.
26 7. Not accrue to the benefit of any person entering into a credit-sale contract with a
27 public warehouseman.
28 8. ~~In no event shall the~~ The aggregate liability of the surety under a bond does not
29 accumulate for each successive annual license renewal period during which ~~such~~ the
30 bond is in force but, for losses during any annual license renewal period, ~~shall be~~ is

Sixty-fifth
Legislative Assembly

1 limited in the aggregate to the bond amount stated or changed by appropriate
2 endorsement or rider.

3 The commission shall set the amount of the bond and may require an increase in the amount of
4 any bond, from time to time, as ~~it shall, in its discretion, deem~~the commission deems necessary
5 to accomplish the purposes of this section. The surety on ~~such a~~the bond must be a corporate
6 surety company, approved by the commission, and authorized to do business within the state.
7 The commission may accept cash, a negotiable instrument, or a bond executed by personal
8 sureties in lieu of a surety bond when, in its judgment, ~~such~~the cash, negotiable instrument, or
9 personal surety bond properly will protect the holders of outstanding receipts. One bond only
10 ~~shall~~may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated
11 by one individual, firm, corporation, or limited liability company, and ~~such~~the bond ~~shall~~must be
12 construed to cover such elevators, mills, or warehouses, as a whole and not a specific amount
13 for each.

14 **SECTION 2. AMENDMENT.** Section 60-02-17 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.**

17 A warehouse receipt must contain, either on its face or reverse side, the following
18 warehouse and storage contract:

19 This grain is received, insured, and stored subject to the laws and rules of the state of North
20 Dakota, the terms of this contract, and the charges and conditions stated herein and as filed
21 with the North Dakota public service commission. Upon surrender of this receipt and
22 payment or tender of all applicable charges, the amount, kind, and grade of grain identified
23 in this receipt will be delivered to the person named above or the person's order as rapidly
24 as due diligence, care, and prudence will permit. At the option of the holder of this receipt,
25 the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be
26 delivered back to the holder at any terminal point customarily shipped to, or at the place
27 where received, upon the payment of any charges for receiving, handling, storage, and
28 insurance and in case of terminal delivery, the payment in addition to the above of the
29 regular freight charges on the gross amount called for by this ticket or in lieu thereof, a
30 receipt issued by a bonded warehouse or elevator company doing business at the terminal
31 point. ~~Nothing in this~~This receipt requires~~does not require~~ the delivery of the identical grain

1 specified herein, but an equal amount of grain of the same kind and grade must be
2 delivered.

3 A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that
4 will be assessed for receiving, storing, processing, or redelivering grain and the termination date
5 of its warehouse receipts. This publication must be filed with the commission as a part of the
6 warehouse license ~~application~~process or annual renewal. The fees and termination date must
7 be stated on the warehouse receipt issued for the grain. The fees or termination date may be
8 changed upon filing a revised publication with the commission.

9 **SECTION 3. AMENDMENT.** Section 60-02-25 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **60-02-25. Bailment not a sale.**

12 Whenever any grain ~~shall be~~is delivered to any public warehouse and an unconverted scale
13 ticket or a warehouse receipt is issued therefor, ~~such~~the delivery ~~shall be~~is a bailment and not a
14 sale of the grain so delivered. ~~In no case shall the~~The delivered grain ~~so delivered be liable~~is
15 not subject to seizure upon process of any court in any action against ~~such~~the bailee, except in
16 an action by an owner of ~~such an~~an unconverted scale ticket or warehouse receipt to enforce the
17 terms thereof or obtain redelivery of ~~such~~the delivered grain. In the event of the failure or
18 insolvency of the warehouseman, all the grain in the warehouse, whether the same is stored or
19 not, first shall be applied at all times to the satisfaction of receipts issued by the warehouseman.

20 **SECTION 4. AMENDMENT.** Section 60-02-35 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **60-02-35. Grain to be kept insured for benefit of owner by warehouseman.**

23 ~~No~~A public warehouseman license ~~may be issued to a public warehouseman~~is not effective
24 unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of
25 the warehouseman for the benefit of the owner at the current market value of the grain against
26 loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of
27 direct physical loss as provided by the insurer in a policy approved by the insurance
28 commissioner. ~~No~~An insurance policy covering grain in a public warehouse may not be
29 transferred or assigned to any person for any purpose, except for grain that is not on
30 warehouse receipt or deposit. The insurance policy must be continuous and may only be
31 canceled in accordance with section 60-02-35.1.

1 **SECTION 5. AMENDMENT.** Section 60-02-38 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-02-38. Refund of license fee by commission.**

4 When requested in writing, the commission shall refund the license fee of a public
5 warehouse, or so much as in its judgment is just and reasonable, when satisfactory proof is
6 furnished that the warehouse has been transferred to some other person, and the new owner
7 has ~~applied for~~obtained a license for the same warehouse for the unexpired period for which the
8 original license was issued. When a warehouse is destroyed by fire or other cause, the license
9 fee may be prorated as the commission may determine.

10 **SECTION 6. AMENDMENT.** Section 60-02-40 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-02-40. Transfer of warehouse - Redemption of receipts.**

13 Whenever a public warehouseman desires to transfer a warehouse, either by sale or lease
14 to any other individual, firm, or corporation, the warehouseman shall:

- 15 1. Notify the commission first of its intention to transfer the warehouse, giving the name
16 and address of the proposed lessee or purchaser.
- 17 2. Furnish a statement of all proper claims that may be filed or pending against the
18 warehouseman pertaining to the storage, inspection, and marketing of grain, together
19 with a statement of:
 - 20 a. The number of bushels [cubic meters] of grain of each kind and grade in store in
21 the warehouse;
 - 22 b. The number and amount of receipts outstanding; and
 - 23 c. The names and addresses of the receiptholders.
- 24 3. Serve notice by registered or certified mail, at least thirty days before the transfer,
25 upon all receiptholders having claims against the warehouse to call for delivery of the
26 grain covered by the receipts, and to pay all storage charges due, the warehouseman
27 in such case to make no charge for redelivery. The commission may waive the
28 thirty-day notice period upon receipt of written consent of all receiptholders.
- 29 4. Transfer all stored grain undelivered at the expiration of such thirty-day period to its
30 successor, if licensed, or to the nearest licensed warehouse for restorage, taking
31 receipts for the same in favor of the owner of the grain so transferred.

1 5. Surrender to the commission its license for cancellation and at such time the proposed
2 lessee or purchaser shall ~~apply~~file in due form for a new license and tender a new
3 bond for ~~approval~~review by the commission, whereupon, it first being duly satisfied
4 that all the outstanding receipts have been redeemed, or that the redemption thereof
5 has been provided for, the commission may ~~issue~~permit a new license to become
6 effective for the lessee or purchaser.

7 No sale, lease, or transfer of any warehouse will be recognized ~~or permitted~~ by the commission
8 except when made in accordance with the provisions of this section.

9 **SECTION 7. AMENDMENT.** Section 60-02-44 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **60-02-44. Licensed warehouse capacity and condominium storage.**

12 Unless an entire warehouse facility is used for nonpublic purposes, all physically connected
13 portions of the facility must be licensed in accordance with this chapter. The warehouseman
14 shall issue receipt memoranda for all grain received. Facilities that are physically connected to
15 the licensed warehouse may be sold under a condominium arrangement or leased to other
16 entities for nonpublic use and sales and lease agreements must be based on the capacity of the
17 bins involved and not on the number of bushels held in the space. The licensee shall provide
18 contents insurance and bond coverage for the space. ~~In case of licensee insolvency, the~~
19 ~~contents of the space must be considered an asset to the trust fund established under~~
20 ~~chapter 60-04 and owners and lessees are entitled to trust fund protection in a manner equal to~~
21 ~~all other valid grain receipt holders.~~

22 ~~— SECTION 9. AMENDMENT. Section 60-02.1-03 of the North Dakota Century Code is~~
23 ~~amended and reenacted as follows:~~

24 ~~— 60-02.1-03. Duties and powers of the commission.~~

25 ~~— The commission has the duty and power to:~~

26 ~~— 1. Exercise general supervision of grain buyers of this state.~~

27 ~~— 2. Investigate all complaints of fraud and injustice, unfair practices, and unfair~~
28 ~~discrimination.~~

29 ~~— 3.2. Examine and inspect, during ordinary business hours, any books, documents, and~~
30 ~~records.~~

*No chg nec
delete from
Bill*

*delete
OK*

1 ~~4.3. Make all proper rules for carrying out and enforcing any law in this state regarding~~
2 ~~grain buyers.~~

3 **SECTION 8. AMENDMENT.** Section 60-02.1-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **60-02.1-08. Bond filed by grain buyer.**

6 Before any license is issued to effective for any grain buyer under this chapter, the applicant
7 for ~~such~~the license shall file a bond with the commission which must:

- 8 1. Be in a sum not less than five thousand dollars.
- 9 2. Be continuous, unless the corporate surety by certified mail notifies the licensee and
10 the commission that the surety bond will be canceled ninety days after receipt of the
11 notice of cancellation.
- 12 3. Run to the state of North Dakota for the benefit of all persons selling grain to or
13 through the grain buyer.
- 14 4. Be conditioned:
 - 15 a. For the faithful performance of the licensee's duties as a grain buyer.
 - 16 b. For compliance with the provisions of law and the rules of the commission
17 relating to the purchase of grain by such grain buyer.
- 18 5. For facility-based grain buyers, specify the location of each facility intended to be
19 covered by ~~such~~the bond.
- 20 6. Be for the specific purpose of:
 - 21 a. Protecting the sellers of grain.
 - 22 b. Covering the costs incurred by the commission in the administration of the
23 licensee's insolvency.
- 24 7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain
25 buyer.
- 26 8. ~~In no event shall the~~The aggregate liability of the surety under a bond does not
27 accumulate for each successive annual license renewal period during which ~~such~~the
28 bond is in force but, for losses during any annual license renewal period, ~~shall be~~is
29 limited in the aggregate to the bond amount stated or changed by appropriate
30 endorsement or rider.

1 The commission may require an increase in the amount of any bond, from time to time, as it
2 deems necessary to accomplish the purposes of this section. The surety on ~~such a~~the bond
3 must be a corporate surety company, approved by the commission, and authorized to do
4 business within the state. The commission may accept cash, a negotiable instrument, or a bond
5 executed by personal sureties in lieu of a surety bond when, in its judgment, ~~such~~ cash, a
6 negotiable instrument, or a personal surety bond properly will protect the holders of outstanding
7 receipts. Only one bond may be required for any series of facilities operated by a facility-based
8 grain buyer, and ~~such~~the bond must be construed to cover ~~such~~those facilities as a whole and
9 not a specific amount for each.

10 **SECTION 9. AMENDMENT.** Section 60-02.1-26 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-02.1-26. Transfer of facility - Redemption of receipts.**

13 Whenever a facility-based grain buyer desires to transfer a facility, either by sale or lease to
14 any other individual, firm, or corporation, the grain buyer shall:

- 15 1. Notify the commission first of its intention to transfer the facility, giving the name and
16 address of the proposed lessee or purchaser.
- 17 2. Provide related information as may be required by the commission.
- 18 3. Surrender to the commission ~~its~~the grain buyer's license for cancellation and at
19 ~~such~~that time the proposed lessee or purchaser shall ~~apply~~file in due form for a new
20 license and tender a new bond for ~~approval~~review by the commission, whereupon, it
21 first being duly satisfied that all the outstanding receipts have been redeemed, or that
22 the redemption thereof has been provided for, the commission may ~~issue~~permit a new
23 license to become effective for the lessee or purchaser.

24 No sale, lease, or transfer of any facility will be recognized ~~or permitted~~ by the commission
25 except when made in accordance with the provisions of this section.

26 **SECTION 10. AMENDMENT.** Section 60-02.1-28 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **60-02.1-28. Insolvency of grain buyer.**

29 A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written
30 demand, including electronic communications, to make payment for grain purchased or
31 marketed by the licensee or is unable to make redelivery upon proper written demand, including

1 electronic communications. The licensee may not assess receiving or redelivery fees on grain
2 that is redelivered during a suspension, following a revocation, or when the owner of the grain is
3 taking redelivery because the licensee is unable to pay for the grain.

4 ~~SECTION 13. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is~~
5 ~~amended and reenacted as follows:~~

6 ~~60-02.1-29. Appointment of commission Commission insolvency proceeding.~~

7 ~~Upon the insolvency of any roving grain buyer, the commission, on its own motion, shall~~
8 ~~apply to the district court of Burleigh County for authority to take all action necessary to act as~~
9 ~~trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a~~
10 ~~facility-based grain buyer, application must be to the district court of a county in which the~~
11 ~~licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not~~
12 ~~exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear~~
13 ~~and determine the application in a summary manner. If the court determines that the licensee is~~
14 ~~insolvent within the meaning of this chapter and that it would be in the best interests of the~~
15 ~~receipt holders that the commission secure and execute the trust, the court shall issue an order~~
16 ~~granting the application, without bond, and the commission shall proceed to exercise its~~
17 ~~authority without further direction from the court.~~

*May need to
add
credit sale
claimants
?*

18 ~~Upon the filing of the commission's application, the court may issue ex parte a temporary~~
19 ~~order to preserve or protect the assets of the trust fund until the court issues its order granting~~
20 ~~or denying the application commence an administrative insolvency proceeding under chapter~~
21 ~~28-32 to secure the bond proceeds, identify potential receipt holder and credit sale claimants,~~
22 ~~determine the amount of each claim, determine the recommended payment on each claim from~~
23 ~~the insolvency fund and the grain indemnity fund, make payments on claims, and take any~~
24 ~~action necessary and appropriate to accomplish the purposes of this chapter.~~

25 ~~SECTION 14. AMENDMENT. Section 60-02.1-30 of the North Dakota Century Code is~~
26 ~~amended and reenacted as follows:~~

27 ~~60-02.1-30. Trust insolvency fund established.~~

28 ~~Upon the insolvency of any licensee, a trust an insolvency fund must be established for the~~
29 ~~benefit of noncredit sale receipt holders and to pay the costs incurred by the commission in the~~
30 ~~administration of the insolvency. The trust insolvency fund must consist of the following:~~

- 1 ~~1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds~~
- 2 ~~obtained from the conversion of such grain.~~
- 3 ~~2. The proceeds, including accounts receivable, from any grain sold from the time of the~~
- 4 ~~filing of the claim that precipitated an insolvency until the commission is appointed~~
- 5 ~~trustee must be remitted to the commission and included in the trust fund.~~
- 6 ~~3. The proceeds of insurance policies on destroyed grain.~~
- 7 ~~4. The claims for relief, and proceeds therefrom, for damages upon bond given by the~~
- 8 ~~licensee to ensure faithful performance of the duties of a licensee.~~
- 9 ~~5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in~~
- 10 ~~the warehouse.~~
- 11 ~~6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that~~
- 12 ~~precipitated an insolvency.~~
- 13 ~~7. Unencumbered equity in grain hedging accounts.~~
- 14 ~~8. Unencumbered grain product assets.~~

15 ~~**SECTION 16. AMENDMENT.** Section 60-02.1-31 of the North Dakota Century Code is~~
16 ~~amended and reenacted as follows:~~

17 ~~**60-02.1-31. Joinder of and notice to surety - Deposit of proceeds.**~~

18 ~~Each~~The commission shall ~~join each~~ surety on the insolvent licensee's bonds must be
19 joined as a party to the insolvency proceeding. If it is in the best interests of the receiptholders,
20 the court~~commission~~ may order a surety to deposit some or all of the penal sum of the bond into
21 the trustee's trust~~insolvency~~ account pending determination of the surety's liability under the
22 bond.

23 **SECTION 11. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **60-02.1-32. Notice to receiptholders and credit-sale contract claimants.**

26 Upon its ~~appointment~~an insolvency, the commission may take possession of relevant books
27 and records of the licensee. If the insolvency involves a roving grain buyer, the commission
28 shall publish a notice of its ~~appointment~~the insolvency and the commencement of the
29 insolvency proceeding once each week for two consecutive weeks in all daily newspapers in the
30 state and may notify, by ordinary mail, the holders of record of outstanding receipts and those
31 who are potential credit-sale contract claimants, disclosed by the licensee's records. If the

1 insolvency involves a facility-based grain buyer, the notice must be published once each week
2 for two consecutive weeks in a newspaper in the county in which the warehouse is located. The
3 notice must require outstanding receiptholders and credit-sale contract claimants to file their
4 claims with the commission along with the receipts, contracts, or other evidence of the claims
5 required by the commission. If an outstanding receiptholder or credit-sale contract claimant fails
6 to submit a claim within forty-five days after the last publication of the notice or a longer time set
7 by the commission, the commission is relieved of further duty in the administration of the
8 insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder

more

9 or credit-sale contract claimant may be barred from participation in the trust fund ~~payment for~~
10 any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties
11 to the insolvency action unless admitted by the court ~~commission~~ upon a motion for intervention.

*OR the credit-sale
contract
claimant
may be
barred
from payment
for any
amt. due*

12 ~~SECTION 17. AMENDMENT. Section 60-02-1-33 of the North Dakota Century Code is
13 amended and reenacted as follows:~~

14 ~~60-02-1-33. Remedy of receiptholders.~~

15 ~~No receiptholder has a separate claim for relief upon any insolvent licensee's bond, nor for
16 insurance, nor against any person converting grain, nor against any other receiptholder, except
17 through the trustee commission, unless, upon demand of five or more receiptholders, the
18 commission fails or refuses to apply for its own appointment or unless the district court denies
19 the application commence an insolvency proceeding and join the surety. This chapter does not
20 prohibit any receiptholder, either individually or in conjunction with other receiptholders, from
21 pursuing concurrently any other remedy against the person or property of the licensee.~~

22 ~~SECTION 18. AMENDMENT. Section 60-02-1-34 of the North Dakota Century Code is
23 amended and reenacted as follows:~~

24 ~~60-02-1-34. Commission to marshal trust assets may maintain suit.~~

25 ~~Upon its appointment, the commission shall marshal all of the trust fund assets. The
26 commission may maintain suits in the name of the state of North Dakota for the benefit of all
27 receiptholders against the licensee's bonds, insurers of grain, any person who may have
28 converted any grain, and any person who may have received preferential treatment by being
29 paid by the insolvent licensee after the first default.~~

30 SECTION 12. AMENDMENT. Section 60-02-1-35 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **60-02.1-35. Power of commission to prosecute or compromise claims.**

2 The commission may:

- 3 1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court
4 in this state or in any other state.
- 5 2. Appeal from any adverse judgment to the courts of last resort.
- 6 3. Settle and compromise any action when it will be in the best interests of the
7 receiptholders and credit-sale contract claimants. *ok?*
- 8 4. Upon payment of the amount of any settlement or of the full amount of any bond,
9 exonerate the person so paying from further liability growing out of the action.

10 ~~5. Take any other action necessary and appropriate to accomplish the purposes of this~~
11 ~~chapter.~~

12 ~~SECTION 20. AMENDMENT. Section 60-02.1-36 of the North Dakota Century Code is~~
13 ~~amended and reenacted as follows:~~

14 ~~60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.~~

15 ~~All funds received by the commission as trustee under this chapter must be deposited in the~~
16 ~~Bank of North Dakota.~~

17 **SECTION 13. AMENDMENT.** Section 60-02.1-37 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **60-02.1-37. Report of trustee to court - Approval and order of commission -**
20 **Distribution.**

- 21 1. Upon the receipt and evaluation of claims, the commission shall file with the court ~~issue~~
22 ~~a notice consistent with chapter 28-32, together with~~ a report showing the amount and
23 validity of each claim after recognizing:
- 24 a. Relevant liens or pledges.
- 25 b. Relevant assignments.
- 26 c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
- 27 d. In case of relevant cash claims or checks, the amount of the claim, ~~with interest~~
28 ~~from the date of default at the weighted average prime rate charged by the Bank~~
29 ~~of North Dakota.~~
- 30 e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount
31 remaining to be paid based on the terms of the contract.

1 2. The report must also contain the proposed reimbursement to the commission for the
2 expenses of administering the insolvency, the proposed distribution of the
3 ~~trust~~insolvency fund assets, less expenses incurred by the commission in the
4 administration of the insolvency, ~~and the proposed indemnity fund payments to~~
5 ~~receipt holder and credit sale contract claimants~~. If the ~~trust~~insolvency fund is
6 insufficient to redeem all ~~receipt holder~~ claims in full, the report should list the funds as
7 prorated.

delete o/s

leave in

leave in but chg indemnity to credit sale contract indemnity fund

8 3. The ~~court~~commission shall set a hearing and ~~issue~~ the appropriate notice ~~at least~~
9 ~~forty five days before the hearing~~, for interested persons to show cause why the
10 commission's report should not ~~be approved~~ ~~become final~~, and ~~grain indemnity fund~~
11 ~~payments and~~ distribution of the ~~insolvency~~ fund be made as proposed. Copies of the
12 report and notice of hearing must be served by the commission by certified mail upon
13 the licensee and the surety and by ordinary mail upon all persons having claims filed
14 with the commission.

15 4. Any aggrieved person having an objection to the commission's report shall file the
16 objection with the ~~court~~commission and serve copies on ~~the~~ commission, the licensee,
17 and the surety at least ~~ten~~ ~~twenty~~ days before the hearing. Failure to file and serve
18 objections in the time set is a waiver of the objection.

20 still ok

19 5. Following the hearing, the ~~court~~commission shall ~~approve~~ ~~adopt~~ or modify the report
20 and issue an order directing payment of the necessary bond proceeds, distribution of
21 the ~~trust~~insolvency fund, and ~~discharge of the commission from its trust~~ ~~payments from~~
22 ~~the grain indemnity fund~~.

** delete ds + move + revise*

leave in - move & correct fund name

23 **SECTION 14. AMENDMENT.** Section 60-02.1-38 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **60-02.1-38. Filing fees and court costs - Expenses.**

26 The commission may not be required to pay any filing fee or other court costs or
27 disbursements. The attorney general may appoint outside legal counsel to assist the
28 commission in the prosecution of ~~the action~~ any proceeding and the cost of employing outside
29 counsel ~~may~~ must be paid from the ~~trust~~insolvency fund and the grain indemnity fund. All other
30 necessary expenses incurred by the commission in carrying out the provisions of this chapter,
31 including adequate insurance to protect the commission, its employees, and others engaged in

leave as orig or broader

delete o/s - trust - leave

revise to credit sale contract indemnity fund

1 carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, ~~may~~ must be
2 ~~paid~~ reimbursed to the commission from the trust fund ~~insolvency and grain indemnity funds.~~

3 **SECTION 15. AMENDMENT.** Section 60-04-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **60-04-02. Insolvency of warehouseman.**

6 A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written
7 demand, including electronic communication, to make payment for grain purchased or marketed
8 by the licensee or to make redelivery or payment for grain stored.

9 ~~SECTION 24. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~60-04-03. Appointment of commission Commission insolvency proceeding.~~

12 ~~Upon the insolvency of any warehouseman, the commission, on its own motion, shall apply~~
13 ~~to the district court of a county in which the warehouseman operates a licensed warehouse for~~
14 ~~authority to take all action necessary and appropriate to secure and act as trustee of the trust~~
15 ~~fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall~~
16 ~~prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the~~
17 ~~warehouseman, the court shall proceed to hear and determine such application in a summary~~
18 ~~manner. If it shall appear to the court that such warehouseman is insolvent within the meaning~~
19 ~~of this chapter and that it would be for the best interests of the receiptholders that the~~
20 ~~commission secure and execute such trust, the court shall issue an order granting the~~
21 ~~application, without bond, whereupon the commission shall proceed to exercise its authority~~
22 ~~without further direction from the court.~~

23 ~~Upon the filing of the commission's application, the court may issue ex parte such~~
24 ~~temporary order as may be necessary to preserve or protect the assets of the trust fund, or the~~
25 ~~value thereof, until the court issues its order granting or denying the application commence an~~
26 ~~administrative insolvency proceeding under chapter 28-32 to secure the bond proceeds, identify~~
27 ~~potential receiptholder and credit sale claimants, determine the amount of each claim,~~
28 ~~determine the recommended payment on each claim from the insolvency fund and the grain~~
29 ~~indemnity fund, make payments on claims, and take any action necessary and appropriate to~~
30 ~~accomplish the purposes of this chapter.~~

delete O/S
credit sale contract
or?
needs to be written correctly

add in to orig lang
credit sale contract

1 ~~SECTION 26. AMENDMENT. Section 60-04-03.1 of the North Dakota Century Code is~~
2 ~~amended and reenacted as follows:~~

3 ~~60-04-03.1. Trust insolvency fund established.~~

4 ~~1. Upon the insolvency of any warehouseman, a trust insolvency fund shall must be~~
5 ~~established:~~

6 ~~a. For the benefit of noncredit sale receipt holders of the insolvent warehouseman,~~
7 ~~other than those who have waived their rights as beneficiaries of the trust fund in~~
8 ~~accordance with section 60-02-11; and~~

9 ~~b. To pay the costs incurred by the commission in the administration of this chapter.~~

10 ~~2. The trust insolvency fund consists of the following:~~

11 ~~a. The grain in the warehouse of the insolvent warehouseman or the proceeds as~~
12 ~~obtained through the sale of such grain;~~

13 ~~b. The proceeds, including accounts receivable, from any grain sold from the time of~~
14 ~~the filing of the claim that precipitated an insolvency until the commission is~~
15 ~~appointed trustee;~~

16 ~~c. The proceeds of insurance policies upon grain destroyed in the elevator;~~

17 ~~d. The claims for relief, and proceeds therefrom, for damages upon any bond given~~
18 ~~by the warehouseman to ensure faithful performance of the duties of a~~
19 ~~warehouseman;~~

20 ~~e. The claims for relief, and proceeds therefrom, for the conversion of any grain~~
21 ~~stored in the warehouse;~~

22 ~~f. Unencumbered accounts receivable for grain sold prior to the filing of the claim~~
23 ~~that precipitated an insolvency;~~

24 ~~g. Unencumbered equity in grain hedging accounts; and~~

25 ~~h. Unencumbered grain product assets.~~

26 **SECTION 16. AMENDMENT.** Section 60-04-03.3 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **60-04-03.3. Joinder of ~~and notice to~~ surety - Deposit of proceeds.**

29 The ~~commission shall join the~~ surety on the warehouseman's bond **must be joined** as a
30 party to the insolvency proceeding **upon a motion by the commission when the commission**
31 **believes that proceeds from the warehouseman's bond may be needed to redeem outstanding**

*old lang
OK as is*

1 receipts issued by the warehouseman. When it appears in the best interests of the
2 receiptholders, the ~~court~~ commission may order the surety to deposit the penal sum of the bond,
3 ~~or so much thereof as may be deemed necessary, into the trustee's trust~~ insolvency account
4 pending a final determination of the surety's liability under the bond.

5 **SECTION 17. AMENDMENT.** Section 60-04-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-04-04. Notice to receiptholders and credit-sale contract claimants.**

8 Upon ~~its~~ appointment by the district court ~~an insolvency~~, the commission may take
9 possession of relevant books and records of the warehouseman. The commission shall cause a
10 notice of its ~~appointment~~ the insolvency and the commencement of the insolvency proceeding to
11 be published once each week for two consecutive weeks in a newspaper in the county in which
12 the warehouse is located and may notify by ordinary mail the holders of record of outstanding
13 receipts and those who are potential credit-sale contract claimants, as shown by the
14 warehouseman's records. The notices must require outstanding receiptholders and credit-sale
15 contract claimants to file their claims against the warehouseman with the commission along with
16 the receipts, contracts, or ~~such~~ any other evidence of the claims as required by the commission.
17 If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within
18 forty-five days after the last publication of the notice or ~~such~~ a longer time as prescribed by the
19 commission, the commission is relieved of further duty or action under this chapter on behalf of
20 the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract
21 claimant may be barred from ~~participation in the trust fund~~ payment for any amount due.
22 Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency
23 action unless admitted by the ~~court~~ commission upon a motion for intervention.

24 **SECTION 18. AMENDMENT.** Section 60-04-05 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **60-04-05. Remedy of receiptholders.**

*could just
leave out this section*

27 No receiptholder has a separate claim for relief upon the warehouseman's bond, ~~nor for~~
28 insurance, nor against any person converting grain, nor against any other receiptholder, except
29 through the ~~trustee~~ commission, unless, upon demand of five or more receiptholders, the
30 commission fails or refuses to apply for its own appointment from the district court or unless the
31 district court denies the application for appointment ~~commence an insolvency proceeding and~~

1 ~~join the surety.~~ This chapter does not prohibit or prevent any receiptholder, either individually or
2 in conjunction with other receiptholders, from pursuing concurrently ~~such any~~ other remedy
3 against the person or property of ~~such the~~ warehouseman, for the whole, or any deficiency
4 occurring in the redemption, of the receipts.

5 ~~SECTION 29. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is~~
6 ~~amended and reenacted as follows:~~

7 ~~60-04-06. Commission to marshal trust assets may maintain suit.~~

8 ~~Upon its appointment by the district court, the~~The commission may maintain suits at law or
9 in equity, or any special proceeding, in the name of the state of North Dakota, upon its own
10 relation, but for the benefit of all such receiptholders against:

11 ~~1. The insurers of grain;~~

12 ~~2. The warehouseman's bond;~~

13 ~~3. Any person who may have converted any grain; or~~

14 ~~4. Any receiptholder who shall have received more than its just and pro rata share of~~
15 ~~grain,~~

16 ~~for the purpose of marshalling all of the trust fund assets and distributing the same among the~~
17 ~~receiptholders. The commission shall seek possession of any grain in the warehouse before~~
18 ~~recourse is had against the insurers of grain, and the remedy against the insurers of grain shall~~
19 ~~be exhausted before recourse is had against the bond, and against the bond before recourse is~~
20 ~~had against the person honestly converting grain, unless the commission shall deem it~~
21 ~~necessary to the redemption of the receipts that all the above remedies be pursued at the same~~
22 ~~time.~~

23 **SECTION 19. AMENDMENT.** Section 60-04-07 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **60-04-07. Power of commission to prosecute or compromise claims.**

26 The commission shall have power ~~may~~:

27 1. ~~To prosecute~~Prosecute any action provided in this chapter in any court in this state or
28 in any other state.

29 2. ~~To appeal~~Appeal from any adverse judgment to the courts of last resort.

30 3. ~~To settle~~Settle and compromise any action whenever, in its judgment, this will be for it
31 is in the best interests of the receiptholders and credit-sale contract claimants.

or?
Don't want to force settlement
only if benefits
both
→

- 1 4. Upon payment of the amount of ~~such~~^{the} compromise or of the full amount of any
2 insurance policy, bond, or conversion claim, to exonerate the person so compromising
3 or paying in full from further liability growing out of the action.
- 4 5. Take any other action necessary and appropriate to accomplish the purposes of this
5 chapter.

6 ~~SECTION 31. AMENDMENT. Section 60-04-08 of the North Dakota Century Code is~~
7 ~~amended and reenacted as follows:~~

8 ~~60-04-08. Money received by trustee - Deposited in Bank of North Dakota.~~

9 ~~All moneys collected and received by the commission as trustee under this chapter,~~
10 ~~pending the marshalling of the fund, shall must be deposited in the Bank of North Dakota.~~

11 SECTION 20. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 60-04-09. Report of trustee to court - Approval and order of commission - Distribution.

14 Upon the receipt and evaluation of claims filed with it, the commission shall file with the
15 court ~~issue a notice consistent with chapter 28-32, together with~~ a report showing the amount
16 and validity of each claim after recognizing:

- 17 1. Any proper liens or pledges thereon.
- 18 2. Assignments thereof.
- 19 3. Deductions therefrom by reason of advances or offsets accrued in favor of the
20 warehouseman.
- 21 4. In case of cash claims or checks, the amount thereof, ~~with interest at the weighted-~~
22 ~~average prime rate charged by the Bank of North Dakota since the date of the~~
23 ~~insolvency.~~
- 24 5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the
25 market price prevailing on the date of the ~~insolvency,~~ with interest at the weighted-
26 average prime rate charged by the Bank of North Dakota since the date of the
27 ~~insolvency~~ commission first received a copy of the written demand, including electronic
28 communication, required by section 60-04-02. *remove 0/5 ← Never mind this note*
- 29 6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid
30 based on the terms of the contract. *unrec. here*

1 The report must also contain the proposed reimbursement to the commission for the
2 expenses of administering the insolvency, a proposed distribution of the trust fund assets ~~and~~
3 ~~proceeds in the insolvency fund~~, less ~~an appropriate portion of the~~ expenses incurred by the
4 commission in the administration of this chapter, and the proposed indemnity fund payments to
5 ~~receipt holder and credit sale contract~~ claimants as their interests are determined. If the
6 ~~trust insolvency~~ fund is insufficient to redeem all ~~receipt holder~~ claims in full, the fund claims must
7 be shown prorated in the report in the manner the commission deems fair and equitable.

8 The court shall set ~~commission shall hold~~ a hearing and the appropriate notice ~~at least forty~~
9 ~~five days before the hearing~~ for interested persons to show cause why the commission's report
10 should not be approved ~~become final, and grain indemnity fund payments~~ and distribution of the
11 ~~insolvency~~ fund be made as proposed. Copies of the report and notice of hearing must be
12 served by the commission by certified mail upon the warehouseman and the surety and by
13 ordinary mail upon all persons having claims filed with the commission.

14 Any aggrieved person having an objection to the commission's report shall file the objection
15 with the court commission and serve copies on the commission, the warehouseman, and the
16 surety at least ~~ten~~ twenty days before the hearing. Failure to file and serve objections in the time
17 set is a waiver of the objection.

18 Following hearing, the court commission shall approve ~~adopt~~ or modify the report and issue
19 an order directing payment of the necessary bond proceeds, ~~from insolvency fund and~~
20 distribution ~~of from the trust~~ grain indemnity fund, and discharge of the commission from its trust.

21 **SECTION 21. AMENDMENT.** Section 60-04-10 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **60-04-10. Filing fees and court costs - Expenses.**

24 Upon the application to the district court as provided in this chapter, or in any action in a
25 state court in this state, the commission shall not be required to pay any filing fee or other court
26 costs or disbursements if the fees accrue to the county or to the state. The attorney general
27 may employ outside legal services to assist the commission in the prosecution of such
28 any proceeding as in the attorney general's judgment may be necessary and may shall
29 deduct the expense of the same from the ~~trust~~ grain indemnity fund and the insolvency fund. All
30 other necessary expenses incurred by the commission in carrying out the provisions of this
31 chapter, including adequate insurance to protect the commission, its employees, and others

delete o/s except for receipt holder & correct name of fund.

delete o/s but correct name of fund or move to end of sentence

pm's for the credit sale contract indemnity fund

needs revision b/c HC doesn't do the deducting

** & the comm. shall deduct*

delete o/s over trust + advise name of indemnity fund

1 engaged in carrying out the provisions of this chapter, ~~may~~must be ~~deducted~~reimbursed to the
2 commission from the ~~trust fund~~insolvency and grain indemnity funds.

3 ~~SECTION 34. AMENDMENT. Section 60-10-01 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~

5 ~~60-10-01. Credit sale contracts Assessment on grain Submission of assessment.~~

6 ~~An assessment at the rate of two tenths~~two one hundredths of one percent is placed on the
7 value of all grain sold in this state under a noncredit sale contract, credit sale contract, as
8 provided for in sections 60-02-19.1 and 60-02.1-14, or for cash. The licensee purchasing the
9 grain shall note the assessment on the check, noncredit sale contract, or credit sale contract
10 required under sections 60-02-19.1 and 60-02.1-14, and shall deduct the assessment from the
11 purchase price payable to the seller. The licensee shall submit any assessment collected under
12 this section to the public service commission no later than thirty days after the last day of each
13 calendar quarter. An assessment at the same rate is placed on all grain delivered for storage in
14 this state when a receipt holder claim based on stored grain is payable by the commission under
15 chapter 60-04. The licensee receiving grain for storage shall note the potential assessment on
16 the warehouse receipt. In the event of an insolvency proceeding, the commission shall deduct
17 the assessment from the amount payable to a receipt holder from the grain indemnity fund for a
18 claim based on stored grain. The commission shall deposit the assessments received under this
19 section in the credit sale contractgrain indemnity fund.

20 ~~SECTION 35. AMENDMENT. Section 60-10-02 of the North Dakota Century Code is~~
21 ~~amended and reenacted as follows:~~

22 ~~60-10-02. Credit sale contract Grain indemnity fund Creation Continuing~~
23 ~~appropriation.~~

24 ~~There is created~~The grain indemnity fund is a special fund in the state treasury the
25 credit sale contract indemnity fund. The state treasurer shall invest available moneys in the fund
26 in accordance with section 21-10-07 and in cooperation with the public service commission and
27 shall deposit any income earned through the investments into the fund. The fund and earnings
28 of the fund are appropriated to the public service commission on a continuing basis to be used
29 exclusively to carry out the intent and purpose of this chapter.

30 ~~SECTION 36. AMENDMENT. Section 60-10-04 of the North Dakota Century Code is~~
31 ~~amended and reenacted as follows:~~

1 ~~— 60-10-04. Credit sale contract Grain indemnity fund—Eligibility for reimbursement.~~

2 ~~— A person is eligible to receive indemnity payments from the credit sale contract grain~~
3 ~~indemnity fund if:~~

4 ~~— 1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer~~
5 ~~in this state under the provisions of a credit sale contract;~~

6 ~~— 2. After August 1, 2017, the person delivered or sold grain to a licensed warehouse or a~~
7 ~~grain buyer in this state;~~

8 ~~— 3. The licensed warehouse to which the person sold grain or the grain buyer to whom the~~
9 ~~person sold grain becomes insolvent; and~~

10 ~~— 3.4. The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully~~
11 ~~compensate the person in accordance with the credit sale contract, noncredit sale~~
12 ~~contract, sale, or storage contract.~~

13 ~~— SECTION 37. AMENDMENT. Section 60-10-05 of the North Dakota Century Code is~~
14 ~~amended and reenacted as follows:~~

15 ~~— 60-10-05. Credit sale contract Grain indemnity fund—Availability of money.~~

16 ~~— Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the~~
17 ~~public service commission serve as the trustee, the public service commission shall commence~~
18 ~~an insolvency proceeding under chapter 60-04 to make the proceeds of the credit sale~~
19 ~~contract grain indemnity fund available for use in meeting the licensee's obligations with respect~~
20 ~~to the reimbursement of any person who delivered or sold grain to the licensee under a~~
21 ~~credit sale contract and who was not fully compensated in accordance with the sale, contract,~~
22 ~~or storage contract.~~

23 ~~— SECTION 38. AMENDMENT. Section 60-10-06 of the North Dakota Century Code is~~
24 ~~amended and reenacted as follows:~~

25 ~~— 60-10-06. Credit sale contract Grain indemnity fund—Reimbursement limit.~~

26 ~~— The amount payable to any eligible person from the credit sale contract grain indemnity fund~~
27 ~~for each insolvency may not exceed the lesser of eighty percent of the amount owed to that~~
28 ~~eligible person in accordance with all of that person's unsatisfied credit sale contracts, storage~~
29 ~~contracts, noncredit sale contracts, or sales, or two four hundred eighty thousand dollars.~~

30 ~~— SECTION 39. AMENDMENT. Section 60-10-07 of the North Dakota Century Code is~~
31 ~~amended and reenacted as follows:~~

1 ~~60-10-07. Credit-sale contract Grain indemnity fund - Prorated claims.~~
2 ~~If claims for indemnity payments from the credit-sale contract grain indemnity fund exceed~~
3 ~~the amount in the fund, the public service commission shall prorate the claims and pay the~~
4 ~~prorated amounts. As future assessments are collected, the public service commission shall~~
5 ~~continue to forward indemnity payments to each eligible person until the person receives the~~
6 ~~maximum amount payable in accordance with this chapter.~~

7 **SECTION 22. AMENDMENT.** Section 60-10-08 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **60-10-08. Reimbursement for later insolvencies.**

10 The public service commission shall ensure that all persons eligible for payment from the
11 grain indemnity fund as a result of an insolvency are fully compensated to the extent permitted
12 by this chapter before any payments from the indemnity fund are initiated as a result of a later
13 insolvency. The chronological order of insolvencies is determined by the date the public service
14 commission is appointed trustee under first received a copy of the written demand, including
15 electronic communications, required by section 60-02.1-2960-02.1-28 or 60-04-0360-04-02.

16 **SECTION 23. AMENDMENT.** Section 60-10-09 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **60-10-09. Credit-sale contract Grain indemnity fund - Reimbursement for**
19 **administrative expenses.**

20 Any expense incurred by the public service commission in administrating the credit-sale
21 contract grain indemnity fund is reimbursable must be reimbursed from the fund before any other
22 claim for indemnity is paid.

23 ~~SECTION 42. AMENDMENT. Section 60-10-10 of the North Dakota Century Code is~~
24 ~~amended and reenacted as follows:~~

25 ~~60-10-10. Credit-sale contract Grain indemnity fund assessment - Failure to collect~~
26 ~~assessment - Penalty.~~

27 ~~Any person who knowingly or intentionally refuses or fails to collect the assessment~~
28 ~~required under this chapter from producers or to submit any assessment collected from~~
29 ~~producers to the public service commission for deposit in the credit-sale contract grain indemnity~~
30 ~~fund is guilty of a class A misdemeanor.~~

unnec here
we shoud discuss this what if not ever appropriated
Perhaps because as is in stat now

1 ~~SECTION 43. AMENDMENT. Section 60-10-13 of the North Dakota Century Code is~~
2 ~~amended and reenacted as follows:~~

3 ~~60-10-13. Claims.~~

4 ~~A claim concerning a grain buyer must be administered in a manner consistent with chapter~~
5 ~~60-02.1. A claim concerning a state licensed grain warehouse must be administered in a~~
6 ~~manner consistent with chapter 60-04. A payment may not be made from the credit sale~~
7 ~~contract grain indemnity fund for a claim based on losses resulting from the sale of grain to a~~
8 ~~person not licensed under chapter 60-02, chapter 60-02.1, or the United States Warehouse Act~~
9 ~~[Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].~~

10 ~~SECTION 44. AMENDMENT. Section 60-10-14 of the North Dakota Century Code is~~
11 ~~amended and reenacted as follows:~~

12 ~~60-10-14. Subrogation.~~

13 ~~Money paid from the credit sale contract grain indemnity fund in satisfaction of a valid claim~~
14 ~~constitutes a debt obligation of the person against whom the claim was made. The commission~~
15 ~~may take action on behalf of the fund against a person to recover the amount of payment made,~~
16 ~~plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest~~
17 ~~computed at the weight average prime rate charged by the Bank of North Dakota. Upon~~
18 ~~payment of a claim from the credit sale contract grain indemnity fund, the claimant shall~~
19 ~~subrogate its interest, if any, to the commission in a cause of action against all parties, to the~~
20 ~~amount of the loss that the claimant was reimbursed by the fund.~~

21 ~~SECTION 45. AMENDMENT. Section 60-10-15 of the North Dakota Century Code is~~
22 ~~amended and reenacted as follows:~~

23 ~~60-10-15. Unlicensed facility-based grain buyer.~~

24 ~~This chapter also applies to a facility based grain buyer, as defined in section 60-02.1-01,~~
25 ~~which is licensed under the United States Warehouse Act but which does not possess a state~~
26 ~~grain buyer license. The commission has the duty and power to may examine and inspect,~~
27 ~~during regular business hours, all books, documents, and records related to collections and~~
28 ~~remittances pertaining to the credit sale contract grain indemnity fund. In the case of insolvency,~~
29 ~~credit sale contract payments to valid claimants must be reduced by an amount equal to the~~
30 ~~credit sale contract indemnity payments received from payments administered by the United~~
31 ~~States department of agriculture.~~

1 **SECTION 24. REPEAL.** Sections ~~60-02-02~~, ~~60-02-25.1~~, ~~60-02-39~~, ~~60-02.1-02~~, ~~60-02.1-25~~,
2 ~~60-04-03.2~~, and ~~60-10-03~~ of the North Dakota Century Code are repealed.

3 **SECTION 25. TRANSFER.** On August 1, 2017, the state treasurer shall transfer the
4 balance of the credit-sale contract indemnity fund to the grain indemnity fund.

*↑
no new
assessments
= no new
fund
= no transfer
necessary*



Public Service Commission
State of North Dakota

1a
2/6/17
HB 1126

COMMISSIONERS

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25 January 2017

Honorable Dennis Johnson, Chairman
Agriculture Committee
North Dakota House of Representatives
600 East Boulevard Avenue
Bismarck, ND 58505

Re: House Bill 1126 – Committee Request for Insolvency Information

Dear Chairman Johnson:

At the hearing on House Bill 1126, the Committee requested that we provide additional information on the history of previous insolvencies handled by the Commission.

Included with this letter are two documents. One shows grain warehouse and grain buyer insolvencies from 1975 through 2003, and one shows grain warehouse and grain buyer insolvencies from 2007 to date. There were no grain warehouse or grain buyer insolvencies between 2003 and 2007.

Both of these documents can be found on the Public Service Commission website at <http://www.psc.nd.gov/public/consinfo/jurisdictiongrain.php>.

If you have additional questions, please do not hesitate to call or e-mail.

Best regards,

Illona A. Jeffcoat-Sacco
General Counsel

Enclosures

c: Rep. Wayne Trottier
Rep. Craig Headland
Rep. Dwight Kiefert
Rep. Bill Oliver
Rep. Kathy Skroch

Rep. Jake Blum
Rep. Kathy Hogan
Rep. Jeffery Magrum
Rep. Bernie Satrom

Rep. Joshua Boschee
Rep. Michael Howe
Rep. Aaron McWilliams
Rep. Cynthia Schreiber-Beck

NORTH DAKOTA PUBLIC SERVICE COMMISSION
Grain Warehouse/Grain Buyer Insolvencies – 1975 through 2003

Page 1

Licensee Name and Location(s)	Insolvency Date	Grain Claims	Grain Proceeds	Bond	Unpaid Claims	Payment
Farmers Grain Company, Bowdon	04-18-75	\$151,954.72	\$29,264.42	\$87,500.00	\$35,886.72	77%
Courtenay Farmers Coop., Courtenay	07-30-80	\$325,558.90	\$191,624.25	\$0.00	\$0.00	100%
Amenia Seed & Grain, Amenia	03-04-82	\$379,473.36	\$364,489.69	\$21,664.96	\$0.00	100%
Coast Trading Company, Underwood, Ray, Stampede, Belfield, Petersburg	04-17-82	\$141,189.51	\$0.00	\$141,189.51	\$0.00	100%
Valley Farmers Bean Assn., Portland, Gilby, Buxton	10-29-82	\$406,117.69	\$271,406.10	\$171,777.86	\$0.00	100%
Jamestown Frms Elev, Inc., Jmstwn	01-21-83	\$192,583.23	\$0.00	\$425,000.00	\$0.00	100%
Central States Grain, Anslem	07-27-83	\$195,637.40	\$0.00	\$222,524.92	\$0.00	100%
Colfax Grain Company, Colfax	04-09-84	\$2,572.00	\$2,572.00	\$0.00	\$0.00	100%
National Sun Industries, Enderlin	08-27-84	\$1,078,299.58	\$56,312.74	\$800,000.00	\$221,986.84	79%
Dakota Bean Company, Casselton, St. Thomas, Northwood	12-10-84	\$1,471,143.59	\$1,471,143.59	\$180,000.00	\$0.00	100%
Hatton Commodities, Inc., Hatton	09-09-86	\$132,849.00	\$8,232.50	\$125,000.00	\$0.00	98%
Regan Farmers Union Coop., Regan	05-14-86	\$1,228,776.13	\$842,522.46	\$512,158.57	\$0.00	100%
Zeeland Frms Union Coop, Zeeland	08-11-86	\$8,028.73	\$0.00	\$8,028.73	\$0.00	100%
Leith Grain Company, Leith	09-17-86	\$14,657.11	\$0.00	\$0.00	\$0.00	100%

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NORTH DAKOTA PUBLIC SERVICE COMMISSION
Grain Warehouse/Grain Buyer Insolvencies – 1975 through 2003

Page 2

Licensee Name and Location(s)	Insolvency Date	Grain Claims	Grain Proceeds	Bond	Unpaid Claims	Payment
Binford Grain Company, Binford	11-26-86	\$5,980.73	\$0.00	\$0.00	\$0.00	100%
Dawn Enterprises (a ND Limited Partnership), Walhalla	10-05-87	\$498,874.20	\$20,746.03	\$175,000.00	\$303,979.34	39%
Binford Grain Company, Binford	05-16-88	\$1,324.10	\$0.00	\$1,324.10	\$0.00	100%
Woods Elevator Coop., Woods	04-12-89	\$293,718.34	\$0.00	\$780,000.00	\$0.00	100%
Farm Marketing Board, Ltd., Easby	07-14-89	\$305,770.06	\$140,641.72	\$100,000.00	\$5,705.79	98%
Chappell Grain, Inc., Grand Rapids	10-19-89	\$37,818.64	\$5,701.10	\$200,000.00	\$0.00	100%
Des Lacs Grain Company, Des Lacs	01-24-90	\$134,643.33	\$0.00	\$150,000.00	\$0.00	100%
Stirco, A Limited Partnership, Stirum	02-16-93	\$103,023.80	\$9,001.38	\$50,000.00	\$0.00	100%
Spent Grain Co., Munich, (Rov Gr)	08-09-93	\$167,422.50	0	\$50,000	\$117,771.94	29.66%
*Goose River Feed Co., Blanchard	03-31-98	\$144,953.36	\$11,517.67	\$0.00	\$133,435.69	8%
Viking Seeds, Inc., Grandin, Argusville	09-11-00	\$577,572.13	\$0	\$50,000.00	\$527,572.13	8.66%
Custom Processors, Inc., Anslem	09-22-00	\$339,886.16	\$590.89	\$150,000.00	\$176,446.28	94%
Wimbledon Grain Co., Wimbledon	01-11-02	\$4,279,796.47	\$3,674,751.00	\$400,000-st \$543,000-fd	\$635,478.11- credit-sale	100% cash 42.9%-cs**
North Central Elevator, Inc.	07-01-03	\$393,637.79	\$19,824.88	\$87,500.00	\$286,312.91	72%
Northern Organic, Inc.	09-17-03	\$36,613.90	0	\$50,000.00	\$19,413.60	100%

*Goose River Feed Company was operating without a grain warehouse license.

** % payment before attorney fees – 32.2% after attorney fees.

u

NORTH DAKOTA PUBLIC SERVICE COMMISSION
 Grain Warehouse/Grain Buyer Insolvencies – 2007 through Current
 Updated May 2015 – Page 1

Licensee Location(s) License Type Case Filed Case Closed	Total Claims Filed	Valid Cash Claims Filed	Valid CSC I-Fund Claims Filed	Invalid Claims Filed	Grain Proceeds	Bond on File & Bond Proceeds Used	Interest Earned on Trust Account	Valid Cash Claim Payments (% Payment)	Interest Paid To Cash Claimants ¹	CSC I-Fund Claim Payments (80%)	Total Claims Paid & Expenses Reimbursed ²
Minnesota Grain, Inc., Rhame, ND (GW) March 2007 February 2009	\$930,365.67	\$323,117.58	\$137,893.69	\$467,920.69	\$0	\$100,000 Entire Bond	\$1,429.19	\$101,429.19 31%		\$110,314.95	\$211,744.14
Specialty Export Productions, Inc., Hatton & East Fairview, ND(GW) August 2007 September 2008	\$190,485.55	\$188,019.22	\$0	\$2,466.33	\$61,463.92	\$200,000 \$142,243.17	\$450.69	\$195,991.24 100%		\$0	\$195,991.24 \$8,166.54
Northwood Mills, LLLP, Northwood, ND (GW) January 2009 October 2009	\$880,009.90	\$880,009.90 11 Claims	\$0	\$19,477.95	\$0	\$50,000 \$50,000	\$129.05	\$50,129.05 5.8%	\$0	\$0	\$50,129.05 \$0
Sustainable Systems, LLC dba Montola, Culbertson, MT (RGB) March 2009 December 2009	\$617,663.45 19 Claims	\$561,629.40 19 Claims	\$0	\$54,095.83	\$0	\$130,000 \$130,000	\$241.66	\$130,241.66 77% + 23% ³	\$241.66	\$0	\$130,241.66 \$1,307.11 ⁴
VeraSun Hankinson, LLC, Hankinson, ND (GW) March 2009 September 2011	\$132,784.85	\$132,784.85 2 Claims	\$0	\$0	\$0	\$380,000 \$3,908.83 ⁵	\$0	N/A	N/A	\$0	N/A \$3,908.83

GW – Grain Warehouse RGB – Roving Grain Buyer CSC – I Fund – Credit-Sale Contract Indemnity Fund (provides maximum payment of 80% not to exceed \$280,000 for each insolvency)

NORTH DAKOTA PUBLIC SERVICE COMMISSION

¹ If funds are available, cash claimants can be paid interest at the weighted average prime rate charged by the Bank of North Dakota since the date of insolvency.
² Statute provides for the reimbursement of expenses incurred by the Commission in the administration of the insolvency.
³ The Montana Dept. of Agriculture liquidated available assets. ND claimants received 77% of each valid claim from the Montana liquidation proceeds, 23% from ND trust fund proceeds, and a proportionate share of interest earned on the ND trust fund.
⁴ The Montana Dept. of Agriculture reimbursed the Commission for the insolvency expenses incurred.
⁵ Two claims were filed and eventually withdrawn by the claimants. The Commission was reimbursed for its insolvency expenses from the bond proceeds.

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Grain Warehouse/Grain Buyer Insolvencies – 2007 through Current
Updated December 2014 – Page 2

Licensee Location(s) License Type Case Filed Case Closed	Total Claims Filed	Valid Cash Claims Filed	Valid CSC I-Fund Claims Filed	Invalid Claims Filed	Grain Proceeds	Bond on File & Bond Proceeds Used	Interest Earned on Trust Account	Valid Cash Claim Payments (% Payment)	Interest Paid To Cash Claimants	CSC I-Fund Claim Payments (80%)	Total Claims Paid & Expenses Reimbursed
Organic Grain & Milling, Inc., Clyde, ND (GW) June 2010 September 2011	\$193,467.24	\$17,276.88 1 Claim	\$160,829.65 4 Claims	\$8,276.62 1 Claim	\$28,148.74 ⁶	\$62,500 \$0	\$41.43	\$17,276.88 100%	\$531.05	\$128,663.72	\$147,607.24 \$1,135.60
Grabanski Grain, LLC, Grafton, ND(GW) July 2010 May 2013	\$848,296.08	\$184,964.03 7 Claims	\$409,002.41 7 Claims	\$266,329.68	\$0	\$340,000 \$201,376.20		\$184,964.03 100% + interest	\$12,984.47	\$327,201.92 + ½ expenses = (\$330,629.62)	\$532,005.82 \$6,855.40 ⁷
Mitchell Feeds, Inc., Fargo, ND (RGB) February 2011 December 2014	\$1,478,729.09	\$1,009,355.61 25 Claims	\$0	\$469,373.48 1 Claim	\$0	\$70,000	\$1.15	\$70,001.15 7%	\$0	\$0	\$70,001.15 \$0
Anderson Seed Co., Inc., Durbin & Selz, ND (GW) February 2012 December 2014	\$4,107,414.49	\$2,233,147.18 32 Claims	\$809,017.70 18 Claims	\$1,065,350.61 9 Claims	\$687,153.25	\$280,000	\$23.42	\$967,176.67 43%	\$0	\$647,214.16	\$1,614,390.83 \$15,620.25
Falkirk Farmers Elev. Co., Falkirk, ND(GW) October 2012 December 2014	\$781,066.11	\$495,795.30 1 Claim	\$278,818.08 7 Claims	\$6,452.73 1 Claim	\$80,507.10	\$380,000	\$535.65	461,042.75 93%	\$0	\$223,054.46	\$684,097.21 ~\$207.08
Earth Harvest Mills, Inc., Harvey, ND(GW) February 2013	\$4,351,571.30	\$80,973.26 7 Claims	\$2,402,901.24 ⁸ 18 Claims	\$54,041.53 1 Claim	\$0	\$50,000	\$2.74	\$50,002.74 62%	\$0	\$948,952.69	\$998,955.43 ~\$272.51
Grand Forks Bean Co., Inc. Grand Forks, ND (GW) January 2015											

⁶ The unused proceeds totaling \$9,246.64 were returned to Organic Grain & Milling, Inc.

⁷ Insolvency expenses totaled \$6,855.40 with ½ paid from the trust fund and ½ paid from the CSC I-Fund.

⁸ Two valid credit-sale contract claims exceeded the maximum amount payable (\$280,000) from the CSC I-Fund.

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NORTH DAKOTA PUBLIC SERVICE COMMISSION

Complaint, Cease & Desist & Consent Order History

Updated May 2016

Page 1 of 5

Year	Company	Complaint Filed (unless no complaint filed is noted)	Fine	Payable
2015	Grand Forks Bean Company, Inc.	Failed to make delivery upon request – Ordered to cease and desist from receiving or purchasing any grain, moving any grain out of the Grand Forks facility without prior Commission permission.	N/A	N/A
2013	Commercial Lynks, Inc.,	Solicited to buy grain without license. Commission issued consent order & dismissed case. Grain buyer license issued in July 2013. No complaint filed.	\$1000	\$500
2013	Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company	Failed to covert outstanding grain accounts. Ordered to cease & desist from receiving or purchasing grain in ND. No complaint filed.	N/A	N/A
2012	Anderson Seed Co., Inc., Mentor, MN (Durbin & Selz, ND)	Failed to pay for grain purchased. Ordered to cease & desist from receiving or purchasing grain in ND & from moving grain out of ND. No complaint filed.	N/A	N/A
2011	Mitchell Feeds, Inc., Fargo, ND	Failed to pay for grain purchased. Ordered to cease & desist from grain buying activities in ND. No complaint filed.	N/A	N/A
2006	Aspen Leaf Organic Farms, Spearfish, SD	Operated as a roving grain buyer. Owed patrons \$28,000.Cease & desist issued. No complaint filed.	N/A	N/A
2005	Hatton Processing & Exporting Company	Operated warehouse without a license – Cease & desist issued.	\$2500	\$500

NORTH DAKOTA PUBLIC SERVICE COMMISSION
Complaint, Cease & Desist & Consent Order History
Updated May 2016
Page 2 of 5

Year	Company	Complaint Filed (unless no complaint filed is noted)	Fine	Payable
2004	Midwest Marketing, Inc.	Operated as a roving grain buyer without a license. Owed patrons \$35,600 - Cease & desist issued.	\$5000	\$5000*
2004	Rayglen Commodities, Inc.	Operated as roving grain buyer without a license. Cease & desist issued. Case dismissed after stipulated agreement was reached.	n/a	n/a
2004	Earth Harvest Mills, LLC	Operated warehouse without a license. Cease & desist issued	\$1000	\$100
2003	Walton Ag Services, Englevale	Operated warehouse without a license – Cease & desist issued	\$5000	\$2500
2003	Lankin Farmers Elevator	Over shipped grain & failed to timely convert scale tickets.	\$4000	\$2000
2001	Northland Marketing, Inc., McCanna	Used two sets of warehouse receipts (\$1500 prior fine paid)	\$3000	\$1000
2000	Viking Seeds, Inc., Argusville & Grandin	Failed to convert scale tickets in 30 days	\$5000	\$1000*
2000	Farmers Mill & Elevator, Hankinson	Unlicensed space	\$1000	\$250
2000	Farmers Elevator of Honeyford	Unlicensed space	\$1000	\$250
1999	Northland Marketing, Inc., McCanna	Unlicensed receiving stations	\$2000	\$500
1999	Fessenden Cooperative	Unlicensed space	\$1000	\$100

NORTH DAKOTA PUBLIC SERVICE COMMISSION
Complaint, Cease & Desist & Consent Order History
Updated May 2016
Page 3 of 5

Year	Company	Complaint Filed (unless no complaint filed is noted)	Fine	Payable
1998	Mayport Farmers Elevator, Portland (beans)	Licensed 4 bins & used 6 bins. Previous fine balance was excused due to the circumstances.	\$1000	\$250
1998	ConAgra, Inc. dba KBC, Northwood	Unlicensed space	\$1000	\$250
1998	Goose River Feed, Blanchard	Operated warehouse without a license	\$5000	\$5000*
1997	Mayport Farmers Coop, Portland Bean	Unlicensed receiving stations	\$1000	\$250
1997	Grand Forks Bean	Unlicensed receiving stations	\$1000	\$250
1997	Johnstown Bean	Unlicensed receiving station	\$1000	\$250
1996	Red River Bean, Cavalier	Over shipped grain	\$1000	\$250
1995	SRS Commodities, Mayville	Unlicensed space (\$750 prior fine paid)	\$1000	\$250
1994	SRS Commodities, Mayville	Over shipped grain	\$1000	\$250
1994	Farmers Elevator of Grace City	Over shipped grain	\$1000	\$250
1994	SunPro, Inc., Hatton	Issued incorrect credit-sale contracts	\$1000	\$250
1994	Alexander Peterson, Martin	Unlicensed space (\$750 prior fine paid)	\$2000	\$500
1994	Hodges Grain Company, St. Joseph, MO	Operated as unlicensed roving grain buyer. Owed patrons \$58,000.	\$5000	\$1000**

NORTH DAKOTA PUBLIC SERVICE COMMISSION
Complaint, Cease & Desist & Consent Order History
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Page 4 of 5

Year	Company	Complaint Filed (unless no complaint filed is noted)	Fine	Payable
1993	Harvest States Cooperatives, Walcott	Unlicensed ground storage	\$1000	\$100
1993	Belfield Grain Company	Unlicensed ground storage	\$1000	\$800
1993	Country Grown Foods, Redford, MI	Operated as unlicensed grain buyer. Issued press release warning public of dangers of selling grain to unlicensed grain buyers in ND. No complaint filed.	N/A	N/A
1992	Alexander Peterson, Martin	Unlicensed ground storage	\$1000	\$250
1992	Gackle Grain Coop	Unlicensed space	\$1000	\$200
1992	Prairie Cooperative, Cleveland & Windsor	Unlicensed space	\$1000	\$200
1992	Cenex, Ltd., Ashley	Unlicensed space	\$1000	\$100
1992	Turtle River Bean, Manvel	Unlicensed space	\$1000	\$100
1991	Nash Grain & Trading, Nash	Unlicensed space	\$1000	\$100
1991	McIntosh Grain & Feed, Great Falls, MT	Operated as an unlicensed grain buyer. Owed patrons \$167,000. Issued press release warning public of dangers of selling grain to unlicensed grain buyers in ND	N/A	N/A

NORTH DAKOTA PUBLIC SERVICE COMMISSION
Complaint, Cease & Desist & Consent Order History
Updated May 2016
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Year	Company	Complaint Filed (unless no complaint filed is noted)	Fine	Payable
1991	Hague Farmers Elevator	Unlicensed space	\$1000	\$100
1991	Harlow Grain & Seed, Maddock	Unlicensed ground storage	\$1000	\$250
1991	U.S. Commission Company, Aloha, OR	Operated as an unlicensed grain buyer. Owed patrons \$41,000.	\$5000	\$1000**
1991	Little Bear Trading, Winona, MN	Operated as an unlicensed grain buyer. Owed patrons \$55,000.	\$5000	\$1000**

* No fees were received.

** Records do not go back far enough to determine if fine was collected

February 6, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1126

- Page 1, line 1, remove "60-02-03,"
- Page 1, line 1, remove "60-02-25,"
- Page 1, line 2, remove "60-02-44, 60-02.1-03,"
- Page 1, line 3, remove "60-02.1-29, 60-02.1-30, 60-02.1-31,"
- Page 1, line 3, remove "60-02.1-33, 60-02.1-34,"
- Page 1, line 4, remove "60-02.1-36,"
- Page 1, line 4, remove "60-04-03, 60-04-03.1, 60-04-03.3, 60-04-03,"
- Page 1, line 5, remove "60-04-05, 60-04-06,"
- Page 1, line 5, remove "60-04-08,"
- Page 1, line 5, remove "60-10-01, 60-10-02, 60-10-04,"
- Page 1, line 6, replace "60-10-05, 60-10-06, 60-10-07, 60-10-08," with "and"
- Page 1, line 7, remove the second comma
- Page 1, remove lines 8 and 9
- Page 1, line 10, replace "indemnity fund" with "and insolvencies of public warehouses and grain buyers"
- Page 1, line 10, remove "60-02-02, 60-02-25.1,"
- Page 1, line 10, replace ", 60-02.1-02," with "and"
- Page 1, line 11, remove "60-04-03.2, and 60-10-03"
- Page 1, line 11, remove "duties of the"
- Page 1, line 12, remove "commission, receiptholders' lien,"
- Page 1, line 12, remove "closure, grain of insolvent warehouseman as trust"
- Page 1, line 13, replace "asset, and suspension of indemnity fund assessments; and to provide for a transfer" with "closures"
- Page 1, remove lines 15 through 23
- Page 2, remove lines 1 through 5
- Page 4, remove lines 9 through 19
- Page 6, remove lines 9 through 30
- Page 7, remove lines 1 and 2
- Page 8, line 30, after "demand" insert ", including electronic communications."

Page 8, line 31, after "demand" insert ", including electronic communications"

Page 9, remove lines 3 through 31

Page 10, remove lines 1 through 20

Page 10, line 24, remove the overstrike over "~~its appointment~~"

Page 10, line 24, remove "an insolvency"

Page 10, line 26, remove the overstrike over "~~its appointment~~"

Page 10, line 26, remove "the insolvency and the commencement of the"

Page 10, line 27, remove "insolvency proceeding"

Page 11, line 7, remove "or credit-sale contract claimant"

Page 11, line 7, remove the overstrike over "~~participation in the trust fund~~"

Page 11, line 7, remove "payment for"

Page 11, line 8, replace "any amount due" with ", and the credit-sale contract claimant may be barred from payment for any amount due"

Page 11, line 9, remove the overstrike over "~~court~~"

Page 11, line 9, remove "commission"

Page 11, remove lines 10 through 27

Page 12, line 5, remove "and credit-sale contract claimants"

Page 12, line 6, after "4." insert "Settle and compromise any action when it is in the best interests of the credit-sale contract claimants."

5."

Page 12, remove lines 8 through 14

Page 12, line 17, remove the overstrike over "~~of trustee to court – Approval~~"

Page 12, line 17, remove "and order of commission"

Page 12, line 19, remove the overstrike over "~~file with the court~~"

Page 12, line 19, remove "issue"

Page 12, line 20, remove "a notice consistent with chapter 28-32, together with"

Page 13, line 1, remove the overstrike over "~~trust~~"

Page 13, line 1, remove "insolvency"

Page 13, line 1, after "assets" insert "to receiptholders"

Page 13, line 2, after "proposed" insert "credit-sale contract"

Page 13, line 3, remove "receiptholder and"

Page 13, line 3, remove the overstrike over "~~trust~~"

Page 13, line 3, remove "insolvency"

Page 13, line 6, remove the overstrike over "court"

Page 13, line 6, remove "commission"

Page 13, line 6, remove "issue"

Page 13, line 6, remove "at least"

Page 13, line 7, remove "forty-five days before the hearing,"

Page 13, line 8, remove the overstrike over "~~be approved~~"

Page 13, line 8, remove "become final,"

Page 13, line 8, remove "grain indemnity fund"

Page 13, line 9, remove "payments and"

Page 13, line 9, replace "insolvency" with "trust"

Page 13, line 14, remove the overstrike over "court"

Page 13, line 14, remove "commission"

Page 13, line 14, remove the overstrike over "~~the commission,~~"

Page 13, line 14, remove the overstrike over the second comma

Page 13, line 17, remove the overstrike over "court"

Page 13, line 17, remove "commission"

Page 13, line 17, remove the overstrike over "approve"

Page 13, line 17, remove "adopt"

Page 13, line 19, remove the overstrike over "~~trust~~"

Page 13, line 19, remove "insolvency"

Page 13, line 19, after "fund" insert ", payments from the credit-sale contract indemnity fund"

Page 13, line 19, remove the overstrike over "~~discharge of the commission from its trust~~"

Page 13, line 19, remove "payments from"

Page 13, line 20, remove "the grain indemnity fund"

Page 13, line 26, remove the overstrike over "~~the action~~"

Page 13, line 26, remove "any proceeding"

Page 13, line 27, remove the overstrike over "~~trust~~"

Page 13, line 27, remove "insolvency"

Page 13, line 27, replace "grain" with "credit-sale contract"

Page 13, line 27, after "fund" insert "as appropriate"

Page 13, line 31, remove the overstrike over "~~trust fund~~"

Page 13, line 31, remove "insolvency"

Page 13, line 31, replace "grain" with "credit-sale contract"

Page 13, line 31, after "funds" insert "as appropriate"

Page 14, line 5, after "demand" insert ", including electronic communication."

Page 14, remove lines 7 through 30

Page 15, remove lines 1 through 31

Page 16, remove lines 1 and 2

Page 16, line 6, remove the overstrike over "~~its appointment by the district court~~"

Page 16, line 6, remove "an insolvency"

Page 16, line 8, remove the overstrike over "~~its appointment~~"

Page 16, line 8, remove "the insolvency and the commencement of the insolvency proceeding"

Page 16, line 21, remove the overstrike over "~~court~~"

Page 16, line 21, remove "commission"

Page 16, remove lines 22 through 31

Page 17, remove lines 1 through 20

Page 17, line 29, remove "and credit-sale contract claimants"

Page 18, line 1, after "4." insert "Settle and compromise any action when it is in the best interests of the credit-sale contract claimants."

5."

Page 18, remove lines 4 through 10

Page 18, line 13, remove the overstrike over "~~of trustee to court – Approval~~"

Page 18, line 13, remove "and order of commission"

Page 18, line 14, remove the overstrike over "~~file with the~~"

Page 18, line 15, remove the overstrike over "~~court~~"

Page 18, line 15, remove "issue a notice consistent with chapter 28-32, together with"

Page 19, line 2, remove the overstrike over "~~trust fund assets~~"

Page 19, line 2, remove "bond"

Page 19, line 3, remove "proceeds in the insolvency fund"

Page 19, line 3, remove "an appropriate portion of the"

Page 19, line 4, after "proposed" insert "credit-sale contract"

Page 19, line 5, remove "receptholder and"

Page 19, line 6, remove the overstrike over "~~trust~~"

Page 19, line 6, remove "insolvency"

Page 19, line 6, remove the overstrike over "fund"

Page 19, line 6, remove the second "claims"

Page 19, line 8, remove the overstrike over "court shall set"

Page 19, line 8, remove "commission shall hold"

Page 19, line 8, remove "at least forty-"

Page 19, line 9, remove "five days before the hearing."

Page 19, line 10, remove the overstrike over "be approved"

Page 19, line 10, remove "become final."

Page 19, line 10, replace "grain" with "credit-sale contract"

Page 19, line 11, replace "insolvency" with "trust"

Page 19, line 11, after "proposed" insert ", and payments from the credit-sale contracts be made as proposed"

Page 19, line 15, remove the overstrike over "court"

Page 19, line 15, remove "commission"

Page 19, line 15, remove the overstrike over "~~the commission,~~"

Page 19, line 15, remove the overstrike over the second comma

Page 19, line 18, remove the overstrike over "court"

Page 19, line 18, remove "commission"

Page 19, line 18, remove the overstrike over "approve"

Page 19, line 18, remove "adopt"

Page 19, line 19, remove the overstrike over the comma

Page 19, line 19, remove "from insolvency fund and"

Page 19, line 20, remove the overstrike over "of"

Page 19, line 20, remove "from"

Page 19, line 20, remove the overstrike over "~~trust~~"

Page 19, line 20, remove "grain indemnity"

Page 19, line 20, after "fund" insert ", payments from the credit-sale contract indemnity fund"

Page 19, line 20, remove the overstrike over "~~, and discharge of the commission from its trust~~"

Page 19, line 27, remove the overstrike over "such"

Page 19, line 28, remove the overstrike over "action"

Page 19, line 28, remove "any proceeding"

Page 19, line 28, after "may" insert "the commission"

Page 19, line 29, overstrike "expense" and insert immediately thereafter "expenses"

Page 19, line 29, remove the overstrike over "trust"

Page 19, line 29, remove "grain indemnity"

Page 19, line 29, replace "insolvency" with "credit-sale contract indemnity"

Page 19, line 29, after "fund" insert "as appropriate"

Page 20, line 2, remove the overstrike over "trust fund"

Page 20, line 2, remove "insolvency"

Page 20, line 2, replace "grain" with "credit-sale"

Page 20, line 2, after "funds" insert "as appropriate"

Page 20, remove lines 3 through 31

Page 21, remove lines 1 through 31

Page 22, remove lines 1 through 15

Page 22, line 18, remove "**Grain**"

Page 22, line 21, remove "grain"

Page 22, remove lines 23 through 31

Page 23, remove lines 1 through 31

Page 24, line 1, remove "60-02-02, 60-02-25.1,"

Page 24, line 1, replace ", 60-02.1-02," with "and"

Page 24, line 1, remove the fifth comma

Page 24, line 2, remove "60-04-03.2, and 60-10-03"

Page 24, remove lines 3 and 4

Renumber accordingly

#3
2/6/17

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1126

Introduced by

Agriculture Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to amend and reenact sections ~~60-02-03~~, 60-02-09, 60-02-17, ~~60-02-25~~,
2 60-02-35, 60-02-38, 60-02-40, ~~60-02-44~~, ~~60-02.1-03~~, 60-02.1-08, 60-02.1-26, 60-02.1-28,
3 ~~60-02.1-29~~, ~~60-02.1-30~~, ~~60-02.1-31~~, 60-02.1-32, ~~60-02.1-33~~, ~~60-02.1-34~~, 60-02.1-35,
4 ~~60-02.1-36~~, 60-02.1-37, 60-02.1-38, 60-04-02, ~~60-04-03~~, ~~60-04-03.1~~, ~~60-04-03.3~~, ~~60-04-03~~,
5 60-04-04, ~~60-04-05~~, ~~60-04-06~~, 60-04-07, ~~60-04-08~~, 60-04-09, 60-04-10, ~~60-10-01~~, ~~60-10-02~~,
6 ~~60-10-04~~, ~~60-10-05~~, ~~60-10-06~~, ~~60-10-07~~, ~~60-10-08~~, and 60-10-09, ~~60-10-10~~, ~~60-10-13~~,
7 ~~60-10-14~~, and ~~60-10-15~~ of the North Dakota Century Code, relating to public warehouse and
8 grain buyer licensing, ~~conditions and attributes of licensure and accepting delivery of grain~~
9 ~~when a licensee is insolvent, the insolvency process, the credit sale contract indemnity fund~~
10 ~~and the grain indemnity fund~~ and insolvencies of public warehouses and grain buyers; to repeal
11 sections ~~60-02-02~~, ~~60-02-25.1~~, 60-02-39, ~~60-02.1-02~~, and 60-02.1-25, ~~60-04-03.2~~, and
12 ~~60-10-03~~ of the North Dakota Century Code, relating to ~~duties of the commission~~,
13 ~~receiptholders' lien~~, warehouse ~~closure~~, ~~grain of insolvent warehouseman as trust asset~~, and
14 ~~suspension of indemnity fund assessments~~; and to provide for a transfer closures.

15 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

16 —

17 — **SECTION 1. AMENDMENT.** Section ~~60-02-03~~ of the North Dakota Century Code is
18 ~~amended and reenacted as follows:~~

19 — ~~60-02-03. Duties and powers of the commission.~~

20 — ~~The commission shall have the duty and power to~~ may:

21 — 1. ~~Exercise general supervision of the public warehouses of this state, including the~~
22 ~~handling, weighing, and storing of grain, and the management of public warehouses.~~

23 — 2. ~~Investigate all complaints of fraud and injustice, unfair practices, and unfair~~
24 ~~discrimination.~~

- 1 ~~3.2. Examine and inspect, during ordinary business hours, any licensed warehouse,~~
2 ~~including all books, documents, and records.~~
3 ~~4.3. Require the filing of reports pertaining to the operation of the warehouse.~~
4 ~~5.4. Make all proper rules for carrying out and enforcing any law in this state regarding~~
5 ~~public warehouses.~~

6 **SECTION 1. AMENDMENT.** Section 60-02-09 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **60-02-09. Bond filed by public warehouseman.**

9 Before any license is ~~issued to~~effective for any public warehouseman under this chapter,
10 the applicant for ~~such~~the license shall file a bond with the commission which ~~shall~~must:

- 11 1. Be in a sum not less than five thousand dollars for any one warehouse.
12 2. Be continuous, unless the corporate surety by certified mail notifies the licensee and
13 the commission that the surety bond will be canceled ninety days after receipt of the
14 notice of cancellation.
15 3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in
16 ~~such~~that warehouse.
17 4. Be conditioned:
18 a. For the faithful performance of the licensee's duties as a public warehouseman.
19 b. For compliance with the provisions of law and the rules of the commission
20 relating to the storage and purchase of grain by such warehouseman.
21 5. Specify the location of each public warehouse intended to be covered by such bond.
22 6. Be for the specific purpose of:
23 a. Protecting the holders of outstanding receipts.
24 b. Covering the costs incurred by the commission in the administration of chapter
25 60-04 in the event of the licensee's insolvency.
26 7. Not accrue to the benefit of any person entering into a credit-sale contract with a
27 public warehouseman.
28 8. ~~In no event shall the~~The aggregate liability of the surety under a bond does not
29 accumulate for each successive annual license renewal period during which ~~such~~the
30 bond is in force but, for losses during any annual license renewal period, ~~shall be~~is

1 limited in the aggregate to the bond amount stated or changed by appropriate
2 endorsement or rider.

3 The commission shall set the amount of the bond and may require an increase in the amount of
4 any bond, from time to time, as ~~it shall, in its discretion, deem~~the commission deems necessary
5 to accomplish the purposes of this section. The surety on ~~such a~~the bond must be a corporate
6 surety company, approved by the commission, and authorized to do business within the state.
7 The commission may accept cash, a negotiable instrument, or a bond executed by personal
8 sureties in lieu of a surety bond when, in its judgment, ~~such~~the cash, negotiable instrument, or
9 personal surety bond properly will protect the holders of outstanding receipts. One bond only
10 ~~shall~~may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated
11 by one individual, firm, corporation, or limited liability company, and ~~such~~the bond ~~shall~~must be
12 construed to cover such elevators, mills, or warehouses, as a whole and not a specific amount
13 for each.

14 **SECTION 2. AMENDMENT.** Section 60-02-17 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.**

17 A warehouse receipt must contain, either on its face or reverse side, the following
18 warehouse and storage contract:

19 This grain is received, insured, and stored subject to the laws and rules of the state of North
20 Dakota, the terms of this contract, and the charges and conditions stated herein and as filed
21 with the North Dakota public service commission. Upon surrender of this receipt and
22 payment or tender of all applicable charges, the amount, kind, and grade of grain identified
23 in this receipt will be delivered to the person named above or the person's order as rapidly
24 as due diligence, care, and prudence will permit. At the option of the holder of this receipt,
25 the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be
26 delivered back to the holder at any terminal point customarily shipped to, or at the place
27 where received, upon the payment of any charges for receiving, handling, storage, and
28 insurance and in case of terminal delivery, the payment in addition to the above of the
29 regular freight charges on the gross amount called for by this ticket or in lieu thereof, a
30 receipt issued by a bonded warehouse or elevator company doing business at the terminal
31 point. ~~Nothing in this~~This receipt requires~~does not require~~ the delivery of the identical grain

1 specified herein, but an equal amount of grain of the same kind and grade must be
2 delivered.

3 A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that
4 will be assessed for receiving, storing, processing, or redelivering grain and the termination date
5 of its warehouse receipts. This publication must be filed with the commission as a part of the
6 warehouse license ~~application~~process or annual renewal. The fees and termination date must
7 be stated on the warehouse receipt issued for the grain. The fees or termination date may be
8 changed upon filing a revised publication with the commission.

9 ~~— **SECTION 3. AMENDMENT.** Section 60-02-25 of the North Dakota Century Code is
10 amended and reenacted as follows:~~

11 ~~— **60-02-25. Bailment not a sale.**~~

12 ~~— Whenever any grain shall be delivered to any public warehouse and an unconverted scale
13 ticket or a warehouse receipt is issued therefor, such the delivery shall be a bailment and not a
14 sale of the grain so delivered. In no case shall The delivered grain so delivered be liable
15 not subject to seizure upon process of any court in any action against such the bailee, except in
16 an action by an owner of such an unconverted scale ticket or warehouse receipt to enforce the
17 terms thereof or obtain redelivery of such the delivered grain. In the event of the failure or
18 insolvency of the warehouseman, all the grain in the warehouse, whether the same is stored or
19 not, first shall be applied at all times to the satisfaction of receipts issued by the warehouseman.~~

20 **SECTION 3. AMENDMENT.** Section 60-02-35 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **60-02-35. Grain to be kept insured for benefit of owner by warehouseman.**

23 ~~No~~A public warehouseman license ~~may be issued to a public warehouseman~~is not effective
24 unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of
25 the warehouseman for the benefit of the owner at the current market value of the grain against
26 loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of
27 direct physical loss as provided by the insurer in a policy approved by the insurance
28 commissioner. ~~No~~An insurance policy covering grain in a public warehouse may not be
29 transferred or assigned to any person for any purpose, except for grain that is not on
30 warehouse receipt or deposit. The insurance policy must be continuous and may only be
31 canceled in accordance with section 60-02-35.1.

1 **SECTION 4. AMENDMENT.** Section 60-02-38 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-02-38. Refund of license fee by commission.**

4 When requested in writing, the commission shall refund the license fee of a public
5 warehouse, or so much as in its judgment is just and reasonable, when satisfactory proof is
6 furnished that the warehouse has been transferred to some other person, and the new owner
7 has ~~applied for~~obtained a license for the same warehouse for the unexpired period for which the
8 original license was issued. When a warehouse is destroyed by fire or other cause, the license
9 fee may be prorated as the commission may determine.

10 **SECTION 5. AMENDMENT.** Section 60-02-40 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-02-40. Transfer of warehouse - Redemption of receipts.**

13 Whenever a public warehouseman desires to transfer a warehouse, either by sale or lease
14 to any other individual, firm, or corporation, the warehouseman shall:

- 15 1. Notify the commission first of its intention to transfer the warehouse, giving the name
16 and address of the proposed lessee or purchaser.
- 17 2. Furnish a statement of all proper claims that may be filed or pending against the
18 warehouseman pertaining to the storage, inspection, and marketing of grain, together
19 with a statement of:
 - 20 a. The number of bushels [cubic meters] of grain of each kind and grade in store in
21 the warehouse;
 - 22 b. The number and amount of receipts outstanding; and
 - 23 c. The names and addresses of the receiptholders.
- 24 3. Serve notice by registered or certified mail, at least thirty days before the transfer,
25 upon all receiptholders having claims against the warehouse to call for delivery of the
26 grain covered by the receipts, and to pay all storage charges due, the warehouseman
27 in such case to make no charge for redelivery. The commission may waive the
28 thirty-day notice period upon receipt of written consent of all receiptholders.
- 29 4. Transfer all stored grain undelivered at the expiration of such thirty-day period to its
30 successor, if licensed, or to the nearest licensed warehouse for restorage, taking
31 receipts for the same in favor of the owner of the grain so transferred.

1 5. Surrender to the commission its license for cancellation and at such time the proposed
2 lessee or purchaser shall ~~apply~~file in due form for a new license and tender a new
3 bond for ~~approval~~review by the commission, whereupon, it first being duly satisfied
4 that all the outstanding receipts have been redeemed, or that the redemption thereof
5 has been provided for, the commission may ~~issue~~permit a new license to become
6 effective for the lessee or purchaser.

7 No sale, lease, or transfer of any warehouse will be recognized ~~or permitted~~ by the commission
8 except when made in accordance with the provisions of this section.

9 ~~— **SECTION 7. AMENDMENT.** Section 60-02-44 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~— **60-02-44. Licensed warehouse capacity and condominium storage.**~~

12 ~~— Unless an entire warehouse facility is used for nonpublic purposes, all physically connected~~
13 ~~portions of the facility must be licensed in accordance with this chapter. The warehouseman~~
14 ~~shall issue receipt memoranda for all grain received. Facilities that are physically connected to~~
15 ~~the licensed warehouse may be sold under a condominium arrangement or leased to other~~
16 ~~entities for nonpublic use and sales and lease agreements must be based on the capacity of the~~
17 ~~bins involved and not on the number of bushels held in the space. The licensee shall provide~~
18 ~~contents insurance and bond coverage for the space. In case of licensee insolvency, the~~
19 ~~contents of the space must be considered an asset to the trust fund established under~~
20 ~~chapter 60-04 and owners and lessees are entitled to trust fund protection in a manner equal to~~
21 ~~all other valid grain receipt holders.~~

22 ~~— **SECTION 9. AMENDMENT.** Section 60-02.1-03 of the North Dakota Century Code is~~
23 ~~amended and reenacted as follows:~~

24 ~~— **60-02.1-03. Duties and powers of the commission.**~~

25 ~~— The commission has the duty and power to:~~

26 ~~— 1. Exercise general supervision of grain buyers of this state.~~

27 ~~— 2. Investigate all complaints of fraud and injustice, unfair practices, and unfair~~
28 ~~discrimination.~~

29 ~~— 3.2. Examine and inspect, during ordinary business hours, any books, documents, and~~
30 ~~records.~~

1 ~~4.3. Make all proper rules for carrying out and enforcing any law in this state regarding~~
2 ~~grain buyers.~~

3 **SECTION 6. AMENDMENT.** Section 60-02.1-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **60-02.1-08. Bond filed by grain buyer.**

6 Before any license is ~~issued to~~effective for any grain buyer under this chapter, the applicant
7 for ~~such~~the license shall file a bond with the commission which must:

- 8 1. Be in a sum not less than five thousand dollars.
- 9 2. Be continuous, unless the corporate surety by certified mail notifies the licensee and
10 the commission that the surety bond will be canceled ninety days after receipt of the
11 notice of cancellation.
- 12 3. Run to the state of North Dakota for the benefit of all persons selling grain to or
13 through the grain buyer.
- 14 4. Be conditioned:
 - 15 a. For the faithful performance of the licensee's duties as a grain buyer.
 - 16 b. For compliance with the provisions of law and the rules of the commission
17 relating to the purchase of grain by such grain buyer.
- 18 5. For facility-based grain buyers, specify the location of each facility intended to be
19 covered by ~~such~~the bond.
- 20 6. Be for the specific purpose of:
 - 21 a. Protecting the sellers of grain.
 - 22 b. Covering the costs incurred by the commission in the administration of the
23 licensee's insolvency.
- 24 7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain
25 buyer.
- 26 8. ~~In no event shall the~~The aggregate liability of the surety under a bond does not
27 accumulate for each successive annual license renewal period during which ~~such~~the
28 bond is in force but, for losses during any annual license renewal period, ~~shall be~~is
29 limited in the aggregate to the bond amount stated or changed by appropriate
30 endorsement or rider.

1 The commission may require an increase in the amount of any bond, from time to time, as it
2 deems necessary to accomplish the purposes of this section. The surety on ~~such a~~the bond
3 must be a corporate surety company, approved by the commission, and authorized to do
4 business within the state. The commission may accept cash, a negotiable instrument, or a bond
5 executed by personal sureties in lieu of a surety bond when, in its judgment, ~~such~~ cash, a
6 negotiable instrument, or a personal surety bond properly will protect the holders of outstanding
7 receipts. Only one bond may be required for any series of facilities operated by a facility-based
8 grain buyer, and ~~such the~~ bond must be construed to cover ~~such those~~ facilities as a whole and
9 not a specific amount for each.

10 **SECTION 7. AMENDMENT.** Section 60-02.1-26 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-02.1-26. Transfer of facility - Redemption of receipts.**

13 Whenever a facility-based grain buyer desires to transfer a facility, either by sale or lease to
14 any other individual, firm, or corporation, the grain buyer shall:

- 15 1. Notify the commission first of its intention to transfer the facility, giving the name and
16 address of the proposed lessee or purchaser.
- 17 2. Provide related information as may be required by the commission.
- 18 3. Surrender to the commission ~~its~~the grain buyer's license for cancellation and at
19 ~~such that~~ time the proposed lessee or purchaser shall ~~apply~~file in due form for a new
20 license and tender a new bond for ~~approval~~review by the commission, whereupon, it
21 first being duly satisfied that all the outstanding receipts have been redeemed, or that
22 the redemption thereof has been provided for, the commission may ~~issue~~permit a new
23 license to become effective for the lessee or purchaser.

24 No sale, lease, or transfer of any facility will be recognized ~~or permitted~~ by the commission
25 except when made in accordance with the provisions of this section.

26 **SECTION 8. AMENDMENT.** Section 60-02.1-28 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **60-02.1-28. Insolvency of grain buyer.**

29 A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written
30 demand, including electronic communications, to make payment for grain purchased or
31 marketed by the licensee or is unable to make redelivery upon proper written demand, including

1 electronic communications. The licensee may not assess receiving or redelivery fees on grain
2 that is redelivered during a suspension, following a revocation, or when the owner of the grain is
3 taking redelivery because the licensee is unable to pay for the grain.

4 — **SECTION 13. AMENDMENT.** Section 60-02.1-29 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 — **60-02.1-29. Appointment of commission Commission insolvency proceeding.**

7 — Upon the insolvency of any roving grain buyer, the commission, on its own motion, shall
8 apply to the district court of Burleigh County for authority to take all action necessary to act as
9 trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a
10 facility-based grain buyer, application must be to the district court of a county in which the
11 licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not
12 exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear
13 and determine the application in a summary manner. If the court determines that the licensee is
14 insolvent within the meaning of this chapter and that it would be in the best interests of the
15 receiptholders that the commission secure and execute the trust, the court shall issue an order
16 granting the application, without bond, and the commission shall proceed to exercise its
17 authority without further direction from the court.

18 — Upon the filing of the commission's application, the court may issue ex parte a temporary
19 order to preserve or protect the assets of the trust fund until the court issues its order granting
20 or denying the application commence an administrative insolvency proceeding under chapter
21 28-32 to secure the bond proceeds, identify potential receiptholder and credit-sale claimants,
22 determine the amount of each claim, determine the recommended payment on each claim from
23 the insolvency fund and the grain indemnity fund, make payments on claims, and take any
24 action necessary and appropriate to accomplish the purposes of this chapter.

25 — **SECTION 14. AMENDMENT.** Section 60-02.1-30 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 — **60-02.1-30. Trust Insolvency fund established.**

28 — Upon the insolvency of any licensee, a trust an insolvency fund must be established for the
29 benefit of noncredit sale receiptholders and to pay the costs incurred by the commission in the
30 administration of the insolvency. The trust insolvency fund must consist of the following:

1 — ~~1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds~~
2 ~~obtained from the conversion of such grain.~~

3 — ~~2. The proceeds, including accounts receivable, from any grain sold from the time of the~~
4 ~~filing of the claim that precipitated an insolvency until the commission is appointed~~
5 ~~trustee must be remitted to the commission and included in the trust fund.~~

6 — ~~3. The proceeds of insurance policies on destroyed grain.~~

7 — ~~4. The claims for relief, and proceeds therefrom, for damages upon bond given by the~~
8 ~~licensee to ensure faithful performance of the duties of a licensee.~~

9 — ~~5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in~~
10 ~~the warehouse.~~

11 — ~~6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that~~
12 ~~precipitated an insolvency.~~

13 — ~~7. Unencumbered equity in grain hedging accounts.~~

14 — ~~8. Unencumbered grain product assets.~~

15 — **SECTION 15. AMENDMENT.** Section 60-02.1-31 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 — **60-02.1-31. Joinder of and notice to surety – Deposit of proceeds.**

18 — ~~Each~~The commission shall join each surety on the insolvent licensee's bonds must be
19 joined as a party to the insolvency proceeding. If it is in the best interests of the receiptholders,
20 ~~the court~~commission may order a surety to deposit some or all of the penal sum of the bond into
21 ~~the trustee's trust~~insolvency account pending determination of the surety's liability under the
22 ~~bond.~~

23 **SECTION 9. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **60-02.1-32. Notice to receiptholders and credit-sale contract claimants.**

26 Upon its appointment~~an insolvency~~, the commission may take possession of relevant books
27 and records of the licensee. If the insolvency involves a roving grain buyer, the commission
28 shall publish a notice of its appointment~~the insolvency and the commencement of the~~
29 insolvency proceeding once each week for two consecutive weeks in all daily newspapers in the
30 state and may notify, by ordinary mail, the holders of record of outstanding receipts and those
31 who are potential credit-sale contract claimants, disclosed by the licensee's records. If the

1 insolvency involves a facility-based grain buyer, the notice must be published once each week
2 for two consecutive weeks in a newspaper in the county in which the warehouse is located. The
3 notice must require outstanding receiptholders and credit-sale contract claimants to file their
4 claims with the commission along with the receipts, contracts, or other evidence of the claims
5 required by the commission. If an outstanding receiptholder or credit-sale contract claimant fails
6 to submit a claim within forty-five days after the last publication of the notice or a longer time set
7 by the commission, the commission is relieved of further duty in the administration of the
8 insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder
9 ~~or credit-sale contract claimant~~ may be barred from participation in the trust fund payment for
10 any amount due, and the credit-sale contract claimant may be barred from payment for any
11 amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the
12 insolvency action unless admitted by the court~~commission~~ upon a motion for intervention.

13 ~~— SECTION 17. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is~~
14 ~~amended and reenacted as follows:~~

15 ~~— 60-02.1-33. Remedy of receiptholders.~~

16 ~~— No receiptholder has a separate claim for relief upon any insolvent licensee's bond, nor for~~
17 ~~insurance, nor against any person converting grain, nor against any other receiptholder, except~~
18 ~~through the trustee~~commission, unless, upon demand of five or more receiptholders, the
19 ~~commission fails or refuses to apply for its own appointment or unless the district court denies~~
20 ~~the application~~commence an insolvency proceeding and join the surety. This chapter does not
21 prohibit any receiptholder, either individually or in conjunction with other receiptholders, from
22 pursuing concurrently any other remedy against the person or property of the licensee.

23 ~~— SECTION 18. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is~~
24 ~~amended and reenacted as follows:~~

25 ~~— 60-02.1-34. Commission to marshal trust assets~~may maintain suit.

26 ~~— Upon its appointment, the commission shall marshal all of the trust fund assets. The~~
27 ~~commission may maintain suits in the name of the state of North Dakota for the benefit of all~~
28 ~~receiptholders against the licensee's bonds, insurers of grain, any person who may have~~
29 ~~converted any grain, and any person who may have received preferential treatment by being~~
30 ~~paid by the insolvent licensee after the first default.~~

1 **SECTION 10. AMENDMENT.** Section 60-02.1-35 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-02.1-35. Power of commission to prosecute or compromise claims.**

4 The commission may:

- 5 1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court
6 in this state or in any other state.
- 7 2. Appeal from any adverse judgment to the courts of last resort.
- 8 3. Settle and compromise any action when it will be in the best interests of the
9 receiptholders ~~and credit sale contract claimants.~~
- 10 4. Settle and compromise any action when it is in the best interests of the credit-sale
11 contract claimants.
- 12 5. Upon payment of the amount of any settlement or of the full amount of any bond,
13 exonerate the person so paying from further liability growing out of the action.
- 14 ~~5. Take any other action necessary and appropriate to accomplish the purposes of this~~
15 ~~chapter.~~

16 ~~**SECTION 20. AMENDMENT.** Section 60-02.1-36 of the North Dakota Century Code is~~
17 ~~amended and reenacted as follows:~~

18 ~~**60-02.1-36. Money received by trustee -- Deposited in Bank of North Dakota.**~~

19 ~~All funds received by the commission as trustee under this chapter must be deposited in the~~
20 ~~Bank of North Dakota.~~

21 **SECTION 11. AMENDMENT.** Section 60-02.1-37 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **60-02.1-37. Report of trustee to court - Approval and order of commission -**
24 **Distribution.**

- 25 1. Upon the receipt and evaluation of claims, the commission shall file with the court ~~issue~~
26 ~~a notice consistent with chapter 28-32, together with~~ a report showing the amount and
27 validity of each claim after recognizing:
 - 28 a. Relevant liens or pledges.
 - 29 b. Relevant assignments.
 - 30 c. Relevant deductions due to advances or offsets accrued in favor of the licensee.

- 1 d. In case of relevant cash claims or checks, the amount of the claim, ~~with interest~~
2 ~~from the date of default at the weighted average prime rate charged by the Bank~~
3 ~~of North Dakota.~~
- 4 e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount
5 remaining to be paid based on the terms of the contract.
- 6 2. The report must also contain the proposed reimbursement to the commission for the
7 expenses of administering the insolvency, the proposed distribution of the
8 trust~~insolvency~~ fund assets to receiptholders, less expenses incurred by the
9 commission in the administration of the insolvency, and the proposed credit-sale
10 contract indemnity fund payments to receiptholder and credit-sale contract claimants.
11 If the trust~~insolvency~~ fund is insufficient to redeem all receiptholder claims in full, the
12 report should list the funds as prorated.
- 13 3. The court~~commission~~ shall set a hearing and issue the appropriate notice at least
14 forty five days before the hearing, for interested persons to show cause why the
15 commission's report should not be approved~~become final~~, and grain indemnity fund
16 payments and distribution of the insolvency~~trust~~ fund be made as proposed. Copies of
17 the report and notice of hearing must be served by the commission by certified mail
18 upon the licensee and the surety and by ordinary mail upon all persons having claims
19 filed with the commission.
- 20 4. Any aggrieved person having an objection to the commission's report shall file the
21 objection with the court~~commission~~ and serve copies on the commission, the licensee,
22 and the surety at least ~~ten~~twenty days before the hearing. Failure to file and serve
23 objections in the time set is a waiver of the objection.
- 24 5. Following the hearing, the court~~commission~~ shall approve~~adopt~~ or modify the report
25 and issue an order directing payment of the necessary bond proceeds, distribution of
26 the trust~~insolvency~~ fund, payments from the credit-sale contract indemnity fund, and
27 discharge of the commission from its trust~~payments from the grain indemnity fund~~.

28 **SECTION 12. AMENDMENT.** Section 60-02.1-38 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **60-02.1-38. Filing fees and court costs - Expenses.**

2 The commission may not be required to pay any filing fee or other court costs or
3 disbursements. The attorney general may appoint outside legal counsel to assist the
4 commission in the prosecution of ~~the action~~any proceeding and the cost of employing outside
5 counsel ~~may~~must be paid from the ~~trust~~insolvency fund and the ~~grain~~credit-sale contract
6 indemnity fund as appropriate. All other necessary expenses incurred by the commission in
7 carrying out the provisions of this chapter, including adequate insurance to protect the
8 commission, its employees, and others engaged in carrying out the provisions of sections
9 60-02.1-28 through 60-02.1-38, ~~may~~must be ~~paid~~reimbursed to the commission from the ~~trust~~
10 ~~fund~~insolvency and ~~grain~~credit-sale contract indemnity funds as appropriate.

11 **SECTION 13. AMENDMENT.** Section 60-04-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **60-04-02. Insolvency of warehouseman.**

14 A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written
15 demand, including electronic communication, to make payment for grain purchased or marketed
16 by the licensee or to make redelivery or payment for grain stored.

17 ~~—SECTION 24. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is~~
18 ~~amended and reenacted as follows:~~

19 ~~—60-04-03. Appointment of commission~~Commission insolvency proceeding.

20 ~~—Upon the insolvency of any warehouseman, the commission, on its own motion, shall apply~~
21 ~~to the district court of a county in which the warehouseman operates a licensed warehouse for~~
22 ~~authority to take all action necessary and appropriate to secure and act as trustee of the trust~~
23 ~~fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall~~
24 ~~prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the~~
25 ~~warehouseman, the court shall proceed to hear and determine such application in a summary~~
26 ~~manner. If it shall appear to the court that such warehouseman is insolvent within the meaning~~
27 ~~of this chapter and that it would be for the best interests of the receipt holders that the~~
28 ~~commission secure and execute such trust, the court shall issue an order granting the~~
29 ~~application, without bond, whereupon the commission shall proceed to exercise its authority~~
30 ~~without further direction from the court.~~

1 — Upon the filing of the commission's application, the court may issue ex parte such
2 temporary order as may be necessary to preserve or protect the assets of the trust fund, or the
3 value thereof, until the court issues its order granting or denying the application commence an
4 administrative insolvency proceeding under chapter 28-32 to secure the bond proceeds, identify
5 potential receipt holder and credit sale claimants, determine the amount of each claim,
6 determine the recommended payment on each claim from the insolvency fund and the grain
7 indemnity fund, make payments on claims, and take any action necessary and appropriate to
8 accomplish the purposes of this chapter.

9 — **SECTION 25. AMENDMENT.** Section 60-04-03.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 — **60-04-03.1. Trust insolvency fund established.**

12 — 1. Upon the insolvency of any warehouseman, a trust insolvency fund shall must be
13 established:

14 — a. For the benefit of noncredit sale receipt holders of the insolvent warehouseman,
15 other than those who have waived their rights as beneficiaries of the trust fund in
16 accordance with section 60-02-11; and

17 — b. To pay the costs incurred by the commission in the administration of this chapter.

18 — 2. The trust insolvency fund consists of the following:

19 — a. The grain in the warehouse of the insolvent warehouseman or the proceeds as
20 obtained through the sale of such grain;

21 — b. The proceeds, including accounts receivable, from any grain sold from the time of
22 the filing of the claim that precipitated an insolvency until the commission is
23 appointed trustee;

24 — c. The proceeds of insurance policies upon grain destroyed in the elevator;

25 — d. The claims for relief, and proceeds therefrom, for damages upon any bond given
26 by the warehouseman to ensure faithful performance of the duties of a
27 warehouseman;

28 — e. The claims for relief, and proceeds therefrom, for the conversion of any grain
29 stored in the warehouse;

30 — f. Unencumbered accounts receivable for grain sold prior to the filing of the claim
31 that precipitated an insolvency;

1 ~~g. Unencumbered equity in grain hedging accounts; and~~

2 ~~h. Unencumbered grain product assets.~~

3 ~~**SECTION 16. AMENDMENT.** Section 60-04-03.3 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~

5 ~~**60-04-03.3. Joinder of and notice to surety – Deposit of proceeds.**~~

6 ~~The commission shall join the surety on the warehouseman's bond must be joined as a~~
7 ~~party to the insolvency proceeding upon a motion by the commission when the commission~~
8 ~~believes that proceeds from the warehouseman's bond may be needed to redeem outstanding~~
9 ~~receipts issued by the warehouseman. When it appears in the best interests of the~~
10 ~~receptholders, the courtcommission may order the surety to deposit the penal sum of the bond,~~
11 ~~or so much thereof as may be deemed necessary, into the trustee's trustinsolvency account~~
12 ~~pending a final determination of the surety's liability under the bond.~~

13 **SECTION 14. AMENDMENT.** Section 60-04-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **60-04-04. Notice to receiptholders and credit-sale contract claimants.**

16 Upon its appointment by the district court~~an insolvency~~, the commission may take
17 possession of relevant books and records of the warehouseman. The commission shall cause a
18 notice of its appointment~~the insolvency and the commencement of the insolvency proceeding~~ to
19 be published once each week for two consecutive weeks in a newspaper in the county in which
20 the warehouse is located and may notify by ordinary mail the holders of record of outstanding
21 receipts and those who are potential credit-sale contract claimants, as shown by the
22 warehouseman's records. The notices must require outstanding receiptholders and credit-sale
23 contract claimants to file their claims against the warehouseman with the commission along with
24 the receipts, contracts, or ~~such~~any other evidence of the claims as required by the commission.
25 If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within
26 forty-five days after the last publication of the notice or ~~such~~a longer time as prescribed by the
27 commission, the commission is relieved of further duty or action under this chapter on behalf of
28 the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract
29 claimant may be barred from ~~participation in the trust fund~~payment for any amount due.
30 Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency
31 action unless admitted by the ~~court~~commission upon a motion for intervention.

1 — **SECTION 18. AMENDMENT.** Section 60-04-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 — **60-04-05. Remedy of receiptholders.**

4 — No receiptholder has a separate claim for relief upon the warehouseman's bond, nor for
5 insurance, nor against any person converting grain, nor against any other receiptholder, except
6 through the trustee commission, unless, upon demand of five or more receiptholders, the
7 commission fails or refuses to apply for its own appointment from the district court or unless the
8 district court denies the application for appointment commence an insolvency proceeding and
9 join the surety. This chapter does not prohibit or prevent any receiptholder, either individually or
10 in conjunction with other receiptholders, from pursuing concurrently such any other remedy
11 against the person or property of such the warehouseman, for the whole, or any deficiency
12 occurring in the redemption, of the receipts.

13 — **SECTION 29. AMENDMENT.** Section 60-04-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 — **60-04-06. Commission to marshal trust assets may maintain suit.**

16 — Upon its appointment by the district court, the The commission may maintain suits at law or
17 in equity, or any special proceeding, in the name of the state of North Dakota, upon its own
18 relation, but for the benefit of all such receiptholders against:

19 — 1. — The insurers of grain;

20 — 2. — The warehouseman's bond;

21 — 3. — Any person who may have converted any grain; or

22 — 4. — Any receiptholder who shall have received more than its just and pro rata share of
23 grain;

24 for the purpose of marshalling all of the trust fund assets and distributing the same among the
25 receiptholders. The commission shall seek possession of any grain in the warehouse before
26 recourse is had against the insurers of grain, and the remedy against the insurers of grain shall
27 be exhausted before recourse is had against the bond, and against the bond before recourse is
28 had against the person honestly converting grain, unless the commission shall deem it
29 necessary to the redemption of the receipts that all the above remedies be pursued at the same
30 time.

1 **SECTION 15. AMENDMENT.** Section 60-04-07 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-04-07. Power of commission to prosecute or compromise claims.**

4 The commission ~~shall have power~~may:

- 5 1. ~~To prosecute~~Prosecute any action provided in this chapter in any court in this state or
6 in any other state.
- 7 2. ~~To appeal~~Appeal from any adverse judgment to the courts of last resort.
- 8 3. ~~To settle~~Settle and compromise any action whenever, ~~in its judgment, this will be for it~~
9 is in the best interests of the receipt holders ~~and credit sale contract claimants~~.
- 10 4. Settle and compromise any action when it is in the best interests of the credit-sale
11 contract claimants.
- 12 5. Upon payment of the amount of ~~such~~the compromise or of the full amount of any
13 insurance policy, bond, or conversion claim, ~~to~~ exonerate the person so compromising
14 or paying in full from further liability growing out of the action.

15 ~~5. Take any other action necessary and appropriate to accomplish the purposes of this~~
16 ~~chapter.~~

17 ~~**SECTION 31. AMENDMENT.** Section 60-04-08 of the North Dakota Century Code is~~
18 ~~amended and reenacted as follows:~~

19 ~~**60-04-08. Money received by trustee - Deposited in Bank of North Dakota.**~~

20 ~~All moneys collected and received by the commission as trustee under this chapter,~~
21 ~~pending the marshalling of the fund, shall~~must be deposited in the Bank of North Dakota.

22 **SECTION 16. AMENDMENT.** Section 60-04-09 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **60-04-09. Report of trustee to court - Approval and order of commission - Distribution.**

25 Upon the receipt and evaluation of claims filed with it, the commission shall file with the
26 court~~issue a notice consistent with chapter 28-32, together with~~ a report showing the amount
27 and validity of each claim after recognizing:

- 28 1. Any proper liens or pledges thereon.
- 29 2. Assignments thereof.
- 30 3. Deductions therefrom by reason of advances or offsets accrued in favor of the
31 warehouseman.

- 1 4. In case of cash claims or checks, the amount thereof, ~~with interest at the weighted~~
2 ~~average prime rate charged by the Bank of North Dakota since the date of the~~
3 ~~insolvency.~~
- 4 5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the
5 market price prevailing on the date of the ~~insolvency, with interest at the weighted~~
6 ~~average prime rate charged by the Bank of North Dakota since the date of the~~
7 ~~insolvency~~ commission first received a copy of the written demand required by section
8 60-04-02.
- 9 6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid
10 based on the terms of the contract.

11 The report must also contain the proposed reimbursement to the commission for the
12 expenses of administering the insolvency, a proposed distribution of the trust fund assets ~~bond~~
13 ~~proceeds in the insolvency fund,~~ less ~~an appropriate portion of the~~ expenses incurred by the
14 commission in the administration of this chapter, and the proposed credit-sale contract
15 indemnity fund payments to receiptholder and credit-sale contract claimants as their interests
16 are determined. If the ~~trust~~ insolvency fund is insufficient to redeem all receiptholder claims in
17 full, the ~~fund~~ claims must be shown prorated in the report in the manner the commission deems
18 fair and equitable.

19 The ~~court shall set~~ commission shall hold a hearing and the appropriate notice ~~at least forty~~
20 ~~five days before the hearing,~~ for interested persons to show cause why the commission's report
21 should not ~~be approved~~ become final, and ~~grain~~ credit-sale contract indemnity fund payments
22 and distribution of the ~~insolvency~~ trust fund be made as proposed, and payments from the
23 credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be
24 served by the commission by certified mail upon the warehouseman and the surety and by
25 ordinary mail upon all persons having claims filed with the commission.

26 Any aggrieved person having an objection to the commission's report shall file the objection
27 with the ~~court~~ commission and serve copies on the commission, the warehouseman, and the
28 surety at least ~~ten~~ twenty days before the hearing. Failure to file and serve objections in the time
29 set is a waiver of the objection.

30 Following hearing, the ~~court~~ commission shall ~~approve~~ adopt or modify the report and issue
31 an order directing payment of the necessary bond proceeds, ~~from insolvency fund and~~

1 distribution ~~offrom~~ the ~~trust~~grain indemnity fund, payments from the credit-sale contract
2 indemnity fund, and discharge of the commission from its trust.

3 **SECTION 17. AMENDMENT.** Section 60-04-10 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **60-04-10. Filing fees and court costs - Expenses.**

6 ~~Upon the application to the district court as provided in this chapter, or in~~In any action in a
7 state court in this state, the commission shall not be required to pay any filing fee or other court
8 costs or disbursements if the fees accrue to the county or to the state. The attorney general
9 may employ outside legal services to assist the commission in the prosecution of such
10 action~~any proceeding~~ as in the attorney general's judgment may be necessary and ~~may~~the
11 commission shall deduct the ~~expense~~expenses of the same from the ~~trust~~grain indemnity fund
12 and the ~~insolvency~~credit-sale contract indemnity fund as appropriate. All other necessary
13 expenses incurred by the commission in carrying out the provisions of this chapter, including
14 adequate insurance to protect the commission, its employees, and others engaged in carrying
15 out the provisions of this chapter, ~~may~~must be ~~deducted~~reimbursed to the commission from the
16 trust fund~~insolvency~~ and grain~~credit-sale~~ indemnity funds as appropriate. — **SECTION 34.**

17 **AMENDMENT.** Section ~~60-10-01~~ of the North Dakota Century Code is amended and reenacted
18 as follows:

19 ~~— 60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.~~

20 ~~— An assessment at the rate of two tenths~~two one hundredths of one percent is placed on the
21 value of all grain sold in this state under a ~~noncredit sale contract,~~ credit-sale contract, as
22 provided for in sections 60-02-19.1 and 60-02.1-14, or for cash. The licensee purchasing the
23 grain shall note the assessment on the ~~check, noncredit sale contract, or credit sale contract~~
24 required under sections 60-02-19.1 and 60-02.1-14, and shall deduct the assessment from the
25 purchase price payable to the seller. The licensee shall submit any assessment collected under
26 this section to the public service commission no later than thirty days after ~~the last day of each~~
27 calendar quarter. An assessment at the same rate is placed on all grain delivered for storage in
28 this state when a receipt holder claim based on stored grain is payable by the commission under
29 chapter 60-04. The licensee receiving grain for storage shall note the potential assessment on
30 the warehouse receipt. In the event of an insolvency proceeding, the commission shall deduct
31 the assessment from the amount payable to a receipt holder from the grain indemnity fund for a

1 ~~claim based on stored grain.~~ The commission shall deposit the assessments received under this
2 section in the ~~credit sale contract~~grain indemnity fund.

3 ~~—~~ **SECTION 35. AMENDMENT.** Section 60-10-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 ~~—~~ **60-10-02. Credit sale contract**Grain indemnity fund – Creation – Continuing
6 **appropriation.**

7 ~~—~~ There is created The grain indemnity fund is a special fund in the state treasury the
8 credit sale contract indemnity fund. The state treasurer shall invest available moneys in the fund
9 in accordance with section 21-10-07 and in cooperation with the public service commission and
10 shall deposit any income earned through the investments into the fund. The fund and earnings
11 of the fund are appropriated to the public service commission on a continuing basis to be used
12 exclusively to carry out the intent and purpose of this chapter.

13 ~~—~~ **SECTION 36. AMENDMENT.** Section 60-10-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 ~~—~~ **60-10-04. Credit sale contract**Grain indemnity fund – Eligibility for reimbursement.

16 ~~—~~ A person is eligible to receive indemnity payments from the credit sale contractgrain
17 indemnity fund if:

18 ~~—~~ 1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer
19 in this state under the provisions of a credit sale contract;

20 ~~—~~ 2. After August 1, 2017, the person delivered or sold grain to a licensed warehouse or a
21 grain buyer in this state;

22 ~~—~~ 3. The licensed warehouse to which the person sold grain or the grain buyer to whom the
23 person sold grain becomes insolvent; and

24 ~~—~~ 3.4. The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully
25 compensate the person in accordance with the credit sale contract, noncredit sale
26 contract, sale, or storage contract.

27 ~~—~~ **SECTION 37. AMENDMENT.** Section 60-10-05 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 ~~—~~ **60-10-05. Credit sale contract**Grain indemnity fund – Availability of money.

30 ~~—~~ Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the
31 public service commission serve as the trustee, the public service commission shall commence

1 ~~an insolvency proceeding under chapter 60-04 to make the proceeds of the credit sale~~
2 ~~contract~~grain indemnity fund available for use in meeting the licensee's obligations with respect
3 to the reimbursement of any person who ~~delivered or~~ sold grain to the licensee under a
4 credit sale contract and who was not fully compensated in accordance with the ~~sale, contract,~~
5 ~~or storage contract.~~

6 — **SECTION 38. AMENDMENT.** Section 60-10-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 — **60-10-06. Credit sale contract**Grain indemnity fund – Reimbursement limit.

9 — The amount payable to any eligible person from the credit sale ~~contract~~grain indemnity fund
10 for each insolvency may not exceed the lesser of eighty percent of the amount owed to that
11 eligible person in accordance with all of that person's unsatisfied credit sale ~~contracts,~~storage
12 ~~contracts, noncredit sale contracts, or sales,~~ or ~~two~~four hundred eighty thousand dollars.

13 — **SECTION 39. AMENDMENT.** Section 60-10-07 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 — **60-10-07. Credit sale contract**Grain indemnity fund – Prorated claims.

16 — If claims for indemnity payments from the credit sale ~~contract~~grain indemnity fund exceed
17 the amount in the fund, the public service commission shall prorate the claims and pay the
18 prorated amounts. As future assessments are collected, the public service commission shall
19 continue to forward indemnity payments to each eligible person until the person receives the
20 maximum amount payable in accordance with this chapter.

21 — **SECTION 22. AMENDMENT.** Section 60-10-08 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 — **60-10-08. Reimbursement for later insolvencies.**

24 — The public service commission shall ensure that all persons eligible for payment from the
25 grain indemnity fund as a result of an insolvency are fully compensated to the extent permitted
26 by this chapter before any payments from the indemnity fund are initiated as a result of a later
27 insolvency. The chronological order of insolvencies is determined by the date the public service
28 commission is appointed trustee under ~~first received a copy of the written demand required by~~
29 ~~section 60-02.1-29~~60-02.1-28 or ~~60-04-03~~60-04-02.

30

1 **SECTION 18. AMENDMENT.** Section 60-10-09 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-10-09. Credit-sale contract~~Grain~~ indemnity fund - Reimbursement for**
4 **administrative expenses.**

5 Any expense incurred by the public service commission in administrating the credit-sale
6 contract~~grain~~ indemnity fund ~~is reimbursable~~ must be reimbursed from the fund before any other
7 claim for indemnity is paid.

8 ~~— **SECTION 42. AMENDMENT.** Section 60-10-10 of the North Dakota Century Code is~~
9 ~~amended and reenacted as follows:~~

10 ~~— **60-10-10. Credit-sale contract~~Grain~~ indemnity fund assessment - Failure to collect**~~
11 ~~**assessment - Penalty.**~~

12 ~~— Any person who knowingly or intentionally refuses or fails to collect the assessment~~
13 ~~required under this chapter from producers or to submit any assessment collected from~~
14 ~~producers to the public service commission for deposit in the credit-sale contract~~grain~~ indemnity~~
15 ~~fund is guilty of a class A misdemeanor.~~

16 ~~— **SECTION 43. AMENDMENT.** Section 60-10-13 of the North Dakota Century Code is~~
17 ~~amended and reenacted as follows:~~

18 ~~— **60-10-13. Claims.**~~

19 ~~— A claim concerning a grain buyer must be administered in a manner consistent with chapter~~
20 ~~60-02.1. A claim concerning a state licensed grain warehouse must be administered in a~~
21 ~~manner consistent with chapter 60-04. A payment may not be made from the credit-sale~~
22 ~~contract~~grain~~ indemnity fund for a claim based on losses resulting from the sale of grain to a~~
23 ~~person not licensed under chapter 60-02, chapter 60-02.1, or the United States Warehouse Act~~
24 ~~[Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].~~

25 ~~— **SECTION 44. AMENDMENT.** Section 60-10-14 of the North Dakota Century Code is~~
26 ~~amended and reenacted as follows:~~

27 ~~— **60-10-14. Subrogation.**~~

28 ~~— Money paid from the credit-sale contract~~grain~~ indemnity fund in satisfaction of a valid claim~~
29 ~~constitutes a debt obligation of the person against whom the claim was made. The commission~~
30 ~~may take action on behalf of the fund against a person to recover the amount of payment made,~~
31 ~~plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest~~

1 ~~computed at the weight average prime rate charged by the Bank of North Dakota. Upon~~
2 ~~payment of a claim from the credit sale contract~~grain ~~indemnity fund, the claimant shall~~
3 ~~subrogate its interest, if any, to the commission in a cause of action against all parties, to the~~
4 ~~amount of the loss that the claimant was reimbursed by the fund.~~

5 ~~—~~ **SECTION 45. AMENDMENT.** ~~Section 60-10-15 of the North Dakota Century Code is~~
6 ~~amended and reenacted as follows:~~

7 ~~—~~ **60-10-15. Unlicensed facility-based grain buyer.**

8 ~~—~~ This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01,
9 which is licensed under the United States Warehouse Act but which does not possess a state
10 grain buyer license. The commission has the duty and power to may examine and inspect,
11 during regular business hours, all books, documents, and records related to collections and
12 remittances pertaining to the credit sale contractgrain indemnity fund. In the case of insolvency,
13 credit sale contract payments to valid claimants must be reduced by an amount equal to the
14 credit sale contract indemnity payments received from payments administered by the United
15 States department of agriculture.

16 **SECTION 19. REPEAL.** Sections ~~60-02-02, 60-02-25.1, 60-02-39, 60-02.1-02,~~and
17 ~~60-02.1-25, 60-04-03.2, and 60-10-03~~ of the North Dakota Century Code are repealed.

18 ~~—~~ **SECTION 25. TRANSFER.** On August 1, 2017, the state treasurer shall transfer the
19 ~~balance of the credit sale contract indemnity fund to the grain indemnity fund.~~

House Bill 1126

Presented by: Randy Christmann
Chairman, Public Service Commission

Before: Senate Agriculture Committee
The Honorable Larry Luick, Chairman

Date: March 16, 2017

TESTIMONY

Mister Chairman and committee members, I am Randy Christmann, Commissioner with the Public Service Commission testifying today regarding House Bill 1126.

HB 1126 was a major re-write of North Dakota's grain licensing laws that I believe would have improved protection for our agricultural producers and helped the PSC's budget at the same time. Many of the proposed changes were removed by the House. However, what remains is vitally important to allow for efficient and expedient operations.

This legislation impacts 19 sections of law, repealing 1 of them. However, it is not really quite as complicated as it appears when you read the bill.

Much of what is being proposed impacts both **Grain Warehousemen** and **Grain Buyers**, so corresponding sections of law are addressed for each. To further complicate things, we are dealing with two separate sections of existing law for the **Grain Warehousemen** but those sections are combined in current law for **Grain Buyers**.

In your bill you will see proposed licensing and insolvency changes for **Grain Warehousemen** in Chapter 60-02 on pages 1-6 and in Chapter 60-04 on pages 9-12. You will see proposed changes for **Grain Buyers** in Chapter 60-02.1 starting on page 5 through page 9. Section 18 on page 12 involves an indemnity fund which affects **Grain Warehouses** and **Grain Buyers**.

Sections 1-7 of the bill make very subtle grammatical changes to pave the way for our new, more efficient electronic licensing program. For example, on line 11 of page 1 you will see that the license will become effective instead of being issued. Being issued requires a full Commission action, and not having to prepare paper work for each of these Commission actions will save significant time for staff.

Section 8, 13, and one phrase in section 16 require written demand before a licensee would be deemed insolvent. *(This change is the sole purpose of HB 1124 which you will hear later, and HB 1124 is not necessary if this bill passes as engrossed.)* Written demand has always been the standard, but in recent litigation of an insolvency a judge determined that the law does not clearly require written demand. Take notice that an "s" was inadvertently added to the word "communications" on lines 3 and 5 of section 8. Those should be eliminated to avoid an argument that multiple requests are required.

Another conclusion in that same insolvency case held that a finding for noncredit-sale claimants should not be finalized at the same time as the finding for credit-sale contract claimants, even though every other similar case had been done that way previously. Sections 9, 10, 14, and 15, as well as parts of sections 11 and 16 clarify that litigation for both groups of claimants can be combined.

The change in subsection 4 of section 11 requires people with objections in insolvency proceedings to file their objections at least 20 days before the hearing instead of 10 days. 10 days makes it very difficult to properly prepare for hearings.

Law is clarified in sections 12 and 18, as well as in parts of sections 11, 16, and 17, that the PSC's expenses of processing an insolvency will be deducted from the trust fund, the indemnity fund, or both.

Parts of sections 11 and 16 also clarify that interest will no longer be paid from the time of an insolvency until claimants are paid. I realize this will not be popular with some claimants. The reality is that in some cases, claimants chose to delay payment for extended periods of time without interest, so payment of interest actually can become an incentive to delay finalization of the insolvency. At the same time, other claimants are waiting for and needing their money. Hopefully, this one change will help speed up what has sometimes become a painfully slow process.

Finally, section 19 repeals language that requires licensees to get permission from the Commission before closing a facility. This is outdated language that does not recognize the modern trend of licensees operating satellite facilities at times of peak demand for short periods of time, or that during peak demand facilities sometimes fill up and there is no reason to be open if they can't take grain.

This concludes my testimony and I will answer any questions you may have.

Prepared by:
Commissioner Randy Christmann
Public Service Commission
March 16, 2017

Grain Warehousemen: Traditional local facilities licensed by PSC.

Grain Buyers: Roving buyers with no facilities or buyers with facilities licensed by USDA.

Credit-Sale Contract: Contract for future payment which meets specific requirements detailed in Century Code. Protected by indemnity fund.

Noncredit-Sale: All sales of grain which do not meet the requirements of a credit-sale contract. (often referred to as a cash sale)
Protected by trust fund.

17.8083.02001
Title:

Prepared by the Legislative Council staff for
Senator Luick

March 20, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1126

Page 1, line 5, remove the second "and"

Page 1, line 6, after "closures" insert "; and to provide for a legislative management study"

Page 12, after line 30, insert:

"SECTION 20. LEGISLATIVE MANAGEMENT STUDY - CONSISTENCY IN GRAIN SAMPLING AND TESTING. During the 2017-18 interim, the legislative management shall consider studying practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly