

2015 SENATE AGRICULTURE

SCR 4023

2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SCR 4023
3/5/2015
Job #24378

- Subcommittee
 Conference Committee

Committee Clerk Signature

Emmery Grothberg

Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to study options for protecting farmers who prepay for chemicals, feed, fertilizer, seed, and similar agricultural supplies

Minutes:

Attachments: #1 - 3

Chairman Miller opened the hearing on SCR 4023.

Senator Sinner, District 46: introduced SCR 4023 (see attachment #1)

Chairman Miller: (2:45) I signed onto the resolution because I agree with you. We talked about bonding on how that increases costs and there's good and bad involved with that. A resolution to study the situation isn't a bad idea. Whether it gets studied or not, we don't know but we have the option.

Dan Wogsland, Executive Director, ND Grain Grower's Association (3:28) testified in support of SCR 4023. If we collectively get together, we can find some solutions (see attachment #2).

Chairman Miller: I think some of it is raising awareness like the "buyer beware" thing that Senator Sinner said. Just having the insolvency that occurred, farmers better scrutinize and better understand what they are doing. There's a lot of complacency at the end of the year.

Senator Larsen: Do you know how many times this issue has been studied?

Dan Wogsland: Specifically to this in the last ten years, I don't believe this issue has been studied per say. The issue of insolvencies has been studied many times and there are others in the room that can tell you how many times that's been looked at. Specifically to the agriculture supplier side, I don't believe there's been a study like this and I think it's something that warrants some examination.

Senator Klein: In the past, it's generally been the grain sales that have been the issue. Now that we've gotten into this new frontier where we're pre-buying fertilizer and chemicals, that's where the issues is.

Dan Wogsland: I believe that for years there have been prepays on seed, chemical and fertilizers. I believe that there was a particular issue in ND that has brought this to the forefront. It is a new frontier when you take a look at the type of monetary amounts being used and it's a lot different than twenty years ago.

Senator Klein: For example the Falkirk issue, do you go back and chat with you membership? What sort of discussion can you have other than telling people to be careful?

Dan Wogsland: I wouldn't say there's a tremendous amount of discussion out there but it is being discussed. When the Falkirk incident happened, there was a lot of discussion about how best to deal with it. That's why the study is so timely, if we bring the resources of the ND legislator, PSC, and private industry such as the agriculture association, perhaps we can come up with some solutions. It is a big deal for the business industry and for farmers.

Neutral Testimony

Randy Christmann, Public Service Commissioner: (8:50) (see attachment #3). Stated that the bill is non-jurisdictional.

Senator Klein: (14:52) We've been talking about the Falkirk issue, can you elaborate? Was there a lot of grain as part of the deal or were there a lot of supplies?

Randy Christmann: I wasn't on commission but I was a customer when the insolvency happened. I don't know exactly the number of grain claims, but by the time it got to the commission, it had boiled down to a few credit sale contracts that went through the indemnity fund and those producers got their 80%. Then there was one very large cash sale to another grain facility and that one has been resolved. There were not individual farm claimants for cash but there was a number of prepaid situations. Being in the elevator the day after it happened, I had a number of fellow farmers come to me as senator wanting reassurance that they were bonded and we found out that they weren't.

Senator Larsen: Do you foresee with this study, some kind of insurance that someone can take out on their diesel fuel and fertilizer? Is that what this could evolve into or do we just hope the study will come up with the best option?

Randy Christmann: they could come up with anything for solutions, I do want to emphasize that this wouldn't be as simple as adding this into our licensing situation because many of the people who sell these supplies are not grain dealers. At one point there was some discussion of private bonding that dealers can acquire, it would be in my mind something that could be advertised. I think that it is not widespread but I don't know what other options could come up in the course of the study.

The committee welcomed students from Fessenden, ND.

Chairman Miller closed the hearing on SCR 4023.

Senator Klein moved Do Pass on SCR 4023.

Senator Oban seconded the motion.

Vice Chairman Luick commented that he hoped something favorable would come out but that the committee needs to be cognizant of the federal IRS laws. Prepay dollars came into existence goes back to when the IRS code was changed to allow prepay on farm products. He said that maybe something can be incorporated into this eventually to watch federal IRS code.

Chairman Miller: We're not suggesting an exact solution here and I don't know if we've identified the problem but it's something we can think about.

A Roll Call vote was taken. Yea: 6; Nay: 0; Absent: 0.

Do Pass carries.

Vice Chairman Luick will carry the bill.

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4023**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Klein Seconded By Senator Oban

Senators	Yes	No	Senators	Yes	No
Chairman Joe Miller	Y		Sen. Erin Oban	Y	
Vice Chairman Larry Luick	Y		Sen. John M. Warner	Y	
Sen. Jerry Klein	Y				
Sen. Oley Larsen	Y				

Total Yes 6 No 0

Absent 0

Floor Assignment Senator Luick

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

REPORT OF STANDING COMMITTEE

SCR 4023: Agriculture Committee (Sen. Miller, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4023 was placed on the
Eleventh order on the calendar.

2015 HOUSE AGRICULTURE

SCR 4023

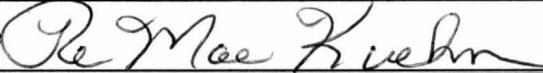
2015 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SCR 4023
3/20/2015
Job #25196

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A resolution directing Legislative Management to study options for protecting farmers who prepay for chemicals, feed, fertilizer, seed, and similar agricultural supplies

Minutes:

Attachments #1-3

Senator George Sinner, Sponsor of bill: (Attachment #1)

(3:46)

Representative Craig Headland: How would signing a "buyer beware" receipt be helpful?

Senator Sinner: The "buyer beware" comes from the seller. It makes the buyer aware that the purchase is unsecured. You have no rights to any products if I go out of business

Representative Craig Headland: It is protecting the person trying to swindle the farmer.

Senator Sinner: How are you protected today?

Representative Craig Headland: I am smart enough to know who I am dealing with.

Senator Sinner: I don't disagree. There are farmers that believe they have security in what they pay for. When they want it they can pick it up. That is not what happens.

Representative Craig Headland: Any farmer who prebuys always has the capability of taking the product that has been prepaid.

Chairman Dennis Johnson: You've had farmers who have gotten into situations like this. We've had grain sales that have collapsed. The indemnity fund is for grain sales. When I write out a check, it is to someone who will be in business tomorrow.

George Sinner: I know a situation where a farmer paid a local supplier. Between the time when he wrote out the check and he went to get the product, the company went out of business. There was over a million dollars of loss to different farmers on that case.

Representative Jessica Haak: What happens in that situation?

George Sinner: By the time the secured lenders are taken care of there is nothing left. If you are dealing with a co-op elevator, you have to pay off the secured creditors first. The ones selling grain are first in line. The last ones in line are these farmers.

Representative Alan Fehr: Is there a possibility of a bond like FDIC in banking? Are there any other options?

Senator Sinner: The major companies have some of this protection.

Chairman Dennis Johnson: The custom harvester is first, not the bank.

Senator Sinner: In many cases where there are supplier liens, the bank isn't first.

Dan Wogsland, Executive Director of the ND Grain Growers (Attachment #2):
(Handed in testimony but not present.)

Neutral:

Randy Christmann, Public Service Commissioner: (Attachment #3)

We need the farmers to prepay so the product is there when they need it.
(16:00)

Representative Alex Looyen: Is this a big problem?

Randy Christmann: It is not a frequent problem. Not all dealers of agriculture supplies are our licensees. We have an insolvency every year or year and a half. When I was a farmer my dealer went down. If a place is on the verge of collapsing, they can run a big sale and collect the money from prepaids and then let the collapse occur. Six figure amounts worth of fertilizer and spray that is prepaid is common.

Representative Alan Fehr: Could you explain the bond?

Randy Christmann: The bond is on our grain buyers. That is just for grain sales and grain storage. That bond is based on the volume of their storage capacity. There are some new rules that will go into effect in a couple of months.

Representative Alan Fehr: Is bonding an option to look at this study? Would that be a commercial product?

Randy Christmann: Large bonding companies do have a product available. A supply sales person could choose to bond themselves. It is not heavily used.

Representative Diane Larson: Would you be able to address this through your rules?

Randy Christmann: No. We have no jurisdiction over this.

Vice Chair Wayne Trottier: Is there a difference between insolvency and bankruptcy.

Randy Christmann: When a dealer is unable to pay for grain, we would petition the court. The court would declare them insolvent. After everything is distributed, they would determine bankruptcy.

Vice Chair Wayne Trottier: There are three different avenues that you mentioned. If it does go into bankruptcy with leftover assets, would they get to the prepay accounts? If the bank had first mortgage on the facilities, would the bankruptcy court address those that prepaid?

Randy Christmann: I would think so. The purchasers are at the bottom of the list.

Representative Craig Headland: What is the difference between the risks of purchasing prepays from a grain elevator vs. a local cooperative that doesn't deal with grain? A lot of risk that we are talking about is from a business who markets grain.

Randy Christmann: Grain dealers operate in a volatile commodity-based business.

Chairman Dennis Johnson: When you bond, it is on the capacity of the facility and not the dollars?

Randy Christmann: That is how we have done it. It starts at a \$50,000 minimum. Beyond that it is 50 cents a bushel up to a certain amount. Then it goes down to 20 cents. In the last couple of months we approved a new rule package that will require additional bonding if you have more than seven times your capacity in volume in a year.

Chairman Dennis Johnson: The bonding is on the storage capacity of the facility and big piles out on the ground?

Randy Christmann: When they do outside grain storage, they call in and license for additional capacity. It is based on bushels not on the value of the product.

Opposition:

Pete Hanebutt, ND Farm Bureau: We don't think this is necessary. We have a free market capitalist system in this country. There are risks and rewards. If you want to prepay, make sure you are dealing with the right folks before you do that. If we study this, we will end up with some legislation that we won't need.

Representative Joshua Boschee: I don't see why it would hurt to send it into a study.

Representative Joshua Boschee: Moved Do Pass

Representative Jessica Haak: Seconded the motion.

Representative Craig Headland: I will resist the Do Pass. Studies turn into bills. Bills turn into problems. I don't want to fund another safety net for myself. Farmers aren't here asking for this.

Representative Dwight Kiefert: I will vote against this also. In a perfect world everybody pays their bill. This works both ways. Sometimes farmers charge a lot of supplies and don't pay for it. I know one farmer that filed Chapter 11 after charging up huge amounts. He shut down a couple of businesses.

Representative Diane Larson: This is directing them to study. It is not "shall consider."

Chairman Dennis Johnson: On the resolutions they can still decide.

A Roll Call vote was taken: Yes 3 , No 8 , Absent 2 .

Do Pass fails.

Representative Alex Looyzen: Moved Do Not Pass

Representative Craig Headland: Seconded the motion.

A Roll Call vote was taken: Yes 8 , No 3 , Absent 2 .

Do Not Pass carries.

Representative Looyzen will carry the bill.

Date: 3/20/2015

Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 4023**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Boschee Seconded By Rep. Haak

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

Failed

Total (Yes) 3 No 8

Absent 2

Floor Assignment Rep.

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

Date: 3/20/2015

Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 4023**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

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

Motion Made By Rep. Looyen Seconded By Rep. Headland

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

Total (Yes) 8 No 3

Absent 2

Floor Assignment Rep. Looyen

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

REPORT OF STANDING COMMITTEE

SCR 4023: Agriculture Committee (Rep. D. Johnson, Chairman) recommends DO NOT PASS (8 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). SCR 4023 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SCR 4023

SCR 4023 - Ag Suppliers Study

Mr. Chairman and members of the Senate Ag committee, I requested that this resolution be drafted after a conversation with Public Service Commissioner Randy Christmann. Commissioner Christmann and I were working on a couple of bills dealing with grain dealers & warehouses and how we could further protect farmers who are selling their ag products and not getting paid. Both Commissioner Christmann and I have dealt with situations when our ag producers have prepaid for fertilizer, chemical, or other farm inputs and have later found out that the ag product supplier has gone out of business causing ^{severe} ~~server~~ losses to the farmer who prepays.

Over the past 35 plus years I have dealt with many ag producers who have found it advantageous to prepay for ag products to take advantage of current tax incentives. Many of those producers deal with the same people they have always dealt with, that might be a neighbor who sells beet seed, a local elevator selling chemical, or a regional coop that sells fertilizer or feed. I have even had experience with companies or individuals that have gone out of business causing severe losses to their farm customers, sometimes in the millions of dollars. During the course of my conversation with Commissioner Christmann, the topic of doing a study was touched on and I thought it might be a good idea.

Mr. Chairman, I don't believe that we can easily rectify this situation by setting up a self-insurance fund to protect from these losses because many would see it as just another level of bureaucracy that ends up spending more money to administer. But, there may be other ideas that come to the forefront....like, 1) requiring a "BUYER BEWARE" notice that explains the risks to the farmer who prepays; 2) requiring registration of those businesses who sell over certain threshold of total dollars; or 3) some other method that might protect the farmer/purchaser in these situations.

In the end, Mr. Chairman, we are not going to find any answers if we don't look.... And that's why I am proposing this study. I ask that you agree and let the ideas flow. Thank you.



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**North Dakota Grain Growers Association
Testimony on SCR 4023
Senate Agriculture Committee
March 5, 2015**

Chairman Miller, members of the Senate Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association. The North Dakota Grain Growers Association is in support of SCR 4023.

Prepay of farm inputs by farmers is a regular business practice employed by North Dakota agriculture; nonetheless this practice leaves farmers and ranchers with tremendous risk exposure should an agricultural vendor experience financial difficulties. The North Dakota agricultural industry has searched for years to mitigate the risks associated with prepaid expenses. Having the North Dakota Legislature study the issue is a proactive approach in finding solutions to the risk issue.

Therefore, Chairman Miller, the North Dakota Grain Growers Association supports SCR 4023 and we respectfully requests the Senate Agriculture Committee to concur.

Senate Concurrent Resolution 4023

Presented by: Randy Christmann, Commissioner
Public Service Commission

Before: Senate Agriculture Committee
The Honorable Joe Miller, Chairman

Date: March 5, 2015

TESTIMONY

The North Dakota Public Service Commission is not taking an official position on this resolution. Agricultural supplies, even when they are sold by grain warehousemen licensed by us, are outside the Commission's jurisdiction. I do, however, believe I can add some insight into the concerns behind SCR 4023.

Many of the grain warehousemen who are licensed by the Commission also sell the agricultural supplies being discussed. In the past, that has sometimes led to confusion about where the Commission's jurisdiction ends. Our jurisdiction is limited to the grain storage and grain sales involving our licensees. The other business transactions are completely outside our authority.

If an insolvency occurs with one of our licensees and customers have claims for grain they sold or had in storage, we would marshal the grain on hand, the accounts receivable for grain, and, if necessary, the bond. Those are the only resources we would have available for noncredit-sale claimants. In the case of claimants with valid credit-sale contracts there is an indemnity fund, and that fund is the only remedy available for credit-sale contract claimants.

In no way are we able to assist producers with losses incurred because they paid in advance for other supplies and did not get those supplies. We are

also unable to use the cash on hand from those sales or the supplies on inventory to help our grain claimants.

My own opinion is that for many of our producers prepaying for agricultural supplies involves more risk than their dealings with grain warehousemen or licensees. In most cases, producers raise multiple crops which are then marketed at different times and often to multiple warehousemen or licensees. Thus it is unlikely that a producer places at risk the value of a whole years' crop in the case of an insolvency. However, producers often prepay for these input supplies with one local dealer in order to take advantage of volume discounts. In the case of anhydrous ammonia, a producer's ability to transport it during application season requires them to buy it locally. To the surprise of many producers, they have no protection from the PSC if that product is not delivered.

It should also be noted that it is in the best interest of the state of North Dakota that ag producers continue the practice of prepaying for certain supplies. This practice increases the likelihood that the proper amounts of supplies will be on hand to allow our producers to maximize their productivity, grow our economy, and feed a hungry world.

Senator Sinner
3/20/15

#1

SCR 4023 - Ag Suppliers Study

Mr. Chairman and members of the House Ag committee, I requested that this resolution be drafted after a conversation with Public Service Commissioner Randy Christmann. Commissioner Christmann and I were working on a couple of bills dealing with grain dealers & warehouses and how we could further protect farmers who are selling their ag products and not getting paid. Both Commissioner Christmann and I have dealt with situations when our ag producers have prepaid for fertilizer, chemical, or other farm inputs and have later found out that the ag product supplier has gone out of business causing server losses to the farmer who prepays.

Over the past 35 plus years I have dealt with many ag producers who have found it advantageous to prepay for ag products to take advantage of current tax incentives. Many of those producers deal with the same people they have always dealt with, that might be a neighbor who sells beet seed, a local elevator selling chemical, or a regional coop that sells fertilizer or feed. I have even had experience with companies or individuals that have gone out of business causing severe losses to their farm customers, sometimes in the millions of dollars. During the course of my conversation with Commissioner Christmann, the topic of doing a study was touched on and I thought it might be a good idea.

Mr. Chairman, I don't believe that we can easily rectify this situation by setting up a self-insurance fund to protect from these losses because many would see it as just another level of bureaucracy that ends up spending more money to administer. But, there may be other ideas that come to the forefront...like, 1) requiring a "BUYER BEWARE" notice that explains the risks to the farmer who prepays; 2) requiring registration of those businesses who sell over certain threshold of total dollars; or 3) some other method that might protect the farmer/purchaser in these situations.

In the end, Mr. Chairman, we are not going to find any answers if we don't look.... And that's why I am proposing this study. I ask that you agree and let the ideas flow. Thank you.



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#2

Dan Wogsland

North Dakota Grain Growers Association
Testimony on SCR 4023
House Agriculture Committee
March 20, 2015

Chairman Johnson, members of the House Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association. The North Dakota Grain Growers Association is in support of SCR 4023.

Prepay of farm inputs by farmers is a regular business practice employed by North Dakota agriculture; nonetheless this practice leaves farmers and ranchers with tremendous risk exposure should an agricultural vendor experience financial difficulties. This risk has never been greater than it is today. The North Dakota agricultural industry has searched for years to mitigate the risks associated with prepaid expenses. Enlisting agricultural stakeholders through a Legislative study to examine the issue and provide possible legislative solutions is a proactive approach in addressing the problem.

Therefore, Chairman Johnson, members of the House Agriculture Committee, the North Dakota Grain Growers Association supports SCR 4023 and we respectfully request the Committee to give the measure a Do Pass recommendation.

3

Senate Concurrent Resolution 4023

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

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

Date: **March 20, 2015**

TESTIMONY

The North Dakota Public Service Commission is not taking an official position on this resolution. Agricultural supplies, even when they are sold by grain warehousemen licensed by us, are outside the Commission's jurisdiction. I do, however, believe I can add some insight into the concerns behind SCR 4023.

Many of the grain warehousemen who are licensed by the Commission also sell the agricultural supplies being discussed. In the past, that has sometimes led to confusion about where the Commission's jurisdiction ends. Our jurisdiction is limited to the grain storage and grain sales involving our licensees. The other business transactions are completely outside our authority.

If an insolvency occurs with one of our licensees and customers have claims for grain they sold or had in storage, we would marshal the grain on hand, the accounts receivable for grain, and, if necessary, the bond. Those three components make up our "trust fund" for that case. That "trust fund" is all we would have available for noncredit-sale claimants. In the case of claimants with valid credit-sale contracts there is an indemnity fund, and that fund is the only remedy available for credit-sale contract claimants.

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In no way are we able to assist producers with losses incurred because they paid in advance for other supplies and did not get those supplies. Even if our "trust fund" exceeds our grain claims, the excess would be returned to the licensee, not the prepaid supply customers. (It should also be noted that we are also unable to use the cash on hand from the sale of other ag supplies or the supplies on inventory to help our grain claimants)

My own opinion is that for many of our producers prepaying for agricultural supplies involves more risk than their dealings with grain warehousemen or buyers. In most cases, producers raise multiple crops which are then marketed at different times and often to multiple warehousemen or licensees. Thus it is unlikely that a producer has at risk the value of a whole year's crop in the case of an insolvency. However, producers often prepay for these input supplies with one local dealer in order to take advantage of volume discounts. In the case of anhydrous ammonia, a producer's ability to transport it during application season essentially requires them to buy it locally. To the surprise of many producers, they have no protection from the PSC if that product is not delivered.

It should also be noted that it is in the best interest of the state of North Dakota that ag producers continue the practice of prepaying for certain supplies. This practice lessens the need for individual ag producers to maintain large anhydrous storage facilities on every individual farm site. More importantly, this practice increases the likelihood that the proper amounts of supplies will be on hand to allow our producers to maximize their productivity, grow our economy, and feed a hungry world.