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Dannan Hall
Operator's Signature

10/2/03
Date

2003 HOUSE AGRICULTURE
HB 1197

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Deanna Holladay
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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1197

House Agriculture Committee

☐ Conference Committee

Hearing Date 1--23--03

Tape Number	Side A	Side B	Meter #
ONE	A		0 TO END
ONE		B	0 TO 10.4
Committee Clerk Signature <i>William D. Olson</i>			

Minutes:

VICE CHAIRMAN POLLERT: The House will come to order. The clerk will take the roll. We will open on HB 1197. HB 1197 is relating to insolvency's of grain buyers and warehousemen; and to provide a penalty.

VICE CHAIRMAN POLLERT: Madam Chair, my name is Chet Pollert. I am a state representative from District 29. I am also a grain elevator, feed plant operator. HB 1197 is in front of you today because of conversations with other Representatives. What the HB 1197. It is a Bill for an Act to create and enact a new chapter to title 60 of the North Dakota Century Code, relating to the creation of a credit-sale contract indemnity fund; and to amend and reenact sections of the North Dakota Century Code relating to insolvency's of grain buyers and warehousemen; and to provide a penalty. What the Bill basically is it is a credit sale contract indemnity fund. It dose not cover cash sale contracts, dose not cover warehouse receipts so it for credit sale contracts only. Credit sale sales contracts could be for deferred payments. Etc.

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Page 2
House Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 1--23--03

Could be a fixed futures contract. A deferred payment. Something with a time element.

What this does is on Section 5 on page 3, what it would do is assess anyone entering into a credit sale contract. The assessment would be at the rate of two-tenths of one percent placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The warehouse purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The warehouseman shall submit any assessment collected under this section to the public service commission no later than thirty days after each calendar quarter. The commission shall deposit the assessments received under this section in the credit-sale contract indemnity fund. Lets be optimistic and say that wheat is \$5.00 dollars you are looking at a penny a bushel. Lets say you have twenty five thousand dollars worth of credit sale contracts at that particular facility, you are looking at a 50 dollar insurance plan. One hundred thousand you are looking at two hundred dollars. Basically a insurance plan.

{{PLEASE READ THE ENTIRE BILL}} as to Chet Pollerts testimony. His testimony was going through the Bill.

In a nut shell that is HB 1197.

REPRESENTATIVE KREIDT: Am I to understand that if you do take a credit sales contract you are automatically in. There are no options. You can't assume a gamble and not take the insurance on the amount of grain I have in the elevator.

VICE CHAIRMAN POLLER: No there is not way to voluntary get out of this. If you enter into a credit sales contract, that's where I talked about a half mandated and half not. You are

Page 3
House Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 1--23--03

going to have to pay two tenths of one percent. It is not for cash sale, or for warehouse receipts. It is a sales contract only. You can choose go to your local elevator and sell Your grain. You have an option to do that sales contract or cash it out with warehouse receipt.

REP. KRIEDT: I can't gamble, If I take a credit sales contract, I'm in, I will be paying the assessment.

REP. BELTER: The only people that are going to pay in are those who are using the deferred payment. Is that correct?

REPRESENTATIVE POLLERT: We might be on a different term. Anyone with a deferred payment contract or for example an MDV contract or a open base contract, those are credit sales contracts that have kind of a time on their contract.

REP. BELTER: It is also my understanding that when this fund reaches a certain level then you no longer would have to contribute to this insurance.

REPRESENTATIVE POLLERT: When the fund would get to ten million dollars the payment Premiums would discontinue until the fund would drop to five million dollars.

REP. BELTER: What about the person who has never contributed to the fund but then we get to the point where we have reached the cap where the insurance rates area no longer assessed are those people then going to have to pay in because they will be recipients of this yet there is no assessment so they would actually get their insurance for nothing. Are there provisions to deal with that?

REPRESENTATIVE POLLERT: I think we are going to have ask the Public Service Commission. I would suspect that the coverage would be there.

Page 4
House Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 1--23--03

REPRESENTATIVE KELSCH: Any other questions of Representative Pollert?

Representative Wrangham.

REP. WRANGHAM ;; Thank you Mrs. Chair? Representative Pollert, what is different about this Bill then what we have seen before?

REPRESENTATIVE POLLERT: Madam Chairman. And Representative Wrangham. Four years ago the PSC had brought some Bills and part of that Bill covered credit sales contracts. At that time that Bill was amended and I felt at that time it would have had ramifications. That it would have dealt with security interests with me at the grain elevator and it would jeopardize my financial standing with my bank and the bank would have drawn down, so that if there is an insolvency there pecking order who was going to get money I felt it would have affected the elevator operations because the bank the bank is not going to give us any money if there pecking order for example was five on the list compared to number one or two. What is different about HB 1197? This is farmer funded. No other funds are in it, that is the difference.

REPRESENTATIVE KELSCH: Any further questions?

REPRESENTATIVE POLLERT: I am going to pass out some amendments.

REPRESENTATIVE KELSCH: Anyone else wishing to offer testimony on HB 1197?

JOHN MIELKE: Vice Chairman and Committee Members. My name is Jon Mielke, I am the Executive Secretary of Public Service Commission. I also serve as the director of the Commission's Licensing Division. The Commission supports the bill. Commissioner Wefald is with us this morning, Tony Clark was here a few minutes ago, he will be back shortly. We also have Bill Benick whose is our commerce council, Rick Filbrant who is one of warehouse

Page 5
House Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 1--23--03

inspectors, He is quite involved with the Wimbelton insolence case. He is a licensing specialist. {{{{PLEASE READ JON MIELKE'S TESTIMONY}}}} {{{{PLEASE SEE SPREAD SHEET PROVIDED BY JON MIELKE;}}} Jon Mielke said he would respond questions.

VICE CHAIRMAN POLLERT: Any questions.

REP. FROELICH : Mr Chairman and Mr. Mielke I am referring to the fiscal note. You have a ½ FTE, Basically that is \$40,000.00 thousand a year. I could not understand what Representative Froelich said but Jon Mileke when on to say, The \$79,000.00 is per Biennium so it would be about \$40,000.00 per year. So half time would be about \$20,000.00 with fringe benefits and actually some of that money would be used for mailing, printing and those sort of things. The amount that would be used for staff time would be somewhat less then that. It would also include developing a computer program to record remittance ,receipts and deposit funds etc.

Also if you were unfortunate enough to have grain in two elevators that insolvency problems you would be insured up to \$100,000.00 at each facility.

REP. BELTER : A lot of farmers sell grain and the manager asks do you want a check or do you want to defer it. The farmer says I don't know. So it just sits there. Is that grain covered under those circumstances?

JON MIELKE. In that case it would be covered because for the credit sales contract to be valid, it must be signed. This is something that the PSC fought hard for in Federal Court In the Wernbelton case. There were a number of contracts where that had been exactly that kind of a discussion between the warehouse and the farmer and the contracts had not been signed.

Page 6

House Agriculture Committee

Bill/Resolution Number HB 1197

Hearing Date 1--23--03

We went to court. An unsigned contract is not a contract. It is open storage. Something that are warehouse inspectors look for when they go out and we advise the warehouseman. If the farmer dose not come in an sign a contract, the elevator should do one of two things. Either Put the grain on a warehouse receipt and start charging storage or cut a check to the farmer. So the farmer can't have the best of both worlds. Just hang out there in open storage indefinitely.

Something has to happen within thirty days.

REP. BELTER If it goes beyond those thirty days is it still covered by bond?

JON MIELKE: You are still covered until the contract is signed but at that time it is incumbent on the warehouseman to get back in touch with the farmer and say we have to do something with this. It can just sit there. Get a signed contract or issue a check. The warehouse man has to force the issue. If there is not a signed contract there is bond protection.

REP. BELTER : Why can we just run this under a bond or is there no bonding company that will do that. I have heard in the past it cost to much to do that but we are incurring the cost throughout this method.

JON MIELKE: That is exactly what the PSC proposed four years ago. We did have a larger bill that resulted in the passage in Chapter 1602.1 of the Century code. The PSC did have a section in there that would have required bond coverage on credit sale contracts. I believe the estimate at that time would cost the industry .06 cents per bushel. So it was very expensive insurance. The real down side with that proposal is that there would be a number of elevators that would not be able to get bonded. They would not be considered a solid enough risk to get a bond at any rice. This would really weaken the overall structure of the industry.

Page 7

House Agriculture Committee

Bill/Resolution Number HB 1197

Hearing Date 1--23--03

REP. BELTER : When you say .06 cents.. On the insured bushels or .06 cents on the capacity of the elevator.

JON. My remembrance is .06 cents of the bushels that would be covered under the bond. Of your credit sale bushels.

JON: When we talk about the free ride as to people not paying premiums. This would only happen when we reached the \$10,000,000.00 million. And there were no more remittances being payable by anybody. If we got into an insolvency case, we worked up to the ten million maximum then at the end when we were cutting checks we would just take an offset. In the settlement. The spread sheet shows what other states are doing.

The time it will take to get the fund up to ten million will be about six and half years assuming no claims. The fund will be handled by the Bank of North Dakota.

There are still risks even with this contract of insurance with the maximum payment being One hundred thousand dollars maximum payment. With 80% of that actually being paid.

REPRESENTATIVE PHILIP MUELLER;; The assessment is designed to be funded until it reached a ten million dollar cap. The assessments go away until there losses take the fund down to five million dollars and then the assessments kick in again until the fund reaches it's cap again of ten million dollars. There are two animals we are dealing with. Deferred contracts and credit sales contracts and there different issues but they do fall under the umbrella of credit sales.

Abou . fifty percent of farmers sales to elevators are credit sales contracts. There are all sorts of reasons for this happening. When I took my grain to the New Hope elevator this fall there is a red poster on door that says you will put your grain on credit sales contract or you will be cut a

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Page 8
House Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 1--23--03

check. They want to get the grain in the car and down the track., That is what is happening to the grain industry. The farmers basically have two options. I am here to tell you insolvency's are expensive. They are not pleasant. I solicit a DO PASS on bill.

MIKE CLEMENS: I am dealing with the Wimbelton. Situation. Please see the printed cover story BANK ROBBERY. It basically was Mikes testimony. Please support HB 1197.

We would like to see a higher limit then the \$100,000.00.

SCOTT DORSON: I am in the Wimbelton situation. The insolvency affects everyone in the community.

JOHN MIDLIGHTER: We would like to see an amendment that make the bill voluntary not mandatory. You should be able to opt out of the Bill. Our membership feels that they should be able to self insure themselves. I can't give you a count as to how many people would opt out. Our membership would like to make there own decisions.

REP. BELTER : Would you opposed to requiring everybody to being in it?

JOHN MIDLIGHTER: No we would not be appeased to that.. Our preference is voluntary.

MARK SITZ: We stand in support of HB 1197. It is a need that has to be addressed.

Today we have nothing.

STEVE STREGE: Most insolvency's were specialty houses. I would like to compliment the PSC for the support they gave us on the Wimbelton case. We support Bill

VICE CHAIRMAN POLLERT: Represntative Pollert read testimony from the North Dakota Grain Dealers that stated they support HB 1197.

LOWELL BERINSTIEN: Mr Vice Chairman and members of Committee,

I am chair of Agriculture Coalition. Please see phamphlet.

Page 9

House Agriculture Committee

Bill/Resolution Number HB 1197

Hearing Date 1--23--03

I think that this Bill would help independent operators. I see this as a positive movement.

This is cheaper then buying bonds.

LANCE HAUGE. We support HB 1197.

VICE CHAIRMAN POLLERT: WE WILL CLOSE ON HB 1197

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1197

House Agriculture Committee

☐ Conference Committee

Hearing Date 2--06--03

Tape Number	Side A	Side B	Meter #
TWO		B	00 TO 12.0
Committee Clerk Signature <i>Edward D. Elger</i>			

Minutes:

CHAIRMAN NICHOLAS: We will open on HB 1197. Representative Pollert.

REPRESENTATIVE POLLERT: Please see amendments being distributed by Rep. Belter.

What is being done on the first page where it says page 1 line 14 and all down to where it says Page 4 line 11 that was all on the previous amendment we passed out two weeks ago so that been before you before. The reason I wanted the PSC here, two things. Rep. Belter had talked On page 4 line 12 of the one hundred thousand dollars cause he would like to see the limit higher. You will see the amendment is two hundred and fifty thousand dollars. Every thing after page four which is the very last line that is all new language. We talked to the PSC about and basically and correct me if I am not correct are means of going after fly by nights. The bonding company can go after these companies when they come in and then head out and try to take advantage the indemnity funds. That is why we asked the PSC to come down so they

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Page 2

House Agriculture Committee

Bill/Resolution Number HB 1197

Hearing Date 2--06---03

can explain what after page four line 31 really dose because I can't truthfully give you a good explanation.

REP. MUELLER : The amendments do put shall in place of may regard to when the cap comes off. The ten million dollar cap.

JOHN MILKEN: EXECUTIVE SECRETARY OF THE PSC. I also serve as director of the licensing division. Bill Benick our council and Commissioner Tony Clark is here.

We have worked with the bill sponsors on these amendments. We also had input from the Grain Dealers Association and had help from the attorneys generals office. We tried to incorporate every thing into these amendments. [[[please read bill]]] John Milken when through the bill.

REPRESENTATIVE POLLER: The Dakota Growers Posta. Will this bill have any thing to do with them?

JOHN MILKEN: The entities that you mentioned all have state licenses right now. So they would be governed by this if they are using credit sales contracts. If there not this will have no impact on them at all.

CHAIRMAN NICHOLAS: Any questions.

REP. MUELLER : Please comment on the cap.

JOHN MILKEN: By increasing the cap you increase the exposure to the fund. You have ten million in fund it would take far fewer claims to get you up to the cap.

CHAIRMAN NICHOLAS: Committee Members, I will entertain a motion on amendments to HB 1197.

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Page 3

House Agriculture Committee

Bill/Resolution Number HB 1197

Hearing Date 2--06---03

REPRESENTATIVE MOVES ON AMENDMENTS, SECONDED BY REPRESENTATIVE
FROELICH. ALL THOSE IN FAVOR SAY YES. OK WE HAVE HB 1197 THE HOUSE
WILL ENTERTAIN A MOTION FOR HB 1197 AS AMENDED FOR A DO PASS.
REPRESENTATIVE ONSTAD AND SECONDED BY REPRESENTATIVE BOE.
THE ROLL WAS TAKEN. THERE WERE 12 YES 0 NO AND 1 ABSENT.
REPRESENTATIVE MUELLER WILL CARRY THE BILL.
WE CLOSED ON HB 1197.

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FISCAL NOTE
Requested by Legislative Council
04/07/2003

Amendment to: HB 1197

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

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$3,000,000	\$0	\$3,000,000
Expenditures	\$0	\$0	\$0	\$79,000	\$0	\$79,000
Appropriations	\$0	\$0	\$0		\$0	

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

This bill, with the Conference Committee's amendment, proposes to establish an indemnity fund to provide protection to farmers who sell their grain via some form of credit sale contract. The program would be self-funding in that credit-sale transactions would be assessed a 2/10th of 1% fee on the dollar value of the sale. This money would be deposited with the state in an indemnity fund. The fund would be used to pay farmers in case of buyer insolvency and to cover administrative costs incurred by the Public Service Commission.

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

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

Deposits into the indemnity fund would be equal to 2/10th of 1% of the value of all grain sold via credit-sales contracts. It is estimated that approximately 250 million bushels of grain are sold each year via credit-sales. Assuming an average value of \$3 per bushel, annual sales equal \$750 million. 2/10th of 1% of this amount is \$1.5 million. Biennial collections are therefore estimated at \$3 million.

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

The Commission estimates that it would require 1/2 FTE and cost approximately \$79,000 per biennium to administer this program. Related tasks would include developing a computer program to record remittance information, receipting and deposit funds, conducting desk compliance audits, investigating potential discrepancies, etc. Additional costs would be incurred if and when insolvencies occur. Expenditures would be directly related to costs incurred by the Commission in the case and payments eventually made to valid credit-sale claimants.

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

This bill provides for a continuing appropriation to the Public Service Commission to administer this program and

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Date

related payments to farmers in insolvency proceedings.

Name:	Jon Mielke	Agency:	Public Service Commission
Phone Number:	328-4082	Date Prepared:	04/07/2003

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Operator's Signature

10/2/03
Date

FISCAL NOTE
Requested by Legislative Council
03/18/2003

Amendment to: HB 1197

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

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$3,000,000	\$0	\$3,000,000
Expenditures	\$0	\$0	\$0	\$79,000	\$0	\$79,000
Appropriations	\$0	\$0	\$0		\$0	

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

This bill, with the Senate's amendments, proposes to establish an indemnity fund to provide protection to farmers who sell their grain via some form of credit sale contract. The program would be self-funding in that credit-sale transactions would be assessed a 2/10th of 1% fee on the dollar value of the sale. This money would be deposited with the state in an indemnity fund. The fund would be used to pay farmers in case of buyer insolvency and to cover administrative costs incurred by the Public Service Commission.

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

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

Deposits into the indemnity fund would be equal to 2/10th of 1% of the value of all grain sold via credit-sales contracts. It is estimated that approximately 250 million bushels of grain are sold each year via credit-sales. Assuming an average value of \$3 per bushel, annual sales equal \$750 million. 2/10th of 1% of this amount is \$1.5 million. Biennial collections are therefore estimated at \$3 million.

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

The Commission estimates that it would require 1/2 FTE and cost approximately \$79,000 per biennium to administer this program. Related tasks would include developing a computer program to record remittance information, receipting and deposit funds, conducting desk compliance audits, investigating potential discrepancies, etc. Additional costs would be incurred if and when insolvencies occur. Expenditures would be directly related to costs incurred by the Commission in the case and payments eventually made to valid credit-sale claimants.

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

This bill provides for a continuing appropriation to the Public Service Commission to administer this program and

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Name:	Jon Mielke	Agency:	Public Service Commission
Phone Number:	328-4082	Date Prepared:	03/18/2003

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Date

FISCAL NOTE
Requested by Legislative Council
02/18/2003

Amendment to: HB 1197

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

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$3,000,000	\$0	\$3,000,000
Expenditures	\$0	\$0	\$0	\$79,000	\$0	\$79,000
Appropriations	\$0	\$0	\$0		\$0	

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

This bill, as amended, proposes to establish an indemnity fund to provide protection to farmers who sell their grain via some form of credit sale contract. The program would be self-funding in that credit-sale transactions would be assessed a 2/10th of 1% fee on the dollar value of the sale. This money would be deposited with the state in an indemnity fund. The fund would be used to pay farmers in case of buyer insolvency and to cover administrative costs incurred by the Public Service Commission.

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

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

Deposits into the indemnity fund would be equal to 2/10th of 1% of the value of all grain sold via credit-sales contracts. It is estimated that approximately 250 million bushels of grain are sold each year via credit-sales. Assuming an average value of \$3 per bushel, annual sales equal \$750 million. 2/10th of 1% of this amount is \$1.5 million. Biennial collections are therefore estimated at \$3 million.

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

The Commission estimates that it would require 1/2 FTE and cost approximately \$79,000 per biennium to administer this program. Related tasks would include developing a computer program to record remittance information, receipting and deposit funds, conducting desk compliance audits, investigating potential discrepancies, etc. Additional costs would be incurred if and when insolvencies occur. Expenditures would be directly related to costs incurred by the Commission in the case and payments eventually made to valid credit-sale claimants.

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

This bill provides for a continuing appropriation to the Public Service Commission to administer this program and

related payments to farmers in insolvency proceedings.

Name:	Jon Mielke	Agency:	Public Service Commission
Phone Number:	328-4082	Date Prepared:	02/18/2003

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Deanna Hallmark
Operator's Signature

10/2/03
Date

FISCAL NOTE
Requested by Legislative Council
01/09/2003

Bill/Resolution No.: HB 1197

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

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$3,000,000	\$0	\$3,000,000
Expenditures	\$0	\$0	\$0	\$79,000	\$0	\$79,000
Appropriations	\$0	\$0	\$0		\$0	

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

This bill proposes to establish an indemnity fund to provide protection to farmers who sell their grain via some form of credit sale contract. The program would be self-funding in that credit-sale transactions would be assessed a 2/10th of 1% fee on the dollar value of the sale. This money would be deposited with the state in an indemnity fund. The fund would be used to pay farmers in case of buyer insolvency and to cover administrative costs incurred by the Public Service Commission.

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

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

Deposits into the indemnity fund would be equal to 2/10th of 1% of the value of all grain sold via credit-sales contracts. It is estimated that approximately 250 million bushels of grain are sold each year via credit-sales. Assuming an average value of \$3 per bushel, annual sales equal \$750 million. 2/10th of 1% of this amount is \$1.5 million. Biennial collections are therefore estimated at \$3 million.

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

The Commission estimates that it would require 1/2 FTE and cost approximately \$79,000 per biennium to administer this program. Related tasks would include developing a computer program to record remittance information, receipting and deposit funds, conducting desk compliance audits, investigating potential discrepancies, etc.

Additional costs would be incurred if and when insolvencies occur. Expenditures would be directly related to costs incurred by the Commission in the case and payments eventually made to valid credit-sale claimants.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive

budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

This bill provides for a continuing appropriation to the Public Service Commission to administer this program and related payments to farmers in insolvency proceedings.

Name:	Jon Mielke	Agency:	Public Service Commission
Phone Number:	328-4082	Date Prepared:	01/09/2003

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Donna Ball
Operator's Signature

1/2/03
Date

30137.0201
Title.

Prepared by the Legislative Council staff for
Representative Pollert
January 20, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1197

Page 1, line 14, replace "cash sale" with "non-credit-sale"

Page 2, line 19, replace "cash sale and storage" with "non-credit-sale"

Page 3, line 24, replace "may" with "shall"

Page 4, line 4, after "warehouse" insert "or a grain buyer"

Page 4, line 6, replace "warehouse's" with "licensee's"

Page 4, line 7, replace "warehouse" with "licensee"

Page 4, line 11, replace the second "the" with "all of that person's unsatisfied"

Page 4, line 12, replace "contract" with "contracts"

Renumber accordingly

30137.0202
Title.0300

Prepared by the Legislative Council staff for
House Agriculture Committee
February 10, 2003

VK
2/14/03
1062

HOUSE AMENDMENTS TO HOUSE BILL NO. 1197 AGR 2-14-03

Page 1, line 14, replace "cash sale" with "noncredit-sale"

HOUSE AMENDMENTS TO HB 1197 AGR 2-14-03

Page 2, line 19, replace "cash sale and storage" with "noncredit-sale"

HOUSE AMENDMENTS TO HB 1197 AGR 2-14-03

Page 3, line 12, replace "warehouseman" with "licensee"

Page 3, line 14, replace "warehouseman" with "licensee"

Page 3, line 24, replace "may" with "shall"

Page 3, line 29, after "a" insert "licensed" and after "warehouse" insert "or a grain buyer"

Page 3, line 31, after "The" insert "licensed" and after "grain" insert "or the grain buyer to whom the person sold grain"

HOUSE AMENDMENTS TO HB 1197 AGR 2-14-03

Page 4, line 1, after "The" insert "licensed" and after "warehouse" insert "or the grain buyer"

Page 4, line 4, after the first "a" insert "licensed" and after "warehouse" insert "or a grain buyer"

Page 4, line 6, replace "warehouse's" with "licensee's"

Page 4, line 7, replace "warehouse" with "licensee"

Page 4, line 11, replace the second "the" with "all of that person's unsatisfied"

Page 4, line 12, replace "contract or one" with "contracts or two" and after "hundred" insert "fifty"

Page 4, line 18, remove "section 6 of"

Page 4, after line 31, insert:

"Revocation and suspension. The commission may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

Cease and desist. If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the commission, the commission, upon its own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the commission. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

Claims. A claim concerning a grain buyer must be administered in a manner consistent with chapter 60-02.1. A claim concerning a state licensed grain warehouse must be administered in a manner consistent with chapter 60-04. A payment may not

be made from the credit-sale contract indemnity fund for a claim based on losses resulting from the sale of grain to a person not licensed under chapter 60-02, chapter 60-02.1, or the United States Warehouse Act [Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].

Subrogation. Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The commission may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate its interest, if any, to the commission in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

Unlicensed facility-based grain buyer. This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state grain buyer license. The commission has the duty and power to examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture."

Renumber accordingly

HB 1197

1-30-03

Date:

Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House AGRICULTURE COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

PROPOSED AMENDMENTS

Motion Made By

KREIDT

Seconded By

FROELICH

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS					
VICE CHAIRMAN POLLERT					
REPRESENTATIVE BELTER					
REPRESENTATIVE BOEHNING					
REPRESENTATIVE KELSCH					
REPRESENTATIVE KINGSBURY					
REPRESENTATIVE KREIDT					
REPRESENTATIVE UGLEM					
REPRESENTATIVE WRANGHAM					
REPRESENTATIVE BOE					
REPRESENTATIVE FROELICH					
REPRESENTATIVE MUELLER					
REPRESENTATIVE ONSTAD					

Noice Vote

Total (Yes) _____

No _____

Absent _____

Floor Assignment _____

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Operator's Signature

Dan Hallmark

Date

1/30/03

HB 1197

Date: 2-6-03
Roll Call Vote #:2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.House AGRICULTURE COMMITTEE☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDEDMotion Made By ONSTAD Seconded By BOE

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS	✓				
VICE CHAIRMAN POLLERT	✓				
REPRESENTATIVE BELTER					
REPRESENTATIVE BOEHNING	✓				
REPRESENTATIVE KELSCH	✓				
REPRESENTATIVE KINGSBURY	✓				
REPRESENTATIVE KREIDT	✓				
REPRESENTATIVE UGLEM	✓				
REPRESENTATIVE WRANGHAM	✓				
REPRESENTATIVE BOE	✓				
REPRESENTATIVE FROELICH	✓				
REPRESENTATIVE MUELLER	✓				
REPRESENTATIVE ONSTAD	✓				

Total (Yes) 12 No 0Absent 1Floor Assignment REP Mueller

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Date

REPORT OF STANDING COMMITTEE (410)
February 14, 2003 12:58 p.m.

Module No: HR-29-2756
Carrier: Mueller
Insert LC: 30137.0202 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1197: Agriculture Committee (Rep. Nicholas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1197 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "cash sale" with "noncredit-sale"

Page 2, line 19, replace "cash sale and storage" with "noncredit-sale"

Page 3, line 12, replace "warehouseman" with "licensee"

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Page 4, after line 31, insert:

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Claims. A claim concerning a grain buyer must be administered in a manner consistent with chapter 60-02.1. A claim concerning a state licensed grain warehouse must be administered in a manner consistent with chapter 60-04. A payment may not be made from the credit-sale contract indemnity fund for a claim based on losses resulting from the sale of grain to a person not licensed under chapter 60-02, chapter 60-02.1, or the United States Warehouse Act (Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.).

REPORT OF STANDING COMMITTEE (410)
February 14, 2003 12:58 p.m.

Module No: HR-29-2756
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Insert LC: 30137.0202 Title: .0300

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Renumber accordingly

(2) DESK, (3) COMM

Page No. 2

HR-29-2756

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Donna Ballman
Operator's Signature

10/2/03
Date

2003 SENATE AGRICULTURE

HB 1197

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Operator's Signature

10/2/03
Date

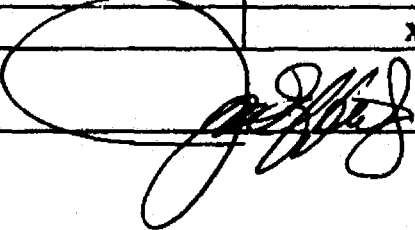
2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1197

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 03/07/03

Tape Number	Side A	Side B	Meter #
1	x		4628 - end
2	x		0 - end
2		x	0 - 400
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the hearing on HB 1197. All members were present.

Representative Pollert introduced and testified in favor of the bill. The bill deals with credit sales contracts with grain warehouses. It does not deal with cash sales or warehouse receipts. The bill seeks to assess .2% of the value of the grain for use in an indemnity fund to provide protection for producers with credit sale contracts with an elevator in case of an insolvency. It is estimated the assessment will bring in \$1.5 million per year and the assessment would stop when the fund balance reaches \$10 million. It would begin again if insolvency brought the fund balance below \$5 million. (meter # 5277) Some elevators can get bonding for credit sales contracts but certainly not all elevators would qualify for bonding. Those that could get it would pay 5 - 6 cents per bushel, approximately 2%.

Senator Klein asked if the assessment would be refundable.

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Page 2
Senate Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 03/07/03

Representative Pollert said no. That is why the assessment only applies to credit sales contracts. If it were to be refundable, after they received their credit sale payment, farmers would apply for a refund. The fund would never build up.

Senator Nichols asked regarding elevators with bonding coverage for credit sales contracts, if this bill were to pass, would drop that coverage?

Representative Pollert said there were others with better knowledge of this issue. He thought they would probably drop their bonding coverage.

Senator Urlacher asked if those elevators with bonding coverage would have the option of being covered under this bill? (meter # 5691)

Representative Pollert said if it was a credit sale contract, there would be a deduction for the indemnity fund.

Representative Mueller testified in favor of the bill. (meter # 5761) 50% of the grain trade in North Dakota are credit sale transactions and this number will increase as elevators move towards more unit train systems. There is currently no protection under the law for these transactions. Representative Mueller was among 150 farmers who have recently been through the exact situation this bill addresses and they are not through with it yet. He has learned that lawyers and court proceedings are very expensive and, so far, not very rewarding. The Wimbledon Grain insolvency has caused a shortage of \$1.1 million in his community because of farmers with credit sales transactions. This shortage has affected the entire community. He doesn't want to see this happen again.

According to Public Service Commission records, there have been 21 insolvent elevators in North Dakota in the past 20 years. (tape 2 side A meter # 160)

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Dan H. Pollert
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Page 3
Senate Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 03/07/03

Regarding the bonding of credit sales, the cost is 2% of the value of the credit sale contract. 15 - 20% of elevators would not have a balance sheet that would qualify them for the bond. This bond, even if the elevator could get it, would cover only deferred sales, not delayed price contracts. As a farmer, you are going to pay either way. It is also important to remember that there is a 80% cap in the bill so an elevator could still bond the credit sales and cover the whole transaction. With the structure of the bill, those who do not use credit sales do not pay. (meter # 488)

Senator Flakoll asked how was the \$250,000 cap selected?

Representative Mueller said it was somewhat arbitrary. The bill originally said \$100,000 and it was amended on the house side. It is in line with what other states are doing.

Senator Flakoll asked if there was any discussion about why producers should keep on paying if they go beyond the \$250,000?

Representative Mueller said it has been discussed. It is important to remember that the assessment goes away when the fund reaches \$10 million and producers continue to be covered without paying, providing there is not a draw on the fund.

Senator Flakoll asked if there would be an ongoing appropriation of \$79,000 for administrative costs?

Representative Mueller said the administrative funds would come from the indemnity fund and at no cost to the general fund and represents the costs for a biennium. The Bank of North Dakota uses a sharp pencil in the management of such funds so interest would accrue.

Senator Flakoll asked if accrued interest would remain in the fund?

Representative Mueller said yes.


Operator's Signature

10/2/03
Date

Page 4

Senate Agriculture Committee

Bill/Resolution Number HB 1197

Hearing Date 03/07/03

Senator Klein asked if there will be a report to the legislature for accountability purposes?

Representative Mueller said its a good point and he doesn't have a good answer. There are internal audit systems with the Public Service Commission.

Jon Mielke, executive secretary of the Public Service Commission, testified in favor of the bill.

(written testimony) (meter # 919) There is a proposed amendment attached to the testimony.

Commissioners Tony Clark and Susan Wefald were both in attendance to answer questions.

Senator Klein asked how an elevator like Wimbledon gets into that position?

Mr. Mielke said Wimbledon was unusual in that they had both federal and state licenses. For efficiency's sake, the Public Service Commission focuses on elevators where the federal inspectors don't go. The federal inspectors had been to Wimbledon and had conducted an audit. The bank pulled their line of credit which made the elevator insolvent. When all was said and done, if you don't consider the funds due the credit sales patrons, the bonds were never called in. The assets were liquidated and the creditors paid.

Senator Klein asked if the federal inspectors weren't forward looking enough? Should they be held accountable?

Mr. Mielke said there has been a lot of finger pointing and questions were raised. He is not familiar enough with the federal system. Things can happen fast in the grain industry. The Public Service Commission tries to get to the elevators they inspect once a year but things can happen after they leave, as was the case with Wimbledon Grain when the bank pulled their checkbook.

Senator Klein said the Public Service Commission sought credit sales coverage in the 1999 session, was cost the reason it failed?

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Page 5
Senate Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 03/07/03

Mr. Mielke said those sections were amended out of the bills. Cost and availability of bonds for credit sales were factors.

Senator Flakoll asked if we should have any concern about ramp up time on this?

Mr. Mielke said in a worst case scenario, if there was an insolvency next September, and there were major claims, the Public Service Commission would pay out whatever was in the fund but this would represent a partial payment and as more funds accrued, the producers would receive the rest of their payment.

Senator Flakoll asked what is the time table for payment by the Public Service Commission to farmers after an insolvency?

Mr. Mielke said payment would not be made until there was a court order. The Public Service Commission would make recommendations to the district court. There is then an opportunity for all claimants to be heard in court and the court then issues an order to the Public Service Commission to issue checks. (meter # 2051)

Senator Nichols asked how many farmers understand the risks involved with different grain transactions?

Mr. Mielke said you would have to ask the farmers. Unless an elevator has a bond to cover credit sale contracts, every contract written by that elevator for a credit sale must have, in bold print over the signature line, a disclaimer notifying the farmer he is not covered in case of an insolvency. There seems to be more awareness after the Wimbledon Grain insolvency.

Senator Flakoll asked if a notice should be posted at the elevators?

Mr. Mielke said after the interim study they developed a brochure with the extension service that was sent to all elevators with a request to post them.

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Dan Hall
Operator's Signature

10/2/03
Date

Page 6
Senate Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 03/07/03

Senator Flakoll asked if the start up costs would be higher than the ongoing costs for administration of the fund?

Mr. Mielke said except for inflationary pressure, he anticipated start up costs would be slightly more than subsequent on going administrative costs.

Scott Jorson, a farmer from the Wimbledon area, testified in favor of the bill. He was a holder of a credit sale contract that has not been paid. This bill is a good one because it provides coverage for users of credit sale contracts, it does it at minimal cost and it is paid for by those who use this sales method. He also submitted written testimony from Greg Nelson, another farmer who could not attend due to the weather.

Mark Sitz, farmer and representing the North Dakota Farmers Union, stood in support of the bill. (meter # 2509) The Farmers Union has language in their policy that deals with credit sales contracts. This is becoming a very common way for farmers to do business. Some farmers do not realize they are not covered by a bond. The bill is fair and reasonable.

Senator Seymour asked how many farmers actually read the Farmers Union policy book?

Mr. Sitz said he hopes they all do.

Brian Kramer, North Dakota Farm Bureau, testified in favor of the bill. (meter # 2730)

Steve Strege, North Dakota Grain Dealers Association, spoke in favor of the bill. (written testimony) (meter # 2816) Their concern about the \$100,000 cap was addressed by the house.

Senator Nichols asked with a delayed price credit sale contract, in case of an insolvency, how is price determined? (meter # 3305)

Mr. Strege said he thought it was the price on the day of insolvency.

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10/2/03
Date

Page 7

Senate Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 03/07/03

Lowell Bernston, farmer from Kulm and Chairman North Dakota the Ag Coalition, testified in favor of the bill. This bill will support independent grain dealers and so supports smaller business in North Dakota. (meter # 3362)

Mr. Strege said as far as the cap is concerned, that is the limit of a payment from one elevator. If a farmer is doing business with more than one elevator, he would have the \$250,000 maximum coverage from each elevator.

Tony Clark, Public Service Commissioner, stood to add a comment. (meter # 3675) He said the 80% limit in the bill encourages farmers to scrutinize who they are doing business with. With 100% coverage, they would not have this incentive.

Keith Brandt, general manager of Plains Grain and Agronomy in Enderlin and the president of the North Dakota Grain Dealers Association testified in favor of the bill. (meter # 3772) It encourages confidence in the local elevators.

Representative Chet Pollert stood for questions. (meter # 3885)

Senator Flakoll asked about out of state producers hauling grain to North Dakota?

Representative Pollert said he is the wrong guy to answer that question.

Mr. Mielke stood for the question. In case of an insolvency, state of residence makes no difference. All claimants are treated the same.

Senator Klein asked if the Public Service Commission determines the legitimacy of the claims?

Mr. Mielke said yes.

Representative Earl Rennerfeldt testified in opposition to the bill. (written testimony) (meter # 4147) He said we are trying to protect a few shaky elevators by taxing everyone. Its the farmer's responsibility to check out an elevator before he does business with them.

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Page 8
Senate Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 03/07/03

Perhaps the bill should be amended so any elevator that offers credit sale contracts should be bonded. The bonds can't cost that much.

Senator Flakoll asked if the ceiling isn't like FDIC's ceiling?

Representative Rennerfeldt said he didn't know how they arrived at the \$250,000 figure. He questions whether assessing a farmer for more than \$250,000 of credit sale contracts is constitutional?

Senator Flakoll asked how a farmer should check out an elevator before he does business with them?

Representative Rennerfeldt said they should find out who the owner is and look at the books.

Senator Nichols asked in the case of an elevator with a \$10 million bond at a cost of \$30,000, wouldn't that cost affect all customers of the elevator?

Representative Rennerfeldt said yes.

Senator Nichols asked even though the bond is directed towards the safety of those with credit sale contracts aren't all customers essentially paying for the bond, because it will reduce the price they receive for their grain?

Representative Rennerfeldt said yes but they are also getting the benefit of using your money interest free.

Chairman Flakoll closed the hearing on HB 1197. (meter # 5639)

Senator Klein said at a cost of .2%, we should have created our own pool long ago. This is an opportunity for farmers to insure themselves at a reasonable rate.

Senator Urlacher said he sees the value in it but some large elevators might get a double whammy, if they keep their bond.

Page 9
Senate Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 03/07/03

Senator Klein said this is a good point but he wondered if the cost of the bond would go down because it would perhaps cover the last 20%.

Senator Nichols said he thought such a bond would be cheaper.

Senator Urlacher said if they operate in several states, they might still need to keep the bond.

Senator Klein said they would still have to bond for the cash sale side.

Senator Erbele moved that the Senate Agriculture Committee adopt the amendments proposed by the Public Service Commission, seconded by Senator Klein.

Senator Flakoll asked if there should be a requirement to post a notice regarding risk?

Mr. Strege said it is done already.

The amendments were accepted on a roll call vote. Voting yes were Senator Flakoll, Senator Erbele, Senator Klein, Senator Urlacher, Senator Nichols and Senator Seymour. There were no negative votes cast.

Chairman Flakoll moved on to other business of the committee.

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Donna Halbach
Operator's signature

10/2/03
Date

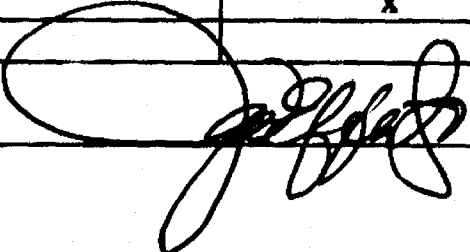
2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1197

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 03/13/03

Tape Number	Side A	Side B	Meter #
1	x		1253 - 1728
1		x	27 - 559
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the discussion on HB 1197. All members were present.

Senator Flakoll said Representative Belter was here earlier saying it might be better to raise the ceiling to \$350,000 with the 80% payout at \$280,000. What does the committee think of this?

Senator Klein said the whole issue is to come up with a level that would keep the fund solvent.

The only opponent to the bill was concerned about the level. Why would he want to go from 100% coverage now to 80% coverage? There are some big grain sellers now. Many are not covered now.

Senator Nichols asked if the \$10 million should be reconsidered if we reconsider the individual coverage?

Senator Flakoll said we are adding 10% to the individual coverage.

Senator Klein said he thinks its OK at \$10 million. If we have significant usage of the fund, we can address the issue. If the money runs out, those farmers would eventually get paid when the

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10/2/03
Date

Page 2
Senate Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 03/13/03

fund is replenished. He would like to run this by the sponsors. They have been working hard on this for a year.

Senator Nichols said he thought the level was similar to other states, this came out in testimony.

Senator Klein said we are changing line 16 to \$280,000?

Senator Flakoll said that is the intent.

Senator Klein will check with the sponsors.

Chairman Flakoll reopened the discussion on HB 1197 (tape 1 side B meter #27).

It was moved by Senator Klein, seconded by Senator Erbele and passed on a roll call vote that the Senate Agriculture Committee adopt the further amendment changing page 4 line 16 to \$280,000. Voting yes were Senator Flakoll, Senator Erbele, Senator Klein, Senator Urlacher, Senator Nichols and Senator Seymour. There were no negative votes cast.

Senator Klein said the producer will pay no matter how we do this, with a bond at the elevator or an indemnity fund and this is more economical. The Wimbledon situation brings the issue to light. Its a good idea.

Senator Urlacher said he checked with Southwest Grain, the largest outlet in the state. Their \$10 million protection is over the entire system so it is very minimal. Over 50% of their grain is sold on a credit sale transaction. They are concerned their coverage is inadequate and supportive of this legislation.

Senator Klein said the Southwest Grain policy only covers delayed payments, not deferred payments so there are still a lot of people without coverage.

Senator Urlacher agreed. He said in some cases two years of a farmer's production held on contract so there is volume involved.

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Doranne Hall
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10/2/03
Date

Page 3

Senate Agriculture Committee

Bill/Resolution Number HB 1197

Hearing Date 03/13/03

Senator Nichols said the 80% coverage is a good feature.

It was moved by Senator Klein, seconded by Senator Erbele and passed on a roll call vote that the Senate Agriculture Committee take a Do Pass As Amended action on HB 1197. Voting yes were Senator Flakoll, Senator Erbele, Senator Klein, Senator Urlacher, Senator Nichols, and Senator Seymour. There were no negative votes cast. Senator Nichols will carry the bill to the floor. Chairman Flakoll moved on to other business of the committee.

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Deanna Ballantyne
Operator's Signature

10/2/03
Date

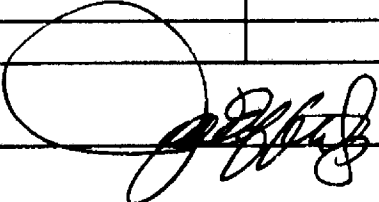
2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1197

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 03/17/03

Tape Number	Side A	Side B	Meter #
No tape			
Committee Clerk Signature 			

Minutes:

Note: When the bill was turned in at the front desk, Senator Holberg from the Appropriations Committee, asked to have the bill re-referred to appropriations.

Chairman Flakoll asked the committee clerk to poll the committee members for their approval.

All members approved re-referring the bill to appropriations.

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Operator's Signature

10/2/03
Date

30137.0301
Title.0400

Adopted by the Agriculture Committee
March 13, 2003

723
3-13-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1197

Page 1, line 3, after "60-02.1-30" insert ", 60-02.1-34"

Page 2, after line 8, insert:

"SECTION 3. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. Commission to marshal trust assets. Upon its appointment, the commission shall marshal all of the trust fund assets. The commission may maintain suits in the name of the state of North Dakota for the benefit of all noncredit-sale claimants against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default."

Page 4, line 16, replace "fifty" with "eighty"

Renumber accordingly

Page No. 1

30137.0301

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Operator's Signature

Date

10/2/03

Date: 3/7/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

Senate	Agriculture	Committee
--------	-------------	-----------

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Amendment

Motion Made By Sen Erbele E Seconded By Sen Klein

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Attached.

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Deanna Holladay
Operator's Signature

18/2/03
Date

Date: 8/13/03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Further
more amendment.

Motion Made By Sen Klein Seconded By Sen Erbele

Senators	Yes	No	Senators	Yes	No
Senator Flakoll, Chairman	✓		Senator Nichols	✓	
Senator Erbele, Vice Chairman	✓		Senator Seymour	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

105 4 11m 16 Δ to \$280,000

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Danna Hallmark
Operator's Signature

10/2/03
Date

Date: 3/13/03
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30137.0301

Action Taken Do Pass As Amended (and Re-Refered Appropriations - added 3/17/03)

Motion Made By Sen Klein Seconded By Sen Erbele

Senators	Yes	No	Senators	Yes	No
Senator Flakoll, Chairman	✓		Senator Nichols	✓	
Senator Erbele, Vice Chairman	✓		Senator Seymour	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Nichols

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

Donna Hallmark 12/2/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
March 17, 2003 1:35 p.m.

Module No: SR-47-4925
Carrier: Nichols
Insert LC: 30137.0301 Title: .0400

REPORT OF STANDING COMMITTEE

HB 1197, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1197 was placed on the Sixth order on the calendar.

Page 1, line 3, after "60-02.1-30" Insert ", 60-02.1-34"

Page 2, after line 8, Insert:

"SECTION 3. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. Commission to marshal trust assets. Upon its appointment, the commission shall marshal all of the trust fund assets. The commission may maintain suits in the name of the state of North Dakota for the benefit of all noncredit-sale claimants against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default."

Page 4, line 16, replace "fifty" with "eighty"

Renumber accordingly

2003 SENATE APPROPRIATIONS

HB 1197

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Dennis Hall
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1197& Vote

☐ Conference Committee

Hearing Date 3-19-03

Tape Number	Side A	Side B	Meter #
1	X		1393-4904
Committee Clerk Signature <i>Jandra Davison</i>			

Minutes: CHAIRMAN HOLMBERG opened the hearing to HB 1197. A bill relating to the creation of a credit-sales contract indemnity fund; relating to insolvencies of grain buyers and warehousemen; and to provide a penalty.

(Meter 1393) REPRESENTATIVE PHIL MUELLER, District 24 testified as one of the sponsors of HB 1197. See written testimony Exhibit 1.

(Meter 2099) CHAIRMAN HOLMBERG asked him to explain delayed price. Does the farmer has absolute control over when that product is going to be sold, such as three months later, go in get a price for that day? Does the elevator charge a fee for storing that commodity during that time? Does the elevator contact the farmer when the price is determined?

(Meter 2163) REPRESENTATIVE PHIL MUELLER stated there are a number of different ways that it can be handled. The elevator does charge a fee in most cases, charge about 10 cents a bushel, this may vary across the state. In order to enter into a delayed contract determines that 10 cents a bushel. Then you set your price for this at this period of time. There are all kinds of

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10/2/03
Date

Page 2
Senate Appropriations Committee
Bill/Resolution Number HB 1197
Hearing Date 3-19-03

mechanisms that fall into this delayed price categorization. There are fixed bases, open bases, but they are all considered delayed price contracts.

(Meter 2281) SENATOR TALLACKSON stated talking about bonding, why wasn't this bonded? (Meter 2305) REPRESENTATIVE PHIL MUELLER stated the PSC and USDA are dual bonding. State law position is the bonding companies only protect stored grain in that elevator, since then all deferred mechanisms and delayed prices so not all are covered now. The bonds do not protect on a credit sale contract.

(Meter 2468) SENATOR KILZER asked what changes the House made to this bill. (Meter 2487) REPRESENTATIVE PHIL MUELLER stated most changes were housekeeping clean up with two additional changes. One was a language cleanup and the second was a single farmer protected 80% or \$280,00 whatever is less.

(Meter 2645) SENATOR CHRISTMANN ask what happened in the Wimbledon elevator, was it fraud or other problems? How are elevators monitored with all the money and contracts? Do they have a list of all their deferred contracts and what their amounts are? (Meter 2722)

REPRESENTATIVE PHIL MUELLER is also a question he asked and wanted to know how to dot this. Currently the PSC is in charge of collecting commodity funds. This assessment will be handled the same way. There is a fiscal note that has been prepared by the PSC for \$79,000 coming out of this grain indemnity fund. The \$79,000 is going to put a couple of auditors on part time bases going around out in the field, going around to the elevators and looking at their books, what do they have on credit, what is the credit line sales, etc.?

(Meter 2880) SENATOR CHRISTMANN also asked if he makes a contract with a privately owned elevator or coop owned elevator, those are open records to the PSC? (Meter 2911)

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10/2/03
Date

Page 3
Senate Appropriations Committee
Bill/Resolution Number HB 1197
Hearing Date 3-19-03

REPRESENTATIVE PHIL MUELLER responded that in the state of ND, it is law requires that every elevator operating in the state, have a state license. Under that state license, the answer to your questions is yes. He explained what happened to Wimbledon Elevator.

(Meter 3270) SENATOR THANE gave his personal account and explained on how his elevator works. His opinion was that coops are not safe either. REPRESENTATIVE PHIL MUELLER agreed that is exactly why this bill is needed.

(Meter 3513) SENATOR LINDAAS asked when would this get up to full strength? If there was a start up date for this August 1st? REPRESENTATIVE PHIL MUELLER state that is a good question, these are based on numbers that the PSC has rendered to and they have used some ball park figures, there was X number of grain handled in this state in a given year on an average basis. Half of that grain they attached a \$3 value to it, may vary with other grains.

(Meter 3785) SENATOR KILZER asked if there were other areas in the elevator business where farmers or other patrons would be left unprotected? REPRESENTATIVE PHIL MUELLER stated that probably no this may not be the last hole but it is a huge one. He gave an example of a commodity sold unrelated to grain that could possibly be a problem within an elevators business.

(Meter 4023) SENATOR ANDRIST states if it start August 1st, what if an elevator goes under prior to August 1st and there are no funds available? REPRESENTATIVE PHIL MUELLER stated those people will be covered. They will get their money but they won't get it until that assessment comes into that fund.

(Meter 4197) SENATOR ANDRIST asked when you say elevators are doing more things than they use to, will the PSC be able to isolate the areas so the elevator fund does not get jeopardized by other activities conducted by the elevators? REPRESENTATIVE PHIL MUELLER stated it


Operator's Signature

10/2/03
Date

Page 4
Senate Appropriations Committee
Bill/Resolution Number HB 1197
Hearing Date 3-19-03

is his belief that because of the licensure provisions and the requirements of the licensure those books have to be separate from other business activities.

(Meter 4411) SENATOR CHRISTMANN asked if it was ever discussed that the same thing could happen to the cattle business if the sales barns go under? REPRESENTATIVE PHIL MUELLER answered he believed there some mechanism in place. Elevators can currently bond for credit sales contracts if they choose to do so, they are not required to do so by law but they may do so. There are some that have a bonding process in place already.

(Meter 4904) SENATOR KRAUTER made a motion of a DO PASS with a second by SENATOR ANDRIST. A voice vote of 11 yeas, 0 nays and 3 absent passed the bill. SENATOR NICHOLS from the Ag committee will carry the bill.

CHAIRMAN HOMBERG closed the hearing of HB 1197.

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10/2/03
Date

Date: 3-19-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1197

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Krauter Seconded By Andrist

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman	✓				
Senator Bowman, Vice Chair					
Senator Grindberg, Vice Chair	✓				
Senator Andrist	✓				
Senator Christmann	✓				
Senator Kilzer	✓				
Senator Krauter	✓				
Senator Kringstad	✓				
Senator Lindaas	✓				
Senator Mathern	✓				
Senator Robinson					
Senator Schobinger					
Senator Tallackson	✓				
Senator Thane	✓				

Total (Yes) 11 No _____

Absent 3

Floor Assignment Ag Nichols

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

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Operator's Signature

Date

REPORT OF STANDING COMMITTEE (410)
March 19, 2003 1:16 p.m.

Module No: SR-49-5188
Carrier: Nichols
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1197, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed HB 1197, as amended, was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-49-5188

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Danna Holmberg

Date

10/2/03

2003 HOUSE AGRICULTURE

CONFERENCE COMMITTEE

HB 1197

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1197

House Agriculture Committee

☒ Conference Committee

Hearing Date 4--03--03

Tape Number	Side A	Side B	Meter #
ONE	A		00 TO END
Committee Clerk Signature <i>Edward D. Clifton</i>			

Minutes:

VICE CHAIRMAN POLLERT: We will now call the Conference Committee together on HB 1197. The clerk took the roll and everyone was present.

VICE CHAIRMAN POLLERT: It was nice of the Senators to join us this morning. You are probably wondering why we did not concur on the Senate Amendments. I will have Representative Mueller address this matter a little further. It deals with a Supreme Court Case that is from the Wimbelton Grain case. We might also have to have the PSC because I have amendments that we will have to have. What these amendments will do. Those incorporate the Senate Amendments that you put on in the Senate Agriculture Committee with the two hunkered and eighty thousand. On the 3rd page, line 16 so that is incorporated in there. {{PLEASE READ THE BILL AND AMENDMENTS FOR A BETTER UNDERSTANDING OF THE TESTIMONY AND CONVERSATION THAT IS GOING ON.}} The Senate Amendments are on the bill and we like the amendments and then we will have to further amend. At this time I

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Operator's Signature

10/2/03
Date

Page 2

House Agriculture Committee

Bill/Resolution Number HB 1197

Hearing Date 4---03---03

would like to have Representative Mueller speak about that and then at that time we will need the PSC to give us the reason why these amendments are needed.

REP. MUELLER : Thank you Chairman Pollert. This has to do with the Supreme Court and what is going on presently. The court has made no decision on as yet. This suit is basically a group of folks Wimbelton Grain and is going through a process and it ended up with the Supreme Court. The issue before the Supreme Court now and our issue as grain people has to do with the definition claimant. It is legal councils position that in the law it says claimant. It gets foggy as to what a claimant really is. That is the basis for our court case in the Supreme Court. The definition of the word claimant. We want to be considered claimants. Then we would have access to this trust fund from the Wimbelton situation. The problem with 1197 is Simply this, if the Supreme Court rules in Wimbelton Grains favor and in fact identifies us as claimants. Access the trust funds and all that. That then presents a major issue with 1197 Because we reference claimants in 1197. In a nut shell, the solution to that problem is to change the term claimants to receipt holders. If the Supreme Court rules against the Wimbelton Grain we would not have to do any of this. I would have been more then happy with your amendments. There is not a problem with them as far as I am concerned. What Chairman Nicholas did not concur was on our request to deal with this issue with claimant verses receipt holders. In the end if the Supreme Court rules against us. The Wimbelton I am talking. The bill would have been just dandy. We don't know when they are going to rule. We didn't want to leave without that technical change being made. The reason that gets to be kind of significant and I think Mr Binek and Commissioner Clark have to come in as I understand it at least what we have done is if we are successful in the Supreme Court claimant says in here we then have

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Date

10/2/03

Page 3
House Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 4---03---03

exposed and created a situation where the elevators are going to have a dickens of a time, number getting bonds, because they are exposed to a great deal more. The are exposed on this credit sales side. The will also probably getting financing. No one on either side wants to put the elevator people in a hurt bag on that. If it looks like we have the potential of double dipping going on. That is a stretch but it is a concern. With double dipping, we have this grain indemnity fund set in place. The Fed's are at least considering there own version of that. It is not even close to being as good as what we have put in place. They could access this fund and also the Fed. Indemnity fund. We are not asking anyone to do any double dipping.

REPRESENTATIVE POLLERT: So what the amendments would do is tighten up the century code a little.

REP. MUELLER: We make this change and it really dose not change anything. We are still doing what we had intended to do. It is kind of a maybe if kind of if they ruled in our favor. With this claimant issue.

REPRESENTATIVE POLLERT. There is a definition for a receipt but not a receipt holder. There has never been a definition of a receipt holder in the sixty o two point one. {{please again refer to the amendment page one line three etc.

REPRESENTATIVE POLLERT: Lets open this up to the PSC.

COMMISSIONER CLARK: PSC There has never been a problem up until the creation of 6002 with the definition of receipt holders. Because receipt is included in both 6002 and 6002.1 The definition of receipt that excludes credit sales contracts. 6002.1 the term receipt holder Would use and with out a definition everyone concluded that receipt holder is someone holding a receipt. Rep. Mueller explained the issue before the Supreme Court right now is what is the

Page 4
House Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 4--03--03

definition of claimant under section 6002.1 that was put into law in 1989. One of the major problems that the PSC has with the language in this law being the way it is if the Supreme Court rules in favor of the Wimbelton Grain Farmers Group what it does it puts the farmers who deal with Federally license ware house receipts in a more favorable position than farmers who deal with state license warehouses, elevators. You have to keep in mind here there are two types of Warehouse licenses. Federal license and a State License. Right now nobody argues the point that under the state license warehouses, credit sales contracts have no protection. If the Wimbelton Farmers Group prevails in the Supreme Court the result of that would be that farmers who sell grain at Federally licensed warehouses will have additional protection because they will have protection of the trust fund in addition to any other protection they might have. Farmers dealing with state license warehouses do not have that protection. So you have an unequal situation. We don't think that is what the legislature wanted to do in 1989 when it created 6002.1. The purpose for creating 6002.1 is so that farmers dealing with Federally licensed warehouses had the same protection as state licensed warehouses. That is the dilemma. We are hoping that the Supreme Court will rule so we know where we are at. We are coming to the end of the session and we don't have a rule from the Supreme Court as yet. So this would take care of that inequality between licensed warehouse facilities and farmers dealing with those license.

COMMISSIONER CLARK: That is the key point always the differences here when we talk about claimants verses receipt holders. When the Federally licensed grain buyers license was created by the legislature they used the word claimant. For what ever reason. So that created a

Deanna Hall
Operator's Signature

10/2/03
Date

Page 5

House Agriculture Committee

Bill/Resolution Number HB 1197

Hearing Date 4-03-03

difference in the word they used compared with the state license which is the word receipt holder.

That is kind of what the whole Supreme Court case is resting on. The problem, if the Supreme Court finds in the Farmers Group favor is that then you have that inequality. The credit sales contracts farmers who sell to Federally Licensed Elevators would have protection credit sales contracts farmers who sell to state warehouses would not have protection when you create The indemnity for both then it even makes the problem worse. No only would credit sales contract farmers sell to Federally licensed elevator's have access to the trust fund but they would also have access to the indemnity pool. We would kind of liked it if the Supreme Court would have ruled by now so we would know exactly if we need those amendments or not. It is better to be safe then sorry. We would hate to have the bill pass as is and then a day or two after the legislature adjourns the supreme court comes out and changes the rules. Then for two years have that inequality. Any farmer would certainly be better off with trading with the Federally Licensed facility. With regard to bonding companies, the concern would be that bonding companies if the trust fund is open to credit sales contracts. The farmers selling to Federally licensed elevators would have greatly expanded liability.

COMMISSIONER CLARK: Receipt is defined in state law so receipt holders is

In that definition it included warehouse receipts and scale tickets and everything that the legislature intended to have covered specifically sales contract are not receipts. Claimant is not defined anywhere really that is what the court case is hinging on is that these Wimbelton farm group attorneys because claimant is not defined therefore credit sales contracts holders are

Page 6
House Agriculture Committee
Bill/Resolution Number HB 1197
Hearing Date 4-03-03

claimants that are legally entitled to the trust fund. So by changing everything to receipt holders

It would make definitive the legislatures intentions that the folks are to be covered by the Trust fund and bonds are warehouse receipts.,

There is a plus and a minus to emergency clause. The plus would be if you don't have it in there

You are taking a chance. If there was another Wimbelton situation between now and August

First potentially you are back in the same trouble what we have right now. You also have

Potential that the supreme court decides the Wimbelton farmers group you also have a potential

that the court decides for the Wimbelton farmers group. You also have a potential if the

supreme court decides for the Wimbelton farmers group and you don't have an emergency

clause on there the banks and bonding companies could become very skittish between now and

Aug. First. That is the plus side.

HB 1197 WAS AMENDED.

VICE CHAIRMAN DID A ROLL CALL AND THERE WERE 6 YES AND 0 NO

THE SENATE AMENDMENTS WERE ADOPTED THERE WERE 6 YES AND 0 NO

CHAIRMAN POLLERT CLOSED ON HB 1197

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Dan Pollert
Operator's Signature

10/2/03
Date

30137.0302
Title.0500

Prepared by the Legislative Council staff for
Representative Pollert
April 3, 2003

Conference Committee Amendments to Engrossed HB 1197 - 04/03/2003

That the Senate recede from its amendments as printed on page 984 of the House Journal and pages 795 and 796 of the Senate Journal and that Engrossed House Bill No. 1197 be amended as follows:

Page 1, line 3, after the first comma insert "60-02.1-29," and after the second comma insert "60-02.1-31, 60-02.1-32, 60-02.1-33, and 60-02.1-34, subsection 3 of section 60-02.1-35, and sections 60-02.1-37,"

Page 1, after line 10, insert:

"SECTION 2. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-29. Appointment of commission. Upon the insolvency of any licensee, the commission shall apply to the district court of Burleigh County, ~~North Dakota~~ for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. Upon notice to the licensee as the court ~~shall prescribe~~ prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the ~~claimants~~ receivetholders that the commission secure and execute the trust, the court shall issue an order granting the application, without bond, and the commission shall proceed to exercise its authority without further direction from the court.

Upon the filing of the commission's application, the court may issue *ex parte* a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application."

Page 1, line 14, remove "noncredit-sale" and overstrike "claimants" and insert immediately thereafter "noncredit-sale receivetholders"

Conference Committee Amendments to Engrossed HB 1197 - 04/03/2003

Page 2, after line 8, insert:

"SECTION 4. AMENDMENT. Section 60-02.1-31 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-31. Joinder of surety - Deposit of proceeds. Each surety on the insolvent licensee's bonds must be joined as a party to the insolvency proceeding. If it is in the best interests of the ~~claimants~~ receiptholders, the court may order a surety to deposit some or all of the penal sum of the bond into the trustee's trust account pending determination of the surety's liability under the bond.

SECTION 5. AMENDMENT. Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-32. Notice to ~~claimants~~ receiptholders. Upon its appointment, the commission may take possession of relevant books and records of the licensee. The commission shall publish a notice of its appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, ~~potential claimants~~ the holders of record of outstanding receipts disclosed by the licensee's records. The notice must require ~~claimants~~ outstanding receiptholders to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If a ~~claimant~~ an outstanding receiptholder fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the commission, the commission is relieved of further duty in the administration of the insolvency on behalf of the ~~claimant~~ receiptholder and the ~~claimant~~ receiptholder may be barred from participation in the trust fund. ~~Claimants~~ Outstanding receiptholders are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 6. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-33. Remedy of ~~claimants~~ receiptholders. No ~~claimant~~ receiptholder has a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other ~~claimant~~ receiptholder, except through the trustee, unless, upon demand of five or more ~~claimants~~ receiptholders, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. ~~Provisions of this chapter do not~~ This chapter does not prohibit any ~~claimant~~ receiptholder, either individually or in conjunction with other ~~claimants~~ receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 7. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. Commission to marshal trust assets. Upon its appointment, the commission shall marshal all of the trust fund assets. The commission may maintain suits in the name of the state of North Dakota for the benefit of all ~~claimants~~ receiptholders against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

SECTION 8. AMENDMENT. Subsection 3 of section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

3. Settle and compromise any action when it will be in the best interests of the ~~claimants~~ receiptholders.

SECTION 9. AMENDMENT. Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-37. Report of trustee to court - Approval - Distribution.

1. Upon the receipt and evaluation of claims, the commission shall file with the court a report showing the amount and validity of each claim after recognizing ~~relevant~~:
 1. ~~Liens~~ Relevant liens or pledges.
 2. ~~Assignments~~ Relevant assignments.
 3. ~~Deductions~~ Relevant deductions due to advances or offsets accrued in favor of the licensee.
 4. ~~d.~~ In case of relevant cash claims or checks, the amount of the claim, with interest from the date of default at the weighted average prime rate charged by the Bank of North Dakota.
2. The report must also contain the proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of the insolvency. If the trust fund is insufficient to redeem all claims in full, the report should list the funds as prorated.
3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the commission's report should not be approved and distribution of the fund be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the licensee and the surety and by ordinary mail upon all ~~claimants~~ persons having claims filed with the commission.
4. Any aggrieved person having an objection to the commission's report shall file the objection with the court and serve copies on the commission, the licensee, and the surety at least ten days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust."

Conference Committee Amendments to Engrossed HB 1197 - 04/03/2003

Page 3, line 24, replace "Act" with "chapter"

Page 3, line 27, remove "section 1 of" and replace "Act" with "chapter"

3 of 4

30137.0302

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10/2/03

Conference Committee Amendments to Engrossed HB 1197 - 04/03/2003

Page 4, line 16, replace "fifty" with "eighty"

Page 4, line 22, replace "Act" with "chapter"

Page 4, line 25, replace "Act" with "chapter"

Conference Committee Amendments to Engrossed HB 1197 - 04/03/2003

Page 5, line 3, remove "section 1 of" and replace "Act" with "chapter"

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number HB 1197 (, as (re)engrossed):

Your Conference Committee HOUSE AGRICULTURE COMMITTEE

For the Senate:

For the House:

SENATOR ERBELE	YES	REPRESENTATIVE POLLERT	YES
SENATOR URLACHER	YES	REPRESENTATIVE UGLEM	YES
SENATOR NICHOLS	YES	REPRESENTATIVE MUELLER	YES

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/H) page(s) 984 -- 985

and place on the Seventh order.

X, adopt (further) amendments as follows, and place 1197 on the
Seventh order:

having been unable to agree, recommends that the committee be discharged and a
new committee be appointed.

((Re)Engrossed) was placed on the Seventh order of business on the calendar.

4-303
DATE: 4/4/03

CARRIER:

REP POLLERT

LC NO. of amendment	30137	0302
LC NO. of engrossment		
Emergency clause added or deleted		
Statement of purpose of amendment		

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REPORT OF CONFERENCE COMMITTEE (420)
April 3, 2003 4:19 p.m.

Module No: HR-60-6711

Insert LC: 30137.0302

REPORT OF CONFERENCE COMMITTEE

HB 1197, as engrossed: Your conference committee (Sens. Erbele, Urlacher, Nichols and Reps. Pollert, Uglem, Mueller) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 984-985 and place HB 1197 on the Seventh order.

That the Senate recede from its amendments as printed on page 984 of the House Journal and pages 795 and 796 of the Senate Journal and that Engrossed House Bill No. 1197 be amended as follows:

Page 1, line 3, after the first comma insert "60-02.1-29," and after the second comma insert "60-02.1-31, 60-02.1-32, 60-02.1-33, and 60-02.1-34, subsection 3 of section 60-02.1-35, and sections 60-02.1-37,"

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REPORT OF CONFERENCE COMMITTEE (420)
April 3, 2003 4:19 p.m.

Module No: HR-60-6711

Insert LC: 30137.0302

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Renumber accordingly

Engrossed HB 1197 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

HB 1197

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Dennan Hall
Operator's Signature

10/2/03
Date

H.B. 1197

Presented by: Jon Mielke, Executive Secretary
Public Service Commission

Before: House Agriculture Committee
Eugene Nicholas, Chairman

Date: January 23, 2003

TESTIMONY

Mr. Chairman and committee members, my name is Jon Mielke. I am the Public Service Commission's executive secretary. I also serve as the director of the Commission's Licensing Division. The Commission supports this bill.

Four years ago, the Commission approached the Legislature concerning the risks associated with credit-sale grain contracts. We explained that the use of these instruments had grown dramatically. In the early 1980s, probably less than 10% of all grain sold was via credit-sale but by the late 1990s we estimated that they accounted for between 40 and 60% of all sales. We believe that this trend has continued.

It is important to note that credit-sales contracts are not entitled to protection in insolvency proceedings unless the warehouseman has obtained a separate bond to cover them. There are very few of these bonds in place at the present time.

Last year's Wimbledon Grain insolvency case brought the credit-sale issue to center stage. In that case, the warehouse owed

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10/2/03
Date

patrons over \$1 million for grain that they had sold via some form of credit-sale contract. If the provisions of HB 1197 had been in place, those farmers would have received at least some degree of protection.

Mr. Chairman, at the request of some of the bill's sponsors, I will briefly walk through each section of the bill to describe its intent.

Sections 1-4 of the bill propose to amend existing language in Century Code Chapters 60-02.1 and 60-04. Revisions are being proposed to statutes that govern insolvency proceedings involving state licensed grain warehouses and federally licensed warehouses that also have state grain buyers licenses.

The intent of these changes is to make the provisions of these chapters identical so farmer will have the same protections, regardless of which kind of elevator they are dealing with. These changes also clarify that these particular insolvency protections will apply only to noncredit-sale transactions. The creation of new protections for credit-sale patrons are set forth in Section 5 of the bill.

Section 5 establishes a farmer-financed credit-sale contract indemnity fund. A fee of 2/10ths of 1% of the value of all credit-sale transactions would be assessed against all contracts. Upon final settlement, funds would be deducted from the value of the contract and the warehouseman would remit payment to the state. Farmers who do not use credit-sale contracts would not pay into the fund. It is, basically, a form of mandatory self-insurance for credit-sale sellers.

The fund would be allowed to increase in size until it reached \$10 million. At that time, remittances would cease. They would not

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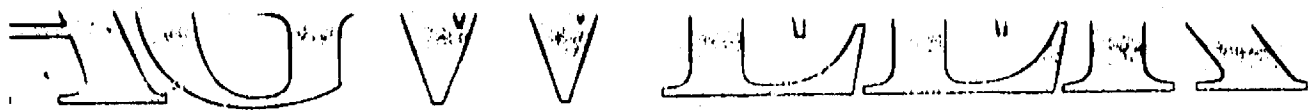
start again unless the fund's balance dropped below \$5 million. All interest earned by the fund would stay in the fund.

Fund monies would be used to pay valid credit-sale claimants in insolvency proceedings. The fund would also be used to pay related costs incurred by the Commission. Non-insolvency costs are expected to be about \$79,000 per biennium. These costs would include things such as developing a program management plan and related computer programs, receipting and depositing funds, conducting compliance audits, etc. Payments to individual claimants in insolvency cases would be limited to 80% of the value of the claim but not over \$100,000.

Twelve states currently use indemnity funds to provide protection to farmers in insolvency cases. In some states, they are used in place of bonds while in others, as is being proposed here, they are used in conjunction with bonds. Nine of these states provide at least some degree of protection for credit-sale patrons.

Providing protection to credit-sale contract patrons is truly a policy decision. The Commission and the bill's sponsors have been very upfront with the farm community on this matter. We have consistently told folks that they need to decide whether or not these transactions should be protected. If they should, farmers need to decide how they want to pay for it. If they don't want protection or if they are not willing to pay for it, this bill should be killed.

Mr. Chairman, we are very appreciative of the work done by the bill's sponsors to get it to this point. We would be happy to respond to any questions that you may have.



COVER STORY

Bank robbery?

Wimbledon Grain Co. argues insolvency while patrons worry

By Mikkel Pates
Agweek Staff Writer

WIMBLEDON, N.D. — Wimbledon (N.D.) Grain Co. is technically insolvent. That's a fact, say officials of the U.S. Department of Agriculture's Farm Service Agency and the North Dakota Public Service Commission. They met with more than 220 tense patrons in the Wimbledon Community Hall Jan. 22 to discuss the issue.

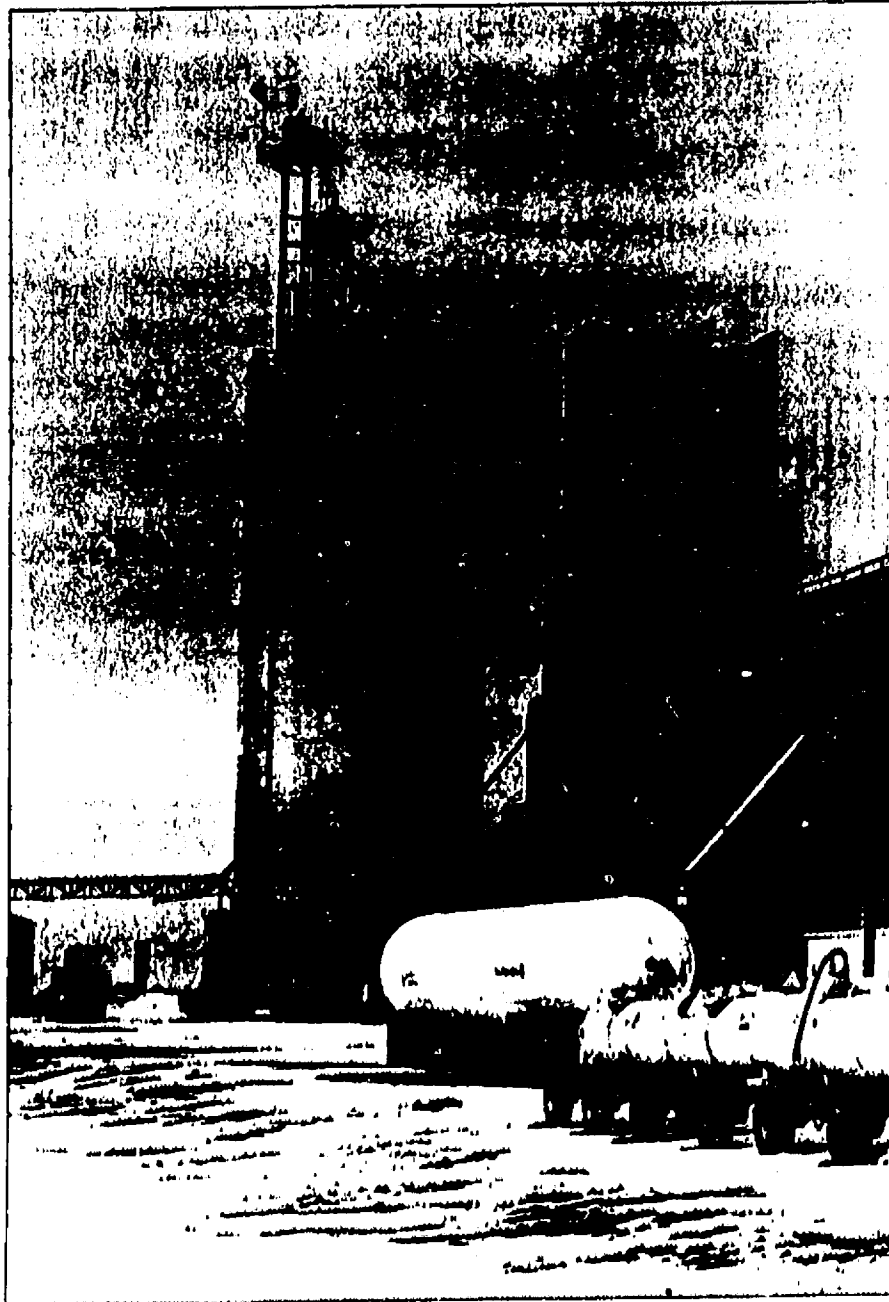
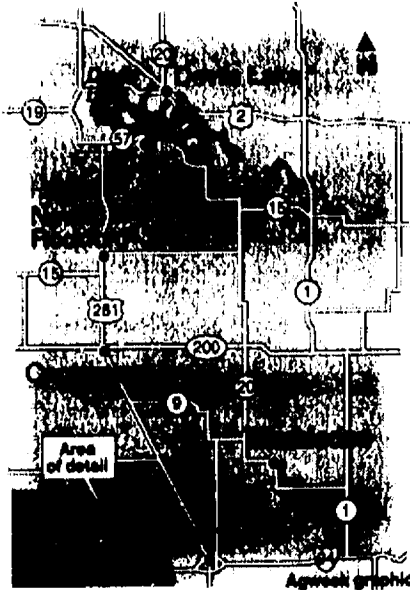
Still, it's unclear what the insolvency means for farmer-patrons. Of particular issue is how much they'll receive on their "deferred" or price-later contracts for which there is no protection.

Gerald Hoggarth, an owner and primary manager of the elevator, came forward at the start of the Jan. 22 meeting. Hoggarth, who recently has suffered health and other personal problems, says his company is, in fact, solvent — that everyone will be paid in full. He didn't say when.

It was a repeat of a Jan. 4 letter

■ **WIMBLEDON:** See Page 36

► Wimbledon (N.D.) Grain Co. is owned by members of the Hoggarth family and includes two sites — this 1.4 million-bushel facility in Wimbledon, and a 1.1 million-bushel site in nearby Leal, N.D. The company is facing stiff competition from 110-car shuttle loaders, such as a Peavey (ConAgra) site at nearby Jamestown, N.D., and a Benson-Quinn site to be completed in nearby Rogers, N.D.



Mikkel Pates, Agweek staff

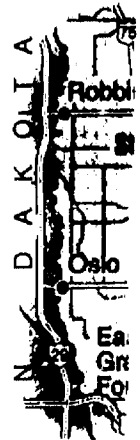
Cautious optimism

■ Minnesota leader, economist

By Mikkel Pates
Agweek Staff Writer

STEPHEN, Minnesota, on the pulse of the growers, it would be

Halfmann grows 430 acres of beets and has been the president of the Red River Valley Sugarbeet Growers Association since 1999. the board of the association farmers who are growing American Crystal Sugar. Halfmann often let he is in close touch



■ **CAUTION:** See Page 36

INSIDE

Calendar.....
Cash Grain.....
Classified Ads.....
Cowboy Logo.....
Last Week's Prices.....
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WIMBLEDON

led from Page 28

he'd sent to patrons where he described the elevator's problems as simply a cash flow problem.

"The factors to resolve this issue are already in place and we would like to assure you that all of our liabilities will be paid," Hogarth wrote.

There essentially are three classes of debt:

■ Those who hold title to grain that is stored by the elevator, covered by a federal license and backed by a \$540,000 bond.

■ Those who sold grain to the elevator on a "cash" basis but haven't been paid. These are covered by a state license and backed by a \$400,000 bond.

■ Those who sold grain on "credit sales," for delayed pricing or deferred payment. These are protected by no bond, but still are subject to civil protection.

As of late last week, there were no official figures. Preliminary indications, accumulated by some farmers and their lawyers, show that 140 farmers are somehow affected. Of that, unofficial estimates are 53 contract holders are owed some \$1.5 million in the last category of unsecured debts.

Of particular interest in all of this is \$500,000 in disputed funds now being held by Cargill, presumably to pay for grain delivered by the elevator to Cargill, probably in December. This is seen as the trigger that caused the problems.

It isn't clear whether other assets of the company and its owners might be used to pay the bills, but Hogarth's statements offer some hope. Ultimately, any payments made under federal rules would not be eligible for interest payments. Reimbursements under state rules could include interest if there are sufficient funds.

Many of the patrons say they're most angry with a local chain of banks for trying to seize \$500,000 they believe is the result of credit sales that they think belong to the farmers. They wonder why this was done when a significant number of the payments are not covered by a bond.

The lien protects the bank while spreading the impact of a troubled loan account over innocent people and forcing regulatory action that makes matters worse.

"Some people are calling this bank robbery, where the bank isn't being robbed," says Dale Reimers, a Jamestown, N.D., farmer and patron of both the elevator and the banks. "The Hogarths have honored their payments. I believe we're going to be paid, but it's just going to take time."

What happened

Wimbledon Grain Co. is owned by the Hogarth family. Four brothers — Gerald, Kenneth, Thomas and Duane — are longtime farmers who have built a business of more than 30 years and control significant land holdings in the area — roughly 65 quarters in North Dakota's Stutsman, Barnes and Griggs counties.

The elevator includes a 1.4 million-bushel facility in Wimbledon, a town of 300 people, the second-largest town in Barnes

North Dakota Grain warehouse insolvencies — Jan. 2002

Warehouse name and location	Insolvency date	Grain claims	Payment
Wimbledon Grain Co., Wimbledon	01/15/02	\$1,500,000	0%
Custom Processors Inc., Anselm	08/22/00	—	—
Valley Grain Co., Valley City	08/11/00	\$1,000,000	0.00%
* Goose River Feed Co., Blanchard	03/31/98	\$144,983.36	8%
Steele, a partner, Steele	02/01/00	\$1,000,000	100%
Dee Loe Grain Co., Dee Loe	01/24/99	\$134,843.33	100%
Chapman, a partner, Chapman	10/01/00	\$1,000,000	100%
Farm Marketing Board Ltd., Eddy	07/14/99	\$308,770.08	99%
Woods, a partner, Woods	04/15/00	\$1,000,000	100%
Dawn Enterprises (a N.D. limited partnership), Wadena	10/05/97	\$488,874.20	39%
Binford Grain Co., Binford	08/11/00	\$1,000,000	100%
Binford Grain Co., Binford	11/28/98	\$5,980.73	100%
Leah, a partner, Leah	08/11/00	\$1,000,000	100%
Zealand Farmers Union Co-op., Zealand	08/11/99	\$8,028.73	100%
Zealand Farmers Union Co-op., Zealand	08/11/99	\$1,000,000	100%
Hutton Commodities Inc., Hutton	08/08/98	\$132,849.00	99%
National Sun Industries, Enderlin	08/27/94	\$1,078,288.88	79%
Central States Grain, Anselm	07/27/93	\$188,637.40	100%
Valley Farmers Bean Association, Portland, Gibby and Budon	10/22/92	\$408,117.88	100%
Ameria Seed and Grain, Ameria	09/04/98	\$379,473.38	100%
Farmers Grain Co., Bowdon	04/16/78	\$151,954.72	77%

* Goose River Feed Company was operating without a grain warehouse license.

** 100% — they proceeded in process.

Source: North Dakota Public Service Commission

Agweek graphic

the bank in New Rockford, N.D., and his brother, Mark Brown, at the original bank in Hannaford, N.D., where the bank was started. A part owner is brother-in-law Steve Steinborn at the bank in Jamestown, N.D. The bank group includes the North Dakota towns of Hannaford, Wimbledon, New Rockford, Jamestown, Carrington, Coopersburg and recently Valley City.

Tom Watson, senior vice president of the bank, declined comment on the Wimbledon Grain matter, citing customer confidentiality.

According to elevator patrons, it generally is known the elevator business has become more difficult in the past few years. Most prefer to point to the era of the "shuttle" trains that quickly load up to 110 cars at lower freight rates. The "biggie" is a

served by the Canadian Pacific Railroad and is capable of loading 62-car trains, but usually loads 28 cars.

Still, there was no warning. Federal warehouse auditors had visited Wimbledon operation in October but found nothing out of place to indicate an insolvency, regulators say. Of course they were not looking for insolvency. Largely, the audit is a process of measuring grain and not a fiscal audit. They get a financial statement every 12 months, but one was not due until the end of the year.

"It boils down to a financial problem," says Terry Chapman, the Farm Service Agency examiner who has taken over control of the grain inventory. It was the payment interruption that brought in the regulators to protect the public that each

gone into an elevator account, but it didn't because the bank called Cargill and tried to put a lien on it. Soon, elevator checks to farmers began bouncing.

Federal regulators say they had contacted Cargill to ask it not to send the \$500,000 to anyone — neither the bank nor the elevator — until it was clear where it should go. Chapman says he was trying to include the money in the federal cache, used to pay only secured debtors. In an insolvency, the grain and proceeds from any grain commingled. Regulators secure all of them for the benefit of secured grain patrons — not the credit sale patrons.

"We both want to do the best we can to get as much money as possible back to eligible grain claimants," says Jon Mielke, executive secretary for the North Dakota Public Service Commission.

Federal interest

The federal bond protects farmers who still hold title to grain in the warehouse. One group is farmers who have taken out federal commodity loans through the FSA's Commodity Credit Corp. and are simply storing this grain in the warehouse. Others include those who might have delivered grain to the warehouse and not yet taken any action concerning its sale.

The bond is up to \$500,000. A year ago, Wimbledon Grain actually added nearly \$40,000 in bond coverage, a situation usually spurred by financial shortcomings.

The FSA suspended the elevator's federal license Jan. 14, preventing Wimbledon Grain from buying or selling grain.

Chapman and his examiners measure the grain inventory to make sure it's all in place. They've found the grain is largely all there — both in quality and quantity, Chapman says. The next step is to sell the grain inventory and pay off patrons who still have title to their grain. These customers will be paid based on local market prices Jan. 14. If revenue from those sales aren't enough to cover those debts, the \$540,000 bond could apply.

In the unlikely event the grain revenue (maybe including the \$500,000) and the bond aren't sufficient, farmers would receive reduced payments on a prorated basis, Chapman says.

Chapman says his agency is looking to attach the \$500,000 so as to "not draw on the bond." This raised the ire of some farmers in the crowd who asked whether the \$500,000 shouldn't instead pay the credit sale customers. After the meeting, farmers said the bond isn't like an insurance payment. After bond payments are made, the bond company goes after the elevator for compensation — even from other assets.

State interests

In cases where there is both federal and state licensure, the state protects only patrons who have sold grain in the warehouse on a noncredit sale basis and who have not yet been paid.

Mielke, the PSC's executive secretary, says inventory grain is the first choice to cover these debts. If the sale of grain isn't sufficient to cover those debts, a \$400,000 bond could pay the difference.

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Operator's Signature

Date

STORY

any payment it makes. The PSC has petitioned the South Central District Court in Burlington County, N.D., to be named trustee. The company waived a right to hearing, so the trustee designation was expected to happen soon.



Jan Mielke, executive secretary, North Dakota Public Service Commission.

PSC and USDA will liquidate the grain assets and put them in a trust account. At the same time, the government agencies will publish a legal notice and make direct contact with elevator patrons, telling them to file claims and documents with the PSC or with Chapman at the elevator. The state requires two legal notices. Farmers must file their claims within 45 days of the second notice — roughly 60 days. Ultimately, the PSC will recommend to District Court its proposal for distributing grain-related assets and the court gives the PSC directions to distribute.

For those covered, checks might be cut in 90 to 120 days.

And then there's a significant number of credit sales contracts on the books.

Everyone else

Farmers who have signed "valid" credit sales contracts are in a high-risk situation. Credit sales contracts essentially are purchase agreements in which the parties agree payment will be made "more than 30 days after grain is delivered, or released." Grain brought into the elevator in mid-December, for example, but with payment to be "deferred" until Jan. 2 is a "deferred-payment contract," but not a credit sales contract because it is not 30 days, Mielke says.

Under credit sales, farmers legally, technically, hand over "title" to their grain to the elevator and agree to set a price later. Grain belongs to the elevator as surely as a title to a vehicle was signed over to another person. One common form is delayed price sales in which the farmer delivers at harvest or some other time with an eye toward setting a price later — perhaps months later.

Deferred payment sales are those in which a farmer delivers grain to receive an established price with payment later — often after Jan. 1 to shift income from year to year to smooth out income to avoid excessive income tax burdens.

In either case, farmers have signed away their bond protection.

"If you look at your (credit sales) contract, it should be in bold print immediately above the signature block," Mielke told the farmers. "The contract means exactly what it says."

Ironically, some farmers who thought they entered into credit sales but somehow didn't sign them or make them legal, may be protected from losses by the bond. Regulators are looking for these cases and will evaluate whether the farmer intended to enter the contracts.

Nongrain matters

Beyond the grain issues are nongrain elevator services and debts. Neither the FSA nor the PSC have jurisdiction over these.

While financial details are being worked out, farmers owed money await payment decisions

WIMBLEDON, N.D. — Mike Clemens wants his money. He is one of dozens of farmers owed money by the Wimbledon (N.D.) Grain Co.

"It sure appears that the bank positioned itself in front of the farmers that are owed the price later and deferred contracts," Clemens says. "This is the same bank the farmers also work with for farm operating and machinery loans."

Clemens, a Wimbledon farmer, is also president of the North Dakota Corn Growers. He's been told that 30 farmers are owed an average of \$87,000 each on "price-later" contracts. These don't initially set a price, but farmers typically set a price within three to six months, depending on the contract.

Clemens' information is that 24 farmers are owed an average of \$39,000 each for deferred contracts. In these, an initial price is set, but payment is delayed until a later date, usually after Jan. 1.

Some farmers in those groups have considerably more than the average, others significantly less, Clemens says.

Although the numbers supposedly came from government sources, neither federal nor state officials could immediately confirm that. Officials acknowledge that such numbers are out there, but examiners still are sorting them.

"I've got some in both categories," Clemens says. "We don't know if we're going to get paid for it. As of right now, we're listed as an unsecured creditor on both of those accounts."

Clemens says he's sure some people will wonder why farmers enter into these delayed or deferred-price contracts.

"It allows us to balance our income from year to year," he says, and allows farmers to market grain orderly when prices aren't favorable. □

— Michael Potos



A Mike Clemens of Wimbledon, N.D., says he's on the hook for both delayed-price and deferred payment grain contracts at Wimbledon Grain Co. and wonders about the timing of a bank lien that forced the elevator into insolvency.

For example, some farmers who have "prepaid" for 2002 fertilizer may be in limbo, but nobody knows. The elevator also may have significant debts for fertilizer they have purchased.

Mielke says farmers with these debts can pursue them through "civil" channels. That means in a lawsuit, either in court or out of court.

Mielke acknowledges that the company may have land or other assets that can be "pulled in" to pay the nonregulated debts, but so far, they technically are insolvent.

Beyond their unpaid debts, patrons worry about the viability of the elevator, especially because of the new shuttle train loaders. The elevator isn't technically closed. It technically is free to do grain

cleaning and other nongrain-trade business until the licenses should be reinstated.

If the company were to file for protection from its creditors in U.S. Bankruptcy Court — and nobody says it will — then the whole process would change, Mielke says.

"The bankruptcy court could step in and oversee the sale of the assets. Then we'd be making recommendations to the bankruptcy court," Mielke says. "They would decide on dispositions of all assets, not just grain. We would stay interested if that's how things unfolded."

Future fixes

It isn't clear how — or whether — farmers can be protected in the future. Credit sales contracts have been around since at least the 1930s, but recently have gained in popularity.

A PSC survey years ago found that half of the grain sales then were covered by credit sales contracts. Reasons for the increase are manifold: Farmers with thin profit margins use the flexibility in marketing to gain an edge of pennies per bushel; farmers use them for tax planning; elevators use them to take title to grain that they must amass to fill ever-larger trains of 80 to 110 cars.

"Grain elevators often need to purchase transportation several months in advance. They're committed to having grain on hand when the train arrives to do that. They have to hold title to large portions of grain in their facility."

Everybody likes credit sales deals until an elevator becomes insolvent. No one wants to accept the risk or the cost of risk when the farmers are willing to become unsecured creditors.



State Rep. Phil Mueller, D-Wimbledon, a patron of the Wimbledon Grain Co., says the Legislature may need to move to protect farmers involved in credit sales contracts.

State Rep. Phil Mueller, D-Wimbledon, a member of the House Agriculture Committee, was at the meeting as a patron. He only would say that his personal exposure is "significant on the credit sales contract side."

Like others in the crowd, Mueller says farmers "can't live" without protection from these situations.

"We tried this two sessions ago, to alleviate exactly the problems we're here talking about," Mueller says. "At that time, there didn't seem to be a lot of will to get it

done. I suspect if you put it to a vote in this group today, you wouldn't have too much trouble. But we do have a project of convincing the rest of the state Legislature we have to get some form of credit sales protection.

"I think if the truth would be known, there are probably a whole lot of operations in the state that aren't that far from being exactly in the same position — using that money to operate on and hoping it's there come Jan. 1 when we all hike in there and try to get our deferred contracts or delayed prices taken care of. In this situation, it wasn't there."

Some elevators are bonded for deferred and delayed contracts, Mueller says. "Some co-ops are especially good at that," he says. "They are run by farmers and do not want to be in a position to not be able to pay their deferreds and delayed."

Among the potential fixes:

■ An indemnity fund, funded partially by farmers themselves. The state would raise a certain amount of dollars and deplete it whenever an insolvency arises. "I'm not horribly comfortable with that approach."

■ WIMBLEDON: See Page 37.

REGIONAL NEWS

Regulations to clobbered

The livestock feed industry went up against the cattle industry easily won. The South Dakota Legislature wanted to loosen state guard against an outbreak in South Dakota. A law put into place last year. Agriculture Department. Livestock feed are all the law. The law gives the authority to enact strict livestock feed. Those manufacture, storage and containing cattle regulators say the regulation. Testifying in favor of a law, they say federal regulation of the cattle industry. A South Dakota Stockgrowers group has no qualms on the feed business. Regulations are flexible. Hollenbeck. Affidavits have not been given. Products must be sold their cattle, the law says. That makes it difficult to have stiff labeling for feed, Hollen-

□□□

Speakers headline marketing conference

Minnesota Department of Agriculture is holding a one-day marketing conference and processors Feb. 27-28 at the Civic Center. Featured speakers include Carrie Schnepf, North American Farmers' Director; Bob Chorney, Farmers' Market Organization of Cooperative Development. Attendees can choose from a variety of topics which runs from 9 a.m. to 5 p.m. Workshops are business plan development, entertainment, farmers' markets. Advance registration is \$30 per person. Registration at the door is not guaranteed. Lunch is not guaranteed. www.state.mn.us/da Minnesota Grown Producers. 5510.

□□□

Options for sustainable ag benefits for farmers

Minnesota Department of Agriculture has increased the amount of money available this year for farmers seeking improvements. The program provides loans to Minnesota farmers to become more economically and socially sustainable through purchases and projects. www.state.mn.us/da

WIMBLEDON

Continued from Page 29

■ Bonds. These could cover shortfalls but are "horribly expensive" for elevators to purchase. Three years ago, the cost for bond coverage was estimated at 5 to 7 cents per bushel.

"It was pretty onerous, pretty tough," Mueller says of this option. "It was one that I wasn't particularly interested in, as a producer."

■ An escrow fund. This also was discussed by the Legislature. When a farmer hands over his grain on a deferred con-

tract, say, in October, the elevator must put some percentage — maybe 50 percent to 100 percent — fund and can't be used by the elevator to pay other bills.

"I think that'll be the approach used in the next session," Mueller says. "The Legislature looked at all the options, looked at how much problem it has had in the past and did it warrant scrutiny. At that time, I'll speculate they considered the problem not that great. This situation may cause them to rethink that."

One of the major opponents of efforts the last time around was the North Dakota Grain Dealers Association. □



▲ More than 220 farmers gathered Jan. 22 at the Wimbledon (N.D.) Community Hall to hear how an insolvency will affect their accounts with the elevator.

Mikkel Pates, Agweek staff

terms, on-farm processing equipment, on-farm energy production, equipment for alternative weed and soil management, composting facilities and breeding livestock. Every financed project will have a fixed interest rate of 6 percent. The loans will have a five-to-seven year duration. Minnesota Agriculture Commissioner Gene Hugoson says this program allows farmers to meet consumer demands and increase overall profitability. Information: Wayne Monsen at (651) 282-2261 or write Sustainable Agriculture Program, Minnesota Department of Agriculture, 90 W. Plato Boulevard, St. Paul, Minn. 55107.

□□□

North Dakota dairy cow college scheduled

■ FARGO, N.D. — The North Dakota dairy cow college will be held at sites across the state Jan. 28 to Feb. 1. The program is a shared effort of the Midwest Dairy Association and the North Dakota State University Extension Service. Meetings will open at 11

Minot and Feb. 1 at the Eagles Club in Jamestown. Information: NDSU Extension Service in one of the counties hosting the college or J.W. Schroeder at (701) 231-7663.

□□□

St. Paul ethanol plant misses noise standard

■ ST. PAUL — Gopher State Ethanol in St. Paul apparently has missed the first deadline set by the city to reduce the noise coming from the West Seventh Street plant, the subject of an ongoing lawsuit by neighbors. The city and the company settled their part of the suit late last month, when the ethanol plant — one of three companies operating at the old Schmidt brewery — agreed to step down noise and odor emissions. But attorney Mike Unger, who represents a group of nearby residents, says the company hasn't complied with the agreement to quiet the plant and that they are taking the company back to court. "It's the highest reading since we got involved in the lawsuit in August," Unger

there was malfunctioning and sin attended to, according to Lee. He the facilities were in compliance with the 4 deadline to reduce noise levels below, and that an independent noise recommended by the city, found party was otherwise meeting its City attorney Eric Larson, who was settlement, also says he is aware suits from the noise testing but is mature to say the plant was in violation of the agreement, approved by the Dec. 26.

□□□

Lawmaker pushes for inv. into unfair dairy imp

■ WASHINGTON — Sen. Mark Dayton, Minn., is calling on two key Congress committees to push for an investigation into how unfair dairy imports are hurting farmers in Minnesota and the rest of the country by pushing down already in a letter to Senate Finance Committee Chairman Max Baucus, D-Mont. Ways and Means Committee Chairman Thomas, R-Calif., Dayton pressed committees to petition the International Commission to investigate the price foreign producers who slightly a dairy products to get around U.S. tariffs. Currently, Dayton says, milk concentrate is not subject to the same requirements of other dairy products. Importers have begun exploiting this by blending previously processed proteins, such as casein and whey, with dry milk to boost its protein content and qualify as MPC, he says. The dairy blends are being imported into the market in ever-increasing amounts, lowering prices for U.S. dairy farmers. Dayton introduced a bill designed to close the loophole being exploited by producers by regulating MPC imports in the same manner all other dairy products are regulated. Dayton's dairy trade law is being reviewed by the Senate Committee, would thus correct trade law that is contributing to dairy prices in Minnesota and the country.

□□□

Administration delays d complaint about Canac

■ WASHINGTON — The Bush administration has delayed a decision on whether to raise trade tariffs against Canada or American wheat farmers. U.S. Representative Robert Zoellick was expected to make an announcement Jan. 27 to side with North Dakota wheat farmers in their complaint against Canadian trade actions. However, Zoellick is postponing a decision until after he has reviewed hundreds of pages of commercial issues involved in the trade dispute.

2002 10 03

Eric	Bartsch	American Renewable Oil Association	Bismarck	ND	58503	701-222-3221
Charles	McKay	Federation of Farm Credit Services	Bismarck	ND	58501	701-222-2406
Anderson	Dale	GND	Bismarck	ND	58502	701-222-0929
Eugene	Schaefer	Milk Producers Assn. OF ND	New Salem	ND	58503	
Patricia	Keough-Wilson	Minn-Dak Farmers Coop	Wahpeton	ND	58075	701-671-1349
Gary	Knutson	ND Agricultural Association	Fargo	ND	58103	701-282-9432
Cynthia	Schreiber-Beck	ND Agricultural Aviation Assn.	Wahpeton	ND	58074	701-642-5777
Leann	Meyer	ND Agri-Women	York	ND	58386	701-466-2881
Gary	Puppe	ND Assn. Of Soil Conservation Dist.	Bismarck	ND	58502	701-223-8518
Steve	Zimmerman	ND Assoc. for Agriculture Education	Bismarck	ND	58505	
James D.	Scholte	ND Bankers Assn	Bismarck	ND	58502	701-223-5303
Nick	Sinner	ND Barley Council	Fargo	ND	58103	701-239-7200
Shannon	Berndt	ND Buffalo Association	Bismarck	ND	58503-0980	701-530-1997
Jocie	Izler	ND Corn Growers Assn	Fargo	ND	58103	701-283-7467
Jocie	Izler	ND Corn Utilization Council	Fargo	ND	58103	701-283-7467
Paula	Neva	ND Crop Improvement & Seed Assn	Fargo	ND	58105	701-237-8067
Roger	Johnson	ND Dept. of Agriculture	Bismarck	ND	58535-0020	701-328-2231
Tim	Counneya	ND Dry Bean Council	Frazee	ND	58544-8863	218-334-6361
Mark	Hagemeister	ND Dry Edible Bean Seed Growers	Fessenden	ND	58438	
Eric	Bartsch	ND Dry Pea & Lentil Association	Bismarck	ND	58503	701-222-0128
Sally	Dvornik	ND Elk Growers	Kildeer	ND	58540	
Brian	Kramer	ND Farm Bureau	Bismarck	ND	58502	701-224-0330
Steve	Stingo	ND Grain Dealers Association	Fargo	ND	58102	701-235-4184
Lance	Hagen	ND Grain Growers Association	Bismarck	ND	58501	701-222-2216
Burt	Pfiffer	ND Lamb & Wool Producers	Bismarck	ND	58504	701-222-8770
Lertene	Kroh	ND Oilseed Council	Bismarck	ND	58503	701-328-5100
Deryl	Dukart	ND Pork Producers	Dunn Center	ND	58626	701-548-8256
Deborah	Johnson	ND Soybean Council	Fargo	ND	58103	701-239-7194
Deborah	Johnson	ND Soybean Growers Association	Fargo	ND	58103-3536	888-489-8409
Ken	Bartsch	ND State Seed Dept	Fargo	ND	58105	701-239-7210
Al	Jochim	ND Turkey Federation	Tolna	ND	58380	701-242-8209
Nancy	Kopp	ND Veterinary Medical Association	Bismarck	ND	58504	701-221-7740
Neel	Fisher	ND Wheat Commission	Bismarck	ND	58501	701-328-5111
Barry	Coleman	Northern Canada Growers Association	Bismarck	ND	58501	701-223-4124
Duane	Masiz	Northern Plains Potato Growers	E Grand Forks	ND	58721	218-773-3633
Mark	Weber	Red River Valley Sugarbeet Growers	Fargo	ND	58103	701-239-4151
Lance	Hagen	US Durum Growers Association	Bismarck	ND	58503	
Kyle	Effertz	AmeriFlex	Mandan	ND	58554	701-853-9798

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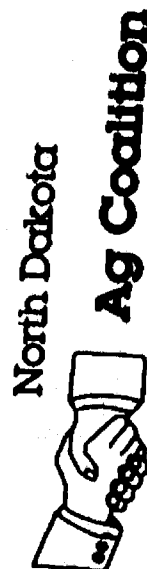
Operator's Signature

Date

10/2/03

North Dakota Ag Coalition

*"Providing a unified voice on
behalf of North Dakota
agricultural interests."*



North Dakota
Ag Coalition
4007 State Street
Bismarck, ND 58503
701-355-4330

*The North Dakota
Ag Coalition is a nonpartisan
group of organization; involved in
all aspects of agriculture.
Organized in April 1982, the North
Dakota Ag Coalition has been
successful in providing a unified
"voice" on behalf of North Dakota
agricultural interests.*

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Operator's Signature

Donna H. [Signature]

Date

10/2/03

The North Dakota Ag Coalition is a federation of organizations representing specific commodities and/or associations with a direct interest in agriculture, for the specific purpose of addressing issues that affect North Dakota agriculture. This group has a common interest to improve the business climate for North Dakota Agriculture.

The Ag Coalition is comprised of over forty member organizations. Each member must meet the requirements set forth from the by-laws, which were designed by the members. These requirements are:

- Be statewide in nature and offer membership in every county
- Have written bylaws
- Have membership dues or an annual budget in excess of \$1,000
- Must not already be represented by a larger association on the Ag Coalition

An executive board consisting of an elected chairman and vice chairman, as well as a representative from the livestock, small grains and row crops sectors govern the day-to-day business activities of the Coalition.

For more than 20 years, the ND Ag Coalition has provided North Dakota agriculture interests with a unified voice. The Coalition has a proven success record in the Legislature. The Coalition has been at the forefront of major issues that have affected every aspect of North Dakota agriculture.

Some examples of past legislative successes of the Coalition are:

- State Board of Agriculture Research and Extension and the gas tax research fund
- Ag In the Classroom funding
- Ag Research/Extension budget
- Support of the NCI budget
- North Dakota No-Net-Loss Wetlands Legislation Repealed

The Ag Coalition serves as a facilitator of ideas as well as pursues legislative support for member's policies. The Coalition speaks as a unified voice for member organizations during the North Dakota State Legislative sessions and in any other setting at the member's request. For the Ag Coalition to speak or act on an issue, the members must agree by a majority vote of 75 percent on the issue. Once the Coalition receives direction from its membership, appropriate actions will take place to help progress the issue through the legislative process.

The greatest advantage of belonging to the Coalition, is the influence the membership has in the legislative process due to the broad support and strength of the agriculture community. Participation in the Coalition provides members an opportunity to hear issues of importance to other groups as well as create an open forum and feedback to work out details of an issue before proceeding to the Legislature.

For more information on the North Dakota Ag Coalition or on becoming a member, please contact the office at 701-355-4330.

GRAIN INSURANCE FUND STUDY
STATE OF ORIGIN
(AS OF 1/16/2003)

REGULATORY AGENCY ID	INVESTMENT OF FUND	UTILIZE FUND TO PAY ADMINISTRATIVE COSTS	HOW TO ESTABLISH CLAIMS AGAINST THE FUND	TIME LIMIT FOR FILING CLAIMS	TIME LIMIT FOR PAYMENT OF CLAIM TO GRAM INSURANCE BODY
	State Treasurer	Commodity Indemnity Fund: the accrued interest can be used for the necessary expenses to administer the fund and if the interest amount is insufficient, up to \$250,000 in a given year can be used from the principle for the necessary expenses to administer the fund. Seed Indemnity Fund: the accrued interest plus principle can be used for the necessary fees and expenses to administer the fund.	Claims filed with the department for certification	30-60 days after notification, but additional 30 days with cause	Only 100 days from the date of the claim
IL	State Treasurer	No	Written notice to Dept. of Ag Board - approves disbursement	90 days from date of failure	120 days from date of failure after claim is adjudicated valid
IN	State Treasurer	No	Claims hearing and report by agency. Board reviews & approves payment.	1 year after notice published by board of a failure	within 90 days of the board's approval of claim.
IA	State Treasurer	Yes	Department reviews - Board approves	120 days after license revoked	As soon as Board approves
KY	State Treasurer	No	Dept. reviews claims & anta. Board reviews & approves payment	One year from the time the claimant receives actual notice	90 days after claim is adjudicated valid
MI	State Treasurer	No	Dept. reviews and validates claims	No	90 days after the claim is valid
NY	State Comptroller's Office	Yes, 5%	Written claim within prompt payment provisions	One year from the expiration of license period.	14 days from the date of submission to State Comptroller's Office
OH	State Treasurer	Yes, pay administration expenses out of accrued interest	Commission reviews and approves claims	Must file within 6 months of time of dishonoring claim; must request payment within 1 yr. of pricing.	90 - 120 days after found insolvent
OK	State Treasurer	\$50,000/year	Agriculture Board reviews and approves claims	60 days from closing date with possible 60 day extension	Paid within 1 year of date of loss (closing date)
ONTARIO	Grain Board (Industry)	Partial	Written claims to Grain Board	30 days following date claim arose	Not specified
SC	State Treasurer	No	Department reviews, validates, and approves payment	GD-90 days from date of loss GP-90 days from date of loss WR-60 days from notification by Department	GD-30 days from date approved GP-30 days from date approved WR-90 days from date approved
TN	State of Tennessee	Yes as of 7/1/86	Dept. reviews claims & amounts. Board reviews & approves payment.	Notification to dept. in writing within 180 days of date of sale or re-delivery. If not paid, in case of deferred pricing, notice must be received within 270 days of delivery of grain	Within 90 days of Board approval
WA	State Treasurer	No	Written claim to the Ag. Advisory Committee	30 days after notification	Not specified

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REGULATOR / AGENCY	SUBROGATION PROVISION OF CLAIM TO GRAIN INSURANCE BODY	PENALTY FOR FAILURE TO CONTRIBUTE	WHO PARTICIPATES IN THE FUND	METHOD OF FUNDING	LEVEL OF FUNDING
ID	Yes	Loss of license, plus penalty of 5% per month to maximum of 25%. Collect interest on the unpaid assessment at a rate of 10% per annum until assessments are remitted together with.	Producers (Producer does not include growers that deliver to a facility in which they have a financial or management interest in, except members of a cooperative marketing association. Collected & submitted by warehouse & commodity dealers)	Two tenths of 1% (0.02) of gross value at first sale (increased to statutory maximum) for "commodity" five tenths of 1% (0.05) of gross value due producer for seed.	Minimum - \$250,000 Maximum - to be maintained between \$10,000,000 and \$12,000,000
IL	Yes	Loss of license	All grain dealers and state and federal grain warehouses	Assessment based upon grain purchases and storage capacity	Annual assessments stop once equity in fund exceeds \$3 million
IN	Yes	Class A misdemeanor; pay monies owed to fund.	Grain producers pay; warehousemen & buyers deduct from all settlements & remit to board quarterly	Producers charged 2% (two tenths) of the price on all grain sold in; they can request a refund.	Caps at \$10,000,000.00, board reinstates collections when balance drops to \$5,000,000.
IA	Yes	Five, Loss of license	Grain dealers, State licensed warehouse operators (Code allows grain dealers to pass on to producers the 1/4¢ per bushel fee)	Fee based on storage capacity and purchases. On purchased grain, one-quarter cent/bushel at time of first sale (except on grain purchased by credit sale contract). The Code allows the grain dealer to pass the 1/4¢ fee on to seller.	Minimum - \$3 million Maximum - \$6 million Shops at \$6 million
KY	Yes	Contributions are mandatory with refund provisions	Grain Producers	One-half cent per bushel on all commodities at the time of sale.	Checkoff stops at \$3 million
MI	Yes	License revocation	All grain licensees (dealers & warehousemen) No exemption of federal licensed dealers	One-tenth of 1% of the value of the commodity sold at the time of the sale - dealer pays	Min. - \$3 million Max. - \$5 million Stops at \$5 million
NY	Yes	License denied	All licensees except those who choose full surety (50% of annual purchases)	Suspended fund is at \$4 million	Min. - \$1 million Max. - \$4 million
OH	Yes	License suspension and/or revocation	Grain handlers and grain warehouses	One-half cent/bushel remitted by licensee (licensed handlers are allowed to pass this 1/2¢ on to producers)	Checkoff stops at \$4 million
OK	Yes	5% penalty license suspension or civil penalty (fine)	Grain producers	Two tenths of one cent per bushel on all commodities to farmers	Minimum - \$1 million Maximum - \$6 million
ONTARIO	Yes	No	Grain producers	Com 1/10 of 1 cent, soybeans 2 cents, Canada 50 cents per metric tonne	No minimum
SC	Yes	GD - 10% penalty and/or license suspension GP - 10% penalty WR - Discretionary	GP - producer of the grain GD - all licensed grain dealers WR - all state licensed warehouses (cotton & grain)	GD - 2 cent/bushel GP - one cent bushel soybeans WR - one-half cent bushel feed grain to producers WR - currently by investment of funds	GP - assessment stops at \$4 million assessments renewed as necessary GD - assessment stops at \$3 million - interest accrues indefinitely WR - assessment stops at \$1.5 million - interest accrues indefinitely
TN	Yes	No	Grain Producers	1¢ per bu. on soybeans paid by producer, remitted by licensee, 2¢ per bu. on all other grain.	Assessment stop at \$3 million Interest accrues indefinitely
WA	Yes	License suspension	Warehousemen and dealers purchasing from producers	License assessment up to 5% of bond requirement	\$3 million

REGULATORY AGENCY	LENGTH OF EXISTENCE	TYPES OF CLAIMS COVERED & MAXIMUM COVERAGE AFFORDED CLAIMANTS	WHO IS AFFORDED COVERAGE?	PRICE LATER CONTRACTS COVERED?	ESTABLISHMENT OF FUND
ID	Effective 7/12/89-commodity Effective 7/1/02-seed	Claims of producers (not common depositories) that are dealing with an Idaho licensed facility. There is no maximum coverage.	Producers only (on Idaho Land only)	Yes 90%, calculated as the lesser of (a) the value at the date of failure, (b) the contract price if a triggering mechanism is stated, (c) the value of the commodity on the date the contract was signed. This requirement is for all types of contracts. There are also requirements as to how the value of the commodity is determined.	Legislators passed effective date of May 1, 1988 July 1, 2002 for the "seed" law.
IL	August 16, 1983 to present	Grain warehousemen 100% - Grain dealers - 100% if sold within 21 days of failure otherwise, 85% to a maximum of \$100,000	Producers, warehouse receipt holders and other depositories	Yes - 85% to maximum of \$100,000	Municipal corporation, body politic
IN	Collections started 7-1-86 to 7/1/86 when it was capped. Effective 5/15/86	Storage = 100% Grain buyer = 80%	Grain producers who paid into fund & did not ask for refund of premium	Yes 80%	Legislature on 7/1/85. Producer premium collections started 7/1/86
IA		All warehouse (storage) claims GD claims-not including GD'er to GD'er sales or credit sale contracts. All claims covered 90% up to a maximum of \$150,000	Sellers and depositories (sellers = producers only) (depositories = all)	No	Legislature passed effective 5/15/86
KY	July, 1984	Grain warehouse receipts - 100% Open storage - 85% Grain dealers - 80%	Warehouse receipted, unreceipted storage, price later, and grain sales	Yes - 80%	Kentucky Grain Insurance Board
MI	Law enacted 12/88-not yet implemented - contingent upon growers petition and referendum	Grain warehousemen/dealer - 100% of the first \$20,000, 80% thereafter	Producers only. All unpaid grain transactions	Yes	If grower referendum passed-Dept. administered fund
NY	6/1984 to present	All commodities except dairy, eggs and timber, 80% of balance after action on primary surety	Producers	Yes, by primary surety, up to 80% by fund	Department
OH	Collection July 1, 1983 to December 31, 1985 Since 1980	100% storage & payable transaction - delayed pricing 100% 1st \$10,000 - 80% thereafter	Producers & holders of warehouse receipts	Yes - 100% first \$10,000 - 80% thereafter	Advisory Commission Board - Legislative oversight
OK	September 1984	Grain warehouse only - 100% Corn Producers - 95%, Soy Producers - 80%, Canola Producers - 90%	Producers - Depositors	No	Board of Agriculture
ONTARIO			Producers only	Not covered	Grain Financial Protection Board
SC	GP - 1982 - 1985 GD - 6/20/2000 WR - 1954	GD-100% of claim GP-100% on purchase agreements WR-100% on state warehouse receipts	GD-licensed grain dealers GP-Producers only WR-any holder of state warehouse receipts	GP-yes, 100% GD-Yes, 100% WR-No, NA	Department of Agriculture GD-Ins Reserve Fund of State of SC Budget and Control Board
TN	September 15, 1980	100% on storage, 85% on all other claims	Warehouse receipted, unreceipted storage, price later & grain sales	Yes - 85%	Tenn. Commodity Producer
WA	Law enacted 4/87 - not yet implemented	Grain warehousemen 100% - Grain dealers within 30 days of 1st \$25,000-100%, thereafter 30-90 days -80%; 90 days - 75%	Depositors and producers with valid contracts	see previous	Indemn. Corp. By department after hearing at request of 2/3 of licensees

Page 3 of 5

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REGULATORY AGENCY	IS THE FUND BACKED BY THE STATE	UNIQUE CHARACTERISTICS	LICENSING REQUIREMENTS (FINANCIAL)	BALANCE IN THE FUND
ID	No	None	Reviewed 1 to 1 ratio, licensed or CPA - \$50,000 net worth	\$2,250,000 for commodity \$50,000 for seed
IL	Yes	None	Audited statement, \$50,000 net worth, 1 to 1 current, 3 to 1 debt to equity ratio	\$4.7 million as of 3/1/01
IN	No, board has authority to borrow. Licensees self required to have bond.	All producers dealing with an Indiana grain buyer or warehouseman are covered under the fund as long as they have not requested a refund of premium.	Reviewed level financial statement, 1:1 current ratio. Minimum: net worth requirement of \$10,000 to \$50,000 depends on license type; plus additional requirement based on either capacity or bushels purchased.	Fund capped 771,000 \$13,000,000 + as of 3/1/02
IA	No	None	Audited or reviewed financial statement - Class I (G) - \$75,000 net worth, current ratio 1 to 1, Class II (G) - \$37,500 - G.W. \$25,000 net worth-min. 254 bushel	\$8,931,626.11 as of 2/28/02
KY	Yes, bonds still needed & used to pay what fund does not pay	None	Annual CPA reviewed financial statement - \$50,000 net worth required and 10:1 per bu. up to \$1,000,000	\$3,500,000.00
MI	No	None	Current financial statements	0
NY	No	None	Review or audit level financial statement, min. net worth increasing to \$60,000, net worth based on bu. handled, 1:1 current ratio	\$4.1 million as of 2/28/2001
OH	No	Ohio program is self-supporting		\$7.6 million as of 3/1/2001
OK	Yes, warehousemen are required to buy bond in addition to checkoff	None	Min. \$50,000 net worth required - appraisal of assets - bond required - 25¢ per bu. of capacity up to 4 million - 10¢ per bu. above 4 million	\$5.4 million as of 1/1/02
ONTARIO	No	None	7 financial ratios - scoring 50/100 to meet financial responsibility bonding or letter of credit for clients not meeting financial responsibility 60% of the highest months purchases	com \$4,250,000, soybeans \$2,500,000, canola \$550,000
SC	No	Oldest fund - Three funds	GP-scale S&Bs, contracts GD-no financial statement-surety bond required WR-reviewed financial statement-\$25,000 min. net worth-25¢ bu./\$12.50 bale - \$25,000 surety bond	GP-\$4,108,161.72 GD-\$123,000,000 Paid out to bean WR-\$461,000.00
TN	No	None	Required only if the business can waive to minimum bond	WR-\$3,258,478.19 \$3,681,964 as of 12/31/2001
WA	No	None	Audited or reviewed financial statement, min. - net worth - \$25,000, working capital ratio of .9 to 1	N/A

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REGULATORY AGENCY	OUTSTANDING CLAIMS	TOTAL CLAIMS FILED	TOTAL CLAIMS PAID FROM THE FUND	TOTAL RECOVERY OF ASSETS TO REPAY THE FUND	FAILURES HAVING CLAIMS SINCE THE INCEPTION OF THE FUND	IS CCC LOAN COVERED BY FUND	IS CCC OWNED COVERED BY FUND
ID	Commodity - \$1,031,000 Seed - \$0	354	\$6,306,724	Commodity - \$478,900.12	9	Yes	Yes, in producer's name
IL	-0-	4,842 for \$92,344,180	\$7.55 million drawn to pay previous claims	\$2,733,807	24	Yes	Yes
IN	-0-	86 claims totaling \$2,382,406.51	80 claims totaling \$1,581,422.57	-0-	7	Yes in producer's name	No
IA	\$2,614.31 as of 2/28/01	1,630 as of 2/28/02	\$11,526,508.32 as of 2/28/02	\$7,575,626.32 as of 2/28/02	44 as of 2/28/02	Yes, individual producers paid for claim, with CCC added to check as a secured party	Yes, 90% up to a maximum of \$150,000
KY	None	\$3,019,063.75	\$2,415,267.66	\$165,593.12	14	Yes, as long as producer retains title to the commodities	No
ME						CCC loan owned not specified, as written	grower coverage only
NY	\$151,422 as of 2/28/01	216 as of 2/28/01	\$1,794,495 as of 2/28/01	0	50 as of 2/28/01	No	No
OH	-0-	989	\$4,114,907.20	\$1,241,518.55 plus monthly restitution	30	Yes	Yes (all wheat, receipt grain, except federal)
OK	-0-	In excess of \$5.0 million	In excess of \$4.3 million	Approx. \$2,575,000 to date	14	Yes, as long as producer retains title to the commodities	CCC covered by bond
ONTARIO	None	420	\$2,649,903	\$400,000	420	N/A	N/A
SC	None	GD - n/a WR - n/a	GP-\$2,351,897.21 GD - \$3,454,855.10 WR - 1,051,183 since 1982	GP-\$83,510.98 WR - \$946,857.86 since 1982 Info. on WR fund unavailable prior to 1982	GP-95 GD - 9 WR - 15 since 1982	Yes, if state wheat receipts are held	Yes if state wheat receipts are held
TN	None	\$471,230 as of 12/31/2001	\$442,230 as of 12/31/2001	\$90,000 as of 12/31/2001	3	Yes	No
WA	N/A	N/A	N/A	N/A	N/A	Yes	Yes

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H.B. 1197

Presented by: Jon Mielke, Executive Secretary
Public Service Commission

Before: Senate Agriculture Committee
Tim Flakoll, Chairman

Date: March 7, 2003

TESTIMONY

Mr. Chairman and committee members, my name is Jon Mielke. I am the Public Service Commission's executive secretary. I also serve as the director of the Commission's Licensing Division. The Commission supports this bill.

Four years ago, the Commission approached the Legislature concerning the risks associated with credit-sale grain contracts. We explained that the use of these instruments had grown dramatically. In the early 1980s, probably less than 10% of all grain sold was via credit-sale but by the late 1990s we estimated that they accounted for between 40 and 60% of all sales. We believe that this trend has continued.

It is important to note that credit-sales contracts are not entitled to protection in insolvency proceedings unless the warehouseman has obtained a separate bond to cover them. There are very few of these bonds in place at the present time.

Last year's Wimbledon Grain Insolvency case brought the credit-sale issue to center stage. In that case, the warehouse owed

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patrons over \$1 million for grain that they had sold via some form of credit-sale contract. If the provisions of HB 1197 had been in place, those farmers would have received at least some degree of protection.

Mr. Chairman, at the request of some of the bill's sponsors, I will briefly walk through each section of the engrossed bill to describe its intent.

Sections 1-4 of the bill propose to amend existing language in Century Code Chapters 60-02.1 and 60-04. Revisions are being proposed to statutes that govern insolvency proceedings involving state licensed grain warehouses and federally licensed warehouses that also have state grain buyers licenses.

The intent of these changes is to make the provisions of these chapters identical so farmer will have the same protections, regardless of which kind of elevator they are dealing with. These changes also clarify that these particular insolvency protections will apply only to noncredit-sale transactions. The creation of new protections for credit-sale patrons are set forth in Section 5 of the bill.

Section 5 establishes a farmer-financed credit-sale contract indemnity fund. A fee of 2/10ths of 1% of the value of all credit-sale transactions would be assessed against all contracts. Upon final settlement, funds would be deducted from the value of the contract and the warehouseman would remit payment to the state. Farmers who do not use credit-sale contracts would not pay into the fund. It is, basically, a form of mandatory self-insurance for credit-sale sellers.

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The fund would be allowed to increase in size until it reached \$10 million. At that time, remittances would cease. They would not start again unless the fund's balance dropped below \$5 million. All interest earned by the fund would stay in the fund.

Fund monies would be used to pay valid credit-sale claimants in insolvency proceedings. The fund would also be used to pay related costs incurred by the Commission. Non-insolvency costs are expected to be about \$79,000 per biennium. These costs would include things such as developing a program management plan and related computer programs, receipting and depositing funds, conducting compliance audits, etc. Payments to individual claimants in insolvency cases would be limited to 80% of the value of the claim but not over \$250,000. Farmers are eligible for payment only if they sold grain via credit-sale contract to an entity that is licensed by the state or by the United States Department of Agriculture. It will still be vitally important for farmers to check to see if buyers are licensed before sales agreements are consummated.

Section 5 also gives the Commission powers to suspend and revoke licenses for cause and it also empowers the Commission to issue cease and desist orders without a prior hearing if the situation is serious enough to warrant such an action. These provisions are identical to those that already exist in Chapters 60-02 and 60-02.1.

Section 5 also provides that money paid from the credit-sale indemnity fund constitutes a debt obligation of the person that caused the claim. The Commission is empowered to take civil action against the licensee in order to reimburse the fund for payments that are made to farmers.

Twelve states currently use indemnity funds to provide protection to farmers in insolvency cases. In some states, they are used in place of bonds while in others, as is being proposed here, they are used in conjunction with bonds. Nine of these states provide at least some degree of protection for credit-sale patrons.

Deciding whether or not to provide protection to credit-sale contract patrons is truly a policy decision. The Commission and the bill's sponsors have been very upfront with the farm community on this matter. We have consistently told folks that they need to decide if they want protection for these transactions. If they do, they need to decide how they want to pay for it. If they don't or if they are not willing to pay for it, this bill should be killed.

The Commission worked closely with this bill's sponsors to craft the engrossed version of the bill that is currently before you. We have found one additional change that should be made.

Sections 30 and 34 of N.D.C.C. 60-02.1 address the use of trust fund assets in insolvency cases. Section 2 of this bill provides that, in insolvency cases, non-indemnity fund assets are to be available strictly for the benefit of noncredit-sale claimants. This bill makes this change in N.D.C.C. 60-02.1-30 but it does not make the same clarifying provision in N.D.C.C. 60-02.1-34. For consistency sake, the bill should be amended to make the language the same in both sections. We have attached a corresponding amendment to our testimony.

Mr. Chairman, we are very appreciative of the work done by the bill's sponsors to get it to this point. We would be happy to respond to any questions that you may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1197

Page 1, line 14, replace "cash sale" with "non-credit-sale"

Page 2, line 19, replace "cash sale and storage" with "non-credit-sale"

Page 3, line 12, replace "warehouseman" with "licensee"

Page 3, line 14, replace "warehouseman" with "licensee"

Page 3, line 24, replace "may" with "shall"

Page 3, line 29, replace "warehouse" with "a licensed warehouse or grain buyer"

Page 4, line 1, after "warehouse" insert "or a grain buyer"

Page 4, line 4, after "warehouse" insert "or a grain buyer"

Page 4, line 6, replace "warehouse's" with "licensee's"

Page 4, line 7, replace "warehouse" with "licensee"

Page 4, line 11, replace the second "the" with "all of that person's unsatisfied"

Page 4, line 12, replace "contract or one hundred" with "contracts or two hundred fifty"

Page 4, after line 31 insert "Revocation and suspension. The commission may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of any provision of this chapter."

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Cease and desist. Whenever an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the commission, upon its own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the commission. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order with fifteen days of the issuance of the order.

Claims. Claims concerning grain buyers shall be administered in a manner consistent with provisions of chapter 60-02.1. Claims concerning state licensed grain warehouses shall be administered in a manner consistent with provisions of chapter 60-04. No payments shall be made from the credit-sale contract indemnity fund if the claim is based on losses resulting from the sale of grain to an entity that is not licensed under chapter 60-02, chapter 60-02.1, or the United States Warehouse Act [7 U.S.C. 241-273].

Subrogation. Amounts paid from the credit-sale contract indemnity fund in satisfaction of any valid claim shall constitute a debt and obligation of the entity against whom the claim was made. The commission may take action on behalf of the fund against such an entity to recover the amount of payment made, plus costs and attorney's fees incurred. Any recovery for reimbursement to the fund shall include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate its interest, if any, to the commission in a cause of action against any and all parties, to the amount of the loss that the claimant was reimbursed by the fund.

Unlicensed facility-based grain buyer. The provisions of this chapter also apply to facility-based grain buyers as defined in chapter 60-02.1 which are licensed under the United States Warehouse Act [7 U.S.C. 241-273] but which

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do not possess a state grain buyer license. The commission shall have the duty and power to examine and inspect, during ordinary business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In case of insolvency, credit-sale contract payments to valid claimants shall be reduced by an amount equal to credit-sale contract indemnity payments received from programs administered by the United States department of agriculture."

Renumber accordingly

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March, 7 2003

Senate ag committee members:

I am a fourth generation farmer from Sutton, ND. in Griggs county. I farm 1160 acres which all but three quarters I rent from my mother. I raised sunflowers and wheat on some of that ground of my mothers in 2001. I hauled the grain to Wimbledon Grain at Wimbledon, ND. I sold my wheat, but did a credit sales contract on my sunflowers. My mother did a credit sales contract on her sunflowers and wheat. Her wheat contract was signed 20 Dec. so she got paid for that because it was less than 30 days. We, however, weren't so lucky on the sunflowers. The elevator was declared insolvent and we have been trying to get our money ever since. The bond does not cover us, and we have spent quite a bit of money on legal fees so far to no avail. We lost approximately a quarter of our income from 2001. We can't take that. Farming at its best has not been very profitable the last 10 years. Most of us are one failed crop away from having to quit and sell out. I'm 56 years old with a prior coronary, so my being able to find another job if I have to quit is next to impossible. I think we really need bill HB 1197 to protect any future credit sales or price later contracts

Thank you, Greg Nelson

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HB 1197 TESTIMONY North Dakota Grain Dealers Association Senate Ag Committee -- March 7, 2003

Mr. Chairman and members of the Senate Ag Committee, the North Dakota Grain Dealers Association supports HB 1197. Previous speakers have told you the good things about it. I'd like to comment on a perception some legislators may have that credit sales contracts are covered by bond. That is only partially true, and only at some elevators, and only on some contracts, and only up to a limited amount.

Back in the 1999 session we talked about requiring bonding on credit sales contracts. Bonding companies said they wouldn't write those kinds of bonds on many, if any, individual elevators. There are too many unknowns. With what's happened in the corporate and accounting world in the past couple years, the desire and capacity of surety companies to write more financial guarantee bonds has declined.

The only credit sales coverage I'm aware of is that Cenex Harvest States has one \$10 million bond over its entire system to cover only the deferred payment contracts, not priced-later contracts. Deferred payments are done for tax purposes. Grain is sold in one year, but the income is deferred to the next. On the other hand, delayed pricing is when the farmer delivers his grain, but agrees to pick a price at some later date. These contracts are done in anticipation that the market price is going up and/or that the basis will change in favor of the farmer. CHS line houses and regionalizations like Southwest Grain near Dickinson and SunPrairie Grain in Minot come under this \$10 million bond, as well as those locally-owned and controlled affiliated co-ops that qualify and buy into that coverage. That's not \$10 million per elevator; that's \$10 million systemwide, under the theory that there won't be multiple losses at the same time. My understanding is that CHS is liable for a very substantial deductible on this bond.

One of my Directors familiar with this told me that the cost to buy into this coverage is 2% of the amount on deferred payment. So on \$1 million of deferreds that's \$20,000. This indemnity fund created by HB 1197 is 2/10ths of 1%, which is \$2000. And remember, that \$10 million bond covers deferred payments only, not delaying pricing. The indemnity fund covers both. I think one time there was an estimate made that of all credit sales there are about 50% of each.

Under the principle on the schedule board that brevity is a sign of confidence, I will keep this to one page and include the resolution passed at our convention in January. Our concern about the \$100,000 cap has been resolved with the increase to \$250,000. Thank you.

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Donna Goldsmith
Operator's Signature

10/2/03
Date

RESOLUTION ON CREDIT SALE INDEMNITY FUND
North Dakota Grain Dealers Association Convention
January 21, 2003 – Bismarck

Whereas: Credit sale contracts are important tools for farmers for tax purposes and marketing, and

Whereas: Farmers and communities can be substantially negatively affected by a grain elevator/buyer insolvency resulting in the inability to cover all contracts, and

Whereas: House Bill 1197 has been introduced to create an indemnity fund for producer protection on credit sale contracts in those rare but unfortunate events, and

Whereas: The fund proposed to be entirely self-funded by all credit sale contract holders, and

Whereas: Grain elevator/buyer involvement is limited to collecting the assessment on credit sales, similar to a commodity promotion checkoff, and

Whereas: HB 1197 appears to be fairly drafted as is, with the question of the payment cap of \$100,000,

Now there be it resolved the North Dakota Grain Dealers Association supports HB 1197, but suggests the \$100,000 cap be removed.

Exhibit 1

Testimony for HB 1197

Chairman Holmberg and Senate Appropriations Members. For the record I am Rep. Phil Mueller of District 24 which is part of Barnes and Ransom Counties.

HB 1197 is about the establishment of a grain indemnity fund for the protection of credit sales patrons of grain elevators in ND.

The basics of the bill provide for an assessment of the grain credit sales contracts in the amount of 2 tenths of a percent of the value of the credit sale contract value. It puts the assessment into a BND indemnity fund that will be administered by the Public Service Commission. In the event of an elevator insolvency, that fund may be used to pay credit sale contract holders who currently have no protection under the law when an elevator becomes insolvent. The fund has a cap of 10 million dollars at which time the assessment goes away and kicks back in when the fund drops below 5 million dollars.

Those who use the credit sales system, either deferred or delayed price contracts, for grain sales represent about 50% of the farmer grain trade in ND. It is estimated that credit sales will only increase as the grain trade increasingly gears up for fast turnover of grain. The elevator bonding requirement currently covers stored and cash sales in the event of an insolvency. Credit sales have no such protection.

I will not devote more time to the mechanics of the bill, others here can do that better than I. I would like to impress upon you the need for such protection for the grain producers of ND. I and about 150 other farmer friends and neighbors have recently been through an elevator insolvency in my home town of Wimbledon. We are not through the process yet. Some issues regarding the insolvency are in the ND Supreme Court now and are still being deliberated in the Federal Court in Fargo. Lawyers and court proceedings are extremely expensive and in too many cases not very rewarding.

The small community in which I live is currently short about one million dollars due to the lost income of those farmers involved in credit sales with the Wimbledon Elevator. That has had a huge negative impact on our community. The implement dealer, the grocery store, the Cenex station, the chemical and fertilizer business and most everyone in our community has suffered financially. I have visited a number of my neighbors who may be forced off their farm because of the problem caused by not getting paid. One of my neighbor farmers did quit in the past month certainly due in part to what his family lost because there was no protection for credit sales.

This is not an isolated situation in ND. There have been 21 insolvency cases in the past 20 years.

This bill provides protection for credit sales farmers in North Dakota and is paid for by those farmers. Those who do not use credit sales are not affected. It is unlikely that I will ever again be involved in the kinds of difficulties brought about by my local elevator's insolvency. But the problem will surface again somewhere in ND. If this bill is enacted, those farmers will be extremely grateful that we passed HB 1197. Please give 1197 a Do Pass.

Thank you for your time and attention.

I will stand for questions if there are any.

**TESTIMONY
SENATE AG COMMITTEE - HB 1197
REPRESENTATIVE EARL RENNERFELDT
MARCH 7, 20003**

I'm Representative Earl Rennerfeldt from District 1 in Williston. I'm here today to oppose HB 1197.

This bill will hurt the credit sales customers. I am speaking of those customers who sign contracts with elevators that provide Bond Protection for their credit sales. Those elevators providing Bond Protection now would most likely drop that to save money.

As a customer under this bill, I would go from 100% coverage to only 80% coverage, with a maximum coverage of \$250,000. A customer could lose much more than 20% of their contract. This bill is very unfair and discriminates against credit sales customers.

These are the customers that are providing free interest to these elevators. This helps cash sales customers also, but they don't have to pay the assessment. This is only a Band-Aid approach.

If due to a bad economy, two large elevators in the state would go bankrupt within a short period of time. This Credit-Sale Contract Indemnity Fund with \$10 million would not be enough to cover the losses.

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Donna Hollenbach
Operator's Signature

10/2/03
Date

**TESTIMONY
SENATE AG COMMITTEE - HB 1197
REPRESENTATIVE EARL RENNERFELDT
MARCH 7, 20003**

Another bad point in this bill is that a customer could be assessed on \$1 million dollars of credit sales, but could only collect \$250,000. This bill will hurt those farmers most that have worked hard to be fiscally responsible and it has the potential to hurt more customers than it would help.

If you plan to support this bill, it should then be amended to assess all customers, Cash Sales and Credit Sales, to build the fund. The assessment should be capped at \$250,000 in credit contracts per customer per Elevator in force at any one time. In my mind, a customer has the responsibility to check out the financial standing of any elevator that they do business with.

I ask for a **DO NOT** pass on HB 1197.

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