

890409

AN INTERIM REPORT
TO THE 1989
LEGISLATURE

AGRICULTURAL CONTRACTS
TASK FORCE

FEBRUARY 1989

A REPORT REQUIRED BY LAWS OF MINNESOTA 1988,
CHAPTER 688, ARTICLE 13, SECTION 1

MINNESOTA DEPARTMENT OF AGRICULTURE
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SUMMARY

Actions to Date

The Minnesota Agricultural Contract Task Force has met eight times to discuss the issues affecting agricultural contracts. The initial meetings developed the issues and concerns of the Task Force members and yielded some of their proposed solutions. Several meetings included informational programs on bonding, bankruptcy and current Minnesota state law affecting contracts. Most recent meetings involved getting together with producers and processors of potatoes, dry edible beans and turkeys to determine individual industry problems and issues.

Findings

The Task Force meetings to date have yielded the following information:

- The Grain Buyers and Inspection Acts, the Livestock Dealers Act, and the Wholesale Producer Dealers Act were written at a time when contract farming was not as prevalent as today. Many producers, knowingly or unknowingly, give up their rights and lose statutory protection by signing commodity contracts.
- Today there is widespread use of contracts. For example, it is estimated that approximately 50% of potatoes, 100% of sweet corn and peas sold to canneries and most turkeys are purchased on contract in Minnesota.
- The trend toward contracting is increasing. In many cases in order for a producer to secure a loan, he may need to have a commodity contract to show proof of income to his lender.
- Contracting is a major tool in efforts to share the risks of agricultural production.
- Major contract problem areas include:
 - 1) Non-payment, slow payment, bankruptcy and bonding.
 - 2) Problems with interpretation of contract rights and responsibilities.
 - 3) Problems due to unequal bargaining power, contracts of adhesion.
 - 4) Producers unaware of their rights and the programs available to help them.
- There is no uniformity to agricultural contracting in Minnesota. The type of contract used (bailee or buy-sell) varies by commodity and within each commodity type.
- Contract issues can have a multi-state impact. Many Minnesota producers compete regionally and nationally for their contracts.
- Many other states have dealt with and are dealing with the same issues that concern the Task Force. The Wisconsin Department of Agriculture, Trade and Consumer Protection is currently looking at vegetable contracting issues in that state.

Conclusions

In order to do a thorough study of contracts the Task Force has found it must research each type of commodity contract separately. It needs to listen to the views of the producers and processors of the commodity, understand contract terms, hear suggestions, determine problems, and assess where the producer may need protection that he doesn't already have. In turn, a study of laws of other states ought to be made to determine if they provide protections needed but not provided in Minnesota's laws and could add needed strength to current statutes.

Recommendations

The Agricultural Contract Task Force has just completed a broad overview of contracts and submits five recommendations for consideration:

- 1) Extend date of final report to February 15, 1990.
- 2) The Task Force should continue meeting with producer/processor groups to assess issues and problems.
- 3) The Task Force should study the statutes of other states for their applicability to Minnesota issues.
- 4) The Task Force recommends production of an informational brochure to inform producers of their rights, state agency resources available, and how to assess the financial strength of the companies with whom they contract.
- 5) Appropriate \$108,065 for administrative and Task Force expenses.
(A proposed budget is contained in Appendix E).

I. INTRODUCTION

A. Background

The Agricultural Contracts Task Force was established to determine the extent of problems relating to the sale of agricultural commodities under contract. (See Appendix A) Complaints received indicated that problems with the contractual process were responsible for a fair amount of economic hardship for farmers.

The 1988 Legislature enacted legislation that enabled the Minnesota department of agriculture to form an Agricultural Contracts Task Force. This task force, composed of members that represented a cross section of the agriculture industry in Minnesota was charged with the task of studying present and potential new programs and making recommendations that will provide economic protection for farmers producing agricultural products under contract.

The issue of agricultural contracting and a system of providing protection for Minnesota producers when they are involved in contracting involves to some degree a study of all of agriculture within the State of Minnesota. There is no uniformity to agricultural contracting. The unique characteristics of each commodity area coupled with market and other economic factors create diverse contract situations.

There is no question that agricultural contracting will expand. This phenomenon will be fueled primarily by the large amounts of capital needed in today's agricultural endeavors. This demand for capital coupled with the existence of new and better technology, specialization and historical low return on investments in agriculture creates an environment where more and more individuals opt for contracting to reduce their financial risk, yet allows them to provide a reasonable living for their families. In many cases this stable source of income will allow farmers to stay on the family farm.

If a young farmer were to start farming today with a 200 sow farrow-to-finish operation, he would be looking at an investment of \$500,000. The same is true for a person who signs a contract for a large turkey building to produce turkeys under contract. It is to the farmer's benefit, in many cases, to sign a contract with another individual who will provide the capital and the farmer will provide the labor and management in a given operation.

There is a strong need to provide economic protection for producers who contract out their crops and labor. The perishable nature of agricultural commodities, vulnerable financial position of many farmers and the destabilizing factors that can affect processors such as leveraged buyouts, mergers, bankruptcy, and labor unrest all serve to create problems for producers under contract.

It becomes readily apparent after looking at the agricultural contract area that consideration of Minnesota contract issues alone

is inadequate. Many Minnesota processors operate in other states. Many Minnesota producers compete in national and international markets. Preliminary inquiries into other state programs indicate similar concerns, a desire to share information, and an interest in coordinating activities in this area.

The enormity of this issue was not apparent or anticipated at the time the legislature was asked to form this Task Force. A thorough study of the issues will require a great deal more time and expense. It is hoped the legislature will see fit to pursue the very important issue of agricultural contracts. The task force urges the legislature to commit to such a task.

B. Members

In recruiting Task Force members, every effort was made to provide representation from as many areas of the affected agricultural community as possible. The enabling legislation required inclusion of farmers, canning processors, contract seed businesses, livestock and poultry contractors, other agricultural processors, farm organizations, and bonding and financial institutions. All of these groups are currently represented on the Task Force; some members represent more than one group. (See Appendix B).

II. PROCESS

Eight meetings have been held by the Agricultural Contracts Task Force.

A. August 22, 1988

This was the Task Force's initial, organizational meeting. The members discussed their major concerns about agricultural contracts, and proposed some solutions.

B. September 13, 1988

Senators Chuck Davis, Dennis Frederickson and Tracy Beckman and Agricultural Commissioner Jim Nichols addressed the Task Force. There was a presentation by Department of Agriculture employees on the provisions of current state law affecting agricultural commodities. John Malmberg, Wholesale Produce Bonding/Licensing, spoke on the Wholesale Produce Dealers Act and the Livestock Buyers Licensing Act; Ed Moline, Director of the Grain Inspection Division spoke on the grain laws. The meeting included further discussion of agricultural contracting issues; new members of the Task Force aired their concerns.

C. November 1, 1988

The task force divided into two groups to discuss specific problems for each of the groups:

Group I - crops, seeds, bonding and processors

Group II - Poultry and livestock

A general discussion ensued to share the results from each group. Scott Strand, Attorney General's Office, gave a presentation on contract law.

- D. December 9, 1988
The Task Force heard a presentation on bonding issues by Don Sommers, Transamerica Insurance Company and task force member, Gerry Jensen, insurance agent, Western Surety Company and Paul Strandberg, Minnesota State Attorney General's office and counsel to the Department of Agriculture. Agriculture department staff gave a presentation on state and federal law that affects agricultural contracts.
- E. December 28, 1988
Three Task Force members and two Department of Agriculture employees attended a meeting in East Grand Forks, Minnesota with Red River Valley Potato Growers to discuss their contract issues and concerns.
- F. January 3, 1989
Phillip Kunkel, Attorney-at-Law, and the Honorable Robert Kressel, Chief Judge of the Minnesota District of the U.S. Bankruptcy Court, met with the Task Force to discuss bankruptcy issues that affect agricultural contracts.
- g. January 26, 1989
Potato processors and dry edible bean producers and processors met with the Task Force to discuss their concerns about agricultural contracts.
- h. February 7, 1989
Task Force members met with turkey producers and processors in Willmar, Minnesota to discuss their contract issues.
- i. March, 1989
Plans are being made to meet in St. Cloud, Minnesota with turkey processors and egg and broiler producers and processors.

III. RESULTS

- A. A wide array of issues and problems concerning agricultural contracts were identified by the Task Force. The Minnesota Wholesale Producer Dealers Act was initially singled out as the Minnesota law that created the most problems for agricultural contracting. However, over time the other commodity areas turned up flaws in their statutes also. Several general areas of contracting problems seem to be emerging. 1) Non-payment and slow payment including bankruptcy; 2) Problems with interpretation of contract rights and responsibilities; 3) Problems due to unequal bargaining power; and 4) Producers unaware of their rights and the programs available to help them. (Appendix C, the issues matrix indicates problems by commodity area. Appendix D is a general outline of all of the issues and problems expressed and/or discussed).
- B. Proposed Solutions
Listed below are some of the task force members' suggestions for solving agricultural contract problems:
 - 1. Bonding - Minnesota law contains bonding provisions for grain, livestock and wholesale produce but there are problems and the laws warrant some fine tuning.

2. Security Funds - These funds are collected and administered by the state for the purpose of reimbursing a producer of agricultural commodities when his buyer defaults. New York, Illinois and Iowa have such funds.
3. Producers Lien - A statutory lien arises in a crop or its proceeds upon delivery to a buyer. New York law provides for such a lien.
4. Arbitration/Mediation - Arbitration or mediation could be required when a contract dispute arises. Florida has an arbitration statute dealing with disputes in the seed industry. Minnesota has general arbitration and mediation statutes.
5. Contract Terms Imposed by Statute - Certain terms would have to be included or dealt with in all agricultural contracts.
6. Risk Sharing - Strike, drought and other events create hardships for both parties to a contract. Contracting can provide for sharing such losses.
7. Plain Language Contract - Contracts should be required to be readable and understandable by the average layman.
8. Disclosure Requirement - Important rights or warnings could be prominently spelled out on the face of a contract.
9. Trust Funds - All or part of a buyer's receivables, inventory and sale proceeds are considered to be in trust to assure payment to the producer.
10. Standardized Contract - Statute or administrative rule would set up a standard contract form to be used by everyone contracting in agricultural commodities. Provisions that are specific to a certain type of crop would be attached to the "boilerplate" or generic contract.
11. Contract Ombudsman - The Department of Agriculture would provide an employee to provide information, investigate complaints and provide or facilitate dispute resolution.
12. Performance bonding - Bonding that would ensure performance by a producer.

IV. State/Federal Programs

Federal, Minnesota and other state programs that impact agricultural contracts are as follows:

I. FEDERAL PROGRAMS

- A. Packers and Stockyards Act - 7 U.S.C. 181
 1. Covers packers and stockyards that purchase more than \$500,000 a year in livestock and participate in interstate commerce.
 2. All livestock purchased by a packer in cash sales, and all inventories of, or receivables or proceeds from meat, meat food products, or livestock products derived therefrom, shall be held by such packer in trust for the benefit of all unpaid cash sellers of such livestock until full payment has been received by such unpaid sellers. The trust does not cover situations where the seller extends credit to the buyer.

3. Payment for livestock is required before the close of the next business day following the purchase. (Poultry is 15 days.)
 - a. The parties may agree in writing before the purchase or sale to change or extend the manner of payment. However, the seller must sign a statement that he understands that he will lose his rights under the trust provisions of the Act by extending credit.
 - b. Any delay or attempt to delay the collection of funds which results in the extension of the normal period of payment is an "unfair practice" in violation of the Act.
 - c. PSA regulations require certain terms to be included in all poultry grow-out contracts.
- B. Perishable Agricultural Commodities Act - 7 U.S.C. 499a - 499s
1. The Act requires agricultural produce buyers to be licensed if they are involved in interstate commerce.
 2. Payment is required to be made within 10 days unless the parties have agreed in writing to other payment terms.
 3. The Act provides that a "floating" trust is set up to ensure payment to producers. The trust consists of all commodities received, inventories, receivables, and the proceeds from sales. A seller is ineligible for trust benefits if payment is not made within 30 days after receipt and acceptance of the product by the buyer.

II. STATE PROGRAMS

A. Minnesota

1. Bonding

a. Grain - Minnesota Statutes 223, 232

- 1) Payment is required by the close of the business day following the day of sale.
- 2) Voluntary extensions of credit are not covered by the bonding provisions of the act and the producer must be informed of this by written statement included in the contract.
- 3) A licensed grain buyer must at all times maintain grain, rights in grain, or proceeds from the sale of grain totaling 90% of the grain buyer's obligation for grain purchased by voluntary extension of credit contracts.
- 4) Claims must be made for bond payment within 180 days of date payment was due.

b. Wholesale Produce Dealers Act - Minnesota Statutes 27

- 1) Due date for payment is 10 days from the date of delivery (milk is 15 days).
- 2) If buyer defaults the producer has 40 days to make a written claim.
- 3) Written voluntary extensions of credit are excused from the 10-day due date. They also may not be covered under the bond.

c. Livestock-Minnesota Statutes 17A

- 1) market agencies and dealers must be licensed and bonded.

2. Agricultural Marketing and Bargaining Act, Minnesota Statutes 17.691

- a. Provides a procedure for producer groups to bargain effectively with buyers of agricultural products.
- b. Procedure
 - 1) A group of producers representing more than 50% of producers in a "bargaining unit area" who in turn produce more than 50% of the commodity that is the subject of bargaining apply to the commissioner of Agriculture for accreditation as an association.
 - 2) The association elects a committee to bargain with contractors concerning prices and other terms of trade.
 - 3) The committee and the contractor must meet and bargain in good faith.
 - 4) If no agreement is reached within 10 days the commissioner steps in to mediate.
 - 5) Any unfair practices or complaints about violations of the act are submitted to the commissioner who will investigate and hold a hearing, if necessary.

3. Statutory Liens

- a. Agricultural Production Input Lien - Minnesota Statutes 514.950.
Anyone who provides seeds, petroleum products, chemicals or labor to produce crops or livestock can obtain a lien in the crop or livestock. After the appropriate filings and notifications are completed the agricultural production input lien will take priority in payment over any lenders lien in the same crop or livestock.
- b. Custom Feeders Lien - Minnesota Statutes 514.19.
This statute creates a lien for anyone who keeps feeds, pastures or otherwise cares for animals.
- c. Threshers' Lien - Minnesota Statutes 514.65.
Provides for a lien for persons owning or operating certain kinds of farm machinery in the crop that is harvested or serviced. The crops affected are grain, clover, corn, ensilage and hay.
- d. Farm Products Statutory Lien - Minnesota Statutes 223A.
This statute provides for a buyer of agricultural commodities to take produce free and clear of other liens on the product except a landlord lien and Article 9 security interests. An exception would be if the buyer had been notified by the seller or lienholder within the previous year that a lien exists, the lien was perfected and the buyer had met any payment conditions for the waiver or release of the security interest.

- e. Landlord Lien - Minnesota Statutes 514.960.
A lessor of agricultural property has a lien for unpaid rent on the crop (and its proceeds) that is grown on the lessor's property. A perfected landlord lien has priority over all other liens and security interests in the crop.
- f. Planting Crop Owner's Lien - Minnesota Statutes 557.10-.12.
Planted and growing crops are the personal property of the person or entity that has the right to plant the crops. If a planting crop owner loses his right to harvest the crop to another, both parties have lien rights under this statute.

4. Arbitration and Mediation Statutes

- a. Minnesota Civil Mediation Act - Minnesota Statutes 572.31. Act provides ground rules for a mediated settlement agreement. Parties agree to submit their dispute to a mediator who will promote a settlement between the parties.
- b. Debtor and Creditor Mediation - Minnesota Statutes 572.41. Parties who agree to mediate submit a written request for referral to a mediator to the county court administrator.
- c. Community Dispute Resolution Program - Minnesota Statutes 494.
 - 1) Parties voluntarily agree to mediation or arbitration to settle their dispute.
 - 2) The state court administrator develops guidelines and training programs for mediators and arbitrators.
- d. Uniform Arbitration Act - Minnesota Statutes 572.08.
If there is a written agreement to submit a controversy to arbitration, it can be enforced through this statute.

III. OTHER STATES' PROGRAMS

A. Florida's Arbitration Statute

A five-member council hears and investigates complaints brought by farmers against seed dealers. It then makes a recommendation as to any cost damages.

B. New York

- 1. New York has a "prompt payment" provision of payment within 30 days of delivery or "such other period of time as otherwise agreed upon in a writing signed by the purchaser and accepted by the seller." This "extension of credit" is covered by the bonding law.
- 2. Agricultural Producers Security Fund.
The fund is in addition to bonding. The fee is based on annual dollar volume of purchases. The contractor can recover his fund deposit by charging it back to the producers from whom he buys produce. The fund covers those cases where bond payments to producers are inadequate.

3. Producers Lien

A first priority statutory lien arises in a buyers receivables and inventory upon delivery by the producer of a farm product. The lien requires no filing and lasts for 20 days beyond the payment due date.

C. Washington State

1. Processors can be required to report their maximum processing capacity.
2. Processors can be required to submit copies of contracts and notices of oral commitment for the purchase of crops to the director of agriculture.
3. Growers may file forms showing crops that a processor is committed to purchase.
4. It's a violation of law for a processor to commit to purchasing more crops than its plant can process.
5. A processor cannot discriminate between growers as to price, conditions for production harvesting and delivery of crops unless such discrimination is supportable by economic cost factors. (Minnesota's discrimination statute applies to most farm products, but not grain or crops).

D. Oklahoma

Oklahoma passed a law effective November 1, 1988, that allows a dairy farmer who has not been paid to demand that the processor create a segregated, interest-bearing escrow account for the farmer. The statute provides that the account is the property of the dairy farmer.

IV. CONCLUSION

It has become apparent over the last six months that the agricultural contracts Task Force has been meeting that the problems in the agricultural contracting field are diverse. While there are some problems and issues that cut across many of the agricultural commodity areas such as bonding, payment problems, bankruptcy issues and arbitration/mediation issues the Task Force has learned that there are differences among the commodity groups that are unique to that segment of agriculture.

There are several reasons why agricultural contracts are so diverse and have different types of problems. A recurring tension in the Task Force's efforts has been the issue of what kind of contract the producer has entered into. Some contracts are strictly buy-sell; the producer owns the crop and sells it to the processor. The title passes at the time of sale. At the other end of the spectrum is the service or bailment contract where the processor owns the seed, crop, or livestock, provides all the inputs, harvests and dictates all phases of production. The farmer provides the labor only. The processor retains title at all times. In between are an infinite number of variations between these two extremes. A major problem is that each of these contracts might be treated differently by the law. Other factors that affect the type of contract that occurs are the number of producers and processors in the market and the character of the market. Some commodity markets are partially open and partially contracted. Other markets are completely closed with no other outlet for a crop grown under contract. Again, there are multiple variations in between these two types of markets.

Beside the diversity of contract issues in Minnesota the Task Force has discovered that contract issues here have a multi-state impact. Two thirds of the Red River Valley potato growing area is in North Dakota. North Dakota, South Dakota and Minnesota grain warehouse bonding is unique in the country. One insurance company writes 80% of the grain bond business in this three state area. California is a big competitor of our wild rice industry. The Red River Valley potato chip industry competes nationally.

Wisconsin has recently completed an extensive study of vegetable contracting. They found that buy-sell contracts were profitable for the farmer, but bailee contracts were not. The Wisconsin Farm Bureau has asked the Wisconsin Agriculture Department to look at issues such as standardized contract forms, prompt payment provisions, bargaining laws in other states, producer rights and retaliatory behavior on the part of processors. The Wisconsin Agriculture Department is also looking at contract provisions in vegetable contracts and unfair trade practice issues. They have contacted us to explore the issues of coordination of efforts and uniformity of approach since Minnesota and Wisconsin are vegetable producing states and have some of the same processors operating in both states.

In conclusion, the Task Force feels its task has just begun. To date, general problems and solutions to those problems have been discussed. The Task Force is presently preparing to meet with each of the individual commodity groups, both producers and processors to assess the issues in each area. The Task Force believes that exploring what other

states have done and assessing the multi-state and/or national issues that affect agricultural contracts in this state are also very important to ensure that any recommended new programs or changes in present programs are the most efficient and effective possible.

V. RECOMMENDATIONS

- A. Further Study - As noted above, the task force has just begun the process of determining all the issues that affect agricultural contracts. Essentially, Phase I of our task has been completed--determination of the general problems affecting all or most agricultural contracts in Minnesota.

Proposal for further study include:

Phase II - Meet with the individual commodity group to determine the specific problems and concerns of both producers and processors in each group.

Phase III - Study the programs in other states and gather information concerning other states' experience with various types of programs.

Phase IV - Address multi-state issues. Some contract issues have multi-state or regional implications and can be best dealt with by involving other states.

Phase V - Address the Minnesota state law problems that affect agricultural contracts, make specific recommendations for changes in the present law and make recommendations for any appropriate new programs. At the very least the Minnesota Wholesale Produce Dealers' Act and accompanying rules need study and discussion.

- B. Informational Brochure

It would be appropriate to utilize all the information gained by the Task Force and publish a brochure to be distributed to all producers engaged in agriculture contracting informing them of their rights under the law, what state agencies are available to help them and how to determine the financial soundness of the companies they contract with.

- C. Move Date of Final Report to February 15, 1990

- D. Appropriation for Administrative and Task Force Expenses

\$108,065 - Fiscal Year 1990
(See Appendix E)

APPENDIX A

AGRICULTURAL CONTRACT TASK FORCE

PURPOSE The Agricultural Contract Task Force was established pursuant to M.S. 15.014, to provide advice and assistance to the Minnesota Department of Agriculture. M.S. 15.014 established the authority and purpose of Advisory Task Forces:

MINNESOTA STATUTES 15.014 ADVISORY TASK FORCES.

Subdivision 1. POLICY. It is the policy of the Legislature to encourage state agencies to solicit and receive advice from members of the public. This advice can best be rendered by an advisory task force of a reasonable number of persons working for a limited duration on a specific and clearly defined subject.

Subd. 2. CREATION: LIMITATIONS. A commissioner of a state department . . . may create advisory task forces to advise the commissioner or agency on specific programs or topics within the jurisdiction of the department or agency . . .

ROLE The purpose of the Task Force will be to determine the impact that existing programs and potential new programs could have in providing economic protection for farmers who are raising livestock, poultry, or crops under contract.

They should provide a report to the legislature by January 5, 1989.

MEMBERSHIP The membership must include farmers, canning processors, contract seed businesses, livestock and poultry contractors, other agricultural processors, farm organizations, and bonding and financial institutions.

STUDY PROCESS The Task Force will identify issues and study and discuss the feasibility of changing current programs or developing new programs to provide economic protection for farmers producing agricultural commodities under contract.

RECOMMENDATIONS A task force report will include the identification of problem areas and specific recommendations on how to remedy those problems.

SUPPORT Staff support is provided by the Minnesota Department of Agriculture.

APPENDIX B

AGRICULTURAL CONTRACT TASK FORCE MEMBERS

MERLE ANDERSON

Mr. Anderson is a producer of certified wheat and barley seed, sugar beets and potatoes. He is a director of the Red River Valley Power Co-op (R.E.A.), the Minnkota Power Co-op (G & T) Rural electric, the Citizen State Bank, East Grand Forks, Minnesota and President of the American Coalition for Ethanol. He is a past president of the Red River Valley Potato Growers Association and the National Potato Council. He is a member of the Red River Valley Potato Growers Association, the National Potato Council, the Red River Valley Sugar Beet Growers Association, the Minnesota Wheat Growers Association, the Minnesota Wheat Council, the National Barley Growers Association, and the Minnesota Farmers Union.

QUENTIN BEADELL

Mr. Beadell is the president of the State Bank of Vernon Center. He is also a member of Independent Bankers of America.

MIKE BOTTIN

Mr. Bottin is the owner of a feed mill and is a feedlot consultant for Glenkirk Farms of Maysville, Missouri. He is a member of Cattlemen's Association (state) and Pork Producers Association (state).

HOWARD CARLSON

Mr. Carlson is a contractor and contractee member of West Central Turkeys, Inc., a cooperative. He is a member of Minnesota Turkey Grower's Association, Minnesota Agri-Growth Council, Feed Producers Association and serves on the executive committee of the National Turkey Federation.

TOM CASHMAN

Mr. Cashman is Executive Secretary of the Northwest Agri-Dealers Association, Inc. He is a member of the Minnesota Agri-Growth Council and the Northwest Feed Manufacturers Association.

BERT ENESTVEDT

Mr. Enestvedt is a farmer and seedsman. He is also a producer and processor of hybrid Seed corn and certified seed grains. Bert is a member of Minnesota Crop Improvement Association, Minnesota Farmers Union, Minnesota Soybean Growers Association, Renville County Co-op Transport Association, Co-op Products Association of Sacred Heart, Minnesota, Minnesota Corn Growers Association, Wheat Growers Association, and the Renville County Planning and Zoning Commission.

STEVE FREESE

Mr. Freese is a producer of corn, seeds, sugarbeets, navy beans and alfalfa. He is a member of the Minnesota Corn Processors, Southern Minnesota Sugar Growers Cooperative, Edible Bean Association, Minnesota Hay and Forage Council, Farmers Union, and the National Farmers Organization (NFO).

DOUGLAS GOENNER

Mr. Goenner is an egg farmer from Clear Lake.

BILL GOETTE

Mr. Goette raises hogs under a contract. He is the General Production Manager for Benson-Quinn Company, a company doing custom or contract hog production. Bill is a member of the Minnesota Pork Producers Association.

JIM LANGMO

Mr. Langmo is a contract turkey producer. He is a member of the Minnesota Turkey Growers Association, Farm Bureau, and the Minnesota Pork Producers Association. He is involved in all areas of agricultural production including crops and hogs.

KERMAN LOVE

Mr. Love contracts the production of raw vegetables for Del Monte Corporation. He is a member of Minnesota Food Processors Association (Now Midwest Food Processors Association - effective approximately November, 1988), Minnesota Agri-Growth Council, and MCCI.

KEN NEESER

Mr. Neeser is the chairman of the Agricultural Contract Task Force. He is a contract grower of chickens. He is also a member of the Farm Bureau and Rotary.

DONALD SOMMERS

Mr. Sommers is a Senior Bond Underwriter for Transamerica Insurance Company. He is a member of the Surety Association of Minnesota, American Warehouse Control Officers Association, North Dakota Grain Dealers, South Dakota Wheat Growers Association, and Farmers Grain Association of Minnesota.

BOB SPARBOE

Mr. Sparboe is a member of the United Egg Producers, Minnesota Chamber of Commerce, American Bankers Association, Minnesota Bankers Association, Minnesota Poultry Association, Egg Cleaning House, Inc., Midwest United Egg Producers Association, and the Independent Insurance Agents Association.

HAROLD (JOHN) WOLLE, JR.

Mr. Wolle is a grain and cattle farmer. He produces peas and sweet corn under contract to a canning company. He is a member of Minnesota Farmers Union and Minnesota Soybean Growers Association. He is also a Soil and Water Conservation District Supervisor.

MINNESOTA DEPARTMENT OF AGRICULTURE STAFF:

Herb Halvorson - Assistant Commissioner of Agriculture
Jerry Heil - Director, Planning Division
Pat Jensen - Deputy Commissioner of Agriculture
Ed Moline - Director, Grain Inspection Division
Bill Coleman - Director, Dairy & Livestock Division
John Malmberg - Wholesale Produce Dealers Licensing and Bonding
Alan Dupay - Accounting Chief External Auditor
Gail Ryan - Planning Division

AGRICULTURAL CONTRACTS TASK FORCE

	<u>CROPS</u>	<u>EGGS</u>	<u>GRAIN</u>	<u>LIVESTOCK</u>	<u>POULTRY</u>	<u>SEEDS</u>	<u>PROCESSORS</u>
Issues	<ul style="list-style-type: none"> • No Bonding on Voluntary Extensions of Credit • Unfair Bargaining Position - "Contracts of Adhesion" • Union Problems/Strikes • Contract Provisions Requiring the Producer to Harvest Crop 	<ul style="list-style-type: none"> • Slow Pay 	<ul style="list-style-type: none"> • Itinerant Grain Buyers • Dispute Handling • Bonding Does Not Cover Voluntary Extension of Credit • Assignment of Cash Sales of Grain to Future Delivery Contracts • Yearly instead of Continuous Bonding • Elevators failing because of CCC grain withdrawals • Statutory presumption of sale, not storage upon delivery 	<ul style="list-style-type: none"> • Misunderstandings on Handshake Agreements • Union Problems • Spreading the Risk of loss • Overfinished Cattle • Feed Companies Need Ownership to be Protected in Bankruptcy • Large Capital Expenditures, then Non Renewal of Contract • PSA trust treatment in bankruptcy 	<ul style="list-style-type: none"> • Resolving Contract Differences • Leveraged Buyouts • Need Bonding • Large Capital Expenditures, then Non Renewal of Contract • Failure to follow Through on Verbal Assurances that a Contract Provision Won't be Enforced • Union Problems • Residue Standards Greater than FDA's - Producer Must Comply with Contractor's Standards • Periodic Review of Long Term Contracts 	<ul style="list-style-type: none"> • Inaccessibility of Contractor • Unable to Determine Financial Soundness of Contractor 	<ul style="list-style-type: none"> • Overproduction • Underproduction • Producer Defaults • Insurance Doesn't Cover Riots, Strikes, Etc. • Difficult to Obtain Bonding Without Sufficient Resources
Potatoes	<ul style="list-style-type: none"> • Grade/Dockage Concerns • Broker abuses • Unwarranted rejections • fear of retaliation • F.O.B. Acceptance 	<ul style="list-style-type: none"> • PACA trust in bankruptcy • Spin off/Shell Corp. that go bankrupt • Wild Rice - failure to pay • Need to get info. on rights out to farmers 					
Statutes, Existing Programs	PACA Federal M.S. 27 Wholesale Producers Act M.S. 25 Commercial Feed M.S. 30 Vegetables/Fruit M.S. 514.950 Agric. Production Input Lien M.S. 557.10 Planting Crop Owner's Lien	M.S. 29 Poultry Eggs M.S. 514.950 Agric. Production Input Lien	17B Grain Inspection M.S. 223 Commission Merchants M.S. 232 Public local Grain Warehouses M.S. 233 Public Terminal Warehouses M.S. 236 Grain Banks M.S. 236.06 Grain Banks Lien M.S. 236A Interstate Compact on Grain Mktg. M.S. 557.10 Planting Crop Owner's Lien	Packers and Stockyard Act M.S. 17A State Market Agency and Dealer Licensing Act M.S. 25 Commercial Feed M.S. 514.950 Agric. Prod. Input Lien	M.S. 29 Poultry M.S. 25 Commercial Feed M.S. 500.24 Corporate Farm Act M.S. 514.950 Agric. Production Input Lien	M.S. 21 Seeds and Seed Potatoes M.S. 514.950 Agric. Production Input Lien M.S. 557.10 Planting Crop Owner's Lien	Ch. 223A - Farm Products Statutory Lien

APPENDIX C

APPENDIX D

A. Contract Issues and Problems

1. Nonpayment; slow payment.
2. Bonding Laws
 - a) Failure of bonding provisions to cover voluntary extension of credit under the Wholesale Produce Dealers Act.
 - b) In many cases under the contract the farmer is not selling goods, but a service. The farmer in those cases has no title to the goods and therefore no bond protection. For example, a feed company is often the owner of chickens, and it is the feed company that collects the bond proceeds upon buyer default, not the farmer.
 - c) There is a need for producer performance bonds on service contracts to ensure producer performance.
 - d) Grain bonds should be continuous rather than renewed yearly.
 - e) Concern for state liability because of failure to license and bond.
3. Bankruptcy
 - a) When a processor goes bankrupt under either Chapter 7 or Chapter 11, how does the bankruptcy court treat the following issues:
 - 1) Perishable Agricultural Commodities Act and Packers' and Stockyard Act trust fund claims.
 - 2) Executory (unperformed) contracts.
 - 3) Statutory liens in agricultural commodities.
 - b) Minnesota Grain Law presumes sale rather than storage upon delivery of grain to an elevator. The producer might be better protected in a bankruptcy situation if the presumption was storage upon delivery.
4. Inability of Producer to Determine Financial Soundness of Contractor
 - a) The effect of leveraged buyout and merger activity on agricultural contracts.
 - b) The effect of shell and spin-off corporations on agricultural contracts. Should parent companies be made responsible for the contracts of its subsidiaries?
 - c) Assets can be transferred between corporate entities to distort the company's financial picture for bond application purposes.
5. "Contracts of Adhesion"
 - a) Little or no producer input into contract provisions.
 - b) Fear of retaliatory behavior on the part of processors.
6. Union Problems - Labor unrest - Farm Product contracts may not get honored if a plant shuts down.
7. Protection of Producers Required to Make Large Capital Expenditures
 - a. Need for periodic review of long-term contracts.
8. Product Quality Disputes - Unwarranted Rejections
 - a) Rejection of load at distant markets; need for F.O.B. acceptance in the potato industry. (Title/risk of loss passes to buyer at point of shipment).

- b) Contracts should spell out specific or objective standards upon which buyers will reject commodities. Some contracts reserve the right to reject a shipment based on subjective criteria. An example of this is the following provision from a chipping potato contract, "Purchaser may at any time return to seller at sellers' expense any portion of goods listed herein, when in the opinion of purchaser in its sole discretion such goods do not chip to its satisfaction . . ."
9. Getting Information to Farmers
About state programs, producer rights and how to determine the financial health of companies farmers contract with.
 10. Multi-State Impact on contractual dealings.
 11. Factory Farming or corporate farming issues.
 12. Broker Abuses - pocket contracts in the potato industry.
 13. Act of God Clauses in Contracts
Impact of 1988 drought and contractual requirements to perform.
 14. Misunderstandings Concerning the Role of Federal/State Fruit and Vegetable Inspectors
 - a. Sampling procedure problems in the potato industry.
 - b. Grade and dockage concerns in the potato industry.
 15. Crop Ownership/Lien Law Issues - several Minnesota lien laws create crop ownership issues for lenders, landlords, producers and processors with interests in the same crop.
 16. Producer Non-Performance
 17. Grain Elevators Failing Because of CCC Grain Withdrawals
 18. Cooperatives
Cooperatives that purchase produce as defined by the Minnesota Wholesale Produce Dealers Act are not required to be licensed and bonded leaving many producers including dairy and sugar beet producers with no protection by the act.
 19. Insufficient Penalties
For violation of licensing and bond laws under the Wholesale Produce Dealers Act.

APPENDIX E

Budget - Fiscal Year 1990

July 1, 1989 - June 30, 1990

I. PERSONNEL	
02 Research Analysis Specialist	\$ 36,055
02 Student Worker Senior	
12 - Month (50% Time)	10,057
6 - Month (50% Time)	5,028
02 Clerk Typist II (50% Time)	11,425
II. TRAVEL	
21 In-State	\$ 15,000
22 Out-State	5,000
III. OTHER EXPENSES	
16 Professional/Technical Services	\$ 5,000
18 Rentals	2,500
20 Communications	10,000
14 Printing - Brochure (35,000)	5,000
30 Supplies	2,000
40 Equipment	<u>1,000</u>
TOTAL	<u>\$108,065</u>

Explanation of Budget Request

I. PERSONNEL

Staff support for the Task Force has been provided on a part-time basis; however, this has not been adequate. Moreover, the amount of activity needed to finish the work of the Task Force will require a full-time person during F.Y. 1990. Additional research assistance is also needed to gather, analyze and organize information from the states. This help could be provided by part-time law students. A part-time secretary is needed to handle typing, general correspondence, mailings, Task Force correspondence, etc.

II. TRAVEL

Funds are needed to pay travel expenses of Task Force members and support staff. The request envisions several meetings of the full Task Force with producer groups at various locations throughout the state as well as meetings of only the Task Force. Out-of-state travel is also anticipated to investigate and evaluate related programs in other states.

III. OTHER EXPENSES

These include the usual expenses such as printing, communications (mail, telephone, etc.), rentals, supplies and equipment. In addition, funds are requested to enable the Task Force to engage the services of technical experts who would provide expert testimony to the Task Force on selected topics.

The proposed budget represents the Task Force's judgment as to the resources required to complete its work in an adequate manner. The budget envisions an acceleration and expansion of meetings, research activity, etc., over what it has done during the past few months. The Department of Agriculture, which has absorbed the Task Force's expenses to date, does not have the resources to continue to absorb either current costs or the expanded costs essential to completion of the Task Force's work.