

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1167

2005 HOUSE AGRICULTURE

HB 1167

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1167**

House Agriculture Committee

☐ Conference Committee

Hearing Date 1--13--05

Tape Number
ONE

Side A
A

Side B

Meter #
00 TO 16.2

Committee Clerk Signature



Minutes:

CHAIRMAN NICHOLAS: Committee members, we will open on HB 1167. HB 1167 deals with , relating to notification to the public service commission of the destruction of a warehouse. We will open with testimony of Susan Richter of the Public Service Commission.

SUSAN RICHTER: Good morning lMr. Chairman and Committee Members. My name is Susan Richter and I am the director of the Licensing Division of the Public Commission. The Licensing division is directly responsible for licensing and regulating grain elevators and grain buyers in North Dakota., {{Please see attached printed testimony}}. Susan Richter's Testimony completed she stated This completes my testimony. I will be happy to answer any questions you may have.

CHAIRMAN NICHOLAS: Are there any questions Committee Members?

REPRESENTATIVE MUELLER: Susan, the forty five days you referenced in the first page of your testimony. We want to go to 45 days. We would have a 45 day window instead of the current 30 days.

SUSAN RICHTER: You are correct. Right now the elevator has 30 days to convert the sales ticket to 45 days would give you additional 15 days. Once a credit sales contract is entered into Then there is 30 days before that credit sales contract that actually makes that credit contract Stand and where you would apply the assessment. So you would really have an additions 15 of coverage on the bond side should be some type of something at an elevator. So you are having a longer exposure so it would go an additional 15 days on the cash side before it get to the contract. You have an additional 15 days to make a decision so that scale ticket is going to have exposure on the bond side for fifteen days longer then it currently has right now.

BILL BENICK: P.S.C. Mr. Chairman and Rep. Mueller, The period of time you have after you enter a credit sales contract before the indemnity assessment applies would not change. The thirty days still applies , I think that is what Susan was saying. It just gives you a longer period of time between when you delivered the grain and when it the determination had to be made as to whether you are selling the grain or putting it on a credit sales contract or putting it in storage.

That goes from thirty days to forty five days.

REPRESENTATIVE NICHOLAS: Rep. Belter, you have a question.

SUSAN RICHTER: It really would not have any impact on deferred payments or any type of credit sales contract. All it dose is give you a longer window to make a decision with the credit sales contract being one of the tools that you may use when you refer to your sales slip.

CHAIRMAN NICHOLAS: REP. MUELLER. It gives you more time on the cash side, if you enter into a credit sales contract on 12--11 for payment on anytime after Jan. 10th that would be 30 days do not impact a 30 days once the credit sales contract has been signed, it would only come before a credit sales contract is signed. So let's say you make delivery on Nov. 1st and you have 30 days to convert scale tickets currently. If you enter into a credit sales contract anytime after Dec. 1st for payment into January. And 30 days have gone by and you are going to be making a claim against the indemnity fund if you are involved in an insolvency. But, if you make on delivery on the first you have forty five days to convert the scale ticket the elevator is not required and you have the ability to make a diocesan until the 15 of Jan. Before entering into credit sales contract if that is what you choose to do and so the 30 starts on Dec. Fifteenth.

REP. BELTER: Farmers are selling grain and they can't make up their mind whether they want to do a deferred payment or whatever until December?

SUSAN: That is part of the reason that scale slips are not being converted. What we tell the elevator is you have to stay in compliance, not remaining in compliance can result in a complaint. If you have a producer that can't make up his mind you can do one of two things. Either you should be putting it on a storage ticket or you should be going ahead and issuing a check and sending the check out to them in the mail because you are bound by law to do something and you have to bring it to an end to the conversion. Either of those options. What we are hearing from industry is that a lot a lot of them are actually developing policies and they are sending out contracts and a cover letter with a contract saying saying that they need to sign and sent back to our business place saying by a date If I don't have it back by this

date you can expect that I will be considering the contract not executed and we will send a check in the mail.

SENATOR HEADLAND: Dose the the thrity day period that we want to extend this to forty five. Does this start with the last load. If you are hauling in 10,000 bushels of wheat dose it start with the first load or dose it start with the last load. It actually goes load by load. So if it takes you forty five days to make delivery that elevator should be converting those first sales tickets. In some manner before you ever get to that last delivery period. A lot of times we are seeing that the contract period is taking 30 days to make delivery on a contract. Rather then having to make a decision as a farmer that last day you are making a delivery you still will have 15 days to make a decision.

REPRESENTATIVE MUELLER: But in reality that is not how it works. Most elevators don't Do that.

CHAIRMAN NICHOLAS: Is there any more testimony in favor of this HB 1167

SUSAN RICHTER: Chairman Nicholas. I have brought testimony from Steve Strege of The North Dakota Grain Dealers Association. The Grain Dealers requests a DO PASS On this bill. Steve Strege's testimony is attached.

Also on the on the 14 of January 2005, Susan Richter sent a letter to Chairman Nichols And the Agriculture Committee Members clarifying a statement she had made in a question And answer session when she was presenting testimony of HB1167. Her letter was sent to all Agriculture Committee Members. The letter is also attached to these minutes.

CHAIRMAN NICHOLAS: Committee Members what are your wishes on HB 1167?

REPRESENTATIVE ONSTAD MADE A MOTION FOR A DO PASS

Page 5

House Agriculture Committee

Bill/Resolution Number HB 1167

Hearing Date 1--13--05

REPRESENTATIVE KINGSBURY SECONDED THE MOTION

CHAIRMAN NICHOLAS AS TO WHETHER THERE WAS ANY DISCUSSION ON THE
BILL. THERE WAS NONE.

A ROLL CALL VOTE WAS TAKEN THERE WERE 13 YES --- 0 ----NO AND

0 ABSENT

THE BILL WAS CARRIED BY REPRESENTATIVE HEADLAND.

Date:
Roll Call Vote #:

1-13-05
HB 1167

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House **HOUSE AGRICULTURE COMMITTEE**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

DO PASS

Motion Made By

ONSTAD

Seconded By

KINGSBURY

Representatives	Yes	No	Representatives	Yes	No
REP. EUGENE NICHOLAS CHAIRMAN	✓		REP. TRACY BOE	✓	
REP. JOYCE KINGSBURY VICE CHAIRMAN	✓		REP. ROD FROELICH	✓	
REP. WESLEY BELTER	✓		REP. PHILLIP MUELLER	✓	
REP. M. BRANDENBURG	✓		REP. KENTON ONSTAD	✓	
REP. CHUCK DAMSCHEN	✓				
REP. CHAIG HEADLAND	✓				
REP. GARY KREIDT	✓				
REP. GERALD UGLEM	✓				
REP. JOHN WALL	✓				

Total (Yes)

13

No

0

Absent

0

Floor Assignment

REP HEADLAND

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

REPORT OF STANDING COMMITTEE (410)
January 13, 2005 11:19 a.m.

Module No: HR-08-0401
Carrier: Headland
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1167: Agriculture Committee (Rep. Nicholas, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1167 was placed on the
Eleventh order on the calendar.

2005 SENATE AGRICULTURE

HB 1167

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1167

Senate Agriculture Committee

☐ Conference Committee

Hearing Date February 24, 2005

Tape Number	Side A	Side B	Meter #
1		x	1978 - 3542

Committee Clerk Signature

Minutes:

Chairman Flakoll opened the hearing on HB 1167, a bill relating to the conversion of warehouse scale tickets, termination of warehouse storage contracts, and filing of monthly reports; relating to notification to the Public Service Commission of the destruction of a warehouse. Senator Taylor was absent.

Bill Binek, Chief Counsel, Public Service Commission testified in favor of the bill. (written testimony)

Senator Seymour asked if notification of fire at a grain warehouse was in another bill heard by the committee this session. (meter 2774)

Mr. Binek said that bill pertained to facility based grain buyers, a license required for grain buyers located in a warehouse licensed by USDA.

Senator Urlacher asked about a situation where a farmer contracts his grain to the elevator and can't deliver it within the given time span, due to road or weather conditions.

Mr. Binek said that does not pertain to this bill, this bill pertains to farmers delivering grain that is put on a scale ticket.

Senator Klein asked if the changes in the bill reflect changes in how we are doing business these days, in other words housekeeping.

Mr. Binek said yes, it is clean up to the section, the industry has changed and the law needs to change to accommodate it.

Senator Klein said he did not know that a sign needs to be posted when storage is not offered at an elevator. Why is the law different for the bean warehouses. (meter 3210)

Mr. Binek said when the bean production came into being in North Dakota, laws were implemented to accommodate the specific situation of that industry. The law did not necessarily change at that time for the grain warehouses. Its only fair to have them apply to grain warehouses as well as bean warehouses and this bill addresses that.

Mr. Binek distributed the written testimony of Steve Strege, North Dakota Grain Dealers Association.

Chairman Flakoll closed the hearing on HB 1167.

Senator Klein moved a do pass for HB 1167.

Senator Erbele seconded the motion.

The motion passed on a roll call vote 5-0-1.

Senator Seymour will carry the bill.

Date: 2/24/05
Roll Call Vote # 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1167

Senate Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Sen. Klein

Seconded By

Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Flakoll	<u>✓</u>		Senator Seymour	<u>✓</u>	
Senator Erbele	<u>✓</u>		Senator Taylor	<u>A</u>	
Senator Klein	<u>✓</u>				
Senator Urlacher	<u>✓</u>				

Total (Yes)

5

No

0

Absent

Floor Assignment

Sen. Seymour

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

REPORT OF STANDING COMMITTEE (410)
February 25, 2005 9:49 a.m.

Module No: SR-35-3658
Carrier: Seymour
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1167: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1167 was placed on the
Fourteenth order on the calendar.

2005 TESTIMONY

HB 1167

H.B. 1167

Presented by: Susan Richter
Director, Licensing Division
Public Service Commission

Before: Agriculture Committee
Honorable Eugene Nicholas, Chairman

Date: 13 January 2005

TESTIMONY

Chairman and committee members, my name is Susan Richter. I am the Director of the Licensing Division of the Public Service Commission. The Licensing Division is directly responsible for licensing and regulating grain elevators and grain buyers in North Dakota. The Commission asked me to appear here today to testify for House Bill 1167.

Section 1 changes the current 30 day conversion requirement for scale tickets to 45 days. Warehousemen must issue scale tickets for each load of grain received and must convert the scale tickets into cash, noncredit-sale contracts, credit-sale contracts or warehouse receipts within 30 days. If grain warehousemen fail to convert scale tickets within the required time, they risk a complaint being filed against them. When reviewing records during warehouse exams our inspectors often find that a 45 day conversion period is being applied.

It is common for grain warehousemen and farmers to use purchase contracts where the volume of grain contracted can be quite large. Larger volume contracts can result in the delivery period taking longer than expected, which causes farmers to have a shorter period of time in which to make their

grain marketing decisions. Also, it is common for licensees to combine scale tickets when converting deliveries under a particular contract. When doing so, the licensee counts the 30 day period starting with the first delivery. This also results in farmers having a very limited number of days in which to make a marketing decision.

Extending the time for converting scale tickets from 30 to 45 days will give farmers additional time to evaluate their needs and decide how they would like to market their grain, whether they'll sell it for cash, put in on storage or sell it and enter into some form of credit-sale contract. It also will provide the necessary time for most licensees to remain in compliance. Please note, however, that extending the conversion time from 30 to 45 days does not eliminate the producer's right (found elsewhere in the law) to demand payment for grain sold at any time.

Section 1 also provides that warehousemen have the option to decide whether storage will be available for their patrons. Business practices have changed and many elevators do not have sufficient space to offer grain storage as an option to their producers. Licensees are posting policies identifying that grain will not be received for storage. That is technically a violation of current law. If the law is changed licensees will be complying rather than violating law. Warehousemen's posted publications will include language identifying whether storage will be available to its patrons.

Sections 2, 3, 5, 6, and 7 propose changes so public warehousemen can establish whatever expiration date they choose for their warehouse receipts rather than the law mandating the termination dates for all licensees. In order to accomplish this, there are five sections of law that must be changed. I will go over each of these sections.

Section 2 requires that all storage contracts include the termination date as identified in the publication required by section 60-02-17. Currently the law mandates the warehouse sell a sufficient amount of grain to pay charges and advances. Changing the law as proposed allows producers to pay the warehouseman directly for the charges and advances.

Section 3 requires licensees to include the warehouse receipt termination date in their publication notice and to file the publication with the Commission when they establish it. It also requires that the termination dates be stated on warehouse receipts and any changes to the fees or termination date could not be made to the publication notice without filing a revised publication with the Commission.

Section 4 removes the current requirement that the Commission not reissue licenses to any public warehouseman who fails to file monthly reports. Making this sanction discretionary would make it less harsh, and provide the Commission with more flexibility. Licenses are needed for businesses to operate and the failure to file a report does not seem to merit the loss of a license.

Section 5 provides public warehousemen with the flexibility to establish a termination date for warehouse receipts. Currently the termination date on warehouse receipts is mandated by law. If a public warehousemen does not establish an alternative termination date on warehouse receipts, the termination date would revert back to the applicable termination date currently provided in law.

Section 5 also provides that public grain warehousemen have the same standards as bean warehousemen when renewing storage contracts. Currently grain warehousemen are obligated to renew storage contracts, while warehousemen storing edible beans are not obligated to renew

storage contracts. We believe the flexibility of bean warehousemen to renew storage contracts should be available for other warehousemen as.

Section 6 requires public warehousemen provide written notice to receipt holders at least thirty days before the termination date on a storage contract. Law currently requires notice be given on or before June 1 for all grains except dry edible beans which must be given on or before April 1 for the June 30 and April 30 respective termination dates.

Section 7 provides that grain warehousemen may elect to continue a storage contract. Currently the law requires grain warehousemen to continue storage contracts and to surrender the warehouse receipt which must be canceled and reissued. Licensees use a practice of collecting storage fees and continuing the old warehouse receipt rather than reissuing a new warehouse receipt. That is technically a violation of current law. Revising this section would make it not only optional to extend grain warehouse receipts but also possible to extend the existing receipt.

Section 8 removes the language requiring that public warehousemen file warehouse receipts with the Commission when transferring a warehouse to another entity. Usually warehouse receipt obligations are assumed by the incoming entity and retained in the vault for safekeeping. They are not sent to us. Filing warehouse receipts with the Commission provides no benefits and poses the risk of being lost in the mail. This change brings elevators in compliance with the practice of retaining warehouse receipts.

Section 9 repeals the current requirement that warehousemen notify the Commission of destruction of facilities. Notification, especially within 24 hours of a loss is not necessary for the following reasons. Grain warehouse bonds are determined by the total physical capacity used by the

licensee. When facilities are destroyed, licensed warehousemen have an interest in notifying the Commission because they may qualify for a lower bond, resulting in lower bond premiums. During annual warehouse inspections, the capacities of licensees is reevaluated and revised accordingly. Licensees are also asked at renewal to identify any capacity changes. When there is destruction at a facility, the licensee has important tasks to handle. A requirement to notify the Commission within 24 hours seems like an unreasonable and unnecessary burden on public grain warehousemen faced with the large problems of destruction due to fire or storm.

This completes my testimony. I will be happy to answer any questions you may have.

January 13, 2005

TO: House Ag Committee

FROM: Steve Strege, North Dakota Grain Dealers Association

RE: HB 1167

Sorry I can't be with you today. Grain Dealers supports this bill. It provides additional flexibility for both farmers and grain elevators with regard to scale tickets and storage contracts. The sky won't fall if you don't pass it, but we feel it is an opportunity to improve things, and therefore urge a Do Pass.

For those of you who are unfamiliar with NDGDA – we are a 94 year-old voluntary membership organization in which over 90% of our state's grain elevators hold membership. That includes small and large, co-ops, privately-owned, LLCs, you name it. Our governing board consists of twelve managers elected from across the state.

We'll be holding our convention at the Ramkota Hotel in Bismarck January 23-25 and invite you over, particularly for a no-speeches noon luncheon on Monday January 24.



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

January 14, 2005

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Phone 701-328-2400

Honorable Eugene Nicholas, Chairman
House Committee on Agriculture
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Representative Nicholas:

In response to a question from one of the committee members at the hearing on H.B. 1167, I made a statement to the effect that with a credit-sales contract, a claim within thirty days of the date the contract is executed would be a claim against the elevator bond in the event of an insolvency, and beyond thirty days it would be a claim against the indemnity fund.

I wish to clarify that when a contract is executed that provides that the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, that contract is a credit-sale contract under N.D.C.C. § 60-02-01(2), and in the event of an insolvency, I believe that a claim would be against the indemnity fund. Only if the seller demands payment earlier (before the 30 days are up) would such a contract fall into the cash (bond) category in the event of insolvency within that time frame.

Thank you for the opportunity to make this clarification. I apologize for any inconvenience I may have caused. I am available at 328-4097 if you have questions.

Sincerely,

Susan Richter, Director
Licensing Division

cc: Rep. Joyce Kingsbury
Rep. Wesley R. Belter
Rep. Michael D. Brandenburg
Rep. Chuck Damschen
Rep. Craig Headland
Rep. Gary Kreidt

Rep. Gerald Uglen
Rep. John Wall
Rep. Tracy Boe
Rep. Rod Froelich
Rep. Philip Mueller
Rep. Kenton Onstad

H.B. 1167

Presented by: Bill Binek
Chief Counsel
Public Service Commission

Before: Agriculture Committee
Honorable Tim Flakoll, Chairman

Date: 24 February 2005

TESTIMONY

Mr. Chairman and committee members, my name is Bill Binek. I am Chief Counsel for the Public Service Commission. The Licensing Division is directly responsible for licensing and regulating grain elevators and grain buyers in North Dakota. The Commission asked me to appear here today to testify in support of House Bill 1167 introduced at our request.

Section 1 changes the current 30 day conversion requirement for scale tickets to 45 days. Warehousemen must issue scale tickets for each load of grain received and must convert the scale tickets into cash, noncredit-sale contracts, credit-sale contracts or warehouse receipts within 30 days. If grain warehousemen fail to convert scale tickets within the required time, they risk a complaint being filed against them. When reviewing records during warehouse exams our inspectors often find that a 45 day conversion period is being applied.

It is common for grain warehousemen and farmers to use purchase contracts where the volume of grain contracted can be quite large. Larger volume contracts can result in the delivery period taking longer than expected, which causes farmers to have a shorter period of time in which to make their

grain marketing decisions. Also, it is common for licensees to combine scale tickets when converting deliveries under a particular contract. When doing so, the licensee counts the 30 day period starting with the first delivery. This also results in farmers having a very limited number of days in which to make a marketing decision.

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Section 1 also provides that warehousemen have the option to decide whether storage will be available for their patrons. Business practices have changed and many elevators do not have sufficient space to offer grain storage as an option to their producers. Licensees are posting policies identifying that grain will not be received for storage. This could be interpreted to be a violation of current law. If the law is changed licensees will be complying rather than violating law. Warehousemen's posted publications will include language identifying whether storage will be available to its patrons.

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February 24, 2005

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FROM: Steve Strege, North Dakota Grain Dealers Association

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Thanks for listening to our opinion.