

2013 HOUSE AGRICULTURE

HB 1403

2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1403
February 14, 2013
Job #18961

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Require Legislative Management to study the credit sale contract indemnity fund

Minutes:

Attachments #1a, 1b, 2, and 3

Representative Onstad, Co-Sponsor: (See attached #1a and #1b) (1:00)

Representative Headland: I'm confused as to an indemnity fund on a cash sale. When we make a cash sale, we pick up the money. If we don't pick up the money, it becomes a credit sale which would be covered by the indemnity fund.

Representative Onstad: They can haul that commodity to that elevator. It could be under a contract price. It is in the elevator until he wants to sell it.

Representative Headland: That is a credit sale and that is a deferred contract.

Representative Onstad: Correct, under the indemnity fund currently. If you haul a commodity and did not receive payment, for example like in the Dickinson and Halliday area. When they asked for payment, they were told the elevator was going into insolvency.

Representative Headland: Did they ask to be paid when they left? Or did they leave the money to be collected at a later date which would be a delayed price contract?

Representative Onstad: I'm not sure of the particulars. Their grain is not covered under the indemnity fund. The only protection was the bond on the elevator. It is about \$1.8 million that these individuals are out.

Chairman Dennis Johnson: This grain was not priced. It was just on storage.

Representative Onstad: Yes.

Representative M. Nelson, Co-Sponsor: (See attached #2) (8:48)

When the crushing plant at Northwood reopened, the Public Service Commission announced that they were requiring that place to carry a bond that was twice the normal due to concerns. Twice the normal bond amounted to about one day's purchase of soybeans for that plant. The bonds are small and costly for the protection that they provide. You may think you are covered. If the right word is not on the contract you are not.

With cash sales you are relying on the assets. If those assets get put on a truck or train and they move out of state, they are not recoverable. Most of the time between the bond and the assets when it is sold there haven't been that many cases where producers have been seriously financially hurt.

There is a danger out there. Producers think they are covered and they are not.

Representative Fehr: A producer brings product to market, a cash sale means they are selling it on the spot. The check in the mail never arrives. Under the conditions of the indemnity fund, they are not paid.

Representative M. Nelson: The indemnity fund is for credit sales. But it is specific to what a credit sale is. If you sold the grain and deferred payment until December, is one style. You may not sell the grain; you might price it down the line. When an elevator goes down, there are producers that think they are covered and are not.

Representative Fehr: When does the indemnity fund cover?

Representative M. Nelson: The indemnity fund covers when there is a qualifying credit sale. There is a written contract with the terms spelled out. Producers, if they are worried about the financial solvency of an elevator, may be afraid to extend the elevator credit. They may go with a cash sale. They have more protection with a credit sale because it covers 80% up to \$285,000 maximum.

Representative Fehr: With this study, what are we hoping to find out?

Representative M. Nelson: It could be an extension. It could be a separate fund. It used to be a problem with edible beans where companies went broke. They have a solution but I don't know what it is. That should be extended to the rest of the grain industry.

Michael Howe with North Dakota Corn Growers: (See attached #3) (16:16)

Representative Headland: How should the fund be paid for?

Michael Howe: I would have to discuss that with our executive director.

Opposition:

Eric Aasmundstad, North Dakota Farm Bureau: We know commodity prices are up. We can't cover everything. The dry bean industry was fixed because it matured. The shady ones are drummed out. Our members are opposed to an increase in the indemnity fund because we pay it. There is personal responsibility. It is unfortunate when a grain dealer goes bankrupt and people don't get paid. We need to step back and know who we are doing business with.

Representative Larson: You opposed this one and the last one? Are you speaking in favor of the Farm Bureau or NoDak Mutual?

Eric Aasmundstad: Both.

Representative Headland: The indemnity fund when it was first created was a \$10 million fund. Then we lowered the fund because of complaints from the farmers who were paying it. The fund is at its cap. There is no need to increase it.

How would you expand it for a cash sale or a prepaid sale when you have regulated commercial operations and unregulated commercial operations?

Eric Aasmundstad: I agree.

Farmers went into prepay agreements to save on fertilizer, etc. I am getting a benefit but there is a risk. I would fear this study will go into prepays.

Representative Rust: I agree. The only thing I worry about is that farmer. The costs are so high. If something like that happens, it could mean the end to that farmer.

Eric Aasmundstad: It is a tough thing. Farming is big business. I don't believe it is the state's place to insure against every instance of poor management, etc.

Representative Rust: So what is the harm in the study?

Eric Aasmundstad: Remember where we have been. The cap was at \$10 million and then we took it back to \$6.5 million at the request of farmers.

Chairman Dennis Johnson: Closed the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1403
February 15, 2013
Job #19053

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Committee Work)

Require Legislative Management to study the credit sale contract indemnity fund

Minutes:

Representative Headland: I would like to amend HB 1403 to say "they shall consider"

Representative Belter: Seconded the motion.

Chairman Dennis Johnson: On line 5, "shall consider studying." It also would be on line 1.

Representative Fehr: I am not sure what the difference is between "may" and "shall."

Chairman Dennis Johnson: "Shall" gives them the option the same as "may."

Representative Rust: "Shall study" means it has to happen. "Shall consider" means Legislative Management can choose which one.

Chairman Dennis Johnson: Our intern says Legislative Council has switched because they like "shall" better than "may."

Representative Headland: Could we have the amendment repeated?

Chairman Dennis Johnson: Line 1 Legislative Management "shall consider studying."
Line 5, "shall consider studying" the credit sale.

Voice Vote on amendment. Amendment passed.

Representative Headland: Moved **Do Not Pass**.

Representative Belter: Seconded the motion.

Representative M. Nelson: I don't see the harm in a study.

Representative Rust: In today's world there are so many dollars riding on things. It could take you out of business when a company goes down. Is everyone comfortable with what happens when dealing with companies?

Representative Belter: How much premium are you will to pay to cover the risk? At one time this program was \$10 million. We reduced it to \$6 million because people are not willing to pay the premium to cover the risk. That is why I am supporting a Do Not Pass. It is an issue that is a concern to all of us.

Representative Fehr: I have two points. As we were hearing the testimony, it was very confusing on why some are covered under the fund and some are not. Secondly, it seemed that based on technicalities in wording of contracts some are winners and some are losers. Because of that it is worth a study.

Representative M. Nelson: The current situation is confusing. Through bonding requirements people do pay a premium for something that isn't effective. Should those types of fees be rolled into a fund? The current indemnity fund was 2/10ths of 1%. Now the fund is there and people are not paying anything for the coverage they are getting. Maybe the State could throw a little general fund money into starting the fund and let it run. It is worthy of a study.

Representative Headland: What other businesses in the state are taxed for a fund to protect themselves for bad decisions. I don't want to be taxed to provide for this protection. I don't see what there is to study. You can't protect everybody from everything.

Representative Larson: With this indemnity fund, farmers are taxed to fund this?

Representative Headland: A tax is not the proper word. They are assessed a fee for every bushel of grain that they put on a deferred contract. It has gone away because the fund reached the limit. When we started the fund, as soon as farmers figured out that they were paying for it, they asked us to get rid of it. So we moved the cap from \$10 million to \$6 million. They are no longer assessed.

You have to be responsible when making a decision of where you are doing business.

Representative Larson: Should there be a fund at all? Maybe there should be a study to do away with the fund?

Representative Headland: The fund is there. The farmers have been taxed. What would you do with that money? You might as well leave the protection in place. There is regulated industry and unregulated. How are you going to regulate a company that you have no regulatory authority over them?

Vice Chair John Wall: When was the last claim made against the indemnity fund and for how much? I think Anderson Farms was mentioned in testimony.

Representative M. Nelson: We had this Falkirk occurrence within the last few months. If the fund is still at its cap, would that mean that nobody made a claim? Maybe we need to change in law that it states on the contract when you are not covered for the credit sale. The fund only covers up to 80%. Falkirk will be over the 80%.

This fund happened in response to the loss at Wimbledon. I am not sure since it was created if there have been claims or not.

Representative Trotter: It is my responsibility to find out the financial status of where I sell my products. The Northwood Crushing plant stuck a bunch of people. The word was out in the coffee shops that they were struggling. Northwood was paying more for their canola so people were selling to them. Farmers are the most trusting people. Some things have to change. I am not for the study.

**A Roll Call vote was taken for Do Not Pass as amended:
Yes 8, No 3, Absent 2.**

Do Not Pass as amended carries.

Representative Belter will carry the bill.

February 15, 2013

2/15/13
JDN/C

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1403

Page 1, line 1, replace "require the" with "provide for a"

Page 1, line 1, remove the second "to"

Page 1, line 1, after "study" insert "of"

Page 1, line 5, replace "The" with " During the 2013-14 interim, the"

Page 1, line 5, replace "study" with "consider studying"

Renumber accordingly

Date: 2/15/13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1403**

House **Agriculture** Committee

Legislative Council Amendment Number 13.0757.01001

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Headland Seconded By Rep. Belter

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman John Wall			Rep. Jessica Haak		
Rep. Wesley Belter			Rep. Marvin Nelson		
Rep. Alan Fehr					
Rep. Craig Headland					
Rep. Joe Heilman					
Rep. Dwight Kiefert					
Rep. Diane Larson					
Rep. David Rust					
Rep. Wayne Trottier					

*Vote
passed*

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Change it to "consider studying"

REPORT OF STANDING COMMITTEE

HB 1403: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). HB 1403 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "require the" with "provide for a"

Page 1, line 1, remove the second "to"

Page 1, line 1, after "study" insert "of"

Page 1, line 5, replace "The" with " During the 2013-14 interim, the"

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Renumber accordingly

2013 TESTIMONY

HB 1403

#1a
2/14/13

HB 1403

Good Morning, Mr. Chairman and Members of the Agriculture Committee

Rep Kenton Onstad, Parshall , District 4

HB 1403 asks to study the section of code Chapter 60-10 dealing with Credit sale contracts and cash sales.

Recent elevator failures, in the last couple of years, has escalated the discussion to provide added protection for individuals delivering a commodity to these sights.

The Credit- Sales protection provided by the Indemnity Fund is not the main target of question but the cash sales are.

A recent elevator, Anderson Grain, had dissolved and the individuals with sunflowers delivered under cash sales are lucky to see 10% of the dollars owed to them

As you are well aware, the current commodity prices being offered , an individual could easily have \$500,000 to a \$1,000,000 in the elevator at any one time.

Expanding the indemnity fund concept, by creating a parallel fund for cash sales, and levy a modest transactional fee on cash sales to fund the insurance provided is a suggestion. Just as with the indemnity fund for credit sales contracts, you could put a cap on the fund level that, when exceeded, elevators cease to levy the transaction fee until the fund is drawn upon to a specified level where the fee triggered again to recapitalize the fund Nobody is in agreement how this can be accomplished but are in agreement that we need to look at this section of code..

Mr. Chairman and members of the Ag Committee, I ask you to look favorably to the study and give it your best recommendation.

I am ready for questions

Cash Sales and Pre-Pay Agreements

HB 1403
2/14/13

#16

Farmers are much more vulnerable to losses from cash sales and pre-paid purchases of seed, fertilizer and chemicals during elevator insolvency than they are to losses from credit sales contracts, which are covered by the Indemnity Fund (so long as the Fund is not exhausted by claims).

In cash sales, the farmer is due proceeds from the delivery and sale of grain at the elevator. With pre-pay agreements, a farmer may purchase seed, fertilizer and chemicals in advance from an elevator for hedging or tax purposes, but take physical delivery of those inputs at a later date. In both cases, that producer becomes an unsecured creditor of the elevator and goes to the end of the line in an insolvency proceeding.

Unfortunately, cash sale and pre-pay liabilities are growing, and North Dakota state policy is inadequate for protecting farmers against losses in an insolvency proceeding. Elevators are required to be bonded under state law, but the bonds are often insufficient to cover anything but a small percentage of outstanding obligations to producers.

The current bankruptcy of Falkirk Elevators offers a case in point: pre-pay liabilities represent a significant portion of the potential losses, with producers facing tens of thousands and up to a quarter of a million dollars in individual losses and little prospect for adequate recovery.

Farmers' Growing Risk Exposure

Over the past 60 years, we have seen a dramatic consolidation in the number of operating grain elevators from 1,025 in 1950 to 396 today. Meanwhile, the average annual licensed storage capacity of elevators has increased from 59,300 bushels to 929,600 bushels in the same period.

The market value of agricultural commodities managed by grain handling facilities in the state has also grown dramatically in recent years. At the beginning of the last decade, market prices for soybeans averaged just under \$5 per bushel, while wheat and corn stood at roughly half that amount. Today, soybeans have topped \$15 per bushel, and wheat and corn stand at over \$7 per bushel.

Finally, the marketing of agricultural commodities has become more sophisticated and reliant on credit sale contracts, pre-pay agreements and other financial instruments that allow agricultural producers and elevators to manage storage, shipping and marketing of commodities and the purchase of inputs, while hedging market risk and reducing tax exposure.

These trends—fewer and larger grain elevators, an ever growing volume of commodities of greater value, and expanding use of sophisticated financial tools—have substantially increased farmers' liabilities and exposure to financial risk from insolvency of an elevator or, increasingly, other grain processing facilities, such as ethanol plants.

Energy to Make a Difference.

#2
2/14/13

Testimony of Representative Marvin E. Nelson, Feb 14, 2013 House Agriculture Committee on HB 1403.

Mr. Chairman, members of the Committee. There is a problem. Agricultural producers sell commodities of great value every day to many businesses. Sometimes, one of those businesses goes out of business. The protection to those producers varies widely. If they did a credit sale, they are covered by the Credit Sale Indemnity Fund for 80% of their sales up to \$280,000. If they did a cash sale, they become an unsecured creditor and must rely on bonding and the sale of assets to recover. Bonds are very small compared to the value of the commodities grain buyers purchase.

The solution is not simple. Increasing bonding is costly for what additional protection is provided, many buyers perceive the grain buyers they do business with to be financially strong and so any insurance is in their minds an unnecessary expense, and so on. Yet we continue to have grain buyers who go out of business and threaten producers.

The fact that the solution is not simple is why this is coming to you as a study and not as a proposed solution, I ask for your support.

#3



Testimony for House Bill 1403
Before North Dakota House Agriculture Committee
February 14, 2013
Michael Howe, ND Corn Growers Association

Mr. Chairman & Members of the Committee:

For the record my name is Michael Howe with the North Dakota Corn Growers Association. Our association supports House Bill 1403.

Our association supports an interim study of the credit sale contract indemnity fund, as risk has changed over the years. With enhanced technology and stronger genetics, corn yields have significantly increased. These higher yields have grain turning through facilities faster than when the laws were made. Facilities are turning over grain 4 to 12 more times per year versus the traditional model upon which our bonding laws were established to purchase grain from the producer and storing it for a year.

Due to the rapid run up in commodity prices in 2007-2008, the issue came up with the 2009 legislature. With the 2012 Corn Belt drought and higher grain prices, we are seeing this issue again. We would agree with the timing and want to be part of the process that evaluates the risk in these scenarios.

The North Dakota Corn Growers Association supports this interim study and would be willing to cost share a portion of this study.

Thank you for your time.

Michael Howe