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FINAL REPORT

**TO THE 1990
LEGISLATURE**

**AGRICULTURAL CONTRACTS
TASK FORCE**

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FEBRUARY 1990

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

**MINNESOTA DEPARTMENT OF AGRICULTURE
90 WEST PLATO BOULEVARD
ST. PAUL, MINNESOTA 55107**

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Pursuant to 1988 Laws, Chap 688
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CONTENTS

PAGE

THE REPORT

Summary	1
Final Recommendations	2
I. Introduction	6
A. Background	6
B. Members	7
II. Process	7
III. Results	9
A. Issues	9
B. Proposed Solutions	9
IV. State and Federal Programs	11
V. Conclusions	17

THE APPENDICES

A. Agricultural Contracts Task Force Policy Statement	18
B. Task Force Members	19
C. Issues Matrix	22
D. Issues and Problems	23
E. Idemnity Fund	25
F. Bolding/Licensing of Cooperatives	26
G. Payment Protection Devices	28

SUMMARY

The Minnesota Agricultural Contract Task Force has met fifteen 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. The Task Force then met with producers and processors of potatoes, dry edible beans, poultry, eggs, processed vegetables, seeds and livestock to determine individual industry problems and issues. Three meetings were held to make final recommendations.

FINDINGS

The Task Force meetings 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, the producer may be required to have a commodity contract to show proof of income to a 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.

FINAL RECOMMENDATIONS

I. NON-PAYMENT TO PRODUCER

1. Bonding and licensing should be retained.
2. Bonding should be supplemented with floating trust provisions in the Wholesale Produce Dealers Act. This would protect producers of fruit, vegetable, poultry, and dairy products.
3. Bonding should be supplemented with a custodial account for livestock. Grain elevators should be required to obtain a letter of credit to protect input prepayments.
4. The Commissioner of Agriculture should appoint a task force made up of representatives of the grain, livestock, wholesale produce, banking and insurance industries to study and make recommendations for the implementation of a Minnesota Catastrophic Agricultural Commodity Indemnity Fund. This fund would cover large monetary losses due to inadequate bonding or bankruptcy of the contractor. The fund would be supported by fees assessed against the producer and/or contractor.
5. A study should be implemented to determine the adequacy and priorities of producer liens.
6. Statutory requirements should be enacted requiring that sellers be paid within a certain amount of time or on the contract due date and providing penalties for the failure to pay within the time limit. Interest on late payments should be required of buyers who fail to pay by the due date.

II. OTHER RECOMMENDATIONS

1. **Mandatory arbitration or mediation clauses in contracts should be required to help solve contract problems before they reach the litigation stage. If no agreement is reached the parties could still go to court. It should be required that all contracts contain a provision for dispute resolution.**
2. **To discourage unnecessary or retaliatory litigation a statutory provision should be proposed to require payment of court costs, attorneys' fees and double or triple damages to a prevailing party.**
3. **Parent companies should be made responsible for the unfulfilled contracts of their subsidiaries.**
4. **It is recognized that many Minnesota producers of agricultural commodities are required to make a large capital investment in buildings and/or equipment when they contract with a processor. Many times such a contract is also a condition of obtaining financing for that investment. Statutory provisions should be proposed to provide these producers with an opportunity to recapture their investment when the contractor terminates or cancels the contract.**
5. **Cooperatives should be included under the wholesale produce dealers bonding and licensing law that currently exempts them. Alternately, bonding could be required to cover non-member producers only.**
6. **Contracts should be required to be written in plain language. A statute governing a specific commodity should require that any contracts for sale of that commodity must contain provisions concerning title, delivery date, payment date, grade and yield specifications, dispute resolution, who pays for inputs and who is responsible for losses due to weather and disease or any other provision that is important to that particular commodity.**

7. A covenant or promise of good faith and fair dealing should be required to be part of every agricultural contract. Violation would result in double or triple damages.
8. The Department of Agriculture should provide an Agricultural Contracts Ombudsman to provide information, investigate complaints and provide or facilitate dispute resolution.
9. Statutory provisions should be proposed to prohibit unfair trade practices.
10. Trust protection should be provided for dairy, fruit, vegetable, livestock, poultry and poultry product producers who are on bailee or production contracts.
11. The Minnesota Wholesale Produce Dealers Act, the Minnesota Livestock Market Agency and Dealer Licensing Act, and the Minnesota Grain Buyers Act should be amended to afford bonding protection for bailee contracts.

MISCELLANEOUS

III. Possible Changes in the Wholesale Produce Dealers Act

- A. Include cooperatives in the licensing and bonding requirements.
- B. Increase recordkeeping requirements including requiring submission of contracts to the Department of Agriculture. (Task Force opinion was divided on this issue.)
- C. Change statutory language to include protection for voluntary extension of credit and production contractees.
- D. Add anti-discrimination language to insure uniformity of pricing policies.
- E. Create a trust mechanism for Wholesale Produce Dealers to protect unpaid sellers.

- G. Change the statute to provide that only Minnesota producers can make bond claims. At the present time out of state producers can make claims against a company's Minnesota bond.
- H. Require a written warning on the face of a contract if voluntary extensions of credit remain exempt from bonding coverage.
- I. Prohibit retaliatory and/or coercive behavior.
- J. Require brokers to have product available to back up all of the contracts that they negotiate.
- K. Provide civil penalties such as fines for violation of provisions of the Wholesale Produce Dealers statute.

STATE PERISHABLE AGRICULTURAL COMMODITIES ACT.

- 1. Trust provisions
- 2. Reporting Provisions
- 3. Economic protection for bailee contracts and voluntary extensions of credit
- 4. Imposition of court costs, attorneys' fees and double or triple damages
- 5. Listing of unfair trade practices
- 6. Fines and penalties

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. Contracting can reduce their financial risk, while allowing producers 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.

Young farmers starting out today with a 200 sow farrow-to-finish operation 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.

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 were represented on the Task Force; some members represent more than one group. (See Appendix B).

II. PROCESS

Fifteen 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 16, 1989
Task Force members met with with turkey processors and egg and broiler producers and processors in St. Cloud, Minnesota.
- J. April 4, 1989
Task Force members met with seed and vegetable processors and producers.
- K. June 27, 1989
Task Force members met with livestock buyers and producers.
- L. September 14, 1989
Task Force members met and discussed contract issues and possible recommendations.
- M. November 8, 1989
Task Force members met and discussed contract issues and possible recommendations.
- N. December 14, 1989
The Task Force members met to make their final recommendations.
- O. December 19, 1989
The Task Force's final recommendations were presented to members of the legislature.

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 became evident: 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. Commodity buyers are required to purchase bond coverage as a condition of licensing to protect producers against non-payment.

Pros

Cost is minimal, it's an effective screening device, the state does not have to administer funds, collection problems can be eased.

Cons

Obtaining bonds can be difficult, bonding amounts can be inadequate to cover all claims. Excessive bond amounts could discourage businesses from buying in Minnesota or cause them to leave the state.

2. Indemnity Funds - These funds are collected and administered by the state for the purpose of reimbursing a producer of agricultural commodities when a buyer defaults. Minnesota does not currently have an indemnity fund but numerous other states have set them up to protect sellers of grain, fruits and vegetables, and dairy products. (See Appendix E). Indemnity funds are used in lieu of or in addition to bonding requirements.

Pros

Works like insurance, spreads the risk, centralized administration by the state and sellers and buyers share the cost.

Cons

The fund can be inadequate to cover claims, it takes time to build up the fund, multiple defaults could exhaust the fund, producers might not be as vigilant in their business practices if they know a fund is available, efficient buyers would be required to pay for the security covering less efficient buyers.

3. **Producers Lien** - A statutory lien arises in a crop or its proceeds upon delivery to a buyer. Many state laws provide for such a lien.
 - Pros**
Provides protection for production or bailee contract situations.
 - Cons**
A court proceeding is necessary to foreclose on the lien and obtain payment. Many times there are several competing claims and the total amount of the claims exceeds the value of the property. The priority of producer claims is uncertain.
4. **Arbitration/Mediation** - Arbitration or mediation could be required when a contract dispute arises. Many contract disputes are minor in nature and do not warrant the large investment of time and money in going to court. Also, many producers cannot afford to go to court at all.
 - Pros**
Inexpensive and relatively speedy dispute resolution.
 - Cons**
Parties must agree to it.
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** - At the present time producers who sell to contractors that are regulated by the federal Perishable Agricultural Commodities Act (P.A.C.A.) and the Packers and Stockyards Act (P & S) are protected by trust provisions. However, there is no trust protection if the producer's product is not sold through interstate commerce. Types of trust provisions include:
 1. Floating trust - Minnesota grain and P.A.C.A. laws require buyers to hold proceeds, inventory and accounts receivable in trust for any unpaid sellers.
 2. Custodial account - The P & S requires buyers to set up a bank account separate from a contractor's regular account to hold money to be paid to any unpaid sellers.
 - Pros**
Gives the producer a priority claim against a contractor's assets, simple administration.
 - Cons**
Could impede a company's ability to borrow money, amount of coverage is uncertain.
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.
13. Parent Company Responsibility - Recent leveraged buyouts and business consolidation activities have created a concern that shell, spin off and subsidiary corporations might be unable to fulfill contracts with producers because of bankruptcy or insufficient assets.
14. Trade Regulation - The federal P & S Act and the P.A.C.A. have provisions that require fair dealing and prohibit unfair trade practices. Recent P & S regulations prohibit a contractor from dictating the terms or manner of payment as a condition of purchase and from using threats of retaliation or intimidation to obtain a payment agreement. A good faith and fair dealing provision should be implied in all contracts.
15. Bonding of Cooperatives - Some producers such as dairy and sugar beet producers do not receive the protection of state licensing and bonding laws because they sell to cooperatives. (For a list of other states that license and/or bond cooperatives see Appendix F.)
16. Provide protection for voluntary extensions of credit - Bonding coverage should be extended to producers who currently lose such coverage when they voluntarily extend credit beyond the statutory due date.
17. Recapture of large capital investment required by contract - It is recognized that many Minnesota producers of agricultural commodities are required to make a large capital investment in buildings and/or equipment when they contract with a processor. Many times such a contract is also a condition of obtaining financing for that investment. Statutory provisions should provide these producers with an opportunity to recapture their investment when the contractor terminates or cancels the contract.
18. Interest on late payments - Interest on late payments should be required of buyers who fail to pay by the due date.
19. Input prepayments - When a producer makes a pre-payment for agricultural production inputs that include feed, seed, fertilizer, pesticides or fuel for future delivery the producer should be able to demand an irrevocable letter of credit to insure reimbursement should delivery not occur.
20. Lien study - A study should be proposed to determine the adequacy and priorities of producer liens.

IV. State/Federal Programs

(Appendix G provides an overview of the Minnesota and federal statutes that protect payment to producers.) Federal, Minnesota and other state programs that impact agricultural contracts are as follows:

A. FEDERAL PROGRAMS

1. Packers and Stockyards Act - 7 U.S.C. 181
 - a. Covers packers and stockyards that purchase more than \$500,000 a year in livestock and participate in interstate commerce.

- b. 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.
- c. Payment for livestock is required before the close of the next business day following the purchase. (Poultry is 15 days.)
 - 1) 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 informs the seller that trust coverage under the Act will be lost by extending credit.
 - 2) 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.
 - 3) PSA regulations require certain terms to be included in all poultry grow-out contracts.
- d. Poultry contracts must contain provisions on the duration of the contracts, payments, the party liable for condemnation, method for determining feed conversion ratios, per unit charges for feed and other inputs, as well as the factors used to group or rank poultry growers.

- 2. Perishable Agricultural Commodities Act - 7 U.S.C. 499a - 499s
 - a. The Act requires agricultural produce buyers to be licensed if they are involved in interstate commerce.
 - b. Payment is required to be made within 10 days unless the parties have agreed in writing to other payment terms.
 - c. 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.

B. MINNESOTA STATE PROGRAMS

- 1. Bonding
 - a.. Grain - Minnesota Statutes, Chapters 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.
 - 5) Grain buyers and sellers may submit samples of grain to the department for analysis when there is a dispute over grade or dockage.
- b. Wholesale Produce Dealers Act - Minnesota Statutes, Chapter 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, Chapter 17A
- 1) Market agencies and dealers must be licensed and bonded.
2. Agricultural Marketing and Bargaining Act, Minnesota Statutes, Section 17.691 to 17.701.
- 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, section 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, section 514.19. This statute creates a lien for anyone who keeps feeds, pastures or otherwise cares for animals.
- c. Threshers' Lien - Minnesota Statutes, section 514.65. This statute 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, chapter 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, section 514.960. A lessor of agricultural property has a lien for unpaid rent on the crop (and its proceeds) that is grown on the lessors 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, section 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 the 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, section 572.31. This 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, section 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, chapter 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, section 572.08. If there is a written agreement to submit a controversy to arbitration, it can be enforced through this statute.

C. OTHER STATES' PROGRAMS

1. Florida

A seed arbitration statute provides for a five-member council to hear and investigate complaints brought by farmers against seed dealers. It then makes a recommendation as to any cost damages.

2. New York

- a. 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.
- b. 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.
- c. 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.

3. Washington State

- a. Processors can be required to report their maximum processing capacity.
- b. Processors can be required to submit copies of contracts and notices of oral commitment for the purchase of crops to the director of agriculture.
- c. Growers may file forms showing crops that a processor is committed to purchase.
- d. It's a violation of law for a processor to commit to purchasing more crops than its plant can process.
- e. 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).

4. 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.

5. Wisconsin

- a. Wisconsin has a lien law that allows producer liens in bankruptcy to have the same priority as wages.
- b. The agriculture department may require a parent company to guarantee an affiliate's payment to producers as a condition of the affiliate's licensing.

6. Pennsylvania
Poultry and egg contract law requires payment within 21 days with the imposition of interest on the payment after that time. If a buyer defaults on payments more than twice in a 12 month period a seller may collect double the amount of each late payment. If a poultry or egg producer does take a buyer to court the producer can collect court costs and attorneys' fees if the producer prevails.
7. North Dakota
Seed sale regulations require a written sales agreement or contract that includes certain provisions if the sale is not for cash.
8. Idaho
Idaho's Commodity Dealer law has a provision on credit sales contracts stating that a dealer takes title to a product at the time a contract is signed unless the contract provides otherwise.
9. North Carolina
 - a. Fruit and vegetable contracts must contain provisions on product identity, delivery date, quantity, container specification, size, quality/condition, pesticide use and time of payment.
 - b. Handlers of fruits and vegetables must submit their contracts to the commissioner of agriculture for approval. If the contract is satisfactory a permit to contract is issued. North Carolina contractors must also report the location of their produce receiving stations and the acreages of each commodity that they have under contract.

Virginia

Contracts must be filed with the Virginia regulatory inspection service.

V. CONCLUSION

It has become apparent over the last one and a half years 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 occur 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 believes that its final recommendations are fair to both producers and processors. Every effort was made to create a level playing field for both producers and processors while avoiding governmental over-regulation.

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

PLEASE NOTE:

Mr. Don Sommers served with distinction on the Agricultural Contracts Task Force. In May, 1989 he entered the hospital as he was experiencing kidney failure. Mr. Sommers passed away on December 5, 1989. His input and expertise had a great impact on the outcome of this report.

Mr. Sommers was replaced on the Task Force by Mr. Brad Hayes who also works for Transamerica Insurance Company.

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	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> M.S. 29 Poultry Eggs M.S. 514.950 Agric. Production Input Lien 	<ul style="list-style-type: none"> 17B Grain Inspection M.S. 273 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 	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> M.S. 29 Poultry M.S. 25 Commercial Feed M.S. 500.24 Corporate Farm Act M.S. 514.950 Agric. Production Input Lien 	<ul style="list-style-type: none"> M.S. 21 Seeds and Seed Potatoes M.S. 514.950 Agric. Production Input Lien M.S. 557.10 Planting Crop Owner's Lien 	<ul style="list-style-type: none"> Ch. 223A - Farm Products Statutory Lien

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.
20. Contract Language - Vague, confusing, misleading and unfair contracts.

APPENDIX E
IDEMNITY FUNDS

States with idemnity funds

Grain

Idaho
Illinois
Iowa
Kentucky
Louisiana
Ohio
Oklahoma
South Carolina
North Dakota
South Dakota

Milk

California
Massachusetts
New York
Pennsylvania

Fruits & Vegetables

New York
California
Texas*

*Texas: Fund claims are limited to 60% of claims over \$1,000

Total for all claims arising from one transaction cannot exceed \$20,000

There is a \$50,000 limit on claims per retailer or commission merchant

APPENDIX F

BONDING/LICENSING OF COOPERATIVES

States that license and or bond cooperatives:

California:

Milk & Produce: Cooperatives must be licensed and contribute to the security funds for purchases from non members.

Wisconsin:

Grain: Cooperatives must be registered.
Produce: Cooperatives are exempt.
Dairy: Cooperatives are licensed and bonded if they do not meet the financial requirements

South Carolina:

All Agricultural Products: All buyers including Cooperatives must be licensed.

New Jersey:

Produce: Cooperatives must be licensed and bonded for purchases from non members.

Delaware:

All Agricultural Products: There is not exemption for cooperatives.

Colorado:

All Agricultural Products: There is not exemption for cooperatives.

Florida:

All Agricultural Products: There is not exemption for cooperatives.

Maine:

Potatoes: There is no exemption for cooperatives.

Washington and Oregon:

All Agricultural Products: Cooperatives must be licensed and bonded for purchases from non members.

Texas:

Fruits and Vegetables: Cooperatives are not exempt from bonding and licensing.

New York:

All Agricultural products: Cooperatives are not exempt from bonding and licensing.

Nevada:

All Agricultural Products: Cooperatives are not exempt from bonding and licensing.

North Carolina:

Cooperatives are required to pay cash or have a permit to purchase farm products.

Nebraska:

Grain: Cooperatives are not exempt from bonding and licensing.

PAYMENT PROTECTION DEVICES

Who is covered	Bonding	Trust Fund Federal PACA or P & S*	Lien
Livestock - voluntary extension of credit	X		
Livestock owner	X	X	
Livestock bailee			X
Grain sold	X		
Grain stored	X		
Grain - voluntary extension of credit		Minnesota State Law provides protection with a trust like provision.	
Produce - voluntary extension of credit		X - covered if payment is made within 30 days.	
Produce owner	X	X	
Produce bailee			X

*Covered only if commodity is shipped through interstate commerce (except potatoes - they're covered by PACA no matter where they're shipped).