

2009 SENATE AGRICULTURE

SB 2127

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2127

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 8, 2009

Recorder Job Number: 6693

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the hearing on SB 2127, a bill relating to definitions and financing under the first time farmer finance program. One member absent, **Sen. Taylor**, all other members were present.

Bob Humann, SVP of Lending with BND, testified in favor of the bill. See attached testimony, attachment #1.

Sen. Flakoll- How does it work if the first time farmer has property in two different counties? What would the policy be there?

Bob Humann- with the restriction that they can't own more than 30 in that county, we would do a blend of the two counties.

Sen. Flakoll- will this increase or not change the pool of eligible people?

Bob Humann- it will increase the pool of eligible people just by increasing the net worth from \$250,000 to \$300,000 of the additional applicants that would be eligible for this program, now we are looking at moving that beginning farmer net worth up. To honest this program gets used very rarely in the state of ND because our other programs are more popular.

Sen. Flakoll- about how many people participate in the current program and what percent increase in eligibility do you see with that change?

Bob Humann- I have a sheet here that I will make copies of and pass out. See attachment #2.

Sen. Behm- How does someone go about this, does he have to establish what he wants that money for first?

Bob Humann- there is a difference the beginning farmer real estate loan is a direct program with the Bank of ND they have to identify what they want to buy and they have to apply. The other program is a participation program where they work with a local bank and then the BND actually buys half the loan. The benefit to the beginning farmer is that there is interest buy down of up to 5%.

Sen. Heckaman- is there any advantage for someone applying for both of these programs or is that an option?

Bob Humann- it could happen.

Sen. Klein- we are talking about a lot of money as we go down the road does the delinquency rate increase then or do you have problems out there collecting?

Bob Humann- our delinquency rates on farm loans are almost non-existent, why is that? We have had some good years so they were able to restructure their date.

Sen. Miller- there is really no risk to the BND in this loan program?

Bob Humann- that is correct it is whoever is holding the bonds that are at risk.

Sen. Behm- how do you get the paperwork started on this who instigates it?

Bob Humann- the local bank starts the process, they decide which program for them.

Sen. Behm- so it is still up to the local bank to see if they want to give you that loan or not?

Bob Humann- we don't actually make the credit decision, it is not our money it's the local banks money we just handle the paperwork. We are just the pass through.

Tom Silbernagel, NDDA, testified in favor of the bill in behalf of **Roger Johnson**, see attached testimony #3.

No opposition to the bill.

Sen. Flakoll closed the hearing.

Sen. Klein motioned for a Do Pass and was seconded by **Sen. Behm**, 6 yeas 0 nays 1 absent and not voting **Sen. Taylor**. **Sen. Behm** was designated to carry the bill to the floor.

REPORT OF STANDING COMMITTEE

SB 2127: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2127 was placed on the
Eleventh order on the calendar.

2009 HOUSE AGRICULTURE

SB 2127

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2127

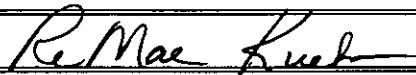
House Agriculture Committee

Check here for Conference Committee

Hearing Date: February 26, 2009

Recorder Job Number: 9760

Committee Clerk Signature



Minutes:

Bob Humann, Senior Vice President, Bank of ND: In regard to the credit crunch in the U.S., where the problems have been is in the commercial real estate, residential development & home areas. As far as the farm credit in North Dakota, I don't see any problem with that.

(Written testimony attached #1)

Chairman Johnson: What is the definition of First-time Farmer?

Bob Humann: Now you can own some real estate up to 30% of the median farm size in the county where they reside. (In the 2007 census, the acres have dropped because we have so many hobby farmers.) Their net worth must be less than \$300,000. In the mid 90's, we came across this First-time Farmer program which is a nation-wide program. The lender does not have to pay tax (state or federal) on the interest that they earn on the loan that they make for first-time farmers. It's a program that sees limited usage in comparison to our beginning farmer program. But yet some banks like the program because of the tax-free benefit for interest income. In 2008 we facilitated three deals for about \$600,000. In 2007 we did one of these deals. When you look at our beginning farmer programs, we're doing 50-60 loans every year. Our state has a very attractive beginning farmer program. So this program doesn't get used as much. It also works for Contract for Deed holders. If a father is a Contract for Deed

holder and wants to sell land to a son, he could get some tax-exempt interest income if using the First-time Farmer program.

Vice Chairman Brandenburg: Just to understand, the bank that borrows the money, the interest that they earn on the loan, they get a tax deduction?

Bob Humann: Let's say they set the interest rate at 5%. They don't have to pay tax on the interest income that they earn.

Vice Chairman Brandenburg: Would that enable the bank to be able to borrow more on the purchase of the land? Where is the benefit both ways?

Bob Humann: The benefit to the bank is they have an incentive to come in with below market interest rate. We just handle the paper work. It's not even a loan that is on the Bank of ND's balance sheet. We have to follow the rules of the IRS program. What is cumbersome is that when the rules of the IRS program change, and we have ND Century Code we can't change the Century Code until the legislators come back to town. So what I am recommending here is that we can be able to be more responsive. When the IRS code changes we can go then and change the First-time Farmers rules so we can make the program more usable to the banks that want to use it. One additional thing, there are some rules on Contract for Deed between siblings. The IRS has rules between family members because they don't want this to be a tool for estate planning.

Representative Rust: You gave some numbers about the First-time Farmer program and the Beginning Farmer program. Would you repeat those again?

Bob Humann: I'll give you a handout. **(attachment #2)** This gives the numbers on all the farm programs.

Chairman Johnson: The chattel mortgages are participation real estate. Are they 100% or are they participation too for the local lender?

Bob Humann: With the Beginning Farmer chattel program, we would lend up to 75% of the value of the cattle or the equipment. Let's say it is a \$100,000 loan. \$50,000 of that loan would be funded out of the Beginning Farmer revolving fund at an interest rate now of 2 ¼% which is 1% under prime. Then the lead bank, with the other 50% of the loan, can charge a market interest rate. If the market rate is 6%, that rate can be reduced by 5%. So the rate by law can only go down to 1%. What does this beginning farmer get for an interest rate? It's a blended rate between 2 ¼% and 1%. In this case it would be about 1 ¾%.

Representative Vig: You want to adjust this with the IRS. How often does the IRS adjust it? Is it every time a farm bill comes along or is it more often?

Bob Humann: For years it was just set. We worked with the ND Congressman to get the law changed and that was part of the farm bill that came out last fall. They said it will be adjusted annually on January 1 of each year. So we won't have to wait for another farm bill to make a change. The next project is the restriction where a first-time farmer cannot own more than 30% of the medium farm size in that county. With the drop in the 2007 census, we want to see that changed. That will make a lot of less folks eligible _____???

Representative Mueller: Do you index to the inflation rate and not the Consumer Price Index?

Bob Humann: There is an index that we can go out and track.

Representative Mueller: We've adjusted \$469,200 off of the \$250,000. It's important how that weight is determined. It goes back to business down on the farm. On one hand we have some escalating farm prices and now that has dropped back. The cost and value of the inputs, six months ago it was a horrible time to buy fertilizer. That is a moving target and not tied into the Consumer Price Index.

Bob Humann: I think it's the CPI. That's just how the IRS works. It's an inflation index that has nothing to do with what is going on in the farm economy.

Don Forsberg, Executive Vice President, Independent Community Banks of ND:

This program is one more tool that is available. This language will keep the adjustments to flow with the underwriting federal regulations.

Vice Chairman Brandenburg: Question to **Bob Humann:**

Looking at the Buy Down of the Beginning Farmer loans, I noticed between 2007 and 2008 **(attachment #2)** you've got about a half million dollars in those categories for real estate and chattel. But then looking at 2008, it decreased in half on the real estate and the chattel is down to \$27,000. Is there less activity in beginning farmer loans or is it just not finished out the year with totals?

Bob Humann: No, there are mistakes in those two boxes. Both of those for 2008 cannot be right. Thanks for pointing that out. Keep in mind with the Beginning Farmer program, the money has not been coming from the general fund. We've just been using the cash balance in the beginning farmer revolving fund and that is starting to run low. So we may have to come back next biennium and get another shot of money. The last three bienniums we've just been using the cash balance. We gave \$800,000 for the PSC to fight the railroads, \$1 million was earmarked for the biomass demonstration project in the state of ND, and then another \$1 million for the NDSU beef research project.

Representative Uglem: Can the Beginning Farmer loans be used to refinance a purchase from an equipment dealer?

Bob Humann: Somewhat. If it is John Deere, no one's feelings are hurt. If the bank has the loan on their books, it puts pressure on them for a lower interest rate.

If the bank has already a loan to them, and the farmer wants to go out and buy additional pieces of equipment, then it makes sense to use the equity on the existing piece of equipment and finance that. There has to be a new purchase involved. The higher the interest rate, the more popular this program is.

Testimony from Roger Johnson, Agriculture Commissioner: handed in **(attached #3)**

Opposing: none

Chairman Johnson: Closed the hearing

Vice Chairman Brandenburg: **Moved Do Pass.**

Representative Kingsbury: **Seconded.**

A Roll Call vote was taken. **Yes: 12, No: 0, Absent: 1**, (Representative Froelich).

Representative Rust will carry the bill.

Date: 2/26/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2127

House Agriculture Committee

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Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. Brandenburg Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	✓	
Mike Brandenburg, Vice Chair	✓		Rod Froelich	AB	
Wesley R. Belter	✓		Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust	✓		Benjamin A. Vig	✓	
Mike Schatz	✓				
Gerry Uglem	✓				
John D. Wall	✓				

Total (Yes) 12 No 0

Absent 1

Bill Carrier Rep. Rust

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

REPORT OF STANDING COMMITTEE

SB 2127: Agriculture Committee (Rep. D. Johnson, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2127 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2127

TESTIMONY TO THE
SENATE AGRICULTURE COMMITTEE
SENATE BILL 2127
BOB HUMANN – SVP OF LENDING
BANK OF NORTH DAKOTA
JANUARY 8, 2009

*Same
testimony &
handouts given
to House.*

Section 1 of Senate Bill 2127 expands the applicant's eligibility for the First-time Farmer Finance Program to follow the revised Internal Revenue Service Code of 1986 amendments that govern this program. The definition eliminates the eligibility restriction on the dollar value of existing land that an applicant could own at the time of application.

Sub-section 1 of Section 2 also expands applicant eligibility by changing from a static net worth maximum of \$250,000 to more of a market adjustable net worth maximum as determined by the Beginning Farmer Revolving Loan Program. The Beginning Farmer Revolving Loan Program net worth maximum is currently at \$300,000 and can be adjusted through the bank's loan policy. Loan policy changes are approved by the North Dakota Ag Credit Review Board, BND's Executive Committee, BND's Advisory Board and the Industrial Commission.

The IRS Code of 1986 and related amendments do not provide for a net worth maximum. A number of states have implemented a net worth maximum to ensure that the program is targeted towards first-time farmers. As for North Dakota, the bank has intended to keep the net worth maximums between the First-time Farmer and Beginning Farmer Loan Programs equal.

Sub-section 2 of Section 2 removes the maximum financing amount of \$250,000 and indexes the maximum financing amount to the IRS Code of 1986 amendments. This amendment set the 2008 financing maximum at \$450,000 with an index to the inflation rate adjusted annually on January 1st of each year. As of January 1, 2009 the maximum financing amount increased to \$469,200.

Attached is further information on the First-time Farmer Finance Program. Your approval of the two amendments is recommended.

First Time Farmer Finance Program

The North Dakota First Time Farmer Finance program (NDFTFFP) is a tax-exempt bond program designed to assist First Time Farmers in the state of North Dakota to acquire agricultural property at lower interest rates. The Bank of North Dakota (BND), acting as the Farm Finance Agency, determines the eligibility of the applicant and also approves and issues the bond. The bond will then be assigned to a Bond Purchaser which typically is a financial institution or contract holder. Since the interest received by the Bond Purchaser is exempt from state and federal tax, the interest rate to the First Time Farmer is at a lower rate.

Qualifying Requirements

Borrower - A First Time Farmer is required to meet the following criteria:

- A ND resident at time of funding
- A First Time Farmer must be at least 18 years of age. There is no upper age limit.
- A First Time Farmer is a person who has never had any direct or indirect ownership interest in Substantial Farmland in the operation of which he/she has materially participated. An ownership interest or material participation by a person's spouse or child will be attributed to the person as well.
- A First Time Farmer must have a net worth of not more than \$200,000.
- The agricultural land, agricultural improvements and depreciable agricultural property shall be used for farming by the First Time Farmer, spouse, or minor children.

Use of Proceeds - Finance the purchase of ND land suitable for use in farming, finance the construction or purchase of improvements located on agricultural land, or the purchase of personal property suitable for use in farming for which an income tax deduction for depreciation is allowed in computing federal income taxes. The loan maximum is \$250,000 for agricultural land and improvements, and \$62,500 for used depreciable agricultural property.

Collateral - Collateral is to be negotiable between bond purchaser and the borrower.

Application Process

Application forms are available from BND. The application should be completed by the First Time Farmer and Bond Purchaser and submitted to BND. Completed applications will be acted upon within five business days of receipt by the Bond Purchaser.

Interest Rate

The interest rate is a tax-exempt rate to be negotiated by the First Time Farmer and the Bond Purchaser.

Repayment Terms

The repayment terms are to be negotiated by the First Time Farmer and the Bond Purchaser.

Fees

The First Time Farmer or Bond Purchaser must submit to BND a non-refundable \$50 application fee. A loan fee equal to 1% of the amount of the bond, but not less than \$500, must be paid to BND by the First Time Farmer at loan closing. The loan fee may be financed with bond proceeds, or in the case of a contract sale, the loan fee may be included in the purchase price reflected in the sales contract.

FARM RECAP (END LOAN AMOUNT) Pending & Funded

FARM INITIATIVE	2008		2007		2006		2005		2004		2003		Total Dollars	
	#	Dollars	#	Dollars	#	Dollars	#	Dollars	#	Dollars	#	Dollars		
Farm Operating	28	\$4,344,488.10	32	\$4,383,061.75	36	\$4,943,973.90	58	\$5,402,388.38	58	\$5,700,052.00	69	\$7,354,990.00	221	\$23,401,384.28
Family Farm	11	\$940,374.44	3	\$290,940.00	6	\$243,720.00	12	\$700,576.77	18	\$911,674.63	19	\$1,378,437.50	55	\$3,234,408.90
Farm Disaster Relief	1	\$270,000.00	81	\$13,887,736.00	105	\$21,165,462.00	2	\$272,250.00	0	\$0.00	36	\$5,436,368.56	143	\$26,874,080.56
Total Loans	41	\$5,554,862.54	116	\$18,541,737.75	147	\$26,353,155.90	72	\$6,375,195.15	76	\$6,611,726.63	124	\$14,169,796.06		

GUARANTEE PROGRAMS	2008		2007		2006		2005		2004		8/103-12/31/03	
	#	Dollars	#	Dollars	#	Dollars	#	Dollars	#	Dollars	#	Dollars
Farm Real Estate (Prg began 8-1-03)	1	\$121,875.00	5	\$755,491.98	3	\$751,500.00	0	\$0.00	5	\$894,422.56	0	\$0.00
Livestock Loan (Prg began 8-1-05)	1	\$789,225.00	3	\$122,825.00	2	\$1,258,000.00	1	\$132,994.00	0	\$0.00	0	\$0.00
Total Guarantee	2	\$911,100.00	8	\$878,316.98	5	\$2,009,500.00	1	\$132,994.00	5	\$884,422.56	0	\$0.00

LIVESTOCK WASTE MANAGEMENT PROGRAM (Prg began 8-1-05)	2008		2007		2006		8/105-12/31/05	
	#	Dollars	#	Dollars	#	Dollars	#	Dollars
Loans	2	\$200,000.00	5	\$362,850.00	8	\$308,298.00	1	\$100,000.00

AGPACE LOANS	07-09 Biennium		05-07 Biennium		03-05 Biennium	
	#	Dollars	#	Dollars	#	Dollars
Irrigation (1)	23	\$1,508,820.00	20	\$988,648.00	24	\$1,337,671.00
Stock (2)	66	\$1,358,943.00	38	\$1,300,241.00	98	\$2,308,369.50
Diversification (3)	12	\$726,000.00	29	\$1,686,014.00	30	\$1,469,750.00
Livestock (4)	6	\$203,000.00	12	\$518,400.00	8	\$302,700.00
Dairy (5)	0	\$0.00	9	\$482,256.00	0	\$0.00
Total Loans	108	\$3,796,463.00	108	\$4,975,559.00	160	\$5,418,490.50

INTEREST BUYDOWN	2008		2007		2006	
	#	Dollars	#	Dollars	#	Dollars
Available for Biennium		\$1,510,745.22		\$1,391,856.45		\$1,611,931.39
Committed		\$1,000,791.28		\$1,368,828.84		\$1,688,898.39
Remaining Availability		\$509,953.94		\$23,027.61		-\$76,967.00

STATE WATER COMMISSION LOANS	07-09 Biennium		05-07 Biennium		03-05 Biennium	
	#	Dollars	#	Dollars	#	Dollars
Irrigation	19	\$1,453,019.63	15	\$888,526.03	15	\$1,056,121.00

INTEREST BUYDOWN	2008		2007		2006	
	#	Dollars	#	Dollars	#	Dollars
Available for Biennium		\$513,725.16		\$692,362.83		\$875,860.96
Committed		\$273,518.61		\$179,180.87		\$183,498.13
Remaining Availability		\$240,206.55		\$513,181.96		\$692,362.83

FIRST TIME FARMER	2008		2007		2006		2005		2004		2003	
	#	Dollars	#	Dollars	#	Dollars	#	Dollars	#	Dollars	#	Dollars
Annual Totals	3	\$592,650.00	1	\$127,600.00	4	\$450,917.00	2	\$282,000.00	1	\$163,680.00	0	\$0.00

BEGINNING FARMER LOANS	2008		2007	
	#	Dollars	#	Dollars
Real Estate	70	\$11,506,370.00	70	\$7,263,739.00
Chattel - Total Loan Amt	69	\$4,844,498.30	93	\$5,863,941.91
Total Loans	139	\$16,350,868.30	163	\$13,127,680.91

INTEREST BUYDOWN	2008		2007	
	#	Dollars	#	Dollars
Real Estate-Buydown		\$272,184.34		\$528,980.88
Chattel-Buydown		\$27,075.64		\$547,341.55

Remaining Buydown Funds	2008		2007	
	#	Dollars	#	Dollars
Remaining Buydown Funds		\$1,177,618.90		\$1,396,278.51

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Attachment # 3

Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020
Equal Opportunity in Employment and Services

**Testimony of Roger Johnson
Agriculture Commissioner
Senate Bill 2127
Senate Agriculture Committee
Roosevelt Park Room
January 08, 2009**

*Same given
to House
2-26-09.*

Chairman Flakoll and members of the Senate Agriculture Committee, I am Agriculture

Commissioner Roger Johnson. I am here today in support of SB 2127, which amends the loan approval requirements for the first - time farmer finance program.

The proposed change to subsection 2 of section 54-17-34 of the North Dakota Century Code modifies the definition of "substantial farmland" by removing the fair market value limit of real estate presently held by the applicant. Current law restricts this value to \$125,000.

The proposed change to section 54-17-34.2 of the North Dakota Century Code removes the net worth limit (*presently \$250,000*) for individuals applying for financing. New language is added which would allow the Bank of North Dakota to address this issue by linking it to the beginning farmer revolving loan program. The net worth requirements of the revolving loan program are established by Bank of North Dakota loan policy.

It should also be noted that the Credit Review Board reviewed and endorsed the changes described in this testimony.

Making these adjustments to the first-time farmer finance program should help the Bank of North Dakota serve more producers and will reduce the need for legislation as agricultural values fluctuate beyond the parameters set by law.

Chairman Flakoll and committee members, I urge a do pass on SB 2127. I would be happy to answer any questions you may have.