

COOPERATION IN NEBRASKA

OFFICIAL PUBLICATION OF THE NEBRASKA COOPERATIVE COUNCIL



ANNUAL REPORT

Volume 43, No. 3

September 2004

This issue of *Cooperation in Nebraska* is a special edition that combines the Annual Report with the September newsletter. This is the sixth year we have combined these two publications, which allows us to become more efficient as we work to maximize your dues dollars.

Subdistrict Meetings

This year's Subdistrict meetings were held in Bridgeport on August 16, Lexington on August 17, and York on August 19. A total of 196 attended the meetings.

The Subdistrict meetings provided local management teams with the opportunity to review the activities of the past year and, more importantly, to hear the Council's plans for the upcoming year. Much of the work of the Council takes place well in advance of when the general public is informed of an issue. These

Subdistrict meetings allow our members to learn about issues and activities that the Council will be working on throughout the course of the year.

Reports were given by Board members, Political Action Committee members, and Fund For Excellence Committee members, in addition to the President's report by Council President Bob

Andersen. We want to thank all those who provided reports at the meetings. Grassroots involvement is important for our organization and having committee members present reports gives you their perspective on the issues the Council is working on.

In addition to the reports, another feature of the



Scholarship recipients Ryan Hunter (above) and Tiffany Minnick (right) addressed the Subdistrict meeting attendees at Bridgeport and Lexington, respectively.



meetings was the opportunity to hear from the 2004/05 NCC Education Foundation Scholarship winners. It is always a pleasure to hear from the scholarship winners and learn of their college activities and future plans. The enthusiasm and energy that these young people bring to the meetings is always a highlight of the evening.

Our special thanks to Terry Bentley and FCE Credit Union for providing the refreshments during registration at each of the Subdistrict meetings.

CALENDAR OF UPCOMING EVENTS...

October 2004 - Co-op Month

- 8 *KRVN/KNEB/KTIC Radio Report
- 22 *KRVN/KNEB/KTIC Radio Report

November 2004

- 5 *KRVN/KNEB/KTIC Radio Report
- 15 Nebraska Rural Radio Assn. Annual Meeting - Lexington
- 19 *KRVN/KNEB/KTIC Radio Report
- 22 Nebraska Cooperative Council Annual Meeting - Kearney Holiday Inn

December 2004

- 3 *KRVN/KNEB/KTIC Radio Report
- 9-10 CHS Inc. Annual Meeting
- 13 Member Input Meeting - North Platte
- 14 Member Input Meeting - York
- 15 Director/Manager Workshop - Sidney
- 16 Director/Manager Workshop - Kearney
- 17 Director/Manager Workshop - Columbus
- *KRVN/KNEB/KTIC Radio Report
- 21 Director/Manager Workshop - Lincoln
- 31 *KRVN/KNEB/KTIC Radio Report

*Broadcast times are:
KRVN: 2:17pm Central
KNEB: 1:15 pm Mountain
KTIC: 2:17pm Central

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President's Message



I want to thank the membership, committee members, Board members, and staff for making this another successful operating year. Your trade association, and

the Nebraska cooperative sector, has been the most successful and effective when we have stood together and worked mutually in support of each other as issues have been addressed.

Incorporated within this Annual Report are the audited year-end financials. I do want to call to your attention the impact the Farmland Industries bankruptcy had on your cooperative trade association. On May 31, 2002, Farmland, and its related entities, filed a voluntary petition under Chapter 11 of the Bankruptcy Code.

For many years, the Nebraska Cooperative Council has had a beneficial and prosperous business relationship with Farmland. As part of its overall investment strategy, it was customary for the Council to invest in various Farmland bond debentures, as well as to redeem certain investments to fund the Council's annual cash flow requirements. The Bankruptcy Code allows the Trustee to avoid certain transactions entered between Farmland and others during the immediate 90 days prior to the filing of the bankruptcy petition. On or about May 17, 2004, the Council received a letter from counsel to the Trustee seeking to avoid the Council's redemption of Farmland investments in March and April 2002, and demanding the return of the "preferential payments" in the amount of \$174,902.46. Because of the long history of its investment and redemption practices with Farmland, the Council raised certain legal defenses seeking to exempt the redemption transactions from the Trustee's preference claim. Because of the costs and risks inherent in any type of litigation, the Board determined that it was in the best interest of the Council to resolve the dispute. Representatives of the Council and the

Trustee's attorneys negotiated a settlement agreement whereby the Council remitted the sum of \$52,759.63 to resolve the preference claim. According to the terms of the settlement agreement, upon receipt of the funds by the bankruptcy trustee, the Council receives an additional allowed claim in the Farmland Industries bankruptcy estate. If the amounts of future distributions from the bankruptcy estate meet the expectations of some, the Council will recoup a significant portion of its bankruptcy claims.

It is not known what the future distribution levels will total. We would have to recover 88.15% of total claims (including interest) to break even (or not have to recognize any further gain or loss). We know it's not going to be exactly this amount, so we need to be prepared to recognize a gain or loss next year depending on the actual payments received. We will keep you abreast of future distributions or factors affecting same.

In closing, this past year has been a time of change, challenge, success, and disappointment as well. Yet, in the final analysis, we believe the association is well positioned to meet the challenges of today and tomorrow. Your continued input and active participation is extremely important as we move forward. Your Council seeks to be part of the solution and not part of the problem.

In the cooperative spirit, I remain....

Robert C. Andersen, President

NEBRASKA COOPERATIVE COUNCIL MISSION STATEMENT

"To defend, protect, and enhance the agricultural cooperative movement through pro-active programs in education, legislation, government affairs, communication, and regulatory issues."

THE COOPERATIVE PRINCIPLES:

- # Voluntary and Open Membership
- # Democratic Member Control
- # Member Economic Participation
- # Autonomy and Independence
- # Education, Training and Information
- # Cooperation among Cooperatives
- # Concern for Community



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BOARD OFFICERS

Board Chairperson Dale Piper, Elmwood - District II
 Vice Chairperson Ed Foster, Gothenburg - District I
 Secretary Bill Schuster, Aurora - District II

BOARD DIRECTORS

Jim Chism, Imperial District I
 Jerrell Dolesh, Battle Creek District II
 Steve Erdman, Scottsbluff District I
 Tom Hansen, Edison District I
 Ron Velder, Dorchester District II
 Virgil Harms, Omaha Participating Member

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2003/2004 Board of Directors

DISTRICT I



Jim Chism
Frenchman Valley
Farmers Co-op
Imperial



Steve Erdman
Panhandle Co-op Assn.
Scottsbluff



Ed Foster, Vice Chair
Farmland Service Co-op
Gothenburg



Tom Hansen
Ag Valley Co-op
Edison

DISTRICT II



Jerrell Dolesh
BattleCreekFarmersCo-op
Battle Creek



Dale Piper, Chair
Midwest Farmers Co-op
Elmwood



Bill Schuster, Secretary
Aurora Co-op Elevator Co.
Aurora



Ron Velder
Farmers Co-op
Dorchester

PARTICIPATING MEMBER



Virgil Harms
CoBank
Omaha

2003/2004 Council Committees

LEGISLATIVE ADVISORY COMMITTEE

Robert Andersen Nebraska Cooperative Council (*Co-chair*)
Ed Foster Farmland Service Co-op, Gothenburg (*Co-chair*)
Jim Chism Frenchman Valley Farmers Co-op, Imperial
Tom Hansen Ag Valley Co-op, Edison

Dennis McGee All Points Co-op, Lexington
Mike Maranell Ag Processing Inc., Omaha
Rich Richey Husker Co-op, Columbus
Bill Schuster Aurora Co-op Elevator Co.

Bruce Younglove CHS Inc., Lincoln
Dale Piper Midwest Farmers Co-op, Elmwood (*ex-officio*)

EDUCATIONAL ADVISORY COMMITTEE

Steve Erdman Panhandle Co-op Assn., Scottsbluff (*Chair*)
Jim Chism Frenchman Valley Farmers Co-op, Imperial
Tod Clark CHS-LOL, Scottsbluff
Tom Houser CoBank, Omaha

Harold Hummel Farmers Co-op Co., Waverly
Eric Johnson Central Valley Ag Co-op, O'Neill
Monty Johnson Southeast Nebraska Co-op Co., Beatrice
Harold Printz Farmers Elevator Co., Chappell

Steve Wright United Farmers Co-op, Shelby
Darrell Mark University of Nebraska-Lincoln (*ex-officio*)
Dale Piper Midwest Farmers Co-op, Elmwood (*ex-officio*)

POLITICAL ACTION COMMITTEE

Ed Foster Farmland Service Co-op, Gothenburg (*Chair*)
David Briggs WESTCO, Alliance
Todd Christensen Agri Co-op, Holdrege
Doug Derscheid Central Farmers Co-op, O'Neill

Bruce Favinger Heartland Co-op, Hastings
George Hohwieler Aurora Co-op Elevator Co.
Jerry Johnson United Farmers Co-op, Shelby
Greg Sabata Frontier Co-op Co., Brainard

Ron Velder Farmers Co-op, Dorchester
Brian Williams Farmers/Ranchers Co-op, Ainsworth
Dale Piper Midwest Farmers Co-op, Elmwood (*ex-officio*)

FUND FOR EXCELLENCE COMMITTEE

Steve Erdman Panhandle Co-op Assn., Scottsbluff (*Chair*)
Jerrell Dolesh Battle Creek Farmers Co-op
Darwin Franzen Cooperative Supply Inc., Dodge
Larry Landstrom Midland Co-op, Funk

Marlin Luebbe Farmers Co-op, Dorchester
Wade Mulari Co-op Mutual Insurance Co., Omaha
Randy Robeson Frontier Co-op Co., Brainard
Dale Piper Midwest Farmers Co-op, Elmwood (*ex-officio*)

HALL OF FAME COMMITTEE

Ron Hunt, Hildreth (*Vice Chair*)
Al Kalkwarf, Dorchester
Jim Miller, Hardy
Ken Regier, Aurora (*Chair*)
Mike Turner, Lincoln
Dale Piper, Elmwood (*ex-officio*)

Nebraska Cooperative Council Cooperative Hall of Fame Induction Ceremony

The Nebraska Cooperative Council Cooperative Hall of Fame welcomed three new members last year. On November 24, 2003, **Frank Bosak** of Dorchester, **Eugene Gustafson** of Aurora, and **James F. "Jimmie" Lawrence** of Lincoln were inducted into the Hall. Both Bosak and Lawrence were honored posthumously.

The three have had a profound impact on cooperatives in Nebraska, and each spent their entire career providing leadership to the cooperative movement.

Frank Bosak spent his entire management career at Dorchester Farmers Co-op. He took over a rundown facility and restored it to a financially sound company that still exists today.

Eugene Gustafson served on the Board of the Aurora cooperative for 18 years, the last 8 as president. He also served on the boards of Farmland Industries, Production Credit Associa-

tion, Farm Credit Bank of Omaha, and the National Bank for Cooperatives.

Jimmie Lawrence was one of the earliest leaders of cooperatives in Nebraska. In 1918 he began working for the University of Nebraska and for the rest of his career he drove across the state promoting cooperatives.

The three individuals continue to add to the prestige of the Hall of Fame which was implemented to recognize individuals who have been unwavering in their support of cooperatives. It is reserved for only those whose leadership is recognized as outstanding by their peers. Certainly these three meet that criteria and add to the prestige of the Hall of Fame.

Council Board Chairman Dale Piper presented each of the inductees or their families with a framed certificate commemorating their induction into the Hall of Fame. In addition, a plaque is permanently displayed at the Council's office in Lincoln.



Frank Bosak*
Dorchester



Eugene Gustafson
Aurora



James F. "Jimmie" Lawrence*
Lincoln

*Honored posthumously

NCC - Political Action Committee

The Council's Political Action Committee (PAC) was organized to enhance access to our elected senators from both rural and urban areas of the state. The committee charged with studying the formation of a PAC expressed a concern about declining rural representation in the Legislature, due to redistricting which occurs every 10 years. Because of that decline in rural representation, the study group realized the need to develop and enhance communications with urban legislators, especially those from Lancaster, Sarpy, and Douglas counties.

Since elections for the Legislature are on a 2-year cycle, the activity of the PAC follows that cycle. Half of the state legislators are up for election in each 2-year cycle.

This past July, the Committee spent 2½ days interviewing candidates for the Legislature. One day was spent in Omaha, one in Lincoln, and a half day in Grand Island. While the interviews require significant dedication on the part of PAC Committee members, the process is a valuable opportunity for the committee to get acquainted with the candidates. At the same time, the committee has been able to inform the candidates about issues affecting cooperatives.

The PAC Committee's role in the interview process is very instrumental in providing the Council with access to legislative members.



Visit our website at
www.nebr.coop

Fund For Excellence

The Nebraska Cooperative Council Fund For Excellence (FFE) has completed its second year of operation. You'll recall that the FFE was initiated in an effort to ensure that local cooperatives in Nebraska would continue to have access to an independent, third-party cooperative faculty member with expertise and extension responsibilities with agricultural cooperatives at the University of Nebraska Institute of Agriculture and Natural Resources (IANR).

Funds donated to the FFE have been placed in a "restricted" account controlled by the Council rather than the University. Our intent is to utilize "only interest income." In addition, we are able to utilize any college (i.e., Iowa State University, Kansas State University, or others) if it better enhances and fulfills cooperative educational needs. Our current agreement with UNL calls for five annual payments of \$12,500 from the FFE.

FFE FUNDING FOR 2003/04

The FFE will be used to fund graduate studies of specific areas/issues, to provide for educational speakers, and for educational enhancement for cooperative directors and managers.

In 2003/04 the FFE Committee took action to fund the following projects:

1. **Agricultural Cooperative Finance Model for Projecting Patron Cash Flow From Qualified and Non-Qualified Allocations** as submitted by Dr. Jeff Royer and Dr. Darrell Mark from UNL. This proposal is designed to develop and implement a computer model to project the impact of qualified vs. non-qualified allocations. This will allow cooperatives to project impact of allocation plans into the future. (\$10,000)

This software has become known as *NU CAST*. Meetings to distribute version 1.0 of *NU CAST* and teach participants how to use it were held on August 12 in York and North Platte.

2. **Equity Management Strategies Used by Central Great Plains Farm Supply and Grain Marketing Cooperatives** was submitted by Dr. David Barton and Dr. Michael Boland, Kansas State University; Dr. Roger Ginder, Iowa State University; Dr. Sue Hine, Colorado State University; and Dr. Darrell Mark, UNL. This proposal would survey central Great Plains states, which was last done by USDA in 1991, to determine equity management strategies being used. It would include 400 cooperatives in Nebraska, Iowa, Kansas, and Colorado. (We have committed up to \$2,000 for the study).

Due to the uniqueness of the Farmland write-down, the study's leaders were concerned about surveying cooperatives while the write-down was occurring. They felt the responses may be tainted by this unusual occurrence. To avoid obtaining questionable results, it was decided to conduct the survey in the Fall of 2004 after most cooperatives had dealt with the Farmland situation.

FFE FUNDING FOR 2004/05

We received three proposals for the 2004/05 funding cycle. These proposals were reviewed by the entire FFE

Committee via conference call. The Committee took action to provide the following funding:

1. **Cooperatives For Tomorrow Workshop.** This proposal would fund a workshop that would focus on creating the vision and strategic plans for a cooperative. The intent is to bring in national speakers which local board members may not normally hear from. The workshop will be co-hosted by the University of Nebraska and the Nebraska Cooperative Council. More information on this program was included in the handout distributed at the Subdistrict meetings. (\$5,500)

2. **University of Nebraska Cooperative Analytical Simulation Tool NU CAST version 2.0.** This proposal would fund version 2.0 of the NU CAST software that was created the first year. Version 1.0 enables us to compare qualified vs. non-qualified allocations. Version 2.0 would incorporate additional features to enable users to project the impact of changes in unallocated equity and cash allocations paid in primarily non-qualified plans. (\$6,500)

During the meetings on August 12, members had the opportunity to give input as to the features they would like to see in version 2.0.

FFA Cooperative Speaking Competition

The Nebraska Cooperative Council once again sponsored the State FFA Cooperative Speaking competition. This event was held in conjunction with the 76th Annual State FFA Convention in Lincoln on April 2. A total of 58 students participated in the event statewide. Of these 58, 15 students were selected at district contests across Nebraska to compete in the state competition this year.

Contestants in the Cooperative Speaking Competition were judged on a six- to eight-minute prepared speech on a topic dealing with cooperatives and their benefits to the local, state, and national economies. This contest encourages young people to gain an understanding of cooperatives and to develop speaking and communication skills.

Judges for the semifinals were Lefty Gabriel, Shelby; Allen Schroeder, Leigh; Gail Hall, Lexington; and Ron Jurgens, Holdrege. Judges for the finals were Mike Turner and Ed Woepfel, both of Lincoln.

Sarah Maslonka from the Verdigre FFA Chapter took top honors in the 2004 competition and received a trophy, first place medal, and a check for \$100 from the Nebraska Cooperative Council. Second place went to **Amanda Gasper** of the Newman Grove FFA Chapter along with a medal and check for \$50. Third place went to **Cassie McCutcheon** of the Superior FFA Chapter who received a medal and check for \$25.

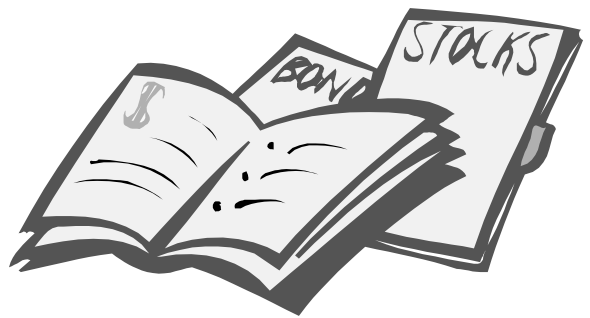
Others receiving medals and the FFA Chapters they represent were:

Gold: Nikki Hutsel, Hampton; Beth Kaup, Stuart;
Silver: Bryant Borchers, Centennial; Christine Elder, Imperial; Megan Marsh, Ord; Lindsey Mattox, Broken Bow; Justin Perry, Kimball; **Bronze:** Samantha Back, Allen; Whitney Carlson, Syracuse; Will Davis, Waverly; Phillip Goering, Lakeview; and Mikayla Meier, Hartington.

Nebraska Cooperative Council Financial Statements

The financial statements presented herein were excerpted from the complete Audited Financial Statements provided to the Council's Board of Directors.

*Financials statements are available for members
by contacting the Council office directly at 402/475-6555.*



2003/04 Education Programs

Three hundred sixty-three (363) directors, managers, and employees of local cooperatives have been a part of the Council's 2003/04 educational programs—the Director/Manager Workshops, Director Certification Programs, Special Director Seminars, and on-site programs.

Thirty-four (34) of our local cooperatives sent representatives to at least one of our educational programs. This means that 59% of our cooperative members took the opportunity to become involved in continuing education to strengthen their local cooperative.

Director/Manager Workshop



Darrell Mark explaining equity management at the Columbus Director/Manager Workshop.

The Council's Director/Manager Workshops were created to address timely issues of importance to Nebraska cooperatives.

Principal co-sponsors include the Council, University of Nebraska-Lincoln (UNL) Institute of Agriculture & Natural Resources (IANR), and CoBank. The following federated regionals serving Nebraska serve as supporting sponsors: AGP, CHS Inc., and Land O'Lakes.

The theme of the workshops was "Managing Equity for Tomorrow." The focal areas of the workshop were:

1. The value created by Nebraska cooperatives.
2. Understanding how qualified and non-qualified allocations differ.
3. How future streams of patronage allocations are affected by the cooperative's financial performance and management decisions.
4. How the cooperative's balance sheet is impacted by changes in the equity management plan.

Facilitators for the day-long program were Dr. Darrell Mark, Professor of Agricultural Economics at UNL; and Tom Houser, Vice President, Commercial Agribusiness Banking Group, CoBank.

Director Certification Program



Iowa State University Professor Dr. Roger Ginder at the York DCP.

The Director Certification Program (DCP) was introduced to cover all aspects of the roles and responsibilities of directors and how these differ from the manager. More than 7,000 phases have been completed. This year's 32 graduates increased the total number of graduates to 1,371. This program is arguably the most important program that we offer to cooperatives.

CoBank and UNL IANR are co-sponsors of the program with the Council.

The 2004 DCP was held January 6-7 at North Platte and January 28-29 at York.

Instructors for the program included: Dr. Darrell Mark, UNL, Phases 1 and 4; Council Attorney Rocky Weber, Crosby Guenzel LLP, Phase 1; Dr. Roger Ginder, Iowa State University and Tom Houser, CoBank, Phases 2 and 3; and Byron Ulery, retired co-op manager from Beloit, KS, Phase 4.

Dr. Ginder's services are obtained through a joint arrangement with Iowa State University.

Special Director Seminar



Mike Fraser at the Special Director Seminar in North Platte.

Special Director Seminars (SDS) are held once every four years in rotation with the three existing Graduate Director Seminars (GDS).

This year, two separate SDS programs were offered: (1) *Strategic Thinking & Planning* was conducted at North Platte on January 8; and (2) *Collaborative Leadership for Change* was offered at York on January 29.

Both programs were well attended and provided cooperative leaders with new tools to share with their local boards.



Legislative/Regulatory Issues

Below is a summary of major legislative and regulatory issues that we have monitored this past year. We normally monitor 75-100 bills/issues that are before the Legislature or regulatory agencies each year. Many times bills or regulations appear, on the surface, to have little to do with cooperatives. However, they can impact us in varying ways.

LB 1012 - ANHYDROUS AMMONIA TAMPERING

The legislative intent was to provide that owner(s) of anhydrous ammonia would not be liable for economic or non-economic damages due to a person(s) tampering with any equipment or storage facilities. This protection also extended to farmers who purchase anhydrous. At the hearing, the Council testified in support of the bill and we also offered an amendment prepared by Attorney Rocky Weber clarifying the definition of "tampering."

LB 1012 was one of the bills that appeared to be a casualty due to extended floor debate during the closing days of the session. Accordingly, an effort was undertaken to attach the legislative intent of LB 1012 onto another bill deemed to be "germane." The bill identified was LB 1207, introduced by Omaha Senator Brashear. Senator Brashear was open to allowing this amendment onto his bill.

LB 1012, via amendment, was attached to LB 1207 on April 13. On the final day of the session, the Legislature passed the revised LB

1207. The bill, which the Council supported, was signed by the Governor. Because it contained the "emergency clause," the bill became effective April 16, 2004.

LB 1065 - ETHANOL PRODUCTION INCENTIVES

LB 1065 was introduced by Senator Baker from Trenton. The legislative intent was to address the additional funding required to fulfill the proposed shortfall to the Ethanol Production Incentive Cash (EPIC) fund due to the number of new plants operating (Trenton, Plainview, and Axtell) and expected to come online shortly (Central City). LB 1065 will:

- ! Increase the EPIC checkoff from $\frac{1}{2}\text{¢}$ to $\frac{3}{4}\text{¢}$ on corn and sorghum, effective October 1, 2004, through October 1, 2010.

- ! The amount the State retains from the off-road fuel refund will increase from $2\frac{1}{4}\text{¢/gallon}$ to $3\frac{1}{2}\text{¢/gallon}$, with all the increase directed to the EPIC Fund.

During first-round floor debate, the Legislature adopted the Revenue

Committee amendment which provided for the following:

- ! That for applications received on or after the effective date of the Act, ethanol producers that receive the production credits are ineligible for benefits under the Employment & Investment Growth Act (LB 775).

- ! No new applications for ethanol incentives will be accepted after the effective date of the Act.

Senator Wehrbein was also successful in offering an amendment which authorized that \$1.5 million annually would be transferred from the LUST (Leaking Underground Storage Tanks) Petroleum Release Fund to the EPIC Fund for the next 8 years. Even with the LUST funding transfer, the EPIC is approximately \$89 million short for the contractual obligations for the four ethanol plants.

LB 1065 was passed by the Legislature and signed by the Governor. Since the "emergency clause" was incorporated, the bill became effective April 16, 2004.

LB 1086 - NEBRASKA AGRICULTURAL OPPORTUNITIES TASK FORCE

Indefinitely postponed following adjournment, LB 1086 would have created the Nebraska Agricultural Opportunities Task Force. While not repealing Initiative 300, LB 1086 would have called for a complete study as to whether the goals of I-300 have been met, as well as the positive and negative effects on issues of importance to the future of agriculture. A Governor-appointed task force would have been charged with this study.

There is some confusion as to how farmers can work together under the "cooperative business model" and still be legal under I-300. Producers who have tried to organize as a cooperative in a production agriculture enterprise have been found to be in violation of I-300.

The Council supported LB 1086 as its long-standing position is to advocate and promote the cooperative way of doing business. The Council

(cont. on page 10)

Cooperative Specific

The following areas directly affect and impact cooperatives; these issues are unique to cooperatives and require constant monitoring.

Securities...The Council continues to work to ensure that cooperative equities are not classified as securities and subject to full registration. The exemption from full registration of certificates of investment has been maintained, but the notice filing requirements continue.

Mandatory Equity Redemption...The Council's position has been that decisions regarding equity redemption should remain in the hands of the Cooperative's Board of Directors. In the past few years, there has been the advancement in several surrounding states to allow members or stockholders of a cooperative to demand immediate payment of equities or to prohibit the practice of setting aside any such members' earnings to a surplus fund. The Council is opposed to both provisions.

Patronage Dividends...The Council will continue to oppose any efforts to

subject cooperative patronage dividends/per unit retainings to "double taxation" at both the producer and local levels for the purpose of computing state income taxes.

Interest on Members' Equity...The Council continues to oppose legislation mandating cooperatives to pay annual interest to member stockholders on their members' equity.

Transportation Cooperatives...The Council will continue to oppose efforts which would discriminate against cooperative transports.

Farm Credit System...The Council will continue to closely monitor legislation to ensure that commercial lending interests do not attach/amend legislation which would prohibit or restrict the ability of the Farm Credit System to adequately serve agriculture and cooperatives.

Telephone Cooperatives and Rural Electric Cooperatives...The Council will continue to closely monitor legislation to ensure that Telephone and Rural Electric Cooperatives are allowed the opportunity to adequately serve their members.

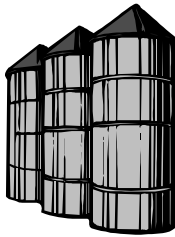
believes that the cooperative system has been beneficial for producers in our state ever since the inception of cooperatives. Allowing farmers to work cooperatively under I-300 while still providing the protection of LLCs or corporations would be in the best interest of rural Nebraska.

LB 992 - GRAIN WAREHOUSE ACT

Indefinitely postponed following adjournment, LB 992 was introduced in an attempt to correct problems which arose during the insolvency of Richland Grain. Richland's primary creditor, a bank, filed a replevin action and pursuant to a court order, seized title to all of the company-owned grain. The bank was able to foreclose on its UCC Article 9 security interest in Richland Grain.

When the Nebraska Public Service Commission (PSC) stepped in to seize grain in storage and make a pro rata distribution of the grain to the depositors, owners or storers of grain, it was unable to access and use company-owned grain to help satisfy the claims of depositors, even though the Grain Warehouse Act provided for the PSC to use all grain in storage at Richland for its pro rata distribution to depositors.

LB 992 would have added features to the Grain Warehouse Act to make sure that owners, depositors, and storers of grain have first interests over the warehousemen's creditors with regard to the grain stocks in the event of an insolvency. According to Attorney Rocky Weber, this measure does provide further protection for owners, depositors, and storers of grain. He believes that its effect is relatively neutral on the cooperatives. However, the effect will be primarily on the cooperative's lenders and, perhaps, could create situations where it will be more difficult for grain warehousemen to finance their inventories because of the super priority of the depositors, owners, and storers of grain. The Council was neutral on LB 992.



LB 946 - GRAIN DEALERS

Indefinitely postponed following adjournment, LB 946 was essentially a

clean-up bill to LB 735 which was enacted last session. LB 946 clarified a number of accounting issues, including who can prepare financial statements for submission to the Commission and under what accounting principles the statements must be prepared. It also allowed grain dealers to submit a "reviewed" financial statement instead of an "audited" financial statement. The Public Service Commission could still require an audited statement if circumstances warranted. In addition, LB 946 clarified that a seller of grain must demand payment from a grain dealer within 30 days after the date of the last shipment of any contract. Such language parallels other existing statutory language. Finally, a small change in the area of moisture meters was included so that the Commission could inspect for "test weight" in addition to "moisture content." The Council supported LB 946 but expressed a concern with present language changing "license" year to "fiscal" year. We recommended that this be clarified to be the grain dealers' "fiscal" year.

LB 962 - WATER POLICY TASK FORCE BILL

LB 962 contained the majority of the recommendations from the state's Water Policy Task Force on issues such as water transfers and interrelated management of the state's ground and surface water. The bill became a victim of filibusters to address other issues, which included getting the death penalty bill off the agenda and attempting to resolve the storm-water issue.

The state funding mechanism was amended to the Water Trust Fund that included a \$1 million transfer from the Nebraska Environmental Trust Fund and \$1.5 million from the Petroleum Release Remedial Action Fund. Part of the compromise included an interim study to be done on the one-man, one-vote issue for NRDs, with the promise to introduce a bill on the subject next year. The local funding portion added as an amendment contained provisions of LB 895 that allows NRDs to levy an additional 1¢ levy over and above the maximum 4½¢ for groundwater and interrelated water management programs under the Nebraska

Groundwater Management Act and also exempts expenditures for such programs from the 2½% budget limitation. The law sets a baseline of expenditures for such at the FY 2003-04 levels.

The bill also included provisions of six other bills. Of interest is provisions from LB 1142, which the Council supported, which extends the reimbursement deadline for funds from the Petroleum Release Remedial Action Fund from June 30, 2005, to June 30, 2009.

The Governor signed LB 962 on April 15, 2004.

LB 1243 - COMMERCIAL FERTILIZERS

LB 1243 was introduced by Senator Preister to gather data to determine which substances are contained in the commercial fertilizers and soil conditioners that are sold and distributed in Nebraska. This will enable the state to determine whether or not there is a problem in Nebraska with waste-derived products or controlled substances being added to commercial fertilizers and soil conditioners which are sold and distributed in Nebraska.

LB 1243 would require labels and labeling of commercial fertilizers and soil conditioners so that consumers have information regarding the substances that are contained in the products they purchase.

The semi-annual reports would also need to be filed by every person who distributes commercial fertilizers and soil conditioners and must set forth, by county name, the number of tons of each commercial fertilizer or soil conditioner sold.

LB 1243, which the Council monitored, was indefinitely postponed following adjournment.

LB 836 - DAIRY INDUSTRY DEVELOPMENT ACT

LB 836 was introduced by Senators Kremer and Wehrbein and adds provisions for selection of members for the Nebraska Dairy Industry Development Board to include one Board member for each 40 milk production units and the Director of Agriculture as an ex-officio member.

In addition, individuals would be nominated by "first purchasers" of milk

with all members to be appointed by the Governor.

LB 836 received no opposition from the regional dairy cooperatives. At the hearing for LB 836, there was no opposition to the bill. LB 836, which the Council monitored, was passed by the Legislature and signed by the Governor.



LB 736 - EMPLOYMENT & INVESTMENT GROWTH ACT

LB 736 was introduced last year by Senators Kremer, Baker, Bromm, Erdman, and Schrock at the request of the Council to correct an inequity in the Employment & Investment Growth Act. Presently, "exempt" cooperatives are not eligible to receive tax credits under the Employment & Investment Growth Act. LB 736 would correct same. Currently, there are approximately 21 local supply/marketing cooperatives and 2 regional cooperatives affected by the existing statutes.

LB 736 was held over from last year because of budget challenges. The Legislative Research Office estimated that the cost of LB 736 would be significantly higher than projections that we anticipated. With the budget under pressure, LB 736 was left for this year's session. Unfortunately, this year's State budget was in no better shape so any measures seeking further State funds were heavily scrutinized.

LB 736, which the Council supported, was indefinitely postponed by the Revenue Committee along with a number of bills that were before them which would have required additional State funding.

FAIR LABOR STANDARDS ACT (FLSA)

During its audits in the last few years, the U.S. Department of Labor (DOL) has taken the position that incentive pay, whether by bonus or commission, must be included in the "base hourly rate" for the purpose of calculating overtime because the incentive is a previously agreed upon part of the employee's compensation plan. The net effect of this has been to require the employer to recalculate all overtime for the period in which the

bonus or commission was earned. When the DOL has taken this position, employers have had to pay large amounts of additional compensation to the employees who received incentive pay.

In order to resolve this issue, the Council arranged meetings with our Congressional representatives and their staff. Through these discussions, the representatives and their staff members have come to understand the problem that this presents to cooperatives. Since the DOL audits were only affecting Nebraska at this time, Congressional representatives felt passing legislation would be difficult, if not impossible. With that in mind, a "fly in" was held in December 2003.

Seven Nebraska cooperative representatives traveled to Washington, DC, to meet with DOL officials to discuss the FLSA. Those participating were Joe Barry, cooperative employee from Battle Creek; Doug Derscheid, manager of Central Valley Cooperative, O'Neill; Mike Harms, board vice chair from Midland Co-op, Funk; Dale Piper, manager of Midwest Farmers Co-op, Elmwood; Rocky Weber, Attorney with Crosby Guenzel LLP, Lincoln; Steve Wright, board chair of United Farmers Co-op, Shelby; and Council President Bob Andersen, Lincoln.

The major point that the Nebraska delegation shared with DOL officials is that the current bonus system that many cooperatives use is helping employees, not taking advantage of them. For those employees involved in seasonal work, such as floater operators or fuel delivery personnel, the bonus allows the employee to be rewarded for the extra work during the busy season but not be penalized by having reduced compensation or hours during slack seasons.

The meeting concluded with the following understanding:

A. Each side has a new perspective of the other's concerns and the foundation of those positions.

B. While the DOL did not formally reject our proposal, they did not offer definitive options or revisions to our proposal. It appears that it could serve as the basis for future consideration.

C. More dialogue would continue on this issue.

Since the fly-in, Attorney Rocky Weber and Al Robinson of DOL have

conferred several times in an attempt to narrow the scope of ideas that were discussed during our meeting.

SPILL PREVENTION, CONTROL AND COUNTERMEASURES (SPCC) RULES

The Council is working with a coalition of farm and commodity groups (including the National Council of Farmer Cooperatives) and individual farmer cooperatives to address concerns over Environmental Protection Agency (EPA) SPCC regulations. Currently, EPA's SPCC rules would require many farms and other "facilities" to meet costly regulations for storage and containment of any kind of oil (petroleum products/vegetable oils/animal fats). The rules would also require certification of an SPCC plan by a professional engineer. The coalition has urged delay in implementation of the regulations and substantial revisions and exemptions relating to agriculture.

Senator Mark Pryor (D-AR) conducted a Senate Small Business & Entrepreneurship Committee hearing on June 25, 2004. The hearing addressed many of the compliance issues that have been looming over the petroleum industry such as clarification/definitions of terms including "loading/unloading rack," "facility," and "produced water."

The Council signed onto a letter from agricultural industry groups urging the EPA to extend compliance of these regulations by two years. Representatives of the EPA Oil Spill office have announced that compliance for these regulations has been extended for 18 months and this ruling is expected to be published in the Federal Register.

PUBLIC SERVICE COMMISSION - GRAIN REGULATIONS

The Council is continuing to work with the Public Service Commission (PSC) in resolving issues related to the proposed new regulations pertaining to grain warehouses due to the passage of LB 735 during the 2003 legislative session. This has become a very complex issue with the entire industry united in opposing portions of the proposed regulations. Of concern is the proposed revised definition that "received grain" would require the

(cont. on page 12)

“physical depositing” of grain in a licensed public warehouse. Through this process, we have suggested increased financial reporting would be a proactive solution to this problem. Whether through audits or other methods, we believe that financial strength needs to be measured.

Regardless of the industry opposition, the PSC did advance its proposed regulations on a 4-1 vote on November 13, 2003. On December 8, 2003, representatives from the industry met with Governor Johanns to voice our concerns. The Governor was very understanding of our concerns. In late January, the Governor visited with the PSC and told them that he wouldn't sign the regulations with the objectionable language. As this was occurring, we worked with Senator Kremer to introduce LB 1151 which was drafted by Rocky Weber. LB 1151 would have struck the objectionable language. In addition, we continued to advocate the need for the PSC to adopt rules and regulations that recognize receipt of grain may be accounted for in an elevator without requiring physical deposit to occur at that elevator. As a result, the compromise between the PSC and the industry was to have the objectionable language removed and the revised regulations then advanced to the Governor. In turn, the industry would ask that LB 1151 be held in committee by the Legislature.

In April, a meeting of stakeholders was called and PSC staff updated us. As the meeting concluded, the Commissioners requested that we come forth with an “industry proposal.”

The Council's proposal has been assembled by Attorney Weber with input from the Grain Ad Hoc Committee.

Latest Developments... On July 20, the PSC convened a stakeholders meeting. At this meeting, we proposed amending the Nebraska Grain Dealers Act by recognizing separate classes of grain dealers. Our proposal is based on the premise that the public is best protected when doing business with entities that are sufficiently capitalized and have the financial means to support the purchases of grain from producers. We believe that financial responsibility is best demonstrated by balance sheet and income statement strength. In addition, the interests of Nebraska farmers are best protected

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when government regulations accommodate rather than obstruct commonly accepted grain warehousing practices.

The concept that we are proposing would allow for a tiered level of classifications for grain warehouses. Each of these levels or tiers would have to show a minimum level of net assets. The reasoning for this is that the weaker the financial reporting of a warehouse, the greater the supervision from the PSC ought to be. The actual level of net assets for each tier is open for discussion, but we feel that it is important for a minimum level to apply.

At this point, it appears that the cooperative proposal is gaining traction with the industry and the PSC. All stakeholders will have an opportunity to review our proposal, and we will meet in September to discuss the proposal.

In addition to these issues, the Farm Services Agency (FSA) has raised a concern about the substitution of grain for their loans. We have met with FSA representatives a number of times to try to resolve this issue. We have determined that the basis for the FSA stance is going back to the “pick and roll” days of the 1980s. The substitution policy was put in place at that time because producers could “shop around” for better loan rates. That program is long since gone, and the FSA policy concerning substitution is probably antiquated by today's industry practices. Our challenge to FSA has been whether their stance is supported by statute or is merely a policy created by FSA.

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