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Bill Analysis

Legislative Service Commission

Am. H.B. 421

125th General Assembly
(As Passed by the House)

Reps. Schlichter, McGregor, Fessler, Gibbs, Collier, Aslanides, Wolpert, Seaver, Reinhard, Carmichael, Distel, Domenick, C. Evans, Niehaus, Perry, Setzer, Wagner, Widener, Yates, Driehaus, Barrett, Book, Carano, Chandler, Cirelli, Combs, D. Evans, Flowers, Grendell, Hollister, Hoops, Hughes, Schaffer, Schmidt, Seitz, G. Smith, Taylor, Wilson

BILL SUMMARY

- Modifies the conditions involving the balance of the Agricultural Commodity Depositors Fund under which the Director of Agriculture must waive or reinstate the per-bushel fee remitted by licensed handlers of agricultural commodities.
- Expands the situations under which the Agricultural Commodity Depositors Fund is liable for 100% of a loss incurred by a depositor of agricultural commodities, provided that the loss involves moneys that a licensed handler of agricultural commodities owes the depositor with respect to an agricultural commodity handling transaction for which the handler was required to remit a per-bushel fee.
- Requires the Director of Budget and Management, at the request of the Director of Agriculture, to transfer not more than \$500,000 per fiscal year from the Agricultural Commodity Depositors Fund to the Commodity Handler Regulatory Program Fund for purposes of paying the examination and administrative costs of the Agricultural Commodity Handlers Law.

CONTENT AND OPERATION

Background

The bill revises certain provisions in the Agricultural Commodity Handlers Law that pertain to the Agricultural Commodity Depositors Fund. Under current

law, "agricultural commodity" means barley, corn, oats, rye, grain, sorghum, soybeans, wheat, sunflower, speltz, or any other agricultural crop that the Director of Agriculture may designate by rule, but does not include any grain that is purchased for sale as seed (sec. 926.01(A), not in the bill).

Current law establishes a detailed, specific definition of "agricultural commodity handling" (sec. 926.01(B), not in the bill). To summarize that definition, "agricultural commodity handling" generally refers to acting as an intermediary between a producer of an agricultural commodity and the retailer or consumer. It mainly involves purchasing agricultural commodities in certain volumes for processing, sale, resale, or any other use; performing certain marketing functions; or operating a warehouse in which agricultural commodities are stored.¹

Under current law, agricultural commodity handlers must hold a valid license issued by the Director (sec. 926.04(A), not in the bill). Current law defines "agricultural commodity handler" or "handler" as any person who is engaged in the business of commodity handling, but does not include a person who does not handle agricultural commodities as a bailee and who annually purchases agricultural commodities in volumes under certain threshold amounts (sec. 926.01(C), not in the bill).²

Agricultural Commodity Depositors Fund

Background

Current law creates the Agricultural Commodity Depositors Fund that is used exclusively to indemnify depositors who have incurred losses after making a demand for settlement of an obligation concerning an agricultural commodity to a licensed handler who failed to honor the demand. "Depositor" means any of the following: (1) any person who delivers an agricultural commodity to a licensed handler for storage, conditioning, shipment, or sale, (2) any owner or legal holder of a ticket or receipt issued for an agricultural commodity who is a creditor of the licensed handler for the value of the agricultural commodity, or (3) any licensed handler storing an agricultural commodity that the licensed handler owns solely, jointly, or in common with others in a warehouse owned or controlled by the licensed handler or any other licensed handler (sec. 926.01(D), not in the bill).

¹ A producer is a person who grows an agricultural commodity on land that the person owns or leases, i.e. a farmer (sec. 926.01(K), not in the bill).

² A bailee is a person to whom an agricultural commodity is delivered in trust for storage in a warehouse with title remaining in the name of the depositor (sec. 926.01(O), not in the bill).

The Agricultural Commodity Depositors Fund consists of a per-bushel fee remitted by licensed handlers, any sums that the Director may collect by any legal action on behalf of the Fund, and any property or securities acquired through the use of moneys in the Fund (sec. 926.16(A)).

Waiver and reinstatement of per-bushel fee

Current law specifies that if, at the end of any fiscal year, the assets of the Fund exceed one-half of the sum of all claims approved during the preceding four years or \$4 million, whichever is greater, less any encumbered balances or pending or unsettled claims, the Director must waive the per-bushel fee required to be remitted by licensed handlers (sec. 926.17(B)). The bill instead requires the Director to waive the fee if, at the end of any fiscal year, the Fund balance exceeds \$10 million less any encumbered balances or pending or unsettled claims (sec. 926.17(B)(1)).

Under current law, the Director must reinstate the waived fee, with the consent of the Commodity Advisory Commission, if necessary to maintain the liquidity of the Fund (sec. 926.17(B)).³ The bill instead specifies that if, at any time, the Director determines that the Fund balance, less any encumbered balances or pending or unsettled claims, is less than \$8 million, the Director may reinstate the fee with the consent of the Commission. If the Director reinstates the fee, the bill requires him to notify all licensed handlers by certified mail, return receipt requested, to begin collecting the fee not later than 90 days after being notified. (Sec. 926.17(B)(2)).

Finally, the bill eliminates current law that authorizes the Director to establish the limits of the assets to be maintained in the Fund in accordance with the requirements governing waiver and reinstatement of the fee (sec. 926.17(B)).

Liability of Fund to depositor

Current law specifies, and the bill reemphasizes, that the Agricultural Commodity Depositors Fund is liable to a depositor for moneys that a licensed handler owes a depositor with respect to a transaction for which the handler was required to remit a per-bushel fee, provided that the moneys were not recovered through other legal and equitable remedies (sec. 926.18(A) and (B)). Under current law, the Fund is liable for 100% of the depositor's loss for commodities stored under a bailment agreement (sec. 926.18(B)(1)). Current law specifies that

³ *The Commodity Advisory Commission consists of seven members: three farmers, three licensed handlers, and one banker. It advises and counsels the Director on all matters related to the Agricultural Commodity Handlers Law. (Sec. 926.32.)*

with respect to commodities deposited with a licensed handler under an agreement other than a bailment agreement, the Fund is liable for 100% of the first \$10,000 of the depositor's loss and 80% of the remaining dollar value of that loss (sec. 926.18(B)(2)).⁴

A bailment involves a situation in which a depositor (the bailor) delivers an agricultural commodity to a licensed handler (the bailee) in trust for storage in a warehouse with title remaining in the name of the depositor. The bailment agreement is stated in the terms of the warehouse receipt issued by the licensed handler for the agricultural commodity in storage. (Sec. 926.01(O), (P), and (Q), not in the bill.)

The bill retains the provision specifying that the liability of the Fund equals 100% of the depositor's loss if the commodities were stored with the handler under a bailment agreement and expands the situations under which the liability of the Fund equals 100% of the depositor's loss. Those situations include any of the following: (1) payment for the commodities was tendered by the handler and subsequently dishonored, such as payment by a check for which there were insufficient funds or by a check that was written on an account that was frozen by the financial institution, (2) the commodities were priced at the time of delivery to the handler, the delivery occurred not more than 30 days prior to the Director's suspension of the handler's license for certain reasons, and the handler failed to pay for the commodities on or before the date on which the suspension occurred, or (3) the commodities were priced at the time of delivery to the handler, the delivery occurred not more than 90 days prior to the Director's suspension of the handler's license for those same reasons, the commodities were subject to a written agreement for deferred payment by the handler not later than 90 days following

⁴ *Under current law unchanged by the bill, the Commodity Advisory Commission must establish the dollar value of the loss incurred by a depositor holding a receipt for commodities delivered to a handler under a delayed price agreement, bailment agreement, or feed agreement or that the depositor delivered to the handler before delivery was due under a contract or other agreement between the depositor and handler. In such circumstances, the value of the loss must be based on the fair market price being paid to producers by handlers for the commodities on the date on which the Director received notice from the depositor that a handler who meets certain criteria such as insolvency or loss of licensure has failed to honor the depositor's demand for payment for the commodities. (Sec. 926.18(A)(1).) The dollar value of the loss incurred by a depositor who has sold or delivered for sale, exchange, or solicitation or negotiation for sale agricultural commodities and who is a creditor of the handler for all or part of the value of the commodities must be based on the amount stated on the obligation on the date of sale (sec. 926.18(A)(2)).*

the date of delivery, and the handler failed to pay for commodities on or before the payment date established in the written agreement. (Sec. 926.18(B)(1)(a).)⁵

The bill specifies that if the deposit of commodities that were the subject of the depositor's loss involves circumstances other than those described above, the liability of the Fund equals 100% of the first \$10,000 of the loss and 80% of the remaining dollar value of that loss (sec. 926.18(B)(1)(b)). The bill retains current law that prohibits the aggregate amount recovered by a depositor under all remedies from exceeding 100% of his loss (sec. 926.18(B)(2)).

Transfer of moneys to Commodity Handler Regulatory Program Fund

Current law requires all moneys collected from the per-bushel fee remitted by licensed handlers, any sums that the Director may collect by legal action on behalf of the Agricultural Commodity Depositors Fund, and any property or securities acquired through the use of moneys in the Fund to be used exclusively to indemnify depositors and for no other purpose (sec. 926.16(A)). Under current law, all interest earned by the collected fees must be credited to the Fund and, at the request of the Director and to the extent necessary to pay the examination and administrative costs incurred under the Agricultural Commodity Handlers Law, may be transferred by the Director of Budget and Management to the Commodity Handler Regulatory Program Fund (sec. 926.16(E)).⁶

The bill eliminates the requirement that all interest earned by the collected fees be credited to the Agricultural Commodity Depositors Fund (sec. 926.16(E)). It instead specifies that all investment earnings of that Fund must be credited to that Fund (sec. 926.16(A)).

⁵ *The reasons for license suspension include situations in which the Director determines that there is reasonable cause to believe that the licensee does not possess sufficient agricultural commodities to cover the outstanding receipts or tickets issued or assumed by the licensee under bailment agreements, does not have the net assets specified under minimum net worth requirements established by the Agricultural Commodity Handlers Law or has failed to obtain a bond or other protection for any deficiency in required net assets as provided in that Law, or does not have the obligations for agricultural commodities purchased under delayed price agreements secured or presented as required under that Law (secs. 926.10(E), (G), and (H), not in the bill, and 926.18(B)(1)(iii) and (iv)).*

⁶ *Moneys in the Commodity Handler Regulatory Program Fund must be used to pay the examination and administrative costs of the Agricultural Commodity Handlers Law (sec. 926.19(A)).*

The bill also eliminates the requirement that moneys in the Agricultural Commodity Depositors Fund be used for no other purpose than to indemnify depositors and adds that moneys in that Fund also must be used to pay the examination and administrative costs of the Agricultural Commodity Handlers Law (sec. 926.16(A)). Under the bill, the Director of Budget and Management, at the request of the Director of Agriculture, must transfer not more than \$500,000 per fiscal year from the Agricultural Commodity Depositors Fund to the Commodity Handler Regulatory Program Fund to pay the examination and administrative costs of that Law (sec. 926.16(E)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-04-04	p. 1656
Reported, H. Agriculture & Natural Resources	04-21-04	pp. 1769-1770
Passed House (94-0)	04-21-04	pp. 1782-1784

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