

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

PUBLIC SERVICES COMMITTEE

Tuesday, January 27, 2004

Auditorium, Northern Crops Institute, North Dakota State University
Fargo, North Dakota

Senator Aaron Krauter, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Aaron Krauter, Jerry Klein; Representatives Randy Boehning, Chet Pollert, Arlo E. Schmidt, Mike Timm

Members absent: Representatives Rod Froelich, John Warner

Others present: See attached appendix

Chairman Krauter informed the committee of a request to amend the minutes of the previous meeting to state that the Public Service Commission weights and measures program has five inspectors, not eight, and two heavy duty inspectors, not five.

It was moved by Senator Klein, seconded by Representative Timm, and carried on a voice vote that the minutes of the previous meeting be amended to change the number of inspectors under the weights and measures program as requested.

It was moved by Senator Klein, seconded by Representative Timm, and carried on a voice vote that the minutes of the previous meeting be approved as distributed and amended.

SURETY BONDS STUDY

At the request of Chairman Krauter, committee counsel presented a memorandum entitled *State Bonding Fund and Surety Bonds - Miscellaneous Issues*. He said as a rule the law does not require public employees and officials to be bonded. He said the duty to be bonded was removed through previous legislation because it was thought that these individuals were being bonded already through the state bonding fund. He said in practice public employees and officials are bonded through the state bonding fund because there is no premium charged and no limit to the amount of the bond. He said the committee may consider placing a duty on public employees and officials to apply for a bond and for creating guidelines for the amount of bond that should be requested. He provided information on the changes in the trigger for and cap on the collection of premiums under the state bonding fund. He provided information on transfers from the state bonding fund to the general fund. He provided information on electricians and real estate brokers and salespersons not being required to be bonded but fulfilling the purpose of bonding through a special fund and insurance.

Mr. Jeff R. Bitz, Insurance Department, provided testimony on bonding of state officials and employees in surrounding states and the financial status of the fund. He provided a handout on the state bonding fund balance, closed claims, open claims, the liability of the bonding fund, the claim balance owing, and the limits of liability for each bonded entity. A copy of the handout is on file in the Legislative Council office.

In response to a question from Senator Krauter, Mr. Bitz said there are 23 claims against the state bonding fund for a total of \$522,132. He said at least one-half that amount will be paid in this biennium because there is one claim for over \$225,000 from Fargo that will be paid in the next 60 days. He said the Legislative Assembly will transfer \$2.8 million from the bonding fund to the general fund this biennium. He said a transfer of \$1.5 million has occurred and a transfer of \$1.3 million will happen before the end of the biennium. He said the funds in the bonding fund at the beginning of the biennium totaled \$5.3 million. He said if the 23 claims are paid, the fund will fall below the \$2 million trigger for the collection of premiums.

In response to a question from Representative Timm, Mr. Bitz said the bonding fund has not charged a premium since 1953. He said funds in the bonding fund came from premiums before that time and from the return on investment of the fund.

In response to a question from Representative Pollert, Mr. Bitz said the funds are invested by the Retirement Board and the rate of return is the same as other retirement funds.

In response to a question from Representative Boehning, Mr. Bitz said the premium is set by the Insurance Commissioner but must be over \$2.50 per year.

In response to a question from Representative Timm, Mr. Bitz said the largest claim paid by the bonding fund will be the Fargo claim in an amount of approximately \$250,000.

Mr. Bitz said the surrounding states bond through private bonding companies. He said Montana purchases a fidelity blanket bond for all state employees which has a \$2 million limit per occurrence. He said the counties buy a bond through an association of counties in the amount of \$5 million. He said other political subdivisions cooperate through different groups to purchase bonds on the private market. He said South Dakota purchases a blanket

bond for public employees in the amount of \$100,000 per occurrence and for specific positions that handle more money the state purchases bonds in higher amounts. He said the cost per year is approximately \$50,000 for coverage of almost 13,000 employees. He said Minnesota provides protection through a master property policy for public employees in the amount of \$25,000 per occurrence. He said certain employees with more opportunity for defalcation have a higher bond.

In response to a question from Representative Timm, Mr. Bitz said Minnesota does not have any active claims.

Representative Schmidt requested the committee consider allowing auctioneers and auction clerks to have a bonding fund instead of using a private surety company. He said the private bonds purchased by auctioneers and auction clerks are never used because if they are used, the company will not continue to bond the person. If that person does not have a bond, he said, that person may not be licensed.

In response to a question from Senator Krauter, Mr. Bitz said Western Surety, the company that bonds a number of auctioneers in this state, is regulated by the Insurance Commissioner inasmuch as Western must apply annually and be approved to sell bonds based on Western's financial condition. He said Western does not provide specific information on previous claims made as part of the application process.

In response to a question from Representative Timm, Representative Schmidt said money spent by auctioneers and auction clerks on surety bonds is sent out of state. He said the bond required for auctioneers is \$5,000 and is \$10,000 for a clerk. He said he pays \$200 per year for both bonds. He said electricians pay \$50 or \$40 for \$5,000 or \$4,000 coverage, respectively. He said a \$5,000 bond is inadequate to cover the value of merchandise auctioned by most auctioneers. He said the cost of an adequate bond would be too expensive for most auctioneers. He said other occupations and professions may want to have a bonding fund.

Senator Krauter said the options to having a private surety bond are creating a state bonding fund or having a self-regulated fund. He said no matter what the option, it is important that the fund is actuarially sound.

Representative Timm said with private surety bonds, bonded individuals most likely do not make small claims because they may not be able to be bonded after making a claim. He said if a state bonding fund was created to replace private surety bonds, there may be more claims made against a state fund.

In response to a question from Senator Krauter, Representative Schmidt said auctioneers carry liability insurance. He said auctioneers would like to be treated as a real estate salesperson. He said

although a real estate salesperson is required by law to have errors and omissions insurance and this insurance is expensive, the purchase of insurance is better than a bond. He said some auctioneers already have errors and omissions insurance.

Representative Pollert said the bond for a grain elevator is very expensive, between \$1,800 and \$2,500 per year. He said the state should not be in the business of bonding grain elevators because of the potential liability.

Representative Schmidt said cattle purchasers and grain purchasers should not be in a bonding fund because they are different from licensed occupations and professions.

In response to a question from Senator Krauter, Mr. Ken Bertsch, Seed Commissioner, State Seed Department, said the Seed Department regulates wholesale potato dealers. He said wholesale potato dealers are bonded to insure payment for potatoes purchased by the dealer. He said bonding requires a very technical expertise and he suggested that the Public Service Commission bond wholesale potato dealers because the Public Service Commission has this expertise. He said the department accepts a letter of credit instead of a bond from wholesale potato dealers.

In response to a question from Representative Pollert, Mr. Bertsch said there are under 50 potato dealers in this state. He said many are small brokers. He said they should be bonded on a sliding fee scale based upon the amount of business the dealer conducts instead of a flat rate. He said it would not be much work for the Public Service Commission to regulate the bond of potato dealers. He said the function has always been with the Seed Department because the department has always dealt with potatoes. He said the function fits within the Department of Agriculture as well because the Department of Agriculture regulates bonding for agriculture-related businesses.

The committee reviewed all statutory references to bonds required by public employees and officials and by private entities. Representative Timm said any private entity could come to the Legislative Assembly and ask for the removal of a bond requirement. He said this is what individuals involved in the storage business did in the past.

In response to a question from Representative Timm, Mr. Bitz said the county coroner is required to have a \$500 bond. He said the \$500 bond is a minimum. He said the coroner is covered under a blanket bond purchased by the county. He said the bonding fund gives a bond to a county in the amount of bond that is requested by the county. He said there are no guidelines for determining the correct amount of bond. He said the amounts of bonds in statute for county officers are a minimum and are not relevant to the amount of bond that covers county officers.

Senator Klein requested a bill draft to clarify the state bonding fund law, to remove references to the

requirement for a bond for a particular public employee or officer, to apply the requirement for a bond generally to all public employees and officers, and to provide guidelines to determine the amount of bond that must be requested.

Chairman Krauter requested Representative Schmidt to provide a plan for the self-bonding for auctioneers to the committee counsel as the basis for a bill draft.

Chairman Krauter suggested that if the Seed Department desires to transfer the bonding of wholesale potato dealers to the Public Service Commission, then the department needs to formally request the change and to present a plan for the change.

STATE SEED DEPARTMENT STUDY

At the request of Chairman Krauter, committee counsel presented a bill draft [50027.0100] to clarify statutes relating to seed regulation. He said the bill draft was prepared after reviewing all state law on seed regulation, excluding potatoes. He said the bill draft has some substantive changes requested by the Seed Department. He said most of the changes are to clarify the language. One substantive change was to provide compensation to the Seed Commission members at the rate of \$75 per day. Other substantive changes included requiring seed handlers to keep records for three years instead of two years and lengthening the time allowed between a germination test and the sale of seed. He reviewed provisions of the North Dakota Administrative Code as they relate to the statutes addressed in the bill draft.

Mr. Bertsch said the per diem of \$75 was set by looking at other per diems in the North Dakota Century Code of approximately \$50 to \$100 and choosing a midpoint. He said the per diem is to help cover the expense of hotel rooms that exceed the state rate. He said the per diem was created to address a concern in the department's last audit report.

In response to a question from Senator Krauter, Mr. Jim Swanson, State Seed Department, said the increase of duration of time from two to three years for seed handler records retention was to make the records retention uniform with federal law and other states' laws. He said the increase in time, generally from 9 months to 12 months, is more workable for the industry.

In response to a question from Representative Pollert, Mr. Swanson said the increased time for the sale of seed from a germination test is not detrimental to consumers because the labeler is still responsible for the condition of the seed regardless of the time of the germination test.

In response to a question from Representative Schmidt, Mr. Bertsch said the Seed Department tests genetically modified seed for certification and quality. He said regarding the sale of genetically modified seed, the Seed Department has jurisdiction over labeling.

At the request of Chairman Krauter, committee counsel presented a memorandum entitled *State Seed Department - Trends in Budget and Fees*. He said the tables attached to the memorandum show that the total appropriated funds and actual expenditures have remained constant for the last eight budgeted years. He said there have been two fee increases in the last 10 years. He said revenues of the Seed Department primarily consist of fees.

Mr. Bertsch presented testimony on the Seed Department. A copy of the handout, used as the basis of his testimony, is on file in the Legislative Council office.

In response to a question from Senator Krauter, Mr. Bertsch said there are 32 full-time employee positions at the Seed Department. He said 27.5 to 28 positions are filled. He said one is to be hired and the others are open and no hiring is being conducted to fill the positions.

In response to a question from Senator Krauter, Mr. Bertsch said the foundation or prenuclear potato seed unit is in the State Seed Department. He said all other foundation seed functions are at North Dakota State University.

In response to a question from Senator Krauter, Mr. Bertsch said the Seed Department rarely uses the Information Technology Department but works through North Dakota State University and private vendors. He said payroll is done through the Information Technology Department system.

In response to a question from Senator Klein, Mr. Bertsch said the Seed Department works with producers if a field is rejected. He said the department retests and works with growers to address any problems.

In response to a question from Senator Klein, Mr. Bertsch said the number of members and composition of the Seed Commission is a regular legislative topic. He said two of the three members that represent the potato industry grow other certified seed. He said a committee that is larger is harder to administer. He said the commission has nine members. He said the membership on the commission should not be based on the acres grown because one acre of potatoes does not equal one acre of wheat as related to the involved work and cost.

In response to a question from Senator Krauter, Mr. Bertsch said when the Legislative Assembly created the commission the bulk of the work done by the Seed Department related to potatoes. He said this is why there are three members related to the potato industry.

After the committee toured the Seed Department, Chairman Krauter adjourned the meeting at 3:45 p.m.

Timothy J. Dawson
Committee Counsel
ATTACH:1