Legislation aims to protect contract growers and producers

by Tim Anderson

Sen. Cap Dierks has taken a look at some of the agreements signed by farmers and ranchers to provide grain and livestock to contractor companies. The Nebraska legislator doesn’t like what he has seen.

“They showed me that we need to offer some kind of protections for these producers,” says Dierks, a rancher from Ewing. “When producers got the contracts, they were considered confidential. People couldn’t take them to their auditor, to their banker or their attorney for advice. As a result, the confidentiality contracts do not treat them fairly.”

He and other legislators in this region are advancing various pieces of legislation this year that attempt to provide producers greater protections during the contracting process. The bills are largely the result of work done last year by a group of 16 attorneys general, including five from the Midwest (Indiana, Iowa, Minnesota, Nebraska, North Dakota and Wisconsin). Led by Iowa Attorney General Tom Miller, these officials developed the Producer Protection Act, model legislation based on both new measures and laws already adopted in individual states.

“Contracting poses serious risks for producers and, ultimately, for consumers,” says Miller, a Democrat. “Contracting has its place and its benefits, and it certainly is growing quickly, but we want to be sure farmers get a fair shake in a time when there is a strong trend toward consolidation and concentration in agriculture. There can be a huge disparity in bargaining power between farmers and contractor companies.”

Some legislators worry that without more proactive government involvement, small contract producers are less likely to receive a fair deal and more prone to have economic risks unfairly shifted to them.

“This is an attempt to level the playing field for grain and livestock contract producers,” says Rep. Frank Kloucek, a Democrat from South Dakota, who is sponsoring the legislation in his state. “While it doesn’t address the issue of justice and agricultural concentration, it will provide some assurance of the contracts and enforcement of the new rules.

“Large companies often offer contracts to producers on a take-it-or-leave-it basis,” Miller adds. “Risks to producers are buried in pages of legalese, and producers easily can be stuck with unfair contract terms. On top of that, they may be barred from disclosing any of the terms to others.”

Another measure would protect farmers who join producer associations from discrimination or retribution against them from processors. The model legislation would prohibit confidentiality pacts, require contracts to be written in plain language and provide producers with a three-day right to review agreements. State departments of agriculture and agricul- ture would be charged with oversight of the contracts and enforcement of the new rules.

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Sen. Cap Dierks

Nebraska

Key provisions of the Producer Protection Act

♦ Require contracts to be in plain language.
♦ Provide contract producers with a three-day right to review production contracts.
♦ Prohibit confidentiality clauses in contracts, allowing a producer to discuss a pending deal with his or her banker, lawyer or fellow farmer.
♦ Provide producers with a first-priority lien for payments due under a contract. The lien can be enforced against the commodity, the cash proceeds of sale of the commodity or the property of the contractor.
♦ Prohibit discrimination or retaliation against farmers who join or contract with producer associations.
♦ Make it more difficult to terminate, cancel or fail to renew a production contract if the producer invests $100,000 or more in capital as a result of the agreement.

Source: Office of Iowa Attorney General Tom Miller

Several approaches

Improving the contracting process is the latest way that policymakers are trying to help family farms. Recent years have seen political and court battles over attempts to control the prices given to producers for their commodities. Spurred by legislative action in five states, Congress approved in 1999 a measure that requires mandatory reporting of prices paid for livestock by packers.

State attempts at enacting price discrimination laws, though, have not been as successful. “We passed a law in Nebraska that basically said you can’t give more money to a person who brings in 1,000 hogs than the person who brings the same quality (but much smaller quantity) of hogs in a pickup,” Dierks says. “That same law was passed in South Dakota and Missouri, but the courts ruled that it was in violation of interstate commerce laws. The law was invalidated.”

Despite setbacks like this, though, he believes states can considerably improve the ability of family farms to survive in an era of increased agribusiness concentration. “Packers can control this market by owning their own cattle or hogs, they can control it with contracting, and they can control it with imports,” he says. “They really need to have all three of them.”

Nebraska already has passed a ban on packer ownership of livestock, and Dierks has introduced legislation this year that would require labeling on meat so that consumers know whether it originated from or was processed in this country.

“There isn’t much you can do with imports; about the only thing you can do is have labeling that tells consumers where the meat is from,” he says.