

2009 HOUSE AGRICULTURE

HCR 3048

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 3048

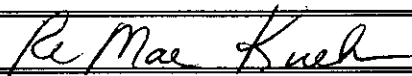
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 27, 2009

Recorder Job Number: 9867

Committee Clerk Signature



Minutes:

**Representative Mueller, Sponsor: (#1b handout)** If there was insolvency in the case of a grain handler, the current bonding and sales protection would be inadequate. The study would look at ways to reduce the financial risk for producers and the grain handlers themselves. I have first-hand knowledge of how that works. We had problems a few years back in my hometown of Wimbledon. This initiative comes in part from corn producers in our state. The numbers that you see, 100 million gallons from an ethanol plant, we hope there are 12-15 in the next few years as opposed to the 6 that are there now. The larger the number of bushels, the larger the risk. Refers to bottom of **#1a handout** with Credit-Sale Contract obligations. The amendment passed out talks about the corn/ethanol industry. I am in support of those amendments.

**Representative Holman:** I assume you are trying to avoid a problem rather than deal with one?

**Representative Mueller:** Yes. We are protecting the #1 industry in our state—agriculture.

**Paul Anderson, Representing the ND Corn Growers Assn.:**

**(Written testimony attached #2)**

If a bond is less than 5% of the value of the risk, then there is a problem.

**Vice Chairman Brandenburg:** Whenever you protect risk, you take away opportunity.

The ethanol plants bought corn at a high price and then the ethanol market went bad and they didn't cover themselves. Would you be in favor of looking at this? We'll have to think of a way to protect the growers. With ethanol plants you really can't look at the margins because the market changes all the time. The only way we could protect ethanol plants, when they make a contract, is they would have to buy a put to offset that. So the cost of a put today is 56 cents for corn. The elevators selling to an ethanol plant would have to offset that too. When we protect everyone from risk, we take away opportunity for more profit.

**Paul Anderson:** Insurance on puts is expensive. We cannot speak to making things completely whole for everybody. My own elevator manager makes sure that he covers what he's got out.

**Jeff Knudson, Dept. of Ag for Roger Johnson: (Written testimony attached #3)**

The Commissioner does support the resolution

**Vice Chairman Brandenburg:** The way the Indemnity Fund was set up before, would he be in favor of every bushel paying into the Indemnity Fund?

**Jeff Knudson:** The study would be a good way to explore that possibility.

**Woody Barth, ND Farmers Union:** We support the resolution and the amendments. We would be willing to be part of the study. It would be good to discuss who pays into the Indemnity Fund also.

**Vice Chairman Brandenburg:** Elevators that are trading without parameters should probably have parameters of buying and selling grain between 9:30 a.m. and 1:15 when the market is open so you don't put risk out there. At my elevator that is the only time I can sell. If we pay out to elevators that aren't doing good business, that is not fair to those who are doing good

business. We also have to look at edible beans and peas and lentils. Everyone should pay including the elevator.

**Woody Barth:** We are in favor of the study.

**Scott Rising, Soybean Growers Assn.:** In favor of the resolution.

**Opposition:**

**Steve Strege, ND Grain Dealers Assn.:** In opposition to the resolution as written. (He has not seen the amendments.) We think it focuses too much on grain elevators. What brought up the issue is the bankruptcy of the ethanol giant, VeraSun. Last June the PSC held a meeting about the size of bonds and how the required amount was calculated. All the farm and commodity groups were invited but they did not participate. Prices were peaking at that time. Only after the VeraSun bankruptcy was there interest at looking at these bonding levels. We think the focus should be on them. The record of insolvency that the PSC has on its website shows that in most cases, like in the last 10 years, there has been a lot of feed and seed and specialty businesses that have gone bankrupt. I have proposed changes to the resolution (#4).

**Chairman Johnson:** The amendments that are before you, Legislative Council drafted your comments into this amendment.

**Steve Strege:** We wanted to emphasize ethanol plants and grain processors can also look at the performance of both sellers and buyers in the marketplace. If we look at risk we should look at both the farmer and the grain elevator. The grain elevator may be at risk if the farmer defaults. Regarding bonding, if you want to increase the bond, the PSC can do that without even going through a rule making. The purpose of a bond is to screen individuals coming into business. If the amendments have my changes, I'm OK with it.

**Chairman Johnson:** We both touched on ethanol plants, processors, and p. 1, line 23 we address the need for increased bonding or financial risk. We tried to cover the points you brought before us.

**Steve Strege:** I had a new WHEREAS #4 and I don't think that is in here. There are elevators that are going to be impacted by the VeraSun bankruptcy not just farmers.

**Vice Chairman Brandenburg:** In your organization, if you have to increase the bond which costs more money, who is going to pay for that bond?

**Steve Strege:** I suppose the customer eventually pays. There would be an increased cost to the bond if the firm qualifies. When you look at some of the numbers with people handling millions of dollars of grain in one year, you can't have a bond that is sufficient to cover all obligations. No bonding company would write it and the premium would be unaffordable.

**Vice Chairman Brandenburg:** Would your organization support that you could only buy and sell between 9:30 and 1:15?

**Steve Strege:** I would have to ask my Board of Directors.

**Vice Chairman Brandenburg:** The other concern that I have is that if you increase the cost of the bond, will some elevators even be able to get a bond? If you can't get a bond, you can't get a license.

**Steve Strege:** That's true. Some of them would not qualify for a bond. Maybe they shouldn't be in the business.

**Representative Belter:** From an elevator's perspective, is there a considerable difference in risk for an elevator to sell a unit train of grain shipped for export vs. a comparable quantity of grain to an ethanol plant.

**Steve Strege:** Depends on the payment mechanism. Once the Bill of Lading is cut and the train is on its way, the elevator can get 90% of its due. When you're talking about these big

trains, you're talking about millions of dollars going down the track. At Casselton, the Tharaldson Ethanol Plant pays twice a week.

**Other opposing:** None

**Chairman Johnson:** Closed the hearing.

**Representative Mueller:** Moved to accept the amendment LC#93102.0101.

**Representative Vig:** Seconded.

**Representative Mueller:** This was brought by the corn producers. They're asking to take a look at it. They are referenced in the amendments.

**Voice Vote taken. Passed.**

**Vice Chairman Brandenburg:** I understand the concerns for studying bonding and the indemnity fund. This grain industry is just like a water balloon. You push it in enough places and it is going to blow up. We all understand what happened with VeraSun. They took positions on the market and bought corn from the elevators and producers. They didn't cover their positions. They didn't do their due diligence. Because one industry did something wrong, we're going to penalize the rest of the industry. My fear when we do study this, bonds will be higher, some elevators will not get bonded. That will impact us as producers. Whether you put a put on corn at 56 cents or when it was \$6 it was 80 cents. If you eliminate the risk, you eliminate the opportunity. With that I am not going to support this.

**Vice Chairman Brandenburg:** **Moved Do Not Pass as amended.**

**Representative Schatz:** Seconded.

**Representative Mueller:** It is a study. There may be other issues to also resolve. I will resist a Do Not Pass.

**Representative Holman:** We have a responsibility to protect our business and our producers.

If the study determines something, then the legislature will have a chance to look at it. I will resist a **Do Not Pass** also.

**Representative Rust:** What happens when the elevator at Wimbledon goes belly up? Does the producer lose money because they had grain there?

**Representative Mueller:** The short answer is that it is not good. There was no indemnity fund. About a million and a quarter dollars of credit sales contracts received approximately 31 cents on a dollar. There were many days where I thought we were going to receive zero.

**Vice Chairman Brandenburg:** Since then they put the indemnity fund in place. There's about \$7 million in the indemnity fund which farmers paid over time. A producer can have 80% of \$280,000 which is \$228,000 they could collect. An elevator can have 80% of \$350,000.

The issue is that now we have ethanol plants. The indemnity fund was never set up for ethanol plants.

**Representative Rust:** What is the disadvantage of a study?

**Vice Chairman Brandenburg:** Think about the ramifications that could happen when you do a study. In order to have a license in the state you have to have a bond. In order to get a bond you have to go out to a bonding company. What is this person or business like? What is the history or past? You have to have some net worth. In 99% of the time the business does a good job. The concern that I have is that there are some elevators that are not. If this study goes to an IBL Committee with people that don't have an Ag background, so they raise the fund which was set up for small elevators. If you have ADM and Cenex Harvest States and Cargill and ethanol plants, \$100 million is not enough. Then it's going to take more money and put it in the indemnity fund or raise the cost of the bond and eliminate these smaller elevators. It may turn into something that we don't want to happen.

**Representative Rust:** I'm still confused.

**Chairman Johnson:** It is a study. It may not even be accepted. That would be the day for folks to testify.

A Roll Call vote was taken. **Yes: 2, No: 9, Absent: 2**, (Representatives Boe & Froelich).

**Motion Failed.**

**Representative Holman:** Moved Do Pass as amended.

**Representative Vig:** Seconded.

A Roll Call vote was taken. **Yes: 9, No: 2, Absent: 2**, (Representatives Boe & Froelich).

**Representative Holman will carry the bill.**



VR  
2/27/09

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3048

Page 1, line 2, replace the second "and" with a semicolon

Page 1, line 3, after "grain" insert "; and the sale of grain to ethanol plants and processors, the payment for grain by such entities, and whether there exists a need for new or increased bonding and indemnification options to reduce financial risk"

Page 1, line 18, after the semicolon insert "and

**WHEREAS**, the sale of grain to ethanol plants and processors and the payment for grain by such entities raises questions regarding the need for new or increased bonding and indemnification options to reduce financial risk;"

Page 1, line 22, replace the second "and" with a semicolon

Page 1, line 23, after "grain" insert "; and the sale of grain to ethanol plants and processors, the payment for grain by such entities, and whether there exists a need for new or increased bonding and indemnification options to reduce financial risk"

Renumber accordingly

Date: 2/27/09  
Roll Call Vote #: 1

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3048

House **Agriculture** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 93102.0101

Action Taken      ☐ Do Pass      ☒ Do Not Pass      ☒ Amended

Motion Made By Rep. Brandenburg Seconded By Rep. Schatz

[illegible]

|       |       |   |    |   |
|-------|-------|---|----|---|
| Total | (Yes) | 2 | No | 9 |
|-------|-------|---|----|---|

Absent 2

Bill Carrier

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

Date: 2/27/09

Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3048

House Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 93102.0101

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep. Mueller Seconded By Rep. Vig

| Representatives              | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-----------------|-----|----|
| Dennis Johnson, Chair        |     |    | Tracy Boe       |     |    |
| Mike Brandenburg, Vice Chair |     |    | Rod Froelich    |     |    |
| Wesley R. Belter             |     |    | Richard Holman  |     |    |
| Joyce M. Kingsbury           |     |    | Phillip Mueller |     |    |
| David S. Rust                |     |    | Benjamin A. Vig |     |    |
| Mike Schatz                  |     |    |                 |     |    |
| Gerry Uglem                  |     |    |                 |     |    |
| John D. Wall                 |     |    |                 |     |    |
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|                              |     |    |                 |     |    |

*Vote  
amendment  
passed*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Bill Carrier \_\_\_\_\_

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

*adding ethanol*

Date: 2/27/09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3048

House Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 93102.0101

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Rep. Holman Seconded By Rep. Vig

| Representatives              | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-----------------|-----|----|
| Dennis Johnson, Chair        | ✓   |    | Tracy Boe       | AB  |    |
| Mike Brandenburg, Vice Chair |     | ✓  | Rod Froelich    | AB  |    |
| Wesley R. Belter             | ✓   |    | Richard Holman  | ✓   |    |
| Joyce M. Kingsbury           | ✓   |    | Phillip Mueller | ✓   |    |
| David S. Rust                | ✓   |    | Benjamin A. Vig | ✓   |    |
| Mike Schatz                  |     | ✓  |                 |     |    |
| Gerry Uglem                  | ✓   |    |                 |     |    |
| John D. Wall                 | ✓   |    |                 |     |    |
|                              |     |    |                 |     |    |
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|                              |     |    |                 |     |    |
|                              |     |    |                 |     |    |
|                              |     |    |                 |     |    |

Total (Yes) 9 No 2

Absent 2

Bill Carrier Rep. Holman

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

**REPORT OF STANDING COMMITTEE**

**HCR 3048: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HCR 3048 was placed on the Sixth order on the calendar.

Page 1, line 2, replace the second "and" with a semicolon

Page 1, line 3, after "grain" insert "; and the sale of grain to ethanol plants and processors, the payment for grain by such entities, and whether there exists a need for new or increased bonding and indemnification options to reduce financial risk"

Page 1, line 18, after the semicolon insert "and

**WHEREAS**, the sale of grain to ethanol plants and processors and the payment for grain by such entities raises questions regarding the need for new or increased bonding and indemnification options to reduce financial risk;"

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Renumber accordingly

2009 SENATE AGRICULTURE

HCR 3048

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 3048

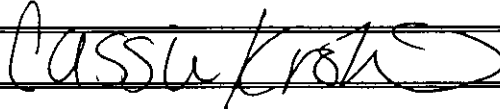
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 19, 2008

Recorder Job Number: 11269

Committee Clerk Signature



Minutes:

**Sen. Flakoll** opened the hearing on HCR 3048, a resolution directing the Legislative council to study the bonding requirements placed on grain warehouses and buyers. All members (7) were present.

**Rep. Mueller**, district 24, testified in favor of the bill.

**Rep. Mueller**- this is basically a study resolution to look at the bonding and requirements of grain warehouses and ways to remove the financial risk of all concerned in the production, handling and processing of grain. The varying prices combined with good production has created a huge handle with grain and in dollars in facilities across ND. I think the question that needs to be answered is are protections for producers and for elevators adequate today? I am going to hand out a handout that has information for you to look at. (see attachment #1) This is a bit of a history on credit sales contracts. Bonding level I think needs to be a consideration, I think that the indemnification end of that maybe needs to be looked at. But I think additionally that this study asks that the corn ethanol plants be seriously looked at and what kind of protections are in place regarding those plants, especially for the producers. This study does reference the producer as having a role in the financial security in the entire grain industry and I think that is important. There have been suggestions on how to improve the resolution, I

think there are good suggestions and have had amendments prepared for this committees consideration.

**Sen. Taylor-** did we reduce the cap or did we reduce the collection on this indemnity fund?

**Rep. Muller-** yes we did reduce the cap on the indemnity fund from 10 million to 6 million dollars in the last session.

**Sen. Miller-** is there any other value in putting some other language in here other then ethanol plant, like biofuel facility?

**Rep. Muller-** I think that is not a bad idea, I think right now that there is not a whole lot of that going on but I hope that in the future that could be a big issue and would have no objection to that.

**Mike Clemens**, farmer and director for the ND Corn Growers assn., testified in favor of the bill. See attached testimony, attachment #2.

**Sue Richter**, director of the licensing division at the public service commission, came to the podium to answer questions the committee had.

**Sen. Wanzek-** as far as 80% of indemnity they are making the assumption that there is no single entity over \$280,000?

**Sue Richter-** that is correct, we have to use that assumption, we have no way of knowing what the individual obligations would be to producers. So if there were contracts or payments it should be 80% so it could potentially be less.

**Sen. Klein-** what is the public service commissions responsibility in doing the bonding work? As you go and look at the various facilities out there, where do you go and how do we get there?

**Sue Richter-** the commission does do exams, we don't an in depth review of the financials. We do look at if there are credit sale contracts out there. Our goal is to do exams at the



elevators every 12-15 months. If there is an elevator that is really on a compliance we will go back and do a review to do a re-audit.

**Jeff Knudson**, testified on behalf of **Roger Johnson**, see attached testimony #3.

**Woody Barth**, ND Farmers Union, testified in favor of the bill.

**Woody Barth**- We are in support of this bill and I have not seen the amendments but I talked to Rep. Mueller about them and believe they would be satisfactory to us if there were adopted. We have been in contact with the public service commission concerning this issue and we would be happy to be part of the future study.

**Steve Strege**, ND ground dealers association, testified in favor of the bill.

**Steve Strege**- we are here to support the bill if it is to pass with the proposed amendments.

We were opposed to the resolution as it was introduced in the house cause it focused on grain elevators and did not focus on ethanol plants and other processors. We wanted to have an emphasis on the ethanol plants and the processors. Let's have the whole package and then we can protect everybody on up the line.

**Sen. Klein**- how many elevators that we have out there that represent ND?

**Steve**- approximately 400.

No opposition to the bill.

**Sen. Flakoll** closed the hearing.

**Sen. Klein** motioned to adopt amendments 93102.0202 and was seconded by **Sen. Taylor**, roll call vote 7 yea 0 nay 0 absent.

**Sen. Wanzek** motioned for a do pass as amended and was seconded by **Sen. Taylor**, roll call vote 7 yea 0 nay 0 absent. **Sen. Behm** was designated to carry the bill to the floor.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE  
CONCURRENT RESOLUTION NO. 3048

Page 1, line 2, after "buyers" insert ", including ethanol plants and grain processors" and after the semicolon insert "and"

Page 1, line 3, replace "production" with "sale, purchase" and replace "; and" with ", including"

Page 1, line 9, replace "an elevator" with "a facility"

Page 1, after line 12, insert:

**"WHEREAS**, defaults by producers or purchasers beyond the local elevator can have adverse consequences for local elevators; and"

Page 1, line 20, replace "; and" with "for sellers and buyers;"

Page 1, remove lines 21 through 23

Page 2, line 2, after "buyers" insert ", including ethanol plants and grain processors"

Page 2, line 3, replace "production" with "sale, purchase" and replace "; and" with ", including"

Renumber accordingly

**Roll Call Vote #:**

3048

## Committee

Legislative Council Amendment Number

Action Taken Adopt Amendments 93102.0202

Motion Made By Klein

**Seconded By**

[illegible]

Absent 0

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

Date: Nov  
Roll Call Vote #: 2

2  
2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3048  
iture

**Senate Agriculture**

## Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

### Action Taken

**Motion Made By**

**Seconded By**

[illegible]

Total (Yes) 7 No 0

Absent                     

Floor Assignment Sen. Behm

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

**REPORT OF STANDING COMMITTEE**

HCR 3048, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HCR 3048 was placed on the Sixth order on the calendar.

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Page 2, line 3, replace "production" with "sale, purchase" and replace "; and" with ", including"

Renumber accordingly

2009 TESTIMONY

HCR 3048

**Credit - Sale Contract Indemnity Fund**  
**February 2009**

#1a  
Rep. Mueller  
3048  
2/27/09

- Provided informal survey to approximately 240 licensees (via e-mail) - asked to identify credit-sale contract obligations as of December 31, 2008 – received 104 responses.
  - Obligations greater than \$10 million – 12
  - Obligations greater than \$5 million / less than \$10 million – 9
  - Obligations greater than \$2.5 million / less than \$5 million – 13
  - Obligations greater than \$1 million / less than \$2.5 million – 16
  - Obligations greater than \$500,000 / less than \$ 1 million – 7
  - Obligations greater than \$100,000 / less than \$500,000 – 5
  - Obligations equal to or less than \$100,000 - 6
  - Obligation is 0 – 36
- Fund collections - \$6,372,305.18
- Fund balance as of 12/31/2008 – ~\$6.7 million (collections + interest – claims paid)

| Credit-Sale Contract Obligations as of December 31 |      |      |
|----------------------------------------------------|------|------|
| Obligation Value                                   | 2008 | 2006 |
| Greater than \$10 Million                          | 12   | 1    |
| Greater than \$5 Million / Less than \$10 Million  | 9    | 3    |
| Greater than \$2.5 Million / Less than \$5 Million | 13   | 10   |
| Greater than \$1 Million / Less than \$2.5 Million | 16   | 10   |
| Greater than \$500,000 / Less than \$1 million     | 7    | 10   |
| Greater than \$100,000 / Less than \$500,000       | 5    | 14   |
| Equal to or less than \$100,000                    | 6    | 7    |
| 0                                                  | 36   | 21   |

**Credit - Sale Contract Indemnity Fund**  
**February 2009**

#16

3048

Rep. Muller

2/27/09

- Provided informal survey to approximately 240 licensees (e-mail contacts only) asked to identify credit-sale contract obligations as of year end – received 104 responses.
  - Obligations greater than \$10 million – 12
  - Obligations greater than \$5 million / less than \$10 million – 9
  - Obligations greater than \$2.5 million / less than \$5 million – 13
  - Obligations greater than \$1 million / less than \$2.5 million – 16
  - Obligations greater than \$500,000 / less than \$ 1 million – 7
  - Obligations greater than \$100,000 / less than \$500,000 – 5
  - Obligations equal to or less than \$100,000 - 6
  - Obligation is 0 – 36
- Fund balance as of 12/31/2008 – ~\$6.7 million



- Surety bonds

- Bond types & levels

- Public Grain Warehouse

- \$50,000 - \$1,500,000

- Facility-Based Grain Buyer

- \$50,000 - \$1,000,000

- Roving Grain Buyer

- \$50,000 - \$1,500,000

**What protections are available to grain sellers?**

## **February 11, 2009 Corn Council Presentation Bonds & Credit-Sale Contract Indemnity Fund**

### **What protections are available to grain sellers? (part 1)**

Everyone that sells grain in ND to a licensed grain buyer has bond and/or CSC I-Fund protection (producer to grain buyer/grain buyer to grain buyer):

3 types of licensees

Bonds are determined by capacity or bushel handle

5 ethanol facilities (didn't include ADM):

| Capacity              | Bond (Capacity)                                     |
|-----------------------|-----------------------------------------------------|
| 75,000 bu.            | \$ 75,000                                           |
| 1,750,000 bu.         | \$ 500,000                                          |
| 1,500,000 bu.         | \$ 455,000                                          |
| 1,141,000 bu.         | \$ 380,000                                          |
| 9,803,000 bu. (plant) | \$1,500,000 (includes 3 million bu. ground storage) |

Purchase 20 million bushel of corn annually

1,666,666 bu./month X \$3/bu. = ~\$5 mill – mth (30 days) ~ \$167,000 day

Purchase 40 million bushel of corn annually  
3,333,333 bu./month X \$3/bu. = ~ \$10 million – mth (30 days) ~ \$333,000/day

Purchase 4 million bushels of corn annually  
= 333,333 bu./month X \$3/bu. = ~\$1 million – month (30) days ~\$33,000/day

Bond based on handle (20 million bushels) - \$1,180,000

Bond based on handle (40 million bushels) - \$1,500,000 (max bond – maxes out at 26,300,001 bushels)

Ethanol facilities procure corn via a merchandiser

Bond based on    projected annual purchase  
                          1<sup>st</sup> yr renewal – actual purchase  
                          2<sup>nd</sup> & after – average actual volume

|                           |                |             |
|---------------------------|----------------|-------------|
| Purchases & bonds on file | 15,500,000 bu. | \$955,000   |
|                           | 17,700,000 bu. | \$1,065,000 |

## MEMORANDUM

TO: Commissioners Wefald, Cramer and Clark  
Illona A. Jeffcoat-Sacco, Executive Director

FR: Sue Richter, Licensing Division Director

DT: June 19, 2008

RE: Meeting with Industry on Current Issues Impacting Elevators

A meeting to discuss current issues impacting grain elevators and grain buyers took place on Tuesday, June 17, 2008. The meeting began at 10:30 a.m. and lasted until shortly after 12:00 noon. There was a nice mix of people in attendance including: Jim Peterson, Wheat Commission; Dan Wogsland, Grain Growers Assn.; Chet Pollert, G & R Grain and Feed/ND Legislator); Woody Barth; Farmers Union; Keith Brandt, Plains, Grain & Agronomy; Pete Peterson, Dahlen Farmers Elevator; David Fiebiger, Finley Farmers Elevator; Steve Strege, Grain Dealers Assn. and Bill, Rick, Shelly and me.

One of the issues discussed was the effect of margin calls on elevators. Everyone agreed that today's high grain prices have changed the way business is being conducted. A few managers said that their financing institutions were keeping a closer eye on the elevators' risk positions by limiting their forward contracting ability (they can only forward contract out to 2008 crop year).

We discussed the importance of honoring purchase contracts and how both elevators and patrons will be affected by those that don't live up to contract commitments. It was mentioned that some elevators will only make contracts with written or electronic confirmation. This is quite a significant change as historically a great deal of business has been done over the phone with verbal contracts.

The consensus of the group was there is no need for any financial requirement because (1) the bond companies and lenders already require financial security, (2) many licensees, in addition to handling grain, handle fuel, fertilizer, etc. which are outside our scope of authority and (3) the Commission does not have adequate staff to review financials.

It was suggested that the bond for grain elevators be determined by the annual volume handle rather than the storage capacity. Although we had a good discussion on this subject, in the end it was decided that determining the bond based on storage capacity should stay status quo, but be monitored.

Someone suggested it may be beneficial to draft a statement that would be issued jointly by affected organizations that would emphasize: (1) the importance of the growers' responsibilities when selling grain, (2) bonds are not always adequate to cover claims in the event of insolvency, and (3) working with local elevators when selling grain to processors lessens the producers risks.

We also discussed some issues that have come up in the last year or so and may need to be addressed by legislature. We discussed whether interest should be paid on credit-sale contract indemnity fund claims. Pollert (wearing his legislative hat) said at the time the language was being worked on for the indemnity fund, discussions were that the intent of the fund was to provide only partial protection to producers (some of the risk should be assumed by those selling via credit-sale contract) and interest should not be paid. Everyone seemed to be in agreement on this.

We discussed changing the insolvency laws to provide for the automatic discontinuance of business at the time a licensee is declared insolvent. In the case of Specialty Export, we asked Specialty to file requests to discontinue business during the insolvency process so that the East Fairview and Hatton facilities could be licensed by the entities that owned the facilities and wanted to license and operate the facilities once the grain inventories had been liquidated.

We also discussed whether it's necessary to define "eligible person" when determining who is eligible for payments for credit-sale contract claims. Our office has had a number of calls from producers that are concerned about their eligibility for payment when selling grain via credit-sale contract under different scenarios. A few individuals shared their thoughts as to how one would determine who would be eligible in the event of insolvency.

There were some good ideas, suggestions, thoughts, etc. shared by all of the participants. I was pleased with the meeting.

If you have any questions, please let me know.

#### Additional information:

I thought it was interesting that late afternoon on the day of this meeting, I received a phone call from a North Dakota business corporation that operates multiple grain warehouses in North Dakota wanting to know if they needed to file a copy of their financial report with our office. I also received a call a few minutes later from a foreign business corporation that operates two grain warehouses in North Dakota, asking if our bond requirements had changed to coincide with the high grain prices.

The very next day I received a phone call from a producer from south central North Dakota that contracted a few months back to sell sunflowers. He said he'd heard something on the news about selling to out of state grain buyers and was checking to

make sure the grain buyer he was working with was licensed. Fortunately the company is licensed. This particular company purchases high oleic sunflowers which are delivered to Northern Sun (a division of Archer Daniels Midland) in Enderlin and crushed into oil.

This particular grain buyer has both grain warehouse licenses and a roving grain buyer license. The grain (hi-oleic sunflowers) this producer is selling is protected via the company's \$400,000 roving grain buyer bond which authorizes them to purchase up to 4,400,000 bushels of grain annually (based on a three year rolling average).

The producer became very agitated when I told him the amount of the bond. He said he alone is selling in excess of \$500,000 worth of sunflowers – which he said will all be delivered in about a 30 day period. The caller said he has farmer friends that are also selling to this company. According to his calculations, he said that 4,400,000 bushels of sunflowers (converted from hundredweight) would have a value of around \$40,000,000. Needless to say it was an interesting conversation.

#2  
Paul Anderson  
3048  
2/27/09

Mr. Chairman and Members of the committee:

For the record my name is Paul Anderson and I farm near Coleharbor, North Dakota. I am pinch hitting for the North Dakota Corn Growers Association as many members are attending the Commodity Classic . I have farmed since 1988 and had never encountered the financial risk exposure that I and my neighbors endured in the last couple of years. Although the markets have receded and have seemed to level off, I don't think it would hurt to review the dilemma that all of us were in when corn futures reached \$8.00 on the Chicago Board of Trade. In fact a global depression could see more parties defaulting on grain, putting farmers, elevators and others at even greater risk.

Here are a few statistics on why the Corn Growers board feels this should be looked at.

#1) Verasun Ethanol in Hankinson, ND was going through \$12 MILLION dollars per month in corn grind. There bond was \$380,000.

#2) According to the Public Service Commission the recent insolvency in Northwood, ND had \$900,000 of unpaid delivered grain and a \$50,000 bond

#3) A recent October/November audit of a grain facility near Minot, ND revealed \$15 million in credit sale contracts on its books.

Although, I understand that nobody can be 100% covered in the case of an insolvency and I do not claim to be an expert. What I can say is that if a bond is less than 5% of the value of risk then there is a problem. The Corn Board feels that the interim study could evaluate current capacity bond structure and what it would take to move to an average grain carry bond. You could also look at reclassifying bond requirements for ethanol plants and some of the larger facilities separately from traditional elevators. We also feel strongly that an economic analysis should be done of what kind of ripple effects a major insolvency would have on our state's economy.

It is for these reasons I would urge your support for House Concurrent Resolution 3048.

Roger Johnson  
Agriculture Commissioner  
www.agdepartment.com



3048 #3  
2/27/09  
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Bismarck, ND 58505-0020  
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**Testimony of Roger Johnson  
Agriculture Commissioner  
HCR 3048  
House Agriculture Committee  
Peace Garden Room  
February 27, 2009**

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Chairman Johnson and members of the House Agriculture Committee, I am Roger Johnson, North Dakota Agriculture Commissioner. I am here to support HCR 3048 which would direct the Legislative Council to study the bonding requirements placed on grain warehouses and buyers and ways to reduce further the financial risk of participants in the production, handling, and processing of grain.

During the past two years, agricultural commodity prices have been extremely volatile and soared to unprecedented levels. The high prices have been a boon to the bottom line of producers and the state coffers and, even though agricultural commodity prices have been retreating, all commodity and financial markets continue to remain erratic during these uncertain times.

HCR 30<sup>4</sup>8 addresses the concern of higher grain prices translating to higher risk to producers in terms of warehouse and grain buyer bond sufficiency. Higher grain prices also generally increase the number and value amounts of credit-sale contracts as producers manage their incomes for tax purposes.



The renewable fuels industry is also creating additional markets and producer risks since many of these plants purchase grain with delivery contracts due to storage constraints. Recently, a major ethanol producer was forced into bankruptcy reorganization resulting in potentially significant contract price losses for producers.

I supported the creation of the credit-sale contract indemnity fund and, last session, opposed HB 1181 which reduced the fund's assessment trigger levels to a minimum of \$3,000,000 and maximum of \$6,000,000. I believe passing HB 1181 was a mistake. The fund, if allowed to grow to a substantial balance, could provide additional options for mitigating some of these other bond and contract sale risks as well.

Chairman Johnson and committee members, I urge a do pass on HCR 30<sup>4</sup>/~~8~~ and would be happy to answer any questions.

Steve Stroup #4  
2/21/09 3048

Possible changes to HCR 3048. New language IN CAPS. From ND Grain Dealers

A concurrent resolution directing the Legislative Council to study the bonding requirements placed on ETHANOL PLANTS, GRAIN PROCESSORS, grain warehouses and buyers, THE PERFORMANCE OF BOTH SELLERS AND BUYERS, and ways to reduce further the financial risk of participants in the ~~production~~ SALES AND PURCHASES, handling, and processing of grain.

**WHEREAS**, North Dakota law requires that warehouses and grain buyers be licensed and bonded and places those requirements within the authority of the Public Service Commission; and

**WHEREAS**, bond requirements are based on the physical size of ~~an elevator~~ THE FACILITY or on the amount of grain that a grain buyer handles; and

**WHEREAS**, even if all bonding requirements are met, there is no guarantee that sufficient assets are available to satisfy all claims in the event of an insolvency; and

**WHEREAS**, THE RISK OF DEFAULT BY PRODUCERS OR THE NEXT POINT OF SALE BEYOND THE LOCAL GRAIN ELEVATOR CAN HAVE SEVERE ADVERSE CONSEQUENCES FOR GRAIN ELEVATORS; AND

**WHEREAS**, bond protection does not extend to credit-sale contracts and the Legislative Assembly in 2003 created an indemnity fund to provide some measure of protection; and

**WHEREAS**, the amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of 80 percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or \$280,000; and

**WHEREAS**, today's volatile financial market and volatile commodity prices can dramatically impact risk and risk coverage ON SELLERS AND BUYERS;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council ~~study the bonding requirements placed on grain warehouses and buyers and ways to reduce further the financial risk of participants in the production, handling, and processing of grain;~~ study the bonding requirements placed on ETHANOL PLANTS, GRAIN PROCESSORS, grain warehouses and buyers, THE PERFORMANCE OF BOTH SELLERS AND BUYERS, and ways to reduce further the financial risk of participants in the ~~production~~ SALES AND PURCHASES, handling, and processing of grain; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

| Credit-Sale Contract Indemnity Fund<br>Quarterly Remittances |                 |                 |                 |                 |                |
|--------------------------------------------------------------|-----------------|-----------------|-----------------|-----------------|----------------|
| Year                                                         | 1 <sup>st</sup> | 2 <sup>nd</sup> | 3 <sup>rd</sup> | 4 <sup>th</sup> | TOTAL          |
| 2003                                                         |                 |                 | 64,130.71       | 417,527.39      | \$481,658.10   |
| 2004                                                         | 393,736.72      | 83,894.34       | 103,778.46      | 413,764.72      | \$995,174.24   |
| 2005                                                         | 413,750.79      | 108,196.26      | 129,304.12      | 411,078.50      | \$1,062,329.67 |
| 2006                                                         | 347,776.68      | 119,671.35      | 147,279.27      | 510,704.82      | \$1,125,432.12 |
| 2007                                                         | 407,162.94      | 186,806.85      | 282,968.20      | 831,063.28      | \$1,708,001.27 |
| 2008                                                         | 738,737.46      | 260,972.32      |                 |                 | \$999,709.78   |
| TOTAL                                                        | \$2,301,164.59  | \$759,541.12    | \$727,460.76    | \$2,584,138.71  | \$6,372,305.18 |

| Outstanding Obligations as<br>of 12/31/08 | 80% Indemnity Fund Payment |
|-------------------------------------------|----------------------------|
| \$ 61,243,000                             | \$ 48,994,400              |
| \$ 36,076,929                             | \$ 28,861,544              |
| \$ 30,317,856                             | \$ 24,254,285              |
| \$ 22,180,073                             | \$ 17,744,058              |
| \$ 21,363,740                             | \$ 17,090,992              |
| \$ 20,136,379                             | \$ 16,109,103              |
| \$ 19,862,278                             | \$ 15,889,822              |
| \$ 16,464,229                             | \$ 13,171,383              |
| \$ 13,264,000                             | \$ 10,611,200              |
| \$ 13,161,736                             | \$ 10,529,389              |
| \$ 12,125,160                             | \$ 9,700,128               |
| \$ 10,000,573                             | \$ 8,000,458               |
| \$ 9,988,306                              | \$ 7,990,644               |
| \$ 9,691,969                              | \$ 7,753,575               |
| \$ 9,162,465                              | \$ 7,329,972               |
| \$ 8,800,903                              | \$ 7,040,722               |
| \$ 8,098,759                              | \$ 6,479,007               |
| \$ 7,740,027                              | \$ 6,192,021               |
| \$ 6,993,300                              | \$ 5,594,640               |
| \$ 5,719,758                              | \$ 4,575,806               |
| \$ 5,190,081                              | \$ 4,152,065               |
| \$ 4,168,354                              | \$ 3,334,683               |
| \$ 3,974,823                              | \$ 3,179,859               |
| \$ 3,740,593                              | \$ 2,992,474               |
| \$ 3,733,410                              | \$ 2,986,728               |
| \$ 3,686,770                              | \$ 2,949,416               |
| \$ 3,606,956                              | \$ 2,885,565               |
| \$ 3,600,000                              | \$ 2,880,000               |
| \$ 3,291,271                              | \$ 2,633,017               |
| \$ 3,274,110                              | \$ 2,619,288               |
| \$ 3,130,033                              | \$ 2,504,027               |
| \$ 3,121,782                              | \$ 2,497,426               |
| \$ 2,817,000                              | \$ 2,253,600               |
| \$ 2,519,873                              | \$ 2,015,899               |
| \$ 2,440,333                              | \$ 1,952,266               |
| \$ 2,324,925                              | \$ 1,859,940               |
| \$ 2,247,500                              | \$ 1,798,000               |
| \$ 2,243,434                              | \$ 1,794,747               |
| \$ 2,090,062                              | \$ 1,672,049               |
| \$ 1,997,967                              | \$ 1,598,374               |
| \$ 1,755,795                              | \$ 1,404,636               |

|    |           |    |           |
|----|-----------|----|-----------|
| \$ | 1,708,639 | \$ | 1,366,911 |
| \$ | 1,520,950 | \$ | 1,216,760 |
| \$ | 1,500,000 | \$ | 1,200,000 |
| \$ | 1,464,100 | \$ | 1,171,280 |
| \$ | 1,331,936 | \$ | 1,065,549 |
| \$ | 1,328,668 | \$ | 1,062,934 |
| \$ | 1,230,676 | \$ | 984,541   |
| \$ | 1,189,332 | \$ | 951,466   |
| \$ | 1,093,718 | \$ | 874,974   |
| \$ | 942,563   | \$ | 754,050   |
| \$ | 899,601   | \$ | 719,680   |
| \$ | 831,307   | \$ | 665,046   |
| \$ | 766,844   | \$ | 613,475   |
| \$ | 661,491   | \$ | 529,193   |
| \$ | 539,476   | \$ | 431,581   |
| \$ | 532,083   | \$ | 425,667   |
| \$ | 407,556   | \$ | 326,045   |
| \$ | 380,258   | \$ | 304,206   |
| \$ | 248,061   | \$ | 198,449   |
| \$ | 227,060   | \$ | 181,648   |
| \$ | 144,817   | \$ | 115,853   |
| \$ | 70,108    | \$ | 56,087    |
| \$ | 68,270    | \$ | 54,616    |
| \$ | 44,400    | \$ | 35,520    |
| \$ | 43,740    | \$ | 34,992    |
| \$ | 11,059    | \$ | 8,847     |
| \$ | 1,040     | \$ | 832       |

## **Credit - Sale Contract Indemnity Fund January 2007**

- Projected annual collection - \$1.5 million/year - 2/10ths of 1% rate.
- Projected 7 years collections - \$10 million cap fund – no claims.
- Actual annual collection - \$1 million (approximately).
- 2/10ths of 1% rate - 10 years of collections - \$10 million cap fund – no claims.
- 2/10ths of 1% rate – 4 years of collection - \$4 million cap fund – no claims
- Insufficient fund level – creates a continuous “catch up” collection process and results in multiple payments to reimburse claimants.
- Provided informal survey to 242 licensees (e-mail contacts only) asked to identify credit-sale contract obligations as of year end – received 77 responses.
  - Obligations greater than \$10 million – 1
  - Obligations greater than \$5 million / less than \$10 million – 3
  - Obligations greater than \$2.5 million / less than \$5 million – 10
  - Obligations greater than \$1 million / less than \$2.5 million – 10
  - Obligations greater than \$500,000 / less than \$ 1 million – 10
  - Obligations greater than \$100,000 / less than \$500,000 – 14
  - Obligations equal to or less than \$100,000 - 7
  - Obligation is 0 – 21
  - Comment submitted but no obligation was identified – 1
- Assessments received as of 12/31/2006 - \$3,153,889.31
- Fund balance as of 12/31/2006 – \$3,352,247.17

**Richter, Susan K.**

---

**From:** Richter, Susan K.  
**To:** Tuesday, January 18, 2005 5:07 PM  
Mueller, Phil  
**Cc:** Richter, Susan K.  
**Subject:** Credit-Sale Contract Information  
**Importance:** High

**Representative Mueller,**

**Attached is the credit-sale contract information you requested.**

**Please note the information contains questions marks. I continue to receive responses to our survey.**

**I wanted you to have as much information as I have available and plan to forward a revised document on**

**Wednesday. It will be a printed document rather than an e-mail document.**

**Please call if you have questions or are looking for information not included in this document.**

#### **Credit - Sale Contract Indemnity Fund**

- **Projected annual collection - \$1.5 million/year - 2/10ths of 1% rate.**
- **Projected 7 years collections - \$10 million cap fund – no claims.**
- **Actual annual collection - \$1 million (approximately).**
- **2/10ths of 1% rate continues - 10 years collections - \$10 million cap fund – no claims.**
- **2/10ths of 1% rate until \$2.5 million – 1/10th of 1% until \$10 million cap fund – 17 ½ years to collection.**
- **Insufficient fund level – creates a continuous “catch up” collection process and results multiple payments to reimburse claimants.**
- **Impact of varying assessment rates will result in:**
  - **Program changes – likely costs passed on to producers.**

- Assessment forms must be revised and distributed as necessary.
- Many licensees printed contracts with 2/10 of 1% rate – these contracts will be incorrect when assessing 1/10 of 1%.
- Licensees' inability to identify correct assessment rate on contracts if assessment rate isn't known at time contract is issued.
- Provided informal survey to 193 licensees (e-mail addresses only) asking to identify credit-sale contract obligations as of year end – received ??? responses:
  - Greater than \$10 million – ???
  - Greater than \$1 million / less than \$10 million – ???
  - \$1 million or less - ???
  - Comments received from industry favor a 2/10ths of 1% rate.

| Outstanding Obligation as of 12/31/04 | 80% Indemnity Fund Payment | Unsolicited Comments Provided                                     |
|---------------------------------------|----------------------------|-------------------------------------------------------------------|
|                                       |                            |                                                                   |
| \$ 1,800,000                          | \$ 1,440,000               |                                                                   |
| \$ 749,865                            | \$ 599,892                 |                                                                   |
| \$45,460,500                          | \$36,368,400               |                                                                   |
| Low to mid 7 digit sur                |                            | Keep current rate to get it done with, instead of dragging it out |
| \$ 2,848,891                          | \$ 2,279,112               |                                                                   |
| \$ 450,000                            | \$ 360,000                 |                                                                   |
| \$ 2,356,000                          | \$ 1,884,800               |                                                                   |
| 0                                     |                            | My thoughts are to leave the assessment alone                     |
| \$ 804,000                            | \$ 643,200                 |                                                                   |
| \$ 2,520,357                          | \$ 2,016,285               |                                                                   |
| \$ 7,661                              | \$ 142,128                 |                                                                   |
| \$ 4,956                              | \$ 3,964                   |                                                                   |



|              |              |                                                                                                                  |
|--------------|--------------|------------------------------------------------------------------------------------------------------------------|
| \$ 38,653    | \$ 30,922    |                                                                                                                  |
| \$ 1,007,610 | \$ 806,088   |                                                                                                                  |
| \$ 50,000    | \$ 120,000   |                                                                                                                  |
| 0            |              | I think they should just leave the system as it is now so as not to confuse anybody anymore than we already are. |
| \$ 23,723    | \$ 18,978    |                                                                                                                  |
| \$ 144,620   | \$ 115,696   |                                                                                                                  |
| \$ 126,000   | \$ 100,800   |                                                                                                                  |
| \$ 2,287,396 | \$ 1,829,916 |                                                                                                                  |
| \$ 1,750,000 | \$ 1,400,000 |                                                                                                                  |
| \$ 550,000   | \$ 440,000   |                                                                                                                  |
| \$ 61,620    | \$ 49,296    |                                                                                                                  |
| \$ 95,000    | \$ 76,000    |                                                                                                                  |
| \$ 623,933   | \$ 499,146   |                                                                                                                  |
| \$ 25,523    | \$ 20,418    |                                                                                                                  |
| \$ 109,413   | \$ 327,530   |                                                                                                                  |
| \$ 126,057   | \$ 100,845   |                                                                                                                  |
| \$ 420,658   | \$ 336,526   |                                                                                                                  |
| \$ 100,000   | \$ 80,000    | Run it up higher – with shuttle loaders you never know.                                                          |
| \$ 8,000,000 | \$ 6,400,000 | Would like to see the assessment rate remain where it is or be higher                                            |
| \$ 7,881,300 | \$ 6,305,040 | If producers really want protection, leave as it                                                                 |
| \$ 135,460   | \$ 108,368   |                                                                                                                  |
| \$ 261,102   | \$ 208,881   |                                                                                                                  |
| \$ 4,615     | \$ 3,692     |                                                                                                                  |
| \$ 346,391   | \$ 277,112   |                                                                                                                  |
| \$ 1,154,762 | \$ 923,809   | Definitely not in favor of lowering the assessment                                                               |

## Attachment #2

Chairman Flakoll and Members of the committee:

MY name is Mike Clemens and I farm in the Wimbledon, North Dakota area. I am a director for the North Dakota Corn Growers Assn.

The Financial risk exposure that my North Dakota neighbors and I have, has never been greater. The prices receded from the past summer highs but to levels that still reflect all time average high prices. The grain elevator business has also evolved from not that many years ago only a call on phone, a hand shake, loading out 1 to 10 cars, storing grain with a warehouse receipt and facilities that held 350,000 bushels.

Today we talk about 1,2, or 5 Million bushel facilities that load 1,2 or 3, 110car shuttle trains (330,000 bu,)per month or grain processors that grind 3 million bushels per month. NO storage for grain is available, only price latter contracts (credit-sales-contacts) with minimal bonding for producer protection. Lenders to these facilities have everything tied up in "Perfected Leins". What is the producer's recourse?

Here are a few statistics on why the Corn Growers board feels this should be looked at.

#1) Verasun Ethanol in Hankinson, ND was going through \$12 MILLION dollars per month in corn grind. There bond was \$380,000.

#2) According to the Public Service Commission the recent insolvency in Northwood, ND had \$900,000 of unpaid delivered grain and a \$50,000 bond

#3) A recent October/November audit of a grain facility near Minot, ND revealed \$15 million in credit sale contracts on its books.

Although, I understand that nobody can be 100% covered in the case of an insolvency. What I can say is that if a bond is less than 5% of the value of risk then there is a problem. The Corn Board feels that the interim study could evaluate current capacity bond structure and what it would take to move to an average grain carry bond. You could also look at reclassifying bond requirements for ethanol plants, processors and some of the larger facilities separately from traditional elevators. We also feel strongly that an economic analysis should be done of what kind of ripple effects a major insolvency would have on our state's economy.

It is for these reasons I would urge your support for House Concurrent Resolution 3048.



## Printer Friendly Story

Brought to You By

### Grain Task Force Will Cut Fraud

JEFFERSON CITY - The Speaker of the House announced a task force aimed at preventing fraud in the grain market.

The Missouri grain market got a lot of attention at the capitol his week.

Last week the Department of Agriculture took control of one grain broker that failed to pay up to fifteen million dollars to mid-Missouri farmers.

Bob Stuenkel manages MFA Grain merchandising operations in Jefferson City and Fulton. He's been in the business for thirty-two years.

"I always tell people if they think they've got the grain market figured out. They are badly mistaken because there's no figuring it out," he said.

Missouri legislators want to change that after two grain fraud incidents this year cost Missouri farmers millions.

Representative Steve Hobbs said the effects of the fraud will be seen for at least two years.

"It will trickle down to the local grocery store, lumber yard. When you take out that much money out of a community, it's devastating," Hobbs said.

Legislators filed two bills to prevent future fraud, but Hobbs says they won't be enough to guarantee an honest grain market.

"Neither one of these bills are the silver bullet. I'll be very honest with you...if someone wants to partake in criminal actions, they're going to do it," he said.

The bill Hobbs filed would increase the amount of insurance grain buyers must have to protect them in case they can't pay farmers what they promised.

"Farmers are very trusting people...and when you do business with people and when you do business with people on a basis like that you trust them. And we don't want that trust to go away," Hobbs said.

The other bill would punish unscrupulous grain elevator owners. Bob Stuenkel says when it comes to business on the farm, old advice never fails.

"When it seems too good to be true, it probably is," Stuenkel said.

Reported by: Emily Rau  
Edited by: Emily Rau

Published: Tuesday, March 3, 2009 at 10:18 PM  
Last Updated: Wednesday, March 4, 2009 at 9:23 AM

Print this Story

Close Window

Roger Johnson  
Agriculture Commissioner  
www.agdepartment.com



Attachment #3

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Fax (701) 328-4567

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Bismarck, ND 58505-0020

*Equal Opportunity in Employment and Services*

**Testimony of Roger Johnson  
Agriculture Commissioner  
Engrossed HCR 3048  
Senate Agriculture Committee  
Roosevelt Park Room  
March 19, 2009**

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Chairman Flakoll and members of the Senate Agriculture Committee, I am Roger Johnson, North Dakota Agriculture Commissioner. I am here to support Engrossed HCR 3048 which would direct the Legislative Council to study the bonding requirements placed on grain warehouses and buyers and ways to reduce further the financial risk of participants in the production, handling, and processing of grain.

During the past two years, agricultural commodity prices have been extremely volatile and soared to unprecedented levels. The high prices have been a boon to the bottom line of producers and the state coffers and, even though agricultural commodity prices have been retreating, all commodity and financial markets continue to remain erratic during these uncertain times.

Engrossed HCR 3038 addresses the concern of higher grain prices translating to higher risk to producers in terms of warehouse and grain buyer bond sufficiency as well as grain sales to bio-fuel plants. As you know, a major ethanol producer was recently forced into bankruptcy reorganization resulting in potentially significant contract price losses for producers.

Higher grain prices also generally increase the number and value amounts of credit-sale contracts as producers manage their incomes for tax purposes. I supported the creation of the credit-sale contract indemnity fund and, last session, opposed HB 1181 which reduced the fund's assessment trigger levels to a minimum of \$3,000,000 and maximum of \$6,000,000. I believe passing HB 1181 was a mistake and urge that appropriate fund levels be reassessed and based on historic and potential credit-sale liabilities of the state's grain handlers.

These issues are of concern in states beyond North Dakota. Inserted below is a March 4<sup>th</sup> news article from *Brownfield Ag News for America* regarding potential legislation and a similar study by Missouri's Legislature. Unfortunately, Missouri's actions are in response to two grain elevator closings resulting in major financial losses to farmers.

### **Two grain elevator closures may lead to Missouri law changes**

*Wednesday, March 4, 2009, 4:33 PM*

*by Julie Harker*

Changes in state law will likely develop out of two recent grain elevator closings, one in northeast Missouri the other in the northwest part of the state. The T-J Gieseke Farms case in Martinsburg affected as many as 250 farmers who lost as much as 15-Million dollars. The Gallatin Grain Company closing this week might affect as many as 70 farmers who could lose between \$7-Million and \$20-Million.

State Representative Steve Hobbs of Mexico says legislation will be proposed this session but the House Speaker will put together an Agriculture Task Force to thoroughly review the problem and report back for next year. "We in agriculture are very concerned about what we see happening. But we also know that instances like this you need to move carefully. And we think by taking the time over this summer to look at what some other states have done and also maybe to come up with new ideas on how we can address that as a state is important," Hobbs says.

Hobbs proposes raising the bonding requirement for grain elevators from the current maximum of \$300-Thousand dollars to \$1-Million. He also proposes making it a misdemeanor to make grain trade beyond a dealer's capacity. Currently, there is no criminal law in Missouri for grain dealer fraud.

Chairman Flakoll and committee members, this study would be a proactive approach to mitigating these risks before a devastating event takes place. I urge a do pass on Engrossed HCR 3038 and would be happy to answer any questions.