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10/3/03
Date

2003 HOUSE AGRICULTURE

HB 1330

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1330

House Agriculture Committee

☐ Conference Committee

Hearing Date 1--24--03

Tape Number	Side A	Side B	Meter #
ONE	A		29.5 TO END
		B	0.0 TO 28.6
Committee Clerk Signature <i>Edward D. Elford</i>			

Minutes:

VICE CHAIRMAN POLLERT: Committee Members, we will open the hearing on
HB 1330.

REPRESENTATIVE DEKREY: I am going to let Charles McCay explain the Bill.

CHARLES McCAY: I represent Farm Credit Services. I have some hand outs for you.

It has a copy chapters and codes. The second is pages from the Farm Services

Administration Regulations Manual regarding loans and restructuring. That is something I will
refer to today. Then there are copies of my testimony. We are here in support of HB 1330.

What the Bill dose lis simply repeal Sections 28-29-04, 28-29-05, and 28-29-06. The three
sections on that hand out. They are refereed to as the Confiscatory price statues. What they do
basically is allow a District Court to delay a foreclosure on farm property for as long as the
court feels it is necessary. If the Court decides that farm prices are so low they should be
considered confiscatory. The Bill does not give any other guidance to the Court in terms of what

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commodities should be looked at or how do they determine that level that prices become confiscatory, how long dose the price have to be below that. One day or six months or anything like that. The Bill dose not provide for the courts to give the debtor or borrower any relief. It dose not stop the interest accruing during the delay. Or change any of the debtors obligations. At all. These were put into the Century Code in 1933. I am sure that you are all aware that 1933 is the dust bowl and the depression. I don't know to what degree these statues were used. In the 1930 but I do know that once we go out of the agriculture crisses in the State they kind of got lost in the back shelf of the law library. I started in the lending business in mid 1960's and I had never heard of confiscatory price until mid 80's, Then we were going through that whole farm crisis in mid 80's the confiscatory statues were revised and used as a defense most foreclosures. Not all of them. The result of using that as a defense is number one it delays the foreclosure process for a few weeks to months because we have to go to court, have a trial as to whether prices are confiscatory. That runs up the interest fee and attorneys fees. Our attorney does not know of a case since the mid 80's where confiscatory price went to court has actually ruled that prices are confiscatory but he qualifies that. Stating there could be a case out there. We have the Agriculture Credit Act of 1977 Federal Law that requires every Farm Credit Institution before it can start foreclosure to offer to restructure. We have send debtor notice that his loan may be legible for restructure. Can include forbearance or requiring rescheduling of payments. Can involve interest concessions. Or even some debt principal debt write off. As long as the total cost of the restructuring is no more then it would be to foreclose on the loan. At the same time we have to refer them to the state sponsored mediation service. I sure you are all aware what that does. Protection that we didn't have in 1933, Chapter 12. I know

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bankruptcy has negative thoughts but what it dose is protect barrowers from there creditors while they have time to work out a plan to allow them to survive. It stops foreclosures from starting or is in progress. It has to stop if a person files bankruptcy. In many of the cases there is unsecured debt. It is simply written off in a bankruptcy process. Now is have Agriculture Mediation where if a farmer is trying to negotiate a restructure or if he is contemplating bankruptcy the Ag. Mediator understands what the Farm Credit Association can and cannot do in restructure. What it must do. He understands how bankruptcy works. The also understand the FFA program might be available, or Banks Of North Dakota program. They have the experience where they can kind of put those all together. In a way that is there is a possible way for a farmer to develop a plan to keep him on the farm and keep him finically viable. These more moderate programs to deal with trying to keep farmers on the farm are all much broader No matter what causes the finical distress. Prices, fire, etc. What ever is dealt with the Ag. Credit Act. Bankruptcy, mediation services. Wide range of options. Confiscatory statues only deal with price. The only resolution they offer is to delay a foreclosure process. If we should delay the foreclosure if the prices are to low then the delay has to be until such a time That the price is high enough to cash flow the loan. So they can start making the payments. Confiscator price dose not give the court the authority to stop the interest taxes or other costs So not only the price have to go up enough to cash flow the original loan that was in default. It cash flow all cost that occurred during the delay. If a judge would grant a delay due to confiscatory price to an individual farmer in foreclosure, if the price dose not go up fast enough to allow the cash flow of original debt the farmer is worse off then he was before the delay. There is a potential cost to having these laws on the books That is if a court clearly declares

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prices confiscatory and stop a foreclosure. Lenders would be forced to look at other loans in similar circumstances and change the way we lend. You have to assume that if District Courts say prices are confiscatory then it is based on rational consideration. If that is the case other Courts could easily come to the same conclusion. I am not saying we quite lending or foreclose on other viable situations. I am saying we would have to change the way we deal. It could limit credit. People in similar circumstances. In summary, we don't think there is a real benefit to these statutes that is not better taken care in restructuring or bankruptcy and mediation, and consulting services. The benefit offered by confiscatory price delays could add to farmers problems. Our contention that if there is a credit crisis, if that happens the farmers and lenders in the state would be much better served if the contemporary legislators that understands the situation have these type of laws to manage and control the debt crisis. Rather then rely on a seventy year old law. There is no value in this Law. {{{PLEASE SEE HAND OUTS AND TESTIMONY FROM CHARLES MCKAY}}}} If there are any questions I will answer them.

VICE CHAIRMAN POLLERT: Any questions for Mr McKay?

REPRESENTATIVE KREIDT: You are looking at as many options as you can provide to farmers. To void out bankruptcy. This really is a valid option though isn't it?

CHARLES MCCAY: Any farmer in foreclosure has a option to plead confiscatory pricing. To delay foreclosure. Our contention is that unless something else happens during that delay the farmers like in restructuring or even writing down a part of the loan. The consulting service that was here talking earlier, there a possible things that they can do. Just delaying dose not give the farmer any advantage. Probably a disadvantage.

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REPRESENTATIVE KRDIDT: For example, say we had a farmer using the confiscatory statute. We have seen wheat prices go from two dollars to four dollars. In the time frame the individual may have been able to work his way out of bankruptcy. I understand that if you file bankruptcy, Federal Law takes over and state law does not mean much.

REPRESENTATIVE KREIDT: We are having a drought in Western North Dakota. We are going to have a lot of farmers in trouble. Next spring, fall etc. I could see where this may be an advantage to those individuals.

CHARLES MCKAY: Confiscatory price statutes don't deal with drought.

VICE CHAIRMAN POLLERT: Any other questions? Representative Wrangham.

REPRESENTATIVE WRANGHAM: Chairman Pollert and Chet, You mentioned that if a producer is in foreclosure action has begun and they were successful in getting confiscatory relief at the end of that period of time the producer could possibly be worse off. What is worse than foreclosure? Tell me how the producer would be worse off.

CHARLES MCKAY: Even if foreclosure has been started the borrower may have equity left. By delaying, interest, taxes, insurance continues etc. The cost involved in owning property continues. If they continue to long it eats up equity.

REPRESENTATIVE ONSTAD: Is there a concern that this may be used.

CHARLES MCKAY: In most foreclosures it is brought up as a defense. The potential problem is if a court would actually say yes prices are confiscatory, that is the potential problem because if it did happen, then lenders would have no choice but to look at similar circumstances well this

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other loan may be eligible for the same kind of delay. We would have to react to it and it would in some way limit credit.

CHARLES MCKAY: Lets put the time line a little bit in prospective. With Farm Credit there has to be a minimum of two weeks. To foreclose. Takes two months for offering restructuring. Then we issue a note of intent which takes thirty days. Then issue a summons and complaint and that is when the actual foreclosure takes place. So that's three to five months down the road. None of use can anticipate when prices are going to shoot one way or another.

VICE CHAIRMAN POLLERT: Anyone else in favor of HB 1330?

ERIC AASMUNDSTAD: President of North Dakota Farmer Bureau and farm in the Devils Lake area. We stand in support of this Bill. We took this to our committee and asked them where we were going to stand. We decided this is something that we should support. It has not done anything.. It probably won't do anything in the future. Dose not apply in drought. Bill could create problems for people wanting credit. When this Bill was caused we did not Have current good laws.

VICE CHAIRMAN POLLERT: Any addition to support Bill. Opposition.

ROGER JOHNSON: For the record my name is Roger Johnson. I am the Agriculture Commission for the State of North Dakota. {{{{{{ PLEASE SEE HAND OUT}}}}} I am here today in opposition to HB 1330. Chuck has done a good job of explaining the Bill. In the 1970's easy credit bought lots of equipment. Later tight money made farmers loan on their land that had been debt free. Borrowing on land created heavy debt thur major lending problems. As I drive around the county I see more well kept lending facilities then I do farm

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building going up. Just to underline that I think we should keep these sorts of statues on the books. I will argue that sometimes delays are positive. Buy a little more time.

I will answer any questions you may have.

REPRESENTATIVE BOEHNING: How many times did you recommend to someone to use the confiscatory bill. Like in the 1080's

ROGER JOHNSON: I don't recall that I ever recommended someone use the confiscatory price defense. What happened. We would get a call that someone might already be in foreclosure. If they had an attorney, we would work with him. Try to negotiate a settlement.

REP. MUELLER : Chapter 11 is reorganization and chapter 12 is what.

COMMISSIONER JOHNSON: There both reorganization Chapter 11 is for larger business and Chapter 12 is carved out for Agriculture situations. I think debt limit is million and half and May be higher. The court will not accept a reorganization plan unless it can be proved to be fruitful.

REPRESENTATIVE BOEHNING: What will happen if this Bill starts getting used.

Say if you need money to plant your crop.. Would that operator be able to get seed money.

COMMISSIONER JOHNSON : There are other tools that the producer could use.

VICE CHAIRMAN POLLERT: Anyone else opposed to HB 1330?

RICHARD SCHLOSSER: I am Vice President of North Dakota Farmers Union.

{{{{{PLEASE SEE PRINTED TESTIMONY:}}}}}

We see no reason to repeal this law. I can arrange for Sarah Vogel to be here at a later date if you want to ask her questions.

VICE CHAIRMAN POLLERT: Any other opposition? We will close on HB 1330.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1330

House Agriculture Committee

☐ Conference Committee

Hearing Date 1--30--03

Tape Number	Side A	Side B	Meter #
ONE	A		00 TO 11.0
Committee Clerk Signature <i>Edward D. Gifford</i>			

Minutes:

CHAIRMAN NICHOLAS: We will open on HB 1330. What are the Committees wishes on HB 1330.

REPRESENTATIVE KREIDT: I will move for a DO NOT PASS ON HB 1330.

CHAIRMAN NICHOLAS: Is there a second.

REPRESENTATIVE KELSCH: I SECOND THE MOTION

CHAIRMAN NICHOLAS: Any discussion? There was some conversation after the motion and Chairman Nicholas asked Chuck for more of an explanation.

CHUCK: It is a law that was incited in 1933. Basically what it does is give the court the right to delay foreclosure for as long as the court deems necessary. If the court says that prices are so low that they could be considered confiscatory. There is no cost to having this law on the books. It is a shadow on loan underwriting process because lenders kind of know what is there. However if we are in a period where there are some foreclosures like in the 80's then

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Most farmers under foreclosure plead it as a defense. They ask the court to delay the foreclosure. If the court dose not agree with them that the price is confiscatory, the cost involved to complete the foreclose, attorney fee's, cost to lenders. The benefit to the individual farmer is a matter of a few weeks and some cases a few months for as to the delay.

Our biggest concern is were the real cost comes in is if a court would say prices are so low that there confiscatory, you have to stop foreclosure and lenders are going to be forced look at all other borrowers under similar circumstances and we are going to have to treat there credit differently. If the court dose something to help one farmer it is going to hurt 100 farmers. As to ability to get credit.

REP. WRANGHAM: In some cases those laws that are on the books, just have them on the books is enough to make a difference. I am going to oppose the Bill.

CHAIRMAN NICHOLAS: The clerk will take the roll.

THE FOLLOWING IS A DO NOT PASS. THERE WERE 7 YES, 6 NO AND 0 ABSENT. REPRERSENTATIVE KREIDT CARRIED THE BILL.

CLOSED ON HB 1330

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HB 1330

Date: 1-30-03
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House AGRICULTURE COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

DO NOT PASS

Motion Made By

KREIDT

Seconded By

KELSCH

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS		✓			
VICE CHAIRMAN POLLERT	✓				
REPRESENTATIVE BELTER		✓			
REPRESENTATIVE BOEHNING		✓			
REPRESENTATIVE KELSCH	✓				
REPRESENTATIVE KINGSBURY		✓			
REPRESENTATIVE KREIDT	✓				
REPRESENTATIVE UGLEM		✓			
REPRESENTATIVE WRANGHAM	✓				
REPRESENTATIVE BOE	✓				
REPRESENTATIVE FROELICH	✓				
REPRESENTATIVE MELLER	✓				
REPRESENTATIVE ONSTAD		✓			

Total (Yes)

7

No

6

Absent

0

Floor Assignment

KREIDT

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REPORT OF STANDING COMMITTEE (410)
January 31, 2003 2:20 p.m.

Module No: HR-19-1473
Carrier: Kreidt
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1330: Agriculture Committee (Rep. Nicholas, Chairman) recommends DO NOT PASS
(7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1330 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-19-1473

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2003 SENATE AGRICULTURE

HB 1330

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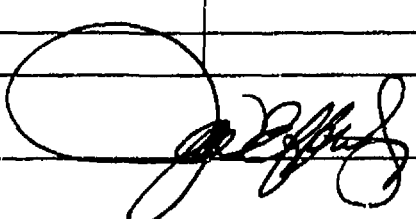
2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1330

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 03/14/03

Tape Number	Side A	Side B	Meter #
1	x		150 - 4580
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the hearing on HB 1330. All members were present.

Charles McCay, representing Farm Credit Services, testified in favor of the bill. (written testimony) He also distributed a copy of chapter 28.

Senator Flakoll asked when are prices confiscatory? (meter # 876)

Mr. McCay said the second paragraph of the chapter deals with the cost of production. The question is does cost of production refer to all farmers in the county or the individual farmer? All crops? The chapter leaves a lot of discretion to the court.

Senator Flakoll asked if federal payments play into this?

Mr. McCay said we did not have the farm program when this legislation was enacted and it is not addressed in code. Evidence will include farm program payments.

Senator Flakoll asked if this law has been used in court?

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Mr. McCay said the law was forgotten until the 80's when it was dusted off. There were many foreclosures in the 80's and confiscatory price pleadings were used in most of the foreclosures. It usually took from 3 weeks to 3 months to have a trial. In court, the lender would state that prices were not confiscatory and would bring farm program payments into evidence. The court never ruled that prices were confiscatory that he knows of. The pleading resulted in a delay for the borrower while waiting for trial.

Senator Flakoll asks if this allows for a very bad situation to get worse? (meter # 1258)

Mr. McCay said yes. While the delay is occurring, interest, insurance, taxes are accruing and debt gets bigger.

Senator Flakoll asked if most farmers in this situation go into bankruptcy?

Mr. McCay said it was common in the 80's. The common tactic would be to discuss restructuring and if they couldn't restructure, foreclosure proceedings would begin. The farmer would plead confiscatory price. A few days before his trial, he would file bankruptcy which would go on for about a year. The case would then be dismissed from bankruptcy court or the court would tell the lender to proceed with foreclosure. They would then go on to confiscatory price trial and then foreclosure.

Senator Erbele said you are asking for a repeal of the section, why not amend it?

Mr. McCay said they discussed this. They decided that this would just be introducing additional litigation. They couldn't find a way to make it useful and workable. Because of bankruptcy and the Agriculture Credit Act, restructuring and ag mediation are useful tools. Another delay is not needed.

Senator Flakoll asked how long is chapter 12 bankruptcy in effect? (meter # 1712)

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Mr. McCay said he does not know much about chapter 12. In the 80's, it usually took about a year.

Senator Klein confirmed this represents only a delay, no forgiveness.

Mr. McCay said yes.

Senator Urlacher asked how long can a farmer tie up his land without payment by going through the loops? (meter # 1841)

Mr. McCay said in an uncontested foreclosure, 18 months from default. In the 80's it could stretch out from 2 - 3 years and quite a few went to four years, 1 went five years. Sometimes, a few days before trial, the farmer would dismiss his attorney and would get 60 days to find a new one.

Senator Erbele asked if a farm was ever saved by a confiscatory price claim?

Mr. McCay said not that he is aware of. Farm Credit Services has never had such a case.

Eric Aasmunstad, president of the North Dakota Farm Bureau, testified in favor of the bill.

(meter # 2110) When he asked an internal Farm Bureau committee about confiscatory prices they decided it was no longer necessary and that it could be a hindrance to people who were trying to find credit. We did not have FSA, ag mediation, chapter 11 and 12 restructuring when the legislation was enacted. It is only a delay tactic. Without an infusion of capital, it won't prevent foreclosure and the delay will add costs which ultimately will be paid by the people who are left. It could affect those on the bubble and just delays the inevitable.

Richard Schlosser, Vice President of North Dakota Farmers Union, testified against the bill.

(written testimony) (meter #2422)

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Senator Flakoll asked in the '84 case referred to in testimony is that Former vs. State? (meter # 3082)

Mr. Schlosser said yes. The wife is still on the farm today. The courts did not get into a confiscatory price trial but the pleading caused a 60 day delay that allowed the farmer to restructure a payment schedule and stay on the farm.

Senator Flakoll asked if the farmer also used bankruptcy?

Mr. Schlosser said he did not know.

Senator Klein asked if there was ag mediation in the 80's?

Mr. Schlosser said in '88 or '89, agriculture credit counseling began.

Senator Klein asked if during the problems of the 80's there was no opportunity to work through the problems with an ag mediator?

Senator Nichols said there was credit counseling in the mid 80's.

Senator Urlacher said it was really in its infancy in the mid 80's.

Senator Nichols said Mr. Schlosser said there is no increased cost of credit with this situation but if there is a delay and if a lender is unable to recover, his losses go up which would be a cost of credit.

Mr. Schlosser said he is merely saying confiscatory prices is a delay tactic.

Senator Nichols said to follow up, if a lender cannot recover interest and principal it would be more cost to the lender.

Mr. Schlosser said possibly if the delay was long.

Senator Flakoll asked if a farmer's attorney's fees to slow or halt the process would have to be covered by the lender?

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Mr. Schlosser said he did not see reference to this in the chapter.

Senator Erbele asked if Farmer's Union's attorney's thought the statute needed to be updated?

Mr. Schlosser said she thought the statute is good today, things are going well.

Woody Barth, farmer from south of Mandan and Chairman of the North Dakota Credit Review Board, the policy making board for the North Dakota Ag Mediation Service, testified for informational purposes. (meter # 3771)

The agricultural credit counseling program started within the North Dakota Agriculture Department under then Agriculture Commissioner Kent Jones in 1984.

The North Dakota Credit Review Board was established by the legislature under the governor's office in 1985 and gave them some funding. The credit counseling program ran out of money due to high work load. During the 1987 session they were brought together under the North Dakota Credit Review Board working only as independent counselors but there were not yet third party mediators.

In 1986 federal legislation allowed for mediation service.

In 1988 Commissioner Sarah Vogel was elected. Roger Johnson took over the credit counseling program.

In 1989 the name was changed to Ag Mediation Service to allow for third party mediation, involving a neutral party trying to resolve problems between farmer and creditor.

The Bank of North Dakota is asked go through mediation through policy, the FSA is required to go through mediation by law and Farm Credit Services goes through mediation by rule.

Senator Klein asked if actual mediation did not start until 1989?

Mr. Barth said yes, '89 is the year the rules were written.

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Senator Klein asked how long it took to get out into the field?

Mr. Barth said it took off right away because the credit counseling program was already in place.

There were 80 counselors on staff. There were close to 1000 clients at one time. November, December, January of '88 and '89 were a very busy time.

Senator Erbele asked how many mediators are on staff now?

Mr. Barth said two mediators, four full time negotiators and 10 - 12 part time negotiators.

Senator Flakoll asked when their involvement takes place?

Mr. Barth said a letter and packet is sent with the delinquency notice by both FSA and Farm Credit.

Senator Erbele asked if there are broader ways of delaying foreclosure than confiscatory price?

Mr. Barth said the point of ag mediation is not to ask the farmers and lenders to go through delays. It is to ask them to solve the problem, do whatever needs to be done and move on.

Chairman Flakoll closed the hearing on HB 1330.

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Deanna Hall
Operator's Signature

10/3/03
Date

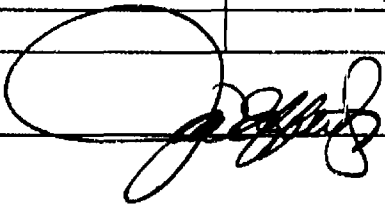
2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1330

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 03/20/03

Tape Number	Side A	Side B	Meter #
1	x		5990 - end
1		x	0 - 240
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the discussion on HB 1330. All members were present.

Senator Flakoll distributed a timeline on an uncontested foreclosure action for the committee's information.

Senator Erbele said things have changed a whole lot since this law was written. The law has never saved a farm. The hole gets deeper when this defense is used.

Senator Nichols said perhaps in the 80's there were times this law may have helped but not a lot.

Since then with the changes to federal bankruptcy laws and with the inception of the ag mediation service it is no longer necessary.

Senator Seymour said it is still a safeguard.

Senator Urlacher said he is in support of the bill.

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Page 2
Senate Agriculture Committee
Bill/Resolution Number HB 1330
Hearing Date 03/20/03

Senator Klein said we have heard from the industry. The last time the law applied was in the 80's when ag mediation was in its infancy. The bankruptcy laws have changed since then. He is also in support of the bill.

It was moved by Senator Klein, seconded by Senator Erbele and passed on a roll call vote that the Senate Agriculture Committee take a Do Pass Action on HB 1330. Voting yes were Senator Flakoll, Senator Erbele, Senator Klein, and Senator Urlacher. Voting no were Senator Nichols and Senator Seymour. Senator Flakoll will carry the bill to the floor.

Chairman Flakoll moved on to other business of the Senate Agriculture Committee.

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Date: 3/20/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1336

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen Klein Seconded By Sen Erbele

Senators	Yes	No	Senators	Yes	No
Senator Flakoll, Chairman	✓		Senator Nichols		✓
Senator Erbele, Vice Chairman	✓		Senator Seymour		✓
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Sen Flakoll

If the vote is on an amendment, briefly indicate intent:

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Dennis Hallmark 10/3/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
March 20, 2003 12:47 p.m.

Module No: SR-50-5309
Carrier: Flakoll
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1330: Agriculture Committee (Sen. Flakoll, Chairman) recommends **DO PASS**
(4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1330 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-50-5309

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2003 TESTIMONY

HB 1330

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10/3/03
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North Dakota Farmers Union

PO Box 2136 • Jamestown ND 58402-2136

PHONE: 701-252-2340

E-MAIL: ndfu@ndfu.org

800-366-NDFU (6338)

WEBSITE: www.ndfu.org

FAX: 701-252-6584

MISSION STATEMENT: North Dakota Farmers Union, guided by the principles of cooperation, legislation and education, is an organization committed to the prosperity of family farms and rural communities.



January 24, 2003

HOUSE AGRICULTURAL COMMITTEE
HB 1330

CHAIRMAN NICHOLAS AND COMMITTEE MEMBERS

Testimony of the North Dakota Farmers Union in Opposition to H.B. 1330

I am Richard Schlosser, Vice President of North Dakota Farmers Union. I am appearing today on behalf of the North Dakota Farmers Union in opposition to this bill that repeals the state's "confiscatory price defense" laws.

We see no reason to repeal these laws and see many reasons to keep them in place in the event that we ever enter into another period of extreme agricultural distress similar to those we experienced in the 1930's or the late 1980's.

It is important to separate myth from fact in reviewing your action on this bill. Because of the complexity of this issue, we have asked an attorney to review the various cases involving this defense to dispel some of the myths that are prevalent about the "confiscatory price defense."

First, let me give you some history. As stated by the Supreme Court, the "confiscatory price defense" statutes "were enacted by the Legislature in 1933, in response to the effects of the Great Depression on this state's largely agricultural economy." These statutes "provide the courts with special equitable powers to protect debtors when the price of agricultural products are below the cost of their production or

North Dakota Farmers Union is a tax exempt agricultural organization under 501 (c) (6) of the Internal Revenue Code. It is not a charitable organization and therefore payments to North Dakota Farmers Union are not deductible as charitable contributions for income tax purposes. However, they may be deductible under other provisions of the Internal Revenue Code.

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when the debtor would lose his equity in a home to foreclosure or execution, and further authorize the courts to stay foreclosure proceedings on public policy grounds." "[T]he object of the Legislature in the enactment of these statutes was to protect farmers during times of economic hardship brought on by the depressed farm economy."

Now let us turn to the myths. Let me emphasize that the confiscatory price laws have **nothing** to do with debt write-downs, bankruptcy or debt forgiveness, which are the result of federal not state laws. The North Dakota Supreme Court has held repeatedly that the confiscatory price laws do not stop foreclosures and do not in any way affect the amount that may be collected by a creditor.

In applying a confiscatory-price defense, the Supreme Court has held that a court cannot relieve mortgagors from making payments, cannot compel a mortgagee to accept less than the amount due, and cannot discharge mortgagors from their obligations. What the law does allow – during a period when prices are in fact confiscatory – is to allow debtors to ask courts for a delay and allow courts to authorize delays in foreclosures when that would be fair. It is a policy of "judicial forbearance" under which delays in foreclosure can be allowed when the equities favor delay.

Second, it can't be used lightly. The debtor cannot merely allege that prices are confiscatory for the defense to kick in. In order to have the defense considered, the debtor must present *specific information* to the trial court that shows that prices are in fact confiscatory. The Supreme Court has repeatedly said that "conclusory statements about a depressed agricultural economy in an affidavit unsupported by specific facts are insufficient to raise the defense." Thus, these laws cannot be used as a defense when prices are not confiscatory. They do not come into play in times, like today, when prices are generally above the cost of production.

Third, these laws provide only the opportunity for a court to *consider the equities*

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in a request to delay a foreclosure. If delay would not be equitable to the lender, the court does not have to approve any delay or can put conditions on a delay, such as payment of rental value and taxes. Thus, when the debtor has not acted equitably, it is proper for a court to refuse to consider the confiscatory price defense -- even if prices were confiscatory.

Fourth, the law has no impact in the good times, and may be helpful to deserving farmers in a bad time when despite all of their efforts, their crops do not cover the cost of production. One such example is shown by the fact that one of the farmers who first raised the "confiscatory price defense" in 1984 to prevent a "foreclosure by advertisement" (a method of foreclosure where the creditor does not go to court, but just advertises the sheriff's sale) is still on the farm today.

In 1933, the legislature of North Dakota believed it was prudent to provide the courts of this state who are presented with lawsuits requesting foreclosure on North Dakota farmers whose families may have been there for generations with the ability to equitably consider the option of allowing delays in foreclosure when the farming economy of the state was in an economic meltdown. This is still good public policy today.

While prices of most of our major crops are higher today, they may not be in the future. If prices again drop to unconscionable levels and many of our farmers, through no fault of their own, face foreclosure, we will need a law like this which gives judges discretion to delay foreclosures during tough times.

I have talked to some of the people who are supporting this proposal. One of the reasons given to me for the repeal of the confiscatory price laws is that "it increases the cost of credit in North Dakota." Yet, the cost of credit is at an all time low even though this law is on the books! We do not believe that the present law raises the cost of money

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in North Dakota. Other laws might, such as federal bankruptcy laws. This law does not forgive any debt or change any interest rates. I also want to say that if a debtor raises the defense frivolously, the creditor can seek sanctions against the debtor's attorney. The courts that have considered the confiscatory price law up to this time have done so very responsibly, and there is no reason to doubt that they would do so in the future. We should leave this matter in the hands of the courts.

While it may seem that there has been a lot of litigation over the confiscatory price law, most of the decisions arose during the farm crisis of the mid-1980's as the scope and application of the defense was being raised by creditors (who argued that it had expired, or was unconstitutional, or did not apply to them) or by debtors (who argued that it should have been considered before summary judgment was granted against them). The law was quite well settled by the late 1980's, and the few times that any issue concerning this law has reached the Supreme Court since 1990, the Supreme Court simply upheld the trial court's determination that it did not apply.

In summary, this law should not be repealed. It is a good law for bad times, and does no harm in good times.

I would be happy to answer any questions that you may have. THANK YOU FOR YOUR TIME AND CONSIDERATION.

Deanna Halliwell
Operator's Signature

10/3/03
Date

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



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600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

Testimony of Roger Johnson
Agriculture Commissioner
House Bill 1330
House Agriculture Committee
Peace Garden Room
January 24, 2003

*I worked in
mediation prior
to my present
job*

Chairman Nicholas and members of the House Agriculture Committee, I am Agriculture Commissioner Roger Johnson. I am here today in opposition to HB 1330, which proposes to repeal sections 28-29-04, 28-29-05, and 28-29-06 of the North Dakota Century Code, relating to powers of courts when agricultural prices are confiscatory.

I am neither an attorney nor an expert in the area of legal defense. However, I do have an extensive background in working with financially distressed farmers and their lenders. North Dakota's confiscatory price statutes date back to the Great Depression of the 1930's. Obviously, they originated in response to a dire situation for the state's farm economy and to provide some protections for producers facing farm foreclosure when prices are so low that foreclosure and the forced sale of assets are considered confiscatory.

During the 1980's, agriculture again experienced a severe farm credit crisis of declining commodity prices and a collapse in farm property values. As a result, the federal Ag Credit Act

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of 1987 required loan servicing and restructuring procedures, including mediation, for the Farm Service Agency (formerly FmHA) and Farm Credit System (FCS). In my judgment, these requirements have been very successful in facilitating distressed loan workouts outside the legal system, greatly improving the relationship between debtors and lenders, and reducing the number of farm foreclosures. However, it is important to note that these federal loan servicing and mediation participation requirements do not apply to other lenders in North Dakota.

Chapter 12 bankruptcy has also proven to be an effective farm debt reorganization tool, but its survival is questionable at best. Chapter 12 bankruptcy has expired and been reauthorized on a short term basis numerous times in recent years.

Unlike these two federal laws, the North Dakota confiscatory price laws do not provide that forgiveness. The North Dakota laws allow those North Dakota courts with the authority to provide a delay in foreclosures in times of extreme economic crisis. However, my observations lead me to believe that our debtor protection laws serve purposes beyond the original purpose of providing certain protections of individual debtors. I believe the existence of these laws provides a strong incentive for lenders to pro-actively attempt negotiated settlements short of foreclosure proceedings. This is good for everyone. The laws also serve as a vivid reminder of the farm credit problems of the past and encourage lending practice vigilance, which helps minimize the magnitude of any similar credit crisis in the future.

We all know that the farm economy is cyclical and that farm survival during down cycles has become increasingly difficult. Certainly, tough times on the farm are also tough on agricultural

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lenders. However, I believe lending institutions are far better able to weather farm economy downturns than individual farm operations.

Will we see another major farm credit crisis in the future? I don't know, but I sincerely hope not. I do, however, believe repealing these longstanding statutes is a mistake. It sends a wrong message and diminishes North Dakota's reputation as a strong supporter and advocate of our agricultural industry.

Chairman Nicholas and committee members, I urge a do not pass on HB 1330. I would be happy to answer any questions you may have.

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Type: FCA Regulation

PART 614 - LOAN POLICIES AND OPERATIONS

Subpart N - Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

§ 614.4516 Restructuring policy and procedures.

Loan restructurings are to be accomplished in accordance with the policy adopted by the bank board of directors under section 4.14A(g) of the Act.

(a) Notice. When a qualified lender determines that a loan is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring. The qualified lender shall include with such notice:

(1) A copy of the policy of the lender established under section 4.14A(g) of the Act that governs the treatment of distressed loans; and

(2) All materials necessary to enable the borrower to submit an application for restructuring on the loan. Such notice shall be provided not later than 45 days before a qualified lender begins foreclosure proceedings with respect to any such loan outstanding to the borrower. In the case of a loan involving more than one primary obligor, the requirements of this section will be satisfied by providing the notice to any one of such parties.

(b) Opportunity for meeting. The lender shall provide any borrower to whom a notice has been sent with a reasonable opportunity to meet personally with a representative of the lender:

(1) To review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring;

(2) With respect to a loan that is in a noninterest-earning status, to develop a plan for restructuring the loan if the loan is suitable for restructuring as determined by the qualified lender.

(c) Voluntary consideration of restructuring. A qualified lender may, in the absence of an application for restructuring from a borrower, propose a restructuring plan for an individual borrower.

[53 FR 35455, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993; 58 FR 62514, Nov. 29, 1993; 61 FR 67187, Dec. 20, 1996; 62 FR 25831, May 12, 1997]

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Type: FCA Regulation

PART 614 - LOAN POLICIES AND OPERATIONS

Subpart N - Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

§ 614.4517 Restructuring decision.

(a) Consideration of application. When a qualified lender receives an application for restructuring from a borrower, the lender shall determine whether or not to restructure the loan, taking into consideration:

(1) Whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure considering all relevant factors including:

(i) The present value of interest and principal foregone by the lender in carrying out the restructuring plan;

(ii) Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;

(iii) Whether the borrower has presented a preliminary restructuring plan and cash-flow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring; and

(iv) Whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the institution;

(2) Whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(3) Whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(4) Whether the borrower is capable of working out existing financial difficulties, taking into consideration any prior restructurings on the loan, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

(5) In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a loan that it is necessary to place in noninterest-earning status.

(b) Required restructuring. If a qualified lender determines that the potential cost to such qualified lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the qualified lender shall restructure the loan in accordance with the plan. If two or more restructuring alternatives are available to a qualified lender with respect to a distressed loan, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

(c) Documentation. In the event that an application for restructuring is denied, a qualified lender shall maintain sufficient documentation to demonstrate its compliance with paragraphs (a) and (b) of this section, as applicable.

[53 FR 35455, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993; 61 FR 67187, Dec. 20, 1996]

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CHAPTER 28-29
RELIEF FROM DEFAULTS AND HARDSHIPS

28-29-01. Opening default judgment - Supplying omissions. Superseded by N.D.R.Civ.P., Rule 60.

28-29-02. Extension of time. Superseded by N.D.R.Civ.P., Rule 6.

28-29-03. Cause must be shown for extending time to answer. Superseded by N.D.R.Civ.P., Rule 6.

28-29-04. Power of courts when prices are confiscatory. Until the price of farm products produced in this state rises to a point to equal at least the cost of production, in comparison with the price of other commodities in general, entering into the business of agriculture, the supreme court of this state and all district courts in this state have power, when it is deemed for the best interests of litigants, to extend the time for serving and filing all papers requisite and necessary for the final determination of any cause. Any such court, in like manner, may stay the entry of judgment or the issuance of execution thereon, or may defer the signing of any order for judgment, or may defer terms of court, whenever in the judgment of the court the strictly legal procedure in any cause will confiscate or tend to confiscate the property of any litigant by forcing the sale of agricultural products upon a ruinous market.

28-29-05. Courts may delay orders in foreclosures. Whenever any foreclosure proceeding is pending in any court in this state and the amount of the debt is less than the value of the property involved, and when any order for judgment will have the force and effect of depriving a defendant of his home and confiscating his property, the court may construe further proceedings to be unconscionable, and may delay the signing of such order to such time as it shall deem it advisable and just to enter the same.

28-29-06. Public policy. Any court mentioned in section 28-29-04 may take judicial notice of the situation of producers and laborers when prices of farm products are confiscatory, and upon the ground of public policy may do all things necessary to be done lawfully to carry out the provisions of sections 28-29-04 and 28-29-05.

28-29-07. Debtor allowed reasonable time to make good default under security agreement. In an action to foreclose or otherwise enforce a security interest in personal property, the court in its discretion, upon the application of the debtor, may make an interlocutory order fixing a reasonable time within which the debtor shall make good the default under the security agreement and shall pay all costs of suit to date. If the debtor shows to the court, on or before the date fixed by the interlocutory order, that he has made such payment, or if he tenders it in court, then such action must be dismissed, otherwise, a final order for judgment for plaintiff may be made as though such interlocutory order had not been made. The court has the power to impound the personal property in controversy during the pendency of the interlocutory order at the expense of the debtor.

28-29-07.1. Redemption of property after retaking under conditional sales contract - Notice. Repealed by S.L. 1965, ch. 296, § 32.

28-29-08. Enjoining mortgagee from foreclosing mortgage or vendor from taking possession or selling property permissible. When the mortgagee has commenced foreclosure proceedings, or the vendor demands or takes possession of the property covered by the contract, and it appears by the affidavit of the mortgagor or vendee, his agent or attorney, to the satisfaction of the judge of the district court of the county wherein such property is situated, that the mortgagor or vendee has a legal counterclaim or is entitled to take advantage of the provisions of section 28-29-07, or has any other valid defense against the collection of the whole or any part of the amount claimed to be due, such judge, by an order to that effect, may enjoin the mortgagee from foreclosing such mortgage by advertisement, or the vendor from taking possession of or selling such property, and may direct that all further proceedings be had in the

Dorinda Hall Smith
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10/3/03
Date

district court having jurisdiction of the subject matter. For the purpose of carrying out the provisions of this section, service may be made on the mortgagee or vendor or his attorney or agent. The provisions of this section apply to the assignee or transferee of any mortgagee or vendor and to the assignee or successor in interest of the mortgagor or vendee.

Page No. 83

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HOUSE BILL 1330

TESTIMONY

Presented by Charles McCay on behalf of Farm Credit Services

The confiscatory price statutes were enacted in the 1930s. The statutes provide for a district court to delay any foreclosure on farm property if the court feels that the prices of farm products is so low that a sale could be considered confiscatory.

Farm Credit Services supports the repeal of NDCC 28-29-04,05 and 06 for the following reasons:

- Since the confiscatory price statutes were enacted, we have put into state and federal law the North Dakota Ag Mediation Service, the restructure requirements of the Agricultural Credit Act of 1987 and chapter 12 of the bankruptcy code.
- Confiscatory price deals only with prices as a source of financial distress and offers only delay as a response. The more recent laws mentioned above deal with any cause of distress and offer a wide range of responses that may help a farmer remain viable, including rescheduling payments, interest rate concessions, reduction of principal and dismissal of unsecured debt.
- Confiscatory price provides little direction to the court or borrower and lender. The statute does not address which farm products should be considered, how the cost of production is determined or how long the collection action should be delayed. This creates more uncertainty for borrowers and lenders.
- If a court should find prices confiscatory in a collection case, the delay granted to the borrower would have to be long enough so that prices recover to a point where the borrower can cash flow the original debt plus any interest and other cost accrued during the delay. A shorter delay would be of no value.
- If a court granted a long or open ended delay, lenders would have to consider other borrowers in similar situations to be candidates for delay also. This would effect the granting of loans to these farmers, especially those with fewer financial resources.

In summary, the confiscatory price statutes should be repealed because they do not offer benefits to financially distressed farmers that are not offered more effectively by other laws, and the possibility that a court could rule that prices are confiscatory presents a potential problem for limited resource farmers needing credit.

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TIME FRAME ON AN UNCONTESTED FORECLOSURE ACTION

DAYS
INTO THE
PROCESS

SERVICE ACTION TAKEN

1	Payment is Due (1)
14	Past Due Reminder Letter
31	Refer to Ag Mediation and provide notice of restructuring rights (2)
97	Attorney sends out "Notice of Intent to Foreclose"
127	Notice of Intent Period Ends
136	Attorney sends out Summons and Complaint - Summons and Complaint is Served
160	End of time period to answer Summons and Complaint (3)
170	Attorney sends Motion for Default Judgement
181	Court enters Default Judgement
212	Publish in paper once per week for three consecutive weeks
223	Sheriff's Sale
223	Redemption Period under current law begins. Borrower retains possession and can redeem during this period.
589	Possession of the Property (4)
589	Total number of days until the Lender takes possession of the property - Uncontested Foreclosure (5)
1.61	Number of Years until the Lender takes possession of the property - Uncontested Foreclosure

*from
Ser.
Fla/koll
3/25/03*

(1) Distressed borrowers have opportunities to work with their lender and Ag Mediation prior to the due date to resolve potential delinquencies or defaults.

(2) During this period the borrower may be negotiating with the lender or working with Ag Mediation. Time frame may be extended with positive discussions to resolve the default.

(3) Borrower has had this first 181 days to resolve the default, negotiate with the lender or through Ag Mediation present a restructure plan to cure the default.

(4) In an uncontested foreclosure action, the borrower would have the 588 days to cure the default or redeem the property.

(5)

> Farm Credit Services believes 588 days in an uncontested process is ample time for a borrower to seek remedies to cure the default, but that if 588 days is not sufficient, the borrower's use of negotiating through Ag Mediation, submitting restructure proposals through the Agricultural Credit Act process or seeking relief through bankruptcy can afford additional time to the distressed borrower. The confiscatory price statutes are no longer relevant given these other remedies available.

> Farm Credit Services believes the Confiscatory Price Statute should be repealed because other state and federal statutes provide borrowers with loans in default more and better remedies to seek positive and proactive alternatives to cure the loan default. Examples are Agricultural Mediation Service, Agricultural Credit Act of 1987 and Federal Bankruptcy Reform.

> Farm Credit believes confiscatory price is used as a delaying strategy by borrowers in default to contest the foreclosure process rather than proactively seeking a resolution to the default. To Farm Credit's knowledge no court has ruled prices were confiscatory. Farm Credit Services believes contested actions through the use of a confiscatory price defense place added costs to other loan customer and that if prices were ever to be found to be confiscatory, the relief afforded is that only of time, not principal and interest.

> Farm Credit Services supports the modernization of North Dakota Statutes. Farm Credit supports the Statutes that have established the Agricultural Mediation Service to assist distressed borrowers in attempts to restructure loans in default and believes that other resources now available to borrowers in default have greater likelihood of resolving the default rather than just delaying the resolution process, as is the case with confiscatory price statute.

> Farm Credit Services supports the passage of HB 1330 to repeal of sections relating to powers of courts when agricultural prices are confiscatory.

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Dennis Hallmark
Operator's Signature

10/3/03
Date

Testimony of Woody Barth, farmer from south of Mandan and Chairman of the North Dakota Credit Review Board, the policy making board for the North Dakota Ag Mediation Service, regarding HB 1330 on March 14, 2003 in the Senate Agriculture Committee:

The committee had a few questions regarding the timeline of agriculture mediation in North Dakota and Mr. Barth stood to provide information.

The agriculture credit counseling program started within the North Dakota Agriculture Department under then Agriculture Commissioner Kent Jones in 1984.

The North Dakota Credit Review Board was established by the legislature under the governor's office in 1985 and gave them some funding. The credit counseling program ran out of money due to high work load. During the 1987 session they were brought together under the North Dakota Credit Review Board but there were not yet third party mediators.

In 1986 federal legislation allowed for mediation service.

In 1988 Commissioner Sarah Vogel was elected. Roger Johnson took over the credit counseling program.

In 1989 the name was changed to allow for third party mediation, involving a neutral party trying to resolve problems between borrower and lender.

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Woody Barth
Operator's Signature

10/3/03
Date

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MISSION STATEMENT: North Dakota Farmers Union, guided by the principles of cooperation, legislation and education, is an organization committed to the prosperity of family farms and rural communities.



Testimony of the North Dakota Farmers Union in Opposition to H.B. 1330

I am Richard Schlosser, Vice President of North Dakota Farmers Union. I am appearing today on behalf of the North Dakota Farmers Union in opposition to this bill that repeals the state's "confiscatory price defence" laws.

Quite frankly, we see no reason to repeal these laws and see many reasons to keep them in place in the event that we ever enter into another period of extreme agricultural distress similar to those we experienced in the 1930's or the late 1980's.

It is important to separate myth from fact in reviewing your action on this bill. We have asked an attorney to review the various cases involving this defense to dispel some of the myths that are prevalent about the "confiscatory price defense."

First, let me give you some history. As stated by the Supreme Court, the "confiscatory price defense" statutes "were enacted by the Legislature in 1933, in response to the effects of the Great Depression on this state's largely agricultural economy." ¹These statutes "provide the courts with special equitable powers to protect debtors when the price of agricultural products are below the cost of their production or when the

North Dakota Farmers Union is a tax exempt agricultural organization under 501 (c) (6) of the Internal Revenue Code. It is not a charitable organization and therefore payments to North Dakota Farmers Union are not deductible as charitable contributions for income tax purposes. However, they may be deductible under other provisions of the Internal Revenue Code.

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Richard Schlosser
Operator's Signature

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debtor would lose his equity in a home to foreclosure or execution, and further authorize the courts to stay foreclosure proceedings on public policy grounds." ¹ "[T]he object of the Legislature in the enactment of these statutes was to protect farmers during times of economic hardship brought on by the depressed farm economy."²

Now let us turn to the myths. Let me emphasize that the confiscatory price laws have **nothing** to do with debt write-downs, bankruptcy or debt forgiveness, which are the result of federal not state laws. The North Dakota Supreme Court has held repeatedly that the confiscatory price laws do not stop foreclosures and do not in any way affect the amount that may be collected by a creditor.³

In applying a confiscatory-price defense, the Supreme Court has held that a court cannot relieve mortgagors from making payments, cannot compel a mortgagee to accept less than the amount due, and cannot discharge mortgagors from their obligations.⁴ What the law does allow – during a period when prices are in fact confiscatory – is to allow debtors to ask courts for a delay and allow courts to authorize delays in foreclosures when that would be fair. It is a policy of "judicial forbearance" under

¹ Federal Land Bank v. Lillehaugen, 404 N.W.2d 452, 456 (N.D.1987).

² Federal Land Bank v. Thomas, 386 N.W.2d 29, 31 n. 1 (N.D.1986)

³ Folmer v. State, 346 N.W.2d 731, 732 (N.D.1984).

⁴ Federal Land Bank of St. Paul v. Asbridge, 474 N.W.2d 490, 495 (N.D. 1991)

which delays in foreclosure can be allowed when the equities favor delay.

Second, it can't be used lightly. The debtor cannot merely allege that prices are confiscatory for the defense to kick in. In order to have the defense considered, the debtor must present *specific information* to the trial court that shows that prices are in fact confiscatory. The Supreme Court has repeatedly said that "conclusory statements about a depressed agricultural economy in an affidavit unsupported by specific facts are insufficient to raise the defense."⁵ Thus, these laws cannot be used as a defense when prices are not confiscatory. They do not come into play in times, like today, when prices are generally above the cost of production.

Third, these laws provide only the opportunity for a court to *consider the equities* in a request to delay a foreclosure. If delay would not be equitable to the lender, the court does not have to approve any delay or can put conditions on a delay, such as payment of rental value and taxes.⁶ Thus, when the debtor has not acted equitably, it is proper for a court to refuse to consider the confiscatory price defense -- even if prices were confiscatory.

Fourth, the law has no impact in the good times, and may be helpful to deserving farmers in a bad time when despite all of their efforts, their crops do not bring in the cost of production. One such example is shown

⁵ Gress v. Kocourek, 427 N.W.2d 815, 816-17 (N.D. 1988); Federal Land Bank v. Thomas, 386 N.W.2d 29, 31 (N.D. 1986).

⁶ Federal Land Bank of St. Paul v. Asbridge, 474 N.W.2d 490, 496 (N.D. 1991); First State Bank of Goodrich v. Oster, 500 N.W.2d 593, 597-598 (N.D.).

by the fact that one of the farmers who first raised the "confiscatory price defense" in 1984 to prevent a "foreclosure by advertisement" (a method of foreclosure where the creditor does not go to court, but just advertises the sheriff's sale) is still on the farm today.⁷

In 1933, the legislature of North Dakota believed it was prudent to provide the courts of this state who are presented with lawsuits requesting foreclosure on North Dakota farmers whose families may have been there for generations with the ability to equitably consider the option of allowing delays in foreclosure when the farming economy of the state was in an economic meltdown. This is still good public policy today.

While prices of most of our major crops are relatively high today, they may not be in the future. If prices again drop to unconscionable levels and many of our farmers, through no fault of their own, face foreclosure, we will need a law like this which gives judges discretion to delay foreclosures during extreme times.

I have talked to some of the people who are supporting this proposal. One of the reasons given to me for the repeal of the confiscatory price laws is that "it increases the cost of credit in North Dakota." Yet, the cost of credit is at an all time low even though this law is on the books! I do not believe that this bill raises the cost of money in North Dakota. Other laws might, such as federal bankruptcy laws, but this does not. This law does not forgive any debt or change any interest rates. I also want to say that

⁷ Folmer v. State, 346 N.W.2d 731, 732 (N.D.1984).

if a debtor raises the defense frivolously, the creditor can seek sanctions against the debtor's attorney. The courts that have considered the confiscatory price law up to this time have done so very responsibly, and there is no reason to doubt that they would do so in the future. We should leave this matter in the hands of the courts.

While it may seem that there has been a lot of litigation over the confiscatory price law, most of the decisions arose during the farm crisis of the mid-1980's as the scope and application of the defense was being raised by creditors (who argued that it had expired, or was unconstitutional, or did not apply to them) or by debtors (who argued that it should have been considered before summary judgment was granted against them). The law was quite well settled by the late 1980's, and the few times that any issue concerning this law has reached the Supreme Court since 1990, the Supreme Court simply upheld the trial court's determination that it did not apply.

In summary, this law should not be repealed. It is a good law for bad times, and does no harm in good times.

I would be happy to answer any questions that you may have.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

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Deanna Hall
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