Approved March 17, 1987
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS.

The meeting was called to order by Representative Clifford V. Campbell at
Chairperson

9:03 a.m./~~p.m.~~ on March 3, 1987 in room 423-S of the Capitol.

All members were present except: Representatives Bryant, Goossen, and Teagarden, who were excused.

Committee staff present: Norman Furse, Revisor of Statutes Office
Raney Gilliland, Legislative Research Department
Pat Brunton, Committee Secretary

Conferees appearing before the committee: Bill Fuller, Assistant Director, Public Affairs Division, Kansas Farm Bureau
Ralph Walker, Walker Fertilizer and Grain, Sharon Springs, Kansas
Harvey Werth, Harvey J. Werth Farms, Inc. LaCrosse, Kansas
Neil Woerman, Chief of Staff, Office of the Attorney General
Chris Wilson, Director, Governmental Relations, Kansas Grain and Feed Dealers Association
Joe Lieber, Executive Vice President, Kansas Cooperative Council

Bill Fuller testified on behalf of the farmers and ranchers who are members of Farm Bureau, stating their strong support for HB 2518. He further stated that HB 2518 is extremely important and should be considered high-priority, Attachment I.

Ralph Walker testified in favor of HB 2518 stating this would be an opportunity for this august body to protect the best interest of agriculture Attachment II.

Harvey Werth testified in favor of HB 2518 stating that this action will make grain producers more secure both emotionally and financially, at a time when there is very little security to be had, Attachment III.

Neil Woerman testified on behalf of Attorney General Robert Stephan in support of HB 2518, Attachment IV.

Chris Wilson testified on HB 2518 stating their members are willing to support such a fund if this is what producers want, Attachment V.

Joe Lieber representing producer-members of the Kansas Cooperative Council testified on HB 2518. He stated it was on behalf of these producer-members that he opposed HB 2518 because those producers will be paying for the security fund, Attachment VI.

A question and answer period followed.

Due to the time frame of the meeting, further hearings will be held on HB 2518 at the March 4, 1987, committee meeting.

The meeting adjourned at 10:00 a.m.

The next meeting of the House Agriculture and Small Business Committee will be March 4, 1987, at 9:00 a.m. in Room 423-S.

GUEST LIST

COMMITTEE: HOUSE AGRICULTURE AND SMALL BUSINESS DATE: March 3, 1987

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Dorothy A. Werth	Rt 1 - Box 17, LaCrosse	Harvey J. Werth Farms, Inc.
Harvey J. Werth	"	"
Bill R. Fuller	Manhattan	Kansas Farm Bureau
Dan Amidon	Emporia	Intern Rep Jeff Freeman
Marvin R. Wolf	Topeka, Ks	Self
John K Blythe	Manhattan	Ks Farm Bureau
Ralph D. Walker	Box 8 Sharon Sprgs	Walker Fert & Grain
RON SCHNEIDER	TOPEKA	KS. RURAL CENTER
Marvin B. Clark	Paola Ks	self
Paul E. Fleener	Manhattan	Kansas Farm Bureau
S J Reda	TopekA	KSGID
Gary M. Bothwell	Topeka	KSGID
Jerry Dudley	Topeka	KSBOA
Mary Harper	Healy	
Neil Woerman	Topeka	Attorney General
Don Lundquist	Lindsborg	Ks Corn Growers
Pat Lundquist	"	
Edie Dahlsten	"	KFB
LARRY Dahlsten	"	"
Chris Wilson	Hutchinson	KGFDA
MIKE BEAM	TOPEKA	Ks. LVSTK Assn.

PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

RE: H.B. 2518 - Establishes the Kansas Grain Producer Security Fund to compensate farmers for losses when they have grain in elevators that fail.

March 3, 1987
Topeka, Kansas

Presented by:
Bill R. Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and Members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. I am speaking on behalf of the farmers and ranchers who are members of Farm Bureau. We appreciate this opportunity to express our strong support for H.B. 2518. In fact, we believe H.B. 2518 is extremely important and should be considered high priority!

To provide additional protection for grain producers, Farm Bureau members in Kansas, after considerable study, exploring of alternatives and debate, adopted policy to support a grain producer security fund for 1986. The resolution was reviewed, refined and reaffirmed for 1987:

ATTACHMENT I
March 3, 1987

Agricultural Co[illegible]odity Storage

The economic repercussions from grain elevator bankruptcies are devastating for the communities involved.

We continue to support licensing and bonding of all commercial elevators and grain warehouses in Kansas. We recommend increasing inspections to a minimum of two each year of licensed warehouses.

We recommend and support legislation to require grain dealers and grain brokerage firms to be bonded or otherwise provide proof of financial responsibility.

When a grain warehouse failure occurs, we believe that when a check has been issued for payment of grain within 14 days of the declared insolvency, and if the check has not cleared the bank, the party to whom the check was issued should be considered eligible for a share of the bond.

Substantial additional protection should be provided for producers whose grain is in commercial storage. A grain producer security fund (indemnity fund) shou[illegible] be established. In an effort to maximize effectiveness and acceptance of a fund, we recommend these features:

1. Grain producers and grain warehouse operators should contribute to the fund;
2. The fund should be in-addition-to the bond requirements for grain warehouses;
3. Federal and state warehouses should be required to participate;
4. Contributions shall **not** be used to maintain the fund **above a balance of** $10 million;
5. All interest earned on the balance in the fund should be credited to the fund;
6. The fund should cover not less than 75 percent nor more than 90 percent of all losses incurred from date of delivery of grain to a warehouse to final settlement; and
7. The state should initially provide meaningful "start-up" funding to assure immediate protection for grain producers.

Grain producers in Kansas are facing record losses from grain elevators and grain brokerage firms filing bankruptcy. Historically, Kansas has experienced fewer grain warehouse failures than many other states. During the 15-year period from 1967 through 1981, only 9 Kansas elevators suffered financial collapse ... that calculates to only 0.6 failures per year. However, the **failure rate has shot up to 2.2 bankruptcies per year ... a 367% increase ... in the 5 most recent years,** 1982 through 1986 (see attachment A).

We are not suggesting elevator operators are dishonest or incompetent. We are saying agribusinessmen ... grain warehousemen ... are caught up in the economic difficulties being experienced in farm country.

The effect of grain elevator failures can be illustrated by reviewing one newspaper article concerning the Twombly Grain Company bankruptcy in Troy and Highland where **farmers explained their plight: "We're in trouble" ... "Some of us will be able to hang on. But, more than likely this thing is going to break some of us" ... "It's already touched a bunch of farmers and some banks. It is going to cause problems for most of Doniphan County, as well as area merchants"** (see attachment B).

H.B. 2518 establishes the Kansas Grain Producer Security Fund to compensate farmers for losses when they have grain stored in elevators that collapse financially. The concept is not new to the Kansas Legislature ... other proposals were made in 1981, 1982 and 1985. A number of states have adopted and are operating programs to **protect their farmers who produce grain ... Iowa, Oklahoma, Ohio, Illinois, Kentucky, Georgia,** etc. (see attachment C). At this time, Kansas has the opportunity to build a program based upon the experiences of other states. We believe H.B. 2518 combines the desirable features from the laws of several other states. We ask you to study the **specific** features of H.B. 2518 ... many are different from earlier proposals. Some highlights of H.B. 2518 include:

1. 3 mills will be assessed each bushel of grain stored in, sold to or marketed through a grain warehouse ... both farmer and elevator contribute to fund. (1 mill = .1 cent)

2. **Assessments will STOP when fund reaches $10 million** ... interest earned on the fund will be credited to the fund (experience in some other states indicate "interest" will cover claims against the fund, thus unlikely assessment will need to be reinstated).

3. 90 percent of the producer's grain is covered ... payment shall be made within 120 days of the claims ... value of the grain shall be the market price on the day of the loss.

4. Both "state" and "federally" licensed grain warehouses must participate.

5. The "fund" is in addition to a "bond" requirements.

A review of the warehouse "bonding" requirements reveals the very minimal amount of actual protection currently provided grain

farmers. A 1985 Comparative Study of 573 Kansas Elevators shows the average protection is 7.78 percent ... the most protection is in the smaller elevators with 28.5 percent, the least protection is in the largest facilities with 3.2 percent and the median Kansas licensed elevator has 20.9 percent protection (see attachment D). The study also shows any substantial increase in Kansas bonding requirements will likely force elevators to seek federal licensing ... thus Kansas losses its control. The availability of bonding is becoming very critical. A representative of the "Kansas Grain Inspection Department" reported to the Senate Agriculture Committee yesterday that three bonding companies are no longer available ... filing for bankruptcy or are in the process of reorganizing. He also indicated 29 elevators had trouble getting bonds; 2 or 3 are out of business because they could not get bonds. We would not oppose some reductions in the amount of the bond required. However, we recommend the "fund" should be in-addition-to a "bond." We believe the financial investigation of the elevator by the bonding company may result in more actual protection to the grain producer than the size of the bond. KFB Policy states the "fund" should be in-addition-to the "bond." We believe the financial investigation of the elevator by the bonding company may result in more protection to the producer than the size of the bond. Therefore, since the availability of bonding is becoming very critical, we would not oppose some reduction in the amount of the bond.

The "TASK FORCE ... TO REDUCE GRAIN WAREHOUSE AND DEALER

FAILURE" created by the Director of the Kansas Grain Inspection Department and consisting of 21 producer and industry groups recommended a study of an "FDIC-Type" program for grain warehouses (see attachment E). The Interim Committee on Agriculture studied the proposal in 1985 ... a few months before KFB adopted policy to support a grain producer security fund for Kansas. The Committee, on a 6-5 split, voted that a "fund" should not be established at that time ... the Committee indicated the desire for producers to indicate support for the program.

We now have significant support! The 44,947 farm and ranch members of the 105 county **Farm Bureaus** in Kansas say ... **"A grain producer security fund (indemnity fund) should be established."** The list of other states is growing as programs are implemented to protect their farmers against elevator insolvencies. The State of Iowa implemented a new program in May of 1986 ... all grain across the scale is assessed 1/4 cent, fund is limited to $6 million, covers 90 percent of losses not to exceed $150,000.

In summarizing, Mr. Chairman and Members of the Committee, we emphasize these points:

1. The number of grain elevator failures is increasing.
2. Farmers, merchants, banks and communities are devasted when these failures occur.
3. The "bond" offers very little protection to the grain producer. We believe the bond creates a feeling of false security. We are convinced if farmers knew how little the bond actually protected their grain they would be lining up to demand more protection.
4. Increasing the bonding requirements 400% to 500% to provide a level of protection equal to an indemnity fund is not pratical.

5. Elevator operators <u>cannot</u> afford much more expenses for additional financial accounting, examinations, reporting and other regulations.

6. Participation in insurance programs to protect farmers against elevator bankruptcy has been so small for policies where not implemented ... insurance would have cost up to 300% more than the proposed indemnity fund.

7. **A Grain Producer Security Fund is the only real option for providing a meaningful and affordable protection of farmer's grain.** We protect our deposits in banks through FDIC. We believe our grain in elevators should be protected with a Grain Producer Security Fund.

Thank you! I will attempt to reply to questions.

LOSSES FROM 1966

CAPACITIES

287,092 Bu.	1.	(1967)	Farmers Coop @ McPherson		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A.		-0-
			Bonding Co.		41,000
441,021 (Courtland) 557,632 (Belleville) 175,986 (Formoso)	2.	(1972)	Maher Grain Company - Courtland, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co.		139,000
661,155 Bu.	3.	(1973)	Farmers Coop @ Victoria		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		8,000
			Bonding Co. -		10,000
57,287 Bu.	4.	(1975)	Centerville Grain Company - Centerville, Kansas		
			Producers -	$	150,000
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		30,000
165,799 Canada 75,137 Elmo 41,222 Lost Springs 96,412 Lehigh	5.	(1975)	Canada Grain Company, Inc. - Canada, Kansas		
			Producers -	$	42,600
			Banks -		38,400
			U.S.D.A. -		16,000
			Bonding Co. -		145,023
224,214 Bu.	6.	(1976)	Dighton Grain Company - Dighton, Kansas		
			Producers -	$	67,180
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		-0-
155,602 Highland 77,005 Emporia 2,314,197 Parsons	7.	(1976)	Way-More Feeds, Inc. - Parsons, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		45,000
27,674 Bu.	8.	(1976)	Hepler Grain Company - Helper, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		10,900
171,385 Bu.	9.	(1980)	Collins Grain Company, Inc. - Kackley, Kansas		
			Producers -	$	120,000
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		150,011

315,859 Bu.	10.	(1982)	Ames Grain Company, Inc. - Ames, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A -		-0-
			Bonding Co. -		67,030
291,952 Bu.	* 11.	(1982)	Pittman Feed Company - Haynes Switch, Kansas		
249,187 Bu.			Plains Grain, Inc. - Plains, Kansas		
			Producers -	$	422,685
			Banks -		-0-
			U.S.D.A. -		595,834
			Bonding Co. -		367,500
419,070 Bu.	12.	(1983)	J & H Grain Company, Inc. - Thayer, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		98,900
265,331 Bu.	13.	(1983)	Farmers Cooperative Association - Moran, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		187,800
98,346 Bu.	14.	(1983)	Kechi Elevator - Kechi, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		159,100
297,620 Bu.	15.	(1984)	Bucyrus Grain Co., Inc. - Bucyrus, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		157,045
760,141 Bu.	*16.	(1984)	Twombly Grain Co., Inc. - Troy, Kansas		
			Producers -	$	629,450
			Banks -		536,151
			U.S.D.A. -		941,327
			Bonding Co. -		217,100
166,372 Bu.	*17.	(1985)	Esbon Grain Co., Inc. - Esbon, Kansas		
			Producers -	$	49,100
			Banks -		-0-
			U.S.D.A. -		199,419
			Bonding Co. -		99,900
179,258 Bu.	18.	(1985)	Munkres Grain, Inc. - Delavan, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		21,000

243,290 Bu.	* 19.	(1986)	McKain Grain Co., Inc. - Delphos, Kansas	
			Producers -	$ 181,322
			Banks -	-0-
			U.S.D.A. -	263,915
			Bonding Co. -	126,000
291,830 Beulah	20.	(1986)	Kan-Ag, Parsons, Kansas	
2,220,739 Parsons			** Producers -	?
214,882 Altamont			Banks -	?
			U.S.D.A. -	?
			Bonding Co. -	?

* Interim figures (approximations)

** A loss has occurred after the receiver took control. Federal and State examinations did not show any shortages or any quality deterioration, but a quality problem developed after the examinations.

St. Joseph Gazette
October 23, 1984

‘We’re in trouble:’ farmers

Gloomy reaction to Twombly filing

By **PAUL STEWART**
Staff Writer

Related story and photo on Page 1A

TROY, Kan. — Outside, it was a beautiful Autumn day. The bright sun, which had melted the early morning frost that covered half-harvested fields, shone brightly through the windows of the Doniphan County Courthouse here.

But, inside the nearly packed second-floor courtroom, it was gloomy — a Blue Monday — for Doniphan County farmers.

The cause for concern — Twombly Grain Co., in temporary state receivership since Oct. 4, had been placed in involuntary bankruptcy.

Many of the 50-plus farmers attending the hearing have had grain tied up at the Twombly elevators here and in nearby Highland, Kan. Some now hold Twombly checks, payment for grain, that are said to be worthless.

Four Highland residents, leaving the Courthouse, summed up the plight of fellow farmers.

“We’re in trouble. What more is there to say?” Loren Ptomey said. His remark was echoed by his father, John Ptomey, Morley Lucas and Allen Ramseier.

Since Oct. 4, when District Court Judge William L. Stevenson of Hiawatha, Kan., placed the state of Kansas in temporary receivership of the elevators, area farmers have clung to the hope that all would not be lost.

These hopes were fading Monday.

“Under state receivership, we would have at least got a percentage of our grain or money back. But, now, it appears that any hopes or even a percentage is shrinking a little bit more, all the time,” the concerned farmers said.

Staff photo by COLIN HACKLEY

Morley Lucas, Loren and John Ptomey and Allen Ramseier discuss Twombly case.

One farmer said he had finished combining his beans about 9 one early October night. The next morning, about 9 a.m., he learned the Twombly elevators had been closed.

The elevators are believed to hold a large quantity of corn and beans, along with some milo, belonging to area farmers. Most of the grain belongs to farmers in the Highland area, they say.

One disgusted farmer said, “We had a meeting the other day with an attorney. He said it would cost between $6,000 and $10,000 just to instigate a lawsuit to help us get what’s ours. And, really, he admitted that all this would do is keep postponing the inevitable.”

Another of the upset farmers said, “Some of us will be able to hang on. But, more than likely, this thing is going to break some of us.”

The men explained that fellow farmers had borrowed money from area banks in order to put their crops in the ground for the year. “We had it (the crops) mortgaged. Now the notes are due, the interest is due, and we have no money to pay.

“Twombly’s got our grain. Or, in some cases, Twombly has already handled our grain. We put the (Twombly) check in the bank and now it came back. So, we’re left with a worthless piece of paper.”

Farmers say banks at Troy, Highland and Hiawatha are involved in the problem.

However, the Twombly elevator problems, the farmers say, will be widespread.

One young farmer stated, “Farming is part of the foundation of this country. Now it is crumbling. Even though it is just one part of the foundation, it will affect everything else.”

Another said, “We know we have to cope with weather, so we prepare as best we can.

“But, how can you prepare for something like this? One day you feel secure, your crop survived and it is in the elevator. The next day it (the elevator) is closed.”

The Ptomeys, Ramseier and Lucas added, “It’s already touched a bunch of farmers and some banks. It is going to cause problems for most of Doniphan County, as well as area merchants. We spend our money in more places than just home. We come to St. Joe and buy things, too. Now, it appears we won’t have much money to spend, even for necessities

“Before it is all said ar one with, this thing is gonna hu a lot of people.”

Attachment B

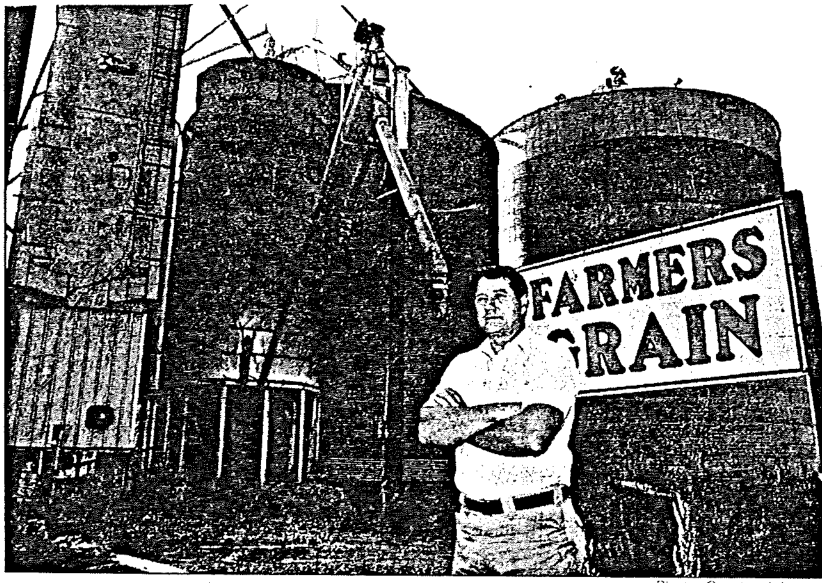


Photo Charles Johnson

WHEN STATE REGULATORS padlocked Farmers Grain in Douglas, Ga., the elevator still owed James Moore (left) $30,000.

Farmers often lose 60% of claims until

States insure elevator failures

By PAM HENDERSON and CHARLES JOHNSON

■ The financial collapse of a Georgia elevator this spring short-changed James Moore and his 22-year-old son $30,000 on a 9,800-bu. grain sale. But the Coffee County, Ga., farmer and agribusinessman won't have any trouble convincing his state representative that warehousing laws need an overhaul. Reason: He is the state representative and serves on the House Agriculture Committee.

"Georgia law protects elevator operators rather than grain producers," he complains. For one thing, the state's maximum $150,000 bond "won't come close" to touching the $1 million in grain proceeds that the elevator owes 81 area farmers. The average Georgia farmer lost 60¢ to 70¢ on the dollar in the last 15 grain operator failures.

"We need laws to protect the man who produces the grain," Moore adds. "He's the one who is going broke as a result."

Watch for increased interest in state programs offering protection to victims of elevator insolvencies. A handful of states have already adopted insurance funds to deal with such disasters. Their popularity may grow if the grain industry shake-out accelerates in 1984, as several state warehouse regulators warn.

"There's nothing like a major insolvency and farmer losses to stimulate interest and support for this kind of program," observes Mike Crews, hearing officer for the Agriculture Industry and Regulation Division of the Illinois Department of Agriculture. Illinois established a $3-million guaranty fund in 1983 after the $5.5 million bust of the Champaign County Grain Association.

Kentucky is the latest state to pass grain insurance legislation. Now signed into law, it requires producers to pitch in ½¢ per bushel on all grain marketed to finance the fund. The assessment will be deducted from the producer's check by the grain buyer.

Collections continue until the fund exceeds $3 million. After that, no assessments will be made unless the fund dips below the $3-million mark. Producers must have contributed ½¢ per bushel on a year's marketings to qualify for coverage, regardless of whether fees are being assessed.

John Nichols, Kentucky Department of Agriculture director of communications, notes that the program is actually voluntary. Any farmer can demand and receive a refund of the collected assessment. But by doing so, the producer forfeits any protection or compensation provided for under the plan.

The fund, administered by a 10-member Kentucky Grain Insurance Corporation, will reimburse 80% of each valid claim ($100,000 maximum) caused by the failure of a grain dealer and 85% of eligible claims on a failed grain warehouseman.

The remaining balance of the claims will be paid by the board from assets and other security of the insolvent facility, provided the funds are available and the claimant has surrendered a warehouse receipt.

Losses above and beyond the amount in the fund will be met with help from the state. The law instructs the state of Kentucky to provide a $1.5-million safety net. If used, the state is reimbursed.

Nichols reports that the measure received overwhelming support in both state chambers and from major farm groups. Recent elevator failures in Kentucky are credited with providing impetus for passage this time after several unsuccessful attempts in previous sessions.

Royal Cox, assistant chief of Ohio's grain warehouse division, recalls a similar situation in that state. Grain insurance legislation sat before the Ohio General Assembly for almost 10 years before passage. The enacted plan went into effect July 1, 1983, and the state is now handling its first claims.

Similar to Kentucky, Ohio imposes a ½¢-per-bushel fee on all grain marketed. The fund builds to $4 million and currently shows a $2-million balance. It reimburses producers for 100% of losses up to $10,000 and covers 80% of any losses over that.

Illinois's program places the funding burden on state-licensed grain dealers and warehouses. Federal warehouses can also elect to participate. The fund is fed by monies that had been used for surety bonds.

It currently holds $1.6 million and will undergo its first draw in May. Producers are reimbursed 100% on eligible storage claims. It insures 85% of eligible sold-grain claims, up to $100,000 per claimant.

Oran Roy Bjornson, of Montana's Plant Industry Division, is president of the American Association of Warehouse Control Officials.

His association, made up of 25-member states, is supporting private or state-run insurance programs in lieu of a federal plan advocated by some congressmen.

"There will be plenty of states eyeing these state programs through the coming year," he predicts.

If James Moore has his way, Georgia will be one of them. ◁

How much protection does the "bond" provide farmers in Kansas licensed and Federal licensed elevators?

Comparative Study of 573 Kansas Elevators
(379 Licenses) 505,189,112 Bushels
Kansas Warehouse Bond -vs- Federal Warehouse Bond
As Of January 1, 1985

NUMBER OF LICENSES	PERCENTILE RANGE FROM	TO	CAPACITY RANGE LOW	HIGH	TOTAL BUSHEL CAPACITY	EXPOSURE (1)	TOTAL KANSAS BOND	TOTAL FEDERAL BOND	PERCENT PROTECTION (3) KAN	FED	BOND PER BUSHEL (4) KAN	FED
38	0%	10%	11,023	112,570	2,363,855	$4,751,349	$1,354,931	$768,539	28.5	16.18	$.573	$.325
38	11%	20%	112,766	218,101	6,043,010	12,146,450	3,444,513	1,424,006	28.4	9.95	.57	.20
95	0%	25%	11,023	257,043	12,899,274	25,927,541	7,360,119	2,875,623	28.4	11.1	.571	.222
38	21%	30%	230,714	301,481	9,896,175	19,891,312	5,640,820	1,763,831	28.6	9.95	.57	.20
38	31%	40%	301,565	436,553	13,961,828	28,063,274	7,443,989	2,792,366	26.5	9.95	.533	.20
94	26%	50%	258,287	547,119	37,363,365	75,100,364	18,124,764	7,472,673	24.1	9.95	.485	.20
38	41%	50%	436,848	551,105 (M)	18,548,876	37,283,241	7,808,638	3,709,775	20.9	9.95	.421	.20
37	51%	60%	563,804	785,278	24,183,309	48,608,451	7,848,050	4,836,662	16.6	9.95	.325	.20
95	51%	75%	551,105	1,190,878	79,556,808	159,909,184	20,848,980	15,828,994	13.6	9.90	.262	.199
38	61%	70%	788,675	1,014,732	34,217,833	68,777,844	8,435,396	6,841,427	12.3	9.95	.247	.20
38	71%	80%	1,021,719	1,356,361	44,712,372	89,871,868	8,855,178	8,606,856	9.9	9.58	.198	.192
95	76%	100%	1,192,866	49,832,291	375,369,665	754,493,027	32,681,494	33,401,592	4.3	4.43	.087	.089
38	81%	90%	1,366,561	2,141,624	65,489,715	131,634,327	9,686,272	11,688,815	7.4	8.88	.148	.178
38	91%	100%	2,145,136	49,832,291	285,772,139	574,404,279	18,497,568	17,146,605	3.2	2.99	.065	.06
379					505,189,112	$1,015,432,395	$79,015,357 (2)	$59,578,882	7.78	5.87	.156	.118

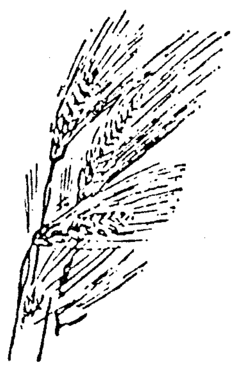
Footnotes
(1) Exposure based on $3.35 per bushel & 60% occupancy
(2) Bond costs: $125,000 At SAA Rates
$395,000 At $5.00 per 1 M
SAA Rates: First $10,000 - $5.00 per $1,000
Next $15,000 - $2.50 per $1,000
Over $25,000 - $1.25 per $1,000
(3) Percent protection - total bond ÷ exposure
(4) Bond per bushel - total bond ÷ total capacity
(M) Median Kansas license

KANSAS WAREHOUSE BOND
First 350,878 bu. - 57¢ per bu.
Additional bu. - 4¢ per bu.
Minimum bond - $10,000
Maximum bond - None

FEDERAL WAREHOUSE BOND
First 1,000,000 bu. - 20¢ per bu.
Second 1,000,000 bu. - 15¢ per bu.
Next 1,500,000 bu. - 10¢ per bu.
Minimum bond - $20,000
Maximum bond - $500,000

Attachment D

FINAL REPORT



TASK FORCE . . .

TO REDUCE GRAIN WAREHOUSE & DEALER FAILURES

Prepared by:

Bill R. Fuller, Chairman

Frank McBride

Howard W. Tice

William R. Morand

February 8, 1985

P R E F A C E

Grain producers in Kansas are facing record losses from grain elevators and grain brokerage firms filing bankruptcy. In fact, it is projected that one recent elevator failure in northeast Kansas alone will likely result in total losses greater than the combined losses of all failures since 1967 in Kansas. In addition, bankruptcies by three grain dealers is expected to cause even larger losses to farmers, elevators and truckers.

Even though the dollar losses in these recent failures is alarming, we must remember that Kansas has experienced few grain warehouse failures when compared to other states. During the last 19 years, Kansas has experienced 16 closings resulting from bankruptcy or receivership -- 0.8 failures per year.

1970 - 1980:

	United States	Kansas
Number Warehouses	6,322 (avg. 154/state)	700
Capacity	5.9 billion bu. (avg. 143,000,000/state)	515 million bu.
Failures	279 (avg. 2.8/year)	8 (avg 0.8/yr.)

Due to these recent grain elevator and grain brokerage firm failures in Kansas, the Kansas State Grain Inspection Department decided to convene a TASK FORCE for the purpose of discovering viable solutions to the problems at hand.

The economic repercussions from the bankruptcies were severe for the geographical areas involved and it became obvious some kind of remedial action is needed. Hopefully, the TASK Force could develop some practical proposals for submission to the Kansas Legislature for its consideration and subsequent legislative action! Those specific proposals or recommendations are set forth at the end of this report.

TASK FORCE MEMBERS:

Erwin Schrag, Jr., Alexander & Alexander, Inc.

Larry Holgerson, Holgerson Grain Dealers

Frank McBride, Evans Grain

C. L. Regini, Far-Mar-Co

Ivan W. Wyatt, Kansas Farmers Union

Don Epps, Chairman, Grain Advisory Commission

Bill Fuller, Kansas Farm Bureau

David W. Dewey, Wichita Bank for Co-ops

Jim Bair, Kansas Wheat Commission

Melissa Cordonier, Kansas City Board of Trade

Stanley Little, Farmer & Grange Member

Dwaine Liby, Pauline Farmers Co-op Elevator

Mike Beam, Kansas Livestock Association

Nancy E. Kantola, Kansas Co-op Council

Howard W. Tice, Kansas Association of Wheat Growers

Wm. R. Morand, Collingwood Grain, Inc.

John Larson, Cargill, Inc.

Tom Tunnell, Kansas Grain & Feed Dealers Association

Robert Batte, Bunge Corporation

Joe Gregg, Morrison-Gregg-Mitchell Grain Company

Wayne Johnson, Topeka Mill & Elevator (General Mills)

KANSAS GRAIN INSPECTION DEPARTMENT STAFF:

Marvin R. Webb, Director

Jack L. Sweeney, Assistant Director

Gary Bothwell, Grain Inspection Coordinator

Sam Reda, Chief Warehouse Examiner

Ron Scheibmeir, Warehouse Examiner II

TASK FORCE RECOMMENDATIONS

1. Increase Warehouse Examinations

Currently, K.S.A. 34-228 reads:

> Every public warehouse licensee shall be entitled to one complete examination of such licensee's warehouse by the department each year, without further costs.

Recommendation: Amend K.S.A. 34-228 to read as follows:

> Beginning October 1, 1985, the Kansas Grain Inspection Department shall examine each state licensed grain warehouse three times in every 24 month period with a minimum of one examination every 12 months.

2. Improve Kansas Grain Inspection Department Warehouse Examination Procedures

Recommendation: Kansas Grain Inspection Department shall seek the assistance of other agencies, including but not limited to, the Office of Attorney General, Kansas Bureau of Investigation and the Office of Inspector General of the United States Department of Agriculture, to review warehouse examination procedures, train personnel and investigate criminal activities including fraud, grain embezzlement, computer crimes, false writings and other crimes which may be associated with the grain business.

3. Require Grain Buyer to Inform Sellers that Deferred Payment Contracts and Delayed Pricing Contracts are NOT Covered by Warehouse Bond

Recommendation: A grain buyer should be required to inform sellers that Deferred Payment Contracts and Delayed Pricing Contracts are voluntary extensions of credit and are <u>not</u> protected by the warehouse bond. The contract shall include the following statement prominently displayed in not less than ten point, all capital type, framed in a box with space provided for the seller's signature:

"THIS CONTRACT CONSTITUTES A VOLUNTARY EXTENSION OF CREDIT PAYMENTS TO THE SELLER AND IS NOT PROTECTED BY THE WAREHOUSE BOND."
(must be signed by seller)

4. <u>Increase Prosecution, Strengthen Penalties and Increase Sentences for Grain Crimes</u>

The task Force . . .

* Insists on timely prosecution of individuals in crimes associated with grain warehouses and grain dealer firms.
* Recommends increases in penalties for crimes including embezzlement, grain embezzlement, fraud and false writings.
* Insists on sentences appropriate to the dollar losses as a result of grain business crimes.
* Recommends extending the current 2 year state statute of limitations to 5 years.

5. <u>Increase Awareness of Insurance Programs</u>

<u>Recommendation</u>: The Kansas Grain Inspection Department and farm organizations should increase the awareness of insurance programs which may be purchased

by grain producers to provide protection from potential losses when dealing with grain warehouses and/or grain dealer firms. Two companies currently offer approved policies.

6. Examine Grain Dealer Firms

Recommendation: The Task Force suggests the legislature conduct public hearings to examine the problems and losses associated with grain dealer firms (brokers, truck buyers, other non-warehouse buyers) to determine the need for licensing, regulating and/or bonding.

7. Study FDIC-Type Program for Grain Warehouses

Recommendation: The Task Force encourages the legislature to conduct a preliminary hearing during the 1985 session to determine the feasibility and potential support for a state administered FDIC-type program for grain warehouses. If there is sufficient support, the Task Force believes an Interim Committee study be conducted.

8. Request State General-Fund Revenues

Recommendation: The Task Force requests the Kansas Legislature appropriate adequate general fund revenues for all expanded responsibilities of the Warehouse Division of the Kansas Grain Inspection Department. (Currently, Kansas is the only state which funds the department entirely by fees and without State general fund revenues.)

March 3, 1987

Mr. Chairman, thank you for the opportunity to make this presentation to you and your committee.

Gentlemen:

My name is Ralph Walker and I am from Sharon Springs, Kansas. I am a farmer, primarily a small grain producer of wheat and corn, and I am also involved in the grain elevator business which was incorporated in 1971 as Walker Fertilizer & Grain. Being from Sharon Springs, I am therefore one of Mr. Crumbaker's constituents.

H.B. 2518 is an opportunity for this august body to protect the best interest of agriculture.

At the present time the bonding requirements of the State of Kansas of grain facilities far exceed the Federal requirements. Most of the other States do not have as rigorous requirements as Kansas. This speaks well for the Grain Inspection system in Kansas, but we are only protecting our producers partially.

The Kansas Grain Inspection System does an excellent job of periodically inspecting grain facilities relative to the amount of grain on hand which is being held as Warehouse Receipted grain or open storage grain which individual farmers have delivered but have not sold. They also check the financial affairs relative to each producer so that any impropriety is observed. So well is this duty performed, that the **failure rate** of grain elevators in Kansas each year, since **1967 through 1985,** is less than **seven/tenths (.7)** of all such governed facilities. This failure rate does not automatically require the Bonding companies to function, as an elevator might fail but has all stocks on hand and there have been no improprieties. But when it does happen the producer is only partially protected.

The **present bonding requirements will only pay the producer,** on a failure, approximately 28.5% on small facilities and 3.2% on terminal facilities, for an average of **20.9% on the dollar.** The producer is not adequately protected under our present bonding requirements.

The solution to this problem is H.B. 2518 with possibly some amendments. With this bill, producers would be protected by an **"indemnity fund"** which **would insure** their deposits of grain in licensed facilities at **90% of value.**

The arguments against the bill are many with some being outright and others being disguised and subtle but none in the final analysis have any merit. The first such argument is the cost. If you the legislature design the bill correctly whereby the annual cost to the producer would not exceed 1/4 of a cent per annum per bushel until an agreed maximum fund of approximately 6 million dollars was obtained, then the fund could perpetuate its self from the interest. Concerning the cost of maintaining and collecting such funds by the State Grain Inspection Department, they are already devoting an untold amount of time in setting bond requirements and reviewing financial statements. This process could be eliminated and the same personnel can maintain the "indemnity fund" at **no additional cost to the State of Kansas.**

Realistically, the producer always pays; he might not like to hear it verbalized that way, but he is going to pay for the price of bonding, hidden in the profit margin of the individual grain company. Why not put it up front and be able to finalize that particular cost as soon as the "Indemnity Fund" is funded. Other lobbyists are suggesting a referendum presented to the farmers. There is no way that adequate information could be disseminated to all the farmers so that they might intelligently vote on the issue. If that were a reality then this legislative hearing would not be necessary, as you would already know all the facts.

Before going further, I must identify myself as a Kansas Farm Bureau member and also a member of the Kansas Grain and Feed Dealers Association. You are presently discovering that the Kansas Farm Bureau supports this bill and that the Kansas Grain and Feed Dealers Association is saying "we want what the producers want".

The subtle suggestions made by lobbyists that they want what the public wants, is a nice way to disguise the killing of a good bill. Their reasons are the following. If a count of grain elevators were made today in Kansas, you would find that by name only, 49% are independent houses. Many of those so called independent houses are in fact "line elevators" for the large chains using local names and groups to disguise that association. The larger chains, which include the Co-ops, are either self-insured or own their own insurance companies solving the bonding problem.

Bonding is very comparable to malpractice insurance for Doctors. It is almost impossible to obtain. Yes, we have Bonding Companies licensed with the Insurance Commissioner but the requirements placed on the small independent elevator are stupendous. Such requirements may be net worth requirements 3 times the amount of the Bond, or C.D.'s on deposit at a bank of the Bonding Companies choice, or a irrevocable letter of credit at a bank of their choice, (this bank cannot be on the F.D.I.C.'s watch list) or all of the above mentioned. This can be evidenced by the State Grain Inspection Department which can also verify that because of these requirements, more and more grain elevators are closing or opting for a Federal license which requires less bond.

With less independent elevators in the state, your constituents, our producers are going to less choice in the marketing of their grain. That is one of the reasons for the support of this bill by Kansas Farm Bureau, another certainly is that with the economic problems the state is realizing in agriculture, it might only take one terminal warehouse failure (with a 3.2% Bond) to jeopardize the entire economic system in Kansas.

It is my understanding that this Administration and the Legislature is committed to economic development in Kansas, that even a special "Task Force" committee is to be appointed to find ways of strengthening our economy. The elimination of the "mom and pop" independent grain elevator is to the contrary. To suppress independent business by not acting favorably on H. B. 2518 is contrary to the purpose of this Legislative Body.

At the Agribusiness Expo, held at Wichita, Kansas on November 13, 1986, sponsored by the Kansas Grain and Feed Dealers Association, a panel discussion was held concerning the issue of "How have grain indemnity funds worked in other states?" On that panel was Mr. Joe Hampton, Executive Director of the Oklahoma Grain and Feed Assn., **Mr. Ken Ludlow, Executive Director of the Iowa Grain Feed Assn.,** and Mr. Wally Furrow, Legislative Committee Chairman of the Illinois Grain and Feed Assn. all of whom were pleased with the operation of such funds and was summed up by Mr. Ludlow of Iowa by saying **"I encourage all states to establish an indemnity fund.".** Thereafter a straw pole was taken of those present and it was determined at that moment of those present 25 voted in favor of such a fund and 17 voted no. These are the facts.

Here is one more fact. Your farmer constituents far out number the members of the Kansas Grain and Feed Dealers, or any other group urging defeat of this legislation. Look well to your ballot and vote in the best interest of your constituents.

THANK YOU.

Chairman and Members of the Committee:

My name is Harvey Werth, and I have been a farmer all of my life. I farm 4,500 acres of land in Ellis and Rush Counties.

Last harvest, the 1986 harvest year, I hauled approximately 29,000 bushels of wheat to Schwab's Elevator of LaCrosse, Kansas. This was a poor crop year. Normally, I take from 60,000 to 100,000 bushels of grain yearly to Schwab's Elevator. When Schwab's Elevator became insolvent, I had 24,081.74 bushels of wheat stored, for which I had not been paid. This is about $60,000. worth of wheat which I lost. This loss is extremely critical to myself and my family. It puts me in jeopardy financially and is extremely hard to bear during these tough times. Survival is at stake, not only for me, but for all farmers. Grain producers such as myself need the State of Kansas to help. We are asking for that help.

The following are some suggestions from a grain producer, which the Committee might wish to consider to alleviate the problem of insolvent elevators.

1. The State Grain Department needs to do a more thorough investigation of elevators before licensing.

2. Elevators should not be able to use contracted grain as an asset when applying for licensing and/or bonding. Such was the case with Schwab's.

3. We must have a check on solvency of grain elevators as a whole. Jerry Sissler, Government Receiver for Schwab's Elevator, now insolvent, said in inspecting other elevators, that three out of four examined in the past sixty days, are showing shortages of from 1% to 18%. This is critical and I personally feel that we will see elevators going under in the same manner as banks with even worse consequences.

After reading HB 2518, I feel it is an absolute necessity that it be in place so my neighbors and our community never suffer a recurrence of this nature.

This act will make grain producers more secure both emotionally and financially, at a time when there is very little security to be had. We, as farmers, are in jeopardy and this Bill will put back a little security in farming.

Thank you for allowing me to testify on behalf of my community, my fellow producers and myself.

I am open to any questions from the floor.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

Statement of Attorney General Robert T. Stephan
Delivered by Neil Woerman, Chief of Staff
Before the House Committee
on Agriculture and Small Business
Re: House Bill No. 2518, Grain Indemnity Fund
March 3, 1987

Mr. Chairman and Members of the Committee:

Attorney General Stephan asked that I express his support for House Bill No. 2518. The issue of establishment of an indemnity fund to protect farmers and others with grain on storage in Kansas grain elevators is indeed a familiar issue to the attorney general. In searching our files on the subject I found that three times before the attorney general has addressed legislative committees on this subject -- in 1981, 1983 and 1985. Each time the attorney general spoke in favor of the concept or of a specific bill.

The attorney general is pleased that the Kansas Farm Bureau has adopted a policy in support of this legislation and he hopes that with that influential support this bill will be enacted into law.

ATTACHMENT IV
March 3, 1987

I would like to continue by quoting from Attorney General Stephan's testimony on this issue before the Special Committee of Agriculture and Livestock in 1985:

"For the farmer, his grain should be as safe in an elevator as money in the bank. In your consideration of the safety of a farmer's grain, you should constantly draw parallels to the protections afforded bank depositors.

"In 1981, we offered testimony before an interim committee studying grain warehousing. Those hearings were conducted in the wake of the interest generated by the events surrounding the James Brothers' Elevator bankruptcy in New Madrid, Missouri. Since that time, issues relating to the solvency of grain elevators have remained among the more important to the agricultural community.

"A number of changes have been made in state law to attempt to strengthen grain warehouse regulation and enforcement. Federal bankruptcy law has been changed so that a 90-day time limit has been imposed on the distribution of a farmer's grain or the proceeds from its sale. These changes all have been helpful, and it was important that they be made. But the task of significantly increasing protection for farmers remains incomplete. As attorney general, I have watched elevator after elevator fail . . . . Our involvement today includes both legal representation of the Grain Inspection Department and criminal investigation and prosecution. In all of these cases, farmers suffered at least from costly delay and inconvenience. Where legal issues have been in dispute, delay can be measured in years. In some cases, where bond has been insufficient to cover losses, farmers have suffered not only from delay and inability to gain access to their grain, but also from its outright loss . . . .

"During the last few years we have seen a number of Kansas banks fail. However, in each of those instances, business either was carried on the very next day under new ownership -- depositors fully protected -- or the FDIC made immediate payment to depositors. Farmers should be able to expect the same of their grain. Not only should they be protected against its loss, but damages due to delays in being paid for grain or inability to gain access to grain should be minimized. In today's depressed farm economy, the financial repercussions of a grain elevator failure on individual farmers and an entire rural community can be disastrous. I hope you will consider . . . establishing an indemnity fund which would provide farmers with immediate relief when an elevator fails."

The attorney general's request remains the same today. He asks for your support of House Bill 2518.

KGFDA
KANSAS GRAIN & FEED DEALERS Association
1722 NORTH PLUM, BOX 949 A/C 316 662-7911 HUTCHINSON, KANSAS 67504-0949

STATEMENT OF THE

KANSAS GRAIN AND FEED DEALERS ASSOCIATION

TO THE HOUSE AGRICULTURE AND SMALL BUSINESS COMMITTEE

CLIFFORD CAMPBELL, CHAIRMAN

REGARDING H.B. 2518

MARCH 3, 1987

Mr. Chairman and members of the Committee, I am Chris Wilson, Director of Governmental Relations of the Kansas Grain and Feed Dealers Association (KGFDA). KGFDA is a voluntary trade and professional organization that includes about 1200 members. Our Association represents the state's grain warehousemen, grain dealers, seed dealers, feed manufacturers and alfalfa processors. KGFDA members own 97.8% of all federal and state licensed storage capacity in the state, and 93.2% of all licensed warehouses.

KGFDA has historically opposed the idea of a mandatory state grain insurance indemnity fund. Our reasons for this position were numerous: By removing the risk of doing business, an indemnity fund also removes the incentive for farmers to trade selectively with reputable elevator operators. As is the case with the banking industry's FDIC program, a grain insurance program may permit weak

ATTACHMENT V
March 3, 1987

and badly managed elevators to prosper along with the strong. Managers and owners of financially fit grain operations have a strong aversion to underwriting the losses of a poorly managed elevator. Further, the grain industry in Kansas has experienced failures and producer losses over time which are substantially less than the national average. Because of the outstanding record which the industry has and the good warehouse laws and enforcement which the state has, the cost of the program to producers would likely outweigh the benefits.

Even though a majority of our members do not philosophically support the concept of an indemnity fund, our historical position, like Farm Bureau's, changed in recent times. In 1985, when there was an interim study on this issue, our Board of Directors approved the following position for our Association: "The Kansas Grain and Feed Dealers Association will support the establishment of a farmer funded grain indemnity fund, provided such a fund is approved by a statewide farmer referendum, or if strongly supported by all relative state producer organizations."

In a survey of our members taken during February of this year, we asked their opinion of an indemnity fund and their opinion as to whether this should continue to be our position. Of those who responded, 62% oppose an indemnity fund. A similar number also feel we should continue to support an indemnity fund IF that is what producers want. That remains our position.

As you consider this bill, though, there are some additional points which should be kept in mind. This bill would apply only to grain warehousemen. This would encourage producers to market their grain through others who would not be required to make the assessment for the fund. This would undermine the competitiveness of the warehousemen and encourage producers to do business with less reputable sources. Such sources would include unlicensed, unregulated, unbonded cash grain dealers. Since there have been larger producers losses to such dealers in a two-year period than to warehouses in a 20-year period, this could have the effect of causing greater producer losses, rather than protecting farmers from losses.

H.B. 2518 would also assign responsibility for administration of the fund to the Board of Agriculture. We believe this would require that the Board establish the expertise to do many of the functions already being done by the Kansas State Grain Inspection Department. This would be needless and costly duplication of effort.

The bill would require that 2 mills per bushel be assessed the farmer and one mill per bushel be assessed the elevator. This is misleading, and we think farmers should understand that the direct cost of the fund would be borne by them. However, some of our members who have facilities in other states which have indemnity funds have studied their costs in helping to administer the fund.

They found that although the direct cost was attributed to the producer, the elevator's cost inhouse exceeded the amount that was going into the fund. Recognizing that, our members still are willing to support such a fund if this is what producers want.

Mr. Chairman, I will be happy to respond to questions.

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KANSAS GRAIN & FEED DEALERS Association

1722 N. PLUM (BOX 949) / AREA CODE 316 662-7911 / HUTCHINSON, KANSAS 67504-0949

*GEORGE AICHER, President, Eureka
*GARY COOPER, First Vice-President, Colby
*ROGER WOLFE, Second Vice-President, White Cloud
TOM R. TUNNELL, Executive Vice-President, Hutchinson

September 23, 1986

THE KANSAS GRAIN AND FEED DEALERS ASSOCIATION

KGFDA has been serving Kansas' grain and feed industry since 1896. The Association includes over 1200 members, representing the state's grain warehousemen, grain dealers, seed dealers, seed processors, feed dealers, feed manufacturers and alfalfa processors. The 1986 president of the Association is George Aicher of Ranch Aid, Inc., Eureka.

Below are Kansas' grain warehouse numbers and capacity statistics. (These statistics include all elevators, both cooperative and independent.)

FEDERAL

Total FEDERAL Licensed Capacity in Kansas . . . . 362,588,000 bu.
  Total Federal Licensed Warehouses in Kansas 130
Total Non-Member Federal Licensed Capacity in Kansas . . . . 2,909,000 bu.
  Total Non-Member Federal Licensed Warehouses in Kansas . . 5
Total Federal Licensed capacity belonging to KGFDA Members . . . 358,679,000 bu.
  Total Members Federal Licensed Warehouses in Kansas . . . 125
98.9% of the Federal Kansas Capacity belongs to KGFDA Members
  Federal Licensed Warehouses in Kansas belonging to KGFDA members equals 96.2%

STATE

Total STATE Licensed Capacity in Kansas . . . . 519,973,000 bu.
  Total State Licensed Warehouses in Kansas 561
Total Non-Member State Licensed Capacity in Kansas . . . . 16,029,000 bu.
  Total Non-Member State Licensed Warehouses in Kansas . . . 42
Total State Licensed Capacity belonging to KGFDA Members . . . . 503,844,000 bu.
  Total Members State Licensed Warehouses in Kansas 519
96.9% of the State Licensed Capacity belongs to KGFDA Members
  State Licensed Warehouses in Kansas belonging to KGFDA Members equals 92.5%

FEDERAL & STATE

Total Licensed Bushel Capacity of FEDERAL & STATE in Kansas . . 882,461,000 bu.
  Total Federal & State Licensed Warehouses in Kansas . . . 691
Total Licensed Capacity of Federal & State Non-Members . . . . . 18,938,000 bu.
  Total Federal & State Licensed Warehouses of Non-Members . 47
Total Licensed Bushel Capacity of Federal & State KGFDA Members . 863,523,000 bu.
  Total Fed. & State Licensed Warehouses-KGFDA member owned . 644
97.8% of all Federal & State Licensed Capacity belongs to KGFDA Members
  KGFDA Members own 93.2% of all Licensed Federal & State Warehouses

GRAIN ELEVATOR FAILURES

National average - 2.8 per year

Kansas average - 0.8 per year

Comparison with Illinois (Illinois is the state nearest to Kansas in capacity)

Year	Kansas	Illinois
1978	0	18
1979	0	17
1980	1	4
1981	0	8
1982	2	3
1983	3	15
1984	2	7
1985	2	2
1986	2	2

In 21 years, there have been 20 warehouse failures in Kansas.

Of those, only 8 resulted in losses to producers. 18 resulted in losses to bonding companies; USDA (Commodity Credit Corporation lost money in 6 of them. Producer losses over 21 years totalled $1.66 million; $629,450 of which was from a single failure (Twombly Grain, Troy)..

LOSSES FROM 1966

CAPACITIES

287,092 Bu.	1.	(1967)	Farmers Coop @ McPherson		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A.		-0-
			Bonding Co.		41,000
441,021 (Courtland) 557,632 (Belleville) 175,986 (Formoso)	2.	(1972)	Maher Grain Company - Courtland, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co.		139,000
661,155 Bu.	3.	(1973)	Farmers Coop @ Victoria		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		8,000
			Bonding Co. -		10,000
57,287 Bu.	4.	(1975)	Centerville Grain Company - Centerville, Kansas		
			Producers -	$	150,000
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		30,000
165,799 Canada 75,137 Elmo 41,222 Lost Springs 96,412 Lehigh	5.	(1975)	Canada Grain Company, Inc. - Canada, Kansas		
			Producers -	$	42,600
			Banks -		38,400
			U.S.D.A. -		16,000
			Bonding Co. -		145,023
224,214 Bu.	6.	(1976)	Dighton Grain Company - Dighton, Kansas		
			Producers -	$	67,180
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		-0-
155,602 Highland 77,005 Emporia 2,314,197 Parsons	7.	(1976)	Way-More Feeds, Inc. - Parsons, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		45,000
27,674 Bu.	8.	(1976)	Hepler Grain Company - Helper, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		10,900
171,385 Bu.	9.	(1980)	Collins Grain Company, Inc. - Kackley, Kansas		
			Producers -	$	120,000
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		150,011
315,859 Bu.	10.	(1982)	Ames Grain Company, Inc. - Ames, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A -		-0-
			Bonding Co. -		67,030
291,952 Bu. 249,187 Bu.	* 11.	(1982)	Pittman Feed Company - Haynes Switch, Kansas Plains Grain, Inc. - Plains, Kansas		
			Producers -	$	422,685
			Banks -		-0-
			U.S.D.A. -		595,834
			Bonding Co. -		367,500
419,070 Bu.	12.	(1983)	J & H Grain Company, Inc. - Thayer, Kansas		
			Producers -	$	-0-
			Banks -		-0-
			U.S.D.A. -		-0-
			Bonding Co. -		98,900

LOSSES FROM 1966

CAPACITIES				
265,331 Bu.	13.	(1983)	Farmers Cooperative Association - Moran, Kansas	
			Producers -	$ -0-
			Banks -	-0-
			U.S.D.A. -	-0-
			Bonding Co. -	187,800
98,346 Bu.	14.	(1983)	Kechi Elevator - Kechi, Kansas	
			Producers -	$ -0-
			Banks -	-0-
			U.S.D.A. -	-0-
			Bonding Co. -	159,100
297,620 Bu.	15.	(1984)	Bucyrus Grain Co., Inc. - Bucyrus, Kansas	
			Producers -	$ -0-
			Banks -	-0-
			U.S.D.A. -	-0-
			Bonding Co. -	157,045
760,141 Bu.	*16.	(1984)	Twombly Grain Co., Inc. - Troy, Kansas	
			Producers -	$ 629,450
			Banks -	536,151
			U.S.D.A. -	941,327
			Bonding Co. -	217,100
166,372 Bu.	*17.	(1985)	Esbon Grain Co., Inc. - Esbon, Kansas	
			Producers -	$ 49,100
			Banks -	-0-
			U.S.D.A. -	199,419
			Bonding Co. -	99,900
179,258 Bu.	18.	(1985)	Munkres Grain, Inc. - Delavan, Kansas	
			Producers -	$ -0-
			Banks -	-0-
			U.S.D.A. -	-0-
			Bonding Co. -	21,000
243,290 Bu.	*19.	(1986)	McKain Grain Co., Inc. - Delphos, Kansas	
			Producers -	$ 181,322
			Banks -	-0-
			U.S.D.A. -	263,915
			Bonding Co. -	126,000
291,830 Beulah	20.	(1986)	Kan-Ag, Parsons, Kansas	
2,220,739 Parsons			** Producers -	?
214,882 Altamont			Banks -	?
			U.S.D.A. -	?
			Bonding Co. -	?

* Interim figures (approximations)

** A loss has occurred after the receiver took control. Federal and State examinations did not show any shortages or any quality deterioration, but a quality problem developed after the examinations.

COMMENTS ON THE PROPOSED
KANSAS WAREHOUSE INDEMNITY FUND
Submitted by Cargill, Inc.

Background:

The Kansas Grain Inspection Director has proposed the creation of a state grain indemnity fund to insure warehousemen who have difficulty obtaining bonds to cover the deposits in their warehouses.

The proposed fund would be established by a one-cent-per-bushel checkoff on all grain handled by licensed grain warehouses - both state and federal - and would continue until a cap of $10 million is reached.

The proposal raises two issues:

1) whether the state can extend its jurisdiction over federally licensed warehouses; and

2) whether the state can compel (tax) secured warehouses to underwrite the liabilities incurred by unsecured warehouses.

The proposed fund is similar to, if not modeled after the Illinois Grain Insurance Fund, which seeks to bring federally licensed warehouses within its insurance program. Cargill and nine other warehousemen operating in Illinois are contesting the state's jurisdiction over federally licensed warehouses.

The experience of Cargill and other federally licensed warehousemen in Illinios may illuminate some of the difficulties of the proposed Kansas fund. To fully understand the issues, it is necessary to review the provisions of the U.S. Warehouse Act.

The U.S. Warehouse Act:

The U.S. Warehouse Act established federal supremacy over federally licensed warehouses for the purposes of: (a) setting sound warehouse standards; (b) providing uniform warehouse procedures and requirements that protect producers and others who store property in public warehouses; and (c) assuring the integrity of federal warehouse receipts as documents of title that facilitate interstate commerce in commodities.

Under the Act, the Secretary of Agriculture is authorized to issue licenses upon application according to the statutes and rules prescribed by Congress and the Secretary respectively.

The statutes and rules require that:

1) the warehouse be suitable for proper storage of particular agricultural products for which the license is applied for;

2) the warehouseman agrees as a condition of the license to comply with and abide by the statute and rules;

3) the warehouseman file good and sufficient bond with the Secretary of Agriculture; and

4) the Secretary can set the terms and conditions for bonding.

The Illinois Act and Federal Supremacy:

The Illinois law attempts to impose additional financial and bonding requirements on federally licensed warehousemen notwithstanding their compliance with the regulations of the U.S. Warehouse Act.

The Illinois law effectively forces federally licensed warehouses to join the insurance fund which, in turn, has the effect of removing much of the incentive for securing a federal license. Those who hold federal warehouse licenses are forced to comply with conflicting regulations that are directly contrary to the intent of Congress.

Cargill and its co-plaintiffs have taken the position that the U.S. Warehouse Act and its implementing regulations expressly govern the financial and bonding requirements of federally licensed warehouses and, therefore, the assertion of state jurisdiction over such warehouses violates the supremacy clause of the U.S. Constitution.

The USDA agrees with this position and has filed an <u>amicus curae</u> brief in support of the plantiffs arguing that the federal act supercedes any state statutes.

Overwhelming legal precedent clearly supports the proposition that federal law preempts state law when Congress has fully occupied a field of regulation, or when state law stands as an obstacle to the accomplishment and execution of the full purpose of Congress.

The Supreme Court has held that matters regulated by the federal act cannot be regulated by the states. The test of a state's jurisdiction, therefore, is whether the matter is regulated by the federal act and, if it is, federal law is supreme even if it is more modest or less pervasive in its effects than the state act.

<u>Risk Sharing</u>:

The proposed fund is intended to distribute the costs of unsecured losses among all warehousemen. An equal sharing of risk is equitable if: (a) the chances of loss are equal or unpredictable for members of that class and (b) that the cause of loss lies beyond the immediate control of those at risk.

Because warehouse failures are usually caused by the warehousemen's actions, they are within his control so that the degree of risk is unequal and varies with the abilities of the warehouseman.

It follows, therefore, that warehouse failures can be prevented by requiring, as a condition of licensing, statements of minimal net worth, letters of credit, financial reports or other established methods of monitoring public warehouses.

Assessing bonded warehouses (whether federally or state licensed) will not remove the causes of warehouse failure nor will it reduce the risks of loss. The assessment will shift the costs from those who are responsible for causing losses to those most able to pay.

Compelling bonded warehouses to contribute to the proposed fund may prove self-defeating because:

1) it will weaken the incentives for securing bonds;
2) it will impose an additional financial burden on already bonded warehousemen; and
3) it will reward imprudent warehousemen at the expense of responsible managers.

As a matter of principle, therefore, the state's first responsibility is to address the causes of warehouse failures and take reasonable preventive action without imposing unreasonable restrictions or burdens on warehouses which are already adequately bonded.

Objections to the Fund:

The proposed fund is objectionable because:

1) it will not materially strengthen the state warehouse system by preventing warehouse insolvency;

2) it will shift the costs of the less solvent warehouses onto the more solvent warehouses, thereby weakening the whole system;

3) it will impose disproportionately larger financial burdens all warehousemen who have secured bonds;

4) it will subject federally licensed warehousemen to dual and conflicting regulations;

5) it will weaken the incentives for warehousemen to obtain federal licenses; and

6) it will conflict with well-established federal supremacy over federally licensed warehouses and lead to needless litigation.

December 8, 1986
0081i

Testimony on HB 2518
House Agriculture Committee
March 3, 1987
Prepared by Joe Lieber
Kansas Cooperative Council

Mr. Chairman and members of the Committee: for the record, my name is Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has nearly 200 local cooperatives as members, and those local cooperatives have a membership of more than 100,000 farmers and ranchers.

It is on behalf of these producer-members that we oppose HB 2518 - because those producers will be paying for the security fund.

1. It doesn't matter how the mills are divided up - 2 by the producers and 1 by the warehouseman - it still means the producers are paying the 3 mills because the cost is going to be passed back to them.

   For every 100,000 bushels the producer brings in, he/she will pay $300. If your local elevator brings in a million bushels, the producers will pay $3,000; 2 million = $6,000; and so on. Can your producers afford this additional cost to support weak elevators?

2. All cooperatives have in their by-laws that they must be audited by an outside independent audit firm. The reputations of these audit firms depend on their accuracy because they sign the audit. These audits are expensive.

   Examples:

   Greenleaf Co-op - $13,000
   Farmway Co-op - $37,000
   St. Marys Co-op - $22,000
   Delphos Co-op - $9,000
   Sublette Co-op - $10,400
   Garfield Co-op - $10,562
   Overbrook Co-op - $9,200
   Ottawa Co-op - $15,000

ATTACHMENT VI
March 3, 1987

Because the cooperatives are producer-owned this is an expense they are already paying for security. Does it make sense that they should pay twice?

3. Cooperatives also have annual meetings where the audit is passed out, and the independent auditor presents an audit report and answers questions. Cooperatives "bare their souls" at these meetings.

This is why to the best of our knowledge (have contacted the top attorneys that specialize in cooperative law) producers have not lost grain to a bankrupt cooperative in the last 50 years. Why should the strong pay twice to protect the weak?

4. What about the availability of bonds? Are the bonding companies getting more particular? Yes. A producer may want to look twice at an elevator that cannot be bonded. But let's give the elevator the benefit of the doubt and say it is financially sound. Senate Bill 344 that has been introduced would let the Grain Inspection Department accept certificate of deposit (CD's) or a letter of credit in lieu of a bond. If Senate Bill 344 passes and an elevator can't get one of the three then they probably shouldn't be in business.

Mr. Chairman and members of the Committee, these are the main points that I would like to bring out in opposition of HB 2518. There are many other points that show the weakness of HB 2518 such as:

5. Why would you have the Board of Agriculture and not the Grain Inspection Department responsible for regulating the warehouse?

6. Would the commencing date of June 1, 1987, mean the producers in the northern half of the state with a later harvest would be paying more?

7. Line 0077 leaves out the Farm Credit System. I know they are hurting but so are the commercial banks.

8. Lines 0100-102 said the administration of this act will be paid from the fund. I thought the idea of the fund was to help the producers, not to establish a new bureaucracy.

9. There is insurance the producer can buy if he wants protection.

10. Doesn't the producer have some responsibility on determining where he does do business?

Mr. Chairman and members of the Committee, I'm sure the other conferees will address some of these problems in more detail.

Thank you for the opportunity to appear before you today.