

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 1173 (as passed by the Senate)  
Sponsor: Senator George A. McManus, Jr.  
Committee: Farming, Agribusiness, and Food Systems

Date Completed: 6-30-98

### **RATIONALE**

The Grain Dealers Act regulates the storage, warehousing, and sale of farm produce in the State by providing for the licensure and bonding of grain dealers. Under the Act, a grain dealer is required annually to obtain a license to engage in the business of buying, exchanging, selling, or storing farm produce. The Act requires that an application for a grain dealer's license be accompanied by a sufficient bond or an irrevocable letter of credit. This requirement protects farmers who deposit their grain with fraudulent or financially insecure grain dealers. Historically, the Department of Agriculture has required that a bond accompany the license application only of a grain dealer who is a bailee of farm produce, which is a dealer who offers warehouse space to store a farmer's grain and who issues a warehouse receipt, or a written acknowledgment, upon accepting farm produce for storage in the dealer's facilities. Some people interpret the Act, however, to require bonds of all grain dealers, such as those who issue price later agreements whereby a dealer takes title to farm produce for a sale price that is not fixed at the time of delivery. Furthermore, the Department considers a bond to be a continuous instrument that does not expire at the end of each licensing period but must satisfy a dealer's obligations at any time. Others claim that bonds are cumulative and must be renewed with each license period. The Attorney General's Office has advised the Department that clarification is needed in the Act as to what the parameters of a bond are and which grain dealers need a bond.

### **CONTENT**

**The bill would amend the Grain Dealers Act by requiring a license application to be accompanied by a bond only for a grain dealer who was a bailee of farm produce and issued warehouse receipts or who did not own a farm**

**produce or handling facility or did not own a vehicle for transporting farm produce, instead of all grain dealers as currently required. A bond would apply only to warehouse receipt transactions. The term of a blanket surety bond would be continuous, but the liability of the surety would not accumulate for each successive license period while the bond was in effect and the liability would not be affected by the number of claimants.**

Currently, an application for a grain dealer's license must be made on form provided by the Director of the Department of Agriculture, filed 30 days in advance of a license expiration date if there is an outstanding license, and accompanied by a sufficient bond or an irrevocable letter of credit in favor of the Department that fulfills the Act's requirements. Under the bill, the license application would have to be accompanied by a bond or letter of credit, if the grain dealer were a bailee of farm produce and issued warehouse receipts or were a grain dealer who did not own a farm produce or handling facility or did not own a vehicle used to transport farm produce.

The Act requires a bond to run to the Department with sufficient surety conditioned for the faithful performance of the duties of a grain dealer and compliance with all State laws relating to grain dealers. The bill would require, instead, that a bond run to the Department and apply only to warehouse receipt transactions.

The Act requires that the bond amount for a grain dealer who is a bailee of farm produce or who issues warehouse receipts be \$15,000 for the first 10,000 bushels of storage capacity of the grain dealer, plus \$5,000 for each additional 10,000 bushel capacity used for the storage of warehouse receipted farm produce. Under the bill, this bond

amount would apply to a grain dealer who was a farm produce bailee *and* who issued warehouse receipts. The bill would retain the current \$50,000 bond amount for a grain dealer who does not own a farm produce storage or handling facility or a vehicle used to transport farm produce.

Currently under the Act, instead of meeting the bonding requirements described above, a person owning at least two farm produce storage facilities may furnish a blanket surety bond equal to the sum of the requirements for the individual facilities, except that when the requirements are at least \$400,000 a blanket bond in the amount of \$400,000 is considered sufficient to meet the Act's requirements. The bond must show the address and capacity of each facility. The bill would add that the term of the bond would have to be continuous and the total and aggregate liability of the surety on the obligation would be limited to the amount specified in the Act. Although the obligation would be continuous in nature, the liability of the surety would not accumulate for each successive license period during which the bond was in effect and the liability would not be affected by the number of claimants involved in the transactions covered by that bond.

MCL 285.67a

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Several court rulings have interpreted the Act's bonding provisions in ways that differ with the Agriculture Department's practices, according to Department officials. These differing interpretations could put at risk grain dealers and bonding companies, which could stop issuing bonds. The Attorney General reportedly has advised the Department that the issue could be resolved if the Act were amended to correspond with departmental practices.

Legislative Analyst: L. Arasim

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: G. Cutler

A9798\S1173A

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.