

Approved March 17, 1987
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Clifford V. Campbell at
Chairperson

9:02 a.m./~~p.m.~~ on March 4, 1987 in room 423-S of the Capitol.

All members were present except: Representative Dean, who was excused.

Committee staff present: Norman Furse, Revisor of Statutes Office
Raney Gilliland, Legislative Research Department
Pat Brunton, Committee Secretary

Conferees appearing before the committee: Mike Beam, Executive Secretary, Cow-Calf/
Stocker Division, Kansas Livestock Association
Howard Tice, Executive Director, Kansas Association
of Wheat Growers
Gary M. Bothwell, Acting Director, Kansas State
Grain Inspection Department
Don Jacka, Assistant Secretary of Agriculture,
State Board of Agriculture

Hearings were continued on House Bill 2518 with Mike Beam testifying in opposition of the bill. He stated that the Kansas Livestock Association is not insensitive to the losses which occur when a grain warehouse fails. He further stated that Kansas farmers and ranchers are not sold on a mandatory indemnity program, Attachment I.

Howard Tice testified in opposition of HB 2518 stating the indemnity fund was not supported because it failed to meet the criteria of emphasizing preventative measures instead of treating symptoms, Attachment II.

Hearings on House Bill 2518 were closed.

Don Jacka testified in opposition of HB 2490 asking the committee to find a gentle, or violent, demise for HB 2490. He stated the cost would be tremendous.

Gary Bothwell testified on House Bill 2490 suggesting to the committee that this bill be set aside for a one year study, Attachment III.

Don Jacka appeared before the committee asking that House Bill 2519 be considered favorably.

Representative Roenbaugh made a motion to pass House Bill 2519.
Representative Apt seconded and the motion passed.

Discussion was held on House Bill 2235. Representative Gross moved to pass House Bill 2235. Representative Hamm seconded and the motion passed.

Representative Hamm read a memorandum from Senator Loran Schmit and Roger Smith, Interstate Grain Marketing Compact Coordinator, stating that on Friday, February 20, Governor Mike Sullivan of Wyoming, signed the Interstate Grain Marketing Compact legislation making Wyoming the fourth state to agree to join this compact. The memorandum further encouraged Kansas supporters to redouble their efforts to form the compact, as only one more state is needed to start organization of the compact, Attachment IV.

The meeting adjourned at 10:00 a.m.



2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358
Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT
OF THE
KANSAS LIVESTOCK ASSOCIATION
TO THE
HOUSE AGRICULTURAL & SMALL BUSINESS COMMITTEE
REPRESENTATIVE CLIFFORD CAMPBELL, CHAIRMAN
IN REGARD TO
HB 2518 - KANSAS GRAIN PRODUCER SECURITY ACT
PRESENTED BY
MIKE BEAM
EXECUTIVE SECRETARY, COW-CALF/STOCKER DIVISION
MARCH 3, 1987

Mr. Chairman and members of the committee, I'm Mike Beam with the Kansas Livestock Association. KLA is a voluntary trade organization made up of approximately 9,000 members. These members include farmers and ranchers involved in many phases of the livestock business. In addition to livestock, a large portion of our membership consists of grain producers who would be affected by a grain indemnity fund as proposed in HB 2518.

For at least five years KLA's policy has opposed the creation of an indemnity fund. I'll attempt to summarize the reasons for this opposition:

(1) HB 2518 will add to the cost of grain production. Three mills, or 1/3¢ per bushel, doesn't sound like much, but many producers will view this

ATTACHMENT I
March 4, 1987

as an unnecessary grain tax.

(2) An indemnity fund can lead to less accountability by grain warehouse management. Our members have felt an indemnity fund would be an incentive for these elevator managers to be less cautious and fearful of repercussions from grain fraud or embezzlement.

(3) What happens if the state has a large claim 30 days after the effective date of HB 2518? Furthermore, a second claim could occur a year or two after the initial claim and the fund would never reach a meaningful balance. If this scenario would happen, a farmer may be forced to wait several years before receiving any benefits. Once a fund is established, it could be difficult to hold the assessment to 3 mills.

(4) The provisions of HB 2518 charge the same assessment for all producers regardless if they store the grain at the warehouse or simply sell it in a cash transaction. (For example, farmer A may store his grain at the elevator for a year and he will pay the 3 mill/bushel charge once it is sold. Farmer B may choose to store his grain on the farm for 60 days and then sell it to his local elevator. Both farmers pay the same assessment, but are they receiving the same protection?)

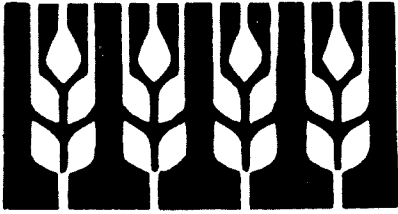
(5) An indemnity fund is no more than a blanket insurance policy for all farmers doing business with a grain warehouse. This proposal is a mandatory insurance policy. Many farmers and ranchers choose not to buy insurance on their crops and livestock. I'm confident that many producers will object to a mandatory insurance program.

At one time, two insurance companies offered "Grain Producers' Indemnity Policies". Both plans gave farmers protection for losses which occur when a grain warehouse fails. There apparently has been little demand for such insurance. One company launched a major marketing program

in Montana and only sold about 30 policies. The point is, farmers were unwilling to buy grain indemnity insurance when it was voluntary. Should the state force all farmers to buy insurance today?

Mr. Chairman and committee members, the Kansas Livestock Association is not insensitive to the losses which occur when a grain warehouse fails. We sincerely believe however, that Kansas farmers and ranchers are not sold on a madatory indemnity program. We respectfully ask that you not pass HB 2518. Thanks for allowing us to present our views and I'd be happy to respond to any questions.

KANSAS ASSOCIATION
OF WHEAT GROWERS



TESTIMONY

House Bill 2518

Committee on Agriculture and Small Business
Chairman, Representative Clifford Campbell

Submitted by Howard W. Tice, Executive Director

On behalf of the members of the Kansas Association of Wheat Growers, I appreciate this opportunity to express our views in opposition to House Bill 2518.

In 1985, when the Legislative Interim Committee examined the idea of an indemnity fund, we testified against it. At that time, we expressed the view that such a fund would create a false sense of security. We also stated concern that it would be a costly way to do so. We said then, that we felt farmers would use less caution in selecting an elevator to store their grain, when they have a choice. We expressed concern in 1985 that elevator managers who might have the tendency to speculate with their depositors' grain, could easily look at an indemnity fund as a backstop, in case their dealings went sour.

Our position remains consistent today. Last September, Marvin Webb presented a similar proposal to HB 2518, at a meeting of our Executive Board. The Board appointed a committee to study the proposal, and to contact local elevators. Many of our Directors who were not on the committee also asked elevators and their neighbors about the issue. The result was unanimous opposition to the proposal. At our annual convention, the issue came up in our Elevator Bankruptcy Resolution Committee. Again, the decision was unanimous to oppose the creation of an indemnity fund.

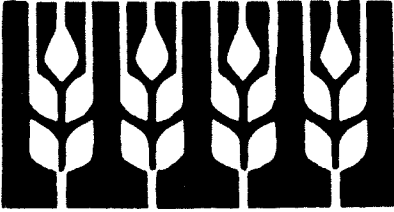
I would like to suggest that this committee consider some serious questions as you ponder this issue. Is it good public policy to mandate an insurance program where those who are in a very low risk category pay a higher share of premium costs, or even an equal share, with those in a high risk category? Is it good public policy to create an indemnity fund with no enforcement provisions to reduce the risk of abuse? Is it fair for strong, well managed businesses to provide funding to support smaller, perhaps shakier operations? As much as we would like to keep all Kansas businesses functioning, is it wise to assist a grain elevator to stay in business on the premise that local farmers need the storage, if in the end, they wind up losing their grain, or a portion of it? Would it not be a better idea for those farmers to haul the grain a few miles further, if it meant their investment would be safer? In other words, if an elevator cannot do business properly, and deal honestly with local farmers, should it be kept in business?

We were reminded yesterday, that all elevator managers are not rascals. I agree with that emphatically. As a matter of fact, the number of elevator failures in our state proves it to be true. However, some of them are. We do not feel that all the rest of the elevators, and producers should subsidize the minority that are either poor or dishonest businessmen.

I would like to refer to a Task Force you have heard about many times in the last two years. It was convened at the request of Kansas Grain Inspection Department Director Marvin Webb during the 1985 Legislative session. I was a member of that Task Force, and I would say that a good cross section of producers, grain industry representatives and others took part in a productive series of meetings. In addition to my participation in the Task Force discussions, my name appears on the cover of the Final Report, along with Frank McBride of Evans Grain in Salina, Bill Morand of Collingwood Grain in Hutchinson, and Bill Fuller, as preparers of the report.

In the report, it is pointed out that Kansas had, at that time, 700 grain warehouses, compared to the U.S. average of 154 per state. Our storage capacity of 515 million bushels compared to the average of 143 million per state. We showed that between 1970 and 1980, there were 279 elevator failures in the U.S. compared to only 8 in Kansas.

KANSAS ASSOCIATION OF WHEAT GROWERS



Testimony on House Bill 2518

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Since 1980, the pace in Kansas has picked up, and our average of .8 failures per year has increased in the last six years to 1.8 per year. However, Illinois, one of the states with an indemnity fund, has experienced 37 elevator failures in the same six years (1981-1986), for an average of 6.1 per year. I would point out that Illinois has a similar number of elevators to Kansas, with comparable storage capacity.

Again in reference to the 1985 task force, I would note that the subject of indemnity funds was discussed, but not supported. Instead, the task force recommended that "The Kansas Grain Inspection Department, and farm organizations should increase the awareness of insurance programs which may be purchased by grain producers to provide protection from potential losses when dealing with grain warehouses and/or grain dealer firms." We further recommended that the Legislature conduct a preliminary hearing to determine the feasibility and potential support for a state administered FDIC-type program for grain warehouses.

House Bill 2518 does not create an FDIC-type program. To be sure, it would be an insurance program of sorts, where the custodians of producers' grain would pay "premiums" in the form of a 3 mill levy to build a slush fund to cover producer losses in the event poor management or dishonesty results in the failure of ~~of grain~~ warehouse. However, the only enforcement capability in the bill is for collection of the mill levy. On the other hand, the FDIC comes in well before bank failures, and mandates changes in management practices to try to steer the troubled institution back to solvency, before taking the drastic step of closing it. In addition, there is a pool of buyers to take over failed banks.

Let's take a look at the cost of the proposed indemnity fund. When the chairman of our Elevator Bankruptcy Committee checked with his local elevator, he was told that the bond for that facility cost them between \$600 and \$800 per year. Since their total grain intake per year is slightly under three million bushels, a 3 mill assessment would mean a payment of slightly under \$15,000 per year. Using a figure of \$14,000 for the proposed mill levy, and \$700 for the bond, to make figuring simple, it is easy to see that the fund would require a payment 20 times higher than the bonding fee, which would, I understand, still be required. It was estimated that it would take five years to build the necessary \$10,000,000 balance. That means that this elevator would pay in \$70,000, plus \$3,500 for the bond. The mill levy then, would be equal to 100 years worth of bond premiums at the current rate, and the bond would have to be paid, too. Of course, that assumes that the fund remains untouched.

If the number of elevator failures increases still further, and we suspect it would with such a slush fund to stimulate more speculation, the mill levy would continue for an indefinite period.

Proponents have indicated their belief that interest on the \$10,000,000 of idle funds would replenish the fund in the event of payouts. I would point to the state's track record with idle fund accounts. It is well to trust the members of this committee to look out for the interests of agriculture. However, we are headed toward a more urban oriented legislature after reapportionment, and we already have people in influential positions in the current Legislature that are not supporters of our state's number one industry. I would have to state that I cannot believe this idle fund account would be safe.

**KANSAS ASSOCIATION
OF WHEAT GROWERS**



Testimony on House Bill 2518

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The final concern I would like you to consider, is what will happen if, as was alluded to yesterday, states are not allowed to enforce participation in indemnity funds, on elevators under federal license. There is no doubt we would see a major departure from state licenses, in favor of the drastically lower cost of bonding requirements under the federal system. The argument may be, on this side of the issue, that the producer will pay two thirds of the cost of the fund. Some elevators may even admit that the producer, in the end will pay all of the fund, but the check will still come from the elevator, and it will show up on their books as an operating expense. As Representative Solbach pointed out yesterday, can we, producers or warehouses, afford to take \$2,000,000 per year out of our already depleted economy, to provide a program that has very little chance of actually solving the real problem.

In conclusion, I would like to again refer back to the 1985 Grain Elevator Bankruptcy Task Force. One common theme of the discussions was that the best way to approach the problems caused by grain elevator failures, was to emphasize preventative measures. This theme resulted in the recommendations for increased inspections, improved inspection procedures, better information about deferred contracts and insurance programs, stronger penalties and longer sentences for grain crimes, general fund revenues to pay for expanded KGID responsibilities, and the study of an FDIC-type program for grain warehouses. The indemnity fund was proposed, and discussed, but it was not supported because it failed to meet the criteria of emphasizing preventative measures instead of treating symptoms.

I believe that this committee, by setting emotion aside, and considering the issue in the light of clear logic and common sense, will arrive at the same conclusion.

FINAL REPORT



TASK FORCE . . .

TO REDUCE GRAIN WAREHOUSE & DEALER FAILURES

Prepared by:

Bill R. Fuller, Chairman

Frank McBride

Howard W. Tice

William R. Morand

February 8, 1985

P R E F A C E

Grain producers in Kansas are facing record losses from grain elevators and grain brokerage firms filing bankruptcy. In fact, it is projected that one recent elevator failure in northeast Kansas alone will likely result in total losses greater than the combined losses of all failures since 1967 in Kansas. In addition, bankruptcies by three grain dealers is expected to cause even larger losses to farmers, elevators and truckers.

Even though the dollar losses in these recent failures is alarming, we must remember that Kansas has experienced few grain warehouse failures when compared to other states. During the last 19 years, Kansas has experienced 16 closings resulting from bankruptcy or receivership -- 0.8 failures per year.

1970 - 1980:

| | United States | Kansas |
|-------------------|--|-----------------|
| Number Warehouses | 6,322 (avg. 154/state) | 700 |
| Capacity | 5.9 billion bu. (avg. 143,000,000/state) | 515 million bu. |
| Failures | 279 (avg. 2.8/year) | 8 (avg 0.8/yr.) |

Due to these recent grain elevator and grain brokerage firm failures in Kansas, the Kansas State Grain Inspection Department decided to convene a TASK FORCE for the purpose of discovering viable solutions to the problems at hand.

The economic repercussions from the bankruptcies were severe for the geographical areas involved and it became obvious some kind of remedial action is needed. Hopefully, the TASK Force could develop some practical proposals for submission to the Kansas Legislature for its consideration and subsequent legislative action! Those specific proposals or recommendations are set forth at the end of this report.

TASK FORCE MEMBERS:

Erwin Schrag, Jr., Alexander & Alexander, Inc.
Larry Holgerson, Holgerson Grain Dealers
Frank McBride, Evans Grain
C. L. Regini, Far-Mar-Co
Ivan W. Wyatt, Kansas Farmers Union
Don Epps, Chairman, Grain Advisory Commission
Bill Fuller, Kansas Farm Bureau
David W. Dewey, Wichita Bank for Co-ops
Jim Bair, Kansas Wheat Commission
Melissa Cordonier, Kansas City Board of Trade
Stanley Little, Farmer & Grange Member
Dwaine Liby, Pauline Farmers Co-op Elevator
Mike Beam, Kansas Livestock Association
Nancy E. Kantola, Kansas Co-op Council
Howard W. Tice, Kansas Association of Wheat Growers
Wm. R. Morand, Collingwood Grain, Inc.
John Larson, Cargill, Inc.
Tom Tunnell, Kansas Grain & Feed Dealers Association
Robert Batte, Bunge Corporation
Joe Gregg, Morrison-Gregg-Mitchell Grain Company
Wayne Johnson, Topeka Mill & Elevator (General Mills)

KANSAS GRAIN INSPECTION DEPARTMENT STAFF:

Marvin R. Webb, Director
Jack L. Sweeney, Assistant Director
Gary Bothwell, Grain Inspection Coordinator
Sam Reda, Chief Warehouse Examiner
Ron Scheibmeir, Warehouse Examiner II

TASK FORCE RECOMMENDATIONS

1. Increase Warehouse Examinations

Currently, K.S.A. 34-228 reads:

Every public warehouse licensee shall be entitled to one complete examination of such licensee's warehouse by the department each year, without further costs.

Recommendation: Amend K.S.A. 34-228 to read as follows:

Beginning October 1, 1985, the Kansas Grain Inspection Department shall examine each state licensed grain warehouse three times in every 24 month period with a minimum of one examination every 12 months.

2. Improve Kansas Grain Inspection Department Warehouse Examination Procedures

Recommendation: Kansas Grain Inspection Department shall seek the assistance of other agencies, including but not limited to, the Office of Attorney General, Kansas Bureau of Investigation and the Office of Inspector General of the United States Department of Agriculture, to review warehouse examination procedures, train personnel and investigate criminal activities including fraud, grain embezzlement, computer crimes, false writings and other crimes which may be associated with the grain business.

3. Require Grain Buyer to Inform Sellers that Deferred Payment Contracts and Delayed Pricing Contracts are NOT Covered by Warehouse Bond

Recommendation: A grain buyer should be required to inform sellers that Deferred Payment Contracts and Delayed Pricing Contracts are voluntary

extensions of credit and are not protected by the warehouse bond.

The contract shall include the following statement prominently displayed in not less than ten point, all capital type, framed in a box with space provided for the seller's signature:

"THIS CONTRACT CONSTITUTES A VOLUNTARY EXTENSION OF
CREDIT PAYMENTS TO THE SELLER AND IS NOT PROTECTED
BY THE WAREHOUSE BOND."

(must be signed by seller)

4. Increase Prosecution, Strengthen Penalties and Increase Sentences for Grain Crimes

The task Force

- * Insists on timely prosecution of individuals in crimes associated with grain warehouses and grain dealer firms.
- * Recommends increases in penalties for crimes including embezzlement, grain embezzlement, fraud and false writings.
- * Insists on sentences appropriate to the dollar losses as a result of grain business crimes.
- * Recommends extending the current 2 year state statute of limitations to 5 years.

5. Increase Awareness of Insurance Programs

Recommendation: The Kansas Grain Inspection Department and farm organizations should increase the awareness of insurance programs which may be purchased

by grain producers to provide protection from potential losses when dealing with grain warehouses and/or grain dealer firms. Two companies currently offer approved policies.

6. Examine Grain Dealer Firms

Recommendation: The Task Force suggests the legislature conduct public hearings to examine the problems and losses associated with grain dealer firms (brokers, truck buyers, other non-warehouse buyers) to determine the need for licensing, regulating and/or bonding.

7. Study FDIC-Type Program for Grain Warehouses

Recommendation: The Task Force encourages the legislature to conduct a preliminary hearing during the 1985 session to determine the feasibility and potential support for a state administered FDIC-type program for grain warehouses. If there is sufficient support, the Task Force believes an Interim Committee study be conducted.

8. Request State General-Fund Revenues

Recommendation: The Task Force requests the Kansas Legislature appropriate adequate general fund revenues for all expanded responsibilities of the Warehouse Division of the Kansas Grain Inspection Department. (Currently, Kansas is the only state which funds the department entirely by fees and without State general fund revenues.)

THE STATE OF KANSAS



Mike Hayden
Governor

Gary M. Bothwell
Acting Director

GRAIN INSPECTION DEPARTMENT

GENERAL OFFICE

700 Jackson, Suite 800, P.O. Box 1918, Topeka, Kansas 66601-1918

INSPECTION DIVISION

WAREHOUSE DIVISION

PHONE (913) 296-3451

INSPECTION POINTS

| | |
|------------|-------------|
| ATCHISON | KANSAS CITY |
| COLBY | SALINA |
| DODGE CITY | TOPEKA |
| HUTCHINSON | WICHITA |

PRESENTATION FOR THE
HOUSE AGRICULTURE COMMITTEE

PRESENTED

BY

GARY M. BOTHWELL

ACTING DIRECTOR

KANSAS STATE GRAIN INSPECTION DEPARTMENT

WEDNESDAY, MARCH 4, 1987

9:00 A.M.

ROOM 423-S - STATE HOUSE

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM GARY BOTHWELL WITH THE KANSAS STATE GRAIN INSPECTION DEPARTMENT.

H.B. 2490 IS TRANSFERRING THE AUTHORITY TO CHECK TEST GRAIN HOPPER AND ELECTRONIC BULK WEIGHING SCALES TO THE BOARD OF AG WEIGHTS AND MEASURES DIVISION UNDER KSA 83-301 LARGE CAPACITY SCALES, WHERE THEY ARE TESTED BY PRIVATE SCALE COMPANIES.

THE WEIGHTS AND MEASURES DIVISION HAS THE RESPONSIBILITY OF CERTIFYING ALL HANGAR WEIGHTS AND LARGE WEIGHTS FOR TESTING SCALES. WE BELIEVE IT WILL BE MORE ECONOMICAL TO THE INDUSTRY AND A TIME SAVING SYSTEM.

IF OUR ONE SCALE MAN IS ON ONE SIDE OF THE STATE AND A SCALE IS OUT ON THE OTHER SIDE OF THE STATE AND HAS BEEN REPAIRED, IT WOULD BE 2 TO 3 DAYS BEFORE WE COULD GET THERE TO TEST THE SCALES AND PUT IT BACK IN SERVICE. ALSO, IF OUR SCALE MAN FINDS A SCALE THAT NEEDS REPAIR, THE ELEVATOR MUST CALL IN A SCALE COMPANY TO REPAIR IT. THIS IS A DUPLICATION OF COST. OUR GRAIN ADVISORY COMMISSION RECOMMENDED THAT WE PROCEED WITH THIS PROPOSAL PROVIDING THE GRAIN TRADE IS RECEPTIVE TO IT.

SINCE THIS BILL WAS INTRODUCED AND A SURVEY OF THE GRAIN TRADE HAS BEEN MADE AND SOME PROBLEMS HAVE SURFACED, SUCH AS, SOME ELEVATORS WOULD HAVE TO PURCHASE HEAD HOUSE WEIGHTS AND SOME HAVE FABRICATED WEIGHTS.

WITH THIS IN MIND, I WOULD LIKE TO SUGGEST TO THE COMMITTEE THAT THIS BILL BE SET ASIDE FOR A ONE YEAR STUDY.

THANK YOU.

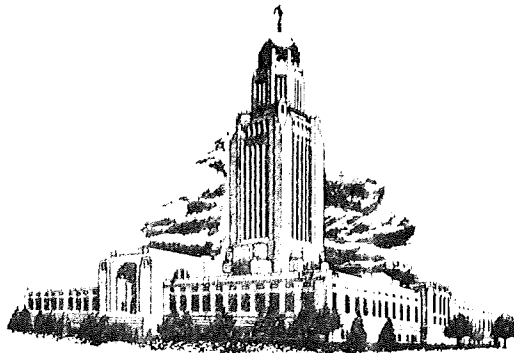
Nebraska State Legislature

Unicameral
Lincoln, Nebraska 68509

SENATOR LORAN SCHMIT

District No. 23
State Capitol
Lincoln, Nebraska 68509
Office: (402) 471-2719

Box 109
Bellwood, Nebraska 68624



COMMITTEES

Chairman, Public Works
Banking, Commerce and Insurance
Executive Board
Reference
Legislative Council

EIGHTY-NINTH LEGISLATURE

MEMORANDUM:

To: All the supporters of the Interstate Grain Compact

From: Senator Loran Schmit and
Roger Smith, Nebraska IGMC Coordinator

Date: February 26, 1987

On Friday, February 20, Governor Mike Sullivan, of Wyoming, signed the Interstate Grain Marketing Compact legislation making Wyoming the fourth state to agree to join this compact. There are still twelve states considering this legislation and we need only one more state to start organizing the compact. The addition of Wyoming improves our odds substantially and should encourage us to redouble our efforts to form the compact.

LS:lr

ATTACHMENT IV
March 4, 1987