

F I N A L R E P O R T

GRAIN DEPOSIT AND HANDLING JOINT SUBCOMMITTEE
OF THE
SENATE AND HOUSE STANDING COMMITTEES ON AGRICULTURE

December, 1978

The Legislative Council approved the creation of the Grain Deposit and Handling Joint Subcommittee which is composed of five members from the Senate Standing Committee on Agriculture and five members from the House Standing Committee on Agriculture.

The members of the Subcommittee were:

Senator Bass Van Gilst, Co-chairperson
Representative Richard Byerly, Co-chairperson
Senator James Calhoon
Senator Merlin D. Hulse
Senator Milo Merritt
Senator Elizabeth Miller
Representative Arlyn E. Danker
Representative Philip A. Davitt
Representative Rollin K. Howell
Representative Lester D. Menke

During the 1978 interim, the Joint Subcommittee was authorized five meetings and met four times. In the course of its meetings the Joint Subcommittee heard testimony on the following topics: The grain hopper rail car shortage; grain shrinkage factors; the State Department of Agriculture's testing of grain probes; the legislative proposals of the Warehouse Division of the Iowa State Commerce Commission; and the feasibility of a grain deposit guaranty fund.

Joint Subcommittee recommendations to the Senate and House Standing Committees on Agriculture are:

1. The Joint Subcommittee spent the greatest part of three of its meetings refining a bill draft that would provide for an Iowa grain deposit guaranty fund corporation. This corporation would be a private nonprofit corporation managed by a board of directors but overseen by the Iowa State Commerce Commission. The purpose of the corporation would be to guarantee the obligations of licensed warehousemen as provided for in the bill. The following attached draft is the recommended bill adopted by the Joint Subcommittee.

2. The Subcommittee on Grain Deposit and Handling also recommends to the Senate and House Standing Committees on Agriculture that the Senate and House Standing Committees on Agriculture monitor the progress of the grain grading and pricing research project being conducted by the Departments of Agricultural Engineering and Agricultural Economics at Iowa State University of

Science and Technology and, upon completion of the research project, prepare appropriate legislation to implement the use of a uniform, accurate moisture weight reduction method.

SENATE FILE _____

By (PROPOSED COMMITTEE ON
AGRICULTURE BILL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act concerning the establishment of the Iowa grain deposit
2 guaranty fund corporation and specifying the powers, limi-
3 tations, rights, liabilities, duties and obligations of
4 the corporation.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. CITATION. This Act shall be
2 known and may be cited as the "Iowa grain deposit guaranty
3 fund Act."

4 Sec. 2. NEW SECTION. FINDINGS AND STATEMENT OF POLICY.
5 This Act is intended to protect the financial interest of
6 the citizens of the state of Iowa by stimulating the
7 development of an improved financial security system for
8 agricultural products. It is recognized that most Iowa farmers
9 have agricultural products on deposit in warehouses and the
10 safety and security of the deposits is a common cause of
11 concern to all persons interested in the economy and well-
12 being of the state of Iowa and its citizens.

13 It is the finding of the general assembly that the standing
14 of these agricultural products as commodities justly entitles
15 them to the status of valued collateral in the commercial
16 world and is of great importance to the state and its citizens.

17 It is determined that to better protect the deposits of
18 agricultural products, and to better ensure the payment of
19 unpaid purchase obligations it is necessary to establish a
20 guaranty fund for the benefit of depositors of grain in open
21 storage, holders of warehouse receipts, and persons selling
22 grain to a licensed warehouseman, in order to better ensure
23 the faithful performance of licensed warehousemen. It is
24 further determined that the exercise of the powers granted
25 in this Act will benefit the people of the state and serve
26 a valid public purpose in improving and otherwise promoting
27 their health, welfare and prosperity.

28 Sec. 3. NEW SECTION. DEFINITIONS.

29 1. "Corporation" means the Iowa grain deposit guaranty
30 fund corporation, an Iowa nonprofit membership corporation
31 incorporated pursuant to chapter five hundred four A (504A)
32 of the Code.

33 2. "Guaranty funded agricultural warehouseman" means a
34 warehouseman licensed under chapter five hundred forty-three
35 (543) of the Code, or a person licensed to accept and store

1 bulk grain under the United States Warehouse Act, either of
2 whom is a member in good standing entitled to the benefits
3 of membership in the Iowa grain deposit guaranty fund
4 corporation.

5 3. "Covered obligation" means an unfulfilled warehouseman's
6 obligation of a member in good standing of the corporation
7 arising out of the performance of the functions of the licensed
8 warehouseman, including his or her obligations as a grain
9 dealer if licensed as one.

10 4. "Commission", when used in this Act, means the Iowa
11 state commerce commission.

12 5. "Member in good standing" means a member of the
13 corporation meeting the standards for the issuance of a
14 membership as specified by the corporation.

15 6. The terms defined in sections five hundred forty-two
16 point one (542.1) and five hundred forty-three point one
17 (543.1) of the Code shall apply to this Act.

18 Sec. 4. NEW SECTION. CORPORATE PURPOSE. The purpose
19 of the Iowa grain deposit guaranty fund corporation is to
20 guarantee as provided in this Act, the obligations of licensed
21 warehousemen entitled to membership in the corporation. The
22 corporation shall be incorporated under chapter five hundred
23 four A (504A) of the Code as an Iowa nonprofit membership
24 corporation. The corporation shall be subject to the
25 provisions of chapter five hundred four A (504A) of the Code,
26 except that in the event of any inconsistency between this
27 Act and chapter five hundred four A (504A) of the Code, this
28 Act shall prevail. Amendment or restatement of the articles
29 of incorporation shall only be done by statute.

30 Sec. 5. NEW SECTION. CORPORATION NOT INSURANCE COMPANY
31 NOR STATE AGENCY. The corporation shall not be deemed to
32 be an insurance company within the meaning of the laws of
33 the state of Iowa relating to insurance or providing for the
34 supervision of insurance companies nor shall its activities
35 be deemed the business of insurance.

1 Although it serves a public purpose, the corporation is
2 a private nonprofit corporation and as such shall not be
3 subject to chapter seventeen A (17A) of the Code or any other
4 statute or rule pertaining to the functioning of a government
5 agency.

6 Sec. 6. NEW SECTION. CORPORATION--HOW ORGANIZED. The
7 corporation shall be organized by the filing with the secretary
8 of state a copy of this Act, subscribed by the five members
9 of the board appointed by the governor, acting as incorporators
10 pursuant to section five hundred four A point twenty-eight
11 (504A.28) of the Code. The copy of this Act so filed shall
12 constitute the articles of incorporation of the corporation.

13 Sec. 7. NEW SECTION. PLAN OF OPERATION. The corporation
14 shall perform its functions under a plan of operation
15 established and approved pursuant to section eight (8) of
16 this Act and shall exercise its powers through the board of
17 directors established under section nine (9) of this Act.
18 The plan of operation shall constitute the bylaws of the
19 corporation.

20 Sec. 8. NEW SECTION. PLAN OF OPERATION.

21 1. The corporation shall submit a plan of operation for
22 the guaranty fund to the commission, suitable to assure the
23 fair, reasonable, and equitable administration of the
24 corporation and the performance of its duties. The plan of
25 operation shall become effective upon approval in writing
26 by the commission. The plan may be subsequently amended by
27 following the same procedure.

28 2. All members in good standing shall comply with the
29 plan of operation as a condition of membership.

30 3. The plan of operation shall:

31 a. Establish the procedures for performance of all the
32 duties and powers of the corporation.

33 b. Establish procedures for managing assets of the
34 corporation. The corporation shall invest its funds only
35 in those types of securities provided for in section five

1 hundred eleven point eight (511.8) of the Code.

2 c. Establish the amount and method of reimbursing members
3 of the board of directors for their actual expenses.

4 d. Establish procedures by which claims may be filed with
5 the corporation and establish acceptable forms of proof of
6 covered obligations.

7 e. Establish regular places and times for meetings of
8 the board of directors and members.

9 f. Establish procedures for keeping records of all
10 financial transactions of the corporation, its agents, and
11 the board of directors.

12 g. Contain additional provisions necessary or proper for
13 the execution of the duties and powers of the corporation.

14 h. Establish standards for member in good standing status
15 for the issuance of certificates of membership. Any net worth
16 requirements established under chapter five hundred forty-
17 two (542) and chapter five hundred forty-three (543) of the
18 Code shall be incorporated in the standards established under
19 this paragraph.

20 i. Provide fidelity bonds for the directors.

21 Sec. 9. NEW SECTION. BOARD OF DIRECTORS. The board of
22 directors of the corporation shall consist of five natural
23 persons. The terms of the directors shall be for four years
24 except for the terms of the two initial appointees which terms
25 shall be for two years. A representative of the warehouse
26 industry and a representative of the producers shall receive
27 the initial two-year terms. Board members shall be appointed
28 by the governor with the approval of two-thirds of the members
29 of the senate and not more than three members shall be of
30 the same political party. Three directors may be selected
31 from lists submitted by warehouse industry organizations.
32 Two directors shall represent agricultural producers.
33 Vacancies occurring while the general assembly is in session
34 shall be filled for the unexpired portion of the term as full-
35 term appointments are filled. Vacancies occurring while the

1 general assembly is not in session shall be filled by the
2 governor, but such appointments shall terminate at the end
3 of sixty days after the convening of the next general assembly.

4 Members of the board may be reimbursed from the assets
5 of the corporation for expenses incurred by them as members
6 of the board of directors.

7 Sec. 10. NEW SECTION. MEMBERSHIP.

8 1. A person licensed as a warehouseman under chapter five
9 hundred forty-three (543) of the Code shall be eligible to
10 be a member of the corporation.

11 2. Any person licensed to accept and store bulk grain
12 under the United States Warehouse Act shall be eligible for
13 membership in the corporation.

14 3. Members in good standing shall be furnished an
15 appropriate certificate of membership. Only licensed
16 warehousemen holding current certificates shall be entitled
17 to use the term "guaranty funded agricultural warehousemen"
18 in conducting their business.

19 Sec. 11. NEW SECTION. CORPORATE POWERS. In addition
20 to the general grant of powers to corporations organized under
21 chapter five hundred four A (504A) of the Code, the corporation
22 shall have the following additional powers:

23 1. To adopt, use and display a corporate seal and logo
24 for use exclusively by members in good standing.

25 2. With the approval of the commission establish and
26 enforce minimum operational standards for members in good
27 standing as part of the plan of operation.

28 Sec. 12. NEW SECTION. DUTIES OF THE CORPORATION. Not
29 later than three years from the effective date of this Act
30 the corporation shall:

31 1. Submit the initial plan of operation to the commerce
32 commission for approval. The initial plan shall provide
33 guaranty fund coverage at least equivalent to the bond
34 provisions established under chapters five hundred forty-two
35 (542) and five hundred forty-three (543) of the Code, and

1 enact an actuarially sound assessment schedule for establishing
2 guaranty funding for all covered obligations. The corporation
3 may provide coverage in excess of the minimum requirements
4 established in this subsection.

5 2. Be obligated to the extent of the unperformed or
6 unfulfilled covered obligation of all guaranty funded
7 agricultural warehousemen as provided for in the plan of
8 operation.

9 3. Be deemed to be the guarantor of the performance of
10 the covered obligations of all guaranty funded agricultural
11 warehousemen as provided in the plan of operation.

12 4. Collect from each member in good standing the membership
13 reserve required by the plan of operation. Thereafter, the
14 corporation shall annually collect such sums as shall be
15 necessary to maintain each member's membership reserve as
16 required. The directors shall have the power to increase
17 the membership reserve when in their opinion the financial
18 condition and the experience of the corporation require.

19 5. In addition to the membership reserve, assess members
20 in good standing in amounts necessary to pay the obligations
21 of the corporation under subsections one (1) and two (2) of
22 this section, however, the maximum assessment under this
23 section for any one year shall not exceed one hundred fifty
24 percent of the member's reserve account for the previous year,
25 provided however that no such limitations shall apply for
26 additional maximum assessments that are necessary to pay
27 claims for coverage which is equivalent to the present
28 statutory coverage. In all events the corporation shall
29 provide coverage equivalent to the bond provision of chapters
30 five hundred forty-two (542) and five hundred forty-three
31 (543) of the Code.

32 6. Levy an annual administrative assessment to fund the
33 administrative functions of the corporation.

34 7. Investigate and process claims filed against the
35 corporation and compromise, settle, defend and pay covered

1 obligations and deny all other claims.

2 8. Provide for refunds or reallocations depending on
3 assessment method used.

4 9. Each year, on or before the first day of March, furnish
5 its members a report, signed and sworn to by its president
6 and by its treasurer or secretary, of its financial condition
7 as of the preceding December thirty-first. A copy of the
8 report shall be filed with the commission.

9 10. Be subject to an annual examination by the commission,
10 the full cost of which shall be paid by the corporation.
11 The commission shall have the right to examine all books and
12 records of the corporation at any time, in addition to such
13 annual examination.

14 11. If the corporation ascertains that any member in good
15 standing has failed to make any payment required by section
16 twelve (12) of this Act when due, or has failed to adhere
17 to the minimum operational standards established by the
18 corporation, or if the corporation ascertains evidence of
19 nonpayment for grain, shortages of grain, deterioration of
20 grain, or falsification of records, the corporation shall
21 promptly notify the commission of this evidence where permitted
22 by law. If payment is not made or such discrepancies are
23 not corrected within a reasonable time following a request
24 by the corporation, the directors shall so report to the
25 commission if permitted by law.

26 Sec. 13. NEW SECTION. EFFECT OF PAID CLAIMS. Any person
27 recovering under this Act shall be deemed to have assigned
28 his or her rights against the member to the corporation to
29 the extent of his or her recovery from the corporation. Every
30 claimant seeking the protection of this Act shall fully
31 cooperate with the corporation in processing all aspects of
32 the claim.

33 Sec. 14. NEW SECTION. NONDUPLICATION OF RECOVERY. Any
34 person having a claim which may be recovered under more than
35 one guaranty association or its equivalent or any other

1 collateral source shall seek recovery first from the collateral
2 source. Any recovery under this Act shall be reduced by the
3 amount of the recovery from any other guaranty corporation
4 or its equivalent or any other collateral source. Nothing
5 contained in this Act shall be construed to require the
6 corporation to first recover from any source whether primary
7 or collateral, before making payment for valid claims.

8 Sec. 15. NEW SECTION. TERMINATION OF MEMBER. The corpora-
9 tion may terminate a licensed warehouseman's membership for
10 failure to make any payment required by section twelve (12)
11 of this Act when due, or for failure to adhere to the minimum
12 operational standards established by the corporation.
13 Cancellation of membership shall become effective ninety days
14 after receipt of notice by certified mail by the member and
15 commission. Provided however, that the member shall be given
16 opportunity for a full evidentiary hearing before the
17 corporation's board of directors as provided in the plan of
18 operation.

19 The member whose membership has been terminated is en-
20 titled to judicial review of that action. Proceedings for
21 judicial review shall be instituted by filing a petition in
22 Polk county district court. Within ten days after such filing,
23 file stamped copies of the petition shall be mailed by the
24 petitioner to the corporation. Such mailing shall be juris-
25 dictional. Proof of mailing shall be by affidavit.

26 The petition for judicial review must be filed within
27 thirty days of the board's final decision on termination of
28 membership. The petition shall name the corporation as re-
29 spondent and shall contain a concise statement of the action
30 appealed from, the grounds on which relief is sought, and
31 the relief sought.

32 The court shall not hear any further evidence with re-
33 spect to those issues of fact whose determination was en-
34 trusted by the plan of operation to the board in the evi-
35 dentiary hearing. The court's decision shall be based solely

1 on the record made before the board when that record is viewed
2 as a whole. The court may affirm or reverse the action of
3 the board. The court shall reverse only if substantial rights
4 of the member have been prejudiced because the board's decision
5 is unsupported by substantial evidence in the record made
6 before the board when that record is viewed as a whole.

7 When judicial review is sought, guaranty coverage shall
8 remain in effect pending the decision of the court. Nothing
9 contained herein shall be construed to empower the court,
10 in deciding such question, to issue any equitable remedy with
11 regard to any other administrative or judicial proceeding
12 involving such member in which the commission is a party.

13 Sec. 16. NEW SECTION. TERMINATION OF CORPORATION. The
14 corporation may be dissolved by repeal of this Act by the
15 general assembly.

16 Sec. 17. NEW SECTION. WITHDRAWAL OF MEMBER. A member
17 shall be entitled to withdraw from the corporation upon
18 compliance with procedures set forth in the bylaws. Upon
19 withdrawal, termination of membership or liquidation, voluntary
20 or involuntary, of a member, such member shall be entitled
21 to a refund of twenty percent of its proportionate interest
22 in the net asset value of the corporation for each consecutive
23 full year of its membership up to five full years. Its
24 proportionate interest shall be a fraction of the net asset
25 value of the corporation, the numerator of which shall be
26 the total contributions to membership reserve made by such
27 withdrawing, terminating or liquidating member during its
28 continuous period of membership in the corporation and the
29 denominator of which shall be the total contributions to
30 membership reserve made by all licensed warehousemen who are
31 members of the corporation immediately preceding the
32 effectiveness of such withdrawal, termination or liquidation
33 during their periods of continuous membership in the
34 corporation. Such refund shall be paid in accordance with
35 provisions to be set forth in the bylaws which may include

1 provision for payment by issuance of certificates of
2 participation in the assets of the corporation. The commission
3 may direct that payment of such refund or any part thereof
4 be deferred, and that payment of less than the full amount
5 of such refund be made in full satisfaction thereof, if it
6 determines that such action is necessitated by the financial
7 condition of the corporation.

8 Sec. 18. NEW SECTION. REPORTS OF EXAMINATIONS.

9 Notwithstanding any other provision of law, the commission
10 shall make available to the corporation the reports of
11 examinations. If the commission ascertains evidence of
12 nonpayment for grain, shortages of grain, deterioration of
13 grain, or falsification of records, the commission shall
14 promptly notify the corporation of this evidence where
15 permitted by law. If payment is not made or such discrepancies
16 are not corrected within a reasonable time following a
17 directive by the commission, the commission shall so report
18 to the corporation. The commission may assist the corporation
19 to the extent of its powers in its efforts to improve the
20 management and condition of each member.

21 Sec. 19. NEW SECTION. COMMISSION'S LICENSING POWER.

22 Nothing in this Act shall limit the commission's licensing
23 function under chapters five hundred forty-two (542) and five
24 hundred forty-three (543) of the Code.

25 Sec. 20. Chapter five hundred forty-two (542), Code 1979,
26 is amended by adding the following new section:

27 NEW SECTION. GUARANTY FUNDED AGRICULTURAL WAREHOUSE.

28 A guaranty funded agricultural warehouseman shall be exempt
29 from the bonding provisions of section five hundred forty-
30 two point four (542.4) of the Code. The commission shall
31 accept a membership certificate of the Iowa grain deposit
32 guaranty fund corporation in lieu of the surety bond required
33 by that section. However, the net worth deficiency bond
34 provisions shall apply.

35 Sec. 21. Chapter five hundred forty-three (543), Code

1 1979, is amended by adding the following new section:

2 NEW SECTION. GUARANTY FUNDED AGRICULTURAL WAREHOUSE.

3 A guaranty funded agricultural warehouseman shall be exempt
4 from the bonding provisions of section five hundred forty-
5 three point twelve (543.12) and five hundred forty-three point
6 thirteen (543.13) of the Code. The commission shall accept
7 a membership certificate of the Iowa grain deposit guaranty
8 fund corporation in lieu of the surety bond required by these
9 sections. However, the net worth deficiency bond provisions
10 shall apply.

11 EXPLANATION

12 This bill provides for a nonprofit membership corporation
13 under Chapter 504A of the Code known as the Iowa grain deposit
14 guaranty fund corporation. The corporation is managed by
15 a board of directors and supervised by the Iowa state commerce
16 commission. The corporation is responsible for guaranteeing
17 the faithful performance of the duties and responsibilities
18 of licensed warehousemen. All warehousemen licensed under
19 Chapter 543 of the Code may belong to the corporation.
20 Federally licensed warehousemen may also belong. A member
21 warehouseman is termed a guaranty funded agricultural
22 warehouseman. The corporation has the power to assess members
23 for contributions to the guaranty fund and is responsible
24 for processing claims filed by persons who have deposited
25 agricultural products in a guaranty funded warehouse that
26 cannot perform its obligations to its depositors. The
27 operation of the corporation will be phased in over a three-
28 year period.

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