



Ninety-Ninth Legislature - First Session - 2005
Revised Committee Statement
LB 439

Hearing Date: February 8, 2005
Committee On: Agriculture

Introducer(s): (Kremer, Hudkins, Stuhr)

Title: Change provisions relating to grain dealers, grain warehouses, and direct delivery grain

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
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Vote Results:

- | | | |
|---|---------------------|--|
| 7 | Yes | Senator(s): Kremer, Wehrbein, Preister, Burling, Cunningham, Erdman, Fischer |
| | No | |
| | Present, not voting | |
| 1 | Absent | Senator(s): Chambers |
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Proponents:

Senator Bob Kremer
 Robert C. Andersen
 Rocky Weber
 Randy Robeson
 Bill Schuster
 Pat Ptacek
 Jay Rempe
 Michael Kelsey

Representing:

Introducer
 Nebraska Cooperative Council
 Nebraska Cooperative Council
 Frontier Cooperative Council
 Self
 Nebraska Grain and Feed Association
 Nebraska Farm Bureau Federation
 Nebraska Cattlemen

Opponents:

Representing:

Neutral:

Jerry Vap
 Mike Bartels

Representing:

Nebraska Public Service Commission
 Nebraska Public Service Commission

Summary of purpose and/or changes:

LB 439 primarily establishes a statutory network within which elevators may accept receipt of direct delivery grain tendered for storage to assure that such transactions occur in a responsible manner. The secondary purpose of the bill is to provide mechanisms to better enable producers who obtain a storage position via substitution in such transactions to substantiate their status as valid storers of grain entitled to claim against liquidated grain

assets and the warehouse bond in the event of financial failure of the warehouse pursuant to §88-547. Specific elements of the bill include the following:

- Section 1 of the bill inserts new defined terms within section §75-902 of the Nebraska Grain Dealer Act and section 4 inserts new defined terms within section §88-525 of the Grain Warehouse Act.
 - “Direct delivery grain” is defined under both the Grain Dealer and Grain Warehouse Acts as all grain bought, sold or transported in the name of the warehouse, or otherwise received, other than grain that is physically deposited in the warehouse.
 - “Grain payable obligation” is defined as an obligation of a warehouse arising from acceptance of direct delivery of grain tendered for storage that is satisfied by delivery on demand of the same amount and quality of grain.
 - “Received grain” relevant to defining grain in storage under the Warehouse Act is defined as grain physically deposited at a warehouse or directly-delivered grain accepted by certified warehouses at the time the warehouse documents the storage position afforded the producer.

- Amends §75-905 of the Grain Dealer Act to add default on a grain payable obligation as an event enabling the tenderer of direct delivery grain for storage to claim against a warehouseman’s grain dealer security. The tenderers right to claim against the dealer security is preserved provided:
 - a demand for satisfaction of the grain payable obligation is made within 30 days of delivery
 - If the tenderer accepts payment in lieu of satisfaction of the grain payable, the tender attempts negotiation of the payment within 30 days of issuance, and;
 - notification is made to the Public Service Commission within 30 days of when the loss becomes apparent.

- Incorporates grain payables within §75-903 of the Grain Dealer Act for purposes of calculating the amount of grain dealer security to be maintained by a warehouse licensee. Only grain payables not satisfied within 7 days in the previous year are used in calculating the amount of grain dealer security.

- §88-535 of the Grain Warehouse Act is amended by section 8 to authorize the Public Service Commission to establish regulations for issuing custom scale tickets to document receipt of direct delivery grain tendered for storage. Scale tickets become *prima facie* evidence that the warehouse has a grain payable obligation to the producer.

- Section 7 of the bill inserts a new provision within the Grain Warehouse Act prohibiting warehouses from receiving direct delivery grain tendered for storage unless annually certified. Higher financial standards are required for certification, including that the warehouse:
 - Annually submits audited, rather than reviewed, financial statement
 - Maintains a minimum of \$300,000 net worth
 - Maintains grain dealer licensure

- Section 7 further requires elevators receiving direct delivered grain tendered for storage to provide prior disclosure of following:

- That warehouse acceptance of direct delivery grain tendered for storage creates a grain payable obligation to producer upon delivery until a storage position is given and that the producer may claim against the warehouseman's grain dealer bond if warehouse fails to timely consummate the intended storage position to be given in exchange
 - That direct delivery may affect farm program eligibility
 - That the producer may submit a copy of form to the Public Service Commission in order notify the Commission of the producers intended status as valid storer or owner of grain protected by Warehouse Act.
- Other provisions:
 - Prohibits any warehouse from recording grain as received and loaded out if grain is not physically deposited in or physically removed from the warehouse. The Public Service Commission may prescribe rules for adjusting a warehouse daily position record to account for grain payables resulting from receipt of direct delivery grain tendered for storage, and to show transfer of grain among accounts in satisfaction of grain payable obligations
 - Amends §88-543 of the Grain Warehouse Act to expressly prohibit receiving direct delivered grain with intent to give producer storage position in exchange:
 - a) without consummating the storage position within 15 days after delivery or
 - b) at any time elevator does not have actual grain present to honor the substitution
 - Allows warehouses to use 70% of value of real assets to meet minimum net worth requirements
 - Calculates grain dealer bond amount required based on the previous years highest quarterly purchases rather than annual purchases

Explanation of amendments, if any:

The Committee amendment strikes the original provisions and becomes the bill. The amendment substantially revises the bill but carries out the original intent of the bill by somewhat different mechanisms. As amended, the bill would essentially codify pending regulatory resolution of overlapping Grain Dealer and Grain Warehouse Act application to direct delivery grain tendered for storage. Specific comparisons of the amendment with the bill as introduced include the following:

- The Committee amendment omits new defined terms for "grain payable obligation" and "received grain" contained in the original bill, and provides a modified definition of "direct delivery grain." New defined terms for "direct delivery grain," "direct delivery obligation," "in-store transfer" and "post delivery storage position" are inserted within the Grain Dealer Act by reference to definitions provided under §88-526 of the Grain Warehouse Act. A revisors rewrite for clarity of the existing definition of "grain dealer" under §75-902 from the original bill is retained in the amendment. New terms are defined under the Warehouse Act in section 4 of the amendment for common usage in both the Grain Dealer and Grain Warehouse acts as follows:
 - "Direct delivery grain" is defined as all grain bought, sold or transported in the name of the warehouse other than grain received at the warehouse
 - "Direct delivery obligation" is defined as an obligation of a dealer to transfer title to warehouse-owned grain via in-store transfer to a direct delivery tenderer upon delivery of the grain

- “in-store transfer” is defined as any method by which a warehouse transfers title to warehouse-owned grain in satisfaction of a direct delivery obligation with the grain remaining in the warehouse
 - “Post direct delivery storage position” is defined as a storage position acquired through in-store transfer
- Default on a grain payable obligation as an event for which a tenderer for storage of direct delivery grain may claim against a warehouseman’s dealer bond is omitted consistent with omission of the grain payable concept. The amendment does retain a similar concept by amendment to §75-905 of the Grain Dealer Act contained in section 3 of the amendment that the grain dealer security secures payment for the value of direct delivered grain until such time as a post-direct delivery position is consummated for up to 30 days. This clarification is repeated within the definition of “direct delivery obligation” that such obligation is a grain dealer obligation until a post delivery storage position is secured.
- Omits reference to “grain payable’s” for purposes of calculating the amount of grain dealer security a warehouseman maintains to guarantee payment on grain dealer obligations. Amendments to §75-903 under section 2 of the amendment provide that the calculation of the amount of grain dealer security includes the value of direct delivery grain on the date of delivery excluding direct delivery grain if same day satisfaction of the direct delivery obligation occurs.
- Omits specific authorization for PSC to prescribe rules for issuing scale tickets for the receipt of direct delivery grain. Pre-existing authority under the Grain Dealer Act to prescribe regulations for use of custom weight scale tickets is not changed by the bill. Pending regulations of the PSC address issuance of new category of custom scale ticket for creating records of direct delivery grain.
- Omits original section 7 of the bill that established a new certified warehouse category and which allowed only certified warehouses to receive direct delivery grain tendered for storage. The committee amendments would therefore apply to direct delivery storage activities of all warehouses and not limit ability to offer such transactions to selected warehouses. The amendment further omits provisions of the original bill creating a new disclosure form. Pending PSC regulations would add similar disclosures to existing grain dealer documentation required to be given to producers prior to, or at the time of delivery, under existing statutory authority.
- An express prohibition against recording grain as physically entering or removed from the warehouse if physical deposit or removal does not occur is retained. The prohibition is added as an additional enumerated prohibited act under section §88-543 of the Grain Warehouse Act by section 6 of the amendment. Section 6 of the amendment retains prohibitions contained in section 9 of the introduced bill against receiving direct delivered grain for storage at any time a warehouse does not have sufficient grain to exchange. The amendment also retains a prohibition against receiving direct delivery grain for storage without consummating the storage exchange in conformity with regulations of the Public Service Commission.
- The amendment omits a change to §75-903 found in section 2 of the introduced bill that would have calculated the amount of dealer bond as 7% of quarterly grain purchases rather than annual grain dealer purchases.

- The amendment retains a provision that allows warehouses to use 70% of the appraised value of real assets in determining whether a warehouse meets net worth requirements.

Senator Bob Kremer, Chairperson