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10/3/03
Date

2003 HOUSE JUDICIARY

HB 1281

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1281

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-4-03

Tape Number	Side A	Side B	Meter #
1	x		6.5-37
Committee Clerk Signature <i>M. Penrose</i>			

Minutes: 12 members present, 1 member absent (Rep. Eckre)

Chairman DeKrey: We will open the hearing on HB 1281.

Charles McCay, Farm Credit Services: Support (see attached testimony and amendment).

Rep. Onstad: How often would this bill have been used in past years.

Mr. McCay: Seldom, our attorneys often advise us that it usually costs more than it is worth.

Rep. Onstad: If not worthwhile, why do the bill.

Mr. McCay: There are a series of laws on the books of ND, none of which have a great impact, but when all the bills are taken together, they have a significant impact.

Chairman DeKrey: Thank you. Any testimony in support? Any testimony in opposition?

Richard Schlosser, Farmers Union: Opposed. We are opposed to treating farm property like community property, we see no reason to change what we have now, leave the protections in place.

Rep. Delmore: With the downturn in farm property values, is the bill being used now.

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House Judiciary Committee
Bill/Resolution Number HB 1281
Hearing Date 2-4-03

Mr. Schlosser: Hasn't been used much. But in the event of a downturn, it would provide that judicial forbearance and time frame of 90 days and a second chance to take a look at the operation to see if we could do some rescheduling.

Rep. Onstad: It is quite apparent that the lending agencies weren't going to hold any risk at all. They always expect the persons holding this, to hold all of this. Nothing is of certainty. With this in place, it seems to be in that they are holding more of the collateral against the property, where is the risk.

Mr. Schlosser: Producers share liability - we do the due diligence.

Chairman DeKrey: Thank you. Any further testimony in opposition.

Elwood "Woody" Barth, Chairperson of Ag Credit Union: (see attached testimony)

Opposed.

Rep. Maragos: Was the legislature wise in their decision 10 years ago in regard to commercial lending.

Mr. Barth: I am not an expert in commercial lending. I know about ag. lending. The history has told us that commercial and ag properties have always been separated. Was it good to make that legislation 10 years ago, I don't know.

Rep. Klemin: When you do ag. loans, I assume that you have procedures that require an appraisal be done to determine the value of the land so you know what you're going to need in relation to that value. What % do you use in debt/asset ratio.

Mr. Barth: We're currently at somewhere between 60-65%, depending on the circumstances of the loan being made, we keep the ratios lower - this benefits the farmer as well as our institution.

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House Judiciary Committee

Bill/Resolution Number HB 1281

Hearing Date 2-4-03

Rep. Klemin: If you were able to get a deficiency judgment, if loans are about 65%, the farm owner is going to have to have about 35% equity in that. If you were able to get a deficiency judgment, and we start looking at the equity side more than the cash flow, would this make it easier for the farmer to get a higher loan?

Mr. Barth: There are two answers to that, two angles the board would look at. The ability of the farmer to cash flow down more debt, they probably couldn't cash flow much more debt than that. And secondly it would expose our credit union to more risk, a risk that we're probably not willing to take. There is not a lot of benefit to the credit union or to that farmer.

Rep. Klemin: Based on your loan policies, it would seem to me that it would be very unlikely that you would be in the position where you would be getting that deficiency judgment.

Mr. Barth: That's very true. I believe we have truth in lending policies. It keeps both borrowers and lenders on an even playing field.

Rep. Klemin: You're opposed to the bill.

Mr. Barth: Yes I am.

Chairman DeKrey: Thank you. Any further testimony? We will close the hearing.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1281

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
2		x	27-38
Committee Clerk Signature <i>Penrose</i>			

Minutes: 13 members present.

Chairman DeKrey: What are the committee's wishes in regard to HB 1281.

Rep. Maragos: I move the amendments.

Rep. Grande: Seconded.

Voice vote: Carried.

Rep. Grande: I move a Do Pass as amended.

Rep. Kingsbury: Seconded.

8 YES 5 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Klemin

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10/3/03
Date

30407.0101
Title.0200

Adopted by the Judiciary Committee
February 11, 2003

VR

2/12/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1281 JUD 2-12-03

Page 1, line 9, replace "2002" with "2003"

Renumber accordingly

Page No. 1

30407.0101

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Date: 2/11/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1281

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30407.0101 . 0200

Action Taken Do Pass as Amended

Motion Made By Rep. Grande Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore		✓
Vice Chairman Maragos	✓		Rep. Eckre		✓
Rep. Bernstein	✓		Rep. Onstad		✓
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar		✓			
Rep. Wrangham		✓			

Total (Yes) 8 No 5

Absent 0

Floor Assignment Rep. Klemin

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

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10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 12, 2003 2:47 p.m.

Module No: HR-27-2459
Carrier: Klemin
Insert LC: 30407.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1281: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1281 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "2002" with "2003"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-27-2459

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2003 TESTIMONY

HB 1281

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10/3/03
Date

HB1281

TESTIMONY

Presented by Charles McCay on behalf of Farm Credit Services.

The deficiency judgment statutes allow lenders to seek a judgment against the borrower in a case where the value of the real estate in a foreclosure action is less than the debt.

North Dakota did not allow deficiency judgments at all until 1951 and then in limited cases. The legislature revised the deficiency judgment laws in 1993 and 1995 but exempted farm property from the revisions.

HB 1281 will allow farm property to be treated the same as commercial property for purposes of deficiency judgment. The key changes will be as follows:

- Farm property lenders must provide a notice in the note and mortgage that the lender has the right to obtain and collect a deficiency judgment.
- Presently, the amount of the deficiency in foreclosures of commercial property is determined in the same legal proceeding as the foreclosure. For farm property, the deficiency amount is determined by a separate jury trial held within 90 days of the sheriff's sale. This bill would make the process for farm property the same as for commercial property.
- Presently, the deficiency amount for commercial property is based on an appraisal process and fair market value. The amount of the deficiency in a farm foreclosure is based on a jury determination of "fair value". Market value may or may not be considered. This bill would make farm property the same as commercial.
- The time period for collecting the judgment will be change from the current three years for farm property to ten years as is currently allowed for commercial

Farm Credit Services supports HB 1281 because the requirement in the present law for a separate jury trial adds significant cost to the process of obtaining a deficiency judgment and the use of "fair value" rather than "fair market value" makes the results of the jury trial very uncertain.

Farm and economic development leaders are strongly encouraging more animal agriculture and more value added ventures in North Dakota. These enterprises usually involve specialized facilities that have little value if not used for their intended purpose and will decline in value rapidly if not properly maintained. If deficiency judgments are difficult to obtain, the borrower has little incentive to maintain the facilities in usable condition.

There are many situations when financially strong borrowers have business or personal reasons for limiting the amount of land available as security for an otherwise sound project. These reasons could include a desire to not disturb an existing mortgage or contract for deed, partnership arrangements or estate planning. Removing some of the cost and uncertainty from the deficiency judgment process could help make financing available.

The changes in HB 1281 would not affect mortgages currently in force because of the need for the notice. The court still has room to exercise some judgment in determining the amount of the judgment by considering "other matters that may affect the value".

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Testimony of Elwood "Woody" Barth
Rancher/Farmer
House Bill 1281
House Judiciary Committee
Prairie Room
February 4, 2003

Chairman DeKrey and members of the House Judiciary Committee. My name is Woody Barth. I ranch and farm in Southern Morton County. I am here today to testify in opposition to House Bill 1281, a bill that seeks to change lenders ability to obtain deficiency judgments on Agricultural Property.

As a person who currently serves as Chairperson of an Agricultural Credit Union located in Flasher, North Dakota (twelve years as Chairperson) and as an agricultural producer, I believe I can look at this issue objectively. (As a lender and a borrower of Ag credit.)

- 1) As our North Dakota statute now reads, there is no ability to obtain deficiency judgments on agricultural property. This encourages loan policies that are conservative in nature and will not overextend credit. This limits the potential loss to financial institutions and keeps ag producers on solid financial ground.
- 2) With only a few exceptions, over the past 80 years, we have seen very solid agricultural land values; thus making the ability to obtain deficiency judgments a ^{moot} mute point. This has ultimately saved legal costs for both lenders and farmers.

- 3) We need to encourage the use of venture capital to maintain solid debt/asset ratios in the area of value-added agricultural enterprises. I am a member of Dakota Prairie Beef Feedlot located near Scranton, North Dakota and we used member capital to make our venture cash flow and become profitable. This again limits the exposure of financial institutions.

Mr. Chairman and members of the committee for the reasons I have just outlined, I urge a do not pass on House Bill 1281. I would be happy to answer any questions you may have.

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