

2009 SENATE AGRICULTURE

SB 2124

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2124

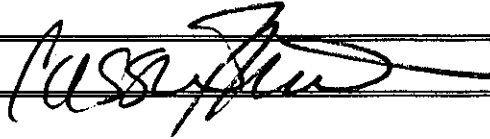
Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 8, 2009

Recorder Job Number: 6722

Committee Clerk Signature



Minutes:

**Sen. Flakoll** opened the hearing on SB 2124, a bill relating to public grain warehouse and facility-based grain buyer credit-sale contract transfers and the definition of facility-based grain buyer. Members present-6, Absent-1 **Sen. Taylor**.

**Sue Richter**, Director Licensing Division Public Service Commission, testified in favor of the bill. See attachment #1 for attached testimony.

**Sen. Wanzek**- I am somewhat involved with the warehousing license but even this is confusing to me at times. Maybe for the benefit of me and the other members could you kind of tell us the difference between grain and warehouse verse the public facility grain buyers?

**Sue Richter**- There are actually two different kinds of licenses. The first license that we can apply for is called the state warehouse license and the elevators are buy, sell, store transactions. The credit-sale contract transactions are all covered under that state license. Now some elevators have chose to operate or to apply for what they call US warehouse act license and what that means is that they get a license from the state that covers their purchase, cash, and credit-sale contract transactions but any transactions that relate to storage on warehouse receipt would be covered under that federal license instead. We have

about 400 licensed elevators about 100 of those elevators are licensed under federal licenses and the rest are licensed under the state license.

**Sen. Wanzek**- why would someone want to be a facility based rather than the other way?

**Sue Richter**- We ask that question all the time but the main reason that they want to have the US court act license is cause they have facilities in more than one state, cause if they have grain delivered in one state you can have a storage obligation in that state and the federal government allows you to have that commodity actually stored in a different state.

**Sen. Flakoll**- so what was it in paragraph two that you referenced?

**Sue Richter**- what we did is that we just referred that company that came in and applied for the facility based grain buyer license to work with their attorney to the best interest of everybody that was involved.

**Sen. Flakoll**- would there be any value in applying the emergency clause to this bill?

**Sue Richter**- an emergency clause could be applied fortunately we haven't been losing a lot of elevators, but if you would want one I see no reason not to.

**Steve Strege**, ND Grain Growers Association, was not present to testify but had a written testimony dropped off for the committee, see attachment #2.

No opposition to the bill.

**Sen. Flakoll** closed the hearing.

**Sen. Wanzek** motioned for a Do Pass and was seconded by **Sen. Miller**. Vote was 5 yeas, 0 nays, 2 absent-**Sen. Klein**, **Sen. Taylor**. **Sen. Wanzek** was designated to carry the bill to the floor.



**REPORT OF STANDING COMMITTEE**

**SB 2124: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS**  
(5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2124 was placed on the  
Eleventh order on the calendar.

2009 HOUSE AGRICULTURE

SB 2124

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2124

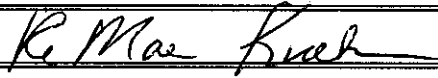
House Agriculture Committee

Check here for Conference Committee

Hearing Date: March 19, 2009

Recorder Job Number: 11287

Committee Clerk Signature



Minutes:

**Sue Richter, Director of Licensing Division, Public Service Commission:**

I would like to explain the difference between two terms. The first one is a grain warehouse. A grain warehouse is a state warehouse that is a state facility and the commission has the authority to govern all the transactions. The second is a facility based grain buyer. That is a grain warehouse that the commission has the jurisdiction over the cash transactions and the storage transactions are governed under a federal license. **(Written testimony attached #1)**

Although this would remove the contradictory language, it would not affect the process the commission uses when transferring a warehouse.

**Representative Vig:** In the second paragraph of your testimony, the state facility was sold to a company?

**Sue Richter:** That is right.

**Representative Vig:** How many state facilities or state warehouses do we have in this state?

**Sue Richter:** We have 400 licensed elevators, 300 are operated under state licenses and 100 are operated under federal licenses.

**Vice Chairman Brandenburg:** So we had a facility with a federal license that bought an elevator that had a state license?

**Sue Richter:** Actually it was the other way around. It was a company that had a number of locations and they were licensed under a state license. The new buyer chose to operate them under a facility based grain buyer license—a federal license.

**Representative Mueller:** We have 300 state facilities and 100 federal facilities. Are there some of those that do both?

**Sue Richter:** We do have a few elevators that have both types of licenses but not for the same facilities. As an example, we have Cenex Harvest States that has a number of line?? elevators. They are operated under federal licenses. They also have three facilities operated under state license because they are feed processing facilities. So it is not possible to operate the same location under two different types of licenses.

**Representative Mueller:** Why do some choose to be federally licensed and some choose to be state licensed?

**Sue Richter:** They don't tell us why they choose. Back in the day when elevators used to have a lot of storage, if you had a federal license you would be able to take grain in at an elevator in North Dakota and maintain that storage position even though you may not have the grain to cover it in North Dakota but you may have the grain in another location in another state.

**Representative Mueller:** And you could only do that if you were federally licensed?

**Sue Richter:** That is correct. If you have a state license, the grain has to be in ND. The only way there is an exception would be if you have grain on a warehouse receipt and for storage purposes you could move grain out of state but the company you move that grain to out of state would have to issue warehouse receipt back to the elevator where it originated.

**Representative Boe:** What is the difference between federal and state in regard to bonding? If you had multiple states, would you only need one bond?



**Sue Richter:** You have to have the state bond based on their storage capacity for one or all of their locations. A facility based grain buyer for a federal facility has a bond requirement that they have to meet with the federal government in order to obtain that license and they also have to file a bond with North Dakota that would cover their purchase transactions. So their bond is based on the number of bushels they handle for the purpose of covering any cash transactions if there is an insolvency.

**Steve Strege, ND Grain Dealers Assn.:** We are fine with this bill. I am here to clarify some questions. There are 400 elevators in the state. 300 of them are state licensed only. 100 have a federal license for their storage operation and they have a state facility grain buyer license. Prior to 1999 the state used to require a public warehouse license for every elevator in North Dakota. Some were also federally licensed. Then the feds came along and said if we have them licensed, they cannot be required to have a state license. The law was changed. Then we started a facility based grain buyers' license because under the federal law only their storage was covered. What has happened over the years is that the number of elevators that have gone federal has increased.

**Representative Mueller:** About two years ago there was a move on the federal government's part to require some things we didn't like in terms of licensing. Do you remember what that was?

**Steve Strege:** I think they were going to go beyond where they were and eliminate the need for a state facility. In Minnesota you have to have a grain buyer's bond.

**Representative Mueller:** Did the federal government decide that wasn't such a grand idea?

**Steve Strege:** I think they ran into resistance from the states because the protection for the farmers was going to be reduced.

**Opposition:** None

**Chairman Johnson:** Closed the hearing.

**Representative Holman:** Moved Do Pass.

**Vice Chairman Brandenburg:** Seconded.

A Roll Call vote was taken. Yes: 11, No: 0, Absent: 2, (Representatives Belter & Froelich).

**Representative Mueller will carry the bill.**

Date: 3/19/09

Roll Call Vote #: \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2124**

House Agriculture Committee \_\_\_\_\_

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep. Holman Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	✓	
Mike Brandenburg, Vice Chair	✓		Rod Froelich	AB	
Wesley R. Belter	AB		Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust	✓		Benjamin A. Vig	✓	
Mike Schatz	✓				
Gerry Uglem	✓				
John D. Wall	✓				

Total (Yes) 11 No 0

Absent 2

Bill Carrier Rep. Mueller

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

**REPORT OF STANDING COMMITTEE**

**SB 2124: Agriculture Committee (Rep. D. Johnson, Chairman) recommends DO PASS**  
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2124 was placed on the  
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2124

**Senate Bill 2124**

**Presented by:** Sue Richter, Director  
Licensing Division  
Public Service Commission

**Before:** Agriculture Committee  
Honorable Tim Flakoll, Chairman


**Date:** 8 January 2009

**TESTIMONY**

Mr. Chairman and committee members, my name is Sue Richter. I am the Public Service Commission's Licensing Division Director. The Licensing Division is directly responsible for licensing and regulating grain elevators and grain buyers in North Dakota. The Commission asked me to appear here today to testify in support of Senate Bill 2124, introduced at our request.


Recently, a company that operated multiple grain warehouses was sold to a company that chose to operate the warehouses under facility-based grain buyer licenses. While working on this transfer, we realized that statute does not provide for credit-sale contracts to be assigned to facility-based grain buyers.

The business practices of both licensees and producers have changed over the years. Credit-sale contracts are widely used as a marketing tool by both producers and licensees. In some instances, elevators will accept grain only if the producers are willing to enter into a credit-sale contract. When a public warehouseman ceases doing business and the warehouse becomes licensed by a facility-based grain buyer, it is important for the credit-sale contracts to be assigned



to a facility-based grain buyer. If credit-sale contracts can't be assigned, both the licensee and producer stand to lose the benefits associated with entering into a credit-sale contract.

Section 1 revises the statute to allow the assignment. The facility-based grain buyer statute already allows for the assignment of credit-sale contracts to another licensed facility-based grain buyer or to another licensed public warehouseman. Senate Bill 2124 now ensures that the same opportunities are available for both the public warehouses and facility-based grain buyers.



Section 2 defines a facility-based grain buyer in the statute that regulates grain buyers. Currently this definition can only be found by referring to the grain warehouse statute, which creates confusion for applicants. It is best to include the definition of a facility-based grain buyer in the statute where they are regulated.

Current law contains contradictory language about transferring a public warehouse or facility-based grain buyer license. In the credit-sale contract law, it provides that licenses can be transferred. In the transfer law, it provides that a license must be surrendered to the Commission and the Commission must be satisfied that all outstanding receipts have been redeemed before a license can be issued to a new company for the applicable warehouse or facility. Senate Bill 2124 will remove the contradictory language for a public warehouseman under Section 1 and a facility-based grain buyer under Section 3.

This completes my testimony. I will be happy to answer any questions you may have.

98209.0100

Sixty-first  
Legislative Assembly  
of North Dakota

SENATE BILL NO. 2124

Introduced by

Agriculture Committee

(At the request of the Public Service Commission)

*Senate Ag - J  
can't be with you for  
the hearing, NODGA  
is OK with this bid  
Steve*

1 A BILL for an Act to amend and reenact section 60-02-19.1, subsection 4 of section 60-02.1-01,  
2 and section 60-02.1-14 of the North Dakota Century Code, relating to public grain warehouse  
3 and facility-based grain buyer credit-sale contract transfers and the definition of facility-based  
4 grain buyer.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 60-02-19.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **60-02-19.1. Credit-sale contracts.** A warehouseman shall not purchase grain by a  
9 credit-sale contract except as provided in this section. All credit-sale contracts must be in  
10 writing and must be consecutively numbered at the time of printing the contract. The  
11 warehouseman shall maintain an accurate record of all credit-sale contract numbers including  
12 the disposition of each numbered form, whether by execution, destruction, or otherwise. Each  
13 credit-sale contract must contain or provide for all of the following:

- 14 1. The seller's name and address.
- 15 2. The conditions of delivery.
- 16 3. The amount and kind of grain delivered.
- 17 4. The price per unit or basis of value.
- 18 5. The date payment is to be made.
- 19 6. The duration of the credit-sale contract.
- 20 7. Notice in a clear and prominent manner that the sale is not protected by the bond
- 21 coverage provided for in section 60-02-09, ~~however.~~ However, if the
- 22 warehouseman has obtained bond coverage in addition to that required by section
- 23 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the



1 warehouseman may state the same in the credit-sale contract along with the extent  
2 of such coverage.

3 The contract must be signed by both parties and executed in duplicate. One copy shall be  
4 retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation,  
5 termination, or cancellation of a warehouseman's license, the payment date for all credit-sale  
6 contracts shall, at the seller's option, be advanced to a date not later than thirty days after the  
7 effective date of the revocation, termination, or cancellation, and the purchase price for all  
8 unpriced grain shall be determined as of the effective date of revocation, termination, or  
9 cancellation in accordance with all other provisions of the contract. ~~However, if the license of~~  
10 ~~the warehouseman is transferred to another licensed warehouseman, credit sale contracts may~~  
11 ~~be assigned to the transferee.~~ When a public warehouse is transferred under this chapter,  
12 credit-sale contracts may be assigned to another licensed public warehouseman or  
13 facility-based grain buyer.

14 **SECTION 2. AMENDMENT.** Subsection 4 of section 60-02.1-01 of the North Dakota  
15 Century Code is amended and reenacted as follows:

16 4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed  
17 under the United States Warehouse Act [7 U.S.C. 241-273] where grain is  
18 received.

19 **SECTION 3. AMENDMENT.** Section 60-02.1-14 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **60-02.1-14. Credit-sale contracts.** A grain buyer may not purchase grain by a  
22 credit-sale contract except as provided in this section. All credit-sale contracts must be in  
23 writing and must be consecutively numbered at the time of printing the contract. The grain  
24 buyer shall maintain an accurate record of all credit-sale contract numbers including the  
25 disposition of each numbered form, whether by execution, destruction, or otherwise. Each  
26 credit-sale contract must contain or provide for all of the following:

- 27 1. The seller's name and address.
- 28 2. The conditions of delivery.
- 29 3. The amount and kind of grain delivered.
- 30 4. The price per unit or basis of value.
- 31 5. The date payment is to be made.

Sixty-first  
Legislative Assembly

- 1           6.    The duration of the credit-sale contract.
- 2           7.    Notice in a clear and prominent manner that the sale is not protected by the bond
- 3                coverage provided for in section 60-02.1-08. However, if the grain buyer has
- 4                obtained bond coverage in addition to that required by section 60-02.1-08 and the
- 5                coverage extends to the benefit of credit-sale contracts, the grain buyer may state
- 6                that fact in the credit-sale contract along with the extent of such coverage.
- 7    The contract must be signed by both parties and executed in duplicate. One copy must be
- 8    retained by the grain buyer and one copy must be delivered to the seller. Upon revocation,
- 9    termination, or cancellation of a grain buyer's license, the payment date for all credit-sale
- 10   contracts, at the seller's option, must be advanced to a date not later than thirty days after the
- 11   effective date of the revocation, termination, or cancellation, and the purchase price for all
- 12   unpriced grain must be determined as of the effective date of revocation, termination, or
- 13   cancellation in accordance with all other provisions of the contract. ~~However, if the license of~~
- 14   ~~the grain buyer is transferred to another grain buyer or licensed warehouseman, credit sale~~
- 15   ~~contracts, if so agreed by the seller and transferee, may be assigned to the transferee. When a~~
- 16   facility is transferred under this chapter, credit-sale contracts may be assigned to another
- 17   licensed facility-based grain buyer or public warehouseman.

Senate Bill 2124

3/19/09

#1

Sue Richter

**Presented by:** Sue Richter, Director  
Licensing Division  
Public Service Commission

**Before:** Agriculture Committee  
Honorable Dennis E. Johnson, Chairman

**Date:** 19 March 2009

### TESTIMONY

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The business practices of both licensees and producers have changed over the years. Credit-sale contracts are widely used as a marketing tool by both producers and licensees. In some instances, elevators will accept grain only if the producers are willing to enter into a credit-sale contract. When a public warehouseman ceases doing business and the warehouse becomes licensed by a facility-based grain buyer, it is important for the credit-sale contracts to be assigned to a facility-based grain buyer. If credit-sale contracts can't be assigned, both the licensee and producer stand to lose the benefits associated with entering into a credit-sale contract.

Section 1 revises the statute to allow the assignment of credit-sale contracts to another licensed public warehouseman or to a licensed facility-based grain buyer. The facility-based grain buyer statute already allows for the assignment of credit-

sale contracts to another licensed facility-based grain buyer or licensed public warehouseman. Senate Bill 2124 now ensures that the same opportunities are available for both public warehouses and facility-based grain buyers.

Section 2 defines a facility-based grain buyer in the statute that regulates facility-based grain buyers. Currently this definition can only be found by referring to the grain warehouse statute, which creates confusion for applicants when reviewing statute to determine the kinds of licenses they can operate under. It is best to include the definition of a facility-based grain buyer in the statute where they are regulated.

Current law contains contradictory language about transferring a public warehouse or facility-based grain buyer license. In the credit-sale contract law, it provides that licenses can be transferred. In the transfer law, it provides that a license must be surrendered to the Commission and the Commission must be satisfied that all outstanding receipts have been redeemed before a license can be issued to a new company for the applicable warehouse or facility. Senate Bill 2124 will remove the contradictory language for a public warehouseman under Section 1 and a facility-based grain buyer under Section 3.

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