Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 899 and 900 (as enacted) **PUBLIC ACTS 263 & 264 of 2016**
Sponsor: Senator Jim Stamas (S.B. 899)
Senator Joe Hune (S.B. 900)
Senate Committee: Commerce
House Committee: Agriculture

Date Completed: 2-2-17

CONTENT

Senate Bill 899 amended the Grain Dealers Act to do the following:

-- **Revise the allowable net assets requirement for a grain dealer license.**
-- **Specify that certain claimants have a lien on all of the farm produce assets of a grain dealer.**
-- **Specify the priority of lienholders receiving proceeds from the sale of a failed grain dealer's farm produce assets.**
-- **Require the Department of Agriculture and Rural Development to liquidate a failed grain dealer's farm produce assets to satisfy valid claims.**
-- **Allow the Director of the Department to reduce the amount of a claim to reflect the liabilities owed to the grain dealer by the claimant.**

The bill also repealed Section 26 of the Act, which governed the distribution of the assets of a failed grain dealer.

Senate Bill 900 amended the Farm Produce Insurance Act to do the following:

-- **Require a producer to pay producer premiums until the Farm Produce Insurance Authority board certifies that the Farm Produce Insurance Fund contains more than $10.0 million, instead of $5.0 million, at the end of the preceding fiscal year.**
-- **Specify that in any fiscal year in which the board certifies that the Fund contains more than $10.0 million, instead of $5.0 million, a producer will not have to pay producer premiums.**
-- **Provide that a producer is not eligible for reimbursement from the Fund for a claim if the producer transferred title to the farm produce more than 18 months, rather than two years, before the date the claim was submitted.**

Each bill took effect on September 26, 2016.

Senate Bill 899

Allowable Net Asset Requirement; Licensure

The Grain Dealers Act prohibits a person from acting or offering to act as a grain dealer without a license from the Department. The Department may refuse to issue or renew such a license unless the grain dealer satisfies an allowable net asset requirement at the time the grain dealer submits the application. Under the bill, a prospective licensee must have allowable net assets of $100,000 or more and handled 1.0 million or fewer bushels of farm produce in the most recent fiscal year, or have allowable net assets of $100,000 or more that equal or exceed the product of 10 cents multiplied by the number of bushels of farm produce handled by the grain dealer in the dealer's most recent completed fiscal year. Previously, the Act required the grain dealer to meet at least one of the following:

-- Have allowable net assets of more than $1.0 million.
-- Have allowable net assets of $50,000 or more and handled 500,000 or fewer bushels of farm produce in the grain dealer's most recent fiscal year.
-- Have allowable net assets of $50,000 or more that equaled or exceeded the product of 10 cents multiplied by the number of bushels of farm produce handled by the grain dealer in the dealer's most recent completed fiscal year.

The Act requires a grain dealer to include with an application for a license or renewal a financial statement for its most recent completed fiscal year. The financial statement must be a reviewed or audited statement, and must include at least the following: a) an accountant's report, a balance sheet, an income statement, and notes and disclosures; and b) a statement of the grain dealer's allowable net assets. The bill requires a financial statement also to include a statement from the certified public accountant that he or she acknowledges that the Department is relying on the financial statement in determining whether the grain dealer meets the Act's allowable net asset requirement.

Farm Produce Assets Lien

Under the bill, each of the following has a lien on all of the farm produce assets of a grain dealer:

-- A lender or other claimant that possesses a warehouse receipt that covers farm produce owned or stored by the grain dealer.
-- A claimant that possesses a written acknowledgment or other written evidence of ownership of farm produce, other than a warehouse receipt, that establishes that the grain dealer has a storage obligation for the farm produce.
-- A claimant that surrendered a warehouse receipt as part of a farm produce sales transaction, if the claimant was not paid in full for the farm produce and the grain dealer failed within 21 days after the surrender of the warehouse receipt.
-- A claimant that possesses any other written evidence of the sale of farm produce to the grain dealer for which the claimant was not paid in full.

All of the following apply to a lien described above: a) the lien secures each lienholder's claims against, and attaches to, the grain dealer's farm produce assets; b) the lien takes effect at the time the farm produce is delivered to the grain dealer for sale or storage under a bailment agreement or at the time money is advanced by the lender; c) the lien terminates at the time the grain dealer's liability to the claimant is discharged; however, the priority of each lien among the respective claimants does not relate to the date the claim arises but is subject to the priorities described below; and d) in the event a grain dealer fails, the lien claims of all claimants of that grain dealer will be considered assigned to the Department, and in the event of a failure and subsequent liquidation, the lien will attach to assets or proceeds of assets that are received or liquidated by the Department.

Liquidation of Failed Grain Dealer's Assets; Lienholder Priority

The bill repealed Section 26 of the Act, which allowed the Department Director to take possession of, liquidate, and distribute the assets and proceeds of a failed grain dealer's assets to satisfy claims. Section 26 also specified the distribution of assets from the liquidation.

Under the bill, except as otherwise provided, in the event a grain dealer fails, the Director must enforce each lienholder's claims against the grain dealer's farm produce assets and allocate the proceeds as described below.

The Director must give first priority to allocating the proceeds equally to claimants that possess a warehouse receipt or a written acknowledgment or other written evidence of ownership of farm produce, or that surrendered a warehouse receipt as part of a farm produce sales transaction within 21 days before the grain dealer's failure. If any proceeds remain after satisfying those claims, the Director must give second priority to allocating the remaining proceeds first to claimants that possess secured price later agreements and then to all remaining claimants that possess price later agreements.

If any proceeds remain after satisfying the claims described above, the Director must give third priority to allocating the remaining proceeds to claimants that possess acknowledgment forms, similar farm produce delivery contracts, or other written evidence of the sale of farm produce and that completed delivery and pricing of the farm produce in the 30-day period preceding the date the grain dealer failed. If any proceeds remain, the Director must give fourth priority to allocating the remaining proceeds on a pro rata basis to all other claimants that possess written evidence of the sale of farm produce to the grain dealer.

If all of the above claims are satisfied, any remaining proceeds must be distributed jointly to the grain dealer and any secured parties.

If an adversary proceeding is commenced to recover farm produce assets on which a lien is attached and the Department declines to enter the proceeding, the Director, if he or she receives an application from a claimant that holds a lien, will have to assign to the claimant the applicable lien to permit it to pursue the lien in the proceeding. The lien must be assigned to the extent that assignment does not delay the resolution of the proceeding, the prompt liquidation of the assets, or the ultimate distribution of the assets of all claimants.

In the event of the failure of a grain dealer, the Department must liquidate the grain dealer's farm produce assets to satisfy valid claims by taking possession of all farm produce in the dealer's facility, distributing or selling the produce, and distributing the proceeds as described above.

The Director may reduce the amount of a claim to reflect the liabilities owed to the grain dealer by the claimant.

A farm produce assets lien has priority over a conflicting security interest in or agricultural lien on the same collateral, except that a conflicting security interest or agricultural lien on the collateral that is perfected on the bill's effective date has priority over a farm produce assets lien that exists for a period of one year after the bill's effective date.

Senate Bill 900

The Farm Produce Insurance Act establishes the Farm Produce Insurance Authority within the Department of Agriculture and Rural Development, and places it under the supervision of a board of directors. The Act also establishes the Farm Produce Insurance Fund, which consists of administrative premiums, producer premiums, money from other sources, and interest and earnings from Fund investments. Payments are directed from the Fund for valid claims for storage or financial loss arising from the failure of a grain dealer, payment of premium refunds, and the board's administrative expenses and legal fees.

Each producer must pay to the Authority a producer premium of not more than 0.2% of the net proceeds from all farm produce sold to a grain dealer licensed under the Grain Dealers Act. If the farm produce is sold to a licensee, the licensee must deduct the producer premium from the proceeds of the sale and pay the premium to the Authority on behalf of the producer. Previously, until the Authority received $5.0 million in producer premiums from licensees, a licensee could retain 0.1% of the premiums collected. The bill eliminated this provision.

(Under the Farm Produce Insurance Act, "producer" means a person that owns, rents, or operates a farm on land and has an interest in and receives any part of the proceeds from the sale and delivery in Michigan of farm produce (dry edible beans, soybeans, small grains cereal grains, or corn) produced from the land to a grain dealer licensed under the Grain Dealers Act.)

The Farm Produce Insurance Act requires the Authority board to hold an annual meeting at which it must certify the amount of money in the Fund at the end of the preceding fiscal year. As amended by the bill, the Act requires a producer to continue to pay and requires a licensee to continue to collect producer premiums until the board certifies that the Fund, excluding the administrative premiums, contained more than $10.0 million at the end of the preceding fiscal year. In any fiscal year in which the board has certified that the Fund contained more than $10.0 million, a producer is not required to pay and a licensee is not required to collect producer premiums until one of the following occurs:

-- The board certifies that the Fund contained less than $3.0 million at the end of the preceding fiscal year.
-- The board certifies that the Fund contained at least $3.0 million at the end of the preceding fiscal year; the board is aware of a licensee's failure; and the amount required to satisfy valid claims, as determined by the board, equals or exceeds the amount of money in the Fund.

Previously, premiums were not be required if the Fund's balance was more than $5.0 million, until one of those events occurred.

As amended by the bill, the Act specifies that a producer is not eligible for reimbursement from the Fund for a claim if, among other things, title to the farm produce that is the subject of the claim was transferred by the producer more than 18 months before the date the claim is submitted. Previously, the period of time was two years.

MCL 285.63 et al. (S.B. 899)
285.317 et al. (S.B. 900)

BACKGROUND

The Farm Produce Insurance Program was created by Public Act 198 of 2003 to protect participating producers (farmers) from losses incurred when a grain dealer declares bankruptcy or is otherwise unable to pay its claimants for grain delivered and sold, but not paid for. According to the Michigan Department of Agriculture and Rural Development, the Farm Produce Insurance Authority had paid $498,566 in claims to 30 producers, as of November 2016.

The producer assessment was suspended on December 31, 2007, after the balance of the Farm Produce Insurance Fund reached $5.0 million. In 2015, it was reinstated due to the bankruptcy of the Lapeer Grain Company. According to the Department, this represented the largest grain dealer failure in recent history. As a result of the failure, the amount of money in the Fund dropped below the $3.0 million required balance. On June 23, 2015, the Authority approved reinstatement of the producer assessment, effective October 1, 2015. As of December 31, 2016, the Fund balance was approximately $5.9 million.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker

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