

BONDING REQUIREMENTS PLACED ON GRAIN WAREHOUSES AND BUYERS - BACKGROUND MEMORANDUM

House Concurrent Resolution No. 3048 (attached as an [appendix](#)) directs the Legislative Management to study the bonding requirements placed on grain warehouses and buyers, including ethanol plants and grain processors, and ways to reduce further the financial risk of participants in the sale, purchase, handling, and processing of grain, including 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.

The phrase "public warehouses" was first defined by 1891 Session Laws Chapter 126 as all "buildings, elevators or warehouses in this State, erected and operated . . . by any person . . . for the purpose of buying, selling, storing, shipping or handling grain for profit . . ." That statute also required the proprietor, lessee, or any manager of a public warehouse to file a bond with the Railroad Commissioners--the precursor to the Public Service Commission. The bond, which was to be not less than \$5,000 nor more than \$75,000, was to be conditioned upon the faithful performance of duty as public warehousemen and upon compliance with the laws of this state.

The 1891 statute set forth the requirements for warehouse receipts, storage receipts, and basic provisions governing insolvency. It further provided that anyone who willfully neglected or refused to deliver the full amount of grain or the grade and market value of grain to which a person making proper demand was entitled would be guilty of larceny. The crime of larceny, as well as any other violation of the Act, which included cheating and falsely weighing wheat or other agricultural products, was deemed a misdemeanor. At the time, the penalty for a misdemeanor was a fine of not less than \$200 nor more than \$1,000 and, at the discretion of the court, one year in the State Penitentiary.

The final section of the 1891 statute stated that "whereas, an emergency exists in that there is at present no code of intelligible warehouse laws upon the statute books of North Dakota . . . this law shall be in force and effect from and after its passage and approval." A similar statute had been enacted by the Territorial Legislature four years earlier. The bonding requirements were, however, lower--not less than \$2,000 nor more than \$50,000.

Today the law requires public warehousemen to file a bond with the Public Service Commission which is conditioned for the faithful performance of duties and compliance with the law, which is in a sum not less than \$5,000. That same language is applicable to grain buyers. North Dakota Century Code (NDCC) Section 60-02-01 defines a public warehouse and a public warehouseman as follows:

5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation. Provided, however, that nothing in this chapter shall be construed to require a processor to receive, store, or purchase any lot or kind of grain at said facility.
6. "Public warehouseman" means the person operating a public warehouse that is located or doing business within this state, whether or not such owner or operator resides within this state. The term does not include a person who is permitted to sell seed under chapter 4-09, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.

North Dakota Century Code Section 60-02.1-01 defines a facility, a facility-based grain buyer, grain, and a grain buyer as follows:

3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
6. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:

- a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
- b. A person who is permitted to sell seed under chapter 4-09, if that person buys grain only for processing and subsequent resale as seed.
- c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.

AMOUNT OF WAREHOUSE BOND REQUIRED

The Public Service Commission, by administrative rule, has established that the amount of a warehouse bond is determined by the total physical capacity identified by the licensee.

Capacity (in Bushels)	Bond Amount
0-100,000	\$50,000
100,001-125,000	\$62,500
125,001-150,000	\$75,000
150,001-175,000	\$87,500
175,001-200,000	\$100,000
200,001-225,000	\$112,500
225,001-250,000	\$125,000
250,001-275,000	\$137,500
275,001-300,000	\$150,000
300,001-325,000	\$162,500
325,001-350,000	\$175,000
350,001-375,000	\$187,500
375,001-400,000	\$200,000
400,001-425,000	\$212,500
425,001-450,000	\$225,000
450,001-475,000	\$237,500
475,001-500,000	\$250,000
500,000+	Additional bond coverage of \$5,000 for each 25,000 bushels of capacity or fraction thereof

In accordance with North Dakota Administrative Code (NDAC) Section 69-07-02-02, unless the Public Service Commission determines that an increase is necessary to accomplish the purpose of NDCC Chapter 60-02, the bond of a warehouseman may not exceed \$1.5 million.

AMOUNT OF GRAIN BUYER BOND REQUIRED

The Public Service Commission, by administrative rule, has established that the amount of a grain buyer bond is determined by the three-year rolling average of grain purchased annually in this state by the grain buyer.

Capacity	Bond Amount
0-100,000 bushels	\$50,000
For each additional 100,000 bushels or fraction thereof in excess of 100,000 and up to 1,000,000	\$20,000
For each additional 100,000 bushels or fraction thereof in excess of 1,000,000	\$5,000

If the grain buyer is a new licensee, the first year's bond is based on the projected purchase volume and the second and third years' bonds are based on the average actual volume according to the above schedule.

In accordance with NDAC Section 69-07-02-02.1, unless the Public Service Commission determines that an increase is necessary to accomplish the purpose of NDCC Chapter 60-02.1, the bond of a facility-based grain buyer may not exceed \$1 million nor may the bond of a non-facility-based grain buyer exceed \$1.5 million.

CONCERNS PROMPTING THE STUDY

Testimony presented to the House and Senate Agriculture Committees during consideration of House Concurrent Resolution No. 3048 (2009) raised the question of the sufficiency of warehouse and grain buyer bonds, given the higher commodity prices and the ultimate value of the commodities being handled. As the study is pursued, the interim Agriculture Committee will have the option of exploring an array of responses that could include making no changes to the current manner of conducting business, increasing the bond amounts, altering the manner in which bond amounts are calculated, and broadening indemnity pools.

ATTACH:1

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE CONCURRENT RESOLUTION NO. 3048
(Representatives Mueller, Hofstad, D. Johnson)
(Senators Flakoll, Krauter, Wanzek)

A concurrent resolution directing the Legislative Council to study the bonding requirements placed on grain warehouses and buyers, including ethanol plants and grain processors; and ways to reduce further the financial risk of participants in the sale, purchase, handling, and processing of grain, including 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.

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 a 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, defaults by producers or purchasers beyond the local elevator can have adverse consequences for local 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 for 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, including ethanol plants and grain processors; ways to reduce further the financial risk of participants in the sale, purchase, handling, and processing of grain, including 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; 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.