

HOUSE BILL NO. 11

INTRODUCED BY HOLLIDAY, SCHULTZ, ASAY, GALT, VINCENT,
JACK MOORE, DARKO, LYBECK, KEYSER, COBB, ERNST, HANSON,
WEEDING, RAPP-SVRCEK, CONOVER, NEUMAN, HOWE, BENGTSON,
LANE, THOFT, DONALDSON, RANEY, CODY, ABRAMS, HAND

BY REQUEST OF THE INTERIM SUBCOMMITTEE
ON AGRICULTURAL PROBLEMS

IN THE HOUSE

March 25, 1986	Introduced and referred to Committee on Appropriations. Fiscal note requested.
March 26, 1986	Fiscal note returned.
March 27, 1986	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached.
March 28, 1986	Bill printed and placed on members' desks. Second reading, do pass. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 28, 1986	Introduced and referred to Committee on Agriculture, Livestock and Irrigation. Committee recommend bill be concurrred in. Report adopted.
----------------	---

March 28, 1986

Second reading, concurred in.

Third reading, concurred in.
Ayes, 44; Noes, 5.

Returned to House.

IN THE HOUSE

March 29, 1986

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *11* *Vigant*
2 INTRODUCED BY *Frederick S. Dyer, Gary Galt, Moore*
3 *Alger* BY REQUEST OF THE INTERIM SUBCOMMITTEE *Ray Sprick*
4 *Lybeck* *Cobb* ON AGRICULTURAL PROBLEMS *Benjamin*
5 *Pyler Ernst* *William* *Benjamin*
6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN
7 AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM TO AID *David*
8 FINANCIALLY DISTRESSED FARMERS; PROVIDING FOR FINANCIAL *Kara*
9 COUNSELING, FARM MANAGEMENT TRAINING, LEGAL SERVICES, *Coyle*
10 VOLUNTARY DEBT MEDIATION, MENTAL HEALTH ASSISTANCE, SUPPORT *David*
11 COUNSELING, AND REFERRAL SERVICES; AUTHORIZING THE
12 DEPARTMENT OF AGRICULTURE TO ADMINISTER THE PROGRAM;
13 APPROPRIATING FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE
14 DATE AND A TERMINATION DATE."
15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17 Section 1. Purpose. It is the declared purpose of
18 [this act] to establish an emergency program to directly
19 assist individual farmers who are financially distressed by
20 providing them assistance and counseling to manage farm
21 credit problems, to avoid forced liquidation or farm
22 foreclosure, and to cope with the financial stress resulting
23 from the adverse conditions of agriculture in this state.
24 Section 2. Definitions. As used in [this act], unless
25 the context indicates otherwise, the following definitions

1 apply:

2 (1) "Agricultural production" means the production of
3 livestock, poultry, field crops, fruit, or other animal and
4 vegetable matter for food or fiber.

5 (2) "Agricultural property" means:

6 (a) real property that is principally used for
7 agricultural production; and

8 (b) personal property that is part of an agricultural
9 production operation or used as security to finance such an
10 operation, including equipment, crops, livestock, and the
11 proceeds of any security.

12 (3) "Department" means the department of agriculture
13 provided for in 2-15-3001.

14 (4) "Farmer" means a person who owns or operates a
15 farm or ranch primarily for the purpose of agricultural
16 production.

17 (5) "Mediator" means a person authorized under
18 [section 7] to serve as a negotiator between a farmer and a
19 creditor.

20 (6) "Program" means the agricultural assistance and
21 counseling program provided for in [section 3].

22 (7) "Secured creditor" means:

23 (a) the holder of a mortgage on agricultural property;

24 (b) a vendor of a contract for deed of agricultural
25 property;

(c) a person with a lien or security interest in agricultural property; or

(d) a judgment creditor with a judgment against a debtor engaged in agricultural production.

(8) "Unsecured creditor" means a person who extends credit without security to a farmer for the purchase of goods or services used in agricultural production.

Section 3. Agricultural assistance and counseling program. (1) The department shall establish an agricultural assistance and counseling program to aid financially distressed farmers in this state.

(2) Under the program, the department shall make available to farmers the following types of assistance:

(a) financial counseling;

(b) farm management training;

(c) legal services;

(d) voluntary debt mediation as provided for in [section 6];

(e) mental health assistance;

(f) support counseling; and

(g) referral services.

Section 4. Powers and duties of department. (1) For the purpose of administering the program, the department shall:

(a) utilize the services of:

(i) the cooperative extension service at Montana state university;

(ii) state agencies;

(iii) legal service corporations or private law firms;

(iv) community service organizations;

(v) private business;

(vi) professional associations;

(vii) regional mental health corporations;

(viii) volunteer organizations; and

(ix) any other person or entity;

(b) contract for services with qualified personnel, including financial counselors, farm management specialists, accountants, attorneys, and mental health professionals, to provide the assistance required under [section 3];

(c) hire a coordinator to implement and manage the program;

(d) provide training for interested and qualified persons to assist farmers needing help with farm financial management problems;

(e) establish a toll-free telephone line to receive requests for assistance, counseling, and referral of services; and

(f) compile a directory of services available through the program.

(2) The department may:

(a) establish an advisory board to assist the department in determining policy and in developing plans for administration of the program; and

(b) adopt rules necessary for the administration of the program.

Section 5. Gifts and grants. The department may accept monetary or in-kind contributions, gifts, and grants provided to support the program.

Section 6. Voluntary mediation -- filing procedure -- dismissal of requests. (1) A farmer who is in danger of imminent foreclosure, or who has received a notice of foreclosure, on agricultural property or a secured creditor may request mediation of the farmer's indebtedness by filing a request with the department on a form prescribed by the department.

(2) In filing a mediation request, the farmer shall provide:

(a) the name and address of each secured and unsecured creditor;

(b) the amount owed to each creditor;

(c) the amount of the periodic installment payments due each creditor; and

(d) any additional information the department may require.

(3) A farmer requesting mediation shall authorize the

release to the department of any information held by a creditor.

(4) Upon receipt of a properly completed mediation request form, the department or its agent shall evaluate each request and may direct a mediator to meet with the farmer and secured creditor to assist in mediation. An unsecured creditor may participate in mediation between a farmer and secured creditor if each party agrees.

(5) Subject to the provisions of subsection (6), the department shall immediately terminate an attempt at mediation and dismiss the mediation request if at any time it finds that:

(a) a secured creditor does not agree to participate in mediation requested by the farmer; or

(b) the farmer does not agree to participate in any mediation requested by a secured creditor.

(6) If the mediation request involves more than one secured creditor and any one creditor does not agree to participate in mediation, the department shall dismiss the mediation request only insofar as it relates to that creditor.

Section 7. Duties and requirements of mediators. (1) A mediator must be qualified to provide the services required under [this act]. A mediator must be an impartial person knowledgeable in agricultural and financial matters.

1 (2) In carrying out his properly authorized duties,
 2 the mediator shall:
 3 (a) listen to the farmer and any creditor desiring to
 4 be heard;
 5 (b) attempt to negotiate an agreement that:
 6 (i) extends the term of credit;
 7 (ii) reduces the dollar amount of payments under
 8 credit; or
 9 (iii) permits the farmer to continue in agricultural
 10 production and provides reasonable security to the creditor;
 11 and
 12 (c) advise, counsel, and assist the farmer and
 13 creditor in attempting to arrive at a satisfactory
 14 agreement.
 15 (3) A mediator may attempt to:
 16 (a) arrange mutually agreed upon forbearance from
 17 litigation, rescheduled or renegotiated debt, voluntary
 18 sale, or other liquidation of any agricultural property; and
 19 (b) obtain assistance from any public or private
 20 agency.
 21 Section 8. Mediation agreement. (1) If an agreement is
 22 reached between the farmer and a creditor, the mediator
 23 shall draft a written mediation agreement to be signed by
 24 the farmer and the creditor.
 25 (2) A farmer and any creditor who are parties to a

1 mediation agreement:
 2 (a) are bound by the terms of the agreement;
 3 (b) may enforce the mediation agreement as a legal
 4 contract; and
 5 (c) may use the mediation agreement as a defense
 6 against an action contrary to the mediation agreement.
 7 Section 9. Unsuccessful mediation. If a mediation
 8 agreement cannot be reached, the mediator shall recommend to
 9 the department that the mediation be concluded and the
 10 mediation request be dismissed.
 11 Section 10. Confidentiality of records. (1) All
 12 materials, data, and information received by the department
 13 with respect to any request filed under [section 6] are
 14 confidential and are not subject to examination or
 15 disclosure as public information.
 16 (2) No official, employee, or agent of the department
 17 may knowingly disclose any materials, data, or information
 18 concerning a mediation request without the consent of the
 19 farmer and the creditor.
 20 Section 11. Closed meetings. Meetings between a farmer
 21 and any creditor conducted by a mediator are not open to
 22 public participation and are not subject to the provisions
 23 of the open meeting law contained in 2-3-203.
 24 Section 12. Appropriation. There is appropriated from
 25 the general fund to the department of agriculture for the

LC 0007/01

1 biennium ending June 30, 1987, the sum of \$350,000 to
2 administer [this act].

3 Section 13. Effective date -- termination. This act is
4 effective on passage and approval and terminates July 1,
5 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB011, Version: as introduced

Description of Proposed Legislation:

A bill to provide an appropriation to establish an agricultural assistance and counselling program.

Assumptions:

1. The proposed legislation sunsets on July 1, 1987.
2. The department will implement the proposed programs within the appropriated amount.
3. An unknown number of farms will remain in operation.

Fiscal Impact:

The proposed legislation will have a positive impact on state and local revenues, but it is not possible to estimate the number of farm operations that will remain viable because of the proposed legislation.

Expenditures:

N/A

Revenues:

N/A

Long-Range Effects of Proposed Legislation:

N/A

Technical or Mechanical Defects or Conflicts With Existing Legislation:

N/A

David L. Hunter 3/26/86
BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Rep. Gay Hellday March 25, 1986
PRIMARY SPONSOR DATE

Fiscal Note for HB011

HB 11

APPROVED BY COMMITTEE
ON APPROPRIATIONS

STATEMENT OF INTENT

HOUSE BILL 11

House Appropriations Committee

A statement of intent is required for this bill because it contains a delegation of authority to allow the department of agriculture to adopt rules necessary for the administration of an agricultural assistance and counseling program.

It is the intent of the legislature that the department of agriculture establish an emergency program fulfilling the purpose stated in section 1. Under such program, the department must provide to financially distressed farmers and ranchers the types of assistance enumerated in section 3.

To the best extent possible, the department should first utilize the available services of the cooperative extension service, state agencies, private businesses, professional organizations, volunteer groups, and other persons having knowledge and experience in providing the type of assistance and counseling required by this bill. The cooperative extension service and other state agencies should cooperate with the department of agriculture in providing needed services.

In contracting for services mandated in section 3, the

department should ensure that contracted personnel are properly qualified and trained to provide assistance. Moreover, the department should establish a procedure to monitor the delivery of services and to guarantee the proper expenditure of public funds.

All contracts for services should be issued on a fair and impartial basis. In addition, all contracts should contain a clause requiring insurance against liability for the negligence of personnel in providing assistance or counseling to financially distressed farmers and ranchers.

In devising an agricultural assistance and counseling program, the department should examine the various financial counseling, debt mediation, and other programs established in many states to aid agricultural producers who are in serious financial trouble. Specifically, the department should consider the success of similar programs in North Dakota, South Dakota, Iowa, Illinois, Minnesota, Missouri, and Kansas.

HOUSE BILL NO. 11

INTRODUCED BY HOLLIDAY, SCHULTZ, ASAY, GALT, VINCENT,
JACK MOORE, DARKO, LYBECK, KEYSER, COBB, ERNST, HANSON,
WEEDING, RAPP-SVRCEK, CONOVER, NEUMAN, HOWE, BENGTSON,
LANE, THOFT, DONALDSON, RANEY, CODY, ABRAMS, HAND

BY REQUEST OF THE INTERIM SUBCOMMITTEE

ON AGRICULTURAL PROBLEMS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN
AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM TO AID
FINANCIALLY DISTRESSED FARMERS; PROVIDING FOR FINANCIAL
COUNSELING, AND FARM MANAGEMENT TRAINING CONSULTING, LEGAL
INFORMATION SERVICES, VOLUNTARY DEBT MEDIATION, MENTAL
HEALTH ASSISTANCE, SUPPORT COUNSELING, AND REFERRAL
SERVICES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO
ADMINISTER THE PROGRAM; APPROPRIATING FUNDS; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. It is the declared purpose of
[this act] to establish an emergency program to directly
assist individual farmers who are financially distressed by
providing them assistance and counseling to manage farm
credit problems, to avoid OR MITIGATE forced liquidation or
farm foreclosure, and to cope with the financial stress

resulting from the adverse conditions of agriculture in this
state. IT IS A GOAL OF THIS PROGRAM TO MAXIMIZE PROGRAM
EFFECTIVENESS BY UTILIZING PEER COUNSELORS AND BY
COOPERATING WITH THE PRIVATE SECTOR.

Section 2. Definitions. As used in [this act], unless
the context indicates otherwise, the following definitions
apply:

(1) "Agricultural production" means the production of
livestock, poultry, field crops, fruit, or other animal and
vegetable matter for food or fiber.

(2) "Agricultural property" means:

(a) real property that is principally used for
agricultural production; and

(b) personal property that is part of an agricultural
production operation or used as security to finance such an
operation, including equipment, crops, livestock, and the
proceeds of any security.

(3) "Department" means the department of agriculture
provided for in 2-15-3001.

(4) "Farmer" means a person who owns or operates a
farm or ranch primarily for the purpose of agricultural
production.

(5) "Mediator" means a person authorized under
[section 7] to serve as a negotiator between a farmer and a
creditor.

(6) "PEER COUNSELOR" MEANS A PERSON WHO IS OR HAS BEEN INVOLVED IN PRODUCTION AGRICULTURE AND WHO HAS BEEN TRAINED THROUGH THE DEPARTMENT AND OTHERS IN FINANCIAL COUNSELING AND MEDIATION OR NEGOTIATION TECHNIQUES AND WHO WORKS TO AID FINANCIALLY DISTRESSED FARMERS THROUGH THIS PROGRAM.

{6}(7) "Program" means the agricultural assistance and counseling program provided for in [section 3].

{7}(8) "Secured creditor" means:

(a) the holder of a mortgage on agricultural property;

(b) a vendor of a contract for deed of agricultural property;

(c) a person with a STATUTORY lien or A PERFECTED security interest in agricultural property; or

(d) a judgment creditor with a judgment against a debtor engaged in agricultural production.

{8}(9) "Unsecured creditor" means a person who extends credit without A PERFECTED security INTEREST to a farmer for the purchase of goods or services used in agricultural production.

Section 3. Agricultural assistance and counseling program. (1) The department shall establish an agricultural assistance and counseling program to aid financially distressed farmers in this state.

(2) Under the program, the department shall make available to farmers the following types of assistance:

(a) financial counseling CONSULTING;

(b) farm management training CONSULTING;

(c) legal INFORMATION services;

(d) voluntary debt mediation as provided for in [section 6];

(e) mental health assistance;

(f) support counseling; and

(g) referral services.

Section 4. Powers and duties of department. (1) For the purpose of administering the program, the department shall:

(a) utilize the services of:

(I) A NETWORK OF TRAINED PEER COUNSELORS WHO CAN DIRECTLY ASSIST FINANCIALLY DISTRESSED FARMERS;

{ii}(II) the cooperative extension service AND THE COLLEGE OF AGRICULTURE at Montana state university;

{iii}(III) state OR FEDERAL agencies;

{iiii}(IV) legal service corporations, THE UNIVERSITY OF MONTANA LAW SCHOOL, or private law firms;

{iv}(V) community service organizations;

{v}(VI) private business;

{vi}(VII) professional associations;

{vii}(VIII) regional mental health corporations;

{viii}(IX) volunteer organizations; and

{ix}(X) any other person or entity;

1 (b) contract for services with qualified personnel,
2 including financial PEER counselors, farm management
3 specialists, accountants, attorneys, and mental health
4 professionals, to provide the assistance required under
5 [section 3];

6 (c) hire a coordinator AND NECESSARY STAFF to
7 implement and manage the program;

8 (d) provide training for interested and qualified
9 persons, INCLUDING PEER COUNSELORS, to assist farmers
10 needing help with farm financial management problems;

11 (e) establish a toll-free telephone line to receive
12 requests for assistance, counseling, and referral of
13 services; and

14 (f) compile a directory of services available through
15 the program.

16 (2) The department may:

17 (a) establish an advisory board to assist the
18 department in determining policy and in developing plans for
19 administration of the program; and

20 (b) adopt rules necessary for the administration of
21 the program.

22 Section 5. Gifts and grants. The department may accept
23 monetary or in-kind contributions, gifts, and grants
24 provided to support the program.

25 Section 6. Voluntary mediation -- filing procedure --

1 dismissal of requests. (1) A farmer who is in danger of
2 imminent foreclosure, ~~or who has received a notice of~~
3 ~~foreclosure~~, on agricultural property or a secured creditor
4 may request mediation of the farmer's indebtedness by filing
5 a request with the department on a form prescribed by the
6 department.

7 (2) In filing OR RESPONDING TO a mediation request,
8 the farmer shall provide:

9 (a) the name and address of each secured and unsecured
10 creditor;

11 (b) the amount owed to each creditor;

12 (c) the amount of the periodic installment payments
13 due each creditor; and

14 (D) ANY FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW
15 STATEMENTS, INCLUDING THOSE RELATED TO ANY NONFARM
16 ACTIVITIES; AND

17 ~~(d)~~ (E) any additional information the department may
18 require.

19 (3) IN FILING OR RESPONDING TO A MEDIATION REQUEST, A
20 SECURED CREDITOR SHALL PROVIDE:

21 (A) INFORMATION PERTAINING TO THE BASIS OF THE CREDIT
22 DETERMINATION;

23 (B) FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW
24 STATEMENTS ON THE RESPECTIVE FARMER;

25 (C) STATEMENTS REGARDING THE STATUS OF THE FARMER'S

1 LOAN PERFORMANCE;

2 (D) THE NAME AND TITLE OF THE REPRESENTATIVE OF THE
 3 CREDITOR AUTHORIZED TO ENTER INTO A BINDING MEDIATION
 4 AGREEMENT; AND

5 (E) ANY ADDITIONAL INFORMATION THE DEPARTMENT MAY
 6 REQUIRE.

7 (3)(4) A farmer requesting OR SECURED CREDITOR WHO
 8 AGREES TO PARTICIPATE IN mediation shall authorize the
 9 release to the department of any information held by a
 10 creditor.

11 (4)(5) Upon receipt of a properly completed mediation
 12 request form, the department ~~or--its--agent--shall--evaluate~~
 13 ~~each--request--and--may~~ SHALL direct a mediator to meet with
 14 the farmer and secured creditor to assist in mediation. An
 15 unsecured creditor may participate in mediation between a
 16 farmer and secured creditor if each party agrees OR IF THE
 17 MEDIATOR DETERMINES THAT AN UNSECURED CREDITOR IS A
 18 NECESSARY PARTY TO THE MEDIATION.

19 (5)(6) Subject to the provisions of subsection (6)
 20 (7), the department shall immediately terminate an attempt
 21 at mediation and dismiss the mediation request if at any
 22 time it finds that:

23 (a) a secured creditor does not agree to participate
 24 in mediation requested by the farmer; or

25 (b) the farmer does not agree to participate in any

1 mediation requested by a secured creditor.

2 (6)(7) If the mediation request involves more than one
 3 secured creditor and any one creditor does not agree to
 4 participate in mediation, the department shall dismiss the
 5 mediation request only insofar as it relates to that
 6 creditor.

7 Section 7. Duties and requirements of mediators. (1) A
 8 mediator must be qualified to provide the services required
 9 under [this act]. A mediator must be an impartial person
 10 knowledgeable in agricultural and financial matters.

11 (2) In carrying out his properly authorized duties,
 12 the mediator shall:

13 (a) listen to the farmer and any creditor desiring to
 14 be heard;

15 (b) attempt to negotiate an agreement that:

16 (i) extends the term of credit;

17 (ii) reduces the dollar amount of payments under
 18 credit; or

19 (iii) permits the farmer to continue in agricultural
 20 production and provides reasonable security to the creditor;
 21 and

22 (c) advise, counsel, and assist the farmer and
 23 creditor in attempting to arrive at a satisfactory
 24 agreement.

25 (3) A mediator may attempt to:

(a) arrange mutually agreed upon forbearance from litigation, rescheduled or renegotiated debt, voluntary sale, or other liquidation of any agricultural property; and

(b) obtain assistance from any public or private agency.

Section 8. Mediation agreement. (1) If an agreement is reached between the farmer and a creditor, the mediator shall draft a written mediation agreement to be signed by the farmer and the creditor.

(2) A farmer and any creditor who are parties to a mediation agreement:

(a) are bound by the terms of the agreement;

(b) may enforce the mediation agreement as a legal contract; and

(c) may use the mediation agreement as a defense against an action contrary to the mediation agreement.

Section 9. Unsuccessful mediation. If a mediation agreement cannot be reached, the mediator shall recommend to the department that the mediation be concluded and the mediation request be dismissed.

Section 10. Confidentiality of records. (1) All materials, data, and information received by the department with respect to any request filed under [section 6] are confidential and are not subject to examination or disclosure as public information.

(2) No official, employee, or agent of the department may knowingly disclose any materials, data, or information concerning a mediation request without the consent of the farmer and the creditor.

Section 11. Closed meetings. Meetings between a farmer and any creditor conducted by a mediator are not open to public participation and are not subject to the provisions of the open meeting law contained in 2-3-203.

SECTION 12. WAIVER OF IMMUNITY. ALL PARTIES WHO VOLUNTARILY ENTER INTO THE MEDIATION PROCESS AS DESCRIBED IN [THIS ACT] SHALL WAIVE THEIR RIGHT TO TAKE CIVIL ACTION AGAINST THE STATE OF MONTANA AND ITS DESIGNATED MEDIATOR AND THEREBY RELEASE THE STATE AND ITS DESIGNATED MEDIATOR FROM CIVIL LIABILITY FOR ACTIONS OCCURRING WITHIN THE SCOPE OF THE MEDIATION SERVICES.

SECTION 13. SEVERABILITY. IF A PART OF THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

Section 14. Appropriation. There is appropriated from the general fund to the department of agriculture for the biennium ending June 30, 1987, the sum of \$350,000 to administer [this act].

HB 0011/02

1 Section 15. Effective date -- termination. This act is
2 effective on passage and approval and terminates July 1,
3 1987.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 11

3 House Appropriations Committee

4
5 A statement of intent is required for this bill because
6 it contains a delegation of authority to allow the
7 department of agriculture to adopt rules necessary for the
8 administration of an agricultural assistance and counseling
9 program.

10 It is the intent of the legislature that the department
11 of agriculture establish an emergency program fulfilling the
12 purpose stated in section 1. Under such program, the
13 department must provide to financially distressed farmers
14 and ranchers the types of assistance enumerated in section
15 3.

16 To the best extent possible, the department should
17 first utilize the available services of the cooperative
18 extension service, state agencies, private businesses,
19 professional organizations, volunteer groups, and other
20 persons having knowledge and experience in providing the
21 type of assistance and counseling required by this bill. The
22 cooperative extension service and other state agencies
23 should cooperate with the department of agriculture in
24 providing needed services.

25 In contracting for services mandated in section 3, the

1 department should ensure that contracted personnel are
2 properly qualified and trained to provide assistance.
3 Moreover, the department should establish a procedure to
4 monitor the delivery of services and to guarantee the proper
5 expenditure of public funds.

6 All contracts for services should be issued on a fair
7 and impartial basis. In addition, all contracts should
8 contain a clause requiring insurance against liability for
9 the negligence of personnel in providing assistance or
10 counseling to financially distressed farmers and ranchers.

11 In devising an agricultural assistance and counseling
12 program, the department should examine the various financial
13 counseling, debt mediation, and other programs established
14 in many states to aid agricultural producers who are in
15 serious financial trouble. Specifically, the department
16 should consider the success of similar programs in North
17 Dakota, South Dakota, Iowa, Illinois, Minnesota, Missouri,
18 and Kansas.

HOUSE BILL NO. 11

INTRODUCED BY HOLLIDAY, SCHULTZ, ASAY, GALT, VINCENT,
JACK MOORE, DARKO, LYBECK, KEYSER, COBB, ERNST, HANSON,
WEEDING, RAPP-SVRCEK, CONOVER, NEUMAN, HOWE, BENGTON,
LANE, THOFT, DONALDSON, RANEY, CODY, ABRAMS, HAND

BY REQUEST OF THE INTERIM SUBCOMMITTEE

ON AGRICULTURAL PROBLEMS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN
AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM TO AID
FINANCIALLY DISTRESSED FARMERS; PROVIDING FOR FINANCIAL
COUNSELING, AND FARM MANAGEMENT TRAINING CONSULTING, LEGAL
INFORMATION SERVICES, VOLUNTARY DEBT MEDIATION, MENTAL
HEALTH ASSISTANCE, SUPPORT COUNSELING, AND REFERRAL
SERVICES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO
ADMINISTER THE PROGRAM; APPROPRIATING FUNDS; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. It is the declared purpose of
[this act] to establish an emergency program to directly
assist individual farmers who are financially distressed by
providing them assistance and counseling to manage farm
credit problems, to avoid OR MITIGATE forced liquidation or
farm foreclosure, and to cope with the financial stress

resulting from the adverse conditions of agriculture in this
state. IT IS A GOAL OF THIS PROGRAM TO MAXIMIZE PROGRAM
EFFECTIVENESS BY UTILIZING PEER COUNSELORS AND BY
COOPERATING WITH THE PRIVATE SECTOR.

Section 2. Definitions. As used in [this act], unless
the context indicates otherwise, the following definitions
apply:

(1) "Agricultural production" means the production of
livestock, poultry, field crops, fruit, or other animal and
vegetable matter for food or fiber.

(2) "Agricultural property" means:

(a) real property that is principally used for
agricultural production; and

(b) personal property that is part of an agricultural
production operation or used as security to finance such an
operation, including equipment, crops, livestock, and the
proceeds of any security.

(3) "Department" means the department of agriculture
provided for in 2-15-3001.

(4) "Farmer" means a person who owns or operates a
farm or ranch primarily for the purpose of agricultural
production.

(5) "Mediator" means a person authorized under
[section 7] to serve as a negotiator between a farmer and a
creditor.

(6) "PEER COUNSELOR" MEANS A PERSON WHO IS OR HAS BEEN INVOLVED IN PRODUCTION AGRICULTURE AND WHO HAS BEEN TRAINED THROUGH THE DEPARTMENT AND OTHERS IN FINANCIAL COUNSELING AND MEDIATION OR NEGOTIATION TECHNIQUES AND WHO WORKS TO AID FINANCIALLY DISTRESSED FARMERS THROUGH THIS PROGRAM.

{6}{7} "Program" means the agricultural assistance and counseling program provided for in [section 3].

{7}{8} "Secured creditor" means:

(a) the holder of a mortgage on agricultural property;

(b) a vendor of a contract for deed of agricultural property;

(c) a person with a STATUTORY lien or A PERFECTED security interest in agricultural property; or

(d) a judgment creditor with a judgment against a debtor engaged in agricultural production.

{8}{9} "Unsecured creditor" means a person who extends credit without A PERFECTED security INTEREST to a farmer for the purchase of goods or services used in agricultural production.

Section 3. Agricultural assistance and counseling program. (1) The department shall establish an agricultural assistance and counseling program to aid financially distressed farmers in this state.

(2) Under the program, the department shall make available to farmers the following types of assistance:

(a) financial counseling CONSULTING;

(b) farm management training CONSULTING;

(c) legal INFORMATION services;

(d) voluntary debt mediation as provided for in [section 6];

(e) mental health assistance;

(f) support counseling; and

(g) referral services.

Section 4. Powers and duties of department. (1) For the purpose of administering the program, the department shall:

(a) utilize the services of:

(I) A NETWORK OF TRAINED PEER COUNSELORS WHO CAN DIRECTLY ASSIST FINANCIALLY DISTRESSED FARMERS;

{I}{II} the cooperative extension service AND THE COLLEGE OF AGRICULTURE at Montana state university;

{II}{III} state OR FEDERAL agencies;

{III}{IV} legal service corporations, THE UNIVERSITY OF MONTANA LAW SCHOOL, or private law firms;

{IV}{V} community service organizations;

{V}{VI} private business;

{VI}{VII} professional associations;

{VII}{VIII} regional mental health corporations;

{VIII}{IX} volunteer organizations; and

{IX}{X} any other person or entity;

1 (b) contract for services with qualified personnel,
2 including financial PEER counselors, farm management
3 specialists, accountants, attorneys, and mental health
4 professionals, to provide the assistance required under
5 [section 3];

6 (c) hire a coordinator AND NECESSARY STAFF to
7 implement and manage the program;

8 (d) provide training for interested and qualified
9 persons, INCLUDING PEER COUNSELORS, to assist farmers
10 needing help with farm financial management problems;

11 (e) establish a toll-free telephone line to receive
12 requests for assistance, counseling, and referral of
13 services; and

14 (f) compile a directory of services available through
15 the program.

16 (2) The department may:

17 (a) establish an advisory board to assist the
18 department in determining policy and in developing plans for
19 administration of the program; and

20 (b) adopt rules necessary for the administration of
21 the program.

22 Section 5. Gifts and grants. The department may accept
23 monetary or in-kind contributions, gifts, and grants
24 provided to support the program.

25 Section 6. Voluntary mediation -- filing procedure --

1 dismissal of requests. (1) A farmer who is in danger of
2 imminent foreclosure ~~or who has received a notice of~~
3 ~~foreclosure~~, on agricultural property or a secured creditor
4 may request mediation of the farmer's indebtedness by filing
5 a request with the department on a form prescribed by the
6 department.

7 (2) In filing OR RESPONDING TO a mediation request,
8 the farmer shall provide:

9 (a) the name and address of each secured and unsecured
10 creditor;

11 (b) the amount owed to each creditor;

12 (c) the amount of the periodic installment payments
13 due each creditor; and

14 (D) ANY FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW
15 STATEMENTS, INCLUDING THOSE RELATED TO ANY NONFARM
16 ACTIVITIES; AND

17 ~~(d)~~ (E) any additional information the department may
18 require.

19 (3) IN FILING OR RESPONDING TO A MEDIATION REQUEST, A
20 SECURED CREDITOR SHALL PROVIDE:

21 (A) INFORMATION PERTAINING TO THE BASIS OF THE CREDIT
22 DETERMINATION;

23 (B) FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW
24 STATEMENTS ON THE RESPECTIVE FARMER;

25 (C) STATEMENTS REGARDING THE STATUS OF THE FARMER'S

1 LOAN PERFORMANCE;

2 (D) THE NAME AND TITLE OF THE REPRESENTATIVE OF THE
 3 CREDITOR AUTHORIZED TO ENTER INTO A BINDING MEDIATION
 4 AGREEMENT; AND

5 (E) ANY ADDITIONAL INFORMATION THE DEPARTMENT MAY
 6 REQUIRE.

7 {3}(4) A farmer requesting OR SECURED CREDITOR WHO
 8 AGREES TO PARTICIPATE IN mediation shall authorize the
 9 release to the department of any information held by a
 10 creditor.

11 {4}(5) Upon receipt of a properly completed mediation
 12 request form, the department or--its--agent--shall--evaluate
 13 each--request--and--may SHALL direct a mediator to meet with
 14 the farmer and secured creditor to assist in mediation. An
 15 unsecured creditor may participate in mediation between a
 16 farmer and secured creditor if each party agrees OR IF THE
 17 MEDIATOR DETERMINES THAT AN UNSECURED CREDITOR IS A
 18 NECESSARY PARTY TO THE MEDIATION.

19 {5}(6) Subject to the provisions of subsection {6}
 20 {7}, the department shall immediately terminate an attempt
 21 at mediation and dismiss the mediation request if at any
 22 time it finds that:

23 (a) a secured creditor does not agree to participate
 24 in mediation requested by the farmer; or

25 (b) the farmer does not agree to participate in any

1 mediation requested by a secured creditor.

2 {6}(7) If the mediation request involves more than one
 3 secured creditor and any one creditor does not agree to
 4 participate in mediation, the department shall dismiss the
 5 mediation request only insofar as it relates to that
 6 creditor.

7 Section 7. Duties and requirements of mediators. (1) A
 8 mediator must be qualified to provide the services required
 9 under [this act]. A mediator must be an impartial person
 10 knowledgeable in agricultural and financial matters.

11 (2) In carrying out his properly authorized duties,
 12 the mediator shall:

13 (a) listen to the farmer and any creditor desiring to
 14 be heard;

15 (b) attempt to negotiate an agreement that:

16 (i) extends the term of credit;

17 (ii) reduces the dollar amount of payments under
 18 credit; or

19 (iii) permits the farmer to continue in agricultural
 20 production and provides reasonable security to the creditor;
 21 and

22 (c) advise, counsel, and assist the farmer and
 23 creditor in attempting to arrive at a satisfactory
 24 agreement.

25 (3) A mediator may attempt to:

(a) arrange mutually agreed upon forbearance from litigation, rescheduled or renegotiated debt, voluntary sale, or other liquidation of any agricultural property; and
 (b) obtain assistance from any public or private agency.

Section 8. Mediation agreement. (1) If an agreement is reached between the farmer and a creditor, the mediator shall draft a written mediation agreement to be signed by the farmer and the creditor.

(2) A farmer and any creditor who are parties to a mediation agreement:

(a) are bound by the terms of the agreement;
 (b) may enforce the mediation agreement as a legal contract; and
 (c) may use the mediation agreement as a defense against an action contrary to the mediation agreement.

Section 9. Unsuccessful mediation. If a mediation agreement cannot be reached, the mediator shall recommend to the department that the mediation be concluded and the mediation request be dismissed.

Section 10. Confidentiality of records. (1) All materials, data, and information received by the department with respect to any request filed under [section 6] are confidential and are not subject to examination or disclosure as public information.

(2) No official, employee, or agent of the department may knowingly disclose any materials, data, or information concerning a mediation request without the consent of the farmer and the creditor.

Section 11. Closed meetings. Meetings between a farmer and any creditor conducted by a mediator are not open to public participation and are not subject to the provisions of the open meeting law contained in 2-3-203.

SECTION 12. WAIVER OF IMMUNITY. ALL PARTIES WHO VOLUNTARILY ENTER INTO THE MEDIATION PROCESS AS DESCRIBED IN [THIS ACT] SHALL WAIVE THEIR RIGHT TO TAKE CIVIL ACTION AGAINST THE STATE OF MONTANA AND ITS DESIGNATED MEDIATOR AND THEREBY RELEASE THE STATE AND ITS DESIGNATED MEDIATOR FROM CIVIL LIABILITY FOR ACTIONS OCCURRING WITHIN THE SCOPE OF THE MEDIATION SERVICES.

SECTION 13. SEVERABILITY. IF A PART OF THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

Section 14. Appropriation. There is appropriated from the general fund to the department of agriculture for the biennium ending June 30, 1987, the sum of \$350,000 to administer [this act].

HB 0011/02

1 Section 15. Effective date -- termination. This act is
2 effective on passage and approval and terminates July 1,
3 1987.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 11

3 House Appropriations Committee

4
5 A statement of intent is required for this bill because
6 it contains a delegation of authority to allow the
7 department of agriculture to adopt rules necessary for the
8 administration of an agricultural assistance and counseling
9 program.

10 It is the intent of the legislature that the department
11 of agriculture establish an emergency program fulfilling the
12 purpose stated in section 1. Under such program, the
13 department must provide to financially distressed farmers
14 and ranchers the types of assistance enumerated in section
15 3.

16 To the best extent possible, the department should
17 first utilize the available services of the cooperative
18 extension service, state agencies, private businesses,
19 professional organizations, volunteer groups, and other
20 persons having knowledge and experience in providing the
21 type of assistance and counseling required by this bill. The
22 cooperative extension service and other state agencies
23 should cooperate with the department of agriculture in
24 providing needed services.

25 In contracting for services mandated in section 3, the

1 department should ensure that contracted personnel are
2 properly qualified and trained to provide assistance.
3 Moreover, the department should establish a procedure to
4 monitor the delivery of services and to guarantee the proper
5 expenditure of public funds.

6 All contracts for services should be issued on a fair
7 and impartial basis. In addition, all contracts should
8 contain a clause requiring insurance against liability for
9 the negligence of personnel in providing assistance or
10 counseling to financially distressed farmers and ranchers.

11 In devising an agricultural assistance and counseling
12 program, the department should examine the various financial
13 counseling, debt mediation, and other programs established
14 in many states to aid agricultural producers who are in
15 serious financial trouble. Specifically, the department
16 should consider the success of similar programs in North
17 Dakota, South Dakota, Iowa, Illinois, Minnesota, Missouri,
18 and Kansas.

HOUSE BILL NO. 11

INTRODUCED BY HOLLIDAY, SCHULTZ, ASAY, GALT, VINCENT,
JACK MOORE, DARKO, LYBECK, KEYSER, COBB, ERNST, HANSON,
WEEDING, RAPP-SVRCEK, CONOVER, NEUMAN, HOWE, BENGTSON,
LANE, THOFT, DONALDSON, RANEY, CODY, ABRAMS, HAND
BY REQUEST OF THE INTERIM SUBCOMMITTEE
ON AGRICULTURAL PROBLEMS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN
AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM TO AID
FINANCIALLY DISTRESSED FARMERS; PROVIDING FOR FINANCIAL
COUNSELING, AND FARM MANAGEMENT TRAINING CONSULTING, LEGAL
INFORMATION SERVICES, VOLUNTARY DEBT MEDIATION, MENTAL
HEALTH ASSISTANCE, SUPPORT COUNSELING, AND REFERRAL
SERVICES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO
ADMINISTER THE PROGRAM; APPROPRIATING FUNDS; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. It is the declared purpose of
[this act] to establish an emergency program to directly
assist individual farmers who are financially distressed by
providing them assistance and counseling to manage farm
credit problems, to avoid OR MITIGATE forced liquidation or
farm foreclosure, and to cope with the financial stress

resulting from the adverse conditions of agriculture in this
state. IT IS A GOAL OF THIS PROGRAM TO MAXIMIZE PROGRAM
EFFECTIVENESS BY UTILIZING PEER COUNSELORS AND BY
COOPERATING WITH THE PRIVATE SECTOR.

Section 2. Definitions. As used in [this act], unless
the context indicates otherwise, the following definitions
apply:

(1) "Agricultural production" means the production of
livestock, poultry, field crops, fruit, or other animal and
vegetable matter for food or fiber.

(2) "Agricultural property" means:

(a) real property that is principally used for
agricultural production; and

(b) personal property that is part of an agricultural
production operation or used as security to finance such an
operation, including equipment, crops, livestock, and the
proceeds of any security.

(3) "Department" means the department of agriculture
provided for in 2-15-3001.

(4) "Farmer" means a person who owns or operates a
farm or ranch primarily for the purpose of agricultural
production.

(5) "Mediator" means a person authorized under
[section 7] to serve as a negotiator between a farmer and a
creditor.

(6) "PEER COUNSELOR" MEANS A PERSON WHO IS OR HAS BEEN INVOLVED IN PRODUCTION AGRICULTURE AND WHO HAS BEEN TRAINED THROUGH THE DEPARTMENT AND OTHERS IN FINANCIAL COUNSELING AND MEDIATION OR NEGOTIATION TECHNIQUES AND WHO WORKS TO AID FINANCIALLY DISTRESSED FARMERS THROUGH THIS PROGRAM.

(7) "Program" means the agricultural assistance and counseling program provided for in [section 3].

(8) "Secured creditor" means:

(a) the holder of a mortgage on agricultural property;

(b) a vendor of a contract for deed of agricultural property;

(c) a person with a STATUTORY lien or A PERFECTED security interest in agricultural property; or

(d) a judgment creditor with a judgment against a debtor engaged in agricultural production.

(9) "Unsecured creditor" means a person who extends credit without A PERFECTED security INTEREST to a farmer for the purchase of goods or services used in agricultural production.

Section 3. Agricultural assistance and counseling program. (1) The department shall establish an agricultural assistance and counseling program to aid financially distressed farmers in this state.

(2) Under the program, the department shall make available to farmers the following types of assistance:

(a) financial ~~counseling~~ CONSULTING;

(b) farm management ~~training~~ CONSULTING;

(c) legal INFORMATION services;

(d) voluntary debt mediation as provided for in [section 6];

(e) mental health assistance;

(f) support counseling; and

(g) referral services.

Section 4. Powers and duties of department. (1) For the purpose of administering the program, the department shall:

(a) utilize the services of:

(I) A NETWORK OF TRAINED PEER COUNSELORS WHO CAN DIRECTLY ASSIST FINANCIALLY DISTRESSED FARMERS;

(II) the cooperative extension service AND THE COLLEGE OF AGRICULTURE at Montana state university;

(III) state OR FEDERAL agencies;

(IV) legal service corporations, THE UNIVERSITY OF MONTANA LAW SCHOOL, or private law firms;

(V) community service organizations;

(VI) private business;

(VII) professional associations;

(VIII) regional mental health corporations;

(IX) volunteer organizations; and

(X) any other person or entity;

1 (b) contract for services with qualified personnel,
2 including ~~financial~~ PEER counselors, farm management
3 specialists, accountants, attorneys, and mental health
4 professionals, to provide the assistance required under
5 [section 3];

6 (c) hire a coordinator AND NECESSARY STAFF to
7 implement and manage the program;

8 (d) provide training for interested and qualified
9 persons, INCLUDING PEER COUNSELORS, to assist farmers
10 needing help with farm financial management problems;

11 (e) establish a toll-free telephone line to receive
12 requests for assistance, counseling, and referral of
13 services; and

14 (f) compile a directory of services available through
15 the program.

16 (2) The department may:

17 (a) establish an advisory board to assist the
18 department in determining policy and in developing plans for
19 administration of the program; and

20 (b) adopt rules necessary for the administration of
21 the program.

22 Section 5. Gifts and grants. The department may accept
23 monetary or in-kind contributions, gifts, and grants
24 provided to support the program.

25 Section 6. Voluntary mediation -- filing procedure --

1 dismissal of requests. (1) A farmer who is in danger of
2 imminent foreclosure, ~~--or--who--has--received--a--notice--of~~
3 ~~foreclosure~~, on agricultural property or a secured creditor
4 may request mediation of the farmer's indebtedness by filing
5 a request with the department on a form prescribed by the
6 department.

7 (2) In filing OR RESPONDING TO a mediation request,
8 the farmer shall provide:

9 (a) the name and address of each secured and unsecured
10 creditor;

11 (b) the amount owed to each creditor;

12 (c) the amount of the periodic installment payments
13 due each creditor; and

14 (D) ANY FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW
15 STATEMENTS, INCLUDING THOSE RELATED TO ANY NONFARM
16 ACTIVITIES; AND

17 ~~(d)~~ (E) any additional information the department may
18 require.

19 (3) IN FILING OR RESPONDING TO A MEDIATION REQUEST, A
20 SECURED CREDITOR SHALL PROVIDE:

21 (A) INFORMATION PERTAINING TO THE BASIS OF THE CREDIT
22 DETERMINATION;

23 (B) FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW
24 STATEMENTS ON THE RESPECTIVE FARMER;

25 (C) STATEMENTS REGARDING THE STATUS OF THE FARMER'S

1 LOAN PERFORMANCE;

2 (D) THE NAME AND TITLE OF THE REPRESENTATIVE OF THE
 3 CREDITOR AUTHORIZED TO ENTER INTO A BINDING MEDIATION
 4 AGREEMENT; AND

5 (E) ANY ADDITIONAL INFORMATION THE DEPARTMENT MAY
 6 REQUIRE.

7 (3)(4) A farmer requesting OR SECURED CREDITOR WHO
 8 AGREES TO PARTICIPATE IN mediation shall authorize the
 9 release to the department of any information held by a
 10 creditor.

11 (4)(5) Upon receipt of a properly completed mediation
 12 request form, the department or--its--agent--shall--evaluate
 13 each--request--and--may SHALL direct a mediator to meet with
 14 the farmer and secured creditor to assist in mediation. An
 15 unsecured creditor may participate in mediation between a
 16 farmer and secured creditor if each party agrees OR IF THE
 17 MEDIATOR DETERMINES THAT AN UNSECURED CREDITOR IS A
 18 NECESSARY PARTY TO THE MEDIATION.

19 (5)(6) Subject to the provisions of subsection (6)
 20 (7), the department shall immediately terminate an attempt
 21 at mediation and dismiss the mediation request if at any
 22 time it finds that:

23 (a) a secured creditor does not agree to participate
 24 in mediation requested by the farmer; or

25 (b) the farmer does not agree to participate in any

1 mediation requested by a secured creditor.

2 (6)(7) If the mediation request involves more than one
 3 secured creditor and any one creditor does not agree to
 4 participate in mediation, the department shall dismiss the
 5 mediation request only insofar as it relates to that
 6 creditor.

7 Section 7. Duties and requirements of mediators. (1) A
 8 mediator must be qualified to provide the services required
 9 under [this act]. A mediator must be an impartial person
 10 knowledgeable in agricultural and financial matters.

11 (2) In carrying out his properly authorized duties,
 12 the mediator shall:

13 (a) listen to the farmer and any creditor desiring to
 14 be heard;

15 (b) attempt to negotiate an agreement that:

16 (i) extends the term of credit;

17 (ii) reduces the dollar amount of payments under
 18 credit; or

19 (iii) permits the farmer to continue in agricultural
 20 production and provides reasonable security to the creditor;
 21 and

22 (c) advise, counsel, and assist the farmer and
 23 creditor in attempting to arrive at a satisfactory
 24 agreement.

25 (3) A mediator may attempt to:

1 (a) arrange mutually agreed upon forbearance from
2 litigation, rescheduled or renegotiated debt, voluntary
3 sale, or other liquidation of any agricultural property; and

4 (b) obtain assistance from any public or private
5 agency.

6 Section 8. Mediation agreement. (1) If an agreement is
7 reached between the farmer and a creditor, the mediator
8 shall draft a written mediation agreement to be signed by
9 the farmer and the creditor.

10 (2) A farmer and any creditor who are parties to a
11 mediation agreement:

12 (a) are bound by the terms of the agreement;

13 (b) may enforce the mediation agreement as a legal
14 contract; and

15 (c) may use the mediation agreement as a defense
16 against an action contrary to the mediation agreement.

17 Section 9. Unsuccessful mediation. If a mediation
18 agreement cannot be reached, the mediator shall recommend to
19 the department that the mediation be concluded and the
20 mediation request be dismissed.

21 Section 10. Confidentiality of records. (1) All
22 materials, data, and information received by the department
23 with respect to any request filed under [section 6] are
24 confidential and are not subject to examination or
25 disclosure as public information.

1 (2) No official, employee, or agent of the department
2 may knowingly disclose any materials, data, or information
3 concerning a mediation request without the consent of the
4 farmer and the creditor.

5 Section 11. Closed meetings. Meetings between a farmer
6 and any creditor conducted by a mediator are not open to
7 public participation and are not subject to the provisions
8 of the open meeting law contained in 2-3-203.

9 SECTION 12. WAIVER OF IMMUNITY. ALL PARTIES WHO
10 VOLUNTARILY ENTER INTO THE MEDIATION PROCESS AS DESCRIBED IN
11 [THIS ACT] SHALL WAIVE THEIR RIGHT TO TAKE CIVIL ACTION
12 AGAINST THE STATE OF MONTANA AND ITS DESIGNATED MEDIATOR AND
13 THEREBY RELEASE THE STATE AND ITS DESIGNATED MEDIATOR FROM
14 CIVIL LIABILITY FOR ACTIONS OCCURRING WITHIN THE SCOPE OF
15 THE MEDIATION SERVICES.

16 SECTION 13. SEVERABILITY. IF A PART OF THIS ACT IS
17 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
18 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
19 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
20 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
21 INVALID APPLICATIONS.

22 Section 14. Appropriation. There is appropriated from
23 the general fund to the department of agriculture for the
24 biennium ending June 30, 1987, the sum of \$350,000 to
25 administer [this act].

HB 0011/02

1 Section 15. Effective date -- termination. This act is
2 effective on passage and approval and terminates July 1,
3 1987.

-End-