

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2033 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2413

2001 SENATE AGRICULTURE

SB 2413

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2413

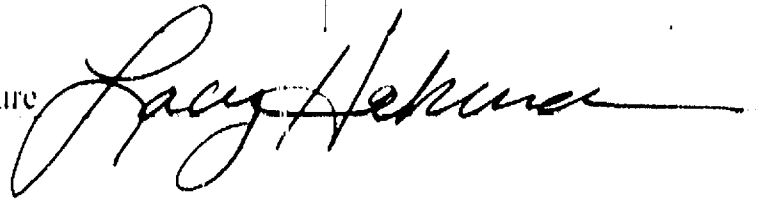
Senate Agriculture Committee

☐ Conference Committee

Hearing Date February 8, 2001

Tape Number		Side A	Side B	Meter #
Feb. 8	1	X		10.2 - 27.7
Feb. 15	2	X		3.3 - 7.5

Committee Clerk Signature



Minutes:

SENATOR WANZEK; Sponsor, introduced the bill to the committee. Any contract regarding the production and sale of a agricultural commodity must include a provision for a resolution of a contract dispute and spell out between the two parties and how the process will go.

SENATOR KROEPLIN; Isn't there another section of code that applies to this or are specialty crops are excluded from that?

SENATOR WANZEK; It seems to me that there is a means by which a sample can be gathered but both parties have to agree that it's a representative sample. There is nothing spelling out how we mediate if there a difference, to my knowledge.

REPRESENTATIVE BRANDENBURG; Sponsor, testified in support of this bill. This should be looked into and worked out so it is fair for both parties.

SENATOR URLACHER; testified in support of this bill.

Page 2

Senate Agriculture Committee

Bill/Resolution Number SB 2413

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ROGER JOHNSON; Agriculture Commissioner, testified in support of this bill. See attached testimony.

STEVE STREIGE; ND Grain Dealers Association, testified in the neutral position on this bill.

Pointed out section 60-02-05, there is a paragraph for dissolving disputes for crop that are covered by US weight standards and another that covers crops not covered by US weight standards and provides for the gathering of a sample.

The hearing was closed.

SENATOR KLEIN moved for a DO PASS.

SENATOR NICHOLS seconded the motion.

Discussion.

The motion was withdrawn.

SENATOR KLEIN moved the amendments changing and to or.

SENATOR ERBELE seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR KLEIN moved for a DO PASS as amended.

SENATOR NICHOLS seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR WANZEK will carry the bill.

Date: 2-15-01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2413

Senate	Agriculture	Committee
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☐ Subcommittee on _____
or _____

☐ Conference Committee

Legislative Council Amendment Number 10351.0101

Action Taken Amendments

Motion Made By Sen Klein Seconded By Sen Erbele

[illegible]

Total (Yes) 6 No 0

Absent

Floor Assignment _____

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

Date: 2-15-01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2413

Senate _____ Agriculture _____ Committee _____

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By Sen Klein Seconded By Sen. Nichols

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Wanzek

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

REPORT OF STANDING COMMITTEE (410)
February 16, 2001 11:22 a.m.

Module No: SR-29-3640
Carrier: Wanzek
Insert LC: 10351.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2413: Agriculture Committee (Sen. Wanzek, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2413 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "and" with "or"

Renumber accordingly

2001 HOUSE AGRICULTURE

SB 2413

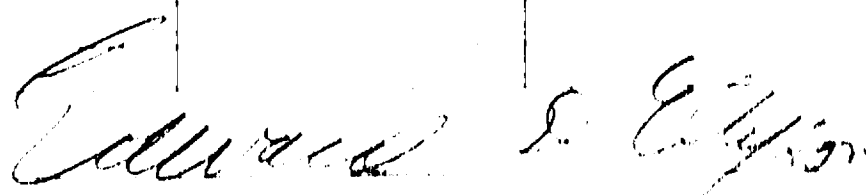
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2413

House Agriculture Committee

☐ Conference Committee

Hearing Date 3--15--01

Tape Number TWO	Side A A	Side B	Meter # 00 TO 3083
Committee Clerk Signature			

Minutes:

CHAIRMAN NICHOLAS: WE WILL OPEN ON SB 2413.

SENATOR WANZEK: Please see Bill prior to the following testimony. It basically says that the contract for sales of agriculture commodity must include provisions regarding the manner in which mediation or arbitration is to be initiated and be resolved. This is something that would be required in the contract. How are we going to settle disputes. I told my story to the senate and now I will tell it to you. Personal experience. I signed a contract, a very lucrative contract, to grow confection sunflowers. It paid bonus's if my insect damage was below a certain threshold and if my seed was above a certain threshold. A very good contract. Sure fire thing. A lot of people signed contracts that year. The price for confection sunflowers dropped below, SEVEN CENTS below what my contract says. I harvested them and sent truckloads to collection point and it came back with a very high dockage. My threshold was three percent or more and the insect damage was three point zero five three point one and anyway

I became frustrated and I sent the next six semi-loads thinking I wanted to get a pattern here to the Jamestown grain association USDA FEDERAL GRAIN ASSOCIATION, paid for it out of my own pocket, had each semi-load probed, samples gathered, some an official third party government official. The samples were analyzed and assessed and every load had half as much dockage, not one load had more then one percent insect damage, and when I confronted the individual with the documentation from the six loads, I will never forget what he said to me. This the reason I am here. Who are you anyway, I don't need to deal with you. Get out of my office an leave me alone. I called the public service commission. In the century code there is a provision that talks about how disputes are settled. The two parties have to agree on a representative sample which creates some problems there. This individual would not even sit down with me and look at a sample etc. We we were never able to resolve it and I felt cheated. There has to be a fair way of doing it. What I am trying to get at with this Bill is have a format that we can follow to resolve a dispute that may arise between the seller and buyer when there is a contract involved. We want a procedure or process.. We have worked out some amendments as to this Bill. I am going to have the grain dealers present the amendments. I am in agreement with the amendments. This would be only for written contracts.

Representative Froelich. You have a thirty day clause. Shouldn't it be longer?

SENATOR WANZEK: It dose not make the contract void. The grain dealers can explain that to you. The contracts that we are trying to target here are the contracts that are presented to us in the spring. Specialty contracts are more of the problem. High price in the spring and low price at harvest. The use every angle that they can to cheapen up the product that you have agreed to at a certain price. If the table were turned, we would be expected to deliver at the

contract price. This is a unique contract. This is not an invasive Bill. We are limited in our negotiation as to specialty contracts. It is negotiable. Agricultural contracting is somewhat unique. There are efforts throughout the whole country to provide rights for contracts for producers and in contracting agricultural producers. You think this is invasive, you should see some of those. They go a lot further in trying to protect.

REPRESENTATIVE LLOYD: Potato growers face the same problem. It has never been resolved. Potato growers send a load of potatoes down to the chip factory and they tell grower that the potatoes did not meet specifications simply because they had all they needed. The grower had to pay the trucking to and from. It is still an issue today. See Bill 4--24--13, is there a penalty for breaking the contract?

SENATOR WANZEK: We discussed that, there is legality situations with fines. There is not any with this Bill. Maybe Dan could touch on that when he testifies.

REPRESENTATIVE MUELLER: Are we running any risk because contractors may not want to do business in ND because of this Bill?

SENATOR WANZEK: I don't want this Bill to be so onerous that it a slanted one way or the other. I don't want to limit opportunities that might otherwise be there. I don't see that it is so much to ask that just up front say we have a dispute. Lets put it in the contract, as to how we would settle a grading etc. dispute.

REPRESENTATIVE KINGSBURY: We have few chip and potato manufacturing in Valley. Do we want to rock the boat. They probably don't need our potatoes here in ND. They can get them anywhere else in the country. Do other states have laws like this?

SEN WANZEK: REALLY DID NOT ANSWER QUESTION AS TO OTHER STATES.

We as growers don't carry clout. I am just asking for the minimum level of some kind of direction in disputes. The market is take it or leave it. Verses going to court. Maybe we are to productive. There is a good contract out there, we all grow the crop and there is an overflow. This Bill is not adversarial to grain dealers.

CHAIRMAN NICHOLAS: We have all been there. WE can all right our own book on it. I don't think that you can go in with an elevator manager one time that there is not some kind of a hassle. That is just the way it is and If I look around at other farmers they will all be nodding their heads. IN AGREEMENT.. There is always a hook.

STEVE STREGG: Grain Dealers. Handed out amendments. The problem is specialty crops. There are already sections of the code that deal with disputes. sixty o two o five. sixty o two point one o five and THE PSC provides a poster for each elevator in this regard. WE don't want this bill to be contradictive with existing laws. Inserting the word written gets us aground oral contracts where there are no written contract. Amendment in line seven adds livestock which is OK with the stockman's association.

The language about 30 days is needed to exclude immediate delivery contracts that with the quality determination on loans at the time of the sale. Most of the contracts are written in the fall.

DAN KUNTS: LEAD COUNCIL FOR THE GRAIN DEALERS ASSOCIATION.

I helped draft these amendments. If there are any questions. Implementation of This Bill without some kind of standard? How would we enforce this Bill.

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DAN: This is pretty broad at this time. It would be buyer.....seller decision as to arbitration or mediation etc. No penalty enforcement at this time. The courts would state where it me arbitration or mediation at this time.

JEFF KNUTSON: Printed testimony. From Roger Johnson, Agr. Commissioner.

CHAIRMAN NICHOLAS: Any additional testimony on SB 2413

WE WILL CLOSE THE HEARING ON SB 2413.

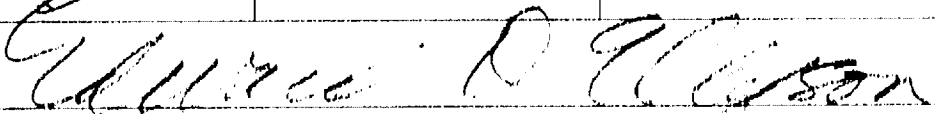
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2413 B

House Agriculture Committee

☐ Conference Committee

Hearing Date 3--15--01

Tape Number	Side A	Side B	Meter #
TWO	A		4955 to END
THREE	A		00 to 116
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: O.K. THE CHAIR WILL ENTERTAIN A MOTION TO ACCEPT THE AMENDMENTS ON 2413 .

REPRESENTATIVE LLOYD: I think that before people vote they may want to take a look at what was handed out at the time we looked at Bill Bowmans Bill. This whole thing is about what Sen. Wanzeks bill is. This whole document here relates to all of the ramifications of contracts between producer and processor. Whether his bill will benefit or hinder, quite frankly this contract with all of these definitions that are outlined in this document here, quite frankly says it probably won't do much good. We have got to be careful about putting in place state regulations because the nature of processing is permitting and there are those who simply do not want to do business with those who are against it. You have to realize that is the situation and to parallel that I will just tell you about what has happened in the potato industry, the chip industry where Freta Lays quite frankly said OK if you are not going to play with us, you don't

get to raise anymore potatoes for us and right now they have five contract growers in the whole US. Everybody else is out.

REPRESENTATIVE KINGSBURLY: You mentioned penalty, we keep raising more potatoes. We bring out our own penalty, we keep raising more potatoes. Dealing with the companies. This makes me a little nervous, because of the nature of dealing with a company like that who can just say. I am not saying there is not something wrong with the company deep down buy we just have to dance to their music.

REPRESENTATIVE MUELLER: I think that all this one is asking some form of contract resolution stated in the contract. I don't think it is talking about the provisions in the contract or suggesting to a contract provider that they have to do certain things in terms of level of potatoes. It says that if we have a problem, you folks have to come to the table to talk about it. That is all I am seeing.

REPRESENTATIVE FROELICH: I am in favor of this Bill. Rite it in or scratch it out.

REPRESENTATIVE LLOYD: The way I read this is it says any written contracts as to production or selling Agr. commodities must include a provision for the resolution of the contract dispute. So if Rep. Froelich is correct and they don't want to write in that resolution into the contract, that means that there is no agreement for that particular producer to be able to utilize that contract. That what I would interpret that. That is what we have right now. If you don't want to sign the contract, you don't. I don't see any benefit. I see we are in the same boat as to where the producer sits.

REPRESENTATIVE ONSTAD: Malting Barley. Pick and choose. Take it or leave it. A good crop, now they can take it or leave it. Do we have currently state mediation. Do we have

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Hearing Date 3--15--01

something in place that will address that end of it, because I think that is what Terry is talking about on that. Where do you go.

MULLER: Do we have to have this out of here today. I think we should study this a bit.

REPRESENTATIVE KINGSBURY: I still question about other states. If they have something like this then, they are dealing with out of state companies. If not, the companies could say why deal with ND when we can deal with other companies. Deal with a state that dose not have contracts like this. I am just wondering where it will go.

REPRESENTATIVE LLOYD: Other states have laws like this, they are more stringent, but they are also more specific to certain commodity markets.

REPRESENTATIVE PETTSCH: This bill may not have the teeth that you would want but to exercise. I think it does less but it is a step in the right direction. There is a study recommendation for agr. contracts in general. In a resolution. That should shed some light on this bill.

REPRESENTATIVE KINGSBURY: I would appreciate it if we could hold this bill over.

CHAIRMAN NICHOLAS: WE WILL HOLD THIS OVER UNTIL TOMORROW.

WE WILL CLOSE ON SB 2413

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2413

House Agriculture Committee

☐ Conference Committee

Hearing Date 3--16--01

Tape Number	Side A	Side B	Meter #
ONE	A		00 TO 1515
Committee Clerk Signature <i>Edward E. Elger</i>			

Minutes:

CHAIRMAN NICHOLAS: COMMITTEE MEMBERS WE WILL OPEN ON SB 2413.

WE will take a look at that Bill. John Milke is here.

REPRESENTATIVE KINGSBURY: The reason I wanted this held over. I need to get potatoes out. Representative raises potatoes.

REPRESENTATIVE LLOYD: I Have made most of my comments. If you have a processor that says I won't put it in my contract what can you do. He has a choice. I don't like to put language into the code that does not advance the system. Also SB 2379 where the language in there says any state that passes legislation that is more restrictive then all the rest of the states around is doomed to have problems. That is the argument side.

CHAIRMAN NICHOLAS: Mohn Milky would you want to address this bill.

JOHN MILKE: I am the Executive Director of the Public Service Commission. and also director of licensing division. What I am distributing is Procedure for Resolving Grain Grade

Disputes. The Banking community also has this information. Please see hand out. Basically is what this provides that is when someone is selling grain to a warehouse or a buyer in ND, very often

If the farmer has a problem with the testing techniques or the result of the test, they can ask for mutually sampling of that grain be drawn at that time and sent off to a federally licensed inspection service and then both parties are obligated to accept the results of the tests that come back. This Bill may be an expansion of the hand out. It may involve production contracts. Please see hand out. I faxed a copy of the Bill to Timm Corny this morning. He is the executive director of North Harvest Bean Growers Association. He said they don't really have any problems in the Bean Industry that he is aware of that this bill would solve. He said maybe this Bill would create some problems. He simply did not know. I also don't know.

The grain grading dispute information. Asks for the tests when the grain is delivered. I can see some potential problems with that in often times we haul it in there and they combined all the samples and send it off some place and we have not asked for a specific test when the grain was delivered and so in essence that circumstance is not covered, in statute currently.

JOHN MIUKE: That is correct and that is why we wanted to put this in the flyer because a lot of producers do not know that they have very narrow window of opportunity. Once the grain has been delivered, dumped and co-mingled, it is too late to go and draw another sample.

It is a mutually agreed to sample. There are factors that might come into the final price that are not governed by the grain grading dispute.

REPRESENTATIVE: How would this Bill affect Northern Grains Institute?

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House Agriculture Committee

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CHAIRMAN NICHOLAS: We have standardized contracts. It is pretty well defined what the specifications are and certainly there is enough there is a load rejected once in a while. Not very often but NCI which is an arm of Dakota Growers.

REPRESENTATIVE: The reason I asked, I have a copy of the contract. They spell it all out how the grain has to meet the grade and they keep a sample up there when you dump. If you don't agree with it you send it in to the grain inspection.

VICE CHAIRMAN JOHNSON: Frustration of specialty grains seeds, etc.

CHAIRMAN NICHOLAS: Committee Members, what we could do, we are in no hurry. We have next week to work on these Bills. We will just wait until next week and see if we can come up with some workable amendments.

STRAGIE: Some of the contracts that already have something on it as to Feed Association already has something on it about arbitration and mediation. I think what we heard yesterday from Sen. Wanzek is that the problem comes with contracts that are signed in the spring. Delivered in the fall. In this bill line seven make it production contracts. Eliminate a lot of other things that is not intended for the bill.

CHAIRMAN NICHOLAS: Run that by me again please.

STRAGIE: I don't know if that answers the potato contract.

CHAIRMAN NICHOLAS: What I am going to do is appoint a subcommittee. Representative Kingsbury, Representative Mueller and Representative Lloyd. Continue to work with the grain growers, Sen. Wanzek as to amendments. See if we can figure out take Steves suggestion under advisement. See if we can figure out something. We will hold this Bill until next week.

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Representative Pietsch: Where is the grain handles on this Bill?

STRAGIE: I wish there were a way to just zero in on the problems. When the quality is determined. Quality standard on the sale ticket. It may be a while before that is know when the load comes in from a long distance.

CHAIRMAN NICHOLAS: O.K. we will take that Bill under advisement.

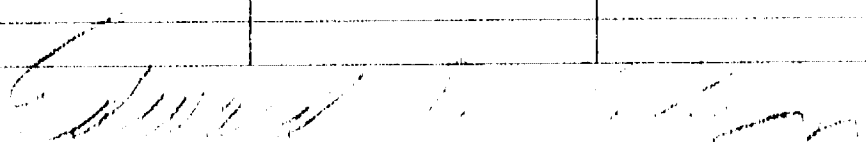
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2413

House Agriculture Committee

☐ Conference Committee

Hearing Date 3--22--01

Tape Number	Side A	Side B	Meter #
ONE	A		1983 TO 4485
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: COMMITTEE MEMBERS, WE WILL OPEN THE HEARING ON HB 2413.

REPRESENTATIVE KINGSBURY: ON SENATE BILL 2413, SEN. WANZEK INTRODUCED AND IT DEALS WITH AGRICULTURE COMMODITIES AND CONTRACTS. WE HAVE MET A COUPLE OF TIMES. BASICALLY WE HOG HOUSED THE BILL. PLEASE SEE THE BILL AND AMENDMENTS AS TO REPRESENTATIVE KINGSBURY STATEMENT. ALSO PLEASE SEE AMENDMENTS TO THE BILL. THE AMENDMENTS PUT MORE TEETH IN THE BILL. PLEASE SEE ATTACHMENTS AS TO HOTHOUSE THE ORIGINAL BILL.

CHAIRMAN NICHOLAS: REPRESENTATIVE KINGSBURY MOVES TO ACCEPT THE AMENDMENTS AND IT WAS SECONDED BY REPRESENTATIVE BERG.

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House Agriculture Committee

Bill/Resolution Number SB 2413

Hearing Date 3--22--01

CHAIRMAN NICHOLAS: NICKY, PLEASE TAKE THIS UP AND HAVE THE COUNCIL REVIEW. HAVE COUNCIL DRAFT IT SO IT IS DONE PROPERLY.

O.K. REPRESENTATIVE KINGSBURY MOVED AND IT WAS SECONDED BY REPRESENTATIVE BERG ALL IN FAVOR SAY YES. OK THE CHAIR WILL ENTERTAIN A MOTION ON 2413 AS AMENDED. REPRESENTATIVE PIETSCH MADE A MOTION FOR A DO PASS AND IT WAS SECONDED BY REPRESENTATIVE KOPPANG.

THERE WAS SIMILAR DISCUSSION TODAY AS TO WHAT THERE WERE FOR THE FIRST HEARING. THERE WAS CONTROVERSY ON THIS BILL. IS THE BILL GOING TO ACCOMPLISH ANYTHING.

CHAIRMAN NICHOLAS: THE BILL WILL GIVE YOU AT LEAST SOME RECOURSE. IT PROBABLY IS NOT A PERFECT BILL. IT DOSE PUT SOME LEGS UNDER THE FARMER.

REPRESENTATIVE BERG: I DON'T THINK THERE IS ANY DANGER IN THIS BILL. THE QUESTION IS, DOSE IT DO ANY GOOD? I DON'T KNOW IF WE COULD PASS ANYTHING THAT WOULD REALLY MAKE A MAJOR CHANGE TO CONTRACT LAW. IF THERE IS A PROBLEM WITH THE BILL LETS CHANGE IT.

REPRESENTATIVE RENNER: FOR PEOPLE THAT ARE OFFERED CONTRACTS SUCH AS CONFECTION SUNFLOWER GROWERS, WE PASS, THEY MIGHT NOT OFFER ANY CONTRACTS. THEY MIGHT NOT WANT TO BE BOUND.

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CHAIRMAN NICHOLAS: WELL I THINK REP. RENNER THEY HAVE A REAL
SERIOUS PROBLEM RIGHT NOW GETTING ENOUGH STUFF. I THINK THE LAST
THING THOSE CONFECTION GUYS ARE GOING TO DO IS NOT OFFER A CONTRACT.
THE HAVE A HARD TIME FINDING ACRES THE WAY IT IS.

REPRESENTATIVE BERG: I WOULD GUESS MR. CHAIRMAN THAT A LOT OF THOSE
CONTRACTS THEY HAVE A PROCESS IN THERE TO SETTLE DISPUTES. THIS WILL
ONLY APPLY IF THEY DO NOT HAVE A PROCESS IN THOSE CONTRACTS. TO
SETTLE THOSE DISPUTES.

CHAIRMAN NICHOLAS: THE CLERK WILL TAKE THE ROLL ON 2413.

THERE WERE *****8 YES*****5 NO*****2 ABSENT*****

REPRESENTATIVE KINGSBURY WILL CARRY SB 2413

3/6/01

PROPOSED AMENDMENTS TO SENATE BILL NO. 2413

Page 1, line 6, after "Any" insert "written" and delete "regarding" and insert "for"

Page 1, line 7, after "commodity" insert ",including grain and livestock, to be delivered more than thirty days after the date of the contract"

Page 1, line 12, after "any" delete "reduction in price that" and insert "resulting effect on the contract price. The contract provisions for resolution of disputes regarding the quality of grain must be consistent with sections 60-02-05, 60-02-05.1, 60-02.1-05 and 60-02.1-06."

Page 1, remove line 13.

Renumber accordingly

CURRENT SB 2413, FIRST ENGROSSMENT
(as passed by the Senate 49-0 on 2/20/01)

SECTION 1. A new section to chapter 4-24 of the North Dakota Century Code is created and enacted as follows: **Agricultural contracts - Mediation - Arbitration.** Any contract regarding the production or sale of an agricultural commodity must include a provision for the resolution of a contract dispute through mediation or arbitration. The contract must include provisions regarding the manner in which mediation or arbitration is to be initiated and the manner in which any costs associated with the mediation or arbitration are to be borne. For purposes of this section, contract dispute includes a disagreement between the producer and the purchaser of an agricultural commodity regarding the commodity's quality and any reduction in price that is to be imposed as a result of a quality determination by the purchaser.

SB 2413 ABOVE, WITH FURTHER AMENDMENTS
(new language underlined; language to be removed ~~overstruck~~)

SECTION 1. A new section to chapter 4-24 of the North Dakota Century Code is created and enacted as follows: **Agricultural contracts - Mediation - Arbitration.** Any written contract regarding for the production or sale of an agricultural commodity, including grain and livestock, to be delivered more than thirty days after the date of the contract must include a provision for the resolution of a contract dispute through mediation or arbitration. The contract must include provisions regarding the manner in which mediation or arbitration is to be initiated and the manner in which any costs associated with the mediation or arbitration are to be borne. For purposes of this section, contract dispute includes a disagreement between the producer and the purchaser of an agricultural commodity regarding the commodity's quality and any ~~reduction in price that is to be imposed as a result of a quality determination by the purchaser,~~ resulting effect on the contract price. The contract provisions for resolution of disputes regarding the quality of grain must be consistent with sections 60-02-05, 60-02-05.1, 60-02.1-05 and 60-02.1-06.

VR
3/23/01

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2413

HOUSE AMENDMENTS TO ENGROSSED SB 2413

HOUSE AGR. 3-23-01

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 60-02 and a new section to chapter 60-02.1 of the North Dakota Century Code, relating to agricultural contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Agricultural contracts - Mediation or arbitration. If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02-05, the parties shall attempt to resolve the disagreements through mediation or arbitration.

SECTION 2. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Agricultural contracts - Mediation and arbitration. If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02.1-05, the parties shall attempt to resolve the disagreements through mediation or arbitration."

Renumber accordingly

3-22-01

Date:
Roll Call Vote #:2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

SB 2413

House AGRICULTURE

Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number

Kingsbury BERG
WITH AMENDMENTS

Action Taken

DO PASS

Motion Made By

Pietsch

Seconded By

Koppang

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	✓		Rod Froelich		✓
Dennis E. Johnson - Vice Chairman	✓		Doug Lemieux		✓
Rick Berg	✓		Philip Mueller	✓	
Michael Brandenburg			Kenton Onstad		✓
Joyce Kingsbury	✓		Sally M. Slandvig	✓	
Myron Koppang	✓		Dennis J. Renner		✓
Edward H. Lloyd	✓		Dwight Wrangham		
Bill Pietsch		✓			

Total (Yes)

8

No

5

Absent

2

Floor Assignment

Rep Kingsbury

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

REPORT OF STANDING COMMITTEE

SB 2413, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2413 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 60-02 and a new section to chapter 60-02.1 of the North Dakota Century Code, relating to agricultural contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Agricultural contracts - Mediation or arbitration. If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02-05, the parties shall attempt to resolve the disagreements through mediation or arbitration.

SECTION 2. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Agricultural contracts - Mediation and arbitration. If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02.1-05, the parties shall attempt to resolve the disagreements through mediation or arbitration."

Renumber accordingly

2001 TESTIMONY

SB 2413

COMMISSIONER OF AGRICULTURE
ROGER JOHNSON



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DEPARTMENT OF AGRICULTURE
State of North Dakota
600 E. Boulevard Ave. Dept. 602
Bismarck, ND 58505-0020

**Testimony of Roger Johnson
Agriculture Commissioner
Senate Bill 2413
Senate Agriculture Committee
Roosevelt Park Room
February 8, 2001**

Chairman Wanzek and members of the Senate Agriculture Committee, I am Agriculture Commissioner Roger Johnson. I am here today in support of SB 2413, which will require agricultural commodity production and sales contracts to include a provision for the resolution of a contract dispute through mediation or arbitration.

Mediation and arbitration are currently two of the most popular forms of alternative dispute resolution (ADR). ADR continues to grow and flourish throughout society for good reasons—it's timely, cost-efficient, and works to resolve disputes outside the court system. Effective March 1, 2001, rules adopted by the North Dakota Supreme Court will require parties to any civil action to first discuss and participate in ADR unless and for good cause the case is inappropriate for ADR.

As you know, we have a state agricultural mediation service and state seed arbitration board, which are able to provide the services contemplated by this legislation. Despite public awareness efforts, producers and others are sometimes unaware that mediation and arbitration are available for the resolution of a variety of disputes. Mandatory contract provisions that specify the availability and initiation processes of mediation or arbitration will help assure that producers are aware of these ADR services should any disputes arise regarding the contract.

On February 2, 2001, I also testified before this committee on SB 2145. If SB 2145 is given a do not pass recommendation, I would urge the committee to consider incorporating the following portions of SB 2145 into SB 2413. First, some companies are offering complicated contracts to growers on a "take it or leave it" basis. At a minimum, adequate time must be given for contract reviews (See Section 5 of SB 2145). Second, many farmers and ranchers are entering into contracts, which require significant capital investments. Protections should be put in place that diminish the ability of contractors to simply walk away from contracts that require such capital investments. Section 8 of SB 2145 deals with this issue. A third issue is confidentiality. Many agricultural contracts have strict confidentiality components, which not only limit market transparency, but also limit the ability of farmers and ranchers to negotiate the best deal possible. Section 6 of this SB 2145 prohibits confidentiality provisions in agricultural contracts.

Chairman Wanzek and committee members, I urge a do pass on SB 2413 and any of the above portions of SB 2145 the committee might see fit to include. I would be happy to answer any questions you may have.

6. "Public warehouseman" means the person operating a public warehouse that is located or doing business within this state, whether or not such owner or operator resides within this state. The term does not include a person who is permitted to sell seed under chapter 4-09, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.
7. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except where such memoranda was received as a result of a credit-sale contract.
8. "Receiving station" means any facility other than an individually licensed warehouse that is used by a licensed public warehouseman to receive and temporarily store grain prior to transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

Source: S.L. 1891, ch. 126, § 4; R.C. 1895, § 1786; S.L. 1899, ch. 126, § 1; R.C. 1899, § 1786; S.L. 1901, ch. 140, § 1, R.C. 1905, § 2244; C.L. 1913, § 3107; S.L. 1925, ch. 217, § 1; 1925 Supp., § 3125d1; S.L. 1927, ch. 155, §§ 2, 7, 9, 25; 1929, ch. 137, § 2; 1933, ch. 4, § 1; R.C. 1943, § 60-0201; S.L. 1963, ch. 413, § 1; 1983, ch. 672, § 1; 1985, ch. 661, § 1; 1993, ch. 52, § 3; 1993, ch. 585, § 1; 1999, ch. 533, § 1; 1999, ch. 534, § 1.

section 1 of chapter 533, S.L. 1999 became effective August 1, 1999.

The 1999 amendment of this section by section 1 of chapter 534, S.L. 1999 became effective July 1, 1999.

Note.

Section 60-02-01 was amended twice by the 1990 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 1 of chapter 533, S.L. 1999, and section 1 of chapter 534, S.L. 1999.

Effective Date.

The 1999 amendment of this section by

60-02-05. Grain marketing — Procedure for resolving disputes.

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints of the grain in dispute may be taken together by both parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States. The person requesting the inspection service shall pay for the inspection. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the determination made by a federal

licensed inspector may be made as provided under the United States Grain Standards Act (Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) and (d)) and under 7 CFR 800.125-800.140. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.

2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints of the grain in dispute may be taken together by the parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed upon third party, who may examine the grain and determine the quality factors in dispute. The person requesting the inspection service shall pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

Source: S.L. 1909, ch. 135, §§ 1, 2; C.L. 1913, §§ 3103, 3104; S.L. 1927, ch. 155, § 5; R.C. 1943, § 60-0205; S.L. 1987, ch. 735, § 1; 1989, ch. 740, § 1; 1999, ch. 533, § 2.

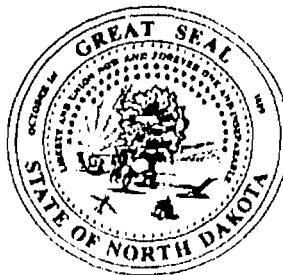
Effective Date.

The 1999 amendment of this section by section 2 of chapter 533, S.L. 1999 became effective August 1, 1999.

60-02-07. Public warehouse license — How obtained — Fee — Financial statement. An annual license must be obtained from the commission for each public warehouse in operation in this state. The license expires on July thirty-first of each year. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described. The annual license fee for a public warehouse is two hundred fifty dollars for a warehouse of a bushel capacity of two hundred thousand (7047.8 cubic meters) or less, four hundred dollars for a warehouse of a bushel capacity of more than two hundred thousand and not more than five hundred thousand (7047.8 to not more than 17619.54 cubic meters), and five hundred dollars for a warehouse of a bushel capacity of more than five hundred thousand (17619.54 cubic meters). If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. Where two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses. If the commission employs fewer than two full-time equivalent warehouse inspectors, each annual fee under this section is reduced by one hundred dollars.

If required to obtain United States department of agriculture approval of the commission's warehouse inspection program, the commission may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

COMMISSIONER OF AGRICULTURE
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**Testimony of Roger Johnson
Agriculture Commissioner
Senate Bill 2413
House Agriculture Committee
Peace Garden Room
March 15, 2001**

Chairman Nicholas and members of the House Agriculture Committee, my name is Jeff Knudson. I am here to deliver testimony on behalf of Agriculture Commissioner Roger Johnson in support of SB 2413. This bill will require agricultural commodity production and sales contracts to include a provision for the resolution of a contract dispute through mediation or arbitration.

Mediation and arbitration are currently two of the most popular forms of alternative dispute resolution (ADR). ADR continues to grow and flourish throughout society for good reasons—it's timely, cost-efficient, and works to resolve disputes outside the court system. Effective March 1, 2001, rules adopted by the North Dakota Supreme Court require parties to any civil action to first discuss and participate in ADR unless and for good cause the case is inappropriate for ADR.

This bill does not specify the use of state programs. However, we do have a state agricultural mediation service and state seed arbitration board, which are able to provide the services contemplated by this legislation. Despite public awareness efforts, producers and others are sometimes unaware that mediation and arbitration are available for the resolution of a variety of disputes. Mandatory contract provisions that specify the availability and initiation processes of mediation or arbitration will help assure that producers are aware of these ADR services should any disputes arise regarding the contract.

Chairman Nicholas and committee members, I urge a do pass of SB 2413. I would be happy to answer any questions you may have.

PROCEDURE FOR RESOLVING GRAIN GRADE DISPUTES

SB 2413

60-02-05. Grain marketing - Procedure for resolving disputes.

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints of the grain in dispute may be taken together by both parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States. The person requesting the inspection service shall pay for the inspection. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the determination made by a federal licensed inspector may be made as provided.

Officially licensed inspection agencies in North Dakota include:

Grain Inspection, Inc.
PO Box 1652
Jamestown, ND 58402
(701) 252-1290
Fax: (701) 252-1298
E-mail: grain@daknet.com

Grand Forks Grain Inspection
Department, Inc.
PO Box 639
Grand Forks, ND 58206
(701) 772-0151
Fax: (701) 772-7948
Cell phone: (701) 779-5686
E-mail: gfginsp@aol.com

Additional service points in North Dakota include:

Grand Forks Grain Inspection
Department, Inc.
PO Box 760
Devils Lake, ND 58301
(701) 662-2142
E-mail: gfgidl@stellarnet.com

ND Grain Inspection Service, Inc.
PO Box 123
Enderlin, ND 58027
701-437-3000 ext.: 202
E-mail: ndgisi@mlgc.com

under the United States Grain Standards Act [Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.

2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints of the grain in dispute may be taken together by the parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed upon third party, who may examine the grain and determine the quality factors in dispute. The person requesting the inspection service shall pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

Minot Grain Inspection, Inc.
PO Box B
Minot, ND 58702
(701) 838-1734
Fax: (701) 852-6533
E-mail: motgrins@minot.com

ND Grain Inspection Service, Inc.
1601 7th Avenue North
Fargo, ND 58102
(701) 293-7420
Fax: (701) 241-8818
E-mail: ndgisi@worldnet.att.net

Grand Forks Grain Inspection
Department, Inc.
PO Box 37
Gladstone, ND 58630
(701) 225-2268
Fax: (701) 225-2269
Cell phone: 701-260-2714
E-mail: gfgi@aol.com

Call the Public Service Commission's
Licensing Division at 701-328-4097 to
receive a copy of this procedure.

May 1996
SFN 13987



Selling Grain?

Know Your Rights and Your Responsibilities

- ▼ Grading disputes
- ▼ Will I be paid?
- ▼ Storage rates
- ▼ Handling fees

Jon H. Mielke
Executive Secretary, Licensing, and Rail
North Dakota Public Service Commission

George Flaskerud
Extension Crops Economist

Andrew Swenson
Farm and Family Resource Management



North Dakota State University
Fargo, North Dakota 58105

AUGUST 2000

No Grain License — No Bond Protection

Bond coverage does not exist if a buyer is not licensed. If grain is sold to an unlicensed buyer and if the buyer does not pay for the grain, there is no bond coverage available to help pay the seller. Court action may be a farmer's only recourse if an unlicensed buyer fails to pay for grain. Therefore, farmers are strongly encouraged to check to ensure that the buyer is licensed. Warehouses and grain buyers must be licensed and bonded. Unlicensed buyers are operating illegally.

In North Dakota, bond requirements are based on the physical size of an elevator or on the amount of grain that a grain buyer handles. Even if the buyer is licensed and bonded, there is no guarantee that farmers will be fully reimbursed if a buyer becomes insolvent. If the buyer does not have enough grain and bond assets available to satisfy all valid grain claims, available funds are distributed on a prorated basis.

Farmers must also be aware that bond coverage may not be available if grain is sold to a company that is located outside the state. If grain is sold to out-of-state entities, the laws of the state in which the buyer is located may govern the transaction. Farmers may find that they have far less protection in those states than they do if the grain was sold to a company that is licensed in North Dakota.

To find out if a warehouse or grain buyer is licensed in North Dakota, visit the Public Service Commission web site at www.psc.state.nd.us or call (701) 328-4097.

Delayed Price and Deferred Payment Contracts — No Bond Protection

Delayed price and deferred payment contracts are examples of credit-sale contracts. In most cases, credit-sale contracts do not have bond protection. State law defines credit-sale contracts as written grain sale contracts that provide that the sale price may be paid more than 30 days after the delivery or release of the grain.

The title to grain passes from the farmer to the buyer when the contract is signed. At this point, the farmer becomes an unsecured creditor.

Farmers must be aware of the fact that **credit-sale contracts are not typically protected by the buyer's bond.** Language concerning the lack of bond coverage or coverage limitations must be printed in bold type immediately above the signature block on the contract. If no bond coverage is available, the contract will read something like this:

**THIS CONTRACT IS NOT PROTECTED
BY BOND COVERAGE IN THE EVENT
OF THE BUYER'S INSOLVENCY.**

This warning means exactly what it says!

Storage Rates and Handling Fees

State law does not prescribe grain elevator storage rates and handling fees. Each state licensed grain warehouse sets its own storage rates and redelivery fees (i.e. "in" and "out" charges).

Licensees cannot, however, unjustly discriminate among patrons. State licensed grain warehouses must file their proposed rate schedule with the Public Service Commission; it must also be posted at the warehouse. The rates may be revised upon filing with the PSC.

Storage rates must be stated on warehouse receipts. If a warehouseman changes his rates, the rates that were in effect when a warehouse receipt was issued are the rates that apply to that storage contract. Warehouse receipts on beans expire on April 30 of each year; other grain receipts expire on June 30. If

expired receipts are reissued, the storage rate in effect at the time is the rate that will apply to the renewed receipt.

Farmers should not confuse storage rates with credit-sale contract service or handling charges (delayed price and deferred payment-type transactions). These fees are not regulated and are governed by the terms of the contract that is entered into by the buyer and the seller.

Grading Disputes — Don't Wait Or You'll Be Too Late

State law does not regulate elevator purchase prices, premiums, or discounts. State law does provide, however, that warehousemen may not unjustly discriminate among patrons.

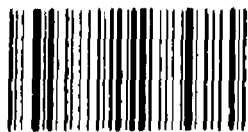
If a farmer does not agree with an elevator's test results he has the right to ask that an independent test be performed on his grain. He must, however, ask for the test when the grain is delivered.

To initiate the process, the farmer must ask for the independent test. The farmer and the warehouseman must then draw a mutually agreeable sample of the load. This sample must be sealed in a container and sent to a federally licensed inspection service or to some other mutually agreed to third party for testing.

The buyer and the seller are both obligated to accept the results of the independent test. The farmer is responsible for the cost of the tests.

State law requires that warehousemen and grain buyers post a notice concerning the law's provisions concerning the resolution of grain grading disputes. To obtain a copy of the notice, visit the PSC's web site at www.psc.state.nd.us or call (701) 328-3097.

North Dakota
Public Service Commission
600 E. Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480
Web Site: www.psc.state.nd.us
E-Mail: skrt@psc.state.nd.us
Phone: (701) 328-3097



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This publication will be made available in alternative format upon request to people with disabilities. (201) 328-3097

S.B. 2413

Hoghouse the original bill and replace with the following:

A new section to 60-02 (chapter dealing with grain warehouses):

Agricultural contracts – mediation or arbitration. If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02-05, the parties shall attempt to resolved such disagreements through mediation or arbitration.

A new section to 60-02.1 (chapter dealing with grain buyers):

Agricultural contracts – mediation or arbitration. If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02.1-05, the parties shall attempt to resolved such disagreements through mediation or arbitration.