

Approved April 1, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Lloyd D. Polson at
Chairperson

9:00 a.m./~~p.m.~~ on March 24, 1986n room 423-S of the Capitol.

All members were present except: Representative Dean who was excused.

Committee staff present:

Raney Gilliland, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Senator Wint Winter, Jr.
Representative Dale Sprague
Robert Berkley, Attorney, banker and farmer, Salina
Sam Eberly, Chairman of the Board, Wichita District Farm Credit Council

Hearing on S.B. 696—Authorizing the stay of certain foreclosure judgments relating to agriculture properties. (Family Farm Rehabilitation Act)

Senator Winter explained this bill is new to Kansas law and is complicated. The concept of the bill springs entirely from existing federal bankruptcy law. Chapter 11 bankruptcy allows for reorganization under certain conditions so long as the debtor treats creditors no worse than they would have been treated under Chapter 7 bankruptcy. Chapter 11 bankruptcy is difficult for farmers. It is expensive and takes a lot of cash. Some of the concepts of Chapter 11 bankruptcy laws are in S.B. 696, so farmers will have 1, 2 or 3 years to turn things around. The Attorney General's opinion is this act takes nothing away from the lenders and is constitutional. This act is available only to insolvent farmers, and only after the bank files a foreclosure action. If the court orders a stay of execution of the judgment, the defendant may pay into court the interest of one year on the fair market value of the land and or agricultural property. After a third one-year stay of execution of the judgment, no further one-year stays may be granted, Attachment I.

Representative Sprague explained this bill allows up to a three-year period for a farmer to rebuild collateral in cash to repay the loan to the lender.

Robert Berkley testified he does not think Kansas has a foreclosure problem. He further stated a stay of execution of judgment would seriously restrict or limit all agriculture in Kansas, and a moratorium on foreclosure is unfair to the financial institutions.

Sam Eberly testified the Wichita District Farm Credit Council cannot support S.B. 696 in its current form. The bill allows the borrower to pay a lower rate of interest on a reduced value determined by the court, representing a significant loss to the lender, Attachment II.

The Committee meeting was adjourned at 10:00 a.m.

The next meeting will be at 9:00 a.m., Tuesday, March 25, 1986, in Room 423-S.

GUEST REGISTER

DATE March 24, 1986

HOUSE OF REPRESENTATIVES
COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

NAME	ORGANIZATION	ADDRESS
Kari Schmitt	Wichita District Farm Credit Council	Wichita, KS
Larry Koptay	FLBA Garden City, Kan.	4195525, Kan.
Nali Kauffman	Farm Credit Center NE Kansas	Enterprise, KS
Richard Lusteron	Farm Credit Center NE Kansas	White City, KS.
Joe M. Conley	Farmer - Farm Credit Center NE KS	Delia, KS
John Royce	Farmer	Corning, KS
Emmett Koch	Farmer	Centerville, KS
Jim May	KBA	Topeka
Howard Stoner	ICBA	Topeka
Robert Berkley	Attorney	Salina
Larry Skypa	First National Bank	Dodge City
Gregory Larson	First National Bank	Topeka
Jim Harding	First National Bank	Dodge City
Tom Schutt	Farm Credit Center Salina	Tipton, KS
James Norris	FARM CREDIT CENTER SALINA	NORWAY, KS
Day Jacka	STATE BOARD OF AGRICULTURE	TOPEKA
Ross Butler	Farmer	Corning, KS
Maclin Roundtree	Farmer	Corning, KS
Ivan Wyatt	Ks. Farmers Union	McPherson
Calvin Wilcox	Farm Credit Center NE KS.	Washington, KS
James Dohlein		Hoff, KS
Howard Wilson	K. A. W. G.	Lawrence
Bill Jullow	Ks. Farm Bureau	Manhattan
Jim Wells	Farmer	Centerville, KS
Joe & Henry Jr	Farm Equipment dealer	Haltom, KS
Ron Rabjes	Farm Credit Center - Hays, Kans	Kensington, KS.

Sam EBERLY
Ron Wilson
Ray EDWARDS
Ed Reznicek

Farm Credit Banks
Farm Credit Council
Deere & Company
Kansas Rural Center

Wichita, KS.
Wichita
Des Moines
Wichita, KS

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

March 5, 1986

WINT WINTER JR
SENATOR SECOND DISTRICT
DOUGLAS COUNTY
2229 WEST DRIVE
BOX 1200
LAWRENCE KANSAS 66044

COMMITTEE ASSIGNMENTS
MEMBER WAYS AND MEANS
JUDICIARY
LOCAL GOVERNMENT
GOVERNMENTAL ORGANIZATION
JOINT COMMITTEE ON STATE
BUILDING CONSTRUCTION
CHAIRMAN JOINT COMMITTEE ON SPECIAL
CLAIMS AGAINST THE STATE

THE FAMILY FARM REHABILITATION ACT

Mr. Chairman and Members of the Committee:

The Act allows a legitimate but insolvent farmer a period of up to three (3) years in length that will allow a farmer to keep his land and equipment so he can keep farming and, in that period, give him the opportunity to make a profit while the farm economy starts to turn around.

It does so by allowing the farmer to prevent a bank or other lender that has filed a foreclosure or repossession suit from taking his land and equipment. The Bill allows the farmer to apply to the State District Court in any foreclosure or repossession action for a stay or order preventing the lender from conducting the sheriff's sale of farm equipment and implements.

The court will issue the stay preventing the lender from taking the property for a period of one year, on condition that the farmer pay into court prior to the sheriff's sale a sum of money equal to the market interest rate for one year on the amount determined by the court to be the current fair market value of the land or equipment. Upon the payment of that sum into court, the stay will be issued for one year allowing the farmer to continue in farming. The money is to be paid to the lender by the court. The farmer may continue in possession of the land and/or equipment and prevent the sheriff's sale and/or repossession of equipment for two additional periods of one year, each upon the payment of similar amounts by the farmer into court.

At the end of any of the three (3) one year periods of Rehabilitation, the farmer will have the right to purchase the land and/or the equipment by paying the lender an amount in cash equal to the fair market value of the property determined as of the date of the entry of the original Stay Order.

The protection under the Act will be available only to legitimate farmers (80% or more of their income from farming) and only if the farmer has no equity in property except (1) property that is exempt from execution under existing Kansas laws, (160 acres, furnishings, tools of the trade and implements up to the value of \$5,000) and (2) cash in an amount determined necessary for family, household and farm expense purposes for a period of (six) 6 months.

3-24-86 Hs. A.S.B.
Attachment I

The Family Farm Rehabilitation Act

March 5, 1986

Page Two

Consider, for example, a farmer who owns 480 acres purchased for \$800/acre with 80% financing over 20 years at 13% and who has an equipment loan of \$90,000 payable over 5 years at 12%. The depressed farm economy has reduced the current value of the land to \$300/acre and cut the value of the equipment to \$45,000. The reduced profit margin has left the farmer with some profit, but not nearly enough to make high fixed land and equipment payments, and foreclosure actions result.

The Family Farm Rehabilitation Act would provide an opportunity for the farmer to keep farming the land with the equipment for an amount much less than previously required. Since the Act is available only to farmers without equity in other property, the lender will receive cash flow equivalent to that it would receive if judgment and foreclosure were entered against the farmer. Application of the Act would result in the following:

	<u>ANNUAL PAYMENTS REQUIRED</u>		
	<u>Land</u>	<u>Equipment</u>	<u>Total</u>
Prior Loans:	\$43,457	\$24,966	\$68,423
Rehabilitation Act:	\$14,400	\$ 4,500	\$18,900

The Family Farm Rehabilitation Act allows the insolvent farmer a period of up to three years that will allow him to keep his land and equipment so that he can keep farming and give him an opportunity to make a profit while the farm economy turns around. Prior to this Act, the farmer could only propose compositions and extensions; if these were not approved by the creditors and the court, he was forced to dismiss his proceeding or be adjudicated into straight bankruptcy.

The Family Farm Rehabilitation Act has the controlling purpose of preserving the ownership and enjoyment of the farm property for the farmer. It "scales down" the indebtedness to the present value of the property. Its main purpose is to provide a moratorium for farmers to relieve them from overburdening mortgage indebtedness and the harshness resulting from a loss of their farms through foreclosure in a period of re-alignment in the world economy and depression in the agricultural sector, rivaled only by the Depression period of the 1930's.

Passage of this Act is desperately needed to rid the farmer of unnecessary losses. These are the losses that prevent farmers from cultivating their land and producing crops - two vital factors that have had and will continue to have a tremendous effect on the state and national economy. Moreover, the strain placed on our farm economy by falling farm product prices and acts of God have put an additional burden on the farmer and thus have greatly increased the need for this Act. Without the Family Farm Rehabilitation Act, we in Kansas, must resign ourselves to an accelerating exodus of families from the farm, to more failures of farm related businesses, including banks, and fewer and larger farms. This Act will not stop the re-alignment going on in agriculture. It will, however, give good farm operators a new tool to allow them a fighting chance to survive through the adjustment period.

TESTIMONY FOR SAM EBERLY

CHAIRMAN OF THE BOARD

WICHITA DISTRICT FARM CREDIT COUNCIL

FOR

HOUSE AGRICULTURE AND SMALL BUSINESS COMMITTEE

TOPEKA, KANSAS

MARCH 24, 1986

3-24-86 Hs. ASB
Attachment II

MR. CHAIRMAN, I AM SAM EBERLY, A FARMER/STOCKMAN FROM THE WICHITA, KANSAS AREA. I AM CHAIRMAN OF THE BOARD OF THE NINTH FARM CREDIT DISTRICT AND THE WICHITA DISTRICT FARM CREDIT COUNCIL, WHICH REPRESENTS COOPERATIVE AGRICULTURAL LENDERS.

WE STRONGLY SUPPORT FARM CREDIT SERVICES, AN AGRICULTURAL LENDING COOPERATIVE WHICH INCLUDES: THE FEDERAL LAND BANK OF WICHITA, WHICH PROVIDES LONG-TERM REAL ESTATE LOANS THROUGH THE FEDERAL LAND BANK ASSOCIATIONS; THE FEDERAL INTERMEDIATE CREDIT BANK OF WICHITA, WHICH PROVIDES FUNDS TO PRODUCTION CREDIT ASSOCIATIONS FOR SHORT- AND INTERMEDIATE-TERM FARM OPERATING LOANS; AND THE BANK FOR COOPERATIVES, WHICH OFFERS LOANS TO AGRICULTURAL AND RURAL UTILITY COOPERATIVES. AS OF FEBRUARY 28, 1986, FARM CREDIT SERVICES PROVIDED MORE THAN 5.5 BILLION DOLLARS FOR NEARLY 70,000 FARMERS, RANCHERS AND COOPERATIVES THROUGHOUT KANSAS, OKLAHOMA, COLORADO AND NEW MEXICO.

MR. CHAIRMAN, AS WE CONSIDER LEGISLATIVE PROPOSALS, WE MUST NEVER LOSE SIGHT OF THE FACT THAT THE FUNDAMENTAL PROBLEM FACING BOTH FARMERS AND FARM LENDERS IS INADEQUATE FARM INCOME. AS FARMERS HAVE AN OPPORTUNITY FOR PROFIT, THEY ARE BETTER ABLE TO SERVICE THEIR DEBTS AND TO GENERATE ECONOMIC GROWTH WHICH BENEFITS ALL OF RURAL AMERICA. WE NEED TO WORK ON OUR CREDIT PROBLEMS, BUT WE MUST REMEMBER THAT FARM INCOME IS THE KEY. I THINK WE CAN ALL AGREE ON THIS BASIC FACT.

MR. CHAIRMAN, WE HAVE REVIEWED SENATE BILL 696 AND ALL OF THE MAJOR FARM CREDIT PROPOSALS, INCLUDING THE TWO BILLS WHICH HAVE PASSED THE HOUSE. WE FIND THAT THERE IS SUBSTANTIAL COST TO AGRICULTURAL LENDERS AND BORROWERS ASSOCIATED WITH EACH ONE.

I MUST REPORT THAT WE CANNOT SUPPORT S.B. 696 IN ITS CURRENT FORM. HOWEVER, WE RECOGNIZE THAT THERE HAS BEEN A GREAT DEAL OF WORK BY A NUMBER OF PARTIES IN AN EFFORT TO MAKE THIS LEGISLATION A REASONABLE PACKAGE THAT WILL HELP BORROWERS AND ALSO BE FAIR TO LENDERS. WE WOULD LIKE TO WORK WITH THE SPONSORS OF THE LEGISLATION TO DISCUSS THE SPECIFIC CONCERNS WE HAVE.

I MUST POINT OUT THE REASONS FOR OUR CONCERN WITH S.B. 696 IN ITS CURRENT FORM. S.B. 696 CREATES A PROCEDURE WHICH ALLOWS THE BORROWER THE PROTECTIONS OF BANKRUPTCY WITHOUT THE BORROWER ACTUALLY TAKING BANKRUPTCY.

FIRST, THE BILL ALLOWS THE BORROWER TO RECEIVE A STAY IN JUDGMENT IF HE MAKES AN INTEREST PAYMENT. HOWEVER, THE BORROWER WOULD NOT PAY THE ACTUAL INTEREST RATE HE OWES, BUT RATHER A LOWER AMOUNT OF THE TREASURY RATE PLUS 2 PERCENT. THE BILL SPECIFIES THE USE OF A 52-WEEK TREASURY BILL RATE, YET THE AVERAGE MATURITY OF FARM CREDIT SECURITIES IS FROM FOUR TO FIVE YEARS. THE BILL COULD RESULT IN THE BORROWER PAYING 9 PERCENT WHEN IN FACT HE OWES THE FEDERAL LAND BANK RATE OF 12 1/2 PERCENT — REPRESENTING A SIGNIFICANT LOSS TO THE LENDER.

SECOND, THE INTEREST RATE WHICH THE BORROWER PAYS WOULD BE BASED NOT ON THE ACTUAL INDEBTEDNESS BUT ON A MARKED-DOWN VALUE OF THE PROPERTY. AGAIN, THE PAYMENT IS BASED ON A REDUCED VALUE DETERMINED BY THE COURT, NOT THE BORROWER'S ACTUAL OBLIGATION.

THIRD, A POSITIVE FEATURE OF THIS LEGISLATION IS THAT BORROWERS WOULD NEED TO MAKE PAYMENTS UP FRONT IN ORDER TO QUALIFY, WHICH MAKES GOOD ECONOMIC SENSE.

HOWEVER, IN THE HOUSE-PASSED VERSION OF THIS MEASURE, BORROWERS COULD QUALIFY BY SIMPLY MAKING QUARTERLY PAYMENTS. SINCE THIS LEGISLATION ALREADY FORGIVES PART OF THE INTEREST RATE AND THE INDEBTEDNESS, IT IS ONLY FAIR THAT THE BORROWER PROVIDE UP-FRONT PAYMENT IN ORDER TO QUALIFY.

FOURTH, THIS LEGISLATION CREATES AN EXTRAORDINARY NEW LEGAL PROCEDURE. IT IS IMPORTANT THAT THE LEGAL RIGHTS FOR LENDERS BE COMPARABLE TO OTHER SIMILAR MEASURES.

MR. CHAIRMAN, THESE ARE ISSUES THAT WE WOULD LIKE TO DISCUSS WITH THE SPONSORS, AND THEN WORK WITH YOU WHERE POSSIBLE.

IN CLOSING, I WOULD LIKE TO MAKE SOME GENERAL COMMENTS REGARDING ALL OF THE PENDING FARM CREDIT PROPOSALS, INCLUDING THE TWO HOUSE-PASSED BILLS TO WHICH WE REMAIN OPPOSED.

FIRST, AMERICAN FARMERS ARE FACING SERIOUS FINANCIAL STRESS TODAY. SINCE THE FARM CREDIT SYSTEM LENDS ONLY TO AGRICULTURE AND RURAL AMERICA, WE FEEL THE STRESS OF OUR FARMER/RANCHER OWNERS FIRST AND FOREMOST. FOR 1985, THE WICHITA DISTRICT REPORTED ITS LARGEST FINANCIAL LOSS IN HISTORY. WE BELIEVE WE ARE MANAGING THIS FINANCIAL DIFFICULTY, BUT WE ARE VERY CONCERNED ABOUT ADDITIONAL COSTS WHICH COULD BE IMPOSED BY SOME OF THE PENDING PROPOSALS AND WHICH MUST BE PASSED ON TO OUR OTHER BORROWERS.

SECOND, SEVERAL OF THE PENDING PROPOSALS MIGHT BE COUNTERPRODUCTIVE IN THAT THEY WOULD ENCOURAGE FARMER/RANCHER BORROWERS TO DEFAULT ON THEIR OBLIGATIONS. I BELIEVE THAT OUR BORROWERS ARE DOING THEIR HONEST BEST, BUT IT IS ALL THE MORE DIFFICULT FOR THEM TO MEET THEIR OBLIGATIONS AS THEY ARE ASKED TO BEAR ADDITIONAL COSTS.

FINALLY, I AM A FARMER AND A BORROWER OF THE SYSTEM. TODAY, I AM REPRESENTING THE VAST MAJORITY OF OUR FARMER/RANCHER MEMBERS WHO ARE MAKING 93% PAYMENTS. WE ALL KNOW THAT AGRICULTURE FACES HARD TIMES, AND WE ARE ALL FACING THE SAME DIFFICULT CONDITIONS. WE SUPPORT A FORBEARANCE POLICY THROUGH WHICH WE CAN HELP QUALIFYING DISTRESSED BORROWERS.

HOWEVER, THESE WELL INTENDED LEGISLATIVE PROPOSALS, WHICH INCREASE THE COST TO PAYING FARMERS, HAVE THE NET EFFECT OF PLACING EVEN MORE FARMERS AND RANCHERS INTO ECONOMIC DISTRESS. WE URGE YOU TO BE FAIR TO THE VAST MAJORITY OF THESE BORROWERS WHO ARE MAKING THEIR PAYMENTS AS YOU CONSIDER THIS LEGISLATION. WITH THAT IN MIND, WE WOULD LIKE TO WORK WITH YOU TOWARD ALTERNATIVES WHICH WILL BE HELPFUL AND FAIR.

I APPRECIATE THIS OPPORTUNITY TO MAKE COMMENTS ON BEHALF OF OUR FARMER AND RANCHER MEMBERS. THANK YOU.