

1999 SENATE AGRICULTURE

SB 2153

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2153

Senate Agriculture Committee

Conference Committee

Hearing Date 1/15/99

Tape Number	Side A	Side B	Meter #
1		X	0-4900
1/22 1	X		0-2760
1/29 1	X		1,850-4425
2/4 2		X	5062-END
2/4 3	X		0-2530
Committee Clerk Signature <i>Chicia Jorgensen</i>			

Minutes:

Senator Wanzek called the meeting to order. Roll call was taken, Senator Kinnoin was absent.

Senator Wanzek opened the hearing on SB 2153.

Jon Mielke from the Public Service Commission spoke in favor of SB 2153. Testimony enclosed.

Senator Wanzek: Define a federal entity, one that wouldn't have to get a state license.

Mielke: Until recently all grain elevators in North Dakota were required to get a state license.

We now have about 75 or 80 elevators that fell out and no longer have a state warehouse license.

Senator Urlacher: How does this blend in with roving grain buyers and hay buyers?

Mielke: Roving grain buyers and roving hay buyers are both covered under 60-03 of the century code and what we are proposing here is to move the roving grain buyer into a different chapter, so they will be separate.

Senator Wanzek: A report would have to be filed monthly to the commission, is that something that is done now?

Meilke: Yes it is. Grain elevators supply us with a monthly report that is related primarily to transportation so it tells us how much grain they ship, where they ship it to, and how it was shipped, truck or rail.

Senator Mathern: Is there a set standard for check-off, how is it determined?

Meilke: Right now there isn't a check-off.

Senator Mathern: Is that an expense to the farmer or the elevator?

Meilke: Those are typically taken off the amount of the check that the elevator issues to the farmer.

Senator Wanzek: Would you say that we ultimately could determine that?

Meilke: Absolutely.

Senator Sand: Are there many roving hay buyers?

Meilke: There are probably a lot more than we have licensed. Right now there are approximately 3 dozen licensed roving grain buyers and 1 roving hay buyer license.

Senator Urlacher: How do roving grain buyers operate?

Meilke: There is a relatively specialized market for it.

Senator Urlacher: At what level is there similar patterns of finance in other states?

Meilke: There is quite a variation. There are different caps.

Senator Urlacher: So the elevators would collect that and it would be put into a special fund.

Meilke: It would be put into the Bank of North Dakota and retained there for use of those insolvency proceedings and to make payments back to people that were selling on credit sales.

Senator Wanzek: A lot of the language in here is similar to 60-03 under current law, so we're going to combine it into one. And also address credit sales, and that's the main change.

Meilke: Most of the language mirrors 60-02, which is the grain elevator statute that we are going to put in similar proposals.

Senator Kroeplin: Does the intent include edible beans?

Meilke: They are now governed under 60-02 because they are not federally or state licensed, they would continue to be treated the way they are right now.

Clyde Krebs from the North Dakota Grain Dealers Association spoke in support of SB 2153.

Testimony is enclosed.

Senator Wanzek: So you are in agreement with the bill except the major change in the bill?

Krebs: The economics of it show us that any cost of redeveloping are going to be passed on to farmers.

Senator Urlacher: Are you in disagreement, are they self-insured?

Krebs: On a check-off we do collect and send them to the appropriate place.

Lance Gaebe testified in opposition of SB 2153. He stated the only part of the bill that the North Dakota Grain Growers Association is opposed to is the bonding requirement because it can get pretty expensive. They do support the provision to create a state pool. He also urged the committee to work on an amendment.

Senator Wanzek: Couldn't there possibly be accounting problems if you were going to just designate a check-off on certain bushels?

Gaebe: I don't know why that would be a problem.

Senator Wanzek: It sound reasonable but there is talk of increasing check-off for other purposes and pretty soon there won't be much left.

Gaebe: I agree, it involves covering some risk.

Senator Urlacher: Is there a higher risk today taken by farmers?

Gaebe: I can't comment on that, I really don't know.

Senator Wanzek asked Jon Mielke to come forward for further questions.

Senator Wanzek: Has there been any recent insolvency cases where farmers have lost money?

Mielke: There has been a dramatic reduction in elevators and very few insolvency cases.

Senator Wanzek: Do we have any provisions that provide fines for not being licensed?

Mielke: There are some penalties. Any fine we collect goes to the general fund.

Senator Wanzek: By getting tough would just be taking more money from the farmers.

Mielke: Exactly.

Senator Wanzek: What about the suggestion of financial statement requirement?

Mielke: The purpose of the financial statements is to have our inspection program recognized by federal programs.

Senator Wanzek closed the hearing on SB 2153.

Discussion was held. Subcommittee was formed for SB 2153. The members include Senator Klein, Senator Mathern, and Senator Wanzek.

January 22, 1999

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Senate Agriculture Committee

Bill/Resolution Number Sb 2153

Hearing Date ~~1/15/99~~ 1-22-99

Tape 1, Side A, Meter #5-

Senator Wanzek called the committee to order. Roll call was taken, all were present.

Senator Wanzek opened the discussion on SB 2153.

Senator Klein, Chairman of the subcommittee, explained the bill a little further and stated on what had happened during the meeting with the House. The stickiest part is the credit sales contracts and who is going to pay for that coverage, bonding being approximately 5 cents a bushel and the indemnity fund which they would need to generate up to \$5 million dollars or a \$3 million minimum in this account. The farmer is going to pay for this regardless. House is going to amend credit sales contract part out of their bill. Some question as far as the submission of financial statements, grain dealers thought some of this information is confidential and they are audited biannually. Proposed amendments for the bill so that it would mirror that of the House. Turned in resolution from the grain dealers opposing indemnity funds with credit sales contracts. That seems to be the real issue.

Senator Urlacher: Do need to look into it further; future sales contracts went up about 40%, it's a tool, more volume at one location to be moved.

Senator Wanzek: I would tend to agree, it's a direction that industry is going, a lot of delayed contracts being used, farmers have a misconception that when they sign a contract like that they are covered under bond.

Senator Klein: Are you required to check off a box that indicates that you know you are signing off delayed pricing?

Senator Kroeplin: When you sign a contract a lot of them in my area do not pay you when you deliver they pay a month later, at that point you are in that credit sales contract.

1-22-99

Senator Wanzek: I don't recall ever checking a box.

Senator Klein: In heat of harvest, hired hand takes load in, the elevator guy says is this delayed pricing and the hired hand doesn't know, how do we know where to go with this? There are a lot of issues here. We've got to but down some real rules.

Senator Urlacher: In our area the driver has to be informed of what to do.

Senator Wanzek: I think a number of the elevators, if it is treated differently, they go to a different bin don't they?

Senator Sand: I don't think we need to worry about the consumer because to stay in this business you have to be sharp.

Senator Wanzek: We need to understand that it still comes down to decent honesty and confidence.

Senator Urlacher: People can't really buy protection in a case like this.

Senator Wanzek: I couldn't agree more, we need to do a thorough study.

Senator Urlacher: I think we are ahead of the game.

Senator Mathern: When grain or whatever is taken to the elevator and most of the time you have a contract, is that contract really looked at when that grain is coming in.

Senator Wanzek: They are becoming a lot more keen on looking at those, the records are becoming more detailed.

Senator Wanzek: The reason for signing a delayed price contract is so that you can get a better price on your grain but if it is already in the elevator, what incentive do they have to raise the price.

Senator Kinnoin: That grain loses its identity other than what's on that slip.

1-22-99

Senator Wanzek: It's very difficult to get your grain back.

Senator Mathern: What do they charge for storage?

Senator Wanzek: Wheat 3 cents a bushel per month, 12 cents a month per hundred weight for pinto beans, same rates that are being charged if you still owned the grain and were storing it at the elevator.

Senator Klein: Most of state elevators have a lot more money behind each bushel of grain in coverage.

Senator Wanzek: I think we are just spinning our wheels now. Is everyone in agreement as far as the amendments go?

Senator Klein: The amendments were drafted by the grain dealers so there shouldn't be any problems with them.

Senator Wanzek: Were any other farm groups at the meetings?

Senator Klein: Farm Bureau, Farmers Union.

Senator Mathern: I would like to visit with some people before we make a decision.

Senator Wanzek closed the discussion on SB 2153.

JANUARY 29, 1999

Senator Wanzek opened the discussion on SB 2153.

Senator Klein proposed another amendment drawn up.

Discussion was held. It was agreed that Senator Wanzek and Senator Klein would work together to draw an amendment that would fit the needs of all.

Senator Wanzek closed the discussion.

FEBRUARY 4, 1999



2-4-99

Discussion was held. Bill Benick was asked to come down for informational purposes.

Senator Klein: What we have done is eliminated the credit sales issue and also made an additional amendment which deals with trade secret protection and volume reports. Removes entire section on page 8 and page 9. Seem to be acceptable.

Bill Benick: The first thing the proposed legislation had in it a provision for credit sales bond and under the amendment here it would remove that and there's a resolution that is being considered to study that issue.

Senator Wanzek: We're removing the language in the bill that refers to a credit sale contract bond. And there is a proposal to study that issue in the interim.

Bill Benick: Right. This provision was put in, one of the things that the public service commission was concerned about is that an awful lot of the grain elevator business are a grain warehousing business these days is not grain warehousing grain is being sold on credit sale contracts, and under present law there is no bond coverage for credit sale contracts so this has been a concern that has been addressed to the commission so it was put in to bring the matter to the attention of legislature and now these people have worked out an amendment.

Senator Kinnoin: Explain to me how that would work.

Bill Benick: The indemnity fund, it's an idea, the details haven't been worked out but I think the idea would be that there would be some sort of a check off to build up a sum to some level and at some point that they reach the level the check off would cease until it dropped and that money, if there were no claims against that fund there would be no further need for a check off.

Senator Kinnoin: And that check off would come from all the commodity groups?

2-4-99

Bill Benick: The thought would be that it would come from a check off of those grains that were sold under credit sale contracts.

Senator Sand: If I deliver some grain to the elevator and I might not get paid for 60 days, is that what you mean by credit sale?

Bill Benick: That is correct, you have transferred title to the elevator and you have not gotten paid yet.

Senator Sand: What is the potential for gain there?

Bill Benick: Some do it for tax purposes, others with price later are hoping for a price increase down the road.

Senator Sand: So credit sale and deferred grain are the same thing?

Bill Benick: That is correct, they are all a type of credit sale contract.

Senator Wanzek: The distinction in those sales is that the title changes hands, versus the warehouse receipt the title stays in the hands of the farmer.

Discussion was held.

Senator Kroeplin made the motion for a Do Pass on amendment 1, deleting credit sales.

Senator Mathern seconded.

Roll Call: 7 yes, 0 no

Senator Klein made the motion for a Do Pass on amendment 2, regarding submission of financial statements.

Senator Kinnoin seconded.

Roll Call: 7 yes, 0 no

Senator Klein made the motion for a Do Pass on amendment 3, trade secret.

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Senate Agriculture Committee

Bill/Resolution Number Sb 2153

Hearing Date ~~1/15/99~~

2-4-99

Senator Urlacher seconded.

Roll Call: 7 yes, 0 no

Senator Klein made the motion for a Do Pass on amendment 4, roving.

Senator Kinnoin seconded.

Roll Call: 7 yes, 0 no

Senator Klein made the motion for a Do Pass as amended on SB 2153.

Senator Urlacher seconded.

ROLL CALL: 7 Yes, 0 No.

CARRIER: Senator Klein

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.:

Amendment to: Eng. SB 2153

Requested by Legislative Council

Date of Request: 3-19-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative: *SB No. 2153 would require that federally licensed grain warehouses obtain a \$250 state grain buyers license to govern their merchandising activities. Prior to 1999, these entities had been obtaining a state warehouse license with fees ranging from \$250 to \$500. There are 73 federally licensed warehouse in North Dakota ( $\$250 \times 73 \times 2 = \$36,500$ ). This bill would also increase the license fees for roving grain buyers from \$75 to \$100 per year. There are 47 roving grain buyers in North Dakota ( $\$25 \times 47 \times 2 = \$2,350$ ).*

2. State fiscal effect in dollar amounts:

	<u>1997-99 Biennium</u>		<u>1999-2001 Biennium</u>		<u>2001-03 Biennium</u>	
	<u>General Fund</u>	<u>Special Funds</u>	<u>General Fund</u>	<u>Special Funds</u>	<u>General Fund</u>	<u>Special Funds</u>
Revenues:	N/A	N/A	\$38,850	N/A	\$38,850	N/A
Expenditures:	N/A	N/A	N/A	N/A	N/A	N/A

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

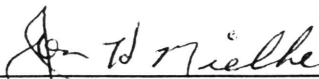
- a. For rest of 1997-99 biennium: N/A
- b. For the 1999-2001 biennium: N/A
- c. For the 2001-03 biennium: N/A

4. County, City, and School District fiscal effect in dollar amounts: *No Effect*

	<u>1997-99 Biennium</u>			<u>1999-2001 Biennium</u>			<u>2001-03 Biennium</u>		
	<u>Counties</u>	<u>Cities</u>	<u>School Districts</u>	<u>Counties</u>	<u>Cities</u>	<u>School Districts</u>	<u>Counties</u>	<u>Cities</u>	<u>School Districts</u>

If additional space is needed, attach a supplemental sheet.

Date Prepared: *March 22, 1999*

Signed: 

Typed Name: Jon H. Mielke, Executive Secretary

Department: Public Service Commission

Phone Number: 328-2400

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: SB 2153

Amendment to:

Requested by Legislative Council

Date of Request: 12-30-98

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative: *See attached supplement*

2. State fiscal effect in dollar amounts:

	<u>1997-99 Biennium</u>		<u>1999-2001 Biennium</u>		<u>2001-03 Biennium</u>	
	<u>General Fund</u>	<u>Special Funds</u>	<u>General Fund</u>	<u>Special Funds</u>	<u>General Fund</u>	<u>Special Funds</u>
Revenues:	N/A	N/A	\$37,500	N/A	\$37,500	N/A
Expenditures:	N/A	N/A	N/A	N/A	N/A	N/A

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

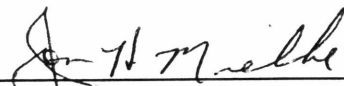
- a. For rest of 1997-99 biennium: N/A
- b. For the 1999-2001 biennium: N/A
- c. For the 2001-03 biennium: N/A

4. County, City, and School District fiscal effect in dollar amounts: *No Effect*

	<u>1997-99 Biennium</u>			<u>1999-2001 Biennium</u>			<u>2001-03 Biennium</u>		
	Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Date Prepared: *January 5, 1999*

Signed: 

Typed Name: Jon H. Mielke, Executive Secretary

Department: Public Service Commission

Phone Number: 328-2400

*Public Service Commission  
Fiscal Note Supplement  
SB 2153*

1. Narrative: *Among other things, this bill would require that the state's 75 federally licensed grain warehouse sites obtain a state grain buyer license to govern their cash and credit-sale transactions. The bill proposes a per site license fee of \$250 per year. Prior to 8/1/98 these sites were required to obtain a state warehouse license. Fees ranged from \$250 to \$500 per site per year.*

Date: 2/4  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2153

Senate Agriculture Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass Amendment

Motion Made By Kroeplin Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 2/4  
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2153

Senate Agriculture Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass Amendment

Motion Made By Klein Seconded By Kinnoin

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
Regarding Submission of Financial Statement



Date: 2/4  
Roll Call Vote #: 3

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2153**

Senate Agriculture Committee

Subcommittee on \_\_\_\_\_  
or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass Amendment

Motion Made By Klein Seconded By Urlacher

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 2/4  
Roll Call Vote #: 4

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2153

Senate Agriculture Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass Amendment

Motion Made By Klein Seconded By Kinnoin

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 2/4  
Roll Call Vote #: 5

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2153

Senate Agriculture Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Klein Seconded By Urlacher

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Klein

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

REPORT OF STANDING COMMITTEE

SB 2153: Agriculture Committee (Sen. Wanzek, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2153 was placed on the Sixth order on the calendar.

Page 5, line 13, replace "The" with "If required to obtain United States department of agriculture approval of the commission's grain buyer inspection program, the"

Page 5, line 14, replace "The commission may" with "A financial statement furnished under this section is a confidential trade secret and is not a public record."

Page 5, remove lines 15 through 17

Page 8, line 5, remove "and is sufficient to cover"

Page 8, line 6, remove "the full value of all outstanding credit-sale contracts"

Page 8, line 7, after "contract" insert "along"

Page 8, line 29, replace "purposes" with "purpose" and remove the underscored colon

Page 8, line 30, replace "a. Protecting" with "protecting"

Page 9, remove lines 1 through 18

Page 10, line 11, after the underscored period insert "Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commission may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees."

Page 13, line 7, remove "roving"

Renumber accordingly

1999 HOUSE AGRICULTURE

SB 2153

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2153

House Agriculture Committee

Conference Committee

Hearing Date 2-26-99

Tape Number	Side A	Side B	Meter #
One SB 2153	x		0.0 to 19.2
Committee Clerk Signature <i>Arline Hanson</i>			

Minutes:

Summary of bill: Relating to grain buyers and grain buyer insolvency proceedings also relates to definition of a public warehouse and hay buyers.

Jon Mielke: Ex Sec of the Public Service Commission. Service director of the license division.

(Testimony Attached) Had an amendment to propose. One minor change and we will be in favor of the bill. This bill is a companion bill to HB1156. While this bill deals with grain buyers, 1156 deals with state license grain warehouses.

Rep Pollert: 3 question please. page 3 line 1, exercise general supervision over the grain buyers in the state. Isn't that an awful broad statement.

Jon Mielke: It is and its just a general statement of intent by the Legislature that those are the PSC responsibilities. And that language is the same as shows up in the century code.

Rep Pollert: Shouldn't it be stricter?

Jon Mielke: You could tighten it up if you want. A number of states don't have their own inspectors and they have cooperative agreements with the federal govt to inspect grain warehouses. It's not in our budget so we have no intentions of doing it.

Rep Pollert: Why shouldn't the license fee for Roving Grain Buyers be \$250. same as elevator.

Jon Mielke: Doesn't know why it hasn't been done before. A few years ago they separated them. Usually Roving Grain Buyers are on a smaller scale than an elevator.

Rep Pollert: Pge 10 line 1 tough on grain buyers.

Jon Mielke: Yes it is tough. No penalty has been enforced yet, though.

Rep Pollert: Hay buyers page 18-- only one hay buyer in State, at peak had 2. If I am late with my report you can take away my license to buy wheat. Isn't that rather tough

Jon Mielke: Tough to keep track of roving grain buyers and hay buyers. Could be more than are licensed.

Rep Mueller: There are some areas where we have some disputes. Would it be appropriate to amend the bill to include Vomitoxin in certain areas?

Jon Mielke: Farmers has a right to ask to have sample taken and sent away for testing. Then the farmers and buyer is obligated to abide by the test results.

Rep Mueller: Basically its covered in here in this law.

Jon Mielke: Yes its covered in the Law.

Dan Kuntz: ND Grain Growers Assoc. (Testimony attached) Roving grain buyers only at \$100 have an amendment to raise it to \$250

Subcommittee appointed. Rep Pollert, Koppang, Mueller.

Page 3  
House Agriculture Committee  
Bill/Resolution Number SB 2153-D  
Hearing Date ~~2-26-99~~

3-11-99 committee work on SB 2153

Rep Pollert: Amendments proposed by Sub-committee

Motion by Rep Renner DO PASS as amended second by Rep Mueller motion carried

Vote total      YES    14      NO    0      ABSENT      1 Bill carrier Rep Pollert



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2153

Page 5, line 11, remove "and"

Page 5, line 12, after "hundred" insert "fifty"

Page 5, line 25, after the second "to" insert "or through"

Page 5, line 26, remove "grain by credit-sale to the"

Page 8, remove lines 16 through 29

Page 8, line 30, replace "60-02.1-16" with "60-02.1-15"

Page 9, line 11, replace "60-02.1-17" with "60-02.1-16"

Page 9, line 16, replace "60-02.1-18" with "60-02.1-17"

Page 10, line 2, replace "60-02.1-19" with "60-02.1-18"

Page 10, line 9, replace "60-02.1-20" with "60-02.1-19"

Page 10, line 20, replace "60-02.1-21" with "60-02.1-20"

Page 10, line 24, replace "60-02.1-22" with "60-02.1-21"

Page 11, line 1, replace "60-02.1-23" with "60-02.1-22"

Page 11, line 4, replace "60-02.1-22" with "60-02.1-21"

Page 11, line 8, replace "60-02.1-24" with "60-02.1-23"

Page 11, line 14, replace "60-02.1-25" with "60-02.1-24"

Page 11, line 17, replace "60-02.1-26" with "60-02.1-25"

Page 11, line 25, replace "60-02.1-27" with "60-02.1-26"

Page 12, line 9, replace "60-02.1-28" with "60-02.1-27"

Page 12, line 21, replace "60-02.1-29" with "60-02.1-28"

Page 12, line 23, replace "60-02.1-30" with "60-02.1-29"

Page 12, line 25, replace "60-02.1-31" with "60-02.1-30"

Page 13, line 6, replace "60-02.1-31" with "60-02.1-30"

Page 13, line 15, replace "60-02.1-32" with "60-02.1-31"

Page 13, line 20, replace "60-02.1-33" with "60-02.1-32"

Page 14, line 1, replace "60-02.1-34" with "60-02.1-33"

Page 14, line 8, replace "60-02.1-35" with "60-02.1-34"

Page 14, line 14, replace "60-02.1-36" with "60-02.1-35"

Page 14, line 16, replace "60-02.1-29" with "60-02.1-28" and replace "60-02.1-39" with "60-02.1-38"

Page 14, line 23, replace "60-02.1-37" with "60-02.1-36"

Page 14, line 25, replace "60-02.1-38" with "60-02.1-37"

Page 15, line 19, replace "60-02.1-39" with "60-02.1-38"

Page 17, line 18, overstrike ", but not less than one hundred thousand dollars, except when the"

Page 17, line 19, overstrike "licensee pays cash for ninety percent of all" and overstrike "hay at the time of delivery and the"

Page 17, overstrike line 20

Page 17, line 21, overstrike "case the bond amount may not be less than fifty thousand dollars"

Renumber accordingly

VR  
3/15/99  
10/2

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2153 Ag 3-16-99**

Page 5, line 11, remove "and"

Page 5, line 12, after "hundred" insert "fifty"

Page 5, line 25, after the second "to" insert "or through"

Page 5, line 26, remove "grain by credit-sale to the"

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2153 Ag 3-16-99**

Page 8, remove lines 16 through 29

Page 8, line 30, replace "60-02.1-16" with "60-02.1-15"

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2153 Ag 3-16-99**

Page 9, line 11, replace "60-02.1-17" with "60-02.1-16"

Page 9, line 16, replace "60-02.1-18" with "60-02.1-17"

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2153 Ag 3-16-99**

Page 10, line 2, replace "60-02.1-19" with "60-02.1-18"

Page 10, line 9, replace "60-02.1-20" with "60-02.1-19"

Page 10, line 20, replace "60-02.1-21" with "60-02.1-20"

Page 10, line 24, replace "60-02.1-22" with "60-02.1-21"

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2153 Ag 3-16-99**

Page 11, line 1, replace "60-02.1-23" with "60-02.1-22"

Page 11, line 4, replace "60-02.1-22" with "60-02.1-21"

Page 11, line 8, replace "60-02.1-24" with "60-02.1-23"

Page 11, line 14, replace "60-02.1-25" with "60-02.1-24"

Page 11, line 17, replace "60-02.1-26" with "60-02.1-25"

Page 11, line 25, replace "60-02.1-27" with "60-02.1-26"

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2153 Ag 3-16-99**

Page 12, line 9, replace "60-02.1-28" with "60-02.1-27"

Page 12, line 21, replace "60-02.1-29" with "60-02.1-28"

Page 12, line 23, replace "60-02.1-30" with "60-02.1-29"

202

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO 2153 Ag 3-16-99**  
Page 12, line 25, replace "60-02.1-31" with "60-02.1-30"

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO 2153 Ag 3-16-99**  
Page 13, line 6, replace "60-02.1-31" with "60-02.1-30"

Page 13, line 15, replace "60-02.1-32" with "60-02.1-31"

Page 13, line 20, replace "60-02.1-33" with "60-02.1-32"

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO 2153 Ag 3-16-99**  
Page 14, line 1, replace "60-02.1-34" with "60-02.1-33"

Page 14, line 8, replace "60-02.1-35" with "60-02.1-34"

Page 14, line 14, replace "60-02.1-36" with "60-02.1-35"

Page 14, line 16, replace "60-02.1-29" with "60-02.1-28" and replace "60-02.1-39" with "60-02.1-38"

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**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO 2153 Ag 3-16-99**  
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Page 17, overstrike line 20

Page 17, line 21, overstrike "case the bond amount may not be less than fifty thousand dollars"

Renumber accordingly

Date: 3-11-99  
Roll Call Vote #:

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2153

House AGRICULTURE Committee \_\_\_\_\_

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass as amended

Motion Made By Renner Second By Mueller

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chaiman	✓		Bob Stefanowicz	✓	
Dennis E. Johnson, Vice Chm	✓				
Thomas T. Brusegaard	✓				
Earl Rennerfeldt	✓				
Chet Pollert	✓				
Dennis J. Renner	✓				
Michael D. Brandenburg	✓				
Gil Herbel	✓				
Rick Berg	✓				
Myron Koppang	✓				
John M. Warner	✓				
Rod Froelich	✓				
Robert E. Nowatzki	✓				
Phillip Mueller	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Pollert

REPORT OF STANDING COMMITTEE

SB 2153: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2153 was placed on the Fourteenth order on the calendar.

Page 5, line 11, remove "and"

Page 5, line 12, after "hundred" insert "fifty"

Page 5, line 25, after the second "to" insert "or through"

Page 5, line 26, remove "grain by credit-sale to the"

Page 8, remove lines 16 through 29

Page 8, line 30, replace "60-02.1-16" with "60-02.1-15"

Page 9, line 11, replace "60-02.1-17" with "60-02.1-16"

Page 9, line 16, replace "60-02.1-18" with "60-02.1-17"

Page 10, line 2, replace "60-02.1-19" with "60-02.1-18"

Page 10, line 9, replace "60-02.1-20" with "60-02.1-19"

Page 10, line 20, replace "60-02.1-21" with "60-02.1-20"

Page 10, line 24, replace "60-02.1-22" with "60-02.1-21"

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Page 11, line 4, replace "60-02.1-22" with "60-02.1-21"

Page 11, line 8, replace "60-02.1-24" with "60-02.1-23"

Page 11, line 14, replace "60-02.1-25" with "60-02.1-24"

Page 11, line 17, replace "60-02.1-26" with "60-02.1-25"

Page 11, line 25, replace "60-02.1-27" with "60-02.1-26"

Page 12, line 9, replace "60-02.1-28" with "60-02.1-27"

Page 12, line 21, replace "60-02.1-29" with "60-02.1-28"

Page 12, line 23, replace "60-02.1-30" with "60-02.1-29"

Page 12, line 25, replace "60-02.1-31" with "60-02.1-30"

Page 13, line 6, replace "60-02.1-31" with "60-02.1-30"

Page 13, line 15, replace "60-02.1-32" with "60-02.1-31"

Page 13, line 20, replace "60-02.1-33" with "60-02.1-32"

Page 14, line 1, replace "60-02.1-34" with "60-02.1-33"

Page 14, line 8, replace "60-02.1-35" with "60-02.1-34"

Page 14, line 14, replace "60-02.1-36" with "60-02.1-35"

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Page 17, overstrike line 20

Page 17, line 21, overstrike "case the bond amount may not be less than fifty thousand dollars"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2153: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2153 was placed on the Sixth order on the calendar.

Page 5, line 11, remove "and"

Page 5, line 12, after "hundred" insert "fifty"

Page 5, line 25, after the second "to" insert "or through"

Page 5, line 26, remove "grain by credit-sale to the"

Page 8, remove lines 16 through 29

Page 8, line 30, replace "60-02.1-16" with "60-02.1-15"

Page 9, line 11, replace "60-02.1-17" with "60-02.1-16"

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Page 10, line 2, replace "60-02.1-19" with "60-02.1-18"

Page 10, line 9, replace "60-02.1-20" with "60-02.1-19"

Page 10, line 20, replace "60-02.1-21" with "60-02.1-20"

Page 10, line 24, replace "60-02.1-22" with "60-02.1-21"

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Page 11, line 14, replace "60-02.1-25" with "60-02.1-24"

Page 11, line 17, replace "60-02.1-26" with "60-02.1-25"

Page 11, line 25, replace "60-02.1-27" with "60-02.1-26"

Page 12, line 9, replace "60-02.1-28" with "60-02.1-27"

Page 12, line 21, replace "60-02.1-29" with "60-02.1-28"

Page 12, line 23, replace "60-02.1-30" with "60-02.1-29"

Page 12, line 25, replace "60-02.1-31" with "60-02.1-30"

Page 13, line 6, replace "60-02.1-31" with "60-02.1-30"

Page 13, line 15, replace "60-02.1-32" with "60-02.1-31"

Page 13, line 20, replace "60-02.1-33" with "60-02.1-32"

Page 14, line 1, replace "60-02.1-34" with "60-02.1-33"



Page 14, line 8, replace "60-02.1-35" with "60-02.1-34"

Page 14, line 14, replace "60-02.1-36" with "60-02.1-35"

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Page 17, overstrike line 20

Page 17, line 21, overstrike "case the bond amount may not be less than fifty thousand dollars"

ReNUMBER accordingly

**1999 SENATE AGRICULTURE**

**CONFERENCE COMMITTEE**

**SB 2153**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 2153

Senate Agriculture Committee

Conference Committee

Hearing Date 4/6/99

Tape Number	Side A	Side B	Meter #
2	X		0-625
Committee Clerk Signature <i>Lucia Irguez</i>			

Minutes:

Senator Klein called the committee to order, roll call was taken, Senator Sand was absent for roll call but came later.

Senator Klein opened the meeting on SB 2153.

Senator Klein explained the concern the Senate had with the bill. Wanted to add the word vomitoxin to pg. 3 line 19 and 26.

Senator Klein made the motion to move the amendment.

Representative Pollert seconded.

Discussion was held with Jon Mielke to make sure that would be right.

Representative Pollert explained the changes they made with the bill. There were four changes to the bill.

ROLL CALL: 6 Yes, 0 No

Page 2

Senate Agriculture Committee

Bill/Resolution Number SB 2153 CC

Hearing Date 4/6/99

Representative Renner made the motion for a Do Pass as Amended.

Representative Nowatzki seconded.

ROLL CALL: 6 Yes, 0 No

Date 4/6/99

Roll call vote # 1

Please type or use black pen to complete

1997 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2153

Senate Agriculture Committee

Subcommittee on \_\_\_\_\_ (Identify or check where appropriate)

Conference Committee  \_\_\_\_\_

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass Amundments

Motion Made By Kroepelin Seconded By Pollert

Senators	Yes	No	Representatives	Yes	No
<u>Klein</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Pollert</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Sand</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Renner</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Kroepelin</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Nowatzki</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
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_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Total 6 0  
(Yes) (No)

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

Date 4/16/99

Roll call vote # 2

Please type or use black pen to complete

1997 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2153

Senate Agriculture Committee

Subcommittee on \_\_\_\_\_ (Identify or

Conference Committee  (check where appropriate)

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Renner Seconded By Nowatzki

Senators	Yes	No	Representatives	Yes	No
<u>Klein</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Pollert</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Sand</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Renner</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Kroepin</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Nowatzki</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
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_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
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_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Total 6 0  
(Yes) (No)

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

**REPORT OF CONFERENCE COMMITTEE**

**SB 2153, as engrossed:** Your conference committee (Sens. Klein, Sand, Kroeplin and Reps. Pollert, Renner, Nowatzki) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 874-876, adopt further amendments as follows, and place SB 2153 on the Seventh order:

That the Senate accede to the House amendments as printed on pages 796 and 797 of the Senate Journal and pages 874-876 of the House Journal and that Engrossed Senate Bill No. 2153 be further amended as follows:

Page 3, line 19, after the second underscored comma insert "vomitoxin level,"

Page 3, line 26, after the third underscored comma insert "vomitoxin level,"

Renumber accordingly

Engrossed SB 2153 was placed on the Seventh order of business on the calendar.

**1999 TESTIMONY**

**SB 2153**



# NORTH DAKOTA GRAIN DEALERS ASSOCIATION

STEVEN D. STREGE, Executive Vice President  
ANN KORZENDORFER, Assistant Secretary  
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## GRAIN DEALERS TESTIMONY ON SB 2153

January 15, 1999 – Senate Ag Committee – Senator Terry Wanzek, Chmn.

*I am the owner of Circle K Feed + Grain. A privately owned grain elevator, and am on the Board of Directors of the North Dakota Grain Dealers Association.*

Clyde Krebs

A Good morning Mr. Chairman and members of the committee. My name is ~~Paul Coppin~~. I ~~am the General Manager at Hunter Grain Co., a farmers cooperative, and the First Vice President of the North Dakota Grain Dealers Association,~~ who I'm representing here today. NDGDA is an 87-year-old voluntary membership organization in which more than 90% of the state's grain elevators hold membership. We are here to offer some comments on SB 2153.

We are generally supportive of this bill. The Public Service Commission will tell you that the federal preemption of North Dakota Warehousing Law brings about the need for some statutory review here at the state level. We agree. This bill and HB 1156, heard yesterday in House Ag, are those reviews.

The primary purposes of SB 2153, as we see it, are to give farmers somewhat similar protection at federally licensed elevators as they now have at state licensed elevators, and to somewhat equalize the cost between the two licensing systems. Some grain buyer functions are protected under the state warehouse license, but are not under the federal warehouse license. The Grain Buyers license proposed in SB 2153 makes up for some of that difference. We compliment the PSC on how this bill leaves the state warehouse license and licensees as is if they choose to stay that way. Only if they switch to the federal license, which covers only storage, will they have to obtain the facility-based Grain Buyers license.

We believe the state should do what it can to encourage elevators to stay in the state system. We believe the more local control and service is the way to go. In an insolvency, we think North Dakota farmers would rather deal with someone at our PSC in Bismarck than the federal warehouse people in Kansas City. The close working relationship between PSC, our Association and the elevators on railroad matters is enhanced by those elevators staying in the state system.

t

nd  
gda

We aren't critical of those companies which have chosen to go federal in order to deal with one set of rules on storage in the multiple states in which they have elevators. A legitimate concern has been raised, however, about the much decreased level of farmer protection through bond in the federal system.

Lines 13-17 on page 5 of the bill authorize the PSC to require the submission of financial statements. We raised concerns about this yesterday in the HB 1156 hearing and will do so again today. PSC doesn't require financial statements under the current licensing statutes and we wonder about putting such a requirement in this new section.

There is the matter of confidentiality. Few if any of us in this room want our financial affairs disclosed to more people than is absolutely necessary. We don't think state law should unnecessarily compromise the confidentiality of elevator financial statements. Therefore we are suggesting an amendment to delete lines 13-17 on page 5 of SB 2153. If absolutely necessary, the PSC can review an elevator's financial statement under authority of the proposed 60-02.1-02, lines 10-11 on page 3 of this bill, without requiring everyone to file a copy.

We understand there may be some additional federal requirements coming down the pike in 2002 which would require submission of financials to a state licensing authority in order for the elevator to handle government grain. Let's cross that bridge when we come to it, if it is still there when the 2001 legislative assembly meets.

Over on pages 8 and 9 of SB 2153 we see the new Section 60-02.1-15 which requires bond protection for credit sale contracts. We will raise the same concerns here about that as we did yesterday regarding the same provision in HB 1156. There is no doubt that the use of credit-sale contracts has increased in recent years. We do however question the need for and practicality of providing farmer protection on these contracts. North Dakota farmers have demonstrated confidence in their elevators by entering into such contracts with the full knowledge that no bond protection exists. A disclaimer to that effect is required by law to be printed in bold and prominent type immediately above the seller's signature line on these contracts.

Such bond protection for credit-sale contracts would be very expensive at a meaningful level, if available at all. For instance, a \$100,000 bond would cost \$1,800. A \$500,000 bond would cost \$9,000. With the increasing use of credit

sales, many elevators have more dollar value outstanding than even those two figures. A \$5 million bond would cost \$90,000 and be available to only a few firms with very deep pockets. Full coverage is impossible to provide. Partial coverage may mislead the farmer to think he is covered. As the situation exists today, farmers are well aware that they are not covered, except in those cases where something special has already been done.

The need for greater use of credit-sale contracts has been brought about by railcar ordering programs which require ordering several months in advance. Elevators must have grain to ship when those cars arrive, but can not legally dip into warehouse receipted obligations.

Even though the present warehouse bond does not cover credit-sale contracts, it still serves as the financial screening device to assure license holders are financially sound. Bonding companies simply won't write substantial bonds on companies with serious financial problems. However, this is less the case under a federal warehouse bond because the bond requirement is only 20% of the state's.

There has been thought of an indemnity fund for credit-sale contracts. Here again there is the matter of cost, cost to the farmer, administration cost of the fund and any claims management, and cost to the elevator of collecting another checkoff. At our convention in the next several days we will no doubt be discussing this concept in greater detail.

Line 12 on page 5 of SB 2153 set the license fee for a roving grain buyer at \$100. In the interest of fairness, we think that ought to be raised to \$250, to match the facility-based grain buyer license fee and the minimum grain warehouse license fee.

That concludes our formal testimony at this time. I'd be happy to respond to any questions.

## **S.B. 2153**

**Presented by: Jon Mielke, Executive Secretary  
Public Service Commission**

**Before: Senate Committee on Agriculture  
Senator Terry M. Wanzek, Chairman**

**Date: January 15, 1999**

### **TESTIMONY**

Mr. Chairman and committee members, my name is Jon Mielke. I am the executive secretary of the Public Service Commission. I also serve as the director of the Commission's Licensing Division. The Licensing Division is directly responsible for licensing and regulating grain elevators and grain buyers in North Dakota.

The Public Service Commission introduced this bill after several meetings with grain industry associations, farm and commodity groups, and legislators. We urge your favorable support of the bill but also we recognize that some amendments may be necessary. We would be happy to work with your committee and other groups to draft amendments that may be deemed appropriate.

Before discussing the specific provisions of this bill, I would like to provide you with some background information concerning the need for this bill and the thought process that went into it.

**Federal Preemption.** This bill became necessary when the U.S. Department of Agriculture notified the Commission that federal law and related court decisions preempt state law and forbid North Dakota from requiring that federally licensed grain warehouses obtain a state warehouse license. This action left patrons of federally licensed warehouses unprotected against elevator insolvency unless their grain was held on a warehouse receipt.

The Commission believes that this situation must be rectified to ensure that farmers have a reasonable level of protection against grain elevator insolvency. The Commission also recognizes that this protection must be provided in a framework that is workable for industry.

North Dakota is one of only a few states that do not require that grain elevators obtain two licenses – one to buy grain and one to store grain. Until now, a North Dakota warehouse license governed both activities.

The basis for the federal preemption determination hinged on the fact that North Dakota was requiring a state license for something that was already governed by the federal government; namely, the storage of grain.

This bill proposes, among other things, to require that federally licensed grain warehouses obtain a grain buyers license to govern their non-storage transactions. This bill will guarantee that farmers who sell grain to federally licensed companies will be afforded protections similar to those that are available to farmers who deal with state licensed warehouses.

This bill is a companion to H.B. No. 1156. While this bill deals with grain buyers, H.B. No. 1156 deals with state licensed grain warehouses. Many of the changes proposed by HB. No. 1156 are also included in this bill. Our intention is to treat federal and state licensees alike and to ensure the same level of protection for farmers, regardless of which type of company that they are doing business with. Much of the “new” language in this bill mirrors provisions of existing grain elevator and roving grain buyer law.

Mr. Chairman, unless you or members of your committee have any preliminary questions, I will “walk through” this bill’s major provisions.

**Section 1 - Definitions.** Section 1 of this bill revises and clarifies the way that state law defines a “public warehouse.” The change would provide that federally licensed warehouses are not “public warehouses” as defined by state law and are not, therefore, regulated under state warehouse laws. Subsequent sections of the bill establish new laws to govern these entities.

This section also proposes to clarify that processors who buy grain from the public are warehousemen and that they do need a corresponding license and bond. Based on a 1987 Attorney General’s opinion, the Commission has been requiring that processors obtain a warehouse license. Section 1 of this bill puts this requirement in the statute. This change will eliminate further misunderstandings and will make it clear that people who sell grain to processors are to be provided with bond protection.

**Section 2 – New Grain Buyers Chapter.** Section 2 of this bill proposes to create a new chapter in the Century Code (Chapter 60-

02.1). This chapter would establish licensing and operating requirements for roving and facility-based grain buyers. Roving grain buyers are currently regulated, along with roving hay buyers, under Chapter 60-03. "Facility-based grain buyers" is a new term that would apply to federally licensed grain storage warehouses.

60-02.1-01. This statute would define grain buyers - both facility-based and roving. A roving grain buyer, as is currently the case, would be a buyer that does not have a facility where grain is received. A facility-based grain buyer would, in effect, be a federally licensed grain warehouse. All the other definitions in this portion of the bill mirror the terms found in Chapter 60-02, the chapter that governs state licensed grain warehouses.

60-02.1-02 thru 06. These statutes outline the duties bestowed on the Commission, procedures for resolving patron disputes, etc. Again, these items mirror those found in Chapter 60-02.

60-02.1-07. This statute prescribes the annual license fee that would be charged for facility-based and roving grain buyers. It proposes a \$250 per site fee for facility-based grain buyers. This amount is the same as the fee that is charged the state's smallest grain warehouses. This section also provides for a \$100 license fee for roving grain buyers. These entities currently pay a \$75 license fee. This fee has not been changed since it was increased from \$50 to \$75 in 1989.

This statute would also give the Commission the ability to require that grain buyers submit financial reports. This change would reduce the differences that exist between state and federal warehouse laws. This point may be critical if the USDA moves ahead

to discontinue portions of its existing warehouse inspection program and to turn those activities over to acceptable state programs.

60-02.1-08. This statute sets forth bonding requirements for grain buyers. It is fashioned after the provisions of Chapter 60-02. It would set the minimum bond at \$5,000 but it would also give the Commission the ability to require higher bond amounts.

State grain warehouse bond requirements are prescribed by rule and are currently based on each entity's physical capacity. To avoid conflicts with similarly crafted federal bonding requirements, it is expected that grain buyer bond requirements might eventually be tied to the amount of grain that each buyer purchases in a year.

60-02.1-09 thru 14. Proposed sections 09 through 14 deal with items including bond cancellations and information that must be contained in scale tickets and credit-sale contracts. These items are the same as those contained in Chapter 60-02.

60-02.1-15. This statute addresses bond coverage to protect credit-sale transactions. It is undoubtedly the most discussed and controversial item in this bill. It would require that grain buyers obtain bond coverage to protect farmers who are selling grain using a credit-sales contract. H.B. 1156 proposes a similar requirement that would apply to state licensed grain warehouses.

State law defines a credit-sales contract as a sale in which the selling price is to be paid more than thirty days after the grain is delivered or released for sale. Delayed price and deferred payment contracts are common forms of credit-sales.

State warehouse laws currently do not require any form of bond protection for credit-sale transactions. If the warehouse becomes



insolvent, the farmer is not afforded any protection in the insolvency proceeding. These farmers are unsecured creditors.

The Commission has noticed a substantial increase in the use of credit-sale instruments in recent years. The Commission has not conducted a formal survey, but it is our belief that credit-sale transactions have risen from less than ten percent of the industry's sales volume to between forty and sixty percent.

Much of this increase is transportation-related. Warehouses need to hold title to grain so they can have grain on hand to make use of rail transportation that has been purchased up to six months in advance under programs like BNSF's COT car auction program.

This dramatic growth in the use of credit-sale instruments has greatly increased the exposure that farmers are facing. The Commission feels an obligation to bring this matter to the Legislature's attention to see if there is continuing legislative intent to leave these transactions unprotected.

There are two obvious flaws with this section's provision to require that grain buyers obtain credit-sale bond coverage. First, not all grain buyers will be able to obtain the required coverage. This would make it impossible for these buyers to use credit-sales legally. Given the need for and the popularity of these instruments, this fact could force many buyers out of business.

Cost is the second problem with mandated credit-sale bond coverage. For buyers who could get coverage, costs could approach five to six cents per bushel (see attached bond premium cost estimate). This would be an extremely expensive form of insurance. The cost could well out-weigh the benefits.

Warehouses and grain buyers operate on very thin margins. They would not be able to absorb this cost and would, in all likelihood, pass the cost on to their patrons. Farmers are simply not in a position to see grain prices drop by five or six cents per bushel.

In recognition of these shortcomings, the Commission has been visiting with industry and farm groups about a protection mechanism that is used in a number of grain-producing states. Many states have established indemnity funds to build cash reserves to protect farmers against grain buyer and warehouse insolvency.

Funding for these indemnity funds often comes in the form of what North Dakota typically refers to as a “check-off.” Grain buyers collect either a set amount per bushel or a percentage of the selling price and remit these collections to the state for deposit in an insurance fund to help pay farmers if the buyer becomes insolvent. Collections normally cease when the fund builds up to a pre-established limit and start again if the fund’s balance drops below a pre-determined amount.

We have reviewed the provisions of the indemnity funds used by other states and developed a conceptual outline of what we consider the most desirable or workable provisions of each. This outline is attached as the last page of our testimony.

We have visited with several industry, farm, and commodity groups about the indemnity fund approach since this bill was drafted. It is an option that the Legislature may want to consider.

Ultimately, the farm community and the Legislature must decide what level of protection should be provided to farmers who decide to sell their grain via credit-sale. The underlying question hinges on

how much farmers are willing and able to pay for protection against warehouse and grain buyer insolvency.

60-02.1-16 thru 19. The provisions of statutes sixteen through nineteen address matters involving non-discrimination, record keeping, reporting, and standard weights. These provisions are identical to those contained in Chapter 60-02.

60-02.1-20. This statute addresses the use of federal grading standards. At the present time, state law requires that all non-bean transactions be based on federal grades. This bill proposes to allow the use of non-federal standards if both the buyer and the seller agree to use some other standards.

60-02.1-21 thru 28. As is the case with many of this bill's provisions, these sections mirror the provisions of Chapter 60-02. Items addressed in these proposed statutes include insuring grain inventories, office hours, and business discontinuances.

60-02.1-29. This statute defines the point at which a grain buyer becomes insolvent. This statute's title is mislabeled; the word "roving" should be struck since the statute is meant to apply to both roving and facility-based grain buyers.

60-02.1-30 thru 39. The remainder of Section 2 addresses issues related to buyer insolvency. These provisions are patterned after existing state laws that govern grain warehouse and roving grain buyer insolvencies.

**Sections 3 thru 16 – Revised Roving Grain and Hay Buyer Statutes.** Chapter 60-03 of the Century Code currently pertains to both roving grain and hay buyers. Section 2 of this bill proposes the enactment of a new chapter to govern both roving and facility-based

grain buyers. If these provisions are enacted, Chapter 60-03 should be amended to delete all references to roving grain buyers. 60-03 would then apply strictly to roving hay buyers.

Mr. Chairman, that concludes our testimony on this bill. Before responding to questions, I want to publicly thank all of the individuals, groups, and associations that worked with the Commission on this bill. I think we have come a long way towards developing a consensus on most of the major issues. We are anxious to work with all of these parties and the Legislature to develop a regulatory system that workable for industry and that provides the degree of protection that our farm community requires.

Thank you, Mr. Chairman. I would be happy to respond to questions from you and members of your committee.

# Credit-Sale Contract Bonds

## Estimated Costs

### On a "Per Bushel" Basis

(Based on Premiums @ \$18 / \$1000 Coverage)

Coverage @ \$3 / bushel	5.4 cents / bushel
Coverage @ \$2 / bushel	3.6 cents / bushel
Coverage @ \$1 / bushel	1.8 cents / bushel
Coverage at same rate as current warehouse bonds (\$1 per bushel on first 500,000 bushels and 20 cents per bushel thereafter):	
100,000 bushel volume	1.8 cents / bushel
250,000 bushel volume	1.8 cents / bushel
500,000 bushel volume	1.8 cents / bushel
1 million bushel volume	1.32 cents / bushel
2 million bushel volume	1.08 cents / bushel
3 million bushel volume	.720 cents / bushel
4 million bushel volume	.600 cents / bushel
5 million bushel volume	.504 cents / bushel

# Producer Funded Indemnity Fund

## An Alternative to Credit-Sale Bond Coverage

Nine states currently have a state indemnity / insurance fund that provides protection to producers who sell grain to warehouses or grain buyers by credit-sale. The following list identifies significant considerations and presents possible approaches that might be built into such a program in North Dakota.

Size and Method of Payment	Producer pays one cent per bushel at time that credit-sale contract is executed. Payments are collected by the buyer and remitted to the state.
Fund Level	Cap at \$5 million. Resume collections if fund falls below \$3 million. Interest earned remains in fund.
Coverage	Available to sellers via valid credit-sale contracts. 90% of first \$10,000; 75% thereafter to max. of \$100,000. If fund balance is insufficient to satisfy claims, available funds are prorated among valid claimants.
Claims	In warehouse insolvency cases or by order of district court in civil cases. Must initiate complaint within 12 months of date that grain is priced.
Failure to Remit	Warehousemen face Class A misdemeanor, pay monies owed, fine, & loss of license.
Administration	Funds remitted to Bank of North Dakota. Funds used to cover cost of administering program, insolvency cases, and compliance audits.

PROPOSED AMENDMENTS TO SB 2153

*Amendment to Correct Incorrect Section Title in Original Bill*

Page 13, line 7, remove "roving"

Renumber accordingly

sls/Legal/Amend1SB2153.doc/pg.3

PROPOSED AMENDMENTS TO SB 2153

*Amendment to Clarify Intent Regarding Submission of Financial Statement*

Page 5, line 13, replace "The" with "If required to obtain United States department of agriculture approval of the commission's grain buyer inspection program, the"

Page 5, line 14, replace "The commission may" with "A financial statement furnished under this section is a confidential trade secret and is not a public record."

Page 4, Remove lines 15 through 17

Renumber accordingly



PROPOSED AMENDMENTS TO SB 2153

*Amendment to Delete Credit-Sale Contract Bond Requirements*

Page 8, line 5, remove "and is sufficient to cover"

Page 8, line 6, remove "the full value of all outstanding credit-sale contracts"

Page 8, line 7, after "contract" insert "along"

Page 8, remove lines 17 through 30

Page 9, remove lines 1 through 18

Renumber accordingly

sls/Legal/Amend1SB2153.doc/pg.1

*Bond requirement*

*license fee for Roaming?  
study resolution*

# PROS AND CONS OF DEREGULATING STORAGE & HANDLING RATES

## **PROS:**

1. State-licensed warehouses can compete with federal-licensed warehouses on storage.
2. Encourage more warehouses to stay on state license (State license provides more protection for depositors.)
3. The warehouses on the state's borders would be free to compete with warehouses in other states.

## **CONS:**

1. Warehouses may compete so aggressively that there would be no profit in storing grain and may drive price of delayed pricing programs down also.
2. It would make it more difficult to utilize delayed pricing programs for customers, basis the price of the program.
3. Regulated rates keep rates equal for both big and small elevators.

*Final Draft*

# **RESOLUTION OPPOSING INDEMNITY FUND ON CREDIT SALE CONTRACTS**

**WHEREAS** the idea of creating an indemnity fund for partial protection on credit sale contracts may come before the state legislature;

**WHEREAS** in past insolvencies, customers have been made whole through commercial arrangements without public intervention;

**WHEREAS** if an indemnity fund were created it would certainly be used, but providing only partial payments to holders of credit sale contracts;

**WHEREAS** cost of an indemnity fund would be passed on to farmer producers who already are already financially strained;

**NOW THEREFORE BE IT RESOLVED** the North Dakota Grain Dealers Association is opposed to the formation of an indemnity fund to protect holders of credit sale contracts



## PROPOSED AMENDMENT TO SB 2153

### *Amendment to Provide Trade Secret Protection to Volume Reports*

Page 10, line 11, after the period insert "Information pertaining to the volume of grain handled is a confidential trade secret and is not a public document. The commission may make this information available for use by other governmental entities but it may not be released by them in a manner that jeopardizes the confidentiality of individual licensees."

Re-number accordingly.

## PROPOSED AMENDMENT TO SB 2153

### *Amendment:*

*Increases Roving Grain Buyer License Fee to \$150  
Corrects Language Error Concerning Bond Coverage  
Deletes Credit-Sale Contract Bond Requirements  
Revises Bond Requirements for Roving Hay Buyers*

Page 5, line 12, after "hundred" insert "fifty"

Page 5, line 25, after "to" insert "through" —

Page 5, line 26, strike "grain by credit-sale to"

Page 8, remove lines 16 through 29

Page 17, line 18, strike "but not less than one hundred thousand dollars,  
except when the"

Page 17, line 19, strike "licensee pays cash for ninety percent of hay at the  
time of delivery and the"

Page 17, line 20, strike "remaining ten percent within twenty-four hours of  
the time of delivery to the licensee in which"

Page 17, line 21, strike "case the bond amount may not be less than fifty  
thousand dollars"

Re-number accordingly

## **S.B. 2153**

**Presented by: Jon Mielke, Executive Secretary  
Public Service Commission**

**Before: House Committee on Agriculture  
Representative Eugene J. Nicholas, Chairman**

**Date: February 26, 1999**

### **TESTIMONY**

Mr. Chairman and committee members, my name is Jon Mielke. I am the executive secretary of the Public Service Commission. I also serve as the director of the Commission's Licensing Division. The Licensing Division is directly responsible for licensing and regulating grain elevators and grain buyers in North Dakota.

The Public Service Commission introduced this bill after several meetings with grain industry associations, farm and commodity groups, and legislators. With one minor change that I will discuss later, we urge your favorable support of the bill as forwarded to you by the Senate.

This bill became necessary when the U.S. Department of Agriculture notified the Commission that federal law and related court decisions preempt state law and forbid North Dakota from requiring that federally licensed grain warehouses obtain a state warehouse

license. This action left patrons of federally licensed warehouses unprotected against elevator insolvency unless their grain was held on a warehouse receipt.

The Commission believes that this situation must be rectified to ensure that farmers have a reasonable level of protection against grain elevator insolvency. The Commission also recognizes that this protection must be provided in a framework that is workable for industry.

North Dakota is one of only a few states that do not require that grain elevators obtain two licenses – one to buy grain and one to store grain. Until now, a North Dakota warehouse license governed both activities.

The basis for the federal preemption determination hinged on the fact that North Dakota was requiring a state license for something that was already governed by the federal government; namely, the storage of grain.

✓ This bill proposes, among other things, to require that federally licensed grain warehouses obtain a grain buyers license to govern their non-storage transactions. This bill will guarantee that farmers who sell grain to federally licensed companies will be afforded protections similar to those that are available to farmers who deal with state licensed warehouses.

This bill is a companion to H.B. No. 1156. While this bill deals with grain buyers, H.B. No. 1156 deals with state licensed grain warehouses. Many of the changes proposed by HB. No. 1156 are also included in this bill. Our intention is to treat federal and state licensees alike and to ensure the same level of protection for farmers,

regardless of which type of company that they are doing business with. Much of the “new” language in this bill mirrors provisions of existing grain elevator and roving grain buyer law.

Mr. Chairman, unless you or members of your committee have any preliminary questions, I will “walk through” this bill’s major provisions.

**Section 1 - Definitions.** Section 1 of this bill revises and clarifies the way that state law defines a “public warehouse.” The change would provide that federally licensed warehouses are not “public warehouses” as defined by state law and are not, therefore, regulated under state warehouse laws. Subsequent sections of the bill establish new laws to govern these entities.

This section also proposes to clarify that processors who buy grain from the public are warehousemen and that they do need a corresponding license and bond. Based on a 1987 Attorney General’s opinion, the Commission has been requiring that processors obtain a warehouse license. Section 1 of this bill puts this requirement in the statute. This change will eliminate further misunderstandings and will make it clear that people who sell grain to processors are to be provided with bond protection.

**Section 2 – New Grain Buyers Chapter.** Section 2 of this bill proposes to create a new chapter in the Century Code (Chapter 60-02.1). This chapter would establish licensing and operating requirements for roving and facility-based grain buyers. Roving grain buyers are currently regulated, along with roving hay buyers, under Chapter 60-03. “Facility-based grain buyers” is a new term that would apply to federally licensed grain storage warehouses.



60-02.1-01. This statute would define grain buyers - both facility-based and roving. A roving grain buyer, as is currently the case, would be a buyer that does not have a facility where grain is received. A facility-based grain buyer would, in effect, be a federally licensed grain warehouse. All the other definitions in this portion of the bill mirror the terms found in Chapter 60-02, the chapter that governs state licensed grain warehouses.

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State grain warehouse bond requirements are prescribed by rule and are currently based on each entity's physical capacity. To avoid conflicts with similarly crafted federal bonding requirements, it is expected that grain buyer bond requirements might eventually be tied to the amount of grain that each buyer purchases in a year.

60-02.1-09 thru 14. Proposed sections 09 through 14 deal with items including bond cancellations and information that must be contained in scale tickets and credit-sale contracts. These items are the same as those contained in Chapter 60-02.

60-02.1-15. In the original version of this bill, this statute proposed to require that grain buyers obtain bond coverage to protect credit-sale transactions. H.B. 1156 originally proposed a similar requirement that would have applied to state licensed grain warehouses.

The House amended this provision out of H.B. 1156. It appears that the Senate intended to do the same on this bill but a clerical error resulted in the deletion of only the latter half of the section. We recommend that the House correct this error and amend the bill by deleting lines 16 through 30 on page 8. A corresponding amendment is attached to our testimony.

60-02.1-16 thru 19. The provisions of statutes sixteen through nineteen address matters involving non-discrimination, record keeping, reporting, and standard weights. These provisions are identical to those contained in Chapter 60-02.

60-02.1-20. This statute addresses the use of federal grading standards. At the present time, state law requires that all non-bean transactions be based on federal grades. This bill proposes to allow the use of non-federal standards if both the buyer and the seller agree to use some other standards.

60-02.1-21 thru 28. As is the case with many of this bill's provisions, these sections mirror the provisions of Chapter 60-02.

Items addressed in these proposed statutes include insuring grain inventories, office hours, and procedures for discontinuing business.

60-02.1-29 thru 39. The remainder of Section 2 addresses issues related to buyer insolvency. These provisions are patterned after existing state laws that govern grain warehouse and roving grain buyer insolvencies.

**Sections 3 thru 16 – Revised Roving Grain and Hay Buyer Statutes.** Chapter 60-03 of the Century Code currently pertains to both roving grain and hay buyers. Section 2 of this bill proposes the enactment of a new chapter to govern roving grain buyers. If these provisions are enacted, Chapter 60-03 should be amended to delete all references to roving grain buyers. 60-03 would then apply strictly to roving hay buyers. Sections 3 - 16 of this bill make this change.

Mr. Chairman, that concludes our testimony on this bill. I would be happy to respond to questions from you and members of your committee.



# NORTH DAKOTA GRAIN DEALERS ASSOCIATION

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## GRAIN DEALERS TESTIMONY ON SB 2153

February 26 1999 – House Ag Committee – Rep Gene Nicholas, Chmn.

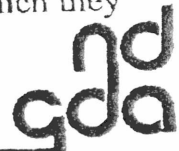
Good morning Mr. Chairman and members of the committee. My name is Clyde Krebs. I am the owner-manager of Circle K Feed and Grain in Glen Ullin, ND and a Director on the North Dakota Grain Dealers Association Board, who I'm representing here today. NDGDA is an 88-year-old voluntary membership organization in which more than 90% of the state's grain elevators hold membership. We are in general support of SB 2153.

Federal preemption of North Dakota warehousing law brings about the need for some statutory revisions here at the state level. This bill and HB 1156, which you've already passed out of here, are those revisions.

The primary purpose of SB 2153 is to give farmers similar protection at federally licensed elevators as they now have at state licensed elevators, and to somewhat equalize the cost between the two licensing systems. Some grain buyer functions are protected under the state warehouse license, but are not under the federal warehouse license. The Grain Buyers license proposed in SB 2153 makes up for some of that difference. We compliment the PSC on how this bill leaves the state warehouse license and licensees as is if they choose to stay that way. Only if they switch to the federal license, which covers only storage, will they have to obtain the facility-based Grain Buyers license.

We believe the state should do what it can to encourage elevators to stay in the state system. We believe the more local control and service is the way to go. In an insolvency, we think North Dakota farmers would rather deal with someone at our PSC in Bismarck than the federal warehouse people in Kansas City. The close working relationship between PSC, our Association and the elevators on railroad matters is enhanced by those elevators staying in the state system.

We aren't critical of those companies which have chosen to go federal in order to deal with one set of rules on storage in the multiple states in which they



nd  
gda

have elevators. A legitimate concern has been raised, however, about the much decreased level of farmer protection through bond in the federal system.

Line 12 on page 5 of Engrossed SB 2153 sets the license fee for a roving grain buyer at \$100. In the interest of fairness, we think that ought to be raised to \$250, to match the facility-based grain buyer license fee and the minimum state grain warehouse license fee.

We've talked to the PSC about the apparent clerical error on page 8 of engrossed SB 2153 where a portion of the credit sale contract bonding requirement remains in the bill. We agree with PSC's amendment to delete this section. It is consistent with the intent of the original amendment and also consistent with what you did with HB 1156 a month ago.

That concludes our formal testimony at this time. I'd be happy to respond to any questions.

PROPOSED AMENDMENTS TO SB 2153

*Amendment to Delete Credit-Sale Contract Bond Requirements*

Page 8, remove lines 16 through 29

Renumber accordingly