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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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10/3/03
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Page 2
House Agriculture Committee
Bill/Resolution Number HB 1330
Hearing Date 1--24--03

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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10/3/03
Date

Page 3

House Agriculture Committee

Bill/Resolution Number HB 1330

Hearing Date 1--24--03

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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10/3/03
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Page 4
House Agriculture Committee
Bill/Resolution Number HB 1330
Hearing Date 1--24--03

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 statues 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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10/3/03
Date

Page 5
House Agriculture Committee
Bill/Resolution Number HB 1330
Hearing Date 1--24--03

REPRESENTATIVE KRIDT: 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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Page 6
House Agriculture Committee
Bill/Resolution Number HB 1330
Hearing Date 1--24--03

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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