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Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Clifford V. Campbell at
Chairperson

9:05 a.m./~~p.m.~~ on February 18, 1987 in room 423-S of the Capitol.

All members were present except: Representatives Apt, Goossen, and Dean, who were excused.

Committee staff present: Norman Furse, Revisor of Statutes Office
Raney Gilliland, Legislative Research Department
Pat Brunton, Committee Secretary

Conferees appearing before the committee: Sam Brownback, Kansas Secretary of Agriculture
Ivan W. Wyatt, President, Kansas Farmers Union
Chris Walker, Kansas National Farmers Organization
James S. Maag, Director of Research, Kansas Bankers Association
Victor J. Olson, Vice President, First State Bank, Burlingame

Hearings were held on HB 2254 - fourteen day notice of terms of sale of agricultural land.

Sam Brownback testified in favor of the bill stating this was a personal appeal and not that of Board of Agriculture or the Governor. He urged acceptance of this bill and further stated it can help both debtor and creditor, Attachment I.

Ivan W. Wyatt gave testimony supporting HB 2254, Attachment II.

Chris Walker gave brief testimony supporting HB 2254. He stated that perhaps it would save a family homestead.

James S. Maag testified against HB 2254 recommending that the bill be reported adversely, Attachment III.

Victor J. Olson testified against HB 2254 asking that the committee kill the bill, Attachment IV.

The meeting was adjourned at 10:01 a.m.

The next meeting of the House Agriculture and Small Business Committee will be Thursday, February 19, 1987, at 9:00 a.m. in Room 423-S.

Statement in Support of 14-Day Notice Given on Upset Price
House Bill 2254

by Sam Brownback

This is a personal appeal and not that of Board of Agriculture or the Governor.

Essence of Proposal:

If creditor states price will bid, debtor or even other purchasers will have opportunity to arrange financing to possibly purchase land. Gets more money to creditors, quicker and land back into private hands.

Present System:

No one knows upset price until day of the sale.

Difficult to arrange financing.

If combine with tract selling, arrangements can be made ahead of time with family, friends, investors or other lenders to allow for downsizing without hurting the creditor.

I urge your acceptance of this bill. It can help both debtor and creditor.

Statement
of
Ivan W. Wyatt, President
Kansas Farmers Union
on
HB-2254 (Providing 14 day notice of creditor Bid)
before
The House Committee on Agriculture & Small Business
on
Feb. 18, 1987

Mr. Chairman, Members of the Committee:

I am Ivan Wyatt, President Kansas Farmers Union.

We support HB-2254.

It seems that almost out of courtesy to the defendant owner, the creditor would notify them of their intended bid on a foreclosed land sale.

In most, if not all cases the creditor bid would be a bid to cover the loan and would not be an investment bid. It is hard to rationalize why the bid amount would need to be secretive.

If the bidding of the land sale is to be an open competitive bid, especially on smaller parcels of land, a notification of the amount the creditor bid could very well cause more bidders to become

involved in the land sale, thereby
enhancing the sale to everyone's benefit.

Thank you



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 18, 1987

TO: House Committee on Agriculture and Small Business

FROM: Kansas Bankers Association

RE: HB 2254 - An Act Relating to Execution Sale of Certain Agricultural Land

Mr. Chairman and Members of the Committee:

The Kansas Bankers Association appreciates the opportunity to appear before the Committee on the provisions of HB 2254. We strongly believe this is unnecessary legislation which will only diminish even further the willingness of creditors to extend financing to their agricultural customers. We have seen at the federal and state level in recent years a constant stream of legislation which makes it difficult, if not impossible, for creditors to protect their collateral on agricultural loans. The Family Farm Rehabilitation Act of 1986, Section 1324 of the 1985 Food Security Act and the new Chapter 12 bankruptcy act are only the most recent examples. These legal impediments to contractual rights have steadily reduced the number of banks, insurance companies and other lenders who are willing to extend agricultural credit.

Many Kansas bankers have written to the KBA expressing strong opposition to SB 2254 and to SB 56 which contains similar provisions. You will be hearing oral testimony from Kansas bankers who have been involved in agricultural lending for many years as to their reasons why HB 2254 is unsound legislation, but we would also like to share with you the comments of one Kansas banker which also reflects the thinking of many Kansas ag bankers about this bill. In his letter to the KBA he states:

"....the lender surely should not be further burdened in his efforts to finally foreclose and salvage what is left of his security. The farm debtor presently has and should only have the right to bid in at the foreclosure sale what he thinks the land is then worth. The lender presently has and should retain the same right, most especially as regards existing farm credit extended on the basis of the law then in effect. The lender and borrower should at least be on equal grounds in this regard. The lender should have until the time of sheriff's sale to develop prospective customer's for the mortgaged land and try to limit his losses, possibly by providing financing for the purchaser of such land at the auction. The lender will be placed at a substantial disadvantage by being required to notify the debtor fourteen days in advance of the sale as to what price the lender will bid in the land at the sale. Why not require the debtor to similarly notify the lender as to his bid price also? The lender should retain

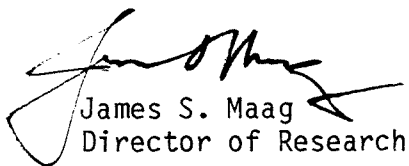
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Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444

ATTACHMENT III
Feb. 18, 1987

his right to analyze the number, type, net worth and proximity to the land of the bidders appearing at the auction and to then make a determination as to how high to carry the bid. In many instances the lender will let the bid go at less than the amount of credit outstanding if he at that time feels that the bid price is as much as he would be able to realize for the land at private sale. I submit, however, that the lender should have the right to bid in the land at sheriff's sale for whatever price he might determine to bid at the time and to carry the land in inventory for a reasonable time in order to try to obtain a higher price and reduce a portion of his losses. The lender has already lost a substantial portion of his loan or the land would not be in foreclosure."

There are also several technical and procedural questions which are not addressed in the bill. For instance, what constitutes "notice" and what proof must the creditor show that proper notice was sent? What is the time frame for the debtor to bring action to void the sale? What if the purchaser, if he is someone other than the creditor, assumes possession of the land immediately after the sheriff's sale and makes improvements on the property prior to the time the sale is voided on the action of the debtor? Would the creditor then be liable for further damages to the purchaser? The bill is also silent as to what happens after the sale is voided and the purchaser has been reimbursed. Has the creditor forfeited his entire interest in the mortgaged land or can he institute further proceedings for the sale of the land? How would such a situation conflict with the provisions of K.S.A. 60-2414(o) which prohibits second sales?

Thank you for the opportunity to express our viewpoint on this legislation. Because of the questions and reasons stated above, the Kansas Bankers Association strongly recommends that HB 2254 be reported adversely.


James S. Maag
Director of Research

JSM/ljs

HOUSE BILL 2254

Testimony
by
Victor J. Olson
Vice President & Agri. Rep.
First State Bank
Burlingame, Kansas 66413
February 18, 1987

GREETINGS

NEGOTIATIONS FIRST

Loan
Partnership
Marriage
Voluntary workout arrangements - Still ONE TEAM
Class 4 to class 2 --- 2 years
Joint Cooperation: Farmers & Bankers
Rural America: Friends, Neighbors, Church Members,
Lodge Brothers, etc...

FORECLOSURE - Divorce

Last resort - All else has failed
Rural Banks - Wait too long
Court ordered procedure
Public auction - Level playing field
NOW HAVE SEPERATE TEAMS
Debtor - Lawyer
Banker - Lawyer
Neighbor bidders
Public auction - NOT A SEALED BID SALE
Bank: Bid Loan + Interest
Bank: Bid estimated/appraised value
Can raise that bid in auction process

DEBTOR'S RIGHT TO VIOD SALE

Futher restricts the Banks flexibility
Mortgage Moratorium Act - 3 years
Clear title
Chapter 12
High numbers of Farm-Bank Failures
Violates "Right of Contract"
Could be Unconstitutional
Could provide debtor with one last "JAB" at the Bank

REAL GOAL OF BANKS

Recovery of bank's assets & customers deposit

LET US ALL REMEMBER AND UNDERSTAND

We don't have the resources to save all the farmers
Kill HB #2254 right here in this committee
Allow us the opportunity to help those whom we can
Foreclosure: Always the LAST RESORT
AMERICA: Land of Opportunity
We all take risks
Success
Failure