

September 14, 2016

**To:** File

**From:** Peter Wattson

**Subj:** Farmer-Lender Mediation Act, 1986 Minn. Laws 398

The Farmer-Lender Mediation Act began as sections 6 to 24 of S.F. No. 1636, proposed to be coded as Minn. Stat. §§ 583.20 to 583.39. It was introduced on February 3, 1986, by Senator Roger D. Moe and referred to the Committee on Agriculture and Natural Resources. SENATE JOURNAL 3527. Senators Charlie Berg, Gary DeCramer, and Clarence Purfeerst were added as authors the same day. Senator Keith Langseth was added as an author on February 12.

Section 583.23 created the Farm Mediation Commission, composed of the Commissioners of Agriculture, Commerce, and Finance, with the Commissioner of Finance as chair. Section 583.28, subd. 10, authorized the commission to issue a postponement order to implement a mediation agreement. A postponement order “prevents creditors of a debtor from initiating or continuing proceedings to foreclose a mortgage, terminate a contract for deed, repossess collateral, seize, execute on, levy on, or attach agricultural property, or collect debts secured by the agricultural property of the debtor.” § 583.22, subd. 7. Section 583.32, subd. 1, required the commission, before issuing a postponement order, to “consider the . . . good faith efforts by the debtor and creditor to reach agreement on their financial relations . . . .”

On February 5, the Committee on Agriculture and Natural Resources recommended that the bill do pass as amended and be referred to the Committee on Judiciary. SENATE JOURNAL 3558. Section 583.32, subd. 1, was amended to authorize the commission to issue a postponement order “if . . . the creditors have not made good faith efforts to reach a mediation agreement with the debtor and the debtor has made good faith efforts to reach a mediation agreement.”

On February 7, S.F. No. 1636, the first engrossment, was heard in the Committee on Judiciary and recommended to pass as amended and be referred to the Committee on Finance. The amendments did not affect § 583.32. *See Minutes, Senate Judiciary Committee* 1, (Feb. 7, 1986). The bill was reported to the Senate on February 10. SENATE JOURNAL 3624.

On February 11, S.F. No. 1636, the second engrossment, was heard in the Committee on Finance and amended, but the amendments did not affect § 583.32. Senator Luther moved an amendment that filled in the blanks in the appropriation section, and then moved that the bill, as amended, be recommended to pass. *See Minutes, Senate Finance Committee*, 2 (Feb. 11, 1986). The bill was reported to the Senate on February 12. SENATE JOURNAL 3672.

On February 13, Senator Roger Moe designated S.F. No. 1636, the third engrossment, as a Special Order for immediate consideration. SENATE JOURNAL 3713. Senator Luther moved to amend page 16, lines 7 to 10, to say that commission and farm mediation board meetings are open to the public, except any portion of commission meetings that discuss or refer to private or nonpublic data. SENATE JOURNAL 3719. The amendment was adopted, as were several other amendments, and the bill was passed on a vote of 45-15. SENATE JOURNAL 3720.

On February 17, S.F. No. 1636, the fourth engrossment, was given its first reading in the House of Representatives and referred to the Committee on Agriculture, HOUSE JOURNAL \_\_\_\_, to which its companion, H.F. No. 1808, introduced by Representative Redalen on February 3, 1986, had been referred. HOUSE JOURNAL \_\_\_\_\_. Neither bill was reported out of the committee.

On March 6, 1968, in the Committee on Finance, Senator Tom Nelson moved a delete-everything amendment, SCS1672A-2, to insert the contents of S.F. No. 1636, the fourth engrossment, (and several other bills) into S.F. No. 1672, authored by Senators Davis, Merriam, Roger Moe, Frederickson, and Dean Johnson. The amendment was adopted. *See Minutes, Senate Finance Committee*, 2. The language of § 583.32 remained unchanged. The report from the Committee on Finance was adopted by the Senate. SENATE JOURNAL 4709, 4715 (March 6, 1986).

On March 6, H.F. No. 1599, a bill to create on the Capitol Mall a memorial to Native Americans, was given its first reading in the Senate. SENATE JOURNAL 4602. Rather than being referred to the Committee on Veterans and General Legislation, where its companion, S.F. No. 2268, authored by Senators Stumpf, Doug Johnson, Roger Moe, Willet, and Collin Peterson, resided, on a motion by Senator Roger Moe, H.F. No. 1599 was laid on the table. SENATE JOURNAL 4602.

On March 7, Senator Davis moved to take H.F. No. 1599 from the table, declare an urgency, give it its second and third readings, and place it on final passage. SENATE JOURNAL 4821. Senator Davis then moved to delete everything after the enacting clause and insert the language of S.F. No. 1672, the third engrossment. SENATE JOURNAL 4822. Numerous amendments were adopted, but none to the farmer-lender mediation sections. *See SENATE JOURNAL 4822-32*. The amended House File passed the Senate 52-7. SENATE JOURNAL 4832.

On March 10, the House of Representatives refused to concur in the Senate amendments

to H.F. No. 1599 and asked for a conference committee. SENATE JOURNAL 4889. Senators Davis, Berg, Stumpf, DeCramer, and Langseth were appointed as conferees on the part of the Senate. SENATE JOURNAL 4889.

On March 19, the conference committee reported a delete-everything amendment to H.F. No. 1599. SENATE JOURNAL 5977. The amendment included the Farmer-Lender Mediation Act as article 1, §§ 5-17. SENATE JOURNAL 5981-87. Postponement orders were eliminated. Section 12, proposed to be coded as Minn. Stat. § 583.27, required that the farmer and lender engage in mediation in good faith:

Sec. 12. [583.27] [GOOD FAITH REQUIRED, COURT SUPERVISED MEDIATION.]

Subdivision 1. [OBLIGATION OF GOOD FAITH.] The parties must engage in mediation in good faith. Not participating in good faith includes: (1) a failure on a regular or continuing basis to attend and participate in mediation sessions without cause; (2) failure to provide full information regarding the financial obligations of the parties and other creditors; (3) failure of the creditor to designate a representative to participate in the mediation with adequate authority to fully settle, compromise, or otherwise mediate the matter; (4) lack of a written statement of debt restructuring alternatives and a statement of reasons why alternatives are unacceptable to one of the parties; (5) failure of the creditor to release to the debtor necessary living and farm operating expenses; or (6) other similar behavior which evidences lack of good faith by the party. A failure to agree to reduce, restructure, refinance, or forgive debt does not, in itself, evidence lack of good faith by the creditor.

Subd. 2. [LACK OF GOOD FAITH AFFIDAVIT; MEDIATOR'S RESPONSIBILITY.] If the mediator determines that either party is not participating in good faith as defined in subdivision 1, the mediator shall file an affidavit indicating the reasons for the finding with the agricultural extension service and both parties.

Subd. 3. [CREDITOR'S LACK OF GOOD FAITH; COURT SUPERVISED MEDIATION.] If the mediator finds the creditor has not participated in mediation in good faith, the debtor may require court supervised mandatory mediation by filing the affidavit with the district court of the county where the property is located with a request for court supervision of mediation and filing a copy of the request with the creditor. Upon request the court shall require both parties to mediate under the supervision of the court in good faith for a period of not less than 60 days. All creditor remedies must be suspended during this period. The court may issue orders necessary to effect good faith mediation. Following the 60-day period, if the court finds the creditor has not participated in mediation in good faith, the court shall by order suspend the creditor's remedies for an

additional period of 180 days. A creditor found by the mediator not to have participated in good faith shall pay attorneys' fees and costs of the debtor requesting court-supervision of mediation or additional suspension of creditor's remedies.

Subd. 4. [DEBTOR LACK OF GOOD FAITH.] A creditor may immediately proceed with creditor's remedies upon receipt of a mediator's affidavit of a debtor's lack of good faith notwithstanding any other requirements of sections 5 to 17.

The bill, as amended by the conference committee, was repassed by the Senate on a vote of 64-2. SENATE JOURNAL 6060 (Mar. 19, 1986). It was enacted as 1986 Minn. Laws 398.