

2015 SENATE AGRICULTURE

SB 2119

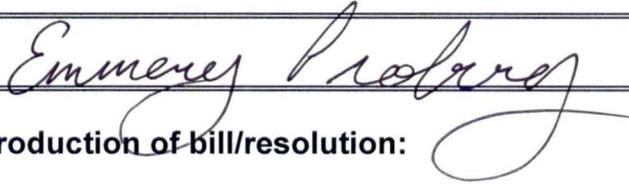
2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2119
1/15/2015
Job # 21997

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the submission of public warehouse and grain buyers information

Minutes:

Attachments: # 1

Sue Richter, Representing Public Service Commissioner Randy Christmann: (See attached #1)

Senator Klein: (4:28) We have seen a number of insolvencies in the past. If this passes, will it give you more opportunity to see more records and not have the risk of that financial information to people who don't have any business knowing what is going on in those particular businesses?

Sue Richter: What this does is gives us the opportunity to protect financial documents if they are filed. They are filed if the commission feels there is a need to require the financial.

Chairman Miller: How often do you look at financial statements for this particular license?

Sue Richter: We only make it a condition of consideration of a license on an as needed basis. It was noted in here that the last audit that was performed by the auditors has recommended that the commission review the financial documents to help determine solvency of licensees and so that is the catalyst for setting it up. If it becomes part of our regular process to require financials with an application or a renewal, the applicant does not have to file a request for that document to be protected and the other items that go along with that.

Senator Klein: Is there a way to look at the records and determine insolvency? If they are showing a balance sheet that suggests profitability, are you able to dig further? For example, in our area in Harvey, everyone suspected the guy was in trouble.

Sue Richter: Insolvencies do and will continue. I'm not sure that even requiring the filing of financials can ever stop that. I don't know if you can ever get to a point of 100% solvency-prevention. In comment to the elevator in your area, the commission did work with that

company for some time. Shortly before they ended up going into insolvency we did ask them to file financial records with us which heightened our concern with that company. If when we receive and review financials, that helps staff to take a look and make a recommendation to the commission. If we have concerns about a grain elevator or grain buyer, there are opportunities to work that business to make them successful if we have the ability to do that. But again, I don't believe it is possible to 100% stop failures even in requiring financials.

Senator Klein: Are there instances we could help or coach those grain buyers? Do you utilize cease and desist?

Sue Richter: It happens on an infrequent basis that we are working with someone who seems to be struggling with their business. If they are having a struggle, hopefully we are able to step in and work with them to make everybody whole. In the case of the elevator you referred to, we were not able to find that success.

Chairman Miller: For example, Fordville Coop Marketing Association, which has been doing good business for years, is going to apply for their annual license, are you likely just to grant it; where as Fordville Grain Company, which has been out of business for twenty years, decides to start up again, you are more likely to request financial reports? Could that be a scenario?

Sue Richter: It could be. We have not actually implemented the way we would be looking to require financials. If Fordville Marketing applied for a license, we could ask for their financials. When our inspectors go out and do an exam, they are not looking at the financials; they are looking at the grain side of the business. If a business needs more monitoring, we require them to file something on a quarterly or a monthly or a semiannual basis. We will continue to do that. If you had someone who comes in and applies for a license and they had been involved with a company that had failed, we would certainly look at their financial records. In the case of Northwood Mills, if anyone remembers that facility, that's what happened when that company went insolvent and they partnered up with a company from a foreign country that was providing finances to them. The commission asked to take a look at their financials and wanted to see what they had for a plan because they did not want to see a failure at that facility again. So we would just use the financials to be of benefit to the licensees and to give the commission comfort when we are approving license applications or when we are renewing a license.

Senator Luick: So the context of this is just basically to take away the availability of your applicants' statements from the public eye?

Sue Richter: It just takes away the need for a request to have to be made for the documents to be protected. When they are filed today, they have to file a request for protection and staff has to see where they fall under the open records law and possibly has to make a recommendation to the commission. What this would do is protect every financial that comes in under those two chapters which are a grain warehouse and grain buyer laws; any financial that comes in would automatically be protected.

Vice Chairman Luick: I am assuming there are two different categories of financial instruments here. (1) the financials for the business itself. (2) But what about the transactions that are taking place? For example grain movements that are moving in and out of that facility? Are those still going to remain public information?

Sue Richter: The day to day transactions would be different than requiring financials. Our inspectors would see the day to day transactions when they are out doing an exam. What we are talking about here is looking at more than the preliminary review. We would be looking to see if the debits and the liabilities are at a plateau that we would be comfortable with issuing a license or issuing a license with an additional bond. But today, we are just looking for protection for the financials without having to include a request for them to be protected.

Senator Oban: Correct me if I'm wrong, all this is allowing you to do is ask for the financials whether the USDA does or not?

Sue Richter: At one time, the USDA was looking at approving state programs. But before the USDA will issue a license require financials. In 1999, we came to the session and said there is a possibility that we may have to have our inspection approved by the USDA. If that happens, we have to have the ability to require financials and we want those financials to be protected without the financials having to be accompanied by that request. This just removes the language that ties the filing of the documents and they are being automatically protected.

Senator Klein: That will speed up the process too, rather than waiting on everyone to sign off. Certainly I would think that you would want confidentiality and would want to ensure that you can get it? Also I assume the institutions have auditors who have to maintain confidentiality with their records. Does the PSC have the opportunity to view what the auditor has done?

Sue Richter: Generally with license programs, yes it has to be a certain level of an auditor and we just require that to be available.

Senator Klein: Do we have a lot of grain warehouses in ND? Like actual warehouses rather than roving buyers? Do you have those numbers with you?

Sue Richter: We have 320 grain houses that have license facilities and their operated by just under 200 different companies. We have 70 or some roving grain buyers. And that's the difference between the 6002 as warehouses. 6002.1 are the roving grain buyers and the federal facilities that operate under the United States Warehouse Act license and then they have to have a state buyer's license. There are about 80 roving grain buyers which include truckers and any kind of buyer that doesn't have a facility where they are receiving grain.

Senator Klein: How do you get around to the 450 grain buyers? How many inspectors do you have?

Sue Richter: We don't have anything in statute that says when an exam has to be completed by. The goal has always been that we try and do an exam in an 18 month to 24 month period. We have two inspectors who do all of our exams. If there are a lot of insolvencies that are going on, that can change the dynamics of the ability to get out at that time that we really think is a reasonable time for completing an exam. Monitored elevators are inspected on monthly or quarterly basis so the more that you are monitoring the thinner the inspectors are spread.

Senator Klein: On the status of the indemnity fund, where are we at?

Sue Richter: The balance is around 4 million dollars.

Senator Klein: What is the maximum amount of money that can go in?

Sue Richter: The fund maxed out when collections reach 6 million dollars. That happened in 2008 and they have been suspended since 2008. Collections will not begin again unless that fund falls below 3 million dollars.

Senator Klein: How do we collect that?

Sue Richter: We collect that by an assessment that is put on the credit sale contracts. There is a two-tenths of one percent assessment that is applied to that transaction and then the elevators are required to collect it from the farmer at the time that the contracts are paid and then they submit that assessment to the commission on a quarterly basis. Back in the day, when interest rates were good, we collected a fair amount of interest that helped us to have moneys in the fund.

Senator Klein: What is the indemnity fund is used for?

Sue Richter: The indemnity fund is used for credit sale contract claimants and they are eligible at the rate of 80% and not to exceed a maximum of \$280,000 per insolvency.

Senator Klein: So if I pre bought my fertilizer, I don't get covered do I?

Sue Richter: No it is only for grain. Fertilizer or chemical are not protected. They are not protected by the trust fund either which is the pool of money which is used to pay the noncredit sale contract claimants in an insolvency.

Vice Chairman Luick: Is seed included in there?

Sue Richter: No seed is not covered either, it specifically covers grain sales. The grain definition is very broad and defines any grain or grass seed.

Senator Klein: Informationally, last session after the Falkirk issue where we had a lot of farmers who had pre-bought fertilizer and seed. After they went away, it really was a hit to a lot of those guys who had bought their fertilizer and then had to come back again the next spring and buy it again because the facility wen insolvent. So this only helps folks on the credit sale side or the grain side?

Sue Richter: In response to Falkirk, fortunately when the elevator liquidated themselves; a claim was not filed at the commission so they liquidated all of the grain and the inventory and supplies and sold the facility. All the cash claimants, with the exception of one were made whole 100%. The elevator paid the credit sale contract claimants 80% and so our indemnity fund reimbursed them the 80% of that remaining 20%. We didn't get any support documents, but we were told that those prepaid farmers were fortunate enough to receive 50% of those prepaids.

Chairman Miller: Have you had any open records requests for financials?

Sue Richter: The commission has requested some financials and with those financials we have required those licensees submit it as protected document.

Chairman Miller: So you haven't had anyone try to get ahold of someone else's financial information?

Sue Richter: When they come in, that sensitive data is in a sealed envelope and they go into a locked drawer in our vault. With that complete financials, you have a redacted version. So anything that the company doesn't feel is sensitive or will impact their business, anyone would be able to view that redacted document. But the important parts are protected and are secured.

No further testimony in support or opposition.

Senator Warner: Moved Do Pass.

Vice Chairman Luick: Seconded the motion.

A Roll Call vote was taken: Yes: 6, Nay: 0, Absent: 0.

Do Pass carries.

Senator Klein will carry the bill.

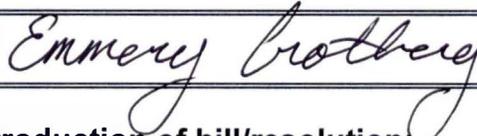
2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2119
1/16/2015
Job # 22084

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Committee Work)

In response to the passing of SB 2119 relating to the submission of public warehouse and grain buyers information

Minutes:

Attachments: n/a

Public Service Commissioner Randy Christmann came to provide information about what the Public Service Commission does impacting agriculture.

(4:04) The PSC (Public Service Commission) conducts random inspections of scales used for agricultural purposes. It is essential for scales to be accurate in agriculture since scales determine the price for commodities and livestock for farmers and ranchers. The PSC currently employs three scale inspectors but are going to be requesting an additional FTE in their upcoming budget. Private scale companies currently service agricultural scales and adjust the scales if necessary. The PSC conducts random inspections to ensure that the private companies are accurate and check the work of the private scale companies.

(8:27) The PSC also receives a lot of calls concerning Railroads. Federal legislation in 1980 and 1994 with the STAGGARs Act took almost all regulatory power into the federal government. The PSC still has limited authority over railroads in bring a "rate case." The PSC cannot do a rate case themselves, but can assist an individual customer of the railroad to bring a complaint. The PSC requests that the rate case fund would remain in the budget in case it is needed.

(12:40) The PSC's largest role in agriculture is with the grain dealers and grain buyers. There are several categories of grain buyers. (1) Roving grain buyers who are people who buy grain and sell it and do not have facilities that are licensed. (2) Facility-based grain buyers is someone with a federal license and they are licensed in multiple states through the USDA so they have a license on their warehouse and a bond but the PSC licenses them similar to a roving grain buyer. For example, CHS, Gaviolon, Columbia Grain are examples of facilities licensed through USDA. The PSC just requires an additional license since they are buying grain in North Dakota. (3) The grain warehouses are the traditional elevators.

(15:02) The PSC has closed out four insolvencies in the past two years. One of the first solutions when there is trouble with a grain buyer is to tell agriculture producers to buy a higher bond. The required bond is fifty cents a bushel for the first 500,000 bushels and twenty cents a bushel for their capacity over 500,000. If the place becomes insolvent, that bond isn't going to cover a great deal. The PSC's main tool for capturing money for the person who has sold their grain is to capture that grain, which is the main thing that compiles the trust fund. No matter how much money the elevator has, if they go insolvent, the only thing the PSC can pay claimants back with is the grain that's there and the bond.

(17:40) The indemnity fund is for credit sales. There are some issues for people who have a contract for selling the grain at a later date and the question of whether they should receive money from the trust fund if the company goes insolvent. The indemnity fund was set up for people with a valid credit sale contract. When we set that up in 2003, there was an assessment that people who sold grain on contracts had to pay. That went up until that fund reached 6 million dollars and then we discontinued the fee. The PSC has had some cases where there were insolvencies and the PSC paid money out of that to those credit sale contract holders and it is down to four million. If it dips down to 3 million, the PSC will begin assessing that fee again. The fee was 2/10s of 1% of the value of the contract. The difference between a cash sale (with the bond and the grain) and the credit sale (indemnity fund) is this: if that elevator goes insolvent, all those valid credit sale contracts will get exactly 80% of their money up to \$280,000. Cash claimants get whatever is there, divided proportionality, sometimes it is 100% but more often, they are getting some lower amount than the 80%.

(22:40) The other thing is prepaids. The PSC only licenses the elevators and provides protection in the case of grain sales. If the elevator sells fertilizer, chemicals, seed, etc. the PSC will not protect purchasers if the elevator goes insolvent.

Senator Larsen: (24:15) Is there an insurance for operating costs like diesel and fertilizer?

Randy Christmann: Insurance can be purchased from various places like Farmers Union, etc.

(25:23) The PSC has a number of changes proposed. SB 2119 (do pass) was one change. Two more that aren't agency bills but Christmann is supporting (1) would go to a 2 year license cycle instead of one year. Since there are 391 locations and only two staff, a two year cycle and double fee would stagger out the licenses and get them on different cycles. (2) There is a bill about the conversion of the sale tickets when grain is sold. The PSC requires that if farmers don't have a contract, the tickets have to be converted into cash within 45 days. Inspectors occasionally find scale tickets that are beyond 45 days because farmers have not decided what to do. This could become a problem if the company goes insolvent, there could be so many unconverted tickets that the PSC is unable to capture enough grain to reimburse the farmers. The bill would create a third category besides the cash sale people that have to be paid within 45 days and the credit sale people who have a contract. The third category would create a form listing the scale tickets that it applies to and stating that the farmer understand that by signing this, the scale tickets are not covered by the bond or the trust fund and they are not covered by the indemnity fund.

Chairman Miller: (29:49) This isn't a storage ticket then?

Sue Richter, Licensing Division Director with the Public Service Commission: At a federal location, you can have open storage as long as you want it. With a state license the open storage can't be more than the 45 days it takes to convert it. Deferred payment won't apply until the farmer signs it.

Randy Christmann: (32:40) That bill will get the elevators off the hook with us pressuring them to convert tickets with farmers who cannot decide which way to go. If the farmers are unwilling to sign the contracts, they are not being fair to the elevator. You cannot expect coverage for something when you are unwilling to commit one way or another.

(33:27) The PSC has also started on the process of a new rule package. The package includes bonding issues. It is not just a whole sale across the board bonding change. The PSC has tried to isolate the most at risk and vulnerability in the bonding system. (1) The bond package will require new bond facilities in their first 6 years to pay 30% more. Most of past insolvencies were in their first 6 years of business. (2) The package will also require elevators to pay a little more bond if they have an annual volume more than 7 times what their capacity is. (3) The PSC is offering a reduction for folks who commit to the shorter conversion requirement. (a) Will lower the amount of bond they need by 15% if they will commit to going from a 45 day conversion time to 21 days (b) or a 30% reduction if they go down to 10 days.

Senator Klein: (39:40) Is there a way to see insolvencies quickly? How can we improve preventative measures?

Randy Christmann: The biggest step to prevent insolvencies, you took yesterday by passing SB 2119 by allowing us to collect more financial data while insuring confidentiality. It will be a learning curve but as we bring financials in from grain dealers and compare them and look for outliers, hopefully we will be able to spot potential insolvencies earlier. Constituents also need to be educated to inform the PSC when there insolvency suspicion.

Senator Oban: Is increasing the one year license inspections to two years riskier than hiring another inspector?

Commissioner Christmann: No because most of these elevators are very stable. The time increase will just free up our time to investigate the vulnerable ones instead of trying to inspect every one each year.

Senator Warner: What type of financial information to receive? Will it have been audited to ensure that the information is accurate?

Randy Christmann: Some of the financials are audited, but it is not usually necessary since it is against the law to turn in false financial information. If they turn in false information, it would make them liable to criminal activity rather than just insolvency if something goes bad. I do not know of anytime a company went insolvent because of criminal activity, so I am not worried about criminal activity as much as I am concerned

about catching potential insolvencies earlier so we can help and perhaps prevent insolvency.

Senator Klein: Are there a lot of the little guys left?

Randy Christmann: There are not a lot of little guys left in the productive grain producing areas; most of the little guys are left further west where the grain production is lower.

Chairman Miller: Would it be possible for the Public Service Commission to create a consumer checklist that would advise the public of what a good grain buyer operation should look like?

Randy Christmann: We will discuss it and try to compile something. We do have some resources on the website but the problem is few people utilize them.

(53:50) A couple things that some other states are doing is creating legislation to (1) make higher bonding requirements for people who deal with beans; and also (2) most of the problems have to do with processors and specialty crops. "Processing" is difficult to define, so we can't really make laws pertaining to them

Chairman Miller: Closed the hearing.

REPORT OF STANDING COMMITTEE

SB 2119: Agriculture Committee (Sen. Miller, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2119 was placed on the
Eleventh order on the calendar.

2015 HOUSE AGRICULTURE

SB 2119

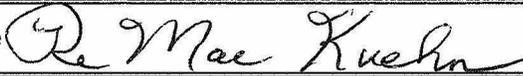
2015 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2119
3/6/2015
Job #24435

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to submission of public warehouse and grain buyers financial information.

Minutes:

Attachments #1a &1b, 2, 3

Randy Christmann, Public Service Commissioner, Requested bill:

(Attachment #1a & 1b)

Objects to language to require a current financial statement as a condition of being licensed.

(8:00)

Opposition:

Stu Letcher, Executive Vice President of ND Grain Dealers Association:

(Attachment #2)

(13:38)

Representative Craig Headland: Why is the PSC asking for these financial statements?

Stu Letcher: According to Commissioner Christmann's testimony, it is due to the state auditor's report. They talked about a financial solvency review. That review is already being performed when the bond is issued.

Representative Craig Headland: Is there something that occurred in the past that threw up a flag?

Stu Letcher: I believe it was the auditor's report.

Representative Cynthia Schreiber Beck: In reading the bill it says the commission "may require." It is not an automatic demand. In the past was the USDA requiring this.

Stu Letcher: The caveat at the beginning of the bill was stating that if a warehouse had a federal license and they needed PSC approval, then the PSE could require that financial statement. So it was if it was for a federal license.

Representative Cynthia Schreiber Beck: Now that the federal changed?

Stu Letcher: That removes the caveat so it makes it open if the PSC requires a financial statement.

Representative Cynthia Schreiber Beck: In the past from a federal perspective, how often?

Stu Letcher: It was submitted to the PSC so the federal would approve the PSC's examination.

Representative Cynthia Schreiber Beck: That was held as confidential as well?

Stu Letcher: Yes.

Representative Cynthia Schreiber Beck: How many times do you anticipate just because it is in here that they "may" require?

Stu Letcher: The problem with the language is this: if your business is financially healthy, just the rumor that the PSC may be looking at your financials and singling out your business indicates a problem. That rumor can have a negative effect on the business.

Representative Joshua Boschee: The current practice for those that are obtaining a license through the USDA, what percentage of membership would fall under the original language with federal licenses?

Stu Letcher: About 30% have federal warehouse licenses.

Representative Joshua Boschee: This change would impact everybody?

Stu Letcher: Yes.

Vice Chair Wayne Trottier: Can a seller ask for a financial statement from a buyer? Would the dealer give them one from an audit or bond company?

Stu Letcher: You can get a financial statement from a cooperative elevator right in the scale room. For a private firm you can ask for a financial statement. They will provide that if they want the business.

Vice Chair Wayne Trottier: Do grain elevators ask for financial statements from the producers when buying fertilizer, seed, etc.?

Stu Letcher: Not to my knowledge.

John Berthhold, North Central Bean Dealers: (Attachment #3)

(23:12)

Representative Diane Larson: Would the solution be that we put it into statute that the PSC doesn't need this information? Then the auditors won't tell them they are failing in what they are overseeing?

John Berthhold: It goes back to the bonding requirements. I do have a concern of what triggers the PSC asking for my statements. Is it a call from a competitor? If the PSC asks for personal financial statements, my business will be buried.

Representative Diane Larson: Would it help to change "may" to "shall." Then everybody has to do the same.

John Berthhold: I don't see the need. I would agree "may ask" is not the answer. If one submits everyone submits.

Chairman Dennis Johnson: Closed the hearing.

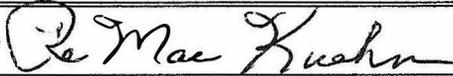
2015 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2119
3/20/2015
Job #25194

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to submission of public warehouse and grain buyers financial information
(Committee Work)

Minutes:

Attachment #1

Chairman Dennis Johnson: It seems it is between the PSC and the auditors and the grain dealers. The grain dealers were opposed to having the PSC come in to look at the books. That causes customers to get weary of the financial condition of the operation.

Proposed an amendment that gets rid of the bill and puts it into a study. (Attachment #1)
This is an issue between the PSC and the auditor's office. We can sort this out during the interim.

Representative Alex Looyen: Moved amendment #15.8078.01001

Representative Cynthia Schreiber Beck: Seconded the motion

Voice Vote. Motion passed.

Vice Chair Wayne Trottier: Moved Do Pass as amended.

Representative Alex Looyen: Seconded the motion

A Roll Call vote was taken: Yes 11, No 0, Absent 2.

Do Pass as amended carries.

Representative Haak will carry the bill.

ADJ
3-20-15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2119

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of requirements for the submission of financial statements by public warehouses and grain buyers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SUBMISSION OF FINANCIAL STATEMENTS BY PUBLIC WAREHOUSES AND GRAIN BUYERS.

During the 2015-16 interim, the legislative management shall consider studying requirements for the submission of financial statements, to the public service commission, by public warehouses and grain buyers in this state, including the time and manner in which the statements must be submitted and confidentiality protections for the information contained therein. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2119**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 15.8078.01001

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions:** Reconsider _____

Motion Made By Rep. Looyzen Seconded By Rep. Schreiber Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman Wayne Trottier			Rep. Jessica Haak		
Rep. Bert Anderson			Rep. Alisa Mitskog		
Rep. Alan Fehr					
Rep. Craig Headland					
Rep. Tom Kading					
Rep. Dwight Kiefert					
Rep. Diane Larson					
Rep. Alex Looyzen					
Rep. Cynthia Schreiber Beck					

Voice Vote passed

Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep. _____

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

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2119**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 15.8078.01001

Recommendation

- Adopt Amendment
 - Do Pass Do Not Pass Without Committee Recommendation
 - As Amended Rerefer to Appropriations
 - Place on Consent Calendar
- Other Actions:** Reconsider _____

Motion Made By Rep. Trottier Seconded By Rep. Looyen

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman Wayne Trottier	X		Rep. Jessica Haak	X	
Rep. Bert Anderson	X		Rep. Alisa Mitskog	AB	
Rep. Alan Fehr	X				
Rep. Craig Headland	X				
Rep. Tom Kading	AB				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. Alex Looyen	X				
Rep. Cynthia Schreiber Beck	X				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Haak

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

REPORT OF STANDING COMMITTEE

SB 2119: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2119 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 to provide for a legislative management study of requirements for the submission of financial statements by public warehouses and grain buyers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SUBMISSION OF FINANCIAL STATEMENTS BY PUBLIC WAREHOUSES AND GRAIN BUYERS.

During the 2015-16 interim, the legislative management shall consider studying requirements for the submission of financial statements, to the public service commission, by public warehouses and grain buyers in this state, including the time and manner in which the statements must be submitted and confidentiality protections for the information contained therein. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

2015 TESTIMONY

SB 2119

#7

Presented by
Sue Ribner

Senate Bill 2119

Presented by: Randy Christmann
Public Service Commissioner

Before: Senate Agriculture Committee
The Honorable Joe Miller, Chairman

Date: January 15, 2015

TESTIMONY

Mister Chairman and committee members, for the record, I am Randy Christmann, Public Service Commissioner. I am appearing today in support of Senate Bill 2119, introduced at our request.

The Public Service Commission has general authority under Chapters 60-02 and 60-02.1 to examine and inspect the books and records and require the filing of reports of a grain dealers and grain buyers. Any financial statement filed with the Commission can be treated as confidential under an exception to the open records law in Chapter 44-04, upon a determination by the Commission that the filing qualifies as an exception. The Commission currently makes these determinations in many types of other cases under its jurisdiction, and has done so for the financial statements of warehousemen.

Such a determination does require an application for protection from the filing entity, a Commission staff response, and a decision by the Commission on whether or not to protect the information. The exception is that a financial statement filed under the existing language in this section (i.e. "if required for USDA approval of the commission's inspection program") is confidential without the need for an application, staff response, and Commission order. This provision was added in

1999 it in response to a concern the USDA might discontinue portions of their warehouse inspection program and turn those activities over to acceptable state programs, which included requiring a financial statement.

This bill is intended to make the confidential treatment of financial information the same whether it is filed for USDA approval or for any other reason. It will reduce the paperwork required to protect financial statements, and make the confidential treatment of a financial statement easy, efficient and consistent regardless of why it is filed. This is very important because one of the operational improvement recommendations in our most recent audit was that financial solvency reviews be completed.

By removing this introductory language, all financial statements filed by a licensee will be confidential and not a public record, without further action by anyone.

Mister Chairman, this completes my testimony. I will be happy to answer any questions.

1a

Senate Bill 2119

Presented by: **Randy Christmann**
Public Service Commissioner

Before: **House Agriculture Committee**
The Honorable Dennis Johnson, Chairman

Date: **March 6, 2015**

TESTIMONY

I am appearing today in support of Senate Bill 2119, introduced at our request. The bill makes the same change to two sections of law. (60-02-07 and 60-02.1-07).

Chapter 60-02 deals with grain warehouses. Chapter 60-02.1 deals with grain buyers who either do not operate a warehouse in North Dakota where grain is received (roving grain buyer) or grain buyers who operate their warehouses under the United States Warehouse Act instead of the ND PSC grain warehouse chapter.

The Public Service Commission has general authority under Chapters 60-02 and 60-02.1 to examine and inspect the books and records and require the filing of reports of licensees. (See attachment) Any financial information filed with the Commission can be treated as confidential under an exception to the open records law in Chapter 44-04, upon a determination by the Commission that the filing qualifies as an exception. The Commission currently makes these determinations in various cases under its jurisdiction, and has done so for the financial data of warehousemen on occasion. Such a determination does require a time consuming, expensive process which includes an application for

protection from the filing entity, a Commission staff response, and then a decision by the Commission on whether or not to protect the information.

There is an existing exception to this burdensome process though. If the Commission is required to obtain United States department of agriculture approval of its grain inspection program, the Commission may require licensees submit current financial statements and these are confidential without the need for an application, staff response, and Commission order. This provision was added in 1999 in response to a concern the USDA might discontinue its warehouse inspection program and turn those activities over to acceptable state programs, which included requiring financial statements.

This bill is intended to make the confidential treatment of financial data the same whether it is filed for USDA approval or for any other reason. It will reduce the paperwork required to protect financial information, and make the confidential treatment of that information efficient and consistent regardless of why it is filed. This is very important because one of the operational improvement recommendations in our most recent audit was that financial solvency reviews be completed.

By removing this introductory language, all financial data filed by a licensee will be confidential and not a public record, without further action by anyone. This is also very important because many of our licensees operate in a very competitive environment. I do not want the financial solvency reviews recommended by the auditors to become a tool for competitors to acquire financial data which may put our licensees at a competitive disadvantage.

You may have seen an article in the Grainmen's Mirror recently that discussed this bill along with other pending legislation. The Grainmen's Mirror is a publication of the North Dakota Grain Dealers Association so they will obviously be impacted by this bill. The article says the NDGDA believes the bond, and by extension the surety company who issues the bond, should determine if the financial strength of a license applicant is sufficient.

I will count on you, as policy makers, to decide whether you want the North Dakota licensing agency or the surety company to make that determination. But as you decide, I do want to point out and object to the language earlier in the article which says "The bill allows the PSC to require a current financial statement from a public warehouse or grain buyer as a condition of being licensed." I point that out as a glaring misinterpretation of both the intent and plain language of this bill.

As you see on the attachment, the Commission already has the authority to examine and inspect financial data. The reality is, this bill is intended to assure the confidentiality of that data in a convenient and inexpensive manner.

60-02-03. Duties and powers of the commission.

The commission shall have the duty and power to:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

60-02.1-03. Duties and powers of the commission.

The commission has the duty and power to:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any books, documents, and records.
4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

The 64th North Dakota Legislative Assembly convened in regular session on January 6. Through February 5 there were 473 House bills, 377 Senate bills 33 House resolutions and 19 Senate resolutions, a total of 902 measures. The bill introduction deadlines passed in late January, but study resolutions and Constitutional amendment resolutions can still be introduced.

Here is the official link for legislative information: <http://www.legis.nd.gov/assembly/64-2015/regular>.

The bill which will have the biggest direct impact on grain elevators is **SB 2119**. The bill allows the PSC to require a current financial statement from a public warehouse or grain buyer as a condition of being licensed. There are many unanswered questions related to the PSC use of financial statements. How will the financial information be used and by whom will it be interpret-

ed? What are the criteria used to determine if there are deficiencies and what must the elevator do to remedy them? What is the purpose of having a bond underwriter examine a warehouse's financial statement to determine financial condition if the PSC can override the underwriter's opinion? There are also questions about confidentiality of the financial information submitted to the PSC. NDGDA believes the bond, and by extension the surety company who issues the bond, should determine if the financial strength of a license applicant is sufficient and **is opposing this bill**. The bill has passed the Senate and is waiting to be heard in the House.

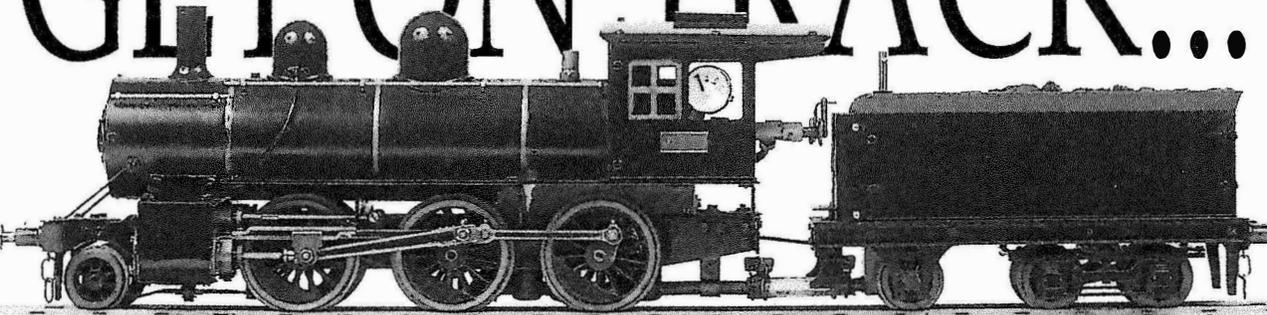
Another related bill is **SB 2291**. It creates a waiver warehousemen can have signed that will allow them to comply with conversion requirements. Current state law says scale tickets are to be converted into cash, credit sale contract or warehouse receipt within

45 days of delivery. **SB 2291** allows the process to go past 45 days if the grain owner signs a waiver form. The form waives the owner's right to trust benefits under ND Century Code 60-04 in the event of the warehouse becoming insolvent. This waiver allows the warehouseman to comply with the scale ticket conversion law under Section 60-02-11 in the event the owner is not willing to make a decision related to the grain delivered to the warehouseman. In late January NDGDA 2nd Vice President Jeff Kittell attended the hearing in the Senate Agriculture Committee on **SB 2291**; Jeff was able to answer some questions related to the mechanics of the current law. The bill passed the Senate and is waiting to be heard in the House.

SB 2301 changes the licensing period for a public warehouse from one year to two years. NDGDA has no problem

CONT'D PG...10

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CONT'D FROM PG. 9 Legislative Report with changing the period. The bill has been heard in the Senate Industry, Business, and Labor Committee but has not been voted upon.

SB 2008 is the Governor's budget for the PSC. It contains the \$900,000 spending authorization from an existing fund within state government for a railroad rate complaint. It is important to keep this funding mechanism in place in light of a Surface Transportation Board (STB) Grain Rail Rate Proceeding (STB EP 665 Sub-No. 1) which would introduce a new, simplified methodology for challenging freight rates. The new methodology would be more workable and accessible for captive shippers of agricultural products to challenge rates they believe are unreasonable. Heard in Senate Appropriations Committee.

HB 1014 creates a new Short line railroad loan program that could be

used by short line railroads and North Dakota agricultural product shippers for cost related to expansions, spurs, switches or other rail enhancements in the state. Heard in House Appropriations Committee.

HB 1330 delays the contingent effective date for implementation of changes to the electronic filing system (central notice) for one year to August 1, 2016. Passed House 89-4.

SB 2125 changes the disposition of weighing and measuring devices that do not meet design or tolerance requirements. The bill would require the devices to be marked and not used in commerce without the consent of the commission. NDGDA is fine with the changes as written. Passed Senate 31-14. ☐

Important Information For 2014 Tax Returns

From Blue Cross Blue Shield

January 2015

As part of the Affordable Care Act (ACA), individuals are now required to report to the Internal Revenue Service (IRS) if the individual, their spouse, or dependents, had qualifying health insurance coverage (also referred to as minimum essential coverage) during the tax year when filing a federal income tax return. The filing for tax year 2014 is voluntary.

Fully insured

If you are a fully insured employer group, Blue Cross Blue Shield of North Dakota (BCBSND) will provide your employees with a statement of coverage. The statement will include the names of the employee and any covered dependents, the last four digits of each member's Social Security number or date of birth, and the months each individual was covered by your plan. For subsequent years, BCBSND will provide form 1095-B to those individuals.

If you have any questions, please contact your BCBSND Account Executive.

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If you are a member group that is part of the ND BANKS Benefit Trust, Home Builders Association of Fargo-Moorhead, North Dakota Grain Dealers Association, or the North Dakota Automobile & Implement Dealers Associations Health Care Trust, contact the association directly for the information.

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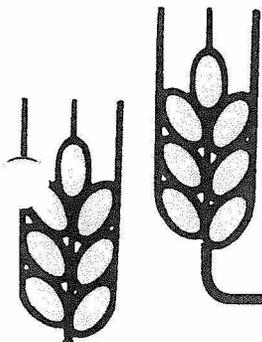
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#2

Testimony of North Dakota Grain Dealers Association on **SB 2119**
House Agriculture Committee-Rep Dennis Johnson, Chairman
Presented by **Stu Letcher**, Executive Vice President **March 6, 2015**

Good morning Mr. Chairman and members of the House Ag Committee. My name is Stu Letcher. I am the Executive Vice President of the North Dakota Grain Dealers Association. We are here today in opposition to Senate Bill 2119.

NDGDA is a 104 year old organization whose purpose is to further the interests of the cooperative and independent concerns of North Dakota engaged in the handling, processing and distribution of grain and other like commodities. We have worked closely with the PSC in the past toward the same goal-A healthy industry serving its customers with efficiency and integrity.

SB 2119 allows the Public Service Commission (PSC) to require financial statements from applicants for grain warehouse and grain buyer licenses. While this may seem harmless, we have many questions.

- ***Who from the PSC will review these financial statements?***

Grain elevator accounting is specialized. Most grain facilities hire firms with expertise in this form of accounting to perform audits and prepare financial statements. Surety companies that write bonds already review these financial statements and have a specialized staff of underwriters with expertise in analyzing them. The surety company looks at much more than just the financial statement. They examine account performance history and other items such as bank covenants. If there is no one currently on the PSC staff with this expertise, someone will have to be trained or hired at additional cost to an already strained budget. A financial statement is a snapshot and change dramatically from one day to the next and it is not the sole tool used by the surety company to make their decision.

- ***What will the financial information be used for?***

Will the financial information be used to make licensing decisions? If not, why does PSC need it? Along with providing cash for claims payment, a primary purpose of a surety bond is to serve as a screening device so that only adequately-capitalized firms get in the business. What criteria will the PSC use to take action and what will that action be? Will there be some kind of warning or will the license be suspended for alleged shortcomings? What happens if the elevator is just having a bad year? Going through a rough patch of financial performance

1

and bouncing back to profitability is not uncommon in the grain industry, or any line of business for that matter. We can envision a scenario where the PSC could withhold or suspend a license from a struggling firm, thus not allowing that firm to work through the situation, causing the firm to go insolvent. Public disclosure of an investigation into an elevator's finances can send a false signal that something is wrong. This could trigger a negative reaction from customers and financiers, worsening the problem. The State of Minnesota recently dropped the requirement for grain warehouse license applicants to provide financial statements. The reasons given were 1) The bonding company already requires it 2) There was too much burden on the licensing staff in reviewing the statements and 3) Licensing decisions were not made off the financial statements so why require them.

- ***Can these financial statements become public record?***

The bill language states: "*A financial statement furnished under this section is a confidential trade secret and is not a public record.*"

That is well and good, but will that statement stand up to a court challenge? Cooperatives provide their members with financial statements. Sole proprietorships, partnerships, and non-public corporations will likely have reservations about providing financial statements to a public entity when those statements might then become open public record. Imagine the damage that can be done to a private business by someone with an ax to grind merely by asking questions in a public way.

Summary: As stated earlier, NDGDA wants a strong and healthy industry and will support changes for that purpose. We feel that the mechanism to ensure the financial viability of grain license applicants is a surety bond. To that fact, we supported the administrative rule changes recently proposed by the PSC which would increase the bonding requirements for facilities in certain sectors of grain industry. The North Dakota Grain Dealers Association supports the concept of bonds being the determiner of financial strength and opposes any state government expansion to receive and review grain elevator financial statements and make licensing decisions based on that.

Thank you. I will try to answer any questions.

3/6/15

SB 2119

#3

Good Morning. My name is John Berthold and I am here to represent the North Central Bean Dealers, a trade association of 35 Edible Bean Processing facilities located in North Dakota. I also own and operate Walhalla Bean Company.

We believe that SB2119 is well meaning and sincere in its intent. Grain buyer insolvency issues give a black eye to an entire industry when they happen. However, we are concerned about the necessity, vagueness, and potential unintended consequences if passed as is.

As a State of ND licensed company, we are required to have a Grain Buyers bond in an amount determined by the PSC. The application process is costly and rigorous to say the least. In my companies' case, we are required to submit Corporate as well as Personal financial statements to the Bonding company in order to acquire the Bond. In essence, the financial situation of a Grain Buyers license applicant is already thoroughly reviewed by an independent 3rd party who has a stake in the applicant's solvency. Why would we need a bond if the financial situation of an applicant is approved by the PSC?

Our industry has a wide range of ownership structure. Publicly traded Corporations, Large multi-national companies, Co-operatives, ND Corporations, and partnerships are all involved in the North Dakota edible bean trade. SB2119 states that the commission "may require current financial statements". This obviously has different meaning for each company's structure. In the case of a closely held private company or partnership, will the individual shareholders have to submit personal financial statements? What about a shareholder in a LLC who owns 5% of the shares? How far do you go?

We understand the bill states that this information is a confidential trade secret and not public record but we are very skeptical of this provision. There is no way to predict, but the requirement of having to submit personal statements would most likely limit who would apply for a Grain Buyers license, simply out of concern of that information somehow becoming public.

We don't believe that submitting financial statements to the PSC will prevent future insolvencies. There are simply too many variables that can happen. Hypothetically, if this bill passes and a company becomes insolvent, I think the PSC now "owns" the problem entirely.

As I previously stated, buyer insolvency is a black eye to an entire industry. We as an industry would welcome further discussions on how to better address these issues going forward. This bill however, is not the answer and we do not support its passing.

Thank you for your consideration.

15.8078.01001
Title.

Prepared by the Legislative Council staff for
Representative D. Johnson
March 19, 2015

#1
3/20/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2119

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of requirements for the submission of financial statements by public warehouses and grain buyers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SUBMISSION OF FINANCIAL STATEMENTS BY PUBLIC WAREHOUSES AND GRAIN BUYERS.

During the 2015-16 interim, the legislative management shall consider studying requirements for the submission of financial statements, to the public service commission, by public warehouses and grain buyers in this state, including the time and manner in which the statements must be submitted and confidentiality protections for the information contained therein. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly