

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## PUBLIC SERVICES COMMITTEE

Tuesday, September 9, 2003  
Roughrider Room, State Capitol  
Bismarck, 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, John Warner

**Member absent:** Representative Rod Froelich

**Others present:** See attached appendix

### SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE

At the request of Chairman Krauter, Mr. John D. Olsrud, Director, Legislative Council, reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*.

### SURETY BONDS STUDY

At the request of Chairman Krauter, committee counsel presented the memorandum *Surety Bonds - Background Memorandum* relating to the study directed by Section 1 of 2003 House Bill No. 1386.

Mr. Alvin A. Jaeger, Secretary of State, provided testimony on the study. He said 1999 Senate Bill No. 2360 deleted references to required bonds of elected officials. He said the bill was introduced by Senator Rich Wardner after he told Senator Wardner the sections were no longer needed because elected officials are bonded under the state bonding fund. He said the previous statute required a bond of \$10,000 for the Secretary of State. He said the amount of the bond required by statute did not seem to be appropriate because the amount was too low. He said the amount had not changed since 1943. He said his budget is in excess of \$4 million.

In response to a question from Senator Krauter, Mr. Jaeger said he is bonded by the state bonding fund and does not know in what amount.

Mr. Jeff Bitz, Insurance Department, provided testimony on the study. He said the state bonding fund covers state entities and political subdivisions and insures against loss of property or money for every official and employee. He said the bond covers limited acts which mainly includes embezzlement. He said workmanlike manner claims are not covered by the state bonding fund. He said as a general rule every entity should have a bond of at least 25 percent of the entity's appropriation. He said the state bonding fund does not challenge the amount for

which entities request a bond. He said these entities generally update bonding amounts after an audit if the audit reports the entity should get more coverage. He said the exposure to liability of the state bonding fund is \$575,550,821.

In response to a question from Representative Warner, Mr. Bitz said the state bonding fund has not charged a premium since 1953. He said the premiums are paid off of earned income from investments. He said there have not been many claims.

In response to a question from Representative Warner, Mr. Bitz said there has never been an actuarial study to determine if the fund is financially sound.

In response to a question from Senator Krauter, Mr. Bitz said last session the Legislative Assembly transferred \$2.5 million from the state bonding fund into the general fund. He said there are 23 claims pending for \$429,000. He said under Section 16 of 2003 Senate Bill No. 2015, the Office of Management and Budget's appropriations bill, the threshold that must be met before a premium is charged against those that are provided bonds under the fund was lowered from \$2.5 million to \$2 million.

In response to a question from Representative Timm, Mr. Bitz said the 23 claims are for theft of money and the amount of these claims could change during the legal process.

In response to a question from Representative Timm, Mr. Bitz said there are 2,910 entities covered by the state bonding fund. He said an entity must apply for coverage to be covered by the fund.

In response to a question from Senator Krauter, Mr. Bitz said the state bonding fund sends a declaration of coverage to an entity covered by the fund when that entity requests a change in coverage.

In response to a question from Senator Klein, Mr. Bitz said entities should raise their coverage to the possible amounts of claims because it does not cost the entity anything.

In response to a question from Representative Boehning, Mr. Bitz said if the fund was depleted, the Insurance Commissioner would conduct an actuarial study to determine the premiums. He said the Insurance Commissioner can reinsure for large losses but has not, based on the claims' history.

In response to a question from Representative Timm, Mr. Bitz said it is not uncommon for a claim to

take two to three years to move from claim to payment. He said this allows the fund to build up for large claims. He said audit controls prevent large claims.

In response to a question from Representative Boehning, Mr. Bitz said North Dakota is unique in having a state bonding fund. He said other states use the open market to provide bonds.

In response to a question from Representative Warner, Mr. Bitz said the Insurance Commissioner has the facilities to handle the inclusion of other groups in the state bonding fund.

Mr. Jon Mielke, Executive Secretary, Public Service Commission, provided testimony on the study. He said the Public Service Commission has regulatory authority over bonds for mining, grain warehouses, auctioneers, and grain and hay buyers. He said he is not aware of any claim against an auctioneer.

Representative Schmidt said if a bonded auctioneer has a claim on that auctioneer's bond, that auctioneer must pay back the amount of the claim to the surety or lose the bond. He said if an auctioneer is not bonded, an auctioneer loses the auctioneer's license. He said no company in this state provides bonds for auctioneers and auctioneer clerks. He said he pays \$200 per year for an auctioneer's bond. He said all the money paid for auctioneer and auction clerk bonds goes out of state to Western Surety in South Dakota or a company in South Carolina. He said he has never heard of any auctioneer having a claim on the auctioneer's bond. He said he was interested in applying the concept of a special fund, such as used by electricians, to auctioneers. He said there is a concern that auctioneers are not bonded enough because they sell single items, for example, tractors that cost between \$80,000 and \$100,000. He said auctioneers would pay an enormous amount for a bond if it were raised to an amount that provided full coverage for customers.

Representative Pollert said if grain elevators were brought into the state bonding fund, there would be enormous exposure to liability. He said it does not appear to be advisable to include some entities in the bonding fund.

Senator Klein said because the study resulted from concerns from auctioneers, the study should focus on providing a solution for auctioneers.

Representative Warner said the committee needs to consider the policy implications of the state competing against private industry for issuance of bonds. He said another major issue would be whether to make a new bonding fund for other entities voluntary or mandatory.

## **AGRICULTURAL INSPECTION AND STANDARDS FUNCTIONS TO PUBLIC SERVICE COMMISSION STUDY**

At the request of Chairman Krauter, committee counsel presented the memorandum *Agricultural Inspection and Standards Functions to Public Service Commission - Background Memorandum* relating to the study directed by 2003 Senate Bill No. 2008.

Mr. Mielke provided testimony on the study. He said the Licensing Division does onsite inspections of the records of grain warehouses not inspected by the federal government. He said the inspectors do some measuring to determine the capacity of an elevator. He said the inspections are done every 12 to 15 months. He said the Testing and Safety Division's weights and measures inspections are conducted by eight inspectors--five heavy-duty inspectors and three light-duty inspectors. He said these inspectors conduct over 22,000 inspections per year. Each device must be inspected every 12 to 15 months. He said there are licensed service providers that may do inspections; however, they charge more than the state. He said the Testing and Safety Division also conducts pipeline safety inspections to ensure the safety of pipelines.

In response to a question from Representative Timm, Mr. Mielke said although one entity could do all inspections for anhydrous ammonia facilities, it would take multiple inspectors because of the different skills required for the different inspections. He said pipeline safety inspectors could do safety inspections on anhydrous ammonia tanks. He said weights and measures inspectors do inspections for measuring devices on anhydrous ammonia tanks.

In response to a question from Representative Timm, Mr. Al Moch, Testing and Safety Division, Public Service Commission, said there have been complaints about the number of inspectors that inspect a certain business. He said a grain elevator that sells anhydrous ammonia, has gas pumps, and has a convenience store could have inspectors come from the anhydrous ammonia tank inspection program, a heavy-duty inspector, a light-duty inspector, and a private inspector.

Representative Pollert said it appears there are too many inspectors for anhydrous ammonia tanks; however, it is a dangerous commodity that requires special skills to inspect for different purposes.

In response to a question from Senator Klein, Mr. Mielke said the Public Service Commission has investigated gaining efficiencies within the department. He said there was a recent legislative interim study on the duties of the commission. He said the commission has made an effort to make the inspection program self-sufficient. He said the light-duty fees were increased by 10 percent and the heavy-duty fees were increased by 60 percent during the last legislative session.

In response to a question from Senator Klein, Mr. Mielke said although the fees obtained from weights and measures inspections go into the general fund, the inspections are self-funding due to the increase in fees last session inasmuch as the fees cover the costs of the inspections and inspectors but not all administration.

Senator Krauter said the boiler inspection fees were increased the last legislative session.

Representative Warner said the transfer of the boiler inspection program to the Public Service Commission may have produced some efficiencies before the study was limited to only agricultural-related functions. He said if only agricultural-related functions are transferred, there would appear to be no efficiencies gained by the transfer of the boiler inspection program.

Representative Pollert said there is a frustration with business owners over the increased costs of having law enforcement, the Public Service Commission, and the boiler inspector inspecting anhydrous ammonia tanks.

Representative Schmidt said the legislature has investigated the privatization of the Public Service Commission's inspection and standard functions and has found it is less expensive for the commission to do these functions than for private entities.

Mr. Bitz provided testimony on the study. He said each inspection requires a different skill set. He said the boiler inspector inspects 8,700 objects per year. He said not all insured boilers are inspected by the inspector; however, the boiler inspector reviews the paperwork on insured boilers inspected by insurance companies. He said the boiler inspector has the same skill set as needed for anhydrous ammonia tank inspection. He said both involve pressure vessels. He said weights and measures is a different skill set.

In response to a question from Senator Krauter, Mr. Bitz said generally the boiler inspector accepts inspections done by insurance companies. He said the boiler inspector reviews the report and issues a certificate. He said sometimes there are questions as to what is on the report.

In response to a question from Representative Warner, Mr. Bitz said the anhydrous ammonia tank inspection program began in 1995. He said the boiler inspection program began in the Workers

Compensation Bureau and was transferred to the Insurance Department.

Senator Klein said the anhydrous ammonia tank inspection program appears to be a good fit with the boiler inspector.

In response to a question from Representative Pollert, Mr. Bitz said a critical methamphetamine users zone pilot project is being conducted in Williams, Burke, Divide, and McKenzie Counties. He said the rules for the program have not been drafted and the Insurance Department is in the process of obtaining federal funds for the program.

In response to a question from Representative Timm, Representative Pollert said young farmers are buying more dry fertilizer and less anhydrous ammonia. He said any additional costs in relation to anhydrous ammonia may remove anhydrous ammonia as a profitable fertilizer to sell.

### STATE SEED DEPARTMENT STUDY

At the request of Chairman Krauter, committee counsel presented the memorandum *State Seed Department - Background Memorandum* relating to the study directed by 2003 Senate Concurrent Resolution No. 4016.

Mr. Ken Bertsch, State Seed Commissioner, presented testimony on the study. He said the rules of his agency are not overwhelming and mainly provide detail. He said the rules were rewritten last year. He said the State Seed Department has tried to do housekeeping changes in the law when changes are made in the seed law during each legislative session. He said during the legislative session the testimony on this study became an open forum on variety protection and royalties. He said he hopes this study does not become an open forum on unrelated issues. He said the State Seed Department has recently done major work on the statutes relating to noxious weeds and wholesale potato dealers.

Chairman Krauter adjourned the meeting at 11:50 a.m.

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Timothy J. Dawson  
Committee Counsel

ATTACH:1