

SUBJECT: Providing an exception to agricultural lien priority for marketing contracts

COMMITTEE: Agriculture and Livestock —favorable, without amendment

VOTE: 5 ayes — T. King, González, C. Anderson, Burrows, Rinaldi

0 nays

2 absent — Cyrier, Stucky

WITNESSES: No public hearing

BACKGROUND: Property Code, ch. 70, subch. E governs the creation and applicability of agricultural liens. Agricultural producers contracting with a purchaser to sell crops automatically have a lien against the crop for the amount of money owed to the producer under the contract. The lien attaches on the date of delivery or on the date of first delivery if multiple deliveries occur. The lien is automatically perfected for a period of 90 days after the date of delivery or on the date of the last delivery if multiple deliveries have occurred. For perfection to continue, the producer must file a financing statement with the secretary of state.

When perfected, these liens have priority over a conflicting security interest in or lien on the crop or proceeds created by the contract purchaser in favor of a third party, other than a cotton ginner's lien, regardless of the date of attachment. This does not affect a security interest or lien created and perfected to secure a loan directly to the agricultural producer.

Some have expressed concern that recent changes in laws relating to agricultural liens have led to unintended consequences and an increase in financing costs for a contract purchaser under certain marketing contracts.

DIGEST: HB 3663 would establish that the superior priority given to agricultural liens would not apply to situations in which contract purchasers were purchasing an agricultural crop from an agricultural producer pursuant to certain marketing contracts.

This bill would take effect September 1, 2017.