

2021 HOUSE AGRICULTURE

HB 1026

2021 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee Room JW327C, State Capitol

HB 1026
1/7/2021
a.m.

Relating to financial criteria for grain buyer, grain broker, grain processor, and warehousemen licenses, and licensing and bonding for grain brokers and grain processors

Chair D. Johnson called the meeting to order at 9:01 a.m.

All members were present.

Attendance	P or Ab
Chair D. Johnson	P
Vice Chair Trottier	P
Representative Beltz	P
Representative Buffalo	P
Representative Dobervich	P
Representative Fisher	P
Representative Headland	P
Representative Kiefert	P
Representative Richter	P
Representative Satrom	P
Representative Schreiber-Beck	P
Representative Skroch	P
Representative Thomas	P
Representative Tveit	P

Discussion Topics:

- Changes to bill with amendment
- Set protections for the grain industry

Doug Goehring, ND Ag. Commissioner: Attachment #154 (9:03)

Presented amendment for item missed on original bill draft. Attachment #261. (9:05)

Also, Section 3, page 5, line 16 strike “an” replace with “a new”
Section 11, line, 7, page 14 strike “an” replace with “a new”

Stu Letcher, Executive Vice President, ND Grain Dealers Assn: Attachment #254 (9:23)

Chair D. Johnson closed the hearing at 9:44 a.m.

Additional written testimony:

Dana Bohn, ND Farm Credit Council, Executive Director: Attachment #227

Phil Murphy, ND Soybean Growers Association: Attachment #8

Steve Perdue, Policy Committee Chair, U.S. Durum Growers Association: Attachment #132

ReMae Kuehn, Committee Clerk

COMMISSIONER
DOUG GOEHRING



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**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL
600 E BOULEVARD AVE DEPT 602
BISMARCK, ND 58505-0020

**Testimony of Doug Goehring, Agriculture Commissioner
House Agriculture Committee
Room 327C
January 7, 2021**

Chairman Johnson and members of the House Agriculture Committee, I am Agriculture Commissioner Doug Goehring here in support of House Bill 1026.

Since transferring the grain inspection program, my office, producers, and the grain industry have worked hard to identify areas of the current law that need to be changed to improve the program. The bill before you today addresses some of these areas.

First, the simple change of volume to value will reflect each of the different types of grain purchased and help to adequately bond the grain industry based on the actual business they conduct versus how much they can hold.

Then we needed to identify and license all grain buyers. The bill draft combines facility-based grain buyers or federal warehouses with current state warehouses into one license and one section of law. Additionally, we move processors out of the current warehouse license and create a new license to reflect their operation. This allows us more ability to accurately review their business and ensure adequate bonds exist to protect producers and the grain industry.

Second, we addressed the need for a license to capture grain brokers and to create accountability for an insolvency. We have seen cases in the past where brokers were used to increase the reach of a business which was set on committing fraud. In the end, the producer had no recourse and the broker was not liable for any of the transaction. I believe we now have an adequate law to address this and include them in the insolvency proceedings. This ensures we are able set bonds

for these types of business to set a level of protection for producers and the grain industry.

Finally, I would like to submit an amendment which is for an item that was missed on the final draft of the interim bill. We would request removal of the requirement to gain district court approval prior to establishing a trust fund during an insolvency, we can act much quicker and work to recover more assets to benefit the receipt holders in an insolvency. In addition, we would also request language to be added that provides for the ability to marshal assets after an insolvency is established and it appears that the warehouse or grain buyer will result in the loss of assets to receipt holders. This language is similar to law currently used by USDA in the warehouse act.

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1026

Page 13, line 23, insert “**SECTION 11.** A new section of chapter 60-02.1 is created and enacted as follows:

Upon the commissioner’s determination that continued operation of a grain buyer is likely to result in probable loss of assets to receipt holders, commissioner may immediately suspend, close, take control of the assets of the trust fund described in section 60-02.1-30, or take any combination of these actions deemed necessary to begin an orderly liquidation of such assets of the trust fund as provided in this chapter.”

Page 20, line 12, overstrike apply to the district

Page 20, line 13, overstrike court of Burleigh County for authority to take all action necessary to

Page 20, overstrike lines 16 through 25

Page 21, after line 31, insert “**SECTION 26.** A new section of chapter 60-04 is created and enacted as follows:

Upon the commissioner’s determination that continued operation of a warehouseman is likely to result in probably loss of assets to receipt holders, commissioner may immediately suspend, close, take control of the assets of the trust fund described in section 60-04-03.1, or take any combination of these actions deemed necessary to begin an orderly liquidation of such assets of the trust fund as provided in this chapter.”

Page 22, line 9, insert “**SECTION 27. AMENDMENT.** Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03. Appointment of commissioner.

~~Upon the insolvency of any warehouseman, the commissioner shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court the warehouseman is insolvent within the meaning of this chapter and it would be for the best interests of the receipt holders that the commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, at which time the commissioner shall proceed to exercise the commissioner’s authority without further direction from the court.~~

~~Upon the filing of the commissioner’s application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust~~

~~fund, or the value of the trust fund, until the court issues an order granting or denying the application.~~

Page 22 line 18 after " 60-02.1-27," insert "60-04-09,"

Testimony of North Dakota Grain Dealers Association on HB 1026
House Agriculture Committee-Rep Dennis Johnson, Chairman
Presented by Stu Letcher, Executive Vice President-January 7, 2021

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 support of House Bill 1026.

NDGDA is a 109-year-old organization whose purpose is to further the interests of the cooperative and independent concerns of North Dakota engaged in the handling, processing and distribution of grain and other like commodities.

HB 1026 is the culmination of two years of work by many interested parties including the ND Department of Agriculture and NDGDA. We feel this bill will make improvements to current grain licensing law that will simplify the licensing process while strengthening protection for sellers and buyers alike.

Here are a few of the major changes this bill would make:

- Change licensing period to annually
- Add definitions for “deferred-payment contracts”, “grain processors”, “grain brokers” and accounts for them in licensing process
- Adds financial criteria for licensees
- Reduces scale ticket conversion time from 45-30 days and removes insolvency protection for unconverted tickets
- Increases minimum bond to \$100,000 and changes basis for bond determination to purchase value
- Requires bond protection be offered for deferred-payment contracts

Summary: NDGDA wants a strong and healthy industry and will support changes for that purpose. We feel this bill promotes that and would encourage you to vote in favor of it.

Thank you. I will try to answer any questions.



North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

**Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
HB 1026
January 7, 2021**

Chairman Johnson and members of the House Agriculture Committee, my name is Dana Bohn and on behalf of the North Dakota Farm Credit Council (NDFCC), I would like to express our support of HB 1026, which provides numerous enhancements and modernizes grain licensing and regulations. We would also like to thank all those involved in the work to address this important issue.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. North Dakota Farm Credit associations provide about \$14.6 billion in credit in addition to providing financial services to approximately 26,000 customers.

Farm Credit Services provides financing to farmers, elevators and grain warehouses. The North Dakota Farm Credit Council is supportive of providing protection to its owners, the farmers, when dealing with elevators and grain warehouses. Although we recognize farmers are responsible for doing their own due diligence regarding entities with whom they are doing business, we appreciate this bill attempts to provide broader financial protection to producer claimants.

We would like to especially thank the Ag Commissioner and his staff for meeting with us during the interim to discuss our concerns with the first draft of this legislation and making changes to address our concerns that are now included in HB 1026. We were very pleased with the progress and their willingness to listen to stakeholders. We are also very appreciative of all the work the interim committee did to develop this legislation.

Thank you for the opportunity to show NDFCC's support for HB 1026 and express our appreciation for all those involved in the work to address this important issue.

Independently owned and operated associations serving North Dakota.

AgCountry FCS

1900 44th Street South
Fargo, ND 58108
701-282-9494 • 800-450-8933
www.agcountry.com

FCS of Mandan

1600 Old Red Trail
Mandan, ND 58554
701-663-6487 • 800-660-6487
www.farmcreditmandan.com

FCS of North Dakota

1400 31st Ave. SW
Minot, ND 58702
701-852-1265 • 800-264-1265
www.farmcreditnd.com

Testimony for 1026 Jan. 7, 2021, House Ag committee

On behalf of the ND Soybean Growers Association, I sign in support of 1026. Phil Murphy



U.S. Durum Growers Association

PROMOTING THE PRODUCTION AND MARKETING OF DURUM AND SEMOLINA

P.O. Box 1091 • Bismarck, ND 58502 • (701) 214-3203
office@durumgrowers.com • www.durumgrowers.com

**Testimony of Steve Perdue
Policy Committee Chair
HB 1026
January 7, 2021**

Chairman Johnson and members of the House Agriculture Committee, my name is Steve Perdue, and I am a farmer from Ray and serve as the policy committee chair for the U.S. Durum Growers Association (USDGA). On behalf of USDGA, I would like to express support of HB 1026, which provides numerous enhancements to grain licensing and regulation to better support producers.

USDGA has represented the nation's durum growers for more than 60 years. Today, we represent grower and industry members from 10 states, with North Dakota producing 50-60 percent of the nation's durum.

This bill is the result of a long-term collaboration between the Department of Agriculture, grain dealers, producers and other stakeholder organizations to provide adequate support for farmers in the event of an insolvency. Unfortunately, there have been insolvency instances over the past several years that have been financially detrimental to North Dakota's producers. The protections in this bill would have helped mitigate the negative impact to the state's farmers. USDGA appreciates the efforts over the interim to address producer and grain dealer concerns and find a compromised solution that is amicable for both stakeholder groups. The provisions in this bill are a step forward in protecting the state's ag producers from additional financial hardships.

Thank you for the opportunity to show USDGA's support for HB 1026 and express our appreciation for all those involved in the work to address this important issue.

2021 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee Room JW327C, State Capitol

HB 1026 Committee Work
1/15/2021
a.m.

Relating to financial criteria for grain buyer, grain broker, grain processor, and warehousemen licenses, and licensing and bonding for grain brokers and grain processors

Chair D. Johnson called the meeting to order at 10:12 a.m.
All members were present

Attendance	P or Ab
Chair D. Johnson	P
Vice Chair Trottier	P
Representative Beltz	P
Representative Buffalo	P
Representative Dobervich	P
Representative Fisher	P
Representative Headland	P
Representative Kiefert	P
Representative Richter	P
Representative Satrom	P
Representative Schreiber-Beck	P
Representative Skroch	P
Representative Thomas	P
Representative Tveit	P

Discussion Topics:

- Committee work to add amendments

Representative Schreiber-Beck moved to amend-Attachment #261

Representative Satrom seconded the motion

Voice Vote. Motion carried

Representative Schreiber-Beck moved Doug Goehring amendment-Attachment #893

Representative Satrom seconded the motion

Voice Vote. Motion carried

Representative Satrom moved Do Pass as amended

Representative Schreiber-Beck seconded the motion

Roll call vote. Motion passed 14-0-0. Representative Satrom is the carrier.

Representatives	Vote
Representative Dennis Johnson	Y
Representative Wayne A Trottier	Y
Representative Mike Beltz	Y
Representative Ruth Buffalo	Y
Representative Gretchen Dobervich	Y
Representative Jay Fisher	Y
Representative Craig Headland	Y
Representative Dwight Kiefert	Y
Representative David Richter	Y
Representative Bernie Satrom	Y
Representative Cynthia Schreiber-Beck	Y
Representative Kathy Skroch	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y

Adjourned at 10:21 a.m.

ReMae Kuehn, Committee Clerk

January 15, 2021

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1/15/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1026

Page 1, line 1, replace "and two" with "three"

Page 1, line 2, after "60-02.1" insert ", and a new section to chapter 60-04"

Page 1, line 7, after the third comma insert "and"

Page 1, line 7, after "60-04-01" insert ", 60-04-03"

Page 1, line 12, after "60-02.1-27" insert ", 60-04-09"

Page 5, line 16, replace "an" with "a new"

Page 13, after line 22, insert:

"SECTION 11. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Commissioner's authority - Grain buyer - Trust assets.

Upon the commissioner's determination that continued operation of a grain buyer is likely to result in probable loss of assets to receiptholders, the commissioner immediately may suspend, close, or take control of the assets held in a trust fund described in section 60-02.1-30, or take any combination of these actions as the commissioner deems necessary to begin an orderly liquidation of those trust fund assets as provided in this chapter."

Page 14, line 7, replace "an" with "a new"

Page 20, line 12, overstrike "apply to the district"

Page 20, line 13, overstrike "court of Burleigh County for authority to take all action necessary to"

Page 20, line 16, overstrike "Upon notice to the licensee as the court prescribes, but not exceeding twenty days, or"

Page 20, overstrike lines 17 through 25

Page 22, after line 8, insert:

"SECTION 28. A new section to chapter 60-04 of the North Dakota Century Code is created and enacted as follows:

Commissioner's authority - Warehouseman - Trust assets.

Upon the commissioner's determination that continued operation of a warehouseman is likely to result in probable loss of assets to receiptholders, the commissioner immediately may suspend, close, or take control of the assets held in a trust fund described in section 60-04-03.1, or take any combination of these actions as the commissioner deems necessary to begin an orderly liquidation of those trust fund assets as provided in this chapter."

SECTION 29. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

95
11/5/21

60-04-03. Appointment of commissioner.

Upon the insolvency of any warehouseman, the commissioner shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court the warehouseman is insolvent within the meaning of this chapter and it would be for the best interests of the receipt holders that the commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, at which time the commissioner shall proceed to exercise the commissioner's authority without further direction from the court.

Upon the filing of the commissioner's application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value of the trust fund, until the court issues an order granting or denying the application."

Page 22, line 18, after the fourth comma insert "60-04-09,"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1026: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1026 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "and two" with "three"

Page 1, line 2, after "60-02.1" insert ", and a new section to chapter 60-04"

Page 1, line 7, after the third comma insert "and"

Page 1, line 7, replace the second "section" with "sections 60-04-03 and"

Page 1, line 12, after "60-02.1-27" insert ", and sections 60-04-09"

Page 5, line 16, replace "an" with "a new"

Page 13, after line 22, insert:

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~~Upon the filing of the commissioner's application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value of the trust fund, until the court issues an order granting or denying the application."~~

Page 22, line 18, after the fourth comma insert "60-04-09,"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1026

Page 13, line 23, insert “**SECTION 11.** A new section of chapter 60-02.1 is created and enacted as follows:

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Proposed Amendment HB 1026

Requested by:

Doug Goehring, ND Ag. Commissioner during testimony
January 7, 2021

Page 5, line 16-- strike "an" and replace with "a new"

Page 14, line 7—strike "an" and replace with "a new"

2021 SENATE AGRICULTURE

HB 1026

2021 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee Fort Union Room, State Capitol

HB 1026
2/18/2021

Relating to financial criteria for grain buyer, grain broker, grain processor, and warehousemen licenses, and licensing and bonding for grain brokers and grain processors

Chair Luick called the Committee to order at 9:00 AM. Roll call was taken. All Committee members were present: Chair Luick, Vice Chair Myrdal, Senator Klein, Senator Lemm, Senator O. Larsen and Senator Hogan.

Discussion Topics:

- Inspectors in the field
- Time frame for the Bill to go into effect regarding the emergency clause
- Costs to producers through bonding
- Feedback to time frames regarding grain distribution
- Amendment changes
- Appropriate fines, fees & penalties regarding violations
- Auditing

(9:00 AM) Representative Dennis Johnson District 15 introduced the Bill

(9:01 AM) Doug Goehring Agriculture Commissioner testified in favor and provided testimony #6906

(9:05 AM) Stu Letcher ND Grain Dealers Association testified in favor and provided testimony # 6842

(9:15 AM) Dustin Assel Legislative Council testified in Neutral position and provided testimony # 6873

(9:17 AM) Dave Spickler Lighthouse Commodities testified in favor and provided testimony # 6907

(9:30 AM) Shaun Quissell Grain and Livestock Division for ND Agriculture Department responded to questions asked by the Committee.

(9:35) Vice Chair Myrdal moved a Do Pass on HB 1026

(9:36) Senator Lemm 2nd the motion

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Jerry Klein	Y
Senator Oley Larsen	Y
Senator Randy D. Lemm	Y

(9:38 AM) Roll call vote was taken on a Do Pass 6-0-0

(9:39 AM) Senator Lemm will carry the Bill

Additional written testimony:

Dana Bohn, Executive Director ND Farm Credit Council (NDFCC) Testimony # 6766 in favor
Steve Perdue, US Durum Growers Association (USDGA) Testimony # 6811 in favor

(9:41 AM) Chair Luick adjourned the meeting.

Alice Delzer, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1026, as engrossed: Agriculture Committee (Sen. Luick, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1026 was placed on the Fourteenth order on the calendar.

COMMISSIONER
DOUG GOEHRING



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**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL
600 E BOULEVARD AVE DEPT 602
BISMARCK, ND 58505-0020

**Testimony of Doug Goehring, Agriculture Commissioner
Senate Agriculture Committee
Fort Union Room
February 18, 2021**

Chairman Luick and members of the Senate Agriculture Committee, I am Agriculture Commissioner Doug Goehring here in support of House Bill 1026. Since transferring the grain inspection program, my office, producers, and the grain industry have worked hard to identify areas of the current law that need to be changed to improve the program. The bill before you today addresses some of these areas.

First, the simple change from volume to value will reflect each of the different types of grain purchased and help to adequately bond the grain industry based on the actual business they conduct versus how much they can hold.

Then we needed to identify and license all grain buyers. The bill draft combines facility-based grain buyers or federal warehouses with current state warehouses into one license and one section of law. Additionally, the bill moves processors out of the current warehouse license and create a new license to reflect their operation.

This allows us more ability to accurately review their business and ensure adequate bonds exist to protect producers and the grain industry.

Third, we addressed the need for a license to capture grain brokers and to create accountability for an insolvency. We have seen cases in the past where brokers were used to increase the reach of a business which was set on committing fraud.

In the end, the producer had no recourse and the broker was not liable for any of the transaction. I believe we now have an adequate law to address this and include them in the insolvency proceedings. This ensures we are able set bonds for these types of business to set a level of protection for producers and the grain industry.

Finally, the bill removes the requirement to gain district court approval prior to establishing a trust fund during an insolvency. This change will allow us to act much quicker and work to recover more assets to benefit the receipt holders in an insolvency. In addition, language was added that provides for the ability to marshal assets after an insolvency is established and it appears that the warehouse or grain buyer will result in the loss of assets to receipt holders. This language is similar to law currently used by USDA in the warehouse act.

Chairman Luick and committee members, thank you for your time and would be happy to answer any questions you may have.

Testimony of North Dakota Grain Dealers Association on HB 1026
Senate Agriculture Committee-Sen. Larry Luick, Chairman
Presented by Stu Letcher, Executive Vice President-February 18, 2021

Good morning Mr. Chairman and members of the Senate 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 support of House Bill 1026.

NDGDA is a 109-year-old organization whose purpose is to further the interests of the cooperative and independent concerns of North Dakota engaged in the handling, processing and distribution of grain and other like commodities.

HB 1026 is the culmination of two years of work by many interested parties including the ND Department of Agriculture and NDGDA. We feel this bill will make improvements to current grain licensing law that will simplify the licensing process while strengthening protection for sellers and buyers alike.

Here are a few of the major changes this bill would make:

- Change licensing period to annually
- Add definitions for “deferred-payment contracts”, “grain processors”, “grain brokers” and accounts for them in licensing process
- Adds financial criteria for licensees
- Reduces scale ticket conversion time from 45-30 days and removes insolvency protection for unconverted tickets
- Increases minimum bond to \$100,000 and changes basis for bond determination to purchase value
- Requires bond protection be offered for deferred-payment contracts

Summary: NDGDA wants a strong and healthy industry and will support changes for that purpose. We feel this bill promotes that and would encourage you to vote in favor of it.

Thank you. I will try to answer any questions.



North Dakota Legislative Council

Prepared by the Legislative Council staff
February 2021

TESTIMONY - HOUSE BILL NO. 1026 SENATE AGRICULTURE (FORT UNION ROOM- 9:00 A.M.) FEBRUARY 18, 2021

Chairman Luick and members of the Senate Agriculture Committee, good morning. For the record, my name is Dustin Assel. I am a staff attorney with the Legislative Council. I staffed the most recent interim Agriculture and Transportation Committee, which worked on, drafted, and recommended House Bill No. 1026 (2021), which is before you today. This testimony is provided in a neutral capacity. I am here only to provide background and information regarding the recommendations of the interim committee.

The bill was introduced by the Legislative Management at the request of the 2019-20 interim Agriculture and Transportation Committee. Section 1 of House Bill No. 1467 (2019) directed a study of agricultural issues in the state, including grain buyers, roving grain buyers, grain brokers, and grain handling facilities under title 60 of the North Dakota Century Code; and issues related to the prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The interim committee was directed to review the current law, industry practices, and background checks relating to grain buyers, brokers, and handling facilities, and to review any potential efficiencies that may exist, methods of maintaining financial security during the grain buying process to ensure solvency, and the auditing process. The interim committee was also directed to review the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from insolvency, the indemnity fund, and bonding requirements.

North Dakota Century Code provisions related to grain buyers, brokers, and grain handling facilities are located in North Dakota Century Code Title 60. Chapter 60-01 addresses general provisions and deposits. Chapter 60-02 regulates grain and seed warehouses. Chapter 60-02.1 addresses and regulates grain buyers. Chapter 60-04 addresses insolvent grain warehousemen. Chapter 60-10 provides for credit-sale contract indemnity.

It is important to note for context that last session the Legislative Assembly passed Senate Bill No. 2009 (2019) into law, which was the agency appropriation for the Agriculture Commissioner. The bill did a number of things in addition to the appropriation, but one of the paramount changes that the bill made to the law was to amend all references in title 60 and transfer regulatory authority over the title, grain buyers, brokers, and warehouses from the Public Service Commission to the Agriculture Commissioner.

During the course of the of the interim committee's work on this topic, the committee received testimony from a representative of the North Dakota Department of Agriculture regarding the transition of authority over grain buyers and warehouses in Title 60 from the PSC to the Agriculture Commissioner. The representative of the department suggested changes could be made in the title to provisions to simplify the provisions and make the oversight over Title 60 more efficient. Some of the suggested changes related to the types of licenses offered to grain buyers and warehouses, licensing fees, background checks, bonding types and levels, scale-ticket policies, credit-sale contracts, and the indemnity fund. The committee also received testimony from a representative of the North Dakota Grain Dealers Association. The representative agreed with many of the changes suggested by the representative of the Department of Agriculture. The interim committee ultimately agreed that amending provisions in Title 60 would be beneficial for the operation of grain buyers and warehouses in the state.

As a result, I was asked to work collaboratively with representatives of both the Department and the grain dealers association to draft legislation and amend provisions in Title 60 to accomplish the changes suggested and agreed upon during the course of the interim. With that in mind, House Bill No. 1026 (2021) makes numerous changes to sections in chapters 60-02, 60-02.1, 60-04, and 60-10.

EXPLANATION OF THE BILL

House Bill No. 1026 (2021) consists of 31 sections. The first approximately 1/3 of the bill address changes recommended by the department and the grain dealers association to sections in chapter 60-02 regarding grain and seed warehouses.

- Section 1 on pages 1&2 addresses definitions. On the bottom of page 1 we are overstriking a reference to subsection 7 of section 60-02-19.1. This is just a cross-reference fix, we reformatted the section and renumbered, this is not a substantive change. On the top of page 2 a definition of "deferred-payment contract" was added. Language was added later in the draft regarding deferred-payment contracts, so it was necessary to define it here as well.
- Section 2 on pages 3&4 addresses warehouse licenses and fees. The amendments in this section remove biennial licensing, returns all warehouses to annual licensing requirements, changes the fee amounts for a warehouse license and bases the licensing fees on the value of the grain held rather than the volume of grain held. On the bottom of page 4, subsection 5 is overstruck. Last session the assembly enacted section 60-02-06.1 regarding the release of records to the agriculture commissioner and confidentiality. Subsection 5 duplicates that language and the suggested change was to remove subsection 5 as it is unnecessary and redundant.
- Section 3 on page 5 creates a new section to the chapter to require grain warehouse license applicants to meet certain financial criteria to be eligible to receive a license to do business in the state. An applicant is required to submit financial documentation to the agriculture commissioner verifying net worth and working capital, as determined by the commissioner. There are requirements to report balance sheets and income statements annually if the applicant was above a certain threshold of business in the last licensing period. An applicant is also required to satisfy certain conditions to obtain a license, such as passing a background check and having a satisfactory credit score.
- Section 4 on Page 6 addresses warehouse bonding. The bonding requirement for warehousemen was increased from \$5,000 to \$100,000 minimum. Language was also added on the bottom of page 6 and top of page 7 to calculate the bonding amount set by the commissioner to be based on the value of the grain purchased.
- Section 5 on pages 7&8 addresses scale tickets. On line 22, the amount of time a producer has to convert a scale ticket was reduced from 45 to 30 days, and the exception on the bottom of page 7 was removed. On page 8 subsection 3 was added to the section to provide language indicating that producers lose trust fund and credit-sale contract indemnity protection if they fail to convert their scale ticket within the 30 days provided under the law.
- Section 6 on page 8 addresses chapter violations. The language added gives the commissioner fining authority up to \$5,000 for violations of the chapter.
- Section 7 on pages 8&9 addresses credit-sale contracts. Language was added on page 9 allowing e-signatures to satisfy credit-sale contract signing requirements, and unsigned contracts are considered unconverted scale tickets. Subsection 3 was added to require warehouses that use deferred payment contracts to offer bond protection to producers.
- Section 8 on pages 9&10 addresses required reports. On page 10 language was added requiring warehousemen to submit additional information requested by the commissioner pursuant to a report or an inspection within 5 business days.

Starting with Section 9 on page 10, the bill addresses sections in chapter 60-02.1 regarding grain buyers. Many of the changes in these sections are similar to or reflect the changes we have already discussed except they affect grain buyers rather than the warehouses.

- Section 9 addresses chapter definitions. On line 24 we are once again removing a reference to subsection 7 due to a reformatting and cross-reference fix, but this is not a substantive change. A definition of "deferred payment contract" was added because language is added later in the chapter regarding those types of

contracts, so a definition is also necessary here. On page 11 the definition of "facility-based grain buyer" is removed as references to facility based grain buyers were removed throughout the chapter per request. Definitions of grain brokers and grain processors were added and the definition of a grain buyer was amended to include grain brokers, processors, and roving grain buyers.

- Section 10 on page 12 addresses grain buyer licenses and fees. Qualifying language was added on line 9 requiring grain buyers to obtain a license to do business in the state if they purchase, solicit, merchandise or take possession of grain in the state. In the middle of page 12 language was removed per suggestion regarding facility-based grain buyers. On the bottom of page 12, language was added to change the grain buyer licensing fee amounts, and bases the licensing amount on the value of the grain purchased. On the top of page 13, language was removed because it was redundant with section 60-02.1-06.1 which already authorized the commissioner to obtain confidential financial records upon request. Subsections 3-7 were added in the middle of page 13 to codify when the agriculture commissioner may refuse to issue or renew grain buyer licenses. The language also adds reporting, notification, and bonding requirements of at least \$100,000.
- Section 11 on page 13 creates a new section to the chapter and authorizes the agriculture commissioner to suspend, close, or take control of trust assets and begin liquidating those assets if the commissioner determines it necessary to halt the loss of assets to receipt holders by a grain buyer.
- Section 12 on page 14 creates another new section and requires grain buyer license applicants to meet certain financial criteria to be eligible to receive a license to do business in the state. The language mirrors the language added earlier in the bill regarding grain warehouses.
- Section 13 on page 15 addresses grain buyer bonds. The section increases minimum bonding amounts to \$100,000. Language was removed regarding facility-based grain buyers per suggested change. Subsections 4 and 5 of the section require grain buyer bond amounts to be based on the value of grain purchased, solicited, or merchandised and reported to the commissioner.
- Sections 14 & 15 on page 16 removes language addressing facility-based grain buyers once again.
- Section 16 on page 17 addresses violations in the chapter regarding grain buyers, and once again provides the commissioner with fining authority up to \$5,000.
- Section 17 addresses credit-sale contracts, and once again allows e-signatures to satisfy the signing requirements. Language also added indicating that unsigned contracts lose indemnity fund protection under chapter 60-10. Subsection 3 was also added to require grain buyers using deferred payment contracts to offer bond protection to producers.
- Section 18 just removes a reference to facility-based grain buyers.
- Section 19 on pages 18 & 19 addresses grain buyer required reports and adds language similar to grain warehouses requiring the submission of additional information requested by the commissioner pursuant to a report or inspection within 5 business days.
- Section 20 removes language regarding facility-based grain buyers.
- Sections 21 & 22 on page 20 replace a reference to facility-based grain buyer to grain processor.
- Section 23 removes a reference to facility-based grain buyers and removes language requiring court action for the commissioner to act as trustee of a trust fund in the event a grain buyer becomes insolvent.
- Section 24 creates a new section regarding the joinder of a grain broker. A joinder is a legal action that joins multiple legal issues together and procedurally allows them to be heard together. The section allows a grain broker to be joined as a party in grain insolvency proceedings and make them liable if they take part in questionable grain transactions that result in an insolvency.

- Section 25 updates references from facility-based grain buyers to grain processors
- Section 26 removes a reference to facility-based grain buyer.
- Section 27 updates a cross-reference due to formatting changes.
- Section 28 on page 22 creates a new section to chapter 60-04 and authorizes the agriculture commissioner to suspend, close, or take control of trust assets and begin liquidating those assets if the commissioner determines it necessary to halt the loss of assets to receipt holders by a warehouseman.
- Section 29 removes language requiring court action for the commissioner to act as trustee of a trust fund in the event a warehouseman becomes insolvent.
- Section 30 removes another reference to facility-based grain buyers.
- Section 31 repeals 6 sections of century code. Section 60-02.1-06 addresses grain disputes by facility-based grain buyers. Section 60-02.1-07.1 is the section on roving grain buyer licensing and is unnecessary because the bill rolls all grain buyer licensing into a single section. Section 60-02.1-26 addresses transfers between facility-based grain buyer facilities. Section 60-02.1-27 addresses facility-based grain buyers going out of business. Section 60-04-09 addresses reporting of the commissioner as trustee of a trust fund to the court in the event of a warehouseman insolvency. Section 60-10-15 addresses unlicensed facility-based grain buyers.

Mr. Chairman, that concludes the information I have prepared for you today.

My name is David Spickler and I'm testifying in support of HB 1026 on behalf of Lighthouse Commodities, LLC and over a hundred North Dakota farmer clients whose grain we market. HB 1026 reflects substantial collaborative effort by the Commissioner, his Staff and numerous industry stakeholders. The result is a bill that provides appropriate oversight and regulation of all grain industry participants while persevering a competitive landscape for North Dakota farmers to market their grain.

I would recommend that the language in Section 12 where 'Purchase' is used be changed to Purchases/Solicitations/Merchandising Agreements to be consistent with how this term is used in prior Chapters.

David Spickler



North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
HB 1026
February 18, 2021

Chairman Luick and members of the Senate Agriculture Committee, my name is Dana Bohn and on behalf of the North Dakota Farm Credit Council (NDFCC), I would like to express our support of HB 1026, which provides numerous enhancements and modernizes grain licensing and regulations. We would also like to thank all those involved in the work to address this important issue.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. North Dakota Farm Credit associations provide about \$14.6 billion in credit in addition to providing financial services to approximately 26,000 customers.

Farm Credit Services provides financing to farmers, elevators and grain warehouses. The North Dakota Farm Credit Council is supportive of providing protection to its owners, the farmers, when dealing with elevators and grain warehouses. Although we recognize farmers are responsible for doing their own due diligence regarding entities with whom they are doing business, we appreciate this bill attempts to provide broader financial protection to producer claimants.

We would like to especially thank the Ag Commissioner and his staff for meeting with us during the interim to discuss our concerns with the first draft of this legislation and making changes to address our concerns that are now included in HB 1026. We were very pleased with the progress and their willingness to listen to stakeholders. We are also very appreciative of all the work the interim committee did to develop this legislation.

Thank you for the opportunity to show NDFCC's support for HB 1026 and express our appreciation for all those involved in the work to address this important issue.

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U.S. Durum Growers Association

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**Testimony of Steve Perdue
Policy Committee Chair
HB 1026
February 18, 2021**

Chairman Luick and members of the Senate Agriculture Committee, my name is Steve Perdue, and I am a farmer from Ray and serve as the policy committee chair for the U.S. Durum Growers Association (USDGA). On behalf of USDGA, I would like to express support of HB 1026, which provides numerous enhancements to grain licensing and regulation to better support producers.

USDGA has represented the nation's durum growers for more than 60 years. Today, we represent grower and industry members from 10 states, with North Dakota producing 50-60 percent of the nation's durum.

This bill is the result of a long-term collaboration between the Department of Agriculture, grain dealers, producers and other stakeholder organizations to provide adequate support for farmers in the event of an insolvency. Unfortunately, there have been insolvency instances over the past several years that have been financially detrimental to North Dakota's producers. The protections in this bill would have helped mitigate the negative impact to the state's farmers. USDGA appreciates the efforts over the interim to address producer and grain dealer concerns and find a compromised solution that is amicable for both stakeholder groups. The provisions in this bill are a step forward in protecting the state's ag producers from additional financial hardships.

Thank you for the opportunity to show USDGA's support for HB 1026 and express our appreciation for all those involved in the work to address this important issue.