



North Dakota Legislative Council

Prepared by the Legislative Council staff
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TESTIMONY - HOUSE BILL NO. 1026 SENATE AGRICULTURE (FORT UNION ROOM- 9:00 A.M.) FEBRUARY 18, 2021

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

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

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

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

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

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

EXPLANATION OF THE BILL

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

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

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

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

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

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

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

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