



# SOUTH DAKOTA LEGISLATURE

State Capitol, 500 East Capitol Ave., Pierre, South Dakota 57501-5070

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June 12, 2012

Chris Nelson, Commissioner  
Public Utilities Commission  
Capitol Building  
500 East Capitol Avenue  
Pierre, South Dakota 57501

Dear Commissioner Nelson:

The Government Operations and Audit Committee has scheduled a meeting for June 28, 2012, in room 413, in the State Capitol Building, to review various issues involving state government.

The Committee requests that you be present on June 28, 2012 to discuss the current bonding requirements for grain buyers in the State of South Dakota. As part of this discussion the Committee has developed the following questions for your consideration:

- 1. Why aren't producers entitled to a secured position when they have delivered grain to a grain warehouse or grain buyer (have not yet been paid) and the warehouse or buyer becomes insolvent?**
- 2. North Dakota has laws in place to protect the producer from loss, for example:**

*60-02.1-21. Grain to be kept insured for benefit of owner by grain buyer.* A license may not be issued to a facility-based grain buyer unless all company-owned and unconverted scale ticket grain is kept fully insured at the expense of the grain buyer for the benefit of the owner at the current market value of the grain against loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of direct physical loss as provided by the insurer in a policy approved by the insurance commissioner. An insurance policy may not be transferred or assigned to any person for any purpose.

*60-02.1-27. Going out of business - Redemption of receipts.*

When a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, such grain buyer shall redeem all outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of such receipts, upon due notice, must accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the commission and all receipt holders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein shall be settled in cash and priced on the market on the day of closing.

*60-02.1-28. Insolvency of grain buyer.*

A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed by the licensee or is unable to make redelivery upon proper demand. The licensee may not assess receiving or redelivery fees on grain that is redelivered during a suspension, following a revocation, or when the owner of the grain is taking redelivery because the licensee is unable to pay for the grain.

*60-10-05. Credit-sale contract indemnity fund - Availability of money.*

Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the public service commission serve as the trustee, the public service commission shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

*60-10-06. Credit-sale contract indemnity fund - Reimbursement limit.*

The amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.

**Does South Dakota have similar laws or rules in place to protect the producer?**

- 3. If South Dakota does not have similar laws in place, would these North Dakota laws have helped our producers in the Anderson Seed insolvency?**
- 4. Explain when a producer is at risk in a typical cash sale and a typical credit sale and for how long are they exposed to the risk of nonpayment.**
- 5. What law or rule changes, if any, does the Public Utilities Commission have planned?**

This agenda item is scheduled to begin at 1:00 p.m.

If you have any questions, please contact Tim Flannery with the Department of Legislative Audit at 773-3595.

Sincerely,



Senator Jeffrey Haverly, Chair  
Government Operations and Audit Committee