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March 23, 2023

Chair Erin Murphy
95 University Avenue W.
Minnesota Senate Bldg., Room 3211
St. Paul, MN 55155

Dear Chair Murphy and members of the committee:

On behalf of Minnesota Farmers Union (MFU), I write to thank you for your consideration of Sen. Kupec's bill to strengthen protections for farmers by creating a grain indemnity fund in Minnesota (SF2218). We are grateful for the opportunity to outline why we strongly support this proposal. According to the Attorney General's office Minnesota farmers who sell grain are among the least protected in the nation. Too many families have been hurt by elevator failures not to act.

MFU is a grassroots organization that has represented Minnesota's family farmers, ranchers, and rural communities since 1918. In November at our annual convention our members again passed policy calling on Minnesota to join over a dozen states—including Wisconsin, Iowa, North Dakota, Illinois, and Michigan—who have indemnity funds that protect producers in the event of fraud, elevator collapse, or other events that result in nonpayment to producers.

We feel strongly about this issue, because our members and others who market grain are among the least protected in the nation. This had real consequences for families who sold grain to elevators that have collapsed in recent years, including Porter in 2015, Ashby in 2018, Karlstad in 2019, Pipeline in 2021, and Global Processing just this past summer. One of our members, for example, delivered over \$80,000 in grain to Pipeline Foods in 2021ⁱ before being told that the company was declaring bankruptcy and they would not be receiving payment. For a small, organic operation—and a young family with children—this was hugely challenging.

Even more dire, MDA has shared that farmers have gone bankrupt in the years waiting for bonds to pay out. Our system is broken and it's time we fix it.

In considering this proposal, we think it's important to consider the following points:

- **Farmers regularly extend credit to grain buyers, which includes risk.** As a rule rather than the exception, farmers are not taking payment for grain when they deliver. In effect, they're unknowingly extending credit to that elevator or other grain buyer. This is important, often strategic in terms of cashflow and marketing, and a standard in the industry. However, it carries inherent risks if the elevator goes under.

- **Our current system fails to protect farmers from this risk**, leaving them among the most vulnerable to elevator failures in the nation. Under our current system, grain buyers purchase bonds which are used to pay out to producers in the event of failures. Unfortunately, these bonds only cover .35 percent of the approximately \$14 billion in grain transactions across the state. And on average across recent failures, our system of bonds has compensated producers for only 11 percent of claims—literal cents on the dollar. Not only that, but bonds pay out much later than an indemnity fund, leaving farmers waiting for years.

In the case of this past summers Global Foods failure, farmers in Minnesota were notified they could file with MDA to get their share of a \$50,000 bond.ⁱⁱ In contrast, farmers across the border in Iowa were told that they should file claims through the state grain indemnity fund which could reimburse farmers for 90 percent of claims up to \$300,000.ⁱⁱⁱ

- **Our industry already pays for this failed system.** In conversations about an indemnity fund, the cost can give some pause. However, it is important to remember that we already pay annually for a system of bonds that is not working. These bonds cost between 1 and 5 percent of the value of the bond meaning that the industry pays between \$.5 and \$2.5 million for bonds every year. These costs are surely passed on to producers and for little benefit.

According to MDA, to raise \$10 million for the fund would cost producers around \$7 per \$10,000 of marketed grain in the first year. Unlike bonds which need to be maintained, assessments for an indemnity fund would then shut off until there is a claim on the fund. It's the cheapest insurance farmers can buy.

- **Previous attempts at regulatory reform have failed producers.** Starting in 2015 after the Porter elevator failure, MFU has participated in multiple stakeholder groups aimed at strengthening protections for producers impacted by elevator collapses. While MFU pushed for an indemnity fund then, others opted to tighten regulations with the aim of prevention. I think it is important to be honest that these attempts at reform have failed and with dire consequences for farmers.

The fact is that grain marketing is increasingly complex, fast-paced, and subject to global market volatility and supply chain disruptions. There is a lot we can do to mitigate risk through smart regulation, but we've been shown now time and time again that we can't prevent failures outright. That is why we need to establish a meaningful safety net through an indemnity fund.

Thank you for your attention to this important issue and hope it earns your support. Policy specifics included in Sen. Kupec's proposal that we support include:

- **Scaled reimbursement** – we believe that it's fair for farmers to have some 'skin in the game' and it isn't necessary that a fund is built to reimburse farmers for 100 percent of losses. We feel the proposal to scale reimbursement based on the length of time farmers stored their grain is thoughtful, fair, and would be far more protection than the current system of bonds.

- **Producer funding** – we support a nominal fee assessed on marketed grain as the long-term funding mechanism to support this fund for generations to come. We also believe that seeding the fund with state dollars is a valuable investment and will ensure producers are protected on day one.
- **Opt-out provision** – we support the provision to allow farmers to ‘opt out’ of the program—reimbursing them the fees they were assessed in exchanged for becoming ineligible for reimbursement. In Michigan this policy has had a limited effect on the fund.
- **Penalties and pursuit of repayment** – we support the new civil penalties imposed on grain buyers who do not comply with the law. We also appreciated the language that would allow the Attorney General to pursue repayments into the fund from elevator operators as a party to the bankruptcy.

Finally, we understand that there are ways we can strengthen our grain buyer laws to prevent failures—and we look forward to engaging constructively to make sure changes work for farmers and small businesses. We are open to discussions on regulatory changes, but do not believe they are an acceptable substitute for the protections provided by this fund.

We thank Sen. Kupec for his leadership on this important issue and Chair Murphy for your consideration. We look forward to working with you to create a system that protects farmers. If you have any questions, please contact our Government Relations Director, Stu Lourey, at stu@mfu.org or (320) 232-2047 (C). Thank you for considering the needs and perspectives of Minnesota’s farm families.

Sincerely,



Gary Wertish
President, Minnesota Farmers Union

ⁱ <https://www.agweek.com/business/bankruptcy-judge-allows-farmers-to-sell-undelivered-grain-in-pipeline-foods-debacle>

ⁱⁱ <https://www.mda.state.mn.us/mda-advises-farmers-ties-global-processing-inc-file-claims>

ⁱⁱⁱ <https://www.desmoinesregister.com/story/money/agriculture/2022/10/26/iowa-organic-soybean-business-loses-state-licenses-files-bankruptcy/69591097007/>