COMMITTEE REPORT

MR. SPEAKER:

Your Committee on Agriculture and Rural Development, to which was referred House Bill 1237, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

1. Replace the effective dates in SECTIONS 1 through 8 with "[EFFECTIVE UPON PASSAGE]".
2. Page 1, between lines 11 and 12, begin a new line block indented and insert:
   
   "(4) "Board" means the governing body of the Indiana grain indemnity corporation created by IC 26-4-3-2.".
3. Page 1, line 12, strike "(4)" and insert "(5)".
4. Page 1, line 14, strike "(5)" and insert "(6)".
5. Page 2, line 2, strike "(6)" and insert "(7)".
6. Page 2, line 7, strike "(7)" and insert "(8)".
7. Page 2, line 12, strike "(8)" and insert "(9)".
8. Page 2, line 16, strike "(9)" and insert "(10)".
Page 2, line 27, strike "(10)" and insert "(11)".
Page 2, line 30, strike "(11)" and insert "(12)".
Page 2, line 33, strike "(12)" and insert "(13)".
Page 2, line 36, strike "(13)" and insert "(14)".
Page 3, between lines 4 and 5, begin a new line block indented and
insert:

"(15) "Fund" means the Indiana grain indemnity fund
established under IC 26-4-4-1.".

Page 3, line 5, strike "(14)" and insert "(16)".
Page 3, line 10, strike "(15)" and insert "(17)".
Page 3, line 38, strike "(16)" and insert "(18)".
Page 3, line 41, strike "(17)" and insert "(19)".
Page 4, line 1, strike "(18)" and insert "(20)".
Page 4, line 3, strike "(19)" and insert "(21)".
Page 4, line 6, strike "(20)" and insert "(22)".
Page 4, line 7, delete "(21)" and insert "(23)".
Page 4, line 9, delete "(22)" and insert "(24)".
Page 4, line 12, delete "(23)" and insert "(25)".
Page 4, line 14, delete "(24)" and insert "(26)".
Page 4, line 16, delete "(25)" and insert "(27)".
Page 4, line 19, delete "(26)" and insert "(28)".
Page 4, line 20, delete "(27)" and insert "(29)".
Page 4, line 23, delete "(28)" and insert "(30)".
Page 4, line 26, delete "(29)" and insert "(31)".
Page 4, line 34, delete "(30)" and insert "(32)".
Page 6, line 11, strike "June 30, 1997," and insert "December 31, 2017,."

Page 6, line 23, delete "FOR GRAIN THAT HAS BEEN".
Page 6, delete lines 24 through 25.
Page 6, line 26, delete "DATE OF FAILURE AND IS".
Page 6, between lines 28 and 29, begin a new line double block
indented and insert:

"INDIANA LAW UNDER IC 26-3-7 CONTAINS
IMPORTANT INFORMATION CONCERNING THE
DURATION OF YOUR COVERAGE.".

Page 7, between lines 10 and 11, begin a new line block indented
and insert:
"(17) Require all grain buyers who execute a contract after
December 31, 2017, with a producer under subdivision (12) to
provide the producer with the educational materials prepared
under IC 26-4-5-4.". 

Page 7, line 21, reset in roman "advisor, ".
Page 7, line 21, delete "adviser,. ".
Page 9, between lines 20 and 21, begin a new paragraph and insert:
"SECTION 5. IC 26-3-7-6.5, AS AMENDED BY P.L.60-2015,
SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
UPON PASSAGE]: Sec. 6.5. (a) The names, locations, respective
counties, and license status of licensees may be disclosed.
(b) Unless in accordance with a judicial order, the director, the
agency, its counsel, auditors, or its other employees or agents shall not
divulge any other information disclosed by the applications or reports
filed or inspections performed under the provisions of this chapter,
except to agents and employees of the agency, the board, or to any
other legal representative of the state or federal government otherwise
empowered to see or review the information.
(c) Except as provided in subsection (d), the director may disclose
the information only in the form of an information summary or profile,
or statistical study based upon data provided with respect to more than
one (1) warehouse, grain buyer, or buyer-warehouse that does not
identify the warehouse, grain buyer, or buyer-warehouse to which the
information applies.
(d) The director shall disclose to the board, while the board is in
executive session, the status and inspection results of any grain
buyer or warehouse operator who has failed to meet the minimum
requirements in section 4(e) or 16 of this chapter and to provide
assurance that sufficient measures are being taken to minimize the
potential loss to the fund. However, the director may not disclose
the information to a board member who has not executed a
confidentiality agreement presented by the agency.
(e) The director may provide the board with records of previous
failures to analyze the factors that have led to previous failures.
SECTION 6. IC 26-3-7-16.5, AS AMENDED BY THE
TECHNICAL CORRECTIONS BILL OF THE 2017 GENERAL
ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
UPON PASSAGE]: Sec. 16.5. (a) Upon learning of the possibility that
a shortage exists, either as a result of an inspection or a report or complaint from a depositor, the agency, based on an on-premise inspection, shall make a preliminary determination as to whether a shortage exists. If a shortage is not discovered, the agency shall treat the audit as it would any other audit.

(b) If it is determined that a shortage may exist, the director or the director's designated representative shall hold a hearing as soon as possible to confirm the existence of a shortage as indicated by the licensee's books and records and the grain on hand. Only the licensee, the surety company named on the licensee's bond, the issuer of the irrevocable letter of credit, and any grain depositor who has made a claim or complaint to the agency in conjunction with the shortage shall be considered as interested parties for the purposes of that hearing, and each shall be given notice of the hearing. At the hearing, the director or the director's designated representative shall determine whether there appears to be a reasonable probability that a shortage exists. If it is determined that a reasonable probability exists and that the bond or letter of credit proceeds or the cash deposit should be distributed, a preliminary determination shall be entered to the effect that the licensee has failed to meet its obligations under this chapter or the rules adopted under this chapter. At the hearing, the director or the director's designated representative may order that all proceeds from grain sales are to be held in the form in which they are received and to be kept separate from all other funds held by the licensee. The order may also provide for informal conferences between agency representatives and persons who have or who appear to have grain deposited with the licensee. The surety company shall be permitted to participate in those conferences.

(c) In the event that the director determines that the bond or letter of credit proceeds or cash deposit is to be distributed, the agency shall hold a hearing on claims. Notice shall be given to the surety company named on the licensee's bond, the issuer of the irrevocable letter of credit, and to all persons shown by the licensee's books and records to have interests in grain deposited with the licensee. If the agency has actual knowledge of any other depositor or person claiming rights in the grain deposited with the licensee, the bond, the irrevocable letter of credit, or the cash deposit, notice shall also be provided to that person. In addition, public notice shall be provided in newspapers of general
circulation that serve the counties in which licensed facilities are located, and notices shall be posted on the licensed premises. At the hearing on claims, the director or the director's designated representative may accept as evidence of claims the report of agency representatives who in informal conferences with depositors have concluded that a claim is directly and precisely supported by the licensee's books and records. When there is disagreement between the claims of a depositor and the licensee's books and records, the director or the director's designated representative shall hear oral claims and receive written evidence of claims in order to determine the validity of the claim.

(d) Any depositor who does not present a claim at the hearing may bring the claim to the agency within fifteen (15) days after the conclusion of the hearing. However, a depositor who has a claim that was the subject of litigation or was involved in the probate of an estate at the time of the claims hearing has one (1) year from the conclusion of the hearing to present the claim to the agency.

(e) Only grain that has been delivered to a first purchaser licensee for sale or storage under a bailment not later than fifteen (15) months before the date of failure of the licensee may be considered by the director or the director's designated representative in determining the total proven storage and financial obligations due to depositors and the loss sustained by each depositor who has proven a claim.

(f) Following the hearing on claims, the director or the director's designated representative shall make a determination as to the total proven storage obligation of the claimants and financial obligations due to depositors and the loss sustained by each depositor who has proven a claim. Depositors found to have proven their claims for storage or financial loss shall be proven claimants. In arriving at that loss, in accordance with section 19 of this chapter, the director shall apply all grain on hand or its identifiable proceeds to meet the licensee's obligations to grain depositors of grain of that type. Initial determinations of loss shall be made on the amount of grain on hand, or identifiable proceeds, and shall reduce the amount to which a depositor may have a proven claim. With respect to the remaining unfulfilled obligations, the director shall, for the sole purpose of establishing each depositor's claim under this chapter, establish a date
upon which the loss is discovered, shall price the grain as of that date, shall treat all outstanding grain storage obligations not covered by grain on hand or identifiable proceeds as being sold as of that date, and shall determine the extent of each depositor's loss as being the actual loss sustained as of that date. Grain of a specific type on the premises of a licensee must first be applied to meet the licensee's storage obligations with respect to that type of grain. If there is insufficient grain of a specific type on hand to meet all storage obligations with respect to that type of grain, the grain that is present shall be prorated in accordance with the procedures described in this section and section 16.8 of this chapter.

(f) Upon the failure of the agency to begin an audit, which would serve as the basis for a preliminary administrative determination, within forty-five (45) days of the agency's receipt of a written claim by a depositor, a depositor shall have a right of action upon the bond, letter of credit, or cash deposit. A depositor bringing a civil action need not join other depositors. If the agency has undertaken an audit within the forty-five (45) day period, the exclusive remedy for recovery against the bond, letter of credit, or cash deposit shall be through the recovery procedure prescribed by this section.

(g) When the proven claims exceed the amount of the bond, letter of credit, or cash deposit, recoveries of proven claimants shall be prorated in the same manner as priorities are prorated under section 16.8 of this chapter.

(h) The proceedings and hearings under this section may be undertaken without regard to, in combination with, or in addition to those undertaken in accordance with section 17.1 of this chapter.

(i) The findings of the director shall be final, conclusive, and binding on all parties.

(j) The director may adopt rules under IC 4-22-2 to determine how the agency may distribute the interest that may accrue from funds held by the agency for the payment of claims.

(k) A claim of a licensee for stored grain may not be honored until the proven claims of all other claimants arising from the purchase, storage, and handling of the grain have been paid in full.

(m) A claim is considered to be adjudicated if the claimant has:

1. agreed with the director's determination on the claim and not filed an appeal under IC 4-21.5-3; or
(2) exhausted the claimant's administrative appeal and judicial review remedies.

(n) Subject to the requirements under this chapter, if one (1) or more claimants are not paid in full for the claimants' proven claims, the director shall forward to the Indiana grain indemnity fund board of directors a list of the claimants who are owed money and the balance due each claimant along with a copy of the final order.

Page 10, line 16, delete "twelve (12)" and insert "fifteen (15)".

Page 12, line 33, after "director" insert "or the director's designated representative".

Page 12, line 35, delete "director," and insert "director or the director's designated representative,"

Page 13, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 8. IC 26-3-7-31, AS AMENDED BY P.L.84-2016, SECTION 115, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 31. (a) Whenever it appears to the satisfaction of the director that a licensee cannot meet the licensee's outstanding grain obligations owed to depositors, or when a licensee refuses to submit the licensee's records or property to lawful inspection, the director may give notice to the licensee to do any of the following:

(1) Cover the shortage with grain that is fully paid for.

(2) Give additional bond, letter of credit, or cash deposit as required by the director.

(3) Submit to inspection as the director may deem necessary.

(b) If the licensee fails to comply with the terms of the notice within five (5) business days from the date of its issuance, or within an extension of time that the director may allow, the director may petition the circuit court, superior court, or probate court of the Indiana county where the licensee's principal place of business is located seeking the appointment of a receiver. If the court determines in accordance with IC 32-30-5 that a receiver should be appointed, upon the request of the licensee the court may appoint the agency or its representative to act as receiver. The agency or its representative shall not be appointed as receiver except upon the request of the licensee. If the agency or its representative is appointed, any person interested in an action as described in IC 32-30-5-2 may after twenty (20) days request that the agency or its representative be removed as receiver. If the agency or its..."
representative is not serving as receiver, the receiver appointed shall
meet and confer with representatives of the agency regarding the
licensee's grain related obligations and, before taking any actions
regarding those obligations, the receiver and the court shall consider
the agency's views and comments.

(c) The director shall inform the corporation of any:
   (1) notice or order issued; or
   (2) action taken;
under this section.

SECTION 9. IC 26-3-7-37 IS ADDED TO THE INDIANA CODE
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
UPON PASSAGE]: Sec. 37. (a) As used in this section, "claim
period" means the period beginning October 7, 2014, and ending
April 7, 2015.

(b) Notwithstanding any other law, a claimant who delivered
grain to a first purchaser for sale or storage under a bailment to a
failed licensee within the claim period shall be considered by the
director or the director's representative in determining the total
proven storage and financial obligations due to depositors and the
loss sustained by each depositor who has proven a claim for the
claim period.

(c) Notwithstanding any other law, the director, the director's
designee, or the board may not consider any refunds claimed
before July 1, 2015, in determining whether a claimant is covered
by the fund for a claim for the period beginning October 7, 2014,
and ending April 7, 2016.

(d) Before September 1, 2017, the director shall forward to the
Indiana grain indemnity fund board of directors a list of the
claimants who are owed money under this section and the balance
due each claimant along with a copy of the final order for any
claimants who were not paid the full amount due for the claimants'
proven claims under this section.

(e) The director or the director's designee shall send a statement
of loss to each claimant that includes the amounts due to each
claimant according to the records of the failed licensee for the
claim allowed under this section. However, a claimant may submit
a claim form with written documentation supporting the claim.

(f) Notwithstanding any other law, before November 1, 2017, the
Indiana grain indemnity fund board of directors shall pay, according to the procedures in IC 26-4-6, the claimants who are owed money according to the list forwarded by the director under subsection (d).

(g) This section expires July 1, 2018.

Page 13, line 17, delete "IC 26-3-7-2(25))." and insert "IC 26-3-7-2(27)).".

Page 13, after line 18, begin a new paragraph and insert:

"SECTION 12. IC 26-4-1-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. "Licensee" has the meaning set forth in IC 26-3-7-2(23).

SECTION 13. IC 26-4-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. "Participant in the grain indemnity program" means a producer who has:

(1) not requested a refund under IC 26-4-5-1 after June 30, 2015; or has

(2) reentered the program under IC 26-4-5-2.

SECTION 14. IC 26-4-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. "Producer" means an owner of land, a tenant on land, or an operator of a farm that has an interest in and receives all or any part of the proceeds from the sale in Indiana to a first purchaser licensee of the grain produced.

SECTION 15. IC 26-4-3-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. The director shall disclose to the board, while the board is in executive session, the status and inspection results of any grain buyer or warehouse operator who has failed to meet the minimum requirements in IC 26-3-7-4(e) or IC 26-3-7-16 and to provide assurance that sufficient measures are being taken to minimize the potential loss to the fund. However, the director may not disclose the information to a board member who has not executed a confidentiality agreement presented by the agency.

SECTION 16. IC 26-4-4-4, AS AMENDED BY P.L.60-2015, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in section 8 of this chapter, beginning on July 1, 2015, the producers of grain shall be charged a producer premium equal to two-tenths percent (0.2%) of the
price on all marketed grain that is sold to a first purchaser licensee.

(b) The producer premiums required under this section are in addition to any other fees or assessments required by law.

SECTION 17. IC 26-4-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A producer upon and against whom a producer premium is charged and collected under the provisions of this chapter may demand of and by complying with this chapter receive from the fund through the board a refund of the producer premiums collected from the producer.

(b) The board shall develop the form on which a demand for a refund must be filed. The board shall make the form available to grain buyers, producers, and the public upon request.

(c) Except as provided in subsection (d), a demand for a refund under this section is only valid if:

(1) made in writing and:

(A) hand delivered; or

(B) sent by first class mail;

(2) delivered or sent to the board not more than twelve (12) months after the premium was collected.

(d) The board may for good cause grant an extension for filing a demand for a refund under this chapter.

(e) A producer that requests and receives a refund under this section after June 30, 2015, and has made a request for reentry after June 30, 2015, is not protected and will not be compensated by the grain indemnity program. The board may not consider any refunds claimed before July 1, 2015, in determining whether a producer is covered by the fund.

(f) Before January 1 of each year in which producer premiums were collected during the immediately preceding calendar year, the board shall send a notice to each producer who requested a refund of producer premiums in any previous year. The notice must inform the producer of the time frame in which a request for a refund must be made and the method of filing for a refund.

SECTION 18. IC 26-4-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A producer who has received a refund of a producer premium under section 1 of this chapter after June 30, 2015, and has made a request for reentry
may reenter the grain indemnity program if the following conditions are satisfied:

1. The producer petitions the board for approval of reentry into the grain indemnity program by hand delivering or sending by certified mail, return receipt requested, a written request in a form required by the board.

2. The board reviews the producer's petition for reentry and approves the petition.

3. The producer pays into the fund:
   (A) all previous producer premium refunds; and
   (B) interest on the refunds;

   as determined by the board.

(b) A producer that reenters the grain indemnity program under subsection (a)(3) is protected by the program from the time all previous producer premium refunds that were claimed after June 30, 2015, and interest on the refunds, are paid to the fund.

(c) A producer who has not been a participant in the grain indemnity program may not reenter the program before meeting the criteria of a claimant as defined by this chapter. This subsection does not apply to a producer who obtained refunds only before July 1, 2015.

SECTION 19. IC 26-4-5-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The board, in coordination with the agency, shall develop educational information to be made available to producers both electronically and through grain buyers and warehouse operators, explaining the following:

1. The purpose of the fund.

2. How the fund is operated.

3. An explanation of coverage under the program, including the duration of coverage and limits on losses.

4. The process for claiming a refund.

5. The process for reentering the program.

6. Where to locate information about who has requested a refund and who is no longer covered by the program.

(b) A producer who has deposited grain with a grain buyer or warehouse operator shall be provided the educational information developed under subsection (a) by the grain buyer or warehouse
operator when a contract is executed under IC 26-3-7-3(a)(12).

SECTION 20. IC 26-4-6-4, AS AMENDED BY P.L.75-2010, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A claimant who has incurred a storage loss due to the failure of a warehouse operator licensed under IC 26-3-7 is entitled to be compensated by the board from the fund for one hundred percent (100%) of the storage loss incurred less all credits and offsets and any producer premium that would have been due on the sale of the grain. The gross amount of the storage loss shall be as determined by the agency for warehouses licensed under IC 26-3-7 or by the United States Department of Agriculture for warehouses licensed under the United States Warehouse Act. The warehouse operator and claimants may submit to the agency evidence related to outstanding charges against stored grain. If the evidence is submitted, the agency shall determine the storage loss payable by the board.

(b) A claimant who has incurred a financial loss due to the failure of a grain buyer is entitled to be compensated by the board from the fund for eighty percent (80%) of the loss incurred less all credits and offsets and any producer premium that should have been due on the sale of the grain. The agency shall determine the loss incurred in the following manner:

(1) For grain that has been priced, the loss shall be the value of the priced grain less any outstanding charges against the grain.

(2) For grain sold to a grain buyer who is also a warehouse operator and that has not been priced, the loss shall be established using the price determined for the storage obligations.

(3) For grain sold to a grain buyer who is not a warehouse operator and that has not been priced, the loss shall be established using a price determined by the agency using the same procedures used by the agency to determine the price at the warehouse.

(c) If a producer appeals under IC 4-21.5-3 an order issued by the director under IC 26-3-7-16.5 that postpones the agency from notifying the board of the amount of loss for proven claimants under IC 26-3-7-16.5(n), the board may issue partial payments to any claimants who have not appealed their claims.

SECTION 21. IC 26-4-6-6, AS AMENDED BY P.L.75-2010, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. A claimant compensated under this chapter
may be is required to subrogate to the board or corporation all the claimant's rights to collect on a bond issued under IC 26-3-7 or the United States Warehouse Act and all the claimant's rights to any other compensation arising from the failure of the grain buyer or warehouse operator. If so required, The claimant shall assign all the claimant's rights, title, and interest in any judgment concerning the failure to the board or corporation.

SECTION 22. An emergency is declared for this act."
Renumber all SECTIONS consecutively.
(Reference is to HB 1237 as introduced.)