

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2365

2007 SENATE AGRICULTURE

SB 2365

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2365

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: 2711

Committee Clerk Signature

Cass Kroh

Minutes:

Sen. Flakoll opened the hearing on SB 2365, a bill to require public service commission to study grain inspection procedures and report to the legislative council. All members (7) were present.

Sen. Wanzek, district 29, testified in favor of the bill.

Sen. Wanzek- This bill comes before you today at the request of the Grain Growers Association. I struggled with how to try and address their situation and address their concerns and legislative council and myself were really struggling with how we do that, and rather than going into a detailed description what might be needed we came to the conclusion we would introduce a bill that would give the public service commission some authority to do some research in the next biennium.

Jim Diepolder, president of USDGA, testified in favor of the bill. See attached testimony.

Sen. Behm- will this standardize the grading procedure more?

Jim Diepolder- I can't answer that question I can only give you my personal view.

Sen. Heckaman- when on looked at the petitions I noticed that most of them are in north central and north western ND, is this pretty much reported throughout the whole state or is that the only area of concern that you are seeing in the state?

Jim Diepolder- no it has been throughout the whole state.

Dennis Wunderlic, farmer, testified in favor of the bill. Gave personal experience with problems he has experienced, time 15:44-18:54.

Larry Neubauer, vice president of USDGA, testified in favor of the bill. See attached testimony.

Gaylen Yoder, farmer, testified in favor of the bill. Gave personal experience with problems he has experienced, time 25:58-34:41.

Jim Lee, farmer, testified in favor of the bill. Gave personal experience with problems he has experienced, time 34:57- 40:00.

Mark Martinson, farmer, testified in favor of the bill. Gave personal experience with problems he has experienced, time 40:23-51:41.

John Fjeldahl, farmer, testified in favor of the bill. See attached testimony.

Dan Deaver also submitted testimony in favor of the bill. Also present and in favor of the bill were **Jim Engtwn**, **Tom Bodur**, **Kurt Ridl**, **Dawn Watson** and **Scott Biberdorf**.

Steve Strege, representing ND Grain Growers Association, testified in opposition to the bill. See attached testimony.

Sen. Wanzek- I empathize with the farmer, as you know I am a farmer and a grain purchaser. So I feel for both ends. But on the other hand I talked with an elevator manager and I feel sorry for him also. How do we help?

Steve Strege- some of these things are probably not solvable, or there are things that we have to put up with as best as we can. When you think about it grain is a living commodity.

Sen. Erbele- when you listed the complaints that have been filed over the last 5 years, do you know anything about the nature or severity of those complaints?

Steve Strege- no.

Sen. Taylor- do you think it is well known amongst the producers of the complaint process, or do you think there are a lot more complaints out there then get reported?

Steve Strege- there is suppose to be a poster like thing in every elevator that is in fact put out by the PSC, and it lists the labs addresses and so forth.

Sen. Behm- my main concern is the testing procedure, how can they test it at one facility and it say one thing and then test it at another and it read different?

Steve Strege- I can explain that.

Sen. Erbele- I know that you mentioned a lot of this stuff is beyond our borders but as far as relating back to the bill what would be wrong with studying the accuracy and the methodology within state?

Steve Strege- I think the problems that were brought up here this morning are problems that are not at the local level, the elevators are suppose to operate at federal grain standards in ND.

Sen. Wanzek- should we probe or should they take a handful, are there standards for that?

Steve Strege- I cant answer that.

Dan DeRouchey, manages elevator in Berthold, ND, testified in opposition to the bill.

Dan DeRouchey- I don't know if I can enlighten you at all when it comes to some of these concerns. Primarily it seems like things are focusing down to a durum and barley, I know there are other commodities that were mentioned. The real sensitive ones seem to be those two. There has been some talk about local level and getting it certified. The state and federal agencies are certified, they go through certification in Kansas City, on the local level those employees are trained.

Sen. Klein- what I am hearing you say is a lot of these issues are beyond your control?

Dan DeRouchey- what I am trying to say is that the elevators and the processors in the state are doing their best to make sure the farmers are being treated fairly. I just don't see where this testing is going to do us one bit of good, if it did I would be for it.

Sen. Flakoll- how much does it cost to install a mechanical probe?

Dan DeRouchey- around \$25,000.

Sen. Flakoll closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2365

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: 2740

Committee Clerk Signature



Minutes:

Sen. Flakoll opened discussion on SB 2365.

Sen. Klein- on this bill I am wondering if there is anyway to work with this at all. I feel for both parties, what we fear is a lot of issues that go beyond what the local elevators can do. So I am curious if anybody had any ideas on any middle ground on this?

Sen. Behm- I don't know if this bill is going to solve it but I do think that there needs to be some standard form of testing, something that if you test in one place it will carry through to end use.

Sen. Wanzek- I don't hold this against the elevators, I think it stems from the market. I understand the frustration, I don't know if this is the answer.

Sen. Erbele- when I listen to the farmers I can see why they are frustrated, but when I look at the other side of things I see where they are coming from too.

Sen. Heckaman- I am wondering if there is another way to do this without having this appropriation.

Sen. Taylor- a lot of the problems seem to revolve around durum and barley, when they make this fiscal note are they looking at a much more wide spread study? Or could we pick a piece of it like the protein probes, a way to make those more standard?

Sen. Klein- I think that if we could change it so that they don't have to study it but PSC is going to need some resources to do the work, and that is the hard part of trying to decide.

Sen. Behm- you know this amount of money for the appropriation is not really that much.

Sen. Klein- I think what I heard though is that we could spend \$250,000 and it is not going to change anything. I think that this goes beyond ND and that the folks in Washington should be addressing.

Sen. Behm- I don't know if this bill would help a whole lot but the farmers are so frustrated, so that is why I would like to have it standardized in some way.

Sen. Flakoll closed the discussion on the bill.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2365

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: 2742

Committee Clerk Signature

CASSA KROW

Minutes:

Sen. Flakoll opened discussion on SB 2365

Sen. Klein- I was going to try to develop some type of resolution with the congress and Ag commissioner to address this, but I came to find I ran into a couple of road blocks with trying to do that. I would suggest that we would add the language: and to provide an appropriation of \$4,900.

Sen. Flakoll closed discussion.

Sen. Klein motioned for a do pass to adopt amendment and was seconded by **Sen. Taylor**, roll call vote 1: 7 yea, 0 nay, 0 absent. **Sen. Klein** motioned for a do pass as amended and seconded by **Sen. Taylor**, roll call vote 2: 7 yeas, 0 nays, 0 absent. **Sen. Wanzek** was designated to carry the bill to the floor.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2365

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3221

Committee Clerk Signature

Cassie Krow

Minutes:

Sen. Flakoll opened discussion on SB 2365.

Sen. Klein motioned to reconsider action **Sen. Wanzek** seconded the motion, roll call vote 3 6 yeas, 0 nays, 1 absent.

Discussion:

Sen. Wanzek- this is a bill that has to do with public service commission study regarding grain grading, cost effectiveness and such. We were in a hurry to get it out that day due to the fiscal note and I don't feel comfortable with the way it came out. I think the concern for the cost and whether public service commission and putting them in that position. I would like to put it in a study where legislative council can consider studying this issue or even entertain the motion for a do not pass.

Sen. Taylor- I would feel more comfortable moving the amendments rather than a do not pass just so there is some hope that it could be studied.

Sen. Wanzek- I just question whether we are really going to get anywhere by pushing the public service commission to spend money, I don't believe for the most part the problem is our elevator dealers in the state. The study would give us more of a chance to learn more about the issue before we take significant steps in any one direction.

Sen. Behm- is this the bill that we had the discussion on the different grades of seeds?

Sen. Wanzek- yes.

Sen. Behm- something needs to be done because you can't have many different grades.

Sen. Wanzek- the way it is directed the dealers felt somewhat like the bull's eye was on them and that was not my intent. It's not the problem it is the market, maybe further study before we do what the original bill intended.

Sen. Taylor- do you know how many studies that intern Ag has picked up in the last intern?

Sen. Flakoll- I believe 2 or 3.

Sen. Taylor- so there is a possibility that it may get studied if they have an intern Ag committee.

Sen. Wanzek motioned to move amendments 70859.0102 and was seconded by **Sen. Klein**, roll call vote 4: 6 yea, 0 nay, 1 absent.

Sen. Wanzek motioned for a do pass as amended and was seconded by **Sen. Behm**, roll call vote 5: 6 yea, 0 nay, 0 absent. **Sen. Wanzek** was designated to carry the bill to the floor.

FISCAL NOTE

Requested by Legislative Council

02/12/2007

Amendment to: SB 2365

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed bill asks Legislative Council to consider studying grain testing and sampling procedures. Such a study would not fiscally impact the PSC.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

n/a

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

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

n/a

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

n/a

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

n/a

Name:	Illona Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	02/12/2007

FISCAL NOTE

Requested by Legislative Council

01/29/2007

REVISION

Bill/Resolution No.: SB 2365

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$125,000	\$0	\$0	\$0
Appropriations	\$0	\$0	\$125,000	\$0	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Requires the PSC to conduct a study of grain testing and sampling procedures including what training and education standards may be needed. The PSC does not have the resources (staff qualifications, time, money) to do the study in-house. Estimated consultant cost - \$125,000.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

PSC would need to hire a consultant, requiring appropriation and funding at \$125,000.

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

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

n/a

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

PSC estimates the need for \$125,000 to hire a consultant to conduct or assist in conducting the study.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

PSC would require an additional appropriation in order to hire the consultant in the estimated amount of \$125,000

Name:	Ilona Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	01/29/2007

FISCAL NOTE

Requested by Legislative Council

01/23/2007

Bill/Resolution No.: SB 2365

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$125,000	\$0	\$0	\$0
Appropriations	\$0	\$0	\$125	\$0	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Requires the PSC to conduct a study of grain testing and sampling procedures including what training and education standards may be needed. The PSC does not have the resources (staff qualifications, time, money) to do the study in-house. Estimated consultant cost - \$125,000.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

PSC would need to hire a consultant, requiring appropriation and funding at \$125,000.

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

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

n/a

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

PSC estimates the need for \$125,000 to hire a consultant to conduct or assist in conducting the study.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

PSC would require an additional appropriation in order to hire the consultant in the estimated amount of \$125,000

Name:	Illona Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	01/28/2007

REPORT OF STANDING COMMITTEE

SB 2365: 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). SB 2365 was placed on the Sixth order on the calendar.

Page 1, line 2, after "council" insert "; and to provide an appropriation"

Page 1, after line 13, insert:

"SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,900, or so much of the sum as may be necessary, to the public service commission for the purpose of completing a study of grain inspection, for the biennium beginning July 1, 2007, and ending June 30, 2009."

Re-number accordingly

[Handwritten signature]
2-8-7

PROPOSED AMENDMENTS TO SENATE BILL NO. 2365

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act relating to a legislative council study of grain inspection and grading procedures."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - GRAIN INSPECTION PROCEDURES. The legislative council shall consider studying, during the 2007-08 interim, grain inspection and grading procedures, including the methodology, accuracy, uniformity, and cost-effectiveness of testing and sampling procedures and training and education standards that would be desirable in improving current procedures. The study should include the participation of agencies of the United States department of agriculture, industry groups, and North Dakota state university. The council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2365: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2365 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act relating to a legislative council study of grain inspection and grading procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - GRAIN INSPECTION PROCEDURES. The legislative council shall consider studying, during the 2007-08 interim, grain inspection and grading procedures, including the methodology, accuracy, uniformity, and cost-effectiveness of testing and sampling procedures and training and education standards that would be desirable in improving current procedures. The study should include the participation of agencies of the United States department of agriculture, industry groups, and North Dakota state university. The council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 HOUSE AGRICULTURE

SB 2365

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2365

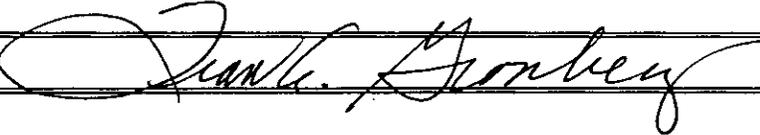
House Agriculture Committee

Check here for Conference Committee

Hearing Date: 3-9-07

Recorder Job Number: 4823

Committee Clerk Signature



Minutes:

Chairman Johnson opened the hearing on SB 2365.

Senator Wanzek, Dist 29: This bill was introduced at the request of the grain growers. It originally was a bill to authorize the PSC to study the grain grading standards and those issues. When we looked at in the Senate, we turned it into a study. This is not an attempt to put the blame on anyone, but we just want a study to focus on the issues.

Rep Onstad: Should it be amended to say "shall study" instead of "shall" consider doing the study.

Wanzek: The leadership doesn't want us to do it and the Legislative Council feels we are undermining their ability to determine what is studied.

Rep Vig: Why is the USDA written in here?

Wanzek: The standards are set by them and we have to abide by them.

Chairman Johnson: Are you aware that the House defeated a similar bill?

Wanzek: I am now.

Jim Lee, Max, ND: I has also at the hearing in the Senate, I hope you give the bill serious consideration. It is a producer bill of rights. It addresses issues that need to be taken care of.

I see this as an economic issue. The grain dealers' testimony in the Senate troubled me. This shouldn't be us against them. This is very important!

Jim Diepolder, President USDGA: (testimony attached)

John Fjoldahl, Farmer, Berthold, ND: (testimony attached)

Larry Neubauer, USDGA Vice President, Producer: (testimony attached) This is not an issue of producer against elevator. The intent is to come up with something that is fair.

Kurt Ridl, Farmer, USDGA: Related instances where the dockage was different at several different elevators on the same load of grain. He would like dockage on a fair basis.

Chairman Johnson: How would this study change what's happening or change procedures?

Ridl: One thing would be to train the people who work at the elevators so they are doing it correctly and consistently.

Chairman Johnson: Contend it's the person doing the test rather than the equipment?

Ridl: Are the people all trained the same way?

Rep Brandenburg: Working with the elevators and sending the sample to the state you got the better price. So you really rectified your problem.

Ridl: Yes, we did but why should there be such a disparity the first time around?

Dennis Wunderlich, Farmer, Velva, ND, USDGA: I am a dying breed in my part of the country. There is a need to train people so that tests are consistent. Relayed personal stories of inconsistency with samples and tests that had been submitted.

Rep Mueller: What do you want to see coming out of the study?

Wunderlich: I don't want costly new test procedures. The need is for training procedures and conditions for grading grain consistently.

Galen Yoder, Farmer, Dist 9: I used to raise durum. I don't anymore and have also had over the top experiences with grain sampling. He told personal experience about his encounters

with sampling and testing. Attorneys won't have anything to do with grain sampling because of chain of custody. The federal inspectors just follow the rules of GPSA which is the board that sets up the discount scales. GPSA is a part of the USDA and the elevator operators can use loopholes to make a tremendous profit. If you look back at the start of discounting on the small grains, spring wheat, durum and barley, I would suggest that profits have skyrocketed since that time. The elevator that I dealt with close to home had a \$1.5M profit and the farmers know where that is coming from. The profit in the elevator comes in the difference between buying grain and selling grain. GPSA is the board that as an arm of USDA does not have representation of small grain farmers of ND. There is only one person on the board from ND and he is a grain dealer.

Chairman Johnson: If we do a legislative study and study this issue how can we change federal grain inspections?

Yoder: I don't know the answer. All I know is that whenever you have those with more power taking advantage of those with less power, even when those with less power are the majority, the only recourse is to bring the light of truth onto that issue. Guess who's not wanting the study.

Rep Brandenburg: You told us the figures on your grain sampling. I've been on an elevator board for 17 years and our policy is if you dispute a sample and we send it to grain inspection, whatever comes back from grain inspection, whether it's more or less, whatever comes back is what you get. You should thank your elevator manager because he probably saved you money. There's always two sides to the story.

Mark Martinson, Farmer and Rancher, Rollette, Dist 9: I went through the same things with my durum as Galen did last year. I am fortunate that I have cattle to feed so I can get rid of my durum that the grain dealers don't want and say is worthless. I had a bunch of retests done

too and I want to go on record that I am in favor of the bill. We can't take our grain to our local elevator and get it graded anymore. Our local elevator will not grade it on the spot. This is very personal to me. This is my life. They sent it all to Devils Lake. My samples came back. So then I took the ice cream pail and sent it to Minot under my own name. Minot, Devils Lake and North Central Grain were all different. The test results ranged from 2.8 damage up to 8.1 out of an ice cream pail of durum. You would think that the law of averages might apply. The pail has been tested six times. Wouldn't you think that just one time it might come back better. No it always comes back worse. Dumb luck would tell you that just once it should be better. The reason this bill is important is that we need to get accuracy and regularity to what we're doing. You'll probably that the PSC said that there are only 4 or 5 complaints in 20 some years. The PSC is mainly concerned with the method of samples weights and measures. I'm a community guy and I'll sell as much as I can to my local elevator, but when I go to the state mill or Bush (I grow barley for Bush) it's all probed mechanically. There is no human inconsistency. We need accuracy, accountability and repeatability.

Rep Uglem: Where does grey mold come from?

Martinson: High moisture during the fall and atmospheric conditions.

OPPOSITION

Steve Strege, ND Grain Dealers Association: (testimony - 5 pieces, attached)

We oppose the study. There have been very few complaints, but we don't see a need for the study. We just like anyone else are not anxious to be studied or investigated. ND elevators are bound by law to use federal grain standards. Grain value, premiums and discounts are not set by local elevators. Those are determined by the market. We urge you to give a do not pass.

Rep Onstad: There is a list of 220 names that have complaints. Maybe they haven't filed with the PSC, but don't you agree there are inconsistencies from elevator to elevator?

Strege: I wouldn't claim that the system is perfect.

Rep Mueller: It's not going to cost you anything, so what's the problem with looking at it?

It says "may" study and "may" result in some exploration of how we are doing business in the elevators. And for me, I have the same problems and could probably be on that list. I think that a lot of this doesn't have to do with what your industry has as standards. It's the folks that you sell it to.

Strege: I am going to yield to a couple of elevator managers who are over here.

Barad Haugenburg, General Manager, SunPrairie Grain:

We have about 12 commodities in our part of the state and no doubt durum and barley are the most subjective because there are a host of different ways of testing that stuff. When a human being is involved there is always going to be some chance for some differences. There is a system in place for disputes and obviously their integrity is being questioned here. But the best system in place - go somewhere else. We are a highly competitive industry and try to get every bushel that I can away from my competitor. The free enterprise system is the best test. The NDGFA addresses contract issues like timely payment terms. It keeps our industry out of the courts. There's an arbitration system, so if there is a dispute, an independent panel is involved. I share the concerns. I share the frustrations. By all means, if you want to study it, study it. Let's make sure that we understand who the victims are here.

Chairman Johnson: Do you have recourse when you send out that grain?

Haugenburg: Yes, we typically grade in house. But it is probed when shipped.

Tony Johannesson, NDGDA, Manager of Dakota Prairie Ag: Vomatoxin seems to cause the widest spread in sample tests. A good sample will be pretty consistent, and poor quality

grain is a different subject. It has been questioned whether federal grain inspection places train their employees inconsistently. The average person can learn the trade and learn to test the samples. We are a federal house and our people have their licenses. If you really want to study something, study the USDA grades.

Chairman Johnson closed the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2365

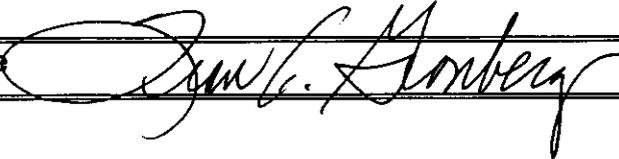
House Agriculture Committee

Check here for Conference Committee

Hearing Date: 3-15-07

Recorder Job Number: 5102

Committee Clerk Signature



Minutes:

Chairman Johnson asked if there were any questions or any discussion on SB 2365.

Rep Belter: I can't support this. As a farmer, I personally understand the difficulties, but I can just about be assured that if we study it, we aren't going to find anything different than when we looked at it in the past. So I am opposed to this.

Chairman Johnson: We studied this in the interim of '88 or '89.

Rep Brandenburg: I think the real problem is dealing with quality adjustment issues.

Crop insurance levels need to be dealt with at the federal level. We can't do anything about it here. I'm not going to support this.

Motion #1

Rep Boe moved a Do Pass and it was seconded by Rep Onstad

The motion failed: (yes) 4 (no) 9 (absent) 0

Motion #2

Rep Brandenburg moved a Do Not Pass

Rep Belter seconded the motion

(yes) 9 (no) 4 (absent) 0

Carrier: Rep Uglem

Date: 3/15/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Agriculture

Committee _____

Check here for Conference Committee

Legislative Council Amendment Number 2365

Action Taken Do Pass

Motion Made By Boe Seconded By Onstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson		✓	Tracy Boe	✓	
Vice Chair Joyce Kingsbury		✓	Rodney Froelich	✓	
Wesley Belter		✓	Phillip Mueller		✓
Mike Brandenburg		✓	Kenton Onstad	✓	
Craig Headland		✓	Benjamin Vig	✓	
Brenda Heller		✓			
John D Wall		✓			
Gerry Uglem		✓			

Total (Yes) 4 No 9

Absent 0

Floor Assignment _____

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

motion failed

Date: 3/15/07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Agriculture

Committee _____

Check here for Conference Committee

Legislative Council Amendment Number 2365

Action Taken Do Not Pass

Motion Made By Brandenburg Seconded By Better

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	✓		Tracy Boe		✓
Vice Chair Joyce Kingsbury	✓		Rodney Froelich		✓
Wesley Belter	✓		Phillip Mueller	✓	
Mike Brandenburg	✓		Kenton Onstad		✓
Craig Headland	✓		Benjamin Vig		✓
Brenda Heller	✓				
John D Wall	✓				
Gerry Uglem	✓				

Total (Yes) 9 No 4

Absent 0

Floor Assignment Rep Uglem

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

REPORT OF STANDING COMMITTEE (410)
March 15, 2007 10:45 a.m.

Module No: HR-49-5397
Carrier: Uglem
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2365, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman)
recommends **DO NOT PASS** (9 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2365 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2365

Senate Bill Testimony 2365
USDGA
President
Jim Diepolder
February 2, 2007

*Same to
House*

USDGA supports the empowerment (financial and legal) of Public Service Commission to ensure the accuracy and repeatability of all tests, weights and measurements concerning the purchasing and procurement of all grains. Whereas to ensure the fairness of discounts and pricing to the producer.

- I. Purpose of this Resolution is to ensure **fairness** and **repeatability** of **existing** and **new** tests
 - A. Repeatability
 - B. Tests and sampling are not exclusive of one another.
 1. Representative Samples vs. Deviation of Tests
 - C. Existing and new tests; PSC should have power to review current tests and new tests. New technology will have greater demands on buyers and sellers.

- II. Issues with growers concerning the procurment of grains.
 - A. Standardization of testing procedures.
 - B. Split weighing of Semi's
 - C. Test equipment Seals (no seal on protien testers)
 - D. Dockage
 - E. Shrunk and Broken (dockage at some elevators)
 - F. Shrinkage vs. Drying charges. No standard tables used for Shrinkage
 - G. Grading of Damage is subjective too much variation
 - H. Federal Grain Inspection Service (FGIS)
 1. Contract Agency
 2. Qualification and education of personnel questionable.

- III. Purpose is not to pit Buyer and Seller against one another but to have uniformity between growers, purchasers and end users.

"The only test that counts is the test results used by the end user!"

**Veratox Test Results
Have Increased
Variability at Levels
Critical to Pricing Decisions**

According to testing experts, while the Veratox test kit serves the market's need for a relatively fast and cost-effective method for measuring vomitoxin in barley, it can produce test results that vary, particularly at concentrations critical to pricing decisions.

**Barley Prices Are Set at
Levels Where Veratox Test
Results Vary the Most**

Veratox test results can range from 0 ppm (where barley receives no discount) to 1.1 ppm (where barley would incur a substantial price discount). The market, therefore, is making crucial pricing decisions at concentration levels where the Veratox kit has substantial variability.

* United States General Accounting Office from March 1999 GAO/RCED-99-59



U.S. Durum Growers Association

PROMOTING THE PRODUCTION AND MARKETING OF DURUM AND SEMOLINA

2409 Jackson Avenue • Bismarck, ND 58501 • (701) 214-3203 • www.durumgrowers.com

Sample sheet of many turned in

USDGA supports the empowerment (financial and legal) of the Public Service Commission to ensure the accuracy and repeatability of all tests, weights and measurements concerning the purchasing and procurement of all grains. Whereas to ensure the fairness of discounts and pricing to the producer.

By signing below you are offering your support for the above stated USDGA resolution.

Printed Name	Address with zip code	Signature	Date
Jack Dalrymple	Box 220 Cassio 1 ton, ND 58512	Jack Dalrymple	1/6/07
Alyx West	9424 95 th St NE	Alyx West	1/6/07
Jawson Jones	8243 59 th St NE	Jawson Jones	1/6/07
Ron Selzler	5799 42 nd Ave NE	Ronald J. Selzler	1/6/07
Pauline Selzler	5799 42 nd ave NE	Pauline A. Selzler	1/6/07
PAUL STAAGAP	6527 84TH AVE NE	WEBSTER ND	1/6/07
Karen Resler	10750 9th St NE	Cooperstown ND	1-6-07
Harland Berg	6576 44th Ave NE Co	400K ND	1-6-07
Paul W. Hendricks	1102 Buell Ave SE	Cooperstown ND	1/6/07
Wendy Loucks	PO Box 2201	Fargo, ND	1/6/07
Heather Reelen	8215-74 th St NE	Shelburne ND	1/6/07
Chr Keltz	421 52nd Ave NE	Christine Richter	1/6/07
Russell Schauer	Box 97 Regent 58650	Russell Schauer	1/6/07
Lee Bulmer	7167 61st Ave NE Coon	Lee Bulmer	1/6/07
Tim Bryan	53801 Hwy 52 N Bowbells ND 58721	Tim Bryan	1/6/07

SENATE BILL NO. 2365

This bill calls for the Public Service Commission to conduct an in-depth study on the methodology, accuracy, repeatability, uniformity, and cost-effectiveness of testing and sampling procedures used in the procurement of grain in North Dakota.

1) Dockage, test weights

- Methods of sampling?
 - using probes, either hand or mechanical
 - dipping the pail into the stream of grain
 - grabbing handfuls from grain stream as deemed necessary
- Accuracy of testing?
 - measuring amounts using mechanical balances
 - using digital scale
 - using funnel-shaped equipment dropping from a constant height
- Uniformity of reading results?
 - including the smaller kernels or not
 - rounding off to the nearest tenth or whole number

2) Protein tests

- Methods of sampling apply as above
- Testers are not sealed and calibration may be adjusted as deemed necessary

3) Moisture-shrinkage

- Accuracy of testing?
 - some moisture testers read the temperatures and calculate the net moisture automatically, some require use of a remote thermometer and chart reading
 - some commodity classes read differently (ex 2-row vs. 6-row barley)
- Uniformity of shrinkage charts used at various locations?
 - some use higher shrinkage to discourage wet grain deliveries
 - some use physical factor and charge a drying charge

4) DON testing

- Methods of sampling apply
- Repeatability is not achievable so test is not accurate enough to be used to procure grain within the narrow standards of the Industry
- Cost of test kits are too expensive for multiple attempts that give non-repeatable results

Many of these concerns or discrepancies can be attributed to equipment, improperly trained personnel, lack of education and non-enforcement of proper procedural methods. Tests with non-repeatable results should not be allowed in ND if results cannot be attained to conform to the pricing or discount schedules set forth by the Industry to procure grain.

Larry Neubauer
USDGA Vice-President, ND Producer
2097 Hwy 5 NE
Bottineau, ND 58318

John Fjeldahl

Points for discussion of SB2365

Senate Ag committee
Chairman Flakoll Vice Chair Wanzek

We would first like to thank the sponsors of this Bill and hope that this will develop into better understanding and trust in the commodities industry of this state. This bill is about fair trade for agriculture in this state and also has the potential to create a significant economic boost as well.

Why I believe this should be undertaken is pretty simple. As a producer I have had so called quality deductions taken from grain produced on my farm that are not part the normal grading standards. I believe an amendment to this bill would be appropriate and would encourage this committee to consider the following amendment. (Item #1)

The reasons for the amendment are as follows:

1. Grains are subjected to discounts with no justifications as to the devaluing of the commodity. Is the discount legitimate? How is the end product affected? These questions should be answered.
2. Discounts seem to change based on the availability of the commodity. One year a discount may apply and the next year it may not. It appears that is what is happening because when commodities are short many so called discounts are not applied. One year Barley was graded on a green count scale and if it passed a certain level it was graded feed. Just 6 months later the same Barley wasn't even checked for green count. By the way this test is purely one person's perspective and no real reason is given for this discount.
3. Commodities are subjected to discounts even though according to Federal Grain Standards they are #1 grade. An example is in the case of wheat, 2% damage is allowed yet at times 2% damage is discounted .10 per bushel. #A!#B!C
4. Falling numbers of commodities is discounted on a scale which is triggered at 330 FN when the industries own ideal number is 200 to 250 FN. (#2 and #3)
5. Crop insurance does not recognize these quality issues. Many of these discounts are not considered as a factor of lessening the value of the commodity.

Another reason this issue should be addressed is, as many of you are aware more and more commodities are being forward contracted each year. This coming year has an increased potential of forward contracting considering the current market prices may increase the number of these issues. It seems when commodities are in greater supply

these new unforeseen discounts appear. When commodities are in short supply many of these discounts disappear.

Many of these discounts are formulated by machines that are not certified by any agency as to their accuracy and no training or certification is required to operate these machines as well. It has been proven many of these tests run on commodities will produce different results on the same sample of the commodity.

How can our state require commodity traders to adhere to these requirements when we are dealing with interstate commerce? It is being done many times in this state in the name of fair business practices. For example the insurance commissioner has stopped out of state companies from doing business in this state when it is determined they are fraudulent in their business practices.

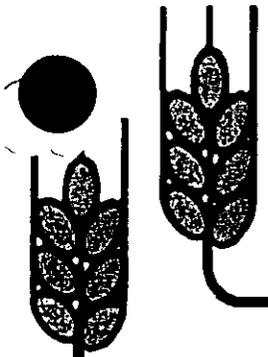
Keeping commodity pricing on a fair playing field should be looked at as sound economic development. Fair pricing of grain commodities is good for all producers no matter the scope of their operation. It will increase the confidence of forward contracting in good and not good so times for both the producer and local merchandisers.

There has been discussion as to why the PSC should undertake this study. First it seems only proper that this is the entity that should be responsible for this. The PSC currently approves the bonds and licenses required of Elevators and grain buyers in North Dakota. They also regulate many commodities to protect the consuming public as well as insure fair returns to the industry which provides the service or commodity. This fair pricing is done by a means of investigating the charges for services such as electricity, rail rates and so on. The Public Service is charged with the responsibility to carry out those investigations. Agriculture producers and commodity traders deserve no less.

Thank you for your time.

I would be glad to answer any questions.

John Fjeldahl
Berthold N. Dak.



NORTH DAKOTA GRAIN DEALERS ASSOCIATION

STEVEN D. STREGE, Executive Vice President
CHERYAL WELLE, Executive Assistant
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118 Broadway N Ste 606, Fargo, ND 58102
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Ph: 701-633-5256, Fax: 701-633-5258
204 4th Avenue S., Buffalo, ND 58011

TESTIMONY OF NORTH DAKOTA GRAIN DEALERS ASSOCIATION SB 2365 – PSC STUDY OF GRAIN GRADING SENATE AG COMMITTEE – FEBRUARY 2, 2007

Good morning Mr. Chairman and members of the committee. My name is Steve Strege and I represent the North Dakota Grain Dealers Association. We are here in opposition to SB 2365. We believe it is unnecessary, intrusive, expensive, and deals with matters already addressed in state law.

I asked the Public Service Commission how many complaints they have received on grain grading in the last several years. Here's the tally:

2002: 2 complaints; 2003: 3; 2004: 11; 2005: 9; 2006: 3.

That's 28 in five years. Without the abnormal 2004 growing season, which produced frost damaged and light test weight corn, a typical year is 2-3 complaints. This does not indicate the need for a study.

Studying requires time from both the studier and the studied. Our elevators have customers to take care of, spring planting inputs to get out the door, grain trucks to dump, blending and other conditioning challenges, marketing to do, and trains to load. Responding to surveys or questionnaires as a part of this study should not interfere with these legitimate and critical business transactions. And for what?

The PSC has put a \$125,000 fiscal note on this bill. Are 2 or 3 complaints in a typical year sufficient to spend that kind of money? We emphatically think not.

North Dakota grain elevators typically handle around 550 million bushels of grain per year. At an average of 700 bushels per truckload that is 786,000 truckloads. Having only 2 or 3 grain grading complaints per year is a record to be envious of, not one to question.

North Dakota law already provides a procedure to resolve grain grading disputes. It is in North Dakota Century Code 60-02-05 and 60-02.1-05. I have copies for you. A sample is sent

to a federal lab or other agreed-upon third party for a determination, and that determination stands. I think the process is seldom used.

North Dakota elevators are bound by law to use federal grade standards. I have for each of you a copy of those standards as of February 2006. As noted on the cover, the distribution of these is a project of the North Dakota, California, Minnesota, Oklahoma and Nebraska Grain and Feed Associations. The 2007 book will have a couple changes in soybeans. Other than that the standards in this booklet are still effective. This is part of our education effort. A couple years ago, in cooperation with the Northern Crops Institute, we had a couple grain grading schools. The local inspection agencies are usually willing to work with employees of their customer elevators.

Grain value, premiums and discounts are not set by the local elevator. If the market is paying a nickel a fifth up on protein to 15 and then another 25 cent kicker, that is what the elevator will be paying. Scarcity of protein means higher premiums. If there is plenty of protein around the premiums will be less.

Maltsters determine how much vomitoxin they will accept, and I'm quite sure that is a function of how much the brewers will accept. The premiums or discounts for hard count in durum or spring wheat are also a function of what's in the market.

Upon hearing of this study, one North Dakota elevator manager made the observation that if farmers want to go to federal grades on each truckload that can be done. But with the understanding that the farmer will pay the cost on each load and that the grade will stick. There will be no opportunity to overlook some deficiencies that might not be prevalent that crop year and so might possibly be blended off.

North Dakota farmers usually raise good to excellent quality crops. Usually, but not everywhere always. And when everyone has high quality there isn't as much premium for high quality. Markets might not always seem rational or fair. But that is the market. We urge the committee to give a Do Not Pass recommendation to this bill. I will try to answer any questions.

#A

Wheat

Grades and Grade Requirements

§ 810.2204 Grades and grade requirements for wheat.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5
Minimum pound limits of:					
Test weight per bushel					
Hard Red Spring wheat or White Club wheat	58.0	57.0	55.0	53.0	50.0
All other classes and subclasses	60.0	58.0	56.0	54.0	51.0
Maximum percent limits of:					
Defects:					
Damaged kernels					
Heat (part of total)	0.2	0.2	0.5	1.0	3.0
Total	2.0	4.0	7.0	10.0	15.0
Foreign material	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels	3.0	5.0	8.0	12.0	20.0
Total ^{1/}	3.0	5.0	8.0	12.0	20.0
Wheat of other classes: ^{2/}					
Contrasting classes	1.0	2.0	3.0	10.0	10.0
Total ^{2/}	3.0	5.0	10.0	10.0	10.0
Stones	0.1	0.1	0.1	0.1	0.1
Maximum count limits of:					
Other material:					
Animal filth	1	1	1	1	1
Castor beans	1	1	1	1	1
Crotalaria seeds	2	2	2	2	2
Glass	0	0	0	0	0
Stones	3	3	3	3	3
Unknown foreign substances	3	3	3	3	3
Total ^{3/}	4	4	4	4	4
Insect-damaged kernels in 100 grams	31	31	31	31	31
U.S. Sample grade is Wheat that:					
(a) Does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5; or					
(b) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor) or					
(c) Is heating or of distinctly low quality.					
^{1/} Includes damaged kernels (total), foreign material, shrunken and broken kernels.					
^{2/} Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.					
^{3/} Includes contrasting classes.					
^{4/} Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, or unknown foreign substance.					

MINOT INSPECTION, INC.
 U.S. GRAIN STANDARDS ACT
 OFFICIAL CERTIFICATE
 SUBMITTED SAMPLE INSPECTION

ORIGINAL
 NOT NEGOTIABLE

HC

MP 031003

MINOT
 (ISSUED AT)

10/22/2004
 (DATE OF SERVICE)

Please refer to this certificate by its number including the lettered prefix, number, and date.

I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 et seq.) to inspect the kind of grain covered by this certificate and that on the above date the following identified service was performed under the Act with the following results.

ORIGINAL INSPECTION

SAMPLE SUBMITTED BY

FJELDAHL, JOHN

IDENTIFICATION OF SAMPLE

QUONSET

The sample identification and inspection results shown on this certificate are assigned only to the quantity of grain in the sample indicated and not to any identified carrier, container, or lot from which the sample of grain may have been taken. This certificate does not meet the inspection requirements of Section 5 of the Act.

GRADE AND KIND

U.S. NO. 1 Dark Northern Spring Wheat, Dockage 0.6%

Test Weight (per bushel)	Moisture	Damaged Kernels (total)	Foreign Material	Shrunken & Broken Kernels	Defects (total)					
60.4 lbs.	14.1%	1.2%	0.1%	0.7%	2.0%					

REMARKS: ADJ/ GARRY JACOBSON .Protein 14.1%, 12% moisture basis.

APPLICANT
 FJELDAHL, JOHN

NAME OR SIGNATURE

David J. Thom

By NJV

This certificate is issued under the authority of the United States Grain Standards Act, as amended (7 U.S.C. 71 et seq.), and the regulations thereunder (7 CFR 800.0 et seq.). It is issued to show the kind, class, grade, quality, condition, or quantity of grain; or the condition of a carrier or container for the storage or transportation of grain; or other facts relating to grain as determined by official personnel. The statements on the certificate are considered true at the time and place the inspection or the weighing service was performed. The certificate is not considered representative of the lot if the grain is transhipped or is otherwise transferred from the identified carrier or container or if grain or other material is added to or removed from the total lot. If this certificate is not cancelled by a superseding certificate, it is admissible by all courts of the United States as prima facie evidence of the truth of the facts stated therein. This certificate does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or other Federal Law. WARNING: Any person who shall knowingly falsely make, issue, alter, forge, or counterfeit this certificate, or participate in any such actions, or otherwise violate provisions in the U.S. Grain Standards Act, the U.S. Warehouse Act, or related Federal laws is subject to criminal, civil, and administrative penalties.

70859.0100
Sixtieth

Legislative Assembly
of North Dakota
Introduced by

SENATE BILL NO. 2365

Senators Wanzek, Taylor

Representatives D. Johnson, Mueller

1 A BILL for an Act to require the public service commission to study grain inspection
2 procedures and report to the legislative council.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1. PUBLIC SERVICE COMMISSION STUDY OF GRAIN INSPECTION

5 PROCEDURES - REPORT TO THE LEGISLATIVE COUNCIL. During the 2007-08 interim, the
6 public service commission shall conduct a study of grain inspection procedures in this state.

7 The study must address the methodology, accuracy, uniformity, and cost-effectiveness of

8 testing and sampling procedures and must determine (*) training and education standards that
9 (* legitimacy of commodity discounts not included in current federal standards and)
10 would be desirable in improving current procedures (*). The public service commission shall work
11 (*of grading and pricing of commodities)

12 with agencies of the United States department of agriculture, industry groups, and North Dakota
13 state university in conducting the study. The public service commission shall present a report
14 regarding its findings and recommendations as a result of the study to the legislative council
15 before September 1, 2008.

#2

Berthold Farmers Elevator

1114/05
~~12-28-2004~~

Premiums and Discount Scales

Spring Wheat - 3.75

Protein scale - 15 cents 1/4 up and 20cents 1/4 down

Falling Number scale - .10 below 330 to 300

.10 per 25 below 300

Damage scale - .03 per 1/2% starting at 0

Test weight - .02 per lb. Under 58tw

Durum - \$3.85

Milling grade consist of 1 or less damage, 330 falling numbers, 13 protein, 60 test weight, 13.5 moisture, 2ppm DON, 88 HVAC

1 Hard Amber Durum - 3.20 (75 HVAC, 60 TW, 2dkt)

2 Hard Amber Durum - 3.10 (75 HVAC, 60 TW, 4dkt)

3 Hard Amber Durum - 3.00 (75 HVAC, 60 TW, 7.0dkt)

Minus 10 and 20 on ambers and straight durums

Malt Barley- 1.75

Based on 13.5 protein, 70 plump, 1% sprout- 95 germ, 2% green, no heat dl and no frost dkt. Feed Barley 1.30

Sunflowers:

Dehulls:

Minimum Test Weight = 25 lbs - 10 per lb under if accepted

Birdseed test weight minimum 27lb

Yellow peas - 3.10 Greens 3.00

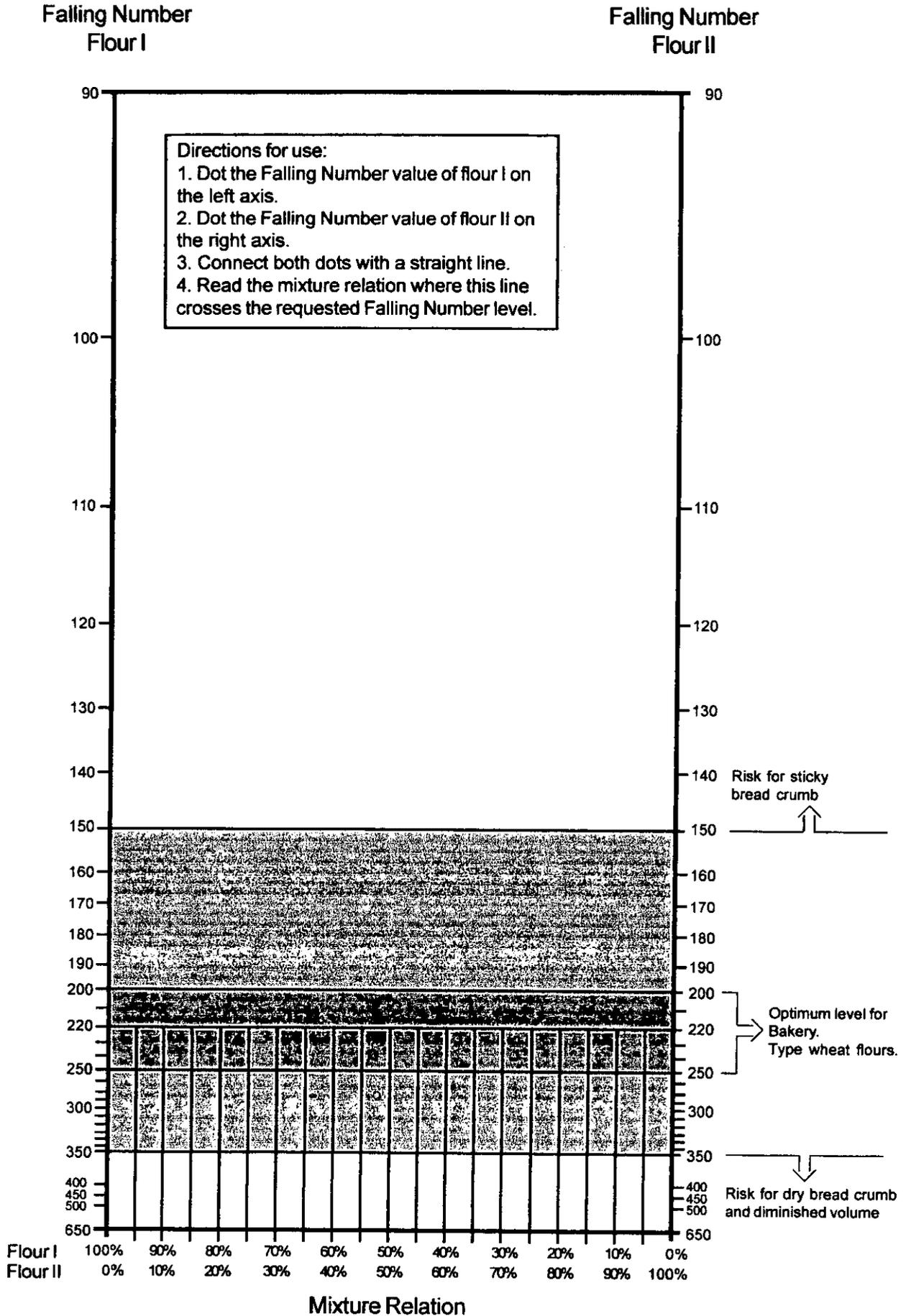
Flax 10.40

Soybeans - 4.50

#2 corn - 1.60

Calculation of flour mixtures

3



To Senate Ag Committee

Good morning Chairman Flakoll and committee members.

Thank you for the opportunity to speak to today about Senate Bill No. 2365.

Grain grading and selling of grain at times can be very frustrating, especially when you think you have good quality only to be discounted for the things that are not legitimate.

Every discount in the price of a bushel of grain means fewer dollars for producer. In our county in one year there were more than one million dollars lost to discounts. This year with grain shortage there were few if any discounts on most all commodities.

If you figure the dollars lost on the discounted grain and what that can add to the states economy and the multiplying effect of those dollars in the states economy, it is quite significant, not to mention the effect of that to tax revenue lost to the state.

If a person has a grading dispute now he really has no place to go. There should be an agency which will oversee and resolve disputes with authority. Certification of these grading practices by an authorized agency should be done.

I would hope the bill would move forward to address these issues of our grain commodities industry.

Thanks for your time.

I would be happy to answer any questions you may have.

Dan Deaver

Berthold, N. Dak.
453 3252

Points for discussion of SB2365

Senate Ag committee
Chairman Flakoll Vice Chair Wanzek

We would first like to thank the sponsors of this Bill and hope that this will develop into better understanding and trust in the commodities industry of this state. This bill is about fair trade for agriculture in this state and also has the potential to create a significant economic boost as well.

Why I believe this should be undertaken is pretty simple. As a producer I have had so called quality deductions taken from grain produced on my farm that are not part the normal grading standards. I believe an amendment to this bill would be appropriate and would encourage this committee to consider the following amendment. (Item #1)

The reasons for the amendment are as follows:

1. Grains are subjected to discounts with no justifications as to the devaluing of the commodity. Is the discount legitimate? How is the end product affected? These questions should be answered.
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Spring wheat
5. Crop insurance does not recognize these quality issues. Many of these discounts are not considered as a factor of lessening the value of the commodity.

Another reason this issue should be addressed is, as many of you are aware more and more commodities are being forward contracted each year. This coming year has an increased potential of forward contracting considering the current market prices may increase the number of these issues. It seems when commodities are in greater supply

these new unforeseen discounts appear. When commodities are in short supply many of these discounts disappear.

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Thank you for your time.

I would be glad to answer any questions.

John Fjeldahl
Berthold N. Dak.

ND House Ag Committee
SB 2365 Hearing
3-9-07

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- Methods of sampling
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 - dipping the pail or hand into the stream of grain
- Accuracy of testing?
 - measuring amounts using mechanical balances
 - using digital scales
 - using grain funnel dropping grain from a constant height
- Uniformity of reading results?
 - including shrunken and broken kernels
 - rounding off to the nearest tenth or whole number

2) Protein tests

- Methods of sampling variances apply as above
- Testers are not sealed
 - can testers be calibrated at shipping time from manufacturer and then be scheduled for calibration testing at regular intervals?

3) Moisture-shrinkage

- Accuracy of testing?
 - some moisture testers automatically read the temperature and calculate the net moisture automatically; others require use of remote thermometer and chart reading. Some commodity classes read differently (ex. 2-row vs. 6-row bly.)
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 - Some use higher shrinkage to discourage wet grain delivery, others use physical factor and assess a drying charge

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- Repeatability is not achievable so test is not accurate enough to be used to procure grain within the narrow ranges that discount standards coincide with
- Costs of test kits are too expensive for multiple attempts that give non-repeatable results

Many of these concerns or discrepancies can be attributed to equipment, improperly trained personnel, lack of education and non-enforcement of proper procedural methods. Tests with non-repeatable results should not be allowed in ND if results cannot be attained to conform to the pricing or discount schedules set forth by the Industry to procure grain.

Larry Neubauer, USDGA Vice President, ND producer
2097 Hwy 5 NE, Bottineau, ND 58318

PROCEDURE FOR RESOLVING GRAIN GRADE DISPUTES

NDCC §§ 60-02-05 & 60-02.1-05. Grain marketing - Procedure for resolving disputes.

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints of the grain in dispute may be taken together by both parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States. The person requesting the inspection service shall pay for the inspection. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector.

An appeal of the determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.

2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints of the grain in dispute may be taken together by the parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed upon third party, who may examine the grain and determine the quality factors in dispute. The person requesting the inspection service shall pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

Officially licensed inspection offices in North Dakota include.

Parent Office:

ND Grain Inspection Service, Inc., (Fargo)
2601 North University Drive
Fargo, ND 58102
Ph: (701) 293-7420
Fax: (701) 241-8818
E-mail: ndgi@graininspection.com
Web site: www.graininspection.com

Specified Service Points:

ND Grain Inspection Service, Inc., (Alton)
PO Box 100
(Street delivery: 200 Hwy 81 South, 58045)
Hillsboro, ND 58045
Ph: (701) 636-5210
Fax: (701) 636-5210
Email: mike.adams@graininspection.com

ND Grain Inspection Service, Inc., (Taylor)
3645 ½ 98th Ave SW
Taylor, ND 58656
Ph: (701) 483-8126
Fax: (701) 483-8127
Email: mike.adams@graininspection.com

Parent Office:

Northern Plains Grain Inspection Ser., Inc., (Grand Forks)
PO Box 13217
(Street delivery: 1013 North 5th Street, 58203)
Grand Forks, ND 58208-3217
(701) 772-2414
Fax: (701) 746-7218
E-mail: paul@npgis.com
Web site: www.npgis.com

Parent Office:

Grain Inspection, Inc., (Jamestown)
PO Box 1652
(Street delivery: 314 2nd Ave. NW, 58401)
Jamestown, ND 58402
Ph: (701) 252-1290
Fax: (701) 252-1298
Email: grain@csicable.net

ND Grain Inspection Service, Inc., (Enderlin)
PO Box 123
(Street delivery: 309 2nd Avenue, 58027)
Enderlin, ND 58027
Ph: (701) 437-3000 ext. 202
Fax: (71) 437-2923
Email: LoriG@graininspection.com

ND Grain Inspection Service, Inc., (Ayr)
686 Main Street
Ayr, ND 58007
Ph: (701) 668-2214
Fax: (701) 668-2453
Email: ndgi@arthurcompanies.com

Specified Service Point:

Northern Plains Grain Inspection Service, Inc., (Devils Lake)
210 5th Street
Devils Lake, ND 58301
Ph: (701) 662-1801
Fax: (701) 662-8081
Email: paul@npgis.com

Parent Office:

Minot Grain Inspection, Inc., (Minot)
PO Box B
(Street delivery: 1804 Valley Street, 58701)
Minot, ND 58702
Ph: (701) 838-1734
Fax: (701) 838-3782
Email: motgrins@srt.com

Call the Public Service Commission
Licensing Division at 701-328-4097
to request a copy of this procedure or
see our web site: www.psc.state.nd.us

You should know...



North Dakota Public Service Commission

Issue C-1 Rev. July 2004



North Dakota Public
Service Commission

Commissioners:
Susan E. Wefald
Kevin Cramer
Tony Clark

600 E. Boulevard Ave.
Department 408
Bismarck ND
58505-0480

Phone
701-328-2400

Facsimile
701-328-2410

TDD/T.T.Y.
800-366-6888

E-mail:
ndpsc@state.nd.us

Website:
www.psc.state.nd.us

Selling Grain?

*Know your rights and responsibilities regarding
grading disputes, payment, storage rates, and handling fees.*

NO GRAIN LICENSE— NO BOND PROTECTION

☞ Bond coverage does not exist if a buyer is not licensed. If grain is sold to an unlicensed buyer and if the buyer does not pay for the grain, there is no bond coverage available to help pay the seller. Court action may be a farmer's only recourse if an unlicensed buyer fails to pay for grain. **Therefore, farmers are strongly encouraged to check to ensure that the buyer is licensed. Warehouses and grain buyers must be licensed and bonded.** Unlicensed buyers are operating illegally.

☞ In North Dakota, bond requirements are based on the physical size of an elevator or on the amount of grain that a grain buyer handles. **Even if the buyer is licensed and bonded, there is no guarantee that farmers will be fully reimbursed if a buyer becomes insolvent.** If the buyer does not have enough grain and bond assets available to satisfy all valid grain claims, available funds are distributed on a prorated basis.

☞ Farmers must also be aware that **bond coverage may not be available if grain is sold to a company that is located outside the state.** If grain is sold to out-of-state entities, the laws of the state in which the buyer is located may govern the transaction. Farmers may find that they have far less protection in those states than they do if the grain was sold to a company that is licensed in North Dakota.

☞ **To find out if a warehouse or grain buyer is licensed in North Dakota, visit the Public Service Commission web site at www.psc.state.nd.us or call (701) 328-4097.**

CREDIT-SALE CONTRACTS AND INDEMNITY FUND

☞ **Delayed price and deferred payment contracts are examples of credit-sale contracts.** State law defines credit-sale contracts as written grain sale contracts that provide that the sale price may be paid more than 30 days after the delivery or release of the grain for sale.

Title to grain will pass from the farmer to the buyer when a credit-sale contract is signed, unless the farmer has signed a contract providing for the title to the grain to pass to the buyer at the time of delivery.

Farmers should be aware that credit-sale contracts are not protected by the buyer's bond unless the buyer has secured independent bond coverage. If the buyer has secured independent bond coverage, the amount of bond available should be identified in the contract disclaimer. If no credit-sale contract bond coverage is available, disclaimer language concerning the lack of bond coverage must be printed in bold type immediately above the signature block on the contract. The disclaimer statement must contain the following or similar language:

**THIS CONTRACT IS NOT PROTECTED BY
BOND COVERAGE IN THE EVENT OF THE
BUYER'S INSOLVENCY.**

Although there may not be bond protection afforded to those entering into credit-sale contracts, a fund was created by the 2003 Legislature that provides protection for unpaid credit-sale contracts executed after August 1, 2003, in grain elevator or grain buyer insolvencies. Each patron's coverage is limited to 80% of the patron's unpaid credit-sale contracts with the insolvent buyer, up to a maximum payout of \$280,000.

The reader agrees that use of this information is entirely at the customer's risk. The Public Service Commission's services are provided "as is" with no warranty of any kind, either expressed or implied, including without limitation any warranty for information provided through or in connection with this service.

Selling Grain?

Know your rights and responsibilities regarding grading disputes, payment, storage rates and handling fees.

FARMERS—CREDIT-SALE CONTRACTS MUST BE SIGNED

(cont.)

State law requires that scale tickets be issued for every load of grain received and that all scale tickets be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within 30 days after the grain is delivered to the warehouse. State law also requires every grain buyer, upon receiving grain, to issue a scale ticket or comparable receipt and shall pay the farmer within 30 days of receipt of the grain.

Farmers who make a decision to sell grain and take payment more than 30 days after the delivery or release of the grain for sale, must enter into a credit-sale contract with the grain warehouse where the grain is delivered or with the grain buyer that received the grain. A credit-sale contract must be signed to be valid and enforceable. If credit-sale contracts are not signed within the required time, grain warehouses and grain buyers are at risk of having a complaint filed against them.

Farmers are encouraged to work with their grain warehouses and grain buyers to get all credit-sale contracts signed within the time permitted by state law.

STORAGE RATES AND HANDLING FEES

- ☞ State law does not prescribe grain elevator storage rates and handling fees. **Each state licensed grain warehouse sets its own storage rates and redelivery fees** (i.e. "in" and "out" charges).
- ☞ **Licensees cannot, however, unjustly discriminate among patrons.** State licensed grain warehouses must file their proposed rate schedule with the Public Service Commission; it must also be posted at the warehouse. The rates may be revised upon filing with the PSC.
- ☞ **Storage rates must be stated on warehouse receipts.** If a warehouseman changes his rates, the rates that were in effect when a warehouse receipt was issued are the rates that apply to

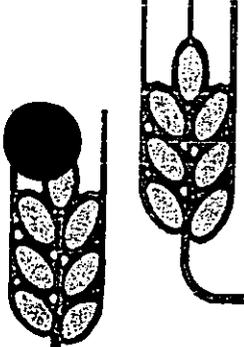
that storage contract. Warehouse receipts on beans expire on April 30 of each year; other grain receipts expire on June 30. If expired receipts are reissued, the storage rate in effect at the time is the rate that will apply to the renewed receipt.

- ☞ **Farmers should not confuse storage rates with credit-sale contract service or handling charges (delayed price and deferred payment-type transactions).** These fees are not regulated and are governed by the terms of the contract that is entered into by the buyer and the seller.

GRADING DISPUTES—DON'T WAIT OR YOU'LL BE TOO LATE

- ☞ State law does not regulate elevator purchase prices, premiums, or discounts. State law does provide, however, that warehousemen may not unjustly discriminate among patrons.
- ☞ If a farmer does not agree with an elevator's test results he has the right to ask that an independent test be performed on his grain. He must, however, **ask for the test when the grain is delivered.**
- ☞ To initiate the process, the farmer must ask for the independent test. The farmer and the warehouseman must then draw a **mutually agreeable sample** of the load. This sample must be sealed in a container and sent to a **federally licensed inspection service** or to some other mutually agreed to third party for testing.
- ☞ **The buyer and the seller are both obligated to accept the results of the independent test. The farmer is responsible for the cost of the tests.**
- ☞ State law requires that warehousemen and grain buyers post a notice concerning the law's provisions concerning the resolution of grain grading disputes. To obtain a copy of the notice, visit the PSC's web site at www.psc.state.nd.us or call (701) 328-4097.

Note: This information piece was originally produced and disseminated in August 2000 in cooperation with the Agricultural Extension Service, North Dakota State University.



NORTH DAKOTA GRAIN DEALERS ASSOCIATION

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TESTIMONY OF NORTH DAKOTA GRAIN DEALERS ASSOCIATION SB 2365 – STUDY OF GRAIN GRADING HOUSE AG COMMITTEE – MARCH 9, 2007

Good morning Mr. Chairman and members of the committee. My name is Steve Strege and I represent the North Dakota Grain Dealers Association. We are here in opposition to SB 2365. We believe it is unnecessary, intrusive, expensive, and deals with matters already addressed in state law.

I asked the Public Service Commission how many complaints they have received on grain grading in the last several years. Here's the tally:

2002: 2 complaints; 2003: 3; 2004: 11; 2005: 9; 2006: 3.

That's 28 in five years. Without the abnormal 2004 growing season, which produced frost damaged and light test weight corn, a typical year is 2-3 complaints. This does not indicate the need for a study.

Studying requires time from both the studier and the studied. Our elevators have customers to take care of, spring planting inputs to get out the door, grain trucks to dump, marketing to do, and trains to load. Responding to surveys or questionnaires as a part of this study should not interfere with these legitimate and critical business transactions. And for what?

The original bill called for the PSC to conduct the study. PSC put a \$125,000 fiscal note on this bill. A Council study may not run anything like that, but 2 or 3 complaints in a typical year don't warrant a study at any price.

North Dakota grain elevators typically handle around 550 million bushels of grain per year. At an average of 700 bushels per truckload that is 786,000 truckloads. Having only 2 or 3 grain grading complaints per year is a record to be envious of, not one to question.

North Dakota law already provides a procedure to resolve grain grading disputes. It is in North Dakota Century Code 60-02-05 and 60-02.1-05. I have copies of the poster that is in

elevators advising farmers of this option. A sample is sent to a federal lab or other agreed-upon third party for a determination, and that determination stands. I think the process is seldom used.

At least a couple times in the past several years the PSC has circulated, with the help of the Extension Service and farm groups I think, a brochure titled "Selling Grain? Know your rights and responsibilities..." I have copies for you and this is on the PSC website.

North Dakota elevators are bound by law to use federal grade standards. I have for each of you a copy of those standards as of February 2006. As noted on the cover, the distribution of these is a project of the North Dakota, California, Minnesota, Oklahoma and Nebraska Grain and Feed Associations. The 2007 book will have a couple changes in soybeans. Other than that the standards in this booklet are still effective. This is part of our education effort. A couple years ago, in cooperation with the Northern Crops Institute, we had a couple grain grading schools. The local inspection agencies are usually willing to work with employees of their customer elevators.

Grain value, premiums and discounts are not set by the local elevator. If the market is paying a nickel a fifth up on protein to 15 and then another 25 cent kicker, that is what the elevator will be paying. Scarcity of protein means higher premiums. If there is plenty of protein around the premiums will be less.

Maltsters determine how much vomitoxin they will accept, and I'm quite sure that is a function of how much the brewers will accept. The premiums or discounts for hard count in durum or spring wheat are also a function of what's in the market.

Upon hearing of this study, one North Dakota elevator manager made the observation that if farmers want to go to federal grades on each truckload that can be done. But with the understanding that the farmer will pay the cost on each load and that the grade will stick. There will be no opportunity to overlook some deficiencies that might not be prevalent that crop year and so might possibly be blended off.

North Dakota farmers usually raise good to excellent quality crops. Usually, but not everywhere always. And when everyone has high quality there isn't as much premium for high quality. Markets might not always seem rational or fair. But that is the market. We urge the committee to give a Do Not Pass recommendation to this bill. I will try to answer any questions.

UNITED STATES
DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

OFFICIAL UNITED STATES
STANDARDS FOR GRAIN

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Contact USDA for copy or