

**FISCAL NOTE**  
**Requested by Legislative Council**  
**03/28/2019**

Amendment to: HB 1467

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
<b>Counties</b>	\$0	\$0	\$0
<b>Cities</b>	\$0	\$0	\$0
<b>School Districts</b>	\$0	\$0	\$0
<b>Townships</b>	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill creates a legislative management study regarding issues associated with grain buyers, roving grain buyers, grain handling facilities, fertilizer, soil amendments, seed, and fuel.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

N/A

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

N/A

**Name:** Junkert/Baumiller

**Agency:** Agriculture

**Telephone:** 328-2231

**Date Prepared:** 03/29/2019

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/14/2019**

Revised  
 Bill/Resolution No.: HB 1467

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$398,558	\$0	\$398,558	\$0
<b>Appropriations</b>	\$0	\$0	\$398,558	\$0	\$398,558	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
<b>Counties</b>	\$0	\$0	\$0
<b>Cities</b>	\$0	\$0	\$0
<b>School Districts</b>	\$0	\$0	\$0
<b>Townships</b>	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers the statutory authority over grain, grain buyers, warehousing, deposits, and warehousemen from the Public Service Commission to the agriculture commissioner.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The North Dakota Department of Agriculture (NDDA) developed an estimate of expenditures believed necessary to efficiently operate the program. The Public Service Commission (PSC) provided NDDA revenue, appropriation, and expenditure data for the 17-19 biennium. The analysis of this data is included in 3B.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

PSC projected the 2017-2019 biennium revenue to be \$350,000. NDDA used this projection for the 19-21 and 21-23 bienniums. All revenue is deposited in the general fund.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

PSC indicated that the program expenditures for the 17-19 biennium are \$367,034 for salaries and operating for 1.75 FTEs.

NDDA expenditure estimates take into consideration the following:

- 4 FTEs (1 program coordinator and 3 field staff)
- Salaries and Wages: \$678,592
- Operating: \$87,000

- Total biennium budget: \$765,592

Based on this data, the fiscal impact will be \$398,558 per biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The appropriation impact is the same as the expenditure impact outlined in 3B. This bill contains no appropriation language. If this bill passes, appropriation language will need to be added to this bill or the agriculture commissioner's budget (SB 2009).

**Name:** Junkert/Baumiller

**Agency:** Agriculture

**Telephone:** 328-2231

**Date Prepared:** 01/23/2019

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/14/2019**

Bill/Resolution No.: HB 1467

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$765,592	\$0	\$765,592	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
<b>Counties</b>	\$0	\$0	\$0
<b>Cities</b>	\$0	\$0	\$0
<b>School Districts</b>	\$0	\$0	\$0
<b>Townships</b>	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers the statutory authority over grain, grain buyers, warehousing, deposits, and warehousemen from the Public Service Commission to the agriculture commissioner.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

It is difficult for the Department of Agriculture (NDDA) to determine the fiscal impact of this law change. NDDA developed an estimate of expenditures believed necessary to efficiently operate the program. PSC is in the process of developing fiscal data.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

NDDA is unable to determine the revenue impacts at this time.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditure estimates take into consideration the following:

- 4 FTEs (1 program coordinator and 3 field staff)
- Salaries and Wages: \$678,592
- Operating: \$87,000
- Total biennium budget: \$765,592

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

This bill contains no appropriation language. If this bill passes, appropriation language will need to be added to this bill or the agriculture commissioner's budget (SB 2009).

**Name:** Junkert/Baumiller

**Agency:** Agriculture

**Telephone:** 328-2231

**Date Prepared:** 01/22/2019

**2019 HOUSE AGRICULTURE**

**HB 1467**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Peace Garden Room, State Capitol

HB 1467  
1/31/2019  
Job #31920

- Subcommittee  
 Conference Committee

Committee Clerk Signature ReMae Kuehn

## Explanation or reason for introduction of bill/resolution:

Relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the PSC to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

## Minutes:

Attachments #1-3

## Chairman Dennis Johnson, Sponsor: (Attachment #1)

(4:00)

There is a federal inspector that said years back there were 10 state inspectors that he conferred with. Then there were 5 inspectors. Today I've been told there are 1½ to 1¾ positions. The federal inspector said he doesn't even know who it is.

We have to strengthen this program. I feel the industry wants this program.

## Doug Goehring, North Dakota Agriculture Commissioner: (Attachment #2)

**Representative McWilliams:** Could you explain the details of a roving grain buyer?

**Doug Goehring:** A roving buyer may be a buyer purchasing grain from farmers, may be doing some commercial business and market through their own channels they can make money. We probably have over 90 grain buyers in North Dakota. We need to provide oversight like we do with our livestock/dairy program.

**Representative Satrom:** Weren't there some warning signs in the current situation? Do we have bonding requirements now for roving grain buyers?

**Doug Goehring:** I don't have that program now so I am not sure. Any time you use a bond it is another cost that goes to the farmer.

Warning signs—for the last 5 years commodity prices have gone down. Farmers receive 7 to 9 cents for the wheat that is in a \$2.00 loaf of bread. Farmers were willing to believe that the buyer had a better price when it was high.

The public believes that someone is watching out by regulating. I had a livestock dealer that after 10 years bounced some checks. We caught him right away and minimized damage.

**Representative Satrom:** Do we have licensing or bonding when it comes to grain buyers?

**Doug Goehring:** There is bonding and some oversight?

**Chairman Dennis Johnson:** Do we have regulatory authority over the brokers? That was part of the downfall of the roving buyer?

**Doug Goehring:** This is the time to make modifications. If I receive the authority, I will work with the PSC. Something has to change. Our mediation program will always step up to provide whatever assistance we can. We shouldn't have to have conversations about indemnity programs. Those are fine but they are self-insured. Us as farmers pay for those programs. Prevention and oversight are the answer.

**Representative Skroch:** You mentioned about not allowing roving grain buyers to do business in North Dakota. Do you see a down side to banning those types of buyers?

**Doug Goehring:** Yes. I think we can have all of them because they provide different opportunities. They just need oversight.

#### **Opposition:**

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

There are some roving grain buyers that have no facility. A lot of roving grain buyers do have facilities. They might be from another state.

(31:53)

The Senate Bill is the best for North Dakota.

The discussion has been about roving grain buyers. That is the type of business of the most recent insolvency. In past sessions when we sought the ability to do more, the insolvencies were processors or specialty crops. The one thing in common with all these insolvencies is they are unique and there is not a pattern. I hope the conversation does not get derailed by this one type because it is the most recent. The problem is that we are unable to do as thorough a financial review as we need to be able to. There have been over 150 insolvencies in less than 20 years around the country.

**Chairman Dennis Johnson:** I am on the Senator's bill also. I do oppose the indemnity fund. If there is a desire to prevent this from happening, my frustration is that we have gone from 10 inspectors down to almost 2. With the number of grain buyers, where do you start with only 2 inspectors? I get the impression it hasn't been a priority for the oversight.

**Randy Christmann:** It is a priority. That is why previous bills were brought to fix it. The legislature has reduced the number. Now with getting us more authority, they are looking at adding to the inspector team.

We looked at Indiana's model of the indemnity fund. The assessments are voluntary. If refunded, then they are not protected.

**Representative Headland:** Does the Senate Bill expand the indemnity fund to specialty crops? I would have objections to that. I believe the fund in place has been funded on the backs of major commodity producers. Specialty growers need to have their own fund. Is that part of the proposal?

**Randy Christmann:** The indemnity fund now is applying to both traditional and specialty crops. But only those who do credit sale contracts pay in. This would expand it from credit sale contracts to all sellers and you can get your money refunded if you wish.

**Representative Richter:** Are you suggesting your agency could be the authority and the agriculture department would execute it.

**Randy Christmann:** No. I think our agency is the perfect agency to do this. The legislature has chosen for 125 years to regulate this because of a sense that sellers were limited in their options. We are that neutral third party regulator. Current law restricts us from doing the kind of thorough background check that we should be doing. It doesn't matter who is overseeing them.

**Representative Skroch:** In your testimony on page 3 you said with the right tools and statutory authority in place, the program can be well managed and implemented by the PSC. What was lacking that could have been different in the most recent issue? Does Senator Wanzek's bill give you the right tools and statutory authority?

**Randy Christmann:** Senator Wanzek had amendments in the hearing this morning. Yes, that would be a help.

What was lacking in the current case? We are unable to do a confidential financial review. The agriculture department can do that with the livestock program. We are unable to do that; but we can with Senator Wanzek's bill.

If the bonding company approves them, they must be alright. But that is not working.

(47:20)

**Representative Tveit:** What are some of the things you have asked for that would have eliminated the need for this bill.

**Randy Christmann:** In 2015 we sought the ability to do more comprehensive financial reviews. The discussion was that the bonding company will be doing that for you.

In 2017 we asked for expanding the indemnity fund. I think we asked to expand it too far. Senator Wanzek has a better version.

**Chairman Dennis Johnson:** Could the financial reviews have been done through administrative rules to parallel the livestock industry?

**Randy Christmann:** No. In the Century Code there is a section for grain buyers and a section for grain warehouses. There was a discussion of USDA requiring a review of certain financials in order to approve a state licensing program. Legislation was passed that says if USDA requires it, then you can look at it and keep it confidential. If we would have done it in Administrative Rules for financial information, a legal argument could be made that we have to release that because there is a provision that says it is confidential if required by USDA. If not required by USDA, you can't keep it confidential.

**Chairman Dennis Johnson:** To get a federal license, that is the first thing they do is check financials. Is that public information?

**Randy Christmann:** I don't know if they publish it or not. Under our state law, we would have to release it if people ask for it.

That would be a simple fix. But there has been strong opposition to us even looking.

**Chairman Dennis Johnson:** The fear was that it becomes public information. In the Senate Bill, how many inspectors are you requesting?

**Randy Christmann:** We are requesting field inspectors to go from 1.75 to 3,

**Neutral:**

**Stu Letcher, North Dakota Grain Dealers Association:** We need a robust inspection program. We expect to be regulated. I would like to stay with the PSC but we recognize the need.

The commercial grain industry is made up of distinct sectors. Current licensing law doesn't address those sectors. We would like to see a comprehensive review of current law and adapt the law to the sectors. We would suggest a legislative study.

**Representative Headland:** Could we fix the roving grain buyer situation just by requiring financial information to be given prior to being licensed?

**Stu Letcher:** The minimum bond for a roving grain buyer is \$50,000. Why not make the bond \$500,000 or \$1 million? The bonding company will do a financial inspection.

**Representative Headland:** How much would a million-dollar bond cost?

**Stu Letcher:** The premium is in the \$11,000 range.

**Chairman Dennis Johnson:** More brokerage companies are getting involved? Do you see any protection?

**Stu Letcher:** When you see the list of claimants for the current situation, not only were producers left, there are several elevators putting claims for maybe millions of dollars. The broker was doing the business and sent the young roving grain buyer.

The average capacity of the grain elevator has doubled. There are more people getting in between. That is what should be looked at. The broker helped get the roving grain buyer's name out.

**Chairman Dennis Johnson:** The farmer can go through the broker and the buyer comes to his yard to pick up the grain. The elevator is out of the loop completely.

**Stu Letcher:** The grain can go anywhere and the elevator is out of the transaction.

(1:02:20)

**Dennis Haugen, North Dakota Grain Growers:** I am a roving grain buyer.

**Representative Headland:** How big of a bond do you carry.

**Dennis Haugen:** I run a \$100,000 bond and a \$3 million liability umbrella. We are strictly a cash business where transactions are taken care of in a number of days. We don't buy the main commodities. Our specialty is damaged and stressed grains. We do a lot of work on the commercial side.

**Representative Headland:** Do you have separation between your roving business and your other business.

**Dennis Haugen:** We have a facility for commercial seed cleaning with portable grain cleaners. I do all the trading for the roving grain buying entity.

**Robert Ferebee, North Dakota Grain Growers Board:** We are going to be scared to sell to some of these operations. That gives the others a captive market.

**Chairman Dennis Johnson:** With the different brokers coming in, that should raise a red flag.

**Chairman Dennis Johnson:** Closed the hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Peace Garden Room, State Capitol

HB 1467—Committee Work  
1/31/2019  
Job #31956

- Subcommittee  
 Conference Committee

Committee Clerk: ReMae Kuehn
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## Explanation or reason for introduction of bill/resolution:

Relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the PSC to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

**Minutes:**

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**Representative Schreiber-Beck:** Moved Do Pass and rerefer to Appropriations

**Vice Chair Wayne Trottier:** Seconded the motion

**Representative McWilliams:** There is a better bill in the Senate?

**Chairman Dennis Johnson:** There is another bill that addresses it differently.

**Representative Richter:** I am not 100% in favor but I am going to vote for it to keep the fiscal note alive for the positions

**A Roll Call vote was taken: Yes 12, No 0, Absent 2.**

**Do Pass** carries.

**Representative Johnson** will carry the bill.



**REPORT OF STANDING COMMITTEE**

**HB 1467: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1467 was rereferred to the **Appropriations Committee**.

**2019 HOUSE APPROPRIATIONS**

**HB 1467**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Roughrider Room, State Capitol

HB 1467  
2/6/2019  
32253

- Subcommittee
- Conference Committee

Committee Clerk Risa Bergquist and Parker Oswald

## Explanation or reason for introduction of bill/resolution:

**Relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.**

## Minutes:

**Chairman Delzer:** Called the meeting to order for HB 1467.

**Representative D. Johnson:** Introduces self to committee. Every time the PSC (Public Service Commission) is in front of the committee, we see a decrease in productivity for the inspections. There used to be 10 inspectors that were all very closely intertwined and worked closely with the farmers. Now, the farmers that used to work closely with these inspectors are not even sure if there are any inspectors to use. I have introduced this legislation because we did not think PSC wanted this in their department and we chose to move it to the Agriculture Department. Most of the other states have this program in the Agriculture Department as well. The Agriculture Department has requested another 2.5 inspectors, which would bring their total to 4 inspectors. PSC currently has 1.5 inspectors and those would transfer. Annual licensing was listed on the warehouses and there are over 300 warehouses throughout the state and these warehouses cannot receive proper licensing due to the shortage on inspectors. A problem that arises from an inspector shortage is that many grain warehouses do not receive these inspections and then buyers just check to see if the seller is bonded, which could lead to quality problems, among other things.

**Representative D. Johnson:** All this has lead me to bring this bill, if you don't like the move we need to address the problem that is going on.

**(5:20) Chairman Delzer:** PSC is projecting a revenue for 2017-2019 of \$358,000; that goes directly to the general fund for these fees then?

**Representative D. Johnson:** That is what they printed on the appropriations note that I had and it includes the fees.

**Chairman Delzer:** On PSC; the last time we funded with general fund money, but is there any other sources to use?

**(6:35) Brady Larson, Legislative Council:** That is correct and I don't not believe there are other sources.

**Representative Kempenich:** Is there a program coordinator now? Did you look at increasing the bonds?

**Chairman Delzer:** That's one of the first things I thought of was not knowing if this needs a full time coordinator, but I would think he would also work as an inspector. Have you thought about other ways to raise money to help pay for this?

**Representative D. Johnson:** PSC has a coordinator that does the renewals, so I do not believe they also inspect. We would have to double the fees to everyone in order to do the 4 inspections. They want to be inspected they are willing to increase these fees in order to use these services.

**Chairman Delzer:** Unless you are taking part of the Herb Fund, we should not mention it.

**Representative Brandenburg:** If you look back at the PSC I think there where 5 FTE (full time employee) on grain inspection around 3 sessions ago, what happened is these FTEs were changed to railroad and pipeline inspectors and were never replaced. PSC does not actually handle the bonds. The bonding is through the insurance company. We don't have enough people watching what is going on out there.

**(11:40) Chairman Delzer:** Are you suggesting we should consider moving the railroad inspectors over to Agriculture Department as well?

**Representative Brandenburg:** I think rail and pipelines inspector are important. I don't think we need to move them, but we are short.

**Representative Boe:** The railroad inspectors should not be our responsibility because they are a regulatory agency.

**Representative D. Johnson:** We've got brokers in here commissioning sales of grain and we have no over site over these brokers. They are out of state and not bonded to us.

**(14:15) Representative Nathe:** I'm guessing the PSC isn't too happy about this, what is their reason for this?

**Representative D. Johnson:** They did oppose this bill and they said they were asking for 3 more FTEs to help with this program.

**(15:40) Chairman Delzer:** Anybody that sells grain and then puts a contract out there, the money is stretched out. The fund is set up to have a minimum of \$3M and a maximum of \$6M and if it falls below \$3M, a \$0.02 per bushel key is put on to help raise that back up.

**Representative D. Johnson:** We set that up originally to be \$3M to \$10M, but it was lowered then. I think if we get the right people in there, we can run this program the right way.

**Chairman Delzer:** We do not have the Senate bill in front of us right now. I think the Senate bill tries to cover this and it insures up to 80% of the farmer's loss. I think it wants to cover fertilizer sales.

**(17:42) Representative Kempenich:** Is there certain levels for bonds?

**Representative D. Johnson:** That was also talked about, the volume that is moving when there are 40 or more semis is all on wheels. There is no extra, it is all being moved around, which makes insuring important.

**Chairman Delzer:** This bill doesn't deal with bonds.

**Representative Kempenich:** The problem is that we need someone out there to watch this.

**Chairman Delzer:** We have the issue of whether we want to move it to the Agriculture Department or move it to PSC. We would still have the issue of having to do something about this as well. We also need to look into removing the 4 inspectors and moving them if this bill goes forward.

**(21:10) Representative Meier:** Are these inspectors able to give out fines?

**Chairman Delzer:** I do not believe so.

**Representative J. Nelson:** It looks like the issue is there's not enough FTEs to run the program. I agree, if we moved those people from the railroad inspection; wouldn't the appropriation go away?

**Representative D. Johnson:** I believe there is only 2 in rail inspection.

**Chairman Delzer:** Did you have any questions about requirements to be an inspector?

**Representative D. Johnson:** They would most likely have to be somewhat of an auditor.

**Chairman Delzer:** That would be one possibility of moving it, but you would have 2 railroad inspectors becoming unemployed.

**(23:40) Representative Brandenburg:** Representative Meier asked about fines, what they do is they go out there and look to see that they are all there and check for flaws, they would advise the PSC commissioners and they would contact the bonding agencies. This fund isn't going to stop the problem, the bank should be carrying this credit and the fund does not make you whole if you cannot get it the full price and pull the credit before it goes too far south.

**Chairman Delzer:** Further questions? I think there's discussion about moving the railroad inspectors and obviously there were the votes to get it done. We had 0 inspectors and Senate had 4, so we compromised with 2. If we keep this in the PSC it will be a fight.

**Representative D. Johnson:** The Agriculture Department has the livestock inspection service. It has been quite a while since we have heard of a sale barn or commission buyer going south and they have one tight program. The person taking care of this knows everyone out there in the field.

**Chairman Delzer:** There's only one person out there doing that?

**Representative D. Johnson:** PSC comes in and they can't look at the financials because then they become public knowledge and you do not want your competition to know that you are doing.

**(28:05) Chairman Delzer:** Are you aware if the sale barns inspector can look at the financials?

**Representative D. Johnson:** That is sealed in statute and you cannot share that information.

**Chairman Delzer:** I think we will set up a working group for this. The difference on a working group from a subcommittee is that they do not need minutes recorded. Closes meeting on HB 1467.

# 2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

HB 1467  
2/15/2019  
32835

- Subcommittee  
 Conference Committee

Committee Clerk: Parker Oswald

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 60-01 of the North Dakota Century Code, relating to the definition of agriculture commissioner; and to amend and reenact section 49-02-01, subsection 1 of section 60-02-01, sections 60-02-02, 60-02-03, 60-02-04, 60-02-05.1, 60-02-07, 60-02-07.2, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-14, 60-02-17, 60-02-24, 60-02-27, 60-02-35.1, 60-02-38, 60-02-40, 60-02-41, and 60-02-42, subsection 1 of section 60-02.1-01, sections 60-02.1-02, 60-02.1-03, 60-02.1-04, 60-02.1-06, 60-02.1-07, 60-02.1-07.1, 60-02.1-08, 60-02.1-09, 60-02.1-11, 60-02.1-16, 60-02.1-17, 60-02.1-19, 60-02.1-22, 60-02.1-26, 60-02.1-27, 60-02.1-29, 60-02.1-30, 60-02.1-32, 60-02.1-33, 60-02.1-34, 60-02.1-35, 60-02.1-36, 60-02.1-37, 60-02.1-38, and 60-02.1-39, subsection 1 of section 60-04-01, and sections 60-04-03, 60-04-03.1, 60-04-03.2, 60-04-03.3, 60-04-04, 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, 60-04-10, 60-05-01, 60-05-02, 60-05-03, 60-05-04, 60-06-05, 60-06-06.1, 60-10-01, 60-10-02, 60-10-03, 60-10-05, 60-10-07, 60-10-08, 60-10-09, 60-10-10, 60-10-11, 60-10-12, 60-10-14, and 60-10-15 of the North Dakota Century Code, relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

Minutes:

**Chairman Jeff Delzer:** Opens hearing on HB 1467. Clerk takes attendance.

**Representative Mike Brandenburg:** The subcommittee met on this bill and we all agreed that this should be done. We visited with the Majority Leader and he agreed that we should move this from PSC (Public Service Commission) to the Agriculture department. **I would make a motion of do pass on this.**

**Chairman Jeff Delzer:** They wanted to raise fees for something unrelated and that does not seem right.

**(3:35) Representative Mike Brandenburg:** We wanted to match the general fund of \$398,000 and \$350,000. The general fund was \$350,000 and if we raised the fees \$150, it would get us to that \$398,000. We would match 50-50 with the fees, but I do not think we need to do that either. If we move the amendment with \$350,000 of fees, general fund of \$398,000 and the approved FTE amount.

**Chairman Jeff Delzer:** They are hoping for 4 FTE (full time employee). Agriculture is expecting to spend closer to \$770,000. This bill will get scrutiny the second half.

**Representative Mike Brandenburg:** I make a motion for a do pass on HB 1467.

**Chairman Jeff Delzer:** Just a do pass, there are no amendments for this.

**Representative Don Vigesaa:** Seconds the motion of do pass on HB 1467.

**(5:20) Chairman Jeff Delzer:** Discussion on the motion of do pass?

**Representative Mike Nathe:** Did PSC ask for this?

**Chairman Jeff Delzer:** PSC does not want the move and the Agriculture commissioner would take it. PSC has done a poor job with this and they are already busy with other important things.

**(6:20) Representative J. Nelson:** I know this is for later on, but is the House's position that we would take the rail inspection program and those positions were the ones switched from grain inspection to rail inspection?

**Chairman Jeff Delzer:** I think PSC is going to sit in Government Operations.

**Representative David Monson:** We are thinking that with the drones down the road, we may be able to replace those inspectors down the road.

**(7:50) Chairman Jeff Delzer:** Good thought. Any further discussion?

**(8:15) Roll call vote is taken on the motion of do pass made by Representative Mike Brandenburg, seconded by Representative Don Vigesaa. Motion carries with 21 yes, 0 no and 0 absent. Representative D. Johnson will carry HB 1467.**

Date: 2/15/2019  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1467**

House Appropriations 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 Representative Brandenburg Seconded By Representative Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew	X				
Representative Brandenburg	X				
Representative Howe	X		Representative Boe	X	
Representative Kreidt	X		Representative Holman	X	
Representative Martinson	X		Representative Mock	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 21 No 0

Absent 0

Floor Assignment Representative D. Johnson

**Motion Carries**

**REPORT OF STANDING COMMITTEE**

**HB 1467: Appropriations Committee (Rep. Delzer, Chairman)** recommends **DO PASS**  
(21 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1467 was placed on the  
Eleventh order on the calendar.

**2019 SENATE AGRICULTURE**

**HB 1467**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Roosevelt Park Room, State Capitol

HB 1467  
3/8/2019  
JOB # 33456

- Subcommittee  
 Conference Committee

Committee Clerk: Florence Mayer

## Explanation or reason for introduction of bill/resolution:

Relating to the definition of agriculture commissioner; relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

## Minutes:

Attachments # 1 - 6

**Chairman Luick:** Called the committee to order on HB 1467. Roll call was taken, all members were present except Senator Osland.

**Representative Dennis Johnson, District 15:** Introduced the bill and provided Attachment #1. Also Attachment #2, an article from Ag Week titled "24 Entities File \$5.2M in Claims Against ND Grain Trader Hunter Hanson".

**(9:40) Senator Klein:** All we are doing is moving this from the PSC to the Agriculture Department. We are also creating that confidentiality we have been lacking. But we are not creating any special fund?

**Representative Johnson:** Correct. We have to get a handle on this. We need to prevent things like this from happening, but I don't want to hurt friendships here. I don't believe the Indemnity Bill will pass the House. If the PSC retains ownership I want to see more personnel dedicated to providing that service. I don't feel like 1 ¾ people can handle this. If it goes to the Agriculture Department, I want 3-4 people to oversee this. House Appropriations voted to pass the bill out of committee without appropriation, they have the individual Agriculture and PSC budgets.

**Senator Hogan:** Is it really where the actual program is housed or is it a funding issue? I remember when we cut those positions from the PSC, I was on Government Ops. That was a tough issue and we had these very concerns of this happening then. Without the positions will the location make a difference?

**Representative Johnson:** Yes, I believe so. Some folks in the Agriculture department have had their phones ringing off the hook. Well the PSC people are the ones with the oversight in this. I want the Agriculture people with their feet to the fire to fix this.

**Chairman Luick:** The money missing today, do we know where those dollars are?

**Representative Johnson:** I don't want to get into the gossip circles. The article I passed out has an opinion on that. There are brokers involved here that lined this young fellow up as far as making transactions. My question is, who are they responsible to? Obviously they are licensed in the states they do business in. This one in particular is out of Minnesota. A lot of these transactions are lined up through him. He gets a cut out of every bushel.

**(15:35) Doug Goehring, ND Agriculture Commissioner:** Testified in favor of HB 1467 and provided Attachment #3. He also spoke to some changes he wants in the bill (discussed in written testimony.)

**(21:06) Chairman Luick:** These items you laid out for requirements, are those administrative rules through the agency or those would need to be in Century Code?

**Doug Goehring:** I think most of this can be accomplished through administrative rules. It also brings open the whole conversation.

**(22:22) Senator Hogan:** Do you think we need to put a requirement of financial records of roving grain buyers in this bill? Those are pretty dramatic changes.

**Doug Goehring:** I threw them out for conversation. With respect to our roving grain buyers, and we do have some good ones, if you set up the right structure you can limit what they do. I have livestock dealers, agents, we monitor them. I am more worried about how we provide that oversight to those out there. If you see someone upside down, we'll have a hearing. First thing is I'll give them a call and talk about their situation. First time they bounce a check, we are going to have a hearing a sit down. It will be uncomfortable. But our responsibility is to provide that oversight and protect the consumer. I'm sorry that one person has a really bad situation, but it's our responsibility to make sure they don't do anymore harm. This would minimize the risk and harm.

**Senator Hogan:** Does this bill give you enough authority to do what needs to be done? Are the staffing needs met in this bill?

**Doug Goehring:** No, you're going to need 1 person in house just to look over financial records, balance sheets, debt asset ratio, and ask those question. The other 3 are going to have to be out doing inspections at elevators, meeting with buyers. When you walk in 3 things should happen. what's the accounts payable, accounts receivable and daily position report. The other side is to sit down with the elevators and talk about what their policies are. You see our ethanol industry that handles millions of bushels. They clear their accounts in 10 days. We have talked about all cash sales if all else fails. We have smaller elevators that don't have the resources of the bigger ones. We might need to put in the law that all cash sales have to be settled within 30 days.

**(27:30) Vice Chair Myrdal:** I have a lot of smaller elevators that couldn't handle those 10-20 day requirements due to staffing and resources. If we put those definitions in Code, they should be broad. This needs to be wide open and talked about. Would it be better to make it more broad so you have authority to set those administrative rules.

**Doug Goehring:** That is the ground work. We need to work through the rest with the Agriculture industry. If we get what needs to happen laid out, then we build the structure around it.

**Senator Larsen:** Did you have the indemnity with the cattle industry like with the grain?

**Doug Goehring:** No. I like components of the indemnity program. It might need to be structured different. It should never be in place of good regulatory oversight. When you ask us to pay for the problems, my job is to make sure those things don't happen. In 10 years I've only had 1 problem in the livestock industry, and that individual was intending to do harm. We pulled his license, had a hearing all within 10 days.

**Senator Klein:** It will boil down to, should this bill pass, the Agriculture Commissioner would be in charge of grain handling. Can the Agriculture department do it?

**Doug Goehring:** This has nothing to do with my friends at the PSC or my friend Randy Christmann. If you chose to give this to us with the authority, we would do so.

**Chairman Luick:** We are going to change the order of testimony today, Randy has to be at a different hearing. We will have the commissioners testimony in opposition.

**Randy Christmann, Public Service Commissioner:** Testified in opposition to HB 1467 and provided Attachment #4.

I was going to leave it at that, but I wasn't happy with the implications made this morning. Provided Attachment #5. I came on in 2013. We brought legislation to fix this confidentiality issue many times for many sessions. I just passed out the legal portion of this. Representative Johnson didn't explain this accurately according to the law. If you just read the last sentence it sounds simple enough. But if you read the first sentence of that subsection, then it changes. This is not for our licenses that go to those who are also federal licensees. For us to issue the ND license to the federal licensees, we are not required by USDA to look at their financial records. These records are not required in any way, so this section does not apply to it, there is nothing in law granting us ability to automatically deem those confidential. We take this responsibility very seriously. I don't want our inspectors to collect financial information and then someone else be able to just come in and review that without their approval. That would be fundamentally wrong. We have brought that up before. Part of this is what is in the Century Code, part of this is the legislative intent. We brought this up in 2015, the House turned it into a study and then didn't study it. Read a section of an article in the ND Grain Buyers Association Magazine about who should issue a bond. They opposed that bill. This applicant we are talking about today had 4 different bonds. None of them were ever revoked. He started as a roving grain buyer so he got a bond. Then he grew beyond that so he shopped around a got a different bond. Then he got a grain warehouse so he needed a separate bond for that and he got it. Then he got a second grain warehouse. He had 4 different bonds. All that discussion from the Grain Dealers Association and from multiple legislators in the House,

talking about how the bonding company does this financial review and we should stay out of them. How is that working out? We were right in 2015, but it didn't happen. Read a section of the standing committee minutes from 2015. "It seems it's between the PSC and the auditors and the grain dealers. The grain dealers were opposed to having the PSC come in to look at the books. It causes customers to get weary of the financial condition of the operation. Then he proposed an amendment that gets rid of the bill and puts it into a study." We didn't stop there. We accepted that the legislature doesn't want us looking at the books. In 2017 we brought a bill to enhance that indemnity fund to cover more people. That started in the house, they striped out the indemnity fund part. The safety net portion was taken out.

Continued with written testimony, Attachment #4 page 2.

I would say we need 4 employees as well. May I remind you, as Senator Hogan said, we didn't take those employees away. We can't review the financials, I never believed we needed 4 doing this, because we didn't have that authority. When 2346 passes and we're able to do the financials, then that is when we need the addition people. The Senate has taken care of that with our appropriations bill. As far as people's duties with this, the Agriculture Commissioner and I see that the same say. Out in office person would be divided as part of the responsibility of 3 different FTEs, who all have other regulatory portions. 1 would be the director of it, 1 is an admin person, 1 is an account position. That is so efficient, because they're already there.

Concluded with written testimony, Attachment #4, on page 3.

**(46:53)Chairman Luick:** The committee will go back into the "in favor of" testimony.

**Dan Wogsland, Executive Director ND Grain Growers Association (NDGGA):** Testified in support of HB 1467 and provided Attachment #6.

**Chairman Luick:** The funding that was taken away, do you know why that happened?

**Dan Wogsland:** No, I do not.

**Senator Klein:** At the end of the day we took those people away. We're pointing fingers, which is easy to do after the fact. I've been here when we created the indemnity fund. I know he's passionate, he was passionate back in the legislature trying to fix this and do the right thing. I don't know if you supported 2346 or not.

**Dan Wogsland:** I actually did not.

**Senator Klein:** That is the hard part here. Knowing the past and what happened. We are to blame too.

**Senator Hogan:** In 2015-27, when the PSC asked for additional regulations, did your association support that financial accountability?

**Dan Wogsland:** I would have to look back on my testimony. I do remember we were supporting the grain industry at that point in time.

**Senator Hogan:** More than just the FTEs, the real issue was we needed more regulation and accountability. We got some major push back. It might be interesting to go back and look.

**Dan Wogsland:** That would be good, appreciate that.

**Scott Rising, ND Soybean Growers Association:** We did not support 1517. It was a massive change. Our opinion was it took the court out of the system. I have some strong opinions about this, but I don't know what to do with it. I have concerns. It's not the grain industry I'm concerned about, I'm concerned about the producer. Things like has this moved from silo to silo so to speak. As it moves from organization to organization it can be very smooth. That is not the case here. These are both led by very capable folks that are elected. We have concerns that all the appropriate processes move with it so it can succeed. I think the PSC is highly favored when it comes to the legal end of things. We don't have that experience with the Agriculture department, we also don't have the FTEs. For us it doesn't break down to FTEs. The State can afford to do whatever it takes to get this right. We supported 2346. It has an indemnity fund in it. If you chose not to self-insure, you don't have to. It re-identifies a process. These are not inconveniences, this is life changing. Our final evaluation is past performance is a good indicator, and we don't like what we see. Even among some of the best, it is easy to fall back on "Well I didn't have the authority". It think in the best interest of our grain growers, I am 51% for this. It cannot be the people who are regulated who set the policy, it has to be the producer.

**Senator Klein:** I wanted ask Stu to come to the podium to answer some questions.

**Stu Letcher, ND Grain Dealers Association:** I don't have written testimony. We are neutral on the bill. I am open to answering questions though.

**Senator Klein:** When did you come on? (He was told 2015.) Senator Myrdal referenced small elevators, with the 30 day thing and today's technology they all have computers. Do the days need to be adjusted?

**Stu Letcher:** There is a term called conversion. The farmer hauls in the grain, dumps it and he get a scale ticket. That shows I have this much grain of this quality. That needs to be converted into cash, credit sale contract or warehouse receipt. Current law state 40 days for that. I could of brought 50 industry managers to tell you the same thing. Conversion in not the responsibility of the elevator manager. We will happily write the check as soon as the grain is in the pit. It is the producers decision when to convert. We have discussed with the PSC and considered putting it into law. Right now it says the elevator manager must convert that scale ticket, it isn't our decision. PSC inspection reports indicate the 2 main infractions are un-converted scale tickets and un-signed contracts. Most of that time is because the producer doesn't want to make a decision. We want to put that into law so it's on the producer, not the elevator. Some producers will do business with the competition because they're willing to bend the law. Warehouse receipts are a rare occasion in our industry.

**Chairman Luick:** Would that be priced at the time of the conversion?

**Stu Letcher:** If it's a cash price, they will get the board price the day they convert. That is sometimes why they wait.

**(1:04:57) Vice Chair Myrdal:** There is a big game there of income for the producer. Can you explain the different options? You contract it for a certain price or you don't because the price might go up. Sometimes you get screwed over.

**Stu Letcher:** There are 3 categories of conversion in the law. Warehouse receipt which says the elevator says you have this much grain on storage and the possession of that is still in the farmers hands. Cash conversion where they write a check here and now. Then we have credit sale contract option, there are many forms of that. They all mean the payment for that grain will happen on a future day. We might fix one portion of the pricing system, whether that be bases or futures or the amount we will deliver.

**Vice Chair Myrdal:** It is basically an investment game. Do you have any rough idea of percentages of what is used more?

**Stu Letcher:** Well over 50% of the grain is marketed on delayed price contracts. They offer more options. There are a lot of cash sales that happen during certain parts of the year, for cash flow reasons.

**Senator Klein:** 30 days is related to how the producer is doing business. Does moving it to 30 days help with insolvency issues? Does that put the grain warehouse at risk?

**Stu Letcher:** Moving the days from 45 to 30 doesn't make any difference to our industry. We should be prepared to write the check when it is delivered. There is no solvency issue as far as conversion. The idea with cutting that down 15 days is there are 15 days less risk to the producer.

**Chairman Luick:** The ethanol plants do this in 12-15 days. Does this have any bearing on the indemnity fund dollar amounts or the bonding?

**Stu Letcher:** The conversion time has no effect on either of those.

**Senator Klein:** Confidentiality issues came up a couple times. Are there issues with the PSC being able to have that confidentiality? How does it work and what can we do to fix it?

**Stu Letcher:** I stand with my 2015 testimony. We came out in opposition to requiring financial statements, and we still are today. I keep in contact with my predecessor, we mirror the same opinion. We have 373 licensed warehouses in the state, 99 licensed roving grain buyers. Who is going to be looking at all those financial statements? From what I hear 1 FTE will be looking at financial statements. Looking at a balance sheet for a cattle buyer versus a grain warehouse is very different. Everyone's thinks it's a confidentiality issue, that is a small piece of it. We have concerns with confidentiality, just like with anytime a government organization gets your information. We haven't talked about that elevator's banker or the bonding company. If you looked at the elevators financial statements, this year they aren't looking so great. Just with the tariffs, volumes being down, the winter we've had and rail service, they aren't meeting their forecasts. Our financials don't look strong if the industry is down. If you're

an elevator and have a business plan with a banker behind you, and a bonding company that is willing to bond you; Our concern is, they will have a hearing or pull the license immediately. Not only have you put that elevators equity in jeopardy, you put that bond in jeopardy. That is why when the law was written, they didn't require financial statements. MN recently stopped the requirement for financial statements. It didn't provide the info they needed. There was a case in Ashby, MN. They had financials that looked just fine for 5 years. It wasn't until the loan was called in and they started looking for grain, that they found problems. We are against the PSC cutting that inspection division. We've always wanted at least 2-3 inspectors out there. That is the way prevention happens. If they're looking at all these things, that goes farther than just a financial statement.

**(1:15:28) Chairman Luick:** No matter how you look at this, doing audits on financials or the inspection on sight, we can be hosed either way. How can we get on top of this more quickly?

**Stu Letcher:** That was my original intent for my comments. First I'll address Senator Klein with his bonding question. I suppose there is a conflict of interest, we operate a bond agency. We were the first warehouse bond agency in the state. There was no one else willing to do it. We've been writing bonds since the 1930s. I stand by the article I wrote in our magazine in 2015. We believe the bonding company should be the arbiter of the strength of the financial statement. I've seen what our company requires for financials. We have struggled to get people bonded. We've had people we will not write bonds for. Not all companies are created equal. Randy said there were 4 bonds in place for the current case. They were written with 4 different companies, why is that? I got a call a month and a half ago from a location that had been sold. The buyer wanted a bond. I explained to them that there is an application process then the company will want complete financials, sign a general agreement of indemnity. The person made the comment they don't give their financials to anybody. I sent him the info, and didn't hear from him. A month later we get notice from the PSC that this warehouse is licensed. Yes, bonding should be the arbiter of the financial statements, but maybe we need to look at the companies. If they are an "A" or a "AA" rated company, they have a good operation. Maybe we should add that to the law, the rating of the company.

**Chairman Luick:** The reason they had 4 different companies is for the same reason I can go to multiple companies. If I want to be bonded for \$100,000 they probably won't do a financial audit on me. If it was \$1M, then the process would be stepped up. If he was under that threshold, there he goes. He can get that bonding.

**Stu Letcher:** In the law it states you can only have 1 bond enforced. You can't have more than 1 bond enforced.

**Chairman Luick:** How did that happen?

**Stu Letcher:** In the current case, he was required to have the original bond, then he went to another company to get a bigger bond. Then he has warehouse license with 2 warehouses. We have a lot of elevators that will expand their storage in the fall. That is required to be bonded. We also call up our current bonding company and tell them we need to add one. They look at the financial statement and they let us know. That did not happen in this case. He should of gone back to the original company. The more you increase that bond, the more the company looks into the financials. I'm speculating. It would be logical he got the first

bond, need a bigger bond so he used the financials that he had already done to get that one. I wonder what the rating of these companies was.

**Chairman Luick:** There is no oversight on the PSC part to make sure the bonds were intact to be covering what his business was.

**Stu Letcher:** He was bonded to level required by law. It just states “bonded”, not what the quality of that is. If you had a class A rated bonding company reviewing that, it would help. The minimum bond for a roving grain buyer is \$50,000. To get bonded for that, you have to show you have \$50,000 in equity. That is easy to do. Maybe we should add a zero to that. Or make it 1M. Bonding is not insurance, it is the companies opinion of the financial health of that company. You increase that bonding level, you increase the scrutiny.

**Senator Klein:** 1467 and 2346 both require a lot more digging into your books. You would be opposed to that?

**Stu Letcher:** Yes, but if it gets put in the law, we would deal with it. We are not picking sides with where this should be administrated. We want to see a wholesale review of the entire law. We have warehouses, roving grain buyers and facility based grain buyers. There’s a lot more than that in the industry today. A lot of the changes in the bill that originated here are changes that effect warehouses. We should not be treating roving grain buyers and warehouses the same. We shouldn’t be treating processors the same. There is a list of the insolvencies back to 1975 on the PSC website. It is a miss-match of processors, specialty companies, roving grain buyers. We want a bigger wholesale review of the entire law. Our president said the same thing. We need to take a bigger look at the law. Some of these changes may help, but doesn’t solve the problems.

**Senator Klein:** We are all looking for good ideas. Especially for the folks in the industry to help us with that.

**Stu Letcher:** If we’re talking the current case, there are 7-8 elevators on the insolvency list. We haven’t talked about the broker that built the trust of the commercial side of the industry as well. He’s taking 3-10 cents a bushel. What does he have invested? A phone a piece of paper. There are more and more of those across the country. We should look at how to address those guys as well. Rather than make reactive changes because of the most recent case, let’s take some time. MN has a grain commission, who is regulated by the Agriculture department. We are advocating for maybe a resolution or study. There are a lot of people we haven’t talked to. The commercial bankers, grain elevator auditing firms and the intricacies of a financial statement. The balance sheet may look healthy on the face of it. People spend hours and hours on a single statement.

**Chairman Luick:** How often are those facilities audited, is there a mandate?

**Stu Letcher:** There is no mandate in law. It depends on what their bank requires. Do we need to require an audited financial statement? The way it reads now it a “Financial statement”. That can read however the person wants it to.

**Chairman Luick:** Called Konrad Crockford to the podium to answer questions

**Konrad Crockford, Director of Compliance, PSC:** I will answer questions.

**Chairman Luick:** Does the PSC have the authority to do these financial audits as it stands today?

**Konrad Crockford:** The inspector can look at the books of the elevator which encompasses the financial statements. The issue is the confidentiality piece of that. It was attempted in the past to get these into statute that these were confidential. When the inspectors go in the field they use a software program that they put the data into. The issue is that data gets put into that software, which is kept in our files. The question is, what is confidential, what is not. The entity has to apply for confidentiality with the commission. They have to identify what they specifically want protected. We don't have a blanket requirement for that.

**Chairman Luick:** What is the process with bonds? How do you determine if they are bonded appropriately?

**Konrad Crockford:** We've got 3 bonding schedules. One for each of the state licenses we offer. We have a state warehouse bonding schedule, facility based grain buyer bonding schedule and the roving grain buyer schedule. The bond that a licensee will be determined by is that schedule and specific requirements. The state licensed warehouse, the bond is based off of the physical capacity. Bonding is based in administrative rule. If a facility turns the capacity over 7 times, there is an additional bond required. The facility based grain buyers are bonded on a 3 year rolling average based on the amount of bushels purchased in a year.

**Chairman Luick:** Would a financial audit be just as important as a physical audit?

**Konrad Crockford:** There is definitely merit to that. You have the opportunity to deep dive things in the office. Part of the proposal is that annual financial statement. You're not looking at where a company is in a certain month. It is a snap shot in time. In an annual report rough months and good months Average out.

**Chairman Luick:** Is an audited financial statement a better way to do that?

**Konrad Crockford:** Yes. An audited financial statement has certain advantages. It is prepared by a firm with experience. That is an independent 3<sup>rd</sup> party. They fill out a form without being able to physically look at accounts and bank records. How are you guaranteeing that other than a perjury statement, that what they provided is accurate.

**Chairman Luick:** What is your opinion on a possible study?

**Konrad Crockford:** I can't speak for the commission. I can point to the facts. A licensed roving grain buyer and a licensed warehouse license. He had 2 facilities. That kicked off at the beginning of November. We are still in the process of receiving claims for people wanting to file for accounts owed. We are still within that window. It will end the first week of April. That is based off of when the final publication of the commission being appointed trustee being published in the papers. We don't know the larger picture yet. We are getting those

claims in now. Those have to be analyzed by our inspectors to see if they are valid. Some people may be putting a claim out there for a contract they had, that they never delivered on. There is a lot of analysis on our end that needs to be done still.

**Chairman Luick:** Does the indemnity fund cover anything that this character had been doing? Because he had a physical plant, are any victims being covered at all?

**Konrad Crockford:** That will depend on the nature of business they had. The indemnity fund is not related to having a physical location or not. It has to do with issuing credit share contracts. We have to evaluate the terms and conditions and see if that contract is a valid credit sale contract. That will determine what puts the meter in the trust fund or the indemnity fund.

**Chairman Luick:** What happened to the money of the \$5-10M that has been taken, where is that?

**Konrad Crockford:** The investigation is still ongoing. From what we've seen it didn't make it into his business accounts. We are discussing with companies that worked with him how much was paid to him. The other issue is trying to balance what the claim is versus what the individual is getting paid for the grain. He isn't always making money on these deals. He would sell the grain for less than he contracted with the farmer. I think we need to evaluate those numbers to see what was paid to him versus what he promised to pay other people.

**Senator Klein:** I heard he took his girlfriend to Paris. Is there any validity, the PSC was notified, and no one was alarmed? Throw us some information as to if that was true?

**Konrad Crockford:** We do receive some communication about verifying the license status of a grain elevator or buyer and their bonding level at that point. We can provide the info we have on hand. In our initial inspection, he didn't raise any eyebrows. When it comes down to it, without the factual info given to us about "he didn't pay me what he said". We can take concerns, but they can only go so far. Commissioner Christmann mentioned we are bound by statutory requirements as far as when a licensee is issued. As long as you meet those requirements, we don't have legal action to not issue a license.

**Senator Klein:** Would you say you got more inquiries of this fellow than others? If 5 people call to ask, doesn't that send a message? Did you have more than one concern?

**Konrad Crockford:** It isn't unusual for us to receive calls on a new person or license. We didn't receive an overabundance of communication on him. It didn't indicate that people were having any troubles. Our first indication of people not getting paid was at the beginning of November. We took swift action. How much alarm do we put into that one call with not feedback. I don't the calls that the department of Agriculture had, we didn't get that. I can't discriminate on age for license either.

**Chairman Luick:** I asked to have him come up. A lot of things need to be ironed out. All information we can get is important here.

**Stu Letcher:** We've had grain licensing since the 1800s. Maybe we don't require financials for a reason. Be careful what you wish for. If they get financial statements and something like this happens anyway, there will be major law suits. There is liability involved.

**Chairman Luick:** There is a term for the involvement, we'll call it "Skin in the game".

**Stu Letcher:** With some of the tradition insolvencies. It wasn't the elevator that made the decision they were insolvent. The banker or lender that is financing the elevator, they make the determination when that elevator is insolvent. In the case of Falkirk. They made a grain sale, and deposited it in the bank. The bank made the decision to put that toward their note, rather than allow them to pay producers.

**Chairman Luick:** With the listing with the Ag Seek Article, do we have more insolvencies coming?

**Stu Letcher:** You've seen the figures in that article. There are elevators taking some heavy financial burdens on. It's a little early to tell. I'm keeping my fingers crossed, but it is possible

**(1:50:53) Konrad Crockford:** I failed to mention, regarding the calls on the individual. We did an out of cycle inspection on the business he was operating in July. At that time, our inspections are a snapshot in time, there was nothing of concern at that time. The calls we received didn't contain specifics. It was a verification of licensing and bonding. I know there is discussion about the different bonds he had. We see the results of not being able to bond an elevator. We get bond cancellation notifications, then that entity try's to source out another bond. We don't know the history going on in the back channels. We get a cancellation notice, then we either need a reinstatement letter or evidence of a new bond. That is the limit to what we see. Some change companies based strictly on premiums.

**Chairman Luick:** Do you think the indemnity fund has merit? Should it go by the way side or evaluation and sorting out?

**Konrad Crockford:** From research and looking at other states, we have some of the highest requirements out there. I get calls from other companies. Our licensees are trying to do an alternative to a bond, because the premiums they pay are cost \$20,000-\$30,000 a year. Other states have gone away from bonding, I am not advocating for that. There is some merit to looking into an indemnity fund. It has been very successful in other states. Indiana was researched thoroughly some of the concepts in SB 2346 were taken from their program. For the safety net, how much do we want to be there and where will that money come from?

**Senator Klein:** Representative Johnson and the concern the House has with expanding the indemnity fund; When an insurance companies go under, the other companies get the money to make sure no one is injured from the company that fails. Insurers are trying to be responsible amongst their own group. There are times when we have to do these things for the good of the people.

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**Chairman Luick:** You look at no-fault insurance, in a mindset it is a system that works in similar ways.

Called for further testimonies. Adjourned the committee on HB 1467.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Roosevelt Park Room, State Capitol

HB 1467  
3/14/2019  
JOB # 33710

- Subcommittee  
 Conference Committee

Committee Clerk: Florence Mayer

## Explanation or reason for introduction of bill/resolution:

Relating to the definition of agriculture commissioner; relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

## Minutes:

None.

**Chairman Luick:** Opened the committee to work on HB 1467. All members were present, except Senator Osland.

**Senator Larsen:** I have a hard reservation with leaving the PSC with this and moving it forward. The Agriculture Department had a strong testimony. However, I know the people who got their paperwork done and had the bonding had no hiccup. I don't feel comfortable about moving the department. They have the expertise now.

**Senator Klein:** I would somewhat echo that. After listening to the emotional testimony from the PSC and Agriculture Department, let's put that aside. I've been here 12 sessions, I've gone through how many insolvencies, every time we have to "Fix it". Therefore, Stu got up, and whatever I was thinking at that point he changed my mind on a lot of stuff. We started talking about financial statements, audits, what about the bankers, what about the brokers. We will always have bad people. We talked about Ashby, MN; that is heavily regulated, yet they still had a bad person. Is it troubling that when I asked Konrad the question of did they get calls, his comment was, "well we did, but there is nothing in the law that says we can go beyond seeing he has the bond". Then Stu talked about bonding, you have to provide financial statements. We have issues with bonding, we have issues with brokers, I don't think spending \$400,000 for more people will change anything. I think the insurance policy that was proposed in the Wanzek bill is the way we need to go. I say that because we have the guarantee fund on the insurance side, the farmers have indemnity fund for the credit sale side, but the Wanzek bill suggest insurance for every type of sale. The PSC has done it for years and years. Who gets the calls? The Agriculture commissioner. I understand that. But there are no solutions, just a lot of ideas. Many House people are adamant that it belongs in the Agriculture Department. I don't know that it matters. Stu made so many points about

audited, unaudited, the bankers aren't involved, the brokers are looked at and we have bad people. We have so many things to think about. I don't know how we will treat this. It is difficult.

**Vice Chair Myrdal:** I look at it from the growers' perspective. Right off the top I think it should have landed in the Agriculture Department to start with. When I talk to farmers, they don't even know that the PSC takes care of the regulatory. I think we need some public relations here. We don't enforce the law. It looks like some of the regulatory wasn't enforced here. There was a lack in the PSC, and they're playing catchup. But who's to say the Agriculture Department wouldn't have done that too. When you look at the fiscal note, we have to make the decision on that. I haven't decided. I just don't want to make a decision based on one single person. We are here to fix proven problems. To leave it be without any direction? Wanzek's bill covers some of that, but I don't know.

**Senator Hogan:** Is there any value in studying the overall process? I came up with 1,000 questions, especially on the finance and bonding. Do other states do this? Is there any value in doing an in-depth study on that? I've been on the interim Agriculture Committee, we haven't gotten into anything big, so maybe that is something we can do?

**Senator Larsen:** I think the reason why I can wrap my head around the PSC having this in their wheelhouse, is because if it wasn't grain what is it. It is a business and a shipping company. It's not an Agriculture issue. They are dealing with a business and an entity. My thought on the bill is, the short fall was the bonding and money part broke down. I don't know where we can legislatively do that, to give the PSC more oversight. The banks are supposed to do their job, the bonding people are supposed to do their job. The PSC is just managing it to make it flow. I think there is a disconnect in the financial part.

**Chairman Luick:** The PSC is supposed to be the regulatory oversight of the whole business.

**Senator Larsen:** But when they opened the books, the paper work part was in order for that guy.

**Senator Klein:** This was a roving grain buyer; he had a license and a warehouse license. When you get the bank involved, they are running the puppets down there. In the Wimbledon case there was a legislator in the house who went to the bank in December. He borrowed \$80,000 to pre-buy some of his implements for the next year. That same bank foreclosed on the elevator 20 days later. How do we force the banks to provide more information? We can look at the balance sheets, but do we really know for sure. I think we are in a position where, how much info can we get out of this with the banks confidentiality. Rick Clayburgh said they need to be part of this, I agree. How do we get them involved?

**Senator Larsen:** They have the bond, everything on paper looks correct, but we had someone call the PSC with a complaint. Does the PSC have the authority to ask for quarterly financials from this person? Do they have that authority? That is a disconnect.

**Chairman Luick:** As law is today, they can't go into their financials unless they are a federal operation.

**Senator Larsen:** Would that be a fix to put in code?

**Chairman Luick:** It will already be happening in our Senate bill.

**Senator Klein:** That was another argument, are those records confidential or not. A House member does some grain stuff. At that point, no one wanted it to be allowed to look at the books. There are 2 arguments, the Agriculture commissioner says you can look at the books, the PSC says you can't. The confidential portion does not apply because of the way we have it written. Is there a fix in the writing that would allow for that?

**Vice Chair Myrdal:** That was the argument between the 2 agencies. They each read it differently. I am not likely to vote for many studies, but this may be something we need to look at the whole process from beginning to end. Hopefully the House passes Wanzek's bills. The PSC says their hand were tied because of the law. If we do not pass this bill, either way we have an issue.

**Senator Klein:** Could we look at the bonding study we did? That was more than 10 years ago. If these bonding companies are so susceptible to this, I don't know what to do. There is a limit you don't have to go beyond that you don't have to provide financial statements. Who requires you to bond for the appropriate level?

**Chairman Luick:** For my construction, it is the Secretary of State. In SD, everything under \$5M of gross proceeds are audited annually. Anything over that has to have a fiscal audit annually and report it quarterly.

**Senator Klein:** Who determines it in the grain world? If you have a roving grain buyer and the application, PSC says we want to see your bond. Do we ask how many dollars of business they plan on doing? If he's only going to buy 2 truckloads or 2 trainloads. How does that work.

**Chairman Luick:** The ethanol plants clear their purchases every 10-12 days. That allows them to stay at a low level of bonding requirements. Because now the books are cleared. The longer they go, the more grain they will have in their control, so their bonds will have to be higher.

**Senator Larsen:** That is what the bank determines, not the state. That is where the problem is. Then the grain buyer is talking with the banker and the PSC is not in the room with that discussion. When the phone call is made of a complaint, the PSC comes in but can't see the financials. I think that is in the indemnity bill with the study.

**Chairman Luick:** We need to look at going out a few more years from where we are today. When you look back in time to when these facilities had a lesser storage capacity then now. The bonding requirements were sufficient. Today we can move out millions of bushels and dollars in a matter of a day or 2.

**Senator Larsen:** That is the big problem with the Agriculture department. They can come into the room with the banker and look at the books. Do we need to give the SSC that

authority? The Agriculture department doesn't even need a complaint. They can just go in and audit.

**Chairman Luick:** Our Agriculture Commissioner says they don't have this problem in the livestock industry.

**Senator Klein:** It's easier to move a train of grain than a train of cows.

**Senator Larsen:** If we could get the authority for them to go in and be a part of that conversation. Will this bill even do that or would we have to hog-house it?

**Chairman Luick:** I could not find the confidentiality in this thing. I believe all this does is transfer the authority that is it.

**Senator Larsen:** If you transfer authority then the rules would have to be that of the Agriculture department.

**Vice Chair Myrdal:** If this bill goes down, will Wanzek's bill go into conference committee? This isn't the first time for something like this, there is frustration with the growers that something needs to be done. A lot of that is contained in that bill, but is the confidentiality included in that?

**Senator Klein:** One bill is not going to survive. Whether it's this or the other. Do we turn one into a study, do we pass this knowing we can't have 2 or that they'll kill it. Turning this into a study doesn't move this, but would it bring the players to the table? There's so much hanging fruit we don't know what to pick.

**Chairman Luick:** Moving forward is only going to make this more complicated. We need to look at this 30 years from now, 50 years from now; who is best equipped to do that.

**Vice Chair Myrdal:** If you turn this into a study and the other bill dies, we have nothing.

**Senator Larsen:** Looking at SB 2346, which requires the applicant to submit a financial statement. It stays confidential, but the PSC could look at it.

**Chairman Luick:** HB 1467 does nothing but move the ownership.

**Vice Chair Myrdal:** In SB 2346, section 3 addresses it. Line 27 page 2.

**Senator Klein:** Looking at HB 1467 and the copy of the public warehouse piece Commissioner Christmann handed out. Is there a tweak we need to make? Page 3 line 26 where they struck the language.

**Senator Larsen:** This bill just moves it and I am not into that. If we add that section we are still moving it, it would just hog-house it.

**Vice Chair Myrdal:** It addresses it 2 times. For the procedural part of this, if we hog house this and turn it into a study. It is an insurance policy of sorts.

**Senator Larsen:** If it is the study, it won't fix the situation with this dude.

**Chairman Luick:** Committee will stand at ease for a short break.

Called committee back to order. I think I will take this bill up to Legislative Council and have them craft a study of what, committee?

**Senator Larsen:** Do we want it the same as the other bill?

**Chairman Luick:** If we did that, it would be combined then. If we put the single topic on here, it would meld together.

**Senator Klein:** I know we did not talk about brokers in the first half. We also need to study the bankers' involvement in the financial arrangements. Bonding needs to be studied again. We don't even know what those rules and regulations are. The grain dealers were real interested in those 3 things.

**Senator Larsen:** The PSC's concern about being able to open the books and have access. That was one of the roadblocks, they can't look at that. Christmann had brought that up in 2015.

**Vice Chair Myrdal:** That relates to the confidentiality to. The Grain Growers Association said they need this oversight, which they never ask for. There were questions from everyone about the roving grain buyers. For those of us who live on the Eastern side, we see more of that because we border MN. It wouldn't be a bad idea to look into that process.

**Senator Klein:** We've talked about confidentiality and whether or not additional oversight is required. Where do we draw then line with how many people do we need to do this?

**Chairman Luick:** In this draft which is the 2000 version, there is no study.

**Senator Klein:** If there was a study on the other one.

**Vice Chair Myrdal:** There is no study on 2346

**Senator Klein:** Read over the changes they had made to 2346.

**Vice Chair Myrdal:** There is no study on the latest version.

**Chairman Luick:** I would include in this study, the idea of moving the authority from the PSC to the Agriculture, availability of open books as needed, brokers, bankers, bonding, brick and mortar. What else?

**Senator Klein:** This study with PSC versus Agriculture. Does that create a whole interim of bad feelings? It will be a back and forth fight. Do we have some additional teeth in the law?

**Chairman Luick:** Should I take that out?

**Senator Larsen:** It is an industry the PSC is regulating, it's not Agricultural. It could be stuffed animals; it doesn't have to be grain. I would agree we don't need that fight all interim.

**Chairman Luick:** Are we ok with excluding that?

Everyone agreed.

**Chairman Luick:** Now I have brokers, bankers, bonding, brick and mortar, open books, confidentiality is covered in the bill. Anything else missing?  
Are we in agreement?

(Yes)

**Senator Klein:** Sometimes the attorneys have their wheels rolling better than ours. They might think of something more than us.

**Chairman Luick:** Committee adjourned.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Roosevelt Park Room, State Capitol

HB 1467  
3/15/2019  
JOB # 33789

- Subcommittee  
 Conference Committee

Committee Clerk: Florence Mayer
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## Explanation or reason for introduction of bill/resolution:

Relating to the definition of agriculture commissioner; relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

## Minutes:

Attachments # 1
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**Chairman Luick:** Called the committee to order to work on HB 1467. All members were present except Senators Osland and Klein.

Handed out a drafted amendment to look at, Attachment #1. This is not the final or good version of this amendment, it is no good just something to look at and think about. I had this crafted up yesterday at Legislative Council. Then I talked to Dennis Johnson about adding this to the bill. Also in the conversations, the PUC from SD loves that we have the indemnity fund. Whereas, people on the House side want to do away with it. I was asked how I would handle this with the elevators and such. That is what the bonding is for. I'm hoping you take these and consider what else needs to be in this study. I want to make sure it does not say, "Consider a study"; it has to say, "Shall study". This is far too costly for us to screw this up. We need to do this right. I don't know what you're feeling is about who ends up with the authority to control the oversight. I was asked this morning to attach this to the bill and run it through the system. Just attach it and vote. Not to hog-house it, simply attach it and move the whole thing through

**Vice Chair Myrdal:** That is up to this committee to vote or not on this. To me, that major decision is hard to move on, and I was originally leaning that direction. There are so many unknowns here. Yes, there were probably mistakes made by the PSC. But they also ready the law and interpreted it as they did. It is more important to get this studied. I think this needs to be a serious in-depth study. I would be more comfortable with voting and moving this next session when more is known.

**Chairman Luick:** For weeks I've known the indemnity portion of this on the House side is in trouble. They say they are willing to waiver on that if we vote on this. I'm not sure that's the

way to do things. I would say let's sit on this for a week. It will give us a starting point and find out what we want in this study. I am not willing to vote on this at this time.

**Senator Larsen:** We have to keep the history in mind. The PSC has been continuously trying to bring this forward, for many sessions, to fix this problem. Last session legislation was passed out of the Senate, but then killed in the House. Here we are addressing it once again. I don't think changing the location is the fix of the problem. I don't think we should vote either.

**Senator Hogan:** I really like it is a "shall study" consideration. This crisis will explode in big ways in the next 2 years. My concern with moving it to the Agriculture Department, I don't want to lose the historical reference and knowledge. Moving it, could make us in a much more weak position then we are now

**Senator Larsen:** If this were to change over, then the Agriculture department will go into grain elevators and the roving grain buyers. It seems weird that the PSC goes into the oil industry, the water and electrical industries but will lose going into the grain industry.

**Chairman Luick:** I encourage you to do some research this next week. Bring back more information about where, philosophically, this should be. Leave the personalities out of this. We won't be here forever; neither will the Agriculture Commissioner or the Public Service Commissioner. They are both friends of ours. We need to set that aside and figure out what is best for ND 50 years from now.

**Senator Larsen:** How many livestock auction barns are there in ND? 7 in the state? I think there are 7-grain entities in Minot alone. There are 3 in Ross.

**Chairman Luick:** The only thing I can think of is, when you hear the people who are working with livestock and how great the system is. The numbers are completely skewed from what we're looking at. If there is any light, it's that the individuals who do the oversight to the cattle industry could compliment or work with the same techniques with the grain industry. That is the only possible thing I can think of that would possibly compliment moving it. The association of the thought with the Agriculture industry today, if they have a problem, they go to the Agriculture Department. They forget the PSC in their oversight.

**Senator Larsen:** I've been to Duluth and other places with big grain things, mills and elevators. That is industrial. It's not just Kist Livestock, grain is a huge industry.

**Chairman Luick:** Probably the Secretary of State and the PSC oversight that.

**Vice Chair Myrdal:** If we move it now, it will take a lot of rearranging that might take a year or more to get every piece flowing again. I think it's premature to move it, until we do the study. We need to lay it all out and look at the study. Then we have time for the agencies to think about this before next session. Back to the indemnity fund. People in the House are like, "Why should 1 producer pay for the failure of another". That is insurance! I hope to God I never need to go to the hospital, but when I did 3 weeks ago, I was covered. All of you payed a few cents for that, thank you so much. The same with a house, car, or anything. There is provision in that bill that if a producer pays in, you can pull it back. Just like checkoff dollars. Notably absent were a majority of Agriculture groups. This would be a lengthy,

intense study. It deserves that. I'm not concerned about the FTEs here. Agriculture is our biggest industry. The fiscal note doesn't concern me at all.

**Senator Larsen:** How many people in the PSC are overseeing this now?

**Chairman Luick:** 1.75 I believe? They have lost 3-4 out of this. If you look back when this was put together, the amount of product we are raising is always increasing. The size of these facilities is growing. It's much more of a disaster waiting to happen. I don't think that we can stand by and pinch pennies. We need to fix this problem. If it takes 4 FTEs, then we do it. The Majority Leader and Senator Holmberg agree, this needs to be fixed.

**Senator Larsen:** When I was listening to the PSC, it says on paper they have 1.75 FTEs working on this, I thought he said someone in the office is doing the paperwork a couple people are out roving. The physical hands on to this project is about 4 I think. I don't know how many hands are touching this?

**Vice Chair Myrdal:** We have so many questions here. I keep going back to those I represent. If it takes a year to work this out, we will be leaving the problem out there. I was leaning towards switching it after the hearing, but the more information we get, I think we need to dig deeper. The battle will be if we pass it out and vote on it on the floor. We will have to educate our chamber in detail, which is difficult when we don't have all the facts ourselves. On the House side, if the indemnity fund is in jeopardy, we are going to be here in May in conference committee. I don't understand that.

**Chairman Luick:** When I was questioning what the bonding covers in these situations. I would think the elevators in trouble right now, there's no way we can include them in the indemnity process. The bonding should be covering them.

**Senator Hogan:** I think this is our biggest issue in ND right now.

**Chairman Luick:** We have issues now. The federal government takes away some of the subsidy for crop premiums. That is ugly as well.

Asked Mr. Wogsland if he had anything to add.

**Dan Wogsland, Executive Director ND Grain Growers Association:** In listening to your discussions, these facilities are getting bigger and the crops are getting bigger. ND 3 out of the last 4 years stands at drought. Those have been the biggest wheat crops, on average, the state has ever seen. Last year we were fortunate to have record crops in soybeans, we would of really had a record if weather had cooperated better. We also had a record with corn. It is extremely important to get this right. I know you are taking this seriously.

**Senator Larsen:** What is your take on the bonding thing? We were discussing that the grain elevators may want to be part of the indemnity. Doesn't the bond cover that?

**Dan Wogsland:** The bonds will never take care of everything. I was part of the Wimbledon thing. That is a long story. That is why the indemnity came about. Farmers didn't come back whole from that. One of the farmers affected was a House Agriculture Committee member at

the time. They worked very hard to put the indemnity fund in place. There are questions as to what the roving grain buyers bonds are at. You can't have those bonds too high, and then they are unaffordable for the facilities. Another thing is, in the Devil's Lake area case, there are questions with what the brokers have to do with this. There are many issues, and many pieces to this puzzle.

**Chairman Luick:** If we don't make a decision where the authority lies this session, and if we do go through with the study, and our bill passes on the House side; chances are, authority stays where it's at. After 2 years of getting the resources they need, I don't see us challenging this again.

**Senator Hogan:** That is an interesting question. You just challenged us to look at other states. If we did a good study, we might find a good model. Maybe there is a combination of PSC and Agriculture? I think we could learn about structures.

**Chairman Luick:** I know SD is envious. They have the \$5M and below gross product handling capacities, they do a certified annual financial audit. The PUC told me they are envious of our indemnity fund. An elevator from my area, they have 14 facilities in SD, ND and MN. One of the managers is a good friend of mine. I asked him the same question; you are working in all 3 states, what's the benefit. In MN, they put a law into effect called the Wimbledon law. That tries to fix their problems. They say the ND system, the way it is today with the indemnity fund, is better than the other states. He said the indemnity fund is not big enough and you have to do better on your financial audits.

**Senator Larsen:** That's what Commissioner Christmann has been saying forever.

**Chairman Luick:** I think we're on the right path here. We just need to make sure we can "black-top" it.

**Senator Larsen:** What is the story on the Canadian Wheat Pool? Does Dan know?

**Dan Wogsland:** The Canadian Wheat Pool is no more. We are working with Canada on the fact Canadian wheat can come to the USA easier than our grain can go up there. It's because of a grading issue. We've been holding a number of meeting with Montana and Washington State to work something out.

**Chairman Luick:** If our wheat goes into Canada, it is immediately feed grade. We lose \$0.40 per bushel or more just like that. There is no discount for it coming to ND.

**Dan Wogsland:** I think you'd be surprised how much Canadian grain comes into the USA.

**Chairman Luick:** I encourage you to think this over this week. Then we will have this redrafted, so it makes the most possible sense.

Adjourned the committee on HB 1467.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Roosevelt Park Room, State Capitol

HB 1467  
3/21/2019  
JOB # 34081

- Subcommittee  
 Conference Committee

Committee Clerk: Florence Mayer
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## Explanation or reason for introduction of bill/resolution:

Relating to the definition of agriculture commissioner; relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

## Minutes:

None.
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**Chairman Luick:** Opened the committee to work on HB 1467. Roll call was taken, all members were present.

This meeting will just be discussion. I will bring you up to date on what I have found and then hopefully tomorrow morning we can resolve this. I have called SD, MN, IA, and IL, and then Montana is my last call. This morning we had a meeting with a broker and a roving grain buyer, 2 fellows directly involved in the process. I am finding out there are different varieties of how states run their grain buying process. If we incorporate some of the things that the other states wish they had or are changing in their legislation, we might be on the right track. I talked to Minnesota this morning and they are mimicking what we are doing. They do not have an indemnity fund, but are trying to start one. Iowa and Illinois have them. Iowa's is \$8M. They do annual audits by an independent CPA. They do not cover credit sale contracts, which is just the opposite in ND, it's all we cover. Credit sale contracts are more of a risk than cash sales. A warehouse has the grain buyer's license and the warehouse operator's license. If they co-mingle any grain, they are considered federally licensed through USDA. They are required to be bonded; although they couldn't tell me how much they are required to be bonded or the stipulation for being bonded. In Illinois, they have an \$8.3M indemnity fund, with no cap. Both of these states assess the plants and warehouses; they don't chase it down to setting so many tenths on the value of a bushel of grain. They let the plant figure that out.

**Senator Hogan:** Do any states have opt outs?

**Senator Klein:** Just Indiana I think.

**Chairman Luick:** MN gave me a website for an overseer of these things. Just google Association of grain regulatory. There is one part of their proposed process that ND is not a part of, I will look into that.

Illinois covers 85%, up to \$250,000 of losses and \$1M for cash sales. No roving grain buyers are allowed in that state. Although MN does, when I called they knew all about Hunter Hanson. He applied in MN and they denied his license. He wouldn't give them his financial information. Therefore, they have to have a physical presence, but they understand it's a new problem. They are under a 7-year probation program and are assessed 3 years at a time for the indemnity fund. In MN, they don't have an indemnity fund; they strictly work off bonds. A friend of mine is actually now managing the Ashby elevator that just went under. I asked him about the differences in oversight between the 3 states. He said ND has the best program right now, except the indemnity fund is too low. We worry about the costs of the financial audits, yet they should be doing this already. All they need to do is send us that information. I don't think it would cost us that much more money.

**Senator Hogan:** I thought MN was a high regulation state, but to have none of this is stunning.

**Chairman Luick:** I also learned about feedlots in MN and how easy it is to get one versus ND. We are 39<sup>th</sup> in ease to get a feedlot set up. Vermont is easier than we are.

**Vice Chair Myrdal:** We've heard that from multiple people. We are too strict.

**Chairman Luick:** I still have a few calls to make. The copy of the study I handed out before, I'd like to know what else we should include. When we get through with this, I hope we have something to get things on the right track. Maybe the study won't even be necessary, I don't know.

**Senator Hogan:** You think of how much we learned this year. I know to ask questions, but the reality is we have a lot of missing pieces.

**Senator Larsen:** In the testimony, we saw that picture of the guy and his business. On the news, they showed all that grain and it's rotting now. The health department stepped and in and said we can move it. Who takes care of moving that and paying for that? The pile is huge. A farmer has given the okay to spread it on his land. What does that even do for the land?

**Chairman Luick:** It would help the soil a little bit. The problem is, there are many weed seeds in there. You're just adding to that problem.

Brief committee discussion of how they would spread the rotting seed.

**Senator Larsen:** The ground is already starting to thaw out; this is going to be a mess. They should have been thinking about this earlier. With all the flooding down South, once the grain leaves the elevator and goes into a bin, then it isn't covered.

**Chairman Luick:** I was under the impression that none of these farmers are going to be covered by the indemnity fund. Only warehouses are covered, not roving grain buyers. They will have little reprieve, only because he owned 2 elevators. They were rat-infested holes.

**Vice Chair Myrdal:** We talked to the chairperson on the House side, where are they at with the Wanzek bill?

**Chairman Luick:** The hearing is today. I talked to the chairman and told him we were thinking of hog housing this. He was good with that. I think the tension is wavering a little. I don't think there will be an amendment to change the direction of authority. We can look at that tomorrow and hopefully kick this out. Do we have any more ideas on the study part?

**Senator Klein:** You're never going to get all the ideas you want. As the study unfolds, questions come up and questions are answered. I had a gentleman from my town call me. They have concerns relating to looking at financial statements, concerns with unlicensed broker, limited confidentiality, and multiple things. There was discussion on the 30 days before he had to pay the farmers. Most of these roving grain buyers deal in 10 days. If there is an indemnity fund, there should not be an opportunity to opt out. The indemnity fund would only be assessed if it drops below the \$3M. After it reaches \$6M those assessments stop. There is a lot of work that needs to be done. I gave my notes to Senator Wanzek; he is going to run with some of those ideas. I think we are diffusing this PSC / Agriculture debate. The quotes the Agriculture Commissioner made in his testimony they have many problems with. I think it will be awhile before we get to the end.

**Senator Hogan:** Are we comfortable with the \$3M and \$6M levels? Are those the right numbers?

**Chairman Luick:** It has been those numbers for years. This Hunter Hanson thing is going to empty it. My friend works in the states surrounding us as well as ND. He wishes the other states had indemnity funds. I asked him how we could make this better. He said we need to increase it. MN is mimicking us. 2346 was at \$10M to start with then it was amended to \$6M.

**Senator Klein:** When we started the credit sale indemnity fund in 2003, we had \$10M as a cap. Then Representative Headland and Pollert suggested we had too much money just sitting there. Then the cap was lowered. It has been enough, but we're only dealing with credit sales. It has never dropped below that \$3M. We changed that a couple sessions ago and we dropped it to \$6M.

**Chairman Luick:** If we are going to include roving grain buyers into this, I do not agree we should be including the facilities themselves. It should only be covering the losses of the producers; otherwise, the facilities need to pay in.

**Senator Hogan:** That is something we might want to look at again.

**Chairman Luick:** Another thing I thought of, something Commissioner Christmann brought up to be early this session. He said Larry if you want to make a lot money, do the same thing Hunter Hanson did and do it with fertilizer or seeds or field amendments. Because right now every farmer will go and prepay for fertilizer at the end of December. They don't get that until late spring. The Western part of the state might store it on farm because they use dry fertilizer. The eastern part uses anhydrous tanks so it sits at the seller until spring because they have no way to store it. There is no oversight of that at all. Laying out all this money for prepaid expenses is normal for these people, yet there is no oversight.

**Senator Hogan:** Should we add that to this study?

**Chairman Luick:** That is what I'm asking? Should this be put in the study too?

Senators Larsen and Klein disagreed.

**Vice Chair Myrdal:** I think this is so much it would overwhelm everyone.

**Senator Klein:** That was the issue when Falkirk went under. It wasn't grain as much as it was prepaid stuff. How many producers go into the elevator in January and lay down \$100,000 as a line of credit. The facility has a supplier's lien against that but the farmer doesn't have anything to show for it.

**Chairman Luick:** Other things discussed in our meeting this morning, the cash grain brokers are running wild. There are 6-8 of those in the state. With that, if I'm the broker and you have grain sitting in your bin and some guy wants to buy it in NY, the broker is the middleman, he gets paid either way. He can buy from the farmer, then turn around, and charge more to the guy in New York. We need quarterly reports, 3<sup>rd</sup> party brokers looking at their financials and to make sure they are bonded. I had the suggestion of setting it up like the cattle brokers. I don't know how far to go into this study.

**Senator Larsen:** The study isn't limited is it?

**Vice Chair Myrdal:** That is my concern, are we going all the way to the beginning of the issue? We heard Dan say the producers don't ask for more regulations, but here they were asking for that. Maybe we need to study the oversight and regulations for the brokers?

**Senator Klein:** Brokers aren't covered at all in the study are they?

**Chairman Luick:** No, but we can add it.

**Senator Klein:** Grain handling is very broad. I thought we were clear with the issue Stu pointed out. The broker have to be in there. That is what we heard from everyone.

**Senator Hogan:** I think we should be extremely clear. Does it need to be a "shall study" or "consider study"?

**Senator Klein:** We need Consider in there.

**Chairman Luick:** I think they will understand this needs to happen

**Vice Chair Myrdal:** We don't have many other studies.

**Chairman Luick:** Other than adding the brokers, how else should the language be changed? I will have it recrafted.

Adjourned the committee work on HB 1467.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Roosevelt Park Room, State Capitol

HB 1467  
3/22/2019  
JOB # 34169

- Subcommittee  
 Conference Committee

Committee Clerk: Florence Mayer

## Explanation or reason for introduction of bill/resolution:

Relating to the definition of agriculture commissioner; relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

## Minutes:

None.

**Chairman Luick:** Opened the committee work on HB 1467. Roll call was taken, all members were present.

Our plan was to consider this bill this morning. I have been getting information from other states on their indemnity funds, warehouse operator licensing, bonding, and audits. I have called Agriculture Departments, PUCs and PSCs in multiple states. I also looked at a national website to see even more states info. We have a lot of this information compiled in our bill on the House side. I found out yesterday that MN has legislation going on, because they are envious of our indemnity fund. The states that don't have it, wish they did. They all have different methods of how they protect their producers. If we get this all together, we will be an example to other states. We had committee discussion yesterday. We had a little stir up yesterday in the House and I think we need a little bit of time for everyone's mind and heart to calm down. We will postpone this until next week.

**Senator Hogan:** My expertise is Human Services. Does NCSL have any expertise or an Agriculture component that was done anything on this?

**Chairman Luick:** I know NCSL is nationwide, I can find out.

**Senator Hogan:** They might be another resource. The website you mentioned will also be a rich resource.

**Chairman Luick:** If the study goes through I recommend more people get involved in that. In 2011 there was a study done in ND, nothing really came from that. I wholeheartedly believe that what we have found the last 2-weeks, will give us what we need. It gives us a good view of the brokers, roving grain buyers, facility warehouse manager and putting together ideas of

the bonding requirements. In Illinois, they don't allow roving grain buyers. Yesterday I found out this Hunter Hanson applied for a license in MN, he was denied that due to him not providing financial information. MN also mentioned they strictly use bonds. They are not happy with that and that is why they are working on the indemnity fund.

**Senator Klein:** In our discussion with the person from Light House Commodities, there was a lot of discussion about bonding and whether or not they had to pay off. I don't understand that. Just because you have a bond, doesn't mean the bonding company has to pay on that. I'm assuming there are regulations. If a person has a bond should we feel comfortable or does it mean nothing? Could anyone here answer that?

**Chairman Luick:** Stu can you come up?

**(8:20) Stu Letcher, ND Grain Dealers Association:** Yes, we operate a bonding agency. Whether the bond is called in depends on the insolvency. One of the things in that bill we heard yesterday on the House side was the same time the lien bill was being heard. One of the things in that bill is conversion. You take your grain to the elevator, dump it, and you get a scale ticket. Then you had 45 days to decide what you want to do with that. You can do a credit sale contract, noncredit sale contract, cash sale or warehouse receipt. If there is an insolvency, they can draw from the trust fund. That consists of all the grain in the warehouse and the accounts receivable. Those along with the bond are gathered and brought in. The bond isn't gathered if there is enough to pay the cash claimants. It really depends. The bond company can potentially fight that, if they feel the warehouse was breaking the law. I have heard from the PSC, they will not fight the bonding company being called in. The bond is not used to pay credit sales. That is why we created the credit sale contract indemnity fund. Now we have 2 pools of money.

**Chairman Luick:** The state of Iowa doesn't cover credit sale contracts, here we only cover that. Is that correct?

**Stu Letcher:** Before we created that fund, we didn't cover either. The Wimbledon grain case is the insolvency that brought to light the fact that the bonding company was unwilling to cover that. We created that fund specifically for them. Our state is a hybrid of many states. I would encourage you to look at that website Luick mentioned.

**Chairman Luick:** If a physical warehouse is bonded, is that only for the protection of the producers? (Yes.) They still have to maintain their own physical plant, liability, comprehensive insurances. They have financial reports you get to see? (Yes.) The bank would get to see if they loan them money? (Yes.) Do insurance companies get access to any of those financial reports?

**Stu Letcher:** The inventory in the warehouse also has to be insured for its value, for the benefit of the producer. If there were a fire, it would be covered. The insurance company gets either a monthly or a quarterly inventory. You have to have insurance to cover whatever you have in the house. So insurance fluctuates. I don't know if they ask for the financials. I think as long as the premium is paid, they aren't concerned with it.

**Senator Hogan:** When it becomes a criminal situation, how are these covered then?

**Stu Letcher:** Our state law allows the PSC to capture grain in the warehouse and accounts receivable. If someone is criminal, they will either convert or hide that, so you won't get much. That's why in those cases we don't have a lot of recovery. The FBI is now investigating the Hunter Hanson case. They have the ability to find assets and pull them back in.

**Chairman Luick:** Every state I visited with knew about this case.

**Stu Letcher:** With the Ashby MN insolvency, that was a case of fraud as well. Very close in time and geographically. Their max bond in MN is \$500,000. I was amazed, can you imagine.

**Chairman Luick:** The other states are about \$1-2M.

**Senator Klein:** On the indemnity fund and expanding it, it has been mentioned that then the local elevator would be in line to recover their losses. What are your thoughts?

**Stu Letcher:** The difference is, it drops it down to a 20<sup>th</sup> of a bushel. It changes it to all grain sales instead of first point of sale. As it moves through the supply chain, every time it's sold it will be collected on that grain. The same bushel of grain could have the assessment collected on it many times.

**Senator Klein:** So do you get to be in line with the producers. We suggested they should know better, "Too good to be true" deal usually are just that. If you look at the list of folks damaged, even some of your folks were. I don't recall all the language in the Wanzek bill, but would they be able to recover their losses with the new indemnity thing?

**Stu Letcher:** I suppose they would be. How we feel about it might be different. I don't think I've heard a lot of opposition to us paying the assessment on grain sales as well. If you look at the list of claimants, there are a few elevators on that. There are 3 that collectively are \$2.7M in claim. Yesterday I had the Dan Mosted with me; he's the manager of an elevator and a claimant in this case. He was willing to get up and say how it happened. He said Midwest grain wouldn't have gotten through his front door without going through E. Central Commodities, the broker. He was a reputable firm. The problem with the broker is he sees both sides of the transaction. If you are the elevator, you may only see 1 side. When he saw the disparity in what he was, being paid versus he was getting for the grain. We think he had a moral obligation to question or bring light to that. He could of put a stop to this. But as long as he was brokering bushels, he was still getting paid.

**Chairman Luick:** Do you know, was it just 1 broker involved? (Yes.)  
So the indemnity premium, some states don't do it as a cost per bushel. It is a cost per facility. It is assessed by the gross amount going through their facility. Is that a better way to do it then every time it is sold? There is a sunset clause on it. Once we get to the price point, whether that stays the \$6M or not, you stop paying into it.

**Stu Letcher:** My opinion maybe doesn't matter. If you're assessing the elevator and telling them, you're going to be charged too much, but you decide how you collect it; versus, we're going to asses you on all your sales. It has the same effect.

**Senator Larsen:** What did you think about the opportunity to not opt out? Should we all just opt in until the \$6M is met or give them an option?

**Stu Letcher:** I think that is a fine option. I see it being more work that if you don't want to pay and don't want to pay, then all of a sudden you do. You then have to pay all of your past assessments.

**Chairman Luick:** The other states have no opt out option.

**Stu Letcher:** With the exception of Indiana.

**Chairman Luick:** My concern is, when you've been out for years, should you be allowed to come back in?

**Stu Letcher:** Why would they want to come back in, in the case of an insolvency? If they're owed money, they will look at what they would have been paid versus what they would pay. I don't know if it's worth it.

**Senator Larsen:** In health insurance, if they decide to not pick up the extra part, there is an assessment they have to pay back. I don't think it is as hard to figure that out. As I think about the opt in and out, with the honeybee folks they can choose to come and go as they please. Just wanted to know your opinion.

**Senator Hogan:** We had talked yesterday about the \$6M being enough, versus the \$10M. Do you have an opinion?

**Stu Letcher:** I think the only way to tell that is to see how it goes. It is the right number right now because it's only credit sales.

**Senator Hogan:** But if we use it for anything except credit sales, we would need to raise it?

**Stu Letcher:** That depends how fast it goes. In addition, this doesn't change the fact a claimant can go to the cash sale side and are made whole; they might now have to make a claim into the indemnity fund.

**Senator Larsen:** Seems like we are building an insurance program for this situation. A couple sessions ago, we had the idea of having an insurance with production costs and fuel. Where are you people with that? Is that discussion still going on?

**Stu Letcher:** To clarify, protection for the commercial side if the producer is buying fuel or fertilizer?

**Senator Larsen:** I was thinking more the producer. The discussion we had 3-4 sessions ago was that the producer puts so much cost into fuel and fertilizer before the seeds are even in the ground. If something happens, they are stuck with all of that. Is there any discussion on that any longer?

**Stu Letcher:** We looked at offering bond products for producers. That stemmed from the Falkirk insolvency. Cash claimants were paid back completely, but the prepaid people were left in a lurch. I think we should study what happened in these past insolvencies and see what we can add for protection and prevention.

**Chairman Luick:** Yesterday we talked about that. I wanted to include fertilizer, seed and soil amendments into the study. Because there is no one overseeing any of that. I asked Dustin about including that in a study. He said we couldn't because it's under a different section of code.

**Senator Hogan:** You can't put 2 sections of code in a study?

**Chairman Luick:** I guess not.

**Senator Klein:** Back to the indemnity opt in or out. We are still counting on a bunch of bad guys. However, we're trying to stomp out the bad guys. When the fund reaches \$6M, it won't be collected anymore. In a matter of speaking, we're not forcing anyone to join. When I listened to the Light House commodities, they were split. It just seemed like the right thing to do at the time. The indemnity fund is a great way to participate. In a few years, we would have something. At some point we are opt out because of the structure. Am I getting that?

**Stu Letcher:** That is correct. I agree that it does provide some reassurance to the producer. And if someone wants to commit fraud and they're good about it, it will be very difficult to catch them.

**Senator Klein:** From the other side, if I was a producer, I would have an attitude of why can't I trust small town reputable elevator. Why do I need my money withdrawn if it's a reputable company? This business has grown. Where I live, our facility has expanded. There will be that question. I see push back on that.

**Chairman Luick:** One concern is that facility may be upstanding. However, when they sell a train to someone else, that someone else might not be. If they don't happen to have that coverage, it might have immediate repercussions.

**Stu Letcher:** We have members of all sectors of the industry. If I'm going to represent the brick and mortar person, my question would be; as an industry, we collect this assessment for free. In essence, you're asking me to collect an assessment to cover damages caused by my direct competitor. If I was that elevator on Main Street, my argument would be, well if that farmer hauled his grain to me we wouldn't be having this discussion. I'm not saying that is our official stance, but I hear that from my membership.

**Chairman Luick:** The problem is, the elevator down the road from me only takes corn and beans. So now, this one over here only takes sunflowers and wheat. Then the other takes something else. Sometimes you don't have a choice in who you do that business with.

**Senator Klein:** In 2003, we had the same discussion; we're putting the burden on the backs of the legitimate folks out there so we can protect ourselves from the folks who are. Just want to say thank you.

**Chairman Luick:** This is all so important. We need to figure out the best way to do this.

**Stu Letcher:** There were 2 sides testifying on that bill. Both sides want the same thing. It depends on how you see us getting there. We don't think the House side bill does enough. On the PSC website, you can get a list of all the insolvencies since 1975. It tells you who the company is, the amount of claims, how much was paid and a percentage. With this, there have been 42 since then. 29 of them paid back the claimants 100%. We get concerned when they are paid less than 50%. Only 9 of them did that. I took the lowest number, happened 10 years ago at North Wood Mills. They were going to do soybeans and canola. They were categorized as a grain warehouse. Therefore, their capacity needed a 50,000 bond. But they had \$880,000 in claims. The bond is the only thing that was paid. Is that the right license? Our law only allows for grain warehouses, roving grain buyers, and facility based grain buyers. That is why we need to look at this law and add license categories. Of the 9 that didn't pay the 50%, only 2 were roving grain buyers. 6 were processors and the other couldn't be determined. Let's look at where the most issues are happening and address that. Let's study this law. Let's account for the brokers, are we bonding enough, should we be licensing processors as a warehouse? The law also allows, when you create the trust fund for the claimants, only grain and grain products. Everything the North Wood Mill had done, had been processed into oils. That was no longer considered a grain product. So it couldn't be taken back and sold for the producers. We know these things. Maybe we should apply that knowledge.

**Senator Klein:** Did we cover all those in the definitions of classifications?

**Chairman Luick:** Under licensure classes. However, I did not add in the final product classification. I don't know how to tackle that.

**Stu Letcher:** Another concept that should be discussed is, when we talk about an insolvency, it wasn't the elevator decision. I have intimate knowledge of the Falkirk case. The guy who took care of the elevator as it was going through this, was on my board. They felt they were struggling financially. They considered it a temporary rough patch to work through. They had a plan, they made some sales and were going to pay producers. They deposited the money in the bank. Their creditor took that and applied it to the line of credit and then took the check book away. In insolvencies, it's usually the creditors. That's one person we haven't talked to, elevator creditors. Everyone is taking a certain amount of risk. The creditor is taking the least amount. This has happened more than once.

**Senator Klein:** We talked about that yesterday.

**(47:47) Scott Rising, ND Soybean Growers Association:** With the opt in and opt out we were in favor of that. I live in an insurance pool for health insurance. I get an annual opportunity to do that. I can decide today that I'm doing good. A year from now I'll have an option to jump back in. Maybe there is an opportunity to jump in and out. If the insolvencies are every 2-3 years, maybe I get that option.

**Chairman Luick:** Do you do that with your home insurance, fire insurance, crop insurance?

**Senator Klein:** You make a great point. If I paid in \$100,000 of premiums, let's cap it now. But we can and we are. We have an indemnity fund when we reach \$6M it is capped. Wouldn't it be great to do it for everything? We have planned for that future. The opt in and opt out creates some problems.

**Scott Rising:** The study is critical. Whatever it takes. Please do this.

**Senator Klein:** The consider or shall study, in light of the discussion, I'll smooth it over. I think we need "we shall". Maybe we could do that. I'm sensing it is critical and I think we could make that work.

**Chairman Luick:** I will take care of that. We will adjourn the committee on HB 1467.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Roosevelt Park Room, State Capitol

HB 1467  
3/28/2019  
JOB # 34337

- Subcommittee  
 Conference Committee

Committee Clerk: Florence Mayer

## Explanation or reason for introduction of bill/resolution:

Relating to the definition of agriculture commissioner; relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

## Minutes:

1 Attachment

**Chairman Luick:** Opened the committee to work on HB 1467. Roll call was taken, all members were present.

Welcome to Senator Lemm, he is taking the place of Senator Osland.

Introductions of each committee member were made, as well as an introduction of Senator Lemm.

**(13:48) Chairman Luick:** Explained the committee process to Senator Lemm. Our hearing next week will be in the Pioneer Room, it is much larger than this. We welcome any ideas that come into this committee open heartedly. We want to have the best-crafted language on the laws that we can. We will continue with HB 1467. Handed out **Attachment #1**, a proposed amendment to HB 1467. This is a more concise effort on getting the language straight. I see there is a typo here. We are missing the word "amendment" after the word "Soil". (Jayla offered to fix the typo.) After what I've found out from other states, it is up to the committee to decide if we hog house this or attach it to the other portion of HB 1467. We are sitting with this hog-house amendment to attach or replace HB 1467. Any discussion? We are looking for direction.

**(16:40) Senator Klein:** We have listened a lot to these issues. After visiting with the gentleman from the grain dealers, I have a better understanding of all the issues, most we are not even aware of. Whether that is the bankers, brokers, bonding, or roving grain buyers. There are too many things. The bad-guys are out there. We can try our best, but they don't just go away. I think the indemnity fund is an issue we need to pursue. Let's let the House

work on Senator Wanzek's bill with the indemnity fund. Confidentiality is another issue we've been hearing. This is very encompassing and very necessary. There are many questions with this. This last insolvency issue was a result of many factors that we should have already been looking at in the past. I am comfortable with hog housing this.

**Vice Chair Myrdal:** The last couple of weeks I've talked to many producers at home. I originally leaned towards moving it to Agriculture Department. As we got more information, I think the problem isn't on top, but the process all the way down. The feedback I've gotten from people at home is more calm and taking a step back. I agree with Senator Klein, moving it is just a Band-Aid for now. If we move it, the process will take so much time, meanwhile we still have an issue. My only concern is what the House does with Wanzek's bill. I support this hog-house.

**Senator Larsen:** Since the inception of this bill, I don't think there was a whole lot of support from the committee on doing that change. We were open to hearing, researching and discussing that change. Our records of history shows that there were thousands of elevators in 1915. Today there are 300. I realize those few move a whole lot more grain than they did back then. The oversight that the PSC has had through history, I think we are doing the right thing with keeping it where it's at. We have people who are talking with the port authorities in Seattle. We have a huge amount of grain moving up through Canada, over to Vancouver and reaching those markets. They have been discussing with Burlington-Northern, the ports, and the tankers. This deal is coming together. Who else can organize and oversee this? That is a huge thing. The PSC has to have their fingers in this to understand how the shipping and business is run. It should continue to stay in the PSC, so they can do the work they need to. This is a grain shipment on a global scale. I don't think the Agriculture Department should be doing that. I continue to support this change.

**Senator Hogan:** Thankyou Chairman Luick for taking all of our ideas and putting this together. It is very comprehensive. I know our discussion was shall consider versus shall study. I am not aware of any other study issues being considered in the Agriculture area. I think this one will be picked. We've had 4-5 hours of discussion on this particular study. I commend you for that.

**Senator Hogan: Moved a Do Pass on Amendment #19.1086.01005**  
**Senator Larsen: Seconded.**

**Chairman Luick:** The original bill is to move the authority to the Agriculture Commissioners office away from the PSC. This amendment replaces the remainder of the bill with a study. No authority is moved, it stay as is.

**Senator Lemm:** From what I've heard and whom I've talked to, it's not a simple issue to deal with. I think the study is good and I agree it should stay with the PSC.

**Chairman Luick:** Your vote here in committee is just for the recommendation. Then it goes up to the floor and we will vote on it again.

**Senator Klein:** You voted for a bunch of studies yesterday. We may have well over 100 studies that will be moved forward. At the end of session, Legislative Management

Committee look through these and whittles it down to about 40-50. You can't do justice to 100. If the language is "shall consider studying" means, they will "think" about it. If the language says, "Shall study", then we have to study it. This it is an important issue. One word makes a difference.

**Senator Larsen:** Has this ever been studied? The concept has come forward to change authority.

**Chairman Luick:** Not to change departments

**Senator Larsen:** I hardly ever vote for studies. If there is a problem, it comes forward in a bill and we fix it. I'm not inclined to keep government busy with something to do. When I sit through the interim and we are studying some of these things, it's as if I'm just gathering a paycheck. This study is one I will support. It will be interesting day upstairs, when my light turns green on a study.

**Chairman Luick:** I too look at studies and think these agencies should be doing this anyway. Are we funding money for these agencies to do their own work? It gets frustrating seeing some of these studies.

**Vice Chair Myrdal:** I know this study will be considered and go through. This is incredibly important. This is 1 of the top 3 issues of this session. Agriculture is still the #1 industry in our state. We sit down here and we don't get a lot of media attention on this. Nevertheless, this is extremely important. I am concerned about the other bill in the House. I hope that isn't gutted.

**Senator Lemm:** I would agree with you, it is very important. As a farmer, you haul that grain to town and you put a lot of faith in who you're hauling it to. It's almost your baby, you raised it all year.

**Senator Klein:** Senator Lemm hit on it. He hauls it to a reputable grain handler. The thing that happened here was a 21 year old showed up and offered 15 cents more per bushel. The issue is how did the guy get licensed in the first place. We still have to put some blame on the producer with not checking the truth with this. We trust in the local businesses. There is also a problem with the broker as a middle person. That is how this all got messy.

**Chairman Luick:** Jayla says she can fix the typo and add the word amendment after soil.

**A roll call vote was taken: 6 yeas, 0 nays, 0 absent.  
Motion on the Amendment carried.**

**Senator Luick will carry.**

**Chairman Luick:** Went over schedule for the following week.

**Senator Lemm:** The group of people that came in Traill County Farm Bureau folks that came on the bus this morning.

**Chairman Luick:** Welcomed the Farm Bureau group and gave them an overview of how committees work.

**Senator Lemm: Moved a Do Pass As Amended on HB 1467.**

**Senator Klein: Seconded.**

**A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.  
Motion Carried.**

**Senator Luick will carry.**

**Chairman Luick:** Gave the audience an overview of the session.

**Senator Hogan:** Are we starting to get conference committees yet?

**Senator Klein:** Only 3 committees have received their conference committee notifications. The chairman will look and see if the members agree or disagree. Then they schedule it, the bill comes back to the floor, and we vote again. That process has begun today. If we do not concur with the House, we elect a committee of 3 to serve with a committee of 3 from the House. They meet in whichever room the bill originally came from. We will help everyone along. The clerks are always on top of that and they help us very much.

**Senator Hogan:** I was just curious if we've got any bills back yet?

**Chairman Luick:** No, not yet.

**Senator Klein:** The idea is the 3 day committees are first. We are waiting for the B committees to wrap up their work. Next Friday is the deadline for all bills to be out of their standing committees. We will have time.

**Chairman Luick:** Adjourned the committee on HB 1467.

March 28, 2019

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1467

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding agricultural issues in the state.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL ISSUES - GRAIN BUYERS, ROVING GRAIN BUYERS, GRAIN HANDLING FACILITIES, FERTILIZER, SOIL AMENDMENTS, SEED, AND FUEL.** During the 2019-20 interim, the legislative management shall consider studying agricultural issues in the state, including studying grain buyers, roving grain buyers, grain brokers, and grain handling facilities under title 60; and issues related to prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The study must include a review of the current law, industry practices, and background checks relating to grain buyers, roving grain buyers, grain brokers, and handling facilities and a review of any potential efficiencies that may exist, methods of maintaining financial security during the grain buying process including consideration of facility operating capital to ensure adequate solvency during licensing, and the process of confidential financial and physical audits. The study also must include a review of the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from facility insolvency if an end product is refined and no longer reflects the original product, the indemnity fund under title 60, and grain handling facility bonding requirements. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly."

Renumber accordingly

Date: 3/28/19  
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1467

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 19.1086.01006

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

Motion Made By Hogan Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick-Chairman	✓		Senator Hogan	✓	
Senator Myrdal- Vice Chair	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Lemm	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Luick

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

Date: 3/28/19  
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1467

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 19.1086.01006

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

Motion Made By Lemm Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Luick-Chairman	✓		Senator Hogan	✓	
Senator Myrdal- Vice Chair	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Lemm	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Luick

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

**REPORT OF STANDING COMMITTEE**

**HB 1467: Agriculture Committee (Sen. Luick, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1467 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding agricultural issues in the state.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL ISSUES - GRAIN BUYERS, ROVING GRAIN BUYERS, GRAIN HANDLING FACILITIES, FERTILIZER, SOIL AMENDMENTS, SEED, AND FUEL.** During the 2019-20 interim, the legislative management shall consider studying agricultural issues in the state, including studying grain buyers, roving grain buyers, grain brokers, and grain handling facilities under title 60; and issues related to prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The study must include a review of the current law, industry practices, and background checks relating to grain buyers, roving grain buyers, grain brokers, and handling facilities and a review of any potential efficiencies that may exist, methods of maintaining financial security during the grain buying process including consideration of facility operating capital to ensure adequate solvency during licensing, and the process of confidential financial and physical audits. The study also must include a review of the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from facility insolvency if an end product is refined and no longer reflects the original product, the indemnity fund under title 60, and grain handling facility bonding requirements. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly."

Renumber accordingly

**2019 TESTIMONY**

**HB 1467**

# /

Testimony of Representative Dennis Johnsons – District 15

House Bill No. 1467

House Agriculture Committee

Peace Garden Room

January 31, 2019

Chairman Trottier, and members of the House Ag Committee, for the record my name is Dennis Johnson, Representative from District 15.

House Bill 1467 looks to move the grain inspection program from the PSC to the Ag Department, and I have a few reasons for looking at this transition. First though, I want to point out that this isn't an attempt to beat up on our friends the PSC, but rather to try and make a point that there are some serious concerns and issues that need to be addressed.

Unfortunately, this conversation comes up every few years. In light of what's happened out in the country this past year, one of the reasons I'm looking at this direction is because out of the 50 states, 38 states regulate grain inspection, and 34 of those have this program ran through the state's Department of Agriculture. North Dakota is one of the four states that have an agency other than the ag department manage the program.

Another reason for looking at the Ag Department is that I want to acknowledge the successful livestock licensing program that the Department is currently operating. They go through a thorough review process to licenses livestock dealers and auction markets. Both of which are very similar to grain warehouses (elevators) and roving grain buyers. If similarities from that program could be adopted and bring some insight into the grain inspection and roving grain buyer program, we should consider it as they have already demonstrated how to successfully run a licensing and bonding program.

One of the issues that has been discussed is the issue of confidentiality of financial records that may be reviewed prior to the PSC issuing a license. This could be easily addressed by adopting confidentiality language similar to that in the Ag Departments livestock dealers license law (4.1-83-09) where they collect financial documents from producers. This would allow the PSC to review applicants financial documents prior to licensing to ensure that they have the financial ability to cover their obligations.

As a legislator we knew the cuts were going to be tough, and it's concerning that this is the program that keeps being picked as a cut. I struggle with continuing to see this program reduced and am concerned that it isn't viewed as a priority to the PSC.



#2

**Testimony of Doug Goehring, Agriculture Commissioner**  
**North Dakota Department of Agriculture**  
**House Bill 1467**  
**House Agriculture Committee**  
**Pioneer Room**  
**January 31, 2019**

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Chairman Johnson and members of the House Agriculture Committee, I am Agriculture Commissioner Doug Goehring. Thank you for the opportunity to appear before the committee. I am here today in support of House Bill 1467.

Unfortunately, this is a reoccurring conversation that we seem to be having every few years that has yet to be resolved. Insolvencies, fraud and grain marketing issues that have happened over the past year are serious. We need to strongly consider how the grain inspection program is structured and operates, and this is the time to have the conversation and find a solution. I have received numerous calls from hurt and frustrated farmers regarding the grain they've sold to a grain buyer and why he wasn't stopped earlier.

The Ag Department currently has a livestock licensing program where we license livestock dealers and auction markets, and I would propose several adjustments to this bill for your consideration based off the structure of this program, and some information I've received from South Dakota's grain inspection program.

The first would be requiring applicants to submit annual financial statements for review prior to a license being issued, and that they file a release authorizing the Commissioner access to financial records of the applicant held by financial institutions, accountants or other sources. Both grain elevators and roving grain buyers would need to submit a financial balance sheet that would be used to determine their current debt to asset ratio, and one's ability to cover current

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liabilities including purchases. Plus, any business with annual purchases over \$5,000,000 needs to submit quarterly financial reports. Maintaining confidentiality of these documents could easily be accomplished by adding confidentiality language similar to that in the Department's livestock dealers licensing law (4.1-83-09).

Another suggestion would be to adopt a portion of South Dakota's grain inspection program. Grain inspectors should look at accounts payable, accounts receivable and a daily position report. All cash sales are settled within 10 days, and all deferred, delayed and hedge to arrive contracts are to be settled 30 days after the final delivery has been made. This minimizes risk and large exposures for both the purchaser and the seller. Reconciling inventory is also vitally important. I believe South Dakota's approach may be an option to consider. They use a third-party contractor and CCC to audit inventory and check warehouse receipts.

Now, to address the real elephant in the room, roving grain buyers. Roving grain buyers generally lack brick and mortar facilities to store, condition or move commodities. Because of this, we should consider limiting a roving grain buyer's annual purchases. They need to provide adequate bonding, a verified line of credit from a financial institution, and adequate assets. The statute could also limit how much exposure the state would allow a grain buyer. Additionally, roving grain buyers should submit documentation on an agreement with receiving facilities to avoid taking possession of a commodity that cannot be conditioned, processed or marketed. A final consideration would be to not allow a roving grain buyer to do business in North Dakota at all.

If the state is going to continue to allow roving grain buyers the ability to do business in North Dakota, they need to be heavily scrutinized and treated differently than grain elevators. Regulatory oversight should not be burdensome but clearly assist the industry in understanding

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the rules, regulations and expectations. As regulators I believe our role is to protect the consumer, seller, purchaser, wholesaler and retailer. Essentially, monitoring the entire value chain.

As you can tell, the real issue at hand is prevention and proper oversight. I also believe it would be beneficial to meet with grain merchandisers, managers, boards and owners of elevators to understand their policies on contracting, hedging and accounts payable to evaluate future adjustments to policy and regulations that reflect the present business environment.

Chairman Johnson and committee members, thank you for your consideration and would be happy to answer any questions.

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**House Bill 1467**

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

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

**Date:** January 31, 2019

**TESTIMONY**

Mr. Chairman and committee members, I am Randy Christmann, Commissioner with the Public Service Commission.

HB 1467 recognizes a need for changes within the grain licensing and inspection program as it currently stands. The Commission appreciates that acknowledgement and agrees that changes to the program are necessary. However, the Commission strongly opposes the removal of the grain licensing and inspection program from the Public Service Commission. A move to another agency does not provide the kind of changes I believe will accomplish the necessary objectives.

The grain licensing and inspection program has been an integral part of the Commission's jurisdiction for over 127 years. The program was established and regulatory authority was granted to the Commission, known as the Board of Railroad Commissioners back then, by the legislature in 1891; two and a half years after North Dakota obtained statehood.

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The Commission has worked diligently to review and issue licenses only to those applicants that meet the statutory requirements, in addition to conducting annual inspections, capacity verifications, and general program oversight, all while ensuring that our work is done as efficiently and effectively as possible. The last major program change occurred 16 years ago, in 2003, with the establishment and implementation of the credit-sale contract indemnity fund. Prior to this, claimants who held credit-sale contracts were not eligible to receive any repayment in the event of an insolvency.

The model used to license and regulate grain warehouses and grain buyers is antiquated. This model is generally consistent with the one that was implemented in the 1800's when the grain industry looked and operated differently. Previous requests from the Commission for modernization of the program have been denied. Our program is not as effective as it could be for 21st century grain trading and merchandising. Sadly, there have been too many insolvencies, not just in North Dakota, but throughout the United States and improving the situation requires more than just a shift of outdated regulations to another agency.

This bill opens a discussion about where the grain licensing and inspection program should be located. The Commission asserts that the 1891 Legislative Assembly had it correct by placing jurisdiction within what is now known as the Public Service Commission. The Commission, by its very nature,

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is a regulatory agency tasked with state-wide regulation of certain businesses and has done so very successfully. The Commission balances the interests of the industries it regulates with the interests of those who must do business with those industries, working to ensure fairness and nondiscrimination.

The grain warehouse and grain marketing businesses are complex. This regulatory program is a great fit for the multi-member Public Service Commission. With the right tools and statutory authority in place, the program can be very well managed and implemented by the PSC.

Improving the current situation should involve a two-prong approach including a more thorough review of licensees to help prevent insolvencies, or at least catch them earlier, and more help for grain sellers who suffer sometimes catastrophic losses due to an insolvency. Providing that authority in statute is more important than which agency executes it.

Senator Wanzek and an impressive list of co-sponsors have introduced a bill that does exactly that. It was heard earlier this morning in the Senate Agriculture Committee, and I believe that the thorough, holistic approach of that bill is the best strategy for North Dakota.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to present this information. I will be happy to answer any questions.

Testimony of Representative Dennis Johnsons – District 15  
House Bill No. 1467  
Senate Agriculture Committee  
Roosevelt Park Room  
March 8, 2019

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#1 pg. 1

Chairman Luick, and members of the Senate Ag Committee, for the record my name is Dennis Johnson, Representative from District 15.

House Bill 1467 looks to move the grain inspection program from the PSC to the Ag Department, and I have a few reasons for looking at this transition. First though, I want to point out that this isn't an attempt to beat up on our friends the PSC, but rather to try and make a point that there are some serious concerns and issues that need to be addressed.

Unfortunately, this conversation comes up every few years. In light of what's happened out in the country this past year, one of the reasons I'm looking at this direction is because out of the 50 states, 38 states regulate grain inspection, and 34 of those have this program ran through the state's Department of Agriculture. North Dakota is one of the four states that have an agency other than the ag department manage the program.

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One of the issues that has been discussed is the issue of confidentiality of financial records that may be reviewed prior to the PSC issuing a license. This could be easily addressed by adopting confidentiality language similar to that in the Ag Departments livestock dealers license law (4.1-83-09) where they collect financial documents from producers. This would ensure that whatever agency is running this program reviews applicants' financial documents prior to licensing to ensure that they have the financial ability to cover their obligations.

As a legislator we knew the cuts were going to be tough, and it's concerning that this is the program that keeps being picked as a cut. I struggle with continuing to see this program reduced and am concerned that it isn't viewed as a priority to the PSC.

Johnson, Dennis E.

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From: Sherman or Lori Cline <srcline@gondtc.com>  
Sent: Monday, February 18, 2019 10:50 AM  
Subject: Johnson, Dennis E.  
Century Code 60-02.1-07

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

**60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement. Grain buyers must obtain an annual license from the commission. Except as provided in this section, each license expires on July thirty-first of each year. When a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. A facility-based grain buyer must obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is three hundred dollars and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location. If required to obtain United States department of agriculture approval of the commission's grain buyer inspection program, the commission may require that grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. **A financial statement furnished under this section is a confidential trade secret and is not a public record.****

**60-02-07. Public warehouse license - Fee - Financial statement.**

3. a. The annual license fee for a public warehouse is:

- (1) Three hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
- (2) Four hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
- (3) Five hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].

b. The biennial license fee for a public warehouse is:

- (1) Six hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
- (2) Nine hundred dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
- (3) One thousand one hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].

**60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.**

The annual license fee for a facility-based grain buyer is three hundred dollars

**60-02.1-07.1. Roving grain buyer license - How obtained - Fee.**

The annual license fee for a roving grain buyer is two hundred dollars

The total number of warehouses licensed in North Dakota is 373. Of that 373 there are 264 warehouses licensed by the state and 109 licensed federally. Those with a federal license also purchase a facility-based grain buyer license from the state. That license is referenced in 60-02.1-07 as the grain buyer license.

There are 99 roving grain buyers licensed in the state.

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**4.1-83-06. Bond requirements - Alternative.**

Any applicant having a bond on file with the United States department of agriculture pursuant to the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.], may meet the requirements of section 4.1-83-05 by filing a copy of that bond with the agriculture commissioner, provided the commissioner is named as the trustee of the bond.

**4.1-83-07. Out-of-state applicant - Trustee.**

A bond posted by an out-of-state applicant for a livestock dealer's license may name as trustee a financially responsible, disinterested person who is satisfactory to the commissioner.

**4.1-83-08. Bond - Minimum amount.**

1. The agriculture commissioner shall determine the amount of the bond required in accordance with this chapter by using the same basis as that prescribed for livestock dealers who are subject to the provisions of the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.].
2. Notwithstanding subsection 1, if at the time of licensure or at any point during the period of licensure the agriculture commissioner has reason to believe that a bond is inadequate to secure the performance of the livestock dealer's obligations, the commissioner shall require an increase in the amount of the bond.
3. A bond required by this chapter may not be in an amount less than ten thousand dollars.

**4.1-83-09. Release of records - Confidentiality.**

1. As a condition of licensure, the applicant shall agree to provide to the agriculture commissioner, upon request, any financial record that the commissioner deems relevant for purposes related to:
  - a. The issuance of a livestock dealer's license; or
  - b. An investigation after issuance of a livestock dealer's license.
2. As a condition of licensure, the applicant shall file a records release with the agriculture commissioner, authorizing the commissioner to obtain, from any source, any financial record that the commissioner deems relevant for purposes related to:
  - a. The issuance of a livestock dealer's license; or
  - b. An investigation after issuance of a livestock dealer's license.
3. Any information gained by the agriculture commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

**4.1-83-10. Dealer's license - Grounds for denial - Hearing.**

1. The agriculture commissioner shall deny an applicant a livestock dealer's license if:
  - a. The applicant's current assets do not exceed the applicant's current liabilities; or
  - b. The applicant submitted false or misleading information in connection with the application.
2. The agriculture commissioner may deny an applicant a livestock dealer's license:
  - a. If after due investigation, the commissioner has reason to believe that the applicant has failed to pay, in a timely manner and without reasonable cause, prior obligations incurred in connection with livestock transactions;
  - b. If the applicant has failed to pay brand inspection fees or veterinary inspection fees, as required by law, within sixty days of the date on which they were due;
  - c. If the applicant has violated any of the laws of this state governing the handling, shipment, or transportation of livestock; or
  - d. For any other just and good cause.

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BUSINESS



Part of a pile of yellow peas lays under snow on the ground at the Turbridge, N.D., one of the sites of the NoDak Grain, headquartered at Devils Lake, N.D. Phototaken Nov. 20, at in rural Rugby, N.D. Mikkel Pates / Agweek

## 24 entities file \$5.2M in claims against North Dakota grain trader Hunter Hanson

By Mikkel Pates on Mar 4, 2019 at 4:41 p.m.

BISMARCK, N.D.—The North Dakota Public Service Commission says claimants have until early April to file loss claims against Hunter Hanson, who was ordered late last year to stop his grain trading businesses after complaints of his checks being returned for insufficient funds.

Hanson was doing business from Devils Lake, N.D., with a roving grain buyer license named Midwest Grain Trading and a warehouse license to NoDak Grain.

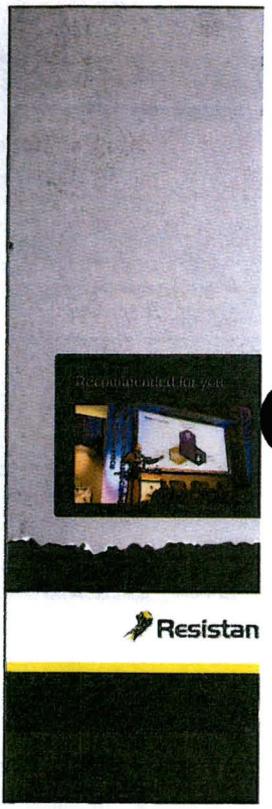
Earlier, the PSC said the deadlines for having claims arrive to the PSC was April 4, but the actual cut-off is dependent on publication dates of legal notices and can be adjusted by the PSC, said Konrad Crockford, director of compliance. The form for making complaints is available on the PSC website.

The PSC has a [list of claims](https://www.psc.nd.gov/database/docket_view_list.php?s_dept=GE&s_year_case=18&s_seq_num=395&s_company_name=Hunter+Hanson+dba+NoDak+Grain) against Hanson, 21, who had residences at West Fargo, N.D., and Leeds, N.D., that had been filed as of March 4. They came from 24 individuals and companies totaling more than \$5.2 million, mostly involving durum wheat and yellow peas. Some claimants have separately filed civil actions in district courts in the state.

About \$2.7 million is owed to one group of three elevators operated by the ItaliGrani USA, a grain storage and milling firm based in St. Louis, Mo.

ItaliGrani was incorporated in 1979 and began purchasing three grain elevators in North Dakota in 1989. The company supplies semolina and durum flour.

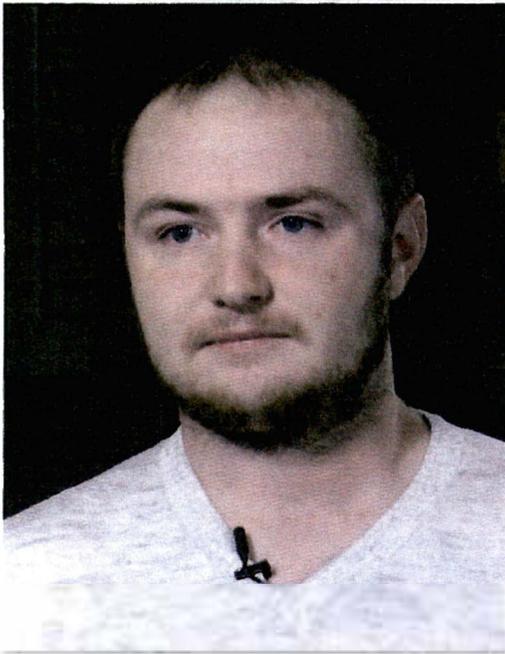
(The St. Louis Post-Dispatch in August 2017 said the company is one of the larger millers of durum wheat



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in the country, selling primarily to pasta makers. It expanded its mill and storage by 40 percent in a project that was to be completed by late 2018.)

## 'Introductory broker'

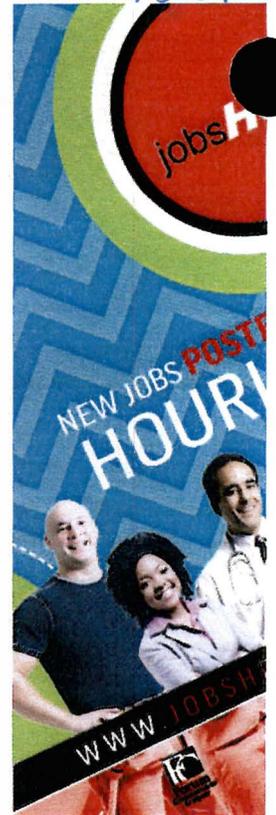


Hunter Hanson

Perhaps significantly, almost all of the PSC claims show the involvement with a company called East Central Grain Marketing LLC, of Minnetonka, Minn., whose owner, Daniel "Danny" Stommes, was described as an "introductory broker" in the deals. East Central had a roving grain buyer's license in North Dakota.

East Central routinely took a "commission" of 2 cents to 10 cents per bushel on deals, but left the grain ownership to Hanson.

"We have looked at East Central Grain and still looking at how they fit into this," said Konrad Crockford, the PSC director of compliance. "How they can fit into this is something our attorneys are still looking at."



East Central Grain has filed its own claims in the case.

Stommes was brief in an interview with Agweek regarding his company's role in the sales. "We submit our victims' claims to the PSC," he said. "At this point, that's all we have. Thank you for your time." And then he hung up.

In some cases, claimant texts and e-mails said they'd appealed directly with Stommes to deal with delivery or payment from Hanson, but in one case, Stommes told them his company had had no liability.

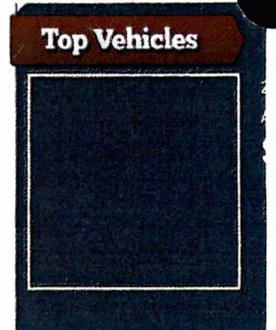
## Selling grain assets

The PSC has not yet "validated" the farmer and elevator claims, but Crockford says that process is underway. In the meantime, the agency is liquidating grain assets from Hanson's facilities at Rohrville, N.D., and Tunbridge, N.D.

In past insolvencies, some claims have been deemed invalid if grain wasn't delivered, but the agency is looking at each one individually. "If a claim is deemed invalid for our proceeding isn't to say they don't have a legitimate breach of contract," he said. They may have other legal recourse, he said.

The claims, from largest to smallest, so far are:

- Renville Elevator, Tolley, N.D.—\$1,449,059. (Owned by ItalGrani USA) Claim includes \$911,448 in unpaid scale tickets, plus \$737,000 "outstanding contracts"—claiming a difference between the \$6.70 per bushel contracted amount minus a \$4.70 value as of mid-November. East Central's commission, 2 cents to 10 cent per bushel.
- McLean Elevator Co., Benedict, N.D.—\$763,041. (Owned by ItalGrani USA) This includes \$638,410 in unpaid hard red spring wheat delivered August to November 2018. The total includes \$124,631 in market differences for grain contracted but not delivered. East Central's commission, 2 cents to 10 cents per



Luthers Family Buick-GMC logo with 'View Luthers GMC' text.

## Classifieds

FOR SALE: 2014 Town & Country Edition Granite Crystal Metallic Mini

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bushel.

• Delmar Commodities Ltd., Winkler, Manitoba—\$598,079. East Central's commission, 8 cents to 10 cents per bushel.

• Powers Lake Elevator Co., Powers Lake, N.D.—\$527,933. (owned by ItalGrani USA)—Claim includes \$430,418 of unpaid scale tickets, plus a \$97,514 market difference on undelivered commodities. East Central's commission, 2 cents to 10 cents per bushel.

• United Quality Cooperative, New Town, N.D.—\$347,939. East Central's commission, 5 cents per bushel. Kim Meyer, controller, writes to the PSC on Nov. 29, 2018: "Should I file a formal complaint against East Central Grain, as they wrote the trade agreements we have with Green Leaf Commodities and Midwest Grain Trading. We most likely would have never even heard of either of these companies if East Central Grain hadn't brokered them to us?"

• Lynden Skaare, Alamo, N.D.—\$199,818. East Central's commission, 5-10 cents per bushel. In July, Skaare writes in the claim that he "called the PSC to check if both elevators were License and Bonded. They said YES."

• Schafer Commodities, Morden, Manitoba --\$167,418. Yellow peas delivered Sept. 13, 2018, to Oct. 30, 2018. ECGM: 10 cents per bushel. On Oct. 25, Hanson explains he didn't have the right bank account number. On Oct. 30, Shafer requests a check sent "by COURIER (not mail) courier" and they would pay the charges. On Nov. 8, Jan Leishman of Schafer appeals to East Central's Stommes: "Dan—could you please ensure that Hunter sends these funds promptly.")

• Dakota AgSynergy LLC, Linton, N.D.—\$164,735. East Central's commission, 3 cents and 5 cents per bushel.

• Derek Morey, Minot, N.D.—\$145,889. Grain hauled in early September at Hensler and Osnabrock, and received a check on Nov. 2, 2018. Checks returned for "stop payment."

• Woodworth (N.D.) Farmers Grain Co.—\$133,579, for spring wheat shipped in August and September, with possible protein adjustment.

• Roger Harstad, Palermo, N.D., farmer, \$111,888. East Central's commission unspecified.

• Todd Timm, Kensal, N.D.—\$70,734. Plus \$1,500 commission already paid to East Central.

• E Y Inc., Jud, N.D.—\$58,300. 10,000 bushels of milling hard red spring wheat, hauled to Osnabrock Farmers Co-op. by A&T trucking, from Sept. 22, 2018, to Nov. 5, 2018. East Central's commission unspecified.

• K&S Operating Partnership, Stanley, N.D.—\$56,776. In wheat, from Stanley, N.D., to Hensler ADM-Benson Quinn, on Sept. 18, 2018, and on Sept. 16 and Sept. 19 to Nekoma, N.D. Kevin Harstad, farmer. East Central's commission, 5 cents per bushel.

• Kent Florhaug, Kensal, N.D.—\$53,869, for loads of spring wheat. East Central's commission, 4 cents per bushel. Grain went to the Osnabrock Farmers Co-op Elevator, Inc., Nekoma, N.D.

• Dale and Brandyn Garksop, Flaxton, N.D.—\$53,461. Aug. 1 to Sept. 30, yellow peas to Dakota Dry Bean, Crary, N.D. East Central's commission, 10 cents per bushel.

• Southland Pulse, Estevan, Saskatchewan—\$41,363. For 15,000 bushels yellow peas, Sept. 5, 2018. East Central's commission, 15 cents per bushel.

Southland had been approached by Stommes in April 2018 to sell 15,000 bushels of peas to Midwest Grain Trading. Southland Pulse wanted an extra 20 cents to deliver to Rohrville, farther than Tunbridge. "How confident are you I will get paid?" asks Shawn Madsen, in an email Sept. 12. "Payments have been as agreed," Stommes replies.

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Garrett Novak, St. Hilaire, Minn.—\$34,977. For peas. East Central's commission, 5 cents per bushel. Sold to Crookston Bean Inc., 1600 S. Main St., Crookston, Minn., to Garrett Novak on Oct. 3 and 4.

· Berthold (N.D.) Farmers Elevator—\$28,540 plus a contract dispute. East Central's commission, 10 cents per bushel, through Zach Herschman.

· Bridge Agri Partners, Inc., Lethbridge, Alberta—\$33,049. "Broker Contract#:TBA: EASTC (referring to East Central Grain Marketing)

· Devin Tuomala, Perth, N.D.—\$21,559. Hard red spring wheat went to Nekoma, N.D., from Oct. 22 to Oct. 23. (On Jan. 14, says he's withdrawing his claim because Hanson had paid him in early December with a check with a 10-day hold "due to there not being any information in the top left corner of the check. Late December the check cleared and I had received the money I was due for my wheat in the full amount."

· Andrew Skaare, Alamo, N.D.—\$108,849. East Central's commission unspecified.

· Austin Steinmetz, Carson, N.D.—\$32,000, estimated. East Central's commission unspecified.

· Ryan Greenfield, Powers Lake, N.D.—\$20,000 estimated. East Central's commission, 5 cents per bushel.

· Kris Mortenson, Souris, N.D.—\$18,450. Durum sales.

## 70 more names

Another 70 names and law offices are being notified by the court. The list includes individuals who contacted the PSC from the beginning and may have a claim, Crockford explained.

Those include: Chris Gratton, CHS Garrison, Garrison, N.D.; Brian Larson, Co-op Elevator of McClusky, N.D.; Darren Edwards, Ray Farmers Union Elevator, Ray, N.D.; Wade Fischer, Grenora, N.D.; Murray Pfau, Upham, N.D.; Bill Spitzer, Kensal, N.D.;

separately, David, Cody and Ronald St. Croix, Kenmare, N.D.;

Chris Rystedt, Powers Lake, N.D.; Leon Schmaltz, Harvey, N.D.; Donald Knox, separately, Donald and Jeff Knox, Ray, N.D.; David Anfinson, Williston, N.D.; Bobby Kubas, Belfield, N.D.; Rich Rice, Tioga, N.D.; Paul Weyrauch, Ray, N.D.; Glen Hauf, Makoti, N.D.; Dillon Dione, Rolette, N.D.; Rodney Sauer, Carpio; Jim Walsh, Palermo, N.D.;

Bryan Huber, Jud, N.D.; Dan Mostad, Berthold Farmers Elevator, Berthold, N.D.; Josh Watterud, Columbus, N.D.; Mark Martinson, Rolette, N.D.; Derek Morey, Minto, N.D.; Dale Genskop, Flaxton, N.D.; Travis Zabloutney, Minnot, N.D.; Scott Anderson, Crary, N.D.; Kris Mortenson, Souris, N.D.; Mark Jennings, Wilton Farmers Elevator, Wilton, N.D.;

Seth Lura, Carrington, N.D.; Lloyd Patrick Walsh, Minnot, N.D.; Devin Toubala, Perth, N.D.; Dan Stommes, East Central Grain Marketing, Minnetonka, Minn.; Jeremy Sorenson, Allied Grain, Carrington, N.D.; Steve Mortenson, Williston, N.D.; Ryan Spitzer, Kensal, N.D.; Randy Lura, Carrington, N.D.; Charles Miller, Williston, N.D.; Ryan Davidson, Tioga, N.D.;

Jeff Graupe, Williston, N.D.; Darren Gohrick, McGregor, N.D.; Mike Mongeon, Rolette, N.D.; Steve Lesmeister, Harvey, N.D.; Ryan Westerness, Powers Lake, N.D.; Jarrett Foss, Rolette, N.D.; Stanley Larson, Williston, N.D.; Justin Iverson, Columbus, N.D.;

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COMMISSIONER  
DOUG GOEHRING



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**Testimony of Doug Goehring, Agriculture Commissioner  
North Dakota Department of Agriculture  
House Bill 1467  
Senate Agriculture Committee  
Roosevelt Park Room  
March 8, 2019**

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Chairman Luick and members of the Senate Agriculture Committee, I am Agriculture Commissioner Doug Goehring. Thank you for the opportunity to appear before the committee. I am here today in support of House Bill 1467.

Unfortunately, this is a reoccurring conversation that we seem to be having every few years that has yet to be resolved. Insolvencies, fraud and grain marketing issues that have happened over the past year are serious. We need to strongly consider how the grain inspection program is structured and operates, and this is the time to have the conversation and find a solution. I have received numerous calls from hurt and frustrated farmers regarding the grain they've sold to a grain buyer and why he wasn't stopped earlier.

The Ag Department currently has a livestock licensing program where we license livestock dealers and auction markets, and I would propose several adjustments to this bill for your consideration based off the structure of this program, and some information I've received from South Dakota's grain inspection program.

The first would be to require applicants to submit annual financial statements for review prior to a license being issued, and that they file a release authorizing the Commissioner access to financial records of the applicant held by financial institutions, accountants or other sources. Both grain elevators and roving grain buyers would need to submit a financial balance sheet that would be used to determine their current debt to asset ratio, and one's ability to cover current

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liabilities including purchases. Plus, any business with annual purchases over \$5,000,000 needs to submit quarterly financial reports. Maintaining confidentiality of these documents could easily be accomplished by adding confidentiality language similar to that in the Department's livestock dealers licensing law (4.1-83-09).

Second, grain inspectors should look at accounts payable, accounts receivable and a daily position report. All cash sales could be settled within 10 or 20 days, and all deferred, delayed and hedge to arrive contracts are to be settled 30 days after the final delivery has been made. This minimizes risk and large exposures for both the purchaser and the seller. Reconciling inventory is also vitally important. I believe South Dakota's approach may be an option to consider. They use a third-party contractor and CCC to audit inventory and check warehouse receipts.

Now, to address the real elephant in the room, roving grain buyers. Roving grain buyers generally lack brick and mortar facilities to store, condition or move commodities. Because of this, we should consider limiting some of our roving grain buyer's annual purchases. They need to provide adequate bonding, a verified line of credit from a financial institution, and adequate assets. The statute could also limit how much exposure the state would allow a grain buyer. Additionally, roving grain buyers should submit documentation on an agreement with receiving facilities to avoid taking possession of a commodity that cannot be conditioned, processed or marketed. A final consideration would be to not allow a roving grain buyer to do business in North Dakota at all. But, I believe we have some reputable buyers and the proper way to address this issue is to have proper oversight.

If the state is going to continue to allow roving grain buyers the ability to do business in North Dakota, they need to be heavily scrutinized and treated differently than grain elevators. Regulatory oversight should not be burdensome but clearly assist the industry in understanding

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the rules, regulations and expectations. As regulators I believe our role is to protect the consumer, seller, purchaser, wholesaler and retailer. Essentially, monitoring the entire value chain.

As you can tell, the real issue at hand is prevention and proper oversight. I also believe it would be beneficial to meet with grain merchandisers, managers, boards and owners of elevators to understand their policies on contracting, hedging and accounts payable to evaluate future adjustments to policy and regulations that reflect the present business environment.

Chairman Luick and committee members, thank you for your consideration and would be happy to answer any questions.

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## House Bill 1467

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

**Before:** Senate Agriculture Committee  
The Honorable Larry Luick, Chairman

**Date:** March 8, 2019

### TESTIMONY

Mr. Chairman and committee members, I am Randy Christmann, Commissioner with the Public Service Commission.

HB 1467 recognizes a need for changes within the grain licensing and inspection program as it currently stands. The Commission appreciates that acknowledgement and agrees that changes to the program are necessary. However, the Commission strongly opposes the removal of the grain licensing and inspection program from the Public Service Commission. A move to another agency does not provide the kind of changes I believe will accomplish the necessary objectives.

The grain licensing and inspection program has been an integral part of the Commission's jurisdiction for over 127 years. The program was established and regulatory authority was granted to the Commission, known as the Board of Railroad Commissioners back then, by the legislature in 1891; two and a half years after North Dakota obtained statehood.

The Commission has worked diligently to review and issue licenses only to those applicants that meet the statutory requirements, in addition to conducting routine inspections, capacity verifications, and general program

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oversite, all while ensuring that our work is done as efficiently and effectively as possible. The last major program change occurred 16 years ago, in 2003, with the establishment and implementation of the credit-sale contract indemnity fund. Prior to this, claimants who held credit-sale contracts were not eligible to receive any repayment in the event of an insolvency.

The model used to license and regulate grain warehouses and grain buyers is antiquated. This model is generally consistent with the one that was implemented in the 1800's when the grain industry looked and operated much differently. Previous requests from the Commission for modernization of the program in both the 2015 and 2017 sessions have been denied. Our program is not as effective as it could be for 21st century grain trading and merchandising. Sadly, there have been too many insolvencies, not just in North Dakota, but throughout the United States and improving the situation requires more than just a shift of outdated regulations to another agency.

This bill opens a discussion about where the grain licensing and inspection program should be located. The Commission asserts that the 1891 Legislative Assembly had it correct by placing jurisdiction within what is now known as the Public Service Commission. The Commission, by its very nature, is a regulatory agency tasked with state-wide regulation of certain businesses and has done so very successfully. The Commission balances the interests of the industries it regulates with the interests of those who must do business with those industries, working to ensure fairness and nondiscrimination.

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The grain warehouse and grain marketing businesses are complex. This regulatory program is a great fit for the multi-member Public Service Commission. With the right tools and statutory authority in place, the program can be very well managed and implemented by the PSC.

Improving the current situation should involve a two-prong approach including a more thorough review of licensees to help prevent insolvencies, or at least catch them earlier, and more help for grain sellers who suffer sometimes catastrophic losses due to an insolvency.

Senator Wanzek and an impressive list of co-sponsors introduced SB 2346 that does exactly that. The Senate Agriculture Committee and subsequently the full Senate unanimously approved that legislation. I believe that the thorough, holistic approach of SB 2346 is the best strategy for North Dakota.

That concludes my prepared remarks. I would be happy to answer any questions.

Thank you.

**60-02-06. Printing and publishing rules.**

Repealed by S.L. 1983, ch. 672, § 25.

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**60-02-07. Public warehouse license - Fee - Financial statement.**

A license must be obtained from the commission for each public warehouse in operation in this state.

1. a. The commission shall stagger by lot the expiration date of all licenses issued for the period beginning August 1, 2015, so that one-half of all the licenses issued expire on July 31, 2016, and one-half of all the licenses issued expire on July 31, 2017. Thereafter, all licenses issued under this section must be for a period of two years and terminate on the thirty-first day of July in the year of expiration.
- b. (1) Notwithstanding the provisions of subdivision a, the commission shall license a warehouse annually, for the first six years of the warehouse's operation.  
(2) An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.
2. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.
3. a. The annual license fee for a public warehouse is:
  - (1) Three hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
  - (2) Four hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
  - (3) Five hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- b. The biennial license fee for a public warehouse is:
  - (1) Six hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
  - (2) Nine hundred dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
  - (3) One thousand one hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- c. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.
4. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. When two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses.
5. If required to obtain United States department of agriculture approval of the commission's warehouse inspection program, the commission may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.

**60-02-07.1. Warehouseman to operate warehouse owned by another.**

A warehouseman may operate under its warehouse license a warehouse owned by another person. Storage performed for such person in the entire licensed warehouse is excepted from the storage rate and discrimination provisions contained in sections 60-02-17 and 60-02-20 to the extent of the person's owned capacity in the warehouse.

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**North Dakota Grain Growers Association  
Testimony on HB 1467  
Senate Agriculture Committee  
March 8, 2019**

Chairman Luick, members of the Senate Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). Through our contracts with the North Dakota Wheat Commission and North Dakota Barley Council NDGGA engages in domestic policy issues on the state and federal levels on behalf of North Dakota wheat and barley farmers. I appear here today on behalf of NDGGA in support of HB 1467.

Einstein is reported to have said "The definition of insanity is doing the same thing over and over again, but expecting different results". For the last number of legislative sessions, the issue of grain inspections has graced this Committee and this legislature with no resolve in sight. Rarely, if ever, do you see an industry say "inspect me, please" yet for one excuse or another the job is never adequately accomplished.

Chairman Luick, members of the Senate Agriculture Committee, it's time to end the insanity and place grain inspections in an agency that will give this important responsibility the attention it deserves; the North Dakota Department of Agriculture. This will result in the overall betterment of North Dakota agriculture.

Therefore, the North Dakota Grain Growers Association respectfully requests the Senate Agriculture Committee give HB 1467 a Do Pass recommendation and would ask the Senate to concur.

*NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.*

March 14, 2019

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1467

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding grain buyers and grain handling facilities.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - GRAIN BUYERS AND GRAIN HANDLING FACILITIES.** During the 2019-20 interim, the legislative management shall consider studying grain buyers and grain handling facilities under North Dakota Century Code Title 60. The study must include a review of the current law and industry practices governing grain buyers and handling facilities and a review of any potential efficiencies that may exist, methods of maintaining financial security during the grain buying process, and the process of confidential financial and physical audits. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly."

Renumber accordingly

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# 1 pg. 1

19.1086.01005  
Title.

Prepared by the Legislative Council staff for  
Senator Luick

March 27, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1467

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding agricultural issues in the state.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL ISSUES - GRAIN BUYERS, ROVING GRAIN BUYERS, GRAIN HANDLING FACILITIES, FERTILIZER, SOIL, SEED, AND FUEL.** During the 2019-20 interim, the legislative management shall consider studying agricultural issues in the state, including studying grain buyers, roving grain buyers, grain brokers, and grain handling facilities under North Dakota Century Code title 60; and issues related to prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The study must include a review of the current law, industry practices, and background checks relating to grain buyers, roving grain buyers, grain brokers, and handling facilities and a review of any potential efficiencies that may exist, methods of maintaining financial security during the grain buying process including consideration of facility operating capitol to ensure adequate solvency during licensing, and the process of confidential financial and physical audits. The study also must include a review of the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from facility insolvency if an end product is refined and no longer reflects the original product, the indemnity fund under title 60, and grain handling facility bonding requirements. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly."

Renumber accordingly