

AGRICULTURAL INSPECTION AND STANDARDS FUNCTIONS TO PUBLIC SERVICE COMMISSION - BACKGROUND MEMORANDUM

Senate Bill No. 2008 (attached as an appendix) directs a study of the feasibility and desirability of transferring inspection and standards functions performed by various state agencies to the Public Service Commission, including the potential cost-savings and efficiencies that may be realized by training and certifying employees to conduct multiple inspection duties. The Legislative Council by directive limited the study to agriculturally related functions. The testimony on the bill does not reveal any particular impetus for the study. According to a representative from the Public Service Commission, there was testimony during the legislative session which stated there may be wasteful redundancy in having multiple agencies inspect anhydrous ammonia tanks.

AGRICULTURAL-RELATED INSPECTION AND STANDARDS BY PUBLIC SERVICE COMMISSION

Under North Dakota Century Code (NDCC) Section 64-02-02, all weighing or measuring devices in this state must be supervised and controlled by the Public Service Commission. A weighing or measuring device, as defined in Section 64-02-01, is any scale, weight, measure, instrument, or device used or offered for use for weighing or measuring in commerce. Under Section 64-02-13, the owner of any weighing or measuring device is responsible for its accuracy and condition and must have it tested at least every 15 months. The commission or the owner may have the device tested annually. In short, the commission has authority over any instrument used to weigh or measure anything being bought or sold. As this relates to agriculture, the commission has jurisdiction over measuring and weighing agricultural commodities and products, including food and seed.

Under NDCC Section 64-02-10, the commission collects fees to test the following agricultural-related scales, devices, or meters: railroad track and truck scales used to haul agricultural products, livestock scales used by auction markets, scales used by elevators, scales used in the retail sale of bulk food or seed, meters used to measure agricultural chemicals or liquid fertilizer, and other agricultural-related scales, devices, or meters. Under Section 64-02-12, the fees collected by the commission are deposited in the general fund of the state treasury.

AGRICULTURAL-RELATED INSPECTION AND STANDARDS BY OTHER STATE AGENCIES

There are some exceptions to the commission's authority over weights and measures.

Under NDCC Section 64-02-13, only the State Dairy Department may inspect and test farm milk bulk tank equipment. Under Section 64-02-13.1, weighing or measuring devices used to conduct sales by a transient vendor are exempt from the authority of the commission. Under Section 64-02-01, a transient vendor is a wholesale or retail seller of produce, fruit, nuts, or seafood that sells to the public from a temporary location, on a seasonal basis, and is open fewer than 120 business days each year. This may include the scales used by sellers at a farmers' market.

Under NDCC Section 19-01-18, the State Department of Health at the request of the Public Service Commission must perform the duties relating to weights and measures as usually performed by the commission. The fees collected by the department are kept, accounted for, and disposed of as provided in Chapter 19-01. Under Section 19-01-07, all fees collected under Chapter 19-01 are placed in the general fund. However, if the funds are accepted for contract services of analytical and inspection work, the funds must be deposited in the operating fund of the State Department of Health.

TRANSFER OF INSPECTION AND STANDARDS FUNCTIONS

In the same way that it may be desirable for the State Department of Health to inspect scales when it is doing health-related inspections of food-related businesses, the study directs a look at the feasibility and desirability of transferring inspection and standards functions to the Public Service Commission when otherwise conducting inspections at agricultural-related businesses.

If the study of "inspection and standards functions" means the study of weights and measures, then the Public Service Commission does all of the functions related to weights and measures except those explicitly exempted by law. In other words, there are no inspection and standards functions to transfer to the commission. The remaining option would be to transfer these exempt functions from other agencies that are at the site for another reason, for instance, like the State Department of Health.

If "inspection and standards functions" means any kind of inspection based on any standard, then the Public Service Commission may be able to efficiently conduct inspection and standards functions that are not weights and measures functions when at an agricultural-related facility that it inspects. The commission regulates a number of agricultural-related businesses--grain elevators, facility-based grain buyers, roving grain buyers, hay buyers, auctioneers, and auction clerks. The main form of regulation of these entities is the licensing of these entities. As a rule, the commission may inspect the

records of these entities. When the commission is inspecting the records of one of these entities, there may be some inspection and standards function done by some other agency that the commission may do to gain efficiency besides any internal efficiency gained by conducting the weights and measures functions the commission already performs. However, any new function would not be related to anything the commission staff is trained to do at present. To the contrary, there are similarities between the regulation by the State Seed Commissioner of wholesale potato dealers and the regulation by the commission of grain or hay buyers, and this may be an area for consolidation. However, the similarities are in licensing, not inspection (except for records) and standards functions unless one views licensing as an inspection and standards function.

An example of when there are multiple agency, multiple inspections for which the Public Service Commission conducts an inspection is in the case of anhydrous ammonia storage facilities. The Public Service Commission makes regular onsite tests of scales and meters used to measure for the sale of anhydrous ammonia. In addition, there are onsite inspections under the anhydrous ammonia tank inspection program. The anhydrous ammonia tank inspection program provides initial and periodic inspections of anhydrous ammonia storage facilities, including storage containers, system piping, safety equipment, and nurse tanks. The focus of the inspection is safe storage. The program is administered and enforced by the Department of Agriculture, and the inspection is done by the Insurance Department through the boiler inspection program.

Under NDCC Section 19-20.2-01.1, the inspection program only applies to anhydrous ammonia storage facilities exceeding a capacity of 6,000 gallons. Under Section 19-20.2-07, these tanks are periodically inspected at least once every five years. The boiler inspector may inspect a farm transportation wagon or vehicle designed to apply anhydrous ammonia which is in the vicinity of the facility during the inspection. Under

Section 19-20.2-08, all fees collected for licensure are used by the Agriculture Commissioner for the inspection program. In addition, under Section 19-20.2-08.1, the anhydrous ammonia tonnage tax of 20 cents per ton under Section 19-20.1-06 must be deposited in the anhydrous ammonia storage facility inspection fund.

House Bill No. 1352, enacted during the 2003 legislative session and codified in NDCC Section 19-20.2-11, provides for the Insurance Commissioner to identify a critical methamphetamine users zone in this state and establish appropriate security measures for owners and users of anhydrous ammonia nurse tanks in the zone. The securities measures are implemented as part of a pilot project and may include the requirement of locks on nurse tanks. The pilot program is under the control of the Insurance Commissioner.

Theoretically, the Public Service Commission could take the functions of the boiler inspector. However, the commission would need to have a person specially trained as a boiler inspector, and the Insurance Commissioner would still need a boiler inspector to inspect boilers, which are not inherently agriculturally related.

SUGGESTED STUDY APPROACH

The suggested study approach parallels the organization of this memorandum. The committee could receive testimony from the Public Service Commission on agricultural inspection and standards functions done by the commission. The committee could receive testimony from other agencies that conduct agricultural inspection and standards functions. The committee could consider similarities between inspection and standards functions done by the commission and other agencies to determine if they are closely related enough to suggest gained efficiencies through the combination of the functions within the commission.

ATTACH:1