

Approved _____
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

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

9:08 a.m./~~p.m.~~ on March 5, 1967 in room 423-S of the Capitol.

All members were present ~~except~~:

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

Conferees appearing before the committee: Robin Leach, State Representative, Kansas
Mary Harper, Scott County, Kansas
John Stitz, Catholic Rural Life
Stan Ward, Director of the Farm Assistance,
Counseling and Training Referral Program
Harold Stones, Kansas Bankers Assn.
Stephen Anderson, A.A.M., Alma, Kansas
Jake Geiger, Robinson, Kansas
Dwaine Mellies
Chuck Stones, Kansas Bankers Assn.

Hearings were held on House Bill 2308 with Representative Leach explaining the bill. He stated that the idea of the bill would be to provide mandatory mediation, upon motion by any party to the court, to avert some of the problems in agriculture in Kansas.

Mary Harper testified in favor of House Bill 2308 stating that this bill would encourage negotiations and that it should be passed.

John Stitz testified for Ivan Wyatt, who was unable to attend, recommending passage of this bill.

Stan Ward was invited by Chairman Campbell to comment on the provisions of this bill as a neutral observer. Due to the added expense for implementing this bill, he felt it was not needed at this time because the FACTs program is already doing what this bill would be doing.

Harold Stones testified in opposition of HB 2308 requesting the Committee not to recommend this bill for passage until we have a chance to see and observe the success of voluntary mediation. Attachment I.

Hearings were closed on House Bill 2308 with a question and answer period following.

Hearings were held on House Bill 2447 with Mary Harper testifying in favor of the bill. HB 2447 would allow a debtor to purchase back his home quarter of land benefiting all by keeping strong rural communities, Attachment II.

Stephen Anderson testified in favor of HB 2447 urging passage, in the interest of the farmer.

Jake Geiger testified in favor of HB 2447 stating he strongly supports the bill.

Dwaine Mellies testified in favor of HB 2447 stating a need to help save the family farm.

John Stitz testified for Ivan Wyatt in favor of HB 2447 and urged passage

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,
room 423-S, Statehouse, at 9:08 a.m./~~p.m.~~ on March 5, 1987.

of this bill.

Chuck Stones testified in opposition of House Bill 2447 requesting that the Committee report the bill adversely, Attachment III. He further stated concern of major problems with the constitutionality of this bill.

A question and answer period followed.

Chairman Campbell distributed written testimony from Ron Wilson, Farm Credit Council, Inc., opposing both House Bill 2308 and House Bill 2447, Attachment IV.

The Chairman informed the committee of his fear that HB 2447 could be unconstitutional as a result of a recent Kansas Supreme Court ruling on partial redemption issues of agricultural land, Attachment V.

The meeting adjourned at 9:58 a.m.

COME TO KBA 100TH BIRTHDAY PARTY
CENTENNIAL CONVENTION, MAY 13-15, TOPEKA

KANSAS **B**ANKERS **A**SSN.
707 MERCH. NTL. BLDG. TOPEKA, KS 66612

TO: HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

FROM: Harold Stonas, Kansas Bankers Assn.

RE: HOUSE BILL 2308

We are pleased to bring our views and share our deep concerns on HB 2308. Kansas bankers and Kansas agriculture producers have been working partners for more years than any of us here have been alive, and this close relationship has been constant through good and bad economic times. The relationship continues today during our current economic adversity. Because of this, the KBA's efforts to help our current agricultural crisis have been intensive, especially over the past 24 months. The following information might be helpful as background.

I. The decline in farm asset values has had a dramatic effect on all facets of agriculture and agri-business, including finance.

A. Kansas banks are by far the largest holders of agricultural credit in our state. Recent figures show the following market shares:

Banks	34%
FLBs	26%
CCC	13%
FmHA	7%
Ins. Co.'s	5%
PCAs	4%
Other	11%

1. Two-thirds of all Kansas banks (407 of 614) are officially designated as "Agricultural Banks" by federal regulators.

ATTACHMENT I
March 5, 1987

2. 467 Kansas banks have agricultural loans of \$1 million or more.

B. The problems resulting to agricultural bankers are simple to understand.

1. Agricultural producers owe some \$2.5 billion to Kansas commercial banks.

2. A significant portion of this debt cannot and will not ever be repaid.

3. There are only three possible sources to absorb these losses: they are the taxpayer; the borrower or the lender.

a. The taxpayer is already absorbing or will absorb huge losses by the FmHA; Congress has decreed future taxpayer assistance to the Farm Credit System, so there is not much chance of taxpayers assuming the losses of commercial banks

b. The borrower has already suffered a loss through the devaluation of assets without reducing the size of the debt owed. The borrower has already "eaten his/her fill" at the loss table, without reducing the debt load.

c. The lender is the only source left to absorb these losses.

4. The debt is distributed unevenly among banks, and in some cases the loan loss charge-offs are large enough to impact the bank's capital, creating the alternative of adding capital to the bank or facing insolvency.

5. Right now, the ag bank must charge off the loan losses immediately upon their discovery, with no time allowed for restructure or work-out.

6. Without time to absorb these loan losses through normal operating profit over several years, many ag banks simply cannot survive; and they cannot pass on the luxury of longer-term workouts to their borrowers. If insolvency occurs:

a. All but the safest ag producers awaken one morning to find FDIC is their banker;

b. Retail stores and small businesses in rural communities find FDIC is not interested in renewing high-risk credit;

c. The affected rural community loses farmers, retail businesses; population declines; unemployment increases. A very harsh cycle occurs.

d. One result has been 35 bank failures in Kansas since 1984.

C. It is important for this Committee to come to terms with the fact that that it is not possible to pass any law to make this debt evaporate! The burden can be transferred; but the burden cannot be removed. Again, no law can make this debt burden disappear! There is a great belief among some in our society, that somehow there is a way. Throughout our economic history, it has not been found.

D. One important way the KBA has tried to be a positive force during these turbulent economic periods is through the development of **voluntary mediation**. KBA was the first organization contacted by an attorney interested in developing this concept into reality. We urged him to contact KSU officials in the FACTS program, and later met with those officials. We pledged 1/3 of the funds needed to educate counselors and mediators, if they could gain the support of at least two of the following groups: Kansas Board of Agriculture, Kansas Bar Assn. and Kansas Farm Bureau. As you know, they were successful, and our preliminary estimates are that voluntary mediation may be successful in achieving more satisfactory workout situations. Mandatory mediation, as practiced in Minnesota, and a few other states, has experienced some tremendous problems, and Kansas appears far ahead of other states in this area. We commend the many agricultural producer groups in this state for their wide support and endorsement of this program.

E. We respectfully request the Committee **not to recommend HB 2308** for passage, until we have a chance to see and observe the success of

voluntary mediation. Changing from voluntary to mandatory, using the very mediators which creditors have contributed significant sums of money to help train, would deliver a heavy blow to the confidence of the program on the part of creditors. It is important that both creditors and borrowers have confidence that the program is unbiased, and interested simply in resolving differences, not in forging social justice on the one hand, or in serving as a debt collection agency, on the other. So far, Dr. Ward and others involved in the program have done an excellent job of being perceived as totally objective. Let's give the present program a chance to work, before turning our backs on the hours and hours of efforts, and the thousands of dollars spent developing it.

Thank you for your consideration.

Omaha World-Herald
Editorial Page
 Unsigned articles are the opinion of The World-Herald.

Banks Deserve Balance On Farm Debt Matters

When a farmer has to give up his land because of debt, reaction in the Midlands can be strong. Some people will blame low market prices. Some will blame politicians or career government officials. Others will try to make it easier for a farmer to keep his land by reducing his debt.

The Nebraska Bankers Association is justifiably concerned that some of the efforts to help the farmers could go too far in protecting farm borrowers at the expense of lenders. The goal should be balance. Otherwise, commercial credit to farm borrowers could dry up and farmers could be worse off, said C.G. "Kelly" Holthus of York, association president.

Last year, the Nebraska Legislature passed Legislative Bill 999, which allowed a farmer in foreclosure to keep his farmstead and up to 160 acres of land, even if the land had been pledged as loan collateral.

Lenders said they were concerned that once the remaining land had been sold, the money might not cover the entire debt and the lenders would be left short. The problem was resolved in a special legislative session in November through the creation of a waiver process.

But there are new problems to deal with in the 1987 Legislature. LB 664, for example, would create a time-consuming, costly mediation process for banks before they could foreclose on borrowers.

The concern, especially among rural banks, is that these measures come close to putting farmers in a privileged class, one whose members don't have to repay all their debts.

It's important to remember that Nebraska's banks, as well as farmers and ranchers, have felt the financial problems in agriculture. In 1983, Nebraska banks suffered \$93 million in losses. Losses were \$134 million in 1984 and \$228 million in 1985. In the past three years, 26 banks in the state have closed.

Holthus says the state's lenders want to continue lending money, working with farm borrowers and remaining an important institution in each community.

He says lenders require one thing: "It's the promise that the loan will be paid back in accordance with the contract to which both lender and borrower agree."

That doesn't seem to be too much to ask.

Mediation law triggers tidal wave of cases

By JERRY PERKINS

Register Agriculture Writer

Digging out from under a blizzard of requests, Iowa's new mediation program is struggling to get farmers and their lenders together.

In other states hit hard by the farm depression, farmers, bankers and others with a stake in how the nation's \$200 billion farm debt-load is resolved are closely monitoring Iowa's experiment, one of just two states requiring farmers and creditors to negotiate before they litigate.

After two months under Iowa's new law, 2,000 requests for mediation are pending, and as many as 7,200 requests may be made in the first year of the mandatory mediation program, officials report. More than 1,500 of the mediation requests have come from the hard-hit Farm Credit Banks of Omaha.

Micheal Thompson, director of the Iowa Farmer/Creditor Mediation Service, said he is already worried about a shortage of mediators and financing. Still, he is trying to sound optimistic as he sifts through the avalanche of mediation requests that has all but paralyzed the fledgling mediation service.

"We're still sorting through the fallout [from the Farm Credit Banks' mediation requests], but we've finally turned the corner," said Thompson.

Yet, reality intrudes when Thompson looks down the road at the projected number of mediation requests he faces. "With the kind of caseloads we're seeing, we don't have nearly enough mediators," he said last week.

Unexpected Caseload

"None of us anticipated having 1,200 requests in the first 5 weeks," he said. "We hoped for a more gradual buildup of cases."

Thompson said a projected case load of 600 mediations a month will require an annual budget of \$780,000. The legislature budgeted just \$150,000 for the mediation service's operation.

Thompson is seeking grant money and in-kind assistance from other groups in an attempt to make up the difference.

To help defray expenses, the law also requires the lender and farmer to pay a \$25-an-hour mediation fee. But Thompson questions how many farmers will be able to pay.

The Iowa mediation law requires all lenders to meet once with farmers and an independent, neutral mediator to discuss possible settlement of a farm debt. Backers of the plan saw required mediation as a way to ease the often-tense relationships that have been building between farmers and their lenders as years of red ink poured over farm balance sheets.

Before a lender can take a farmer-customer to court to collect the money owed, a settlement or a mediation release must be obtained if the debt is more than \$20,000.

One Session

Just one mediation session is required, but a creditor must obtain a mediation release before it can proceed to collect.

The law authorized the Iowa Attorney General's office to contract with a non-profit organization for mediation service. Chosen for the task was Thompson's Iowa Farmer/Creditor Mediation Service, which already had been up and running for about six months as a voluntary service financed through donated funds.

Thompson, 38, who has been the mediation service's director since its creation, participated in about 150 voluntary mediation sessions before the law went on the books.

Iowa wasn't the first state to try this approach to easing farmer-creditor tensions. Both Minnesota and Wisconsin also have farm mediation laws in effect, although Wisconsin's is a voluntary program.

Officials in Kansas, Oklahoma, Wyoming, Colorado, Indiana and Nebraska also have expressed interest in the Iowa law, Thompson said, and are following its progress.

Weldon Barton, agricultural representative for the Independent Bankers Association of America, said bankers

MEDIATION

Please turn to Page 2F

MEDIATION

Continued from Page One

across the country also are clearly watching with interest. The mediation laws are going to have an effect on how the farm debt is handled."

Slow Beginnings

Wisconsin's law took effect in April, but began slowly with a small pilot program, said Beverly Massing, coordinator of that state's Farm Mediation and Arbitration Program.

"Our goal is to have at least 100 mediators available throughout the state," said Massing, a lawyer who works 20 hours a week in the state's voluntary program based in Madison.

In the early going, just nine cases have been assigned to professional mediators from other fields such as labor or family mediation, and who volunteered for mediation duty.

No mediations have been concluded, Massing said, and only 50 requests for the service have been received so far. But she expects that number to reach 400 cases during the first year.

That would be a fraction of the expected Iowa caseload, but it's enough to worry Massing. The state legislature appropriated \$64,000 for the voluntary mediation program.

"Can we do it? That's the \$64,000 question," she said. "It all depends on how many voluntary mediators we get. If I can get 100, that's three or four cases apiece."

Minnesota had a mediation law several months before either Wisconsin or Iowa. And although

Iowa studied Minnesota's efforts before drafting its legislation, there are several significant differences in the two laws.

Iowa's law calls for mandatory mediation of virtually all types of ag-

"Folks are calling me, asking: 'Is it getting better?' I'm not sure it is."

Michael Thompson
Mediation service director

riculture debt over \$20,000. Minnesota requires mediation of farm debts of more than \$5,000.

Mediation Period

Iowa's mediation period can last as long as 42 days, if no extension is agreed to by the parties. In Minnesota, the mediation period can last for up to 364 days if a court finds that a creditor has acted in bad faith.

About 480 mediators have been trained in Minnesota, and more than 800 cases should be concluded by August, said Matt Metz, director of the Minnesota service.

The constitutionality of Minnesota's law is currently being challenged in federal court by Farm Credit Services of St. Paul, although the farmer-owned cooperative lender agreed to continue mediating cases until the court issues a ruling.

Farm Credit Services lends money to farmers in Minnesota, North Dakota, Michigan and Wisconsin, but has sued only in Minnesota.

Farm Credit officials say they had no choice but to file suit. The Minnesota law could cost the FCS up to \$50 million, the lawsuit claims.

"Under mandatory mediation, there are delays that can extend from six months up to a year, delaying Farm Credit Services from being able to collect on a loan that has gone into default," said FCS spokesman James Ruen.

"Because we're a cooperative, we don't have a cash fund to draw on to cover this sort of thing," he said.

Among other provisions of the Farm Act being challenged are the right of first refusal, which allows a debtor up to five years in which to match a purchase price offered for his land, and a provision that expands the homestead exemption from 80 acres to 160 acres.

"In all of these, we're dealing with a situation where the borrower and the lender have entered into a contract and each has contractual obligations," Ruen said. "What the Farm Act has done is to change that after the fact, and that's the constitutional question."

Mark Levinger, special assistant to Minnesota Attorney General Hubert H. Humphrey III, said only a small number of mediation cases in Minnesota — those where a court determines that the lender acted in bad faith — will last longer than 90 days.

"We think there's a benefit in delaying [enforcement of a security interest] while there are negotiations," Levinger said.

Iowa Law Unchallenged

Iowa's mediation law hasn't faced a similar court challenge. Still, some questions remain among lawyers, lenders and farmers about the new law. One question being asked is, what if a debt collection action began before the new law took effect?

A recent decision by the Minnesota Court of Appeals made that state's mediation law retroactive to include all debt collection actions that were pending when the law was passed on March 23.

Whether the Iowa mediation law also will be applied retroactively hasn't been tested in the courts. Rather than litigate every case over the question of whether the mediation law is retroactive, the Farm Credit Banks of Omaha decided instead to simply shove all its foreclosure actions — existing and pending — into Iowa's mediation hopper.

In fact, of the 2,000 mediation requests now on file at Thompson's office in Des Moines, 1,578 are from the Farm Credit Banks of Omaha's Federal Land Bank or Production Credit Association of the Midlands. That doesn't include mediation requests from the Farm Credit Capital Corp., which purchased \$65 million in bad loans from Iowa PCAs and has been trying to negotiate repayment plans.

Fewer than 50 mediation requests have come from commercial banks, while insurance companies have filed another 150 to 200 requests for medi-

ation, Thompson said.

Of the 1,578 Land Bank or PCA mediation requests, 500 to 600 cases are in some stage of foreclosure, Thompson said, and will be handled first.

"Those are going to be real tough to negotiate because they have already reached a decision on those loans," he said.

Looking ahead, Thompson sees nothing that will improve the workload or the caseload.

"The Federal Land Bank said it could send in another 400 to 500 cases a month," he said. "That number alone will require a massive servicing. If we have the cases the Federal Land Bank projects, we're really going to have some problems."

From 200 to 250 volunteer mediators would be needed in the state to handle that kind of a demand for mediation, he estimated.

Thompson said he has 90 volunteer mediators trained now, and will be training more soon. There also are 21 Public Employee Relations Board mediators who have been trained for the special needs of a farm mediator, he said.

Mediation offices are open in Des Moines, Cedar Rapids, Mason City, Spencer and Ottumwa and offices will open soon in southwest and northeast Iowa, Thompson said.

"Folks are calling me, asking: 'Is it getting better?' I'm not sure it is. Some people are talking \$1 corn at harvest-time. As long as corn prices keep dropping, we're going to have land values keep dropping. ... We're not looking at the bottom of this," he said.

JOHN CARLIN
GOVERNOR OF KANSAS

Michael Swenson, Press Secretary The Statehouse, Topeka 66612 (913) 296-2716

FOR IMMEDIATE RELEASE: October 3, 1986

Governor John Carlin today announced the creation of a voluntary mediation program for Kansas farmers and their lenders. Kansas Farmer/Creditor Mediation Services will be a cooperative effort by the Farmers Assistance, Counseling and Training Service (FACTS) program and Prairie View Mental Health Center in Newton. The program will begin operation on October 10, 1986.

Carlin said, "I am very enthused about the formation of Kansas Farmer/Creditor Mediation Services. It represents a cooperative venture between government and the private sector to address some of our most pressing agricultural problems. I am proud of the commitment from the private sector to this program.

"Voluntary mediation represents an opportunity for lenders and borrowers to have the benefit of neutral, third party input. Trained mediators will be a valuable asset to farmers and lenders in negotiating the complex issues of farm credit."

All financial needs for the first year operations of this program, including training of the mediators, have been raised from private sources. Financial support has been pledged by the Kansas Bankers Association, the Farm Credit Services of Wichita, the Kansas Farm Bureau and the Kansas Farmers' Union.

Mediators will be provided to farmers and lenders who agree to participate in the mediation process. Actual administration of the program will be provided by the Prairie View Mental Health Center. The

FACTS program hotline will serve as the central contact point. Mediation services will be provided on a fee-for-service basis, the costs being shared by the farmer and the lender.

Kansas Secretary of Agriculture Sam Brownback is holding a press conference at 2:00 p.m. today at the FACTS office in Room 140 of Waters Hall at Kansas State University in Manhattan for the official kick-off of the program.

Persons interested in utilizing Kansas Farmer/Creditor Mediation Services should contact the FACTS program at 1-800-321-FARM.

Testimony before the House Agriculture Committee

March 5, 1987

Mary Harper

I am Mary Harper, a farmer from Scott County. I come in support of House Bill 2447 which would allow a debtor to purchase back his home quarter of land.

I believe that in view of the fact that this legislature is very concerned with economic development, this bill is essential. We are all concerned with the continuation of our rural communities. It is economic suicide for us to destroy our communities by moving a family who has helped establish churches, schools and businesses in his community. Simply developing job re-training for non-existing jobs will do little to strengthen our state. Most farmers have many skills and are able to cope with taking care of their families and finding other income if allowed to keep their homes. We can spare them the demoralizing trauma of leaving their communities.

We hear much talk these days about entrepreneurs. The farmer is probably the original entrepreneur. He has coped with the laws of nature. He will be able to survive if he has the encouragement of keeping his home and family together.

The lender will probably lose some anyway because of property de-valuation, so why not work out a deal with the owner to pay fair market value for part of the land. He not only may survive but help the lender re-coup some loss.

ATTACHMENT II

March 5, 1987

I believe passage of this bill will be the incentive needed for the debtor and the lender to be able to reach an agreement and we will all benefit by keeping strong rural communities.

Thank you.

KBA

The Kansas Bankers Association
707 Merchants National Bldg
Topeka, KS 66612 913 232-3444

March 5, 1987

TO: House Committee on Agriculture

FROM: Charles A. Stones, Kansas Bankers Association

RE: HB 2447

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee to voice our concerns about HB 2447. We are well aware of the problems faced by many agricultural producers today and the trauma of those faced with losing their farm land. In these times of distress in the agricultural sector bankers, more than ever, are working hand in hand with their farm customers to help them weather this storm. Most bankers in Kansas also owe their living to agriculture. There are 407 Kansas banks that are designated as Ag banks, and these banks have a vital interest in the survival of their farm customers. As you have heard in previous testimony before this committee commercial bankers are exhausting every possible avenue feasible to keep a farmer on his land before initiating legal action.

We now have a delicate balance between the banker and his farm customers. On one hand we want to keep our farm customers on their land but on the other hand we do not want to tip the scales so far in the other direction that we hurt our other farm customers. We must remember that we cannot make the debt that the farmer owes disappear. It has to come out of somebody's pocket. The provisions of HB 2447 tip the scales even further in the other direction and it is out of the bankers pocket that the debt must come. Those pockets are getting shallower every day. In 1985, 142 banks (22.8%) in Kansas, most of which are Ag banks, lost money. It is the other

farm customers in the bank that are hurt badly when that bank fails and they find themselves customers of the FDIC. The provisions of HB 2447 would be yet another brick on the wall between the banker and his collateral. It would restrict the bankers opportunities and would tend to diminish the value of that collateral.

If agriculture is to continue to be a vital industry in Kansas. We must do everything in our power to insure that we maintain the proper environment within our state to make agricultural credit a viable alternative. Many banks that have other options are already staying away from agricultural credit, and all others now look much more closely at all their loans. Many who would have been approved for credit just one short year ago are now being re-examined. It is these farmers that are being hurt by legislation such as HB 2447. Those farmers have a chance at survival but, because of a series of measures designed to help, are being hurt. Barriers such as non-assignable generic PIK Certificates, farm products clear-title, Chapter 12 Bankruptcy and measures such as HB 2447 are hurting the majority of farmers in Kansas.

In addition, our General Counsel feels there is a major problem based on the recent ruling by the Kansas Supreme Court where they found SB 696 to be unconstitutional. Our Counsel feels that HB 2447 does not pass the test because of the impairment of contract that exists by this partial redemption.

Therefore we request you report HB 2447 adversely. We greatly appreciate the opportunity to express our concerns regarding this matter to you.

**Wichita District
Farm Credit Council, Inc.**

245 North Waco
P.O. Box 2940
Wichita, Kansas 67201-2940
316/266-5540

805 Chisholm Trail
P.O. Box 909
Enid, Oklahoma 73701

4695 Franklin Street
P.O. Box 16046
Denver, Colorado 80216

3109 Carlisle, N.E.
P.O. Box 37440
Albuquerque, New Mexico 87176-7440

March 4, 1987

The Honorable Clifford Campbell, Chairman
House Committee on Agriculture and Small Business
State Capitol
Topeka, Kansas 66612

Dear Mr. Chairman:

I know you and all legislators are very busy and I appreciate the opportunity to comment on proposals pending before you.

The Farm Credit Council and our members across Kansas support the continuation of the Farmer Assistance Counseling and Training Service (FACTS). We believe there is much benefit in the business assistance, referral, and emotional counseling for farmers which FACTS provides. We commend the FACTS staff and the State Board of Agriculture for the way they are operating the program and working with the voluntary mediation program. We hope that the FACTS program will be continued, and possibly expanded to provide assistance to rural communities.

In addition, as you are aware, we support the thrust of House Bill 2300 introduced by Representative Lee Hamm and others. This legislation would require lenders to provide certain notice to debtors and allow farmers and other debtors to have their mortgage reinstated. While we propose some clarifications, we would accept the thrust of H.B. 2300 in a spirit of cooperation.

In the last year, we have altered our process so borrowers are notified of our forbearance policy and their opportunities for seeking forbearance, and also have an opportunity to appeal an adverse decision to a credit review committee. These new review committees must consist of a majority of persons who were not involved in the original adverse decision, and must include farmer representation. In contrast to mandatory mediation, this process can and does take place without the initiation of formal, public foreclosure. These procedures are already in place, without mandatory mediation, and are operating without cost to farmers or to the State.

The Honorable Clifford Campbell
March 4, 1987
Page Two

Beyond that, I should report to you on the current status of the Farm Credit System's troubled debt restructuring program. On December 1, 1986, we formed the Special Assets Group, a team of loan officers specializing in the work-out of troubled loans. Since that time, the SAG has completed 738 cases. These are our most distressed borrowers, and a year ago they would all have been in foreclosure. However, due to the work of the SAG and the cooperation of farmers, attorneys, and other lenders, much progress has been made.

Of the 738 loans, which would all have been in foreclosure a year ago, more than 300 have been restructured or some other action has been taken to keep the member on the land. And in more than 675 cases -- more than 90% -- we've been able to reach an agreement with the borrower out of court, and managed to avoid foreclosure. Many of these involve an arrangement which allows the family to remain in the farmstead. We believe this is a good record, in only 2 1/2 months.

In light of our support for the voluntary mediation program, our support for House Bill 2300, and our own debt restructuring activity, we believe that H.B. 2308 and H.B. 2447 would be unnecessary and in fact would be costly and legally cumbersome. We hope the Agriculture Committee will support these ongoing efforts without H.B. 2308 and H.B. 2447. We appreciate the committee's concern and look forward to working with you.

Sincerely,



Ron Wilson
Executive Director

/ss

Partial Redemption Issues -- Agricultural Land

- I. The Kansas Supreme Court in deciding the constitutionality of the Family Farm Rehabilitation Act states in syllabus #5: "The Family Farm Rehabilitation Act...substantially impairs the contractual relationship between the mortgagor and mortgagee because it (1) impairs the mortgage indebtedness; (2) alters the contract rate of interest; (3) permits a partial redemption of the mortgaged property; and (4) provides inadequate protection for the mortgagee." (Federal Land Bank v. Bott, case no. 59,734.)
- II. The Kansas Supreme Court explains its holding in the Bott case in regard to partial redemption as follows: "An additional impairment of the contract results from the Act's allowance of a 'partial redemption.' K.S.A. 1986 Supp. 2-3407 permits a farmer to redeem 'any part or portion' of the agricultural land upon which execution has been stayed. Thus, the farmer could choose to redeem the most valuable portion of land and leave the mortgagee with a severed portion of little value."

RT