

TO: The Floor of the 2004 Annual Meeting of National Conference of
Commissioners on Uniform State Laws

FROM: Lyle Hillyard, Enactment Coordinator/Ag & Ag Related Cooperative Act;
Tom Geu, Reporter

RE: Preliminary Enactment Memorandum/Ag & Ag Related Cooperative Act

BRIEF INTRODUCTION TO THE DRAFT ACT

The purpose of the Ag & Ag Related Cooperative Act is to provide a flexible cooperative act to aid agricultural producers associated for economic development. The draft is limited to Ag & Ag Related enterprises but “agricultural” and “agricultural related” are defined broadly and includes marketing, service, and value-added enterprises.

The draft differs from most traditional cooperative acts because it expressly addresses investment from outside sources. It also allows, though not as a matter of default, member patron interests to be transferable. It is intended to allow coops formed under the draft to be taxed as partnerships for federal income tax purposes if they so choose.

Wyoming, Minnesota and Tennessee have adopted some version of an Ag & Ag Related Cooperative Act. There has been interest in Iowa, Wisconsin and Missouri and a bill was introduced in Vermont. Generally speaking, the Wyoming Act is based on an unincorporated drafting model while Minnesota and Tennessee contain detailed provisions similar to corporate law. The draft is more similar to the Minnesota and Tennessee approaches (as well as the approach existing “general” cooperative statutes).

The draft differs from the existing acts because it places far greater constraint on contractual freedom in the governance and “dividend/distribution” provisions. It does so to more closely track traditional cooperative principles, protect the coop “brand,” and to distinguish it from LLCs and limited partnerships. Unlike the existing acts the draft prohibits its use to form non-ag or non-ag related cooperatives.

POSSIBLE INTERESTED GROUPS

The Act is only on first reading this meeting. Nonetheless, it is not too early to think about state enactment and persons within the states whom might be interested in such legislation. At least four types of persons or groups will probably be interested: (1) cooperative industry trade groups; (2) rural economic development groups; (3) producer trade organizations; and (4) professional service providers.

There are various cooperative industry trade groups. On the national level two of the most well known are the National Council of Farmers Cooperatives and the National Cooperative Business Association. There are many state-based organizations, for example, the Iowa Institute for Cooperatives. Note that some of these organizations do not limit membership to “agricultural or agricultural related cooperatives.” There are other cooperative industry groups or trade associations outside agriculture that may have interest. These groups may include, for example, electric cooperative or telephone cooperative associations.

Rural economic development groups like development corporations or economic development divisions of larger associations like the League of Municipalities, the state banking

association or the state chamber of commerce may be interested. It is also possible the state agency charged with economic development will be interested.

State chapters of agricultural producers and state producer organizations will be interested. Examples of such organizations include state chapters of Farmers' Union, Farm Bureau, and the National Farmers' Organization. Interested parties will also probably include specific product groups like the state pork producers, dairy farmers or fruit growers associations.

Finally, agricultural law committees or sections of state and local bar associations or similar organizations for accountants may be the first groups to become interested. For example, nationally, there is a group called the "National Association of Cooperative Accountants." Relatedly, from the public sector, state universities have cooperative centers or institutes. While university organizations are of a completely different nature than the other organizations listed, they often have close ties to producer and industry groups through the extension service.

This listing of possible interested persons is not intended to be complete. Rather, it is intended to serve as a categorical reminder that these and other similar groups will play an important role in any enactment of a finally promulgated act on agricultural and agricultural related cooperatives.

CONTACT INFORMATION

The draft and a far more detailed memo concerning the project is available on the NCCUSL website. Commissioners should feel free to contact the following for more information related to this memo:

- (1) Lyle Hillyard, Enactment Coordinator
175 E. 1st N.
Logan, UT 84321

lyle@hao-law.com

- (2) Tom Geu, Reporter
The University of South Dakota
School of Law
414 East Clark Street
Vermillion, SD 57069

tgeu@usd.edu