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2003 HOUSE AGRICULTURE
HB 1197

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Deanna Ballantyne 10/2/03
Operator's Signature Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1197

House Agriculture Committee

Conference Committee

Hearing Date 1--23--03

Tape Number	Side A	Side B	Meter #
ONE	A		0 TO END
ONE		B	0 TO 10.4
Committee Clerk Signature <i>Edward D. Olson</i>			

Minutes:

VICE CHAIRMAN POLLERT: The House will come to order. The clerk will take the roll. We will open on HB 1197. HB 1197 is relating to insolvency's of grain buyers and warehousemen; and to provide a penalty.

VICE CHAIRMAN POLLERT: Madam Chair, my name is Chet Pollert. I am a state representative from District 29. I am also a grain elevator, feed plant operator. HB 1197 is in front of you today because of conversations with other Representatives. What the HB 1197. It is a Bill for an Act to create and enact a new chapter to title 60 of the North Dakota Century Code, relating to the creation of a credit-sale contract indemnity fund; and to amend and reenact sections of the North Dakota Century Code relating to insolvency's of grain buyers and warehousemen; and to provide a penalty. What the Bill basically is it is a credit sale contract indemnity fund. It dose not cover cash sale contracts, dose not cover warehouse receipts so it for credit sale contracts only. Credit sale sales contracts could be for deferred payments. Etc.

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Could be a fixed futures contract. A deferred payment. Something with a time element.

What this does is on Section 5 on page 3, what it would do is assess anyone entering into a credit sale contract. The assessment would be at the rate of two-tenths of one percent placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The warehouse purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The warehouseman shall submit any assessment collected under this section to the public service commission no later than thirty days after each calendar quarter. The commission shall deposit the assessments received under this section in the credit-sale contract indemnity fund. Lets be optimistic and say that wheat is \$5.00 dollars you are looking a penny a bushel. Lets say you have twenty five thousand dollars worth of credit sale contracts at that particular facility, you are look at a 50 dollar insurance plan. One hundred thousand you are looking at two hundred dollars. Basically a insurance plan.


{{PLEASE READ THE ENTIRE BILL}} as to Chet Pollerts testimony. His testimony was going through the Bill.

In a nut shell that is HB 1197.

REPRESENTATIVE KREIDT: Am I to understand that if you do take a credit sales contract you are automatically in. There are no options. You can't assume a gamble and not take the insurance on the amount of grain I have in the elevator.

VICE CHAIRMAN POLLER: No there is not way to voluntary get out of this. If you enter into a credit sales contract, that's where I talked about a half mandated and half not. You are

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going to have to pay two tenths of one percent. It is not for cash sale, or for warehouse receipts. It is a sales contract only. You can choose go to your local elevator and sell Your grain. You have an option to do that sales contract or cash it out with warehouse receipt.

REP. KRIEDT: I can't gamble, If I take a credit sales contract, I'm in, I will be paying the assessment.

REP. BELTER: The only people that are going to pay in are those who are using the deferred payment. Is that correct?

REPRESENTATIVE POLLERT: We might be on a different term. Anyone with a deferred payment contract or for example an MDV contract or a open base contract, those are credit sales contracts that have kind of a time on their contract.

REP. BELTER: It is also my understanding that when this fund reaches a certain level then you no longer would have to contribute to this insurance.

REPRESENTATIVE POLLERT: When the fund would get to ten million dollars the payment Premiums would discontinue until the fund would drop to five million dollars.

REP. BELTER; What about the person who has never contributed to the fund but then we get to the point where we have reached the cap where the insurance rates area no longer assessed are those people then going to have to pay in because they will be recipients of this yet there is no assessment so they would actually get their insurance for nothing. Are there provisons to deal with that?

REPRESENTATIVE POLLERT: I think we are going to have ask the Public Service Commission. I would suspect that the coverage would be there.

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REPRESENTATIVE KELSCH: Any other questions of Representative Pollert?

Representative Wrangham.

REP. WRANGHAM ;; Thank you Mrs. Chair? Representative Pollert, what is different about this Bill then what we have seen before?

REPRESENTATIVE POLLERT: Madam Chairman. And Representative Wrangham. Four years ago the PSC had brought some Bills and part of that Bill covered credit sales contracts. At that time that Bill was amended and I felt at that time it would have had ramifications. That it would have dealt with security interests with me at the grain elevator and it would jeopardize my financial standing with my bank and the bank would have drawn down, so that if there is an insolvency there pecking order who was going to get money I felt it would have affected the elevator operations because the bank the bank is not going to give us any money if there pecking order for example was five on the list compared to number one or two. What is different about HB 1197? This is farmer funded. No other funds are in it, that is the difference.

REPRESENTATIVE KELSCH: Any further questions?

REPRESENTATIVE POLLERT: I am going to pass out some amendments.

REPRESENTATIVE KELSCH: Anyone else wishing to offer testimony on HB 1197?

JOHN MIELKE: Vice Chairman and Committee Members. My name is Jon Mielke, I am the Executive Secretary of Public Service Commission. I also serve as the director of the Commission's Licensing Division. The Commission supports the bill. Commissioner Wefald is with us this morning, Tony Clark was here a few minutes ago, he will be back shortly. We also have Bill Benick whose is our commerce council, Rick Filbrant who is one of warehouse

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inspectors, He is quite involved with the Wimbeldon insolvency case. He is a licensing specialist. {{{(PLEASE READ JON MIELKE'S TESTIMONY)}}}{{{(PLEASE SEE SPREAD SHEET PROVIDED BY JON MIELKE)}}} Jon Mielke said he would respond questions.

VICE CHAIRMAN POLLERT: Any questions.

REP. FROELICH : Mr Chairman and Mr. Mielke I am referring to the fiscal note. You have a 1/2 FTE, Basically that is \$40,000.00 thousand a year. I could not understand what Representative Froelich said but Jon Mielke when on to say, The \$79,000.00 is per Biennium so it would be about \$40,000.00 per year. So half time would be about \$20,000.00 with fringe benefits and actually some of that money would be used for mailing, printing and those sort of things. The amount that would be used for staff time would be somewhat less than that. It would also include developing a computer program to record remittance ,receipts and deposit funds etc.

Also if you were unfortunate enough to have grain in two elevators that insolvency problems you would be insured up to \$100,000.00 at each facility.

REP. BELTER : A lot of farmers sell grain and the manager asks do you want a check or do you want to defer it. The farmer says I don't know. So it just sits there. Is that grain covered under those circumstances?

JON MIELKE. In that case it would be covered because for the credit sales contract to be valid, it must be signed. This is something that the PSC fought hard for in Federal Court in the Wembeldon case. There were a number of contracts where that had been exactly that kind of a discussion between the warehouse and the farmer and the contracts had not been signed.

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We went to court. An unsigned contract is not a contract. It is open storage. Something that are warehouse inspectors look for when they go out and we advise the warehouseman. If the farmer dose not come in an sign a contract, the elevator should do one of two things. Either Put the grain on a warehouse receipt and start charging storage or cut a check to the farmer. So the farmer can't have the best of both worlds. Just hang out there in open storage indefinitely.

Something has to happen within thirty days.

REP. BELTER If it goes beyond those thirty days is it still covered by bond?

JON MIELKE: You are still covered until the contract is signed but at that time it is incumbent on the warehouseman to get back in touch with the farmer and say we have to do something with this. It can just sit there. Get a signed contract or issue a check. The warehouse man has to force the issue. If there is not a signed contract there is bond protection.

REP. BELTER : Why can we just run this under a bond or is there no bonding company that will do that. I have heard in the past it cost to much to do that but we are incurring the cost throughout this method.

JON MIELKE: That is exactly what the PSC proposed four years ago. We did have a larger bill that resulted in the passage in Chapter 1602.1 of the Century code. The PSC did have a section in there that would have required bond coverage on credit sale contracts. I believe the estimate at that time would cost the industry .06 cents per bushel. So it was very expensive insurance. The real down side with that proposal is that there would be a number of elevators that would not be able to get bonded. They would not be considered a solid enough risk to get a bond at any rice. This would really weaken the overall structure of the industry.

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REP. BELTER : When you say .06 cents.. On the insured bushels or .06 cents on the capacity of the elevator.

JON. My remembrance is .06 cents of the bushels that would be covered under the bond. Of your credit sale bushels.

JON: When we talk about the free ride as to people not paying premiums. This would only happen when we reached the \$10,000,000.00 million. And there were no more remittances being payable by anybody. If we got into an insolvency case, we worked up to the ten million maximum then at the end when we were cutting checks we would just take an offset. In the settlement. The spread sheet shows what other states are doing.

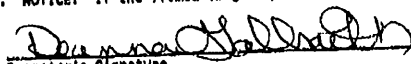
The time it will take to get the fund up to ten million will be about six and half years assuming no claims. The fund will be handled by the Bank of North Dakota.

There are still risks even with this contract of insurance with the maximum payment being one hundred thousand dollars maximum payment. With 80% of that actually being paid.

REPRESENTATIVE PHILIP MUELLER;; The assessment is designed to be funded until it reached a ten million dollar cap. The assessments go away until there losses take the fund down to five million dollars and then the assessments kick in again until the fund reaches it's cap again of ten million dollars. There are two animals we are dealing with. Deferred contracts and credit sales contracts and there different issues but they do fall under the umbrella of credit sales.

Abou fifty percent of farmers sales to elevators are credit sales contracts. There are all sorts of reasons for this happening. When I took my grain to the New Hope e'levator this fall there is a red poster on door that says you will put your grain on credit sales contract or you will be cut a

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check. They want to get the grain in the car and down the track., That is what is happening to the grain industry. The farmers basically have two options. I am here to tell you insolvency's are expensive. They are not pleasant. I solicit a DO PASS on bill.

MIKE CLEMENS: I am dealing with the Wimbeldon. Situation. Please see the printed cover story BANK ROBBERY. It basically was Mikes testimony. Please support HB 1197.

We would like to see a higher limit then the \$100,000.00.

SCOTT DORSON: I am in the Wimbeldon situation. The insolvency affects everyone in the community.

JOHN MIDLIGHTER: We would like to see an amendment that make the bill voluntary not mandatory. You should be able to opt out of the Bill. Our membership feels that they should be able to self insure themselves. I can't give you a count as to how many people would opt out. Our membership would like to make there own decisions.

REP. BELTER : Would you opposed to requiring everybody to being in it?

JOHN MIDLIGHTER: No we would not be appeased to that.. Our preference is voluntary.

MARK SITZ: We stand in support of HB 1197. It is a need that has to be addressed.

Today we have nothing.

STEVE STREGE: Most insolvency's were specialty houses. I would like to compliment the PSC for the support they gave us on the Wimbeldon case. We support Bill

VICE CHAIRMAN POLLERT: Representative Pollert read testimony from the North Dakota Grain Dealers that stated they support HB 1197.

LOWELL BERINSTIEN: Mr Vice Chairman and members of Committee.

I am chair of Agriculture Coalition. Please see pamphlet.

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I think that this Bill would help independent operators. I see this as a positive movement.

This is cheaper then buying bonds.

LANCE HAUGE. We support HB 1197.

VICE CHAIRMAN POLLERT: WE WILL CLOSE ON HB 1197

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