

SENATE BILL NO. 321

INTRODUCED BY JERGSON, BARDANOUE, HIRSCH,
RAPP-SVRCEK, ASAY, SCHYE, YELLOWTAIL, LYBECK

IN THE SENATE

FEBRUARY 11, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON AGRICULTURE, LIVESTOCK & IRRIGATION.

FEBRUARY 18, 1987 COMMITTEE RECOMMEND BILL
DO NOT PASS. REPORT ADOPTED.

FEBRUARY 19, 1987 ON MOTION, RECONSIDER ADOPTION OF
ADVERSE COMMITTEE REPORT. BILL
PRINTED AND PLACED ON SECOND READING.

FEBRUARY 20, 1987 PRINTING REPORT.

FEBRUARY 21, 1987 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 23, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 41; NOES, 8.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON AGRICULTURE, LIVESTOCK & IRRIGATION.

MARCH 19, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 27, 1987 ON MOTION, TAKEN FROM SECOND READING
AND REREFERRED TO COMMITTEE
ON APPROPRIATIONS.

MARCH 28, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 30, 1987

SECOND READING, CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, CONCURRED IN.
AYES, 91; NOES, 7.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 4, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. *321*
 2 INTRODUCED BY *Jerry Brown* *Barbara*
 3 *Heisek Fopp* *John* *Lehy* *Yellowtail* *Lybeck*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE RIGHT
 5 TO MEDIATION OF AGRICULTURAL INDEBTEDNESS; AUTHORIZING THE
 6 DEPARTMENT OF AGRICULTURE TO PROVIDE MEDIATION SERVICES;
 7 GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; PROVIDING FOR
 8 PAYMENT OF FEES TO DEFRAY THE COSTS OF MEDIATION; AMENDING
 9 SECTIONS 80-13-102, 80-13-201 THROUGH 80-13-203, 80-13-211,
 10 AND 80-13-212, MCA, AND SECTION 15, CHAPTER 9, SPECIAL LAWS
 11 OF MARCH 1986; AND PROVIDING AN EFFECTIVE DATE AND A
 12 TERMINATION DATE."
 13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 NEW SECTION. Section 1. Legislative findings. The
 16 legislature finds that the agricultural sector of the
 17 state's economy is under severe financial stress due to low
 18 farm commodity prices, continuing high interest rates, and
 19 reduced net farm income. The suffering agricultural economy
 20 also adversely affects the economic conditions for
 21 businesses in rural communities. The legislature further
 22 finds that hundreds of this state's farmers are unable to
 23 meet current interest and principal payments on mortgages
 24 and other loan obligations and are threatened with the loss
 25 of their farmland, equipment, crops, and livestock through

1 mortgage and lien foreclosures, cancellation of contracts
 2 for deed, and other debt collections. Therefore, the
 3 legislature finds that an economic emergency exists that
 4 requires an orderly process for the adjustment of
 5 agricultural indebtedness to preserve the general welfare of
 6 the citizens of Montana.

7 Section 2. Section 80-13-102, MCA, is amended to read:
 8 "80-13-102. (Temporary) Definitions. As used in this
 9 chapter, unless the context indicates otherwise, the
 10 following definitions apply:

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

14 (2) "Agricultural property" means:
 15 (a) real property that is principally used for
 16 agricultural production; and

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

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

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



1 (5) "Mediator" means a person authorized under
2 80-13-202 to ~~serve--as--a--negotiator~~ assist in mediation
3 between a farmer and a creditor.

4 ~~{6}--"Peer-counselor"--means-a-person-who-is-or-has-been~~
5 ~~involved--in-production-agriculture-and-who-has-been-trained~~
6 ~~through-the-department-and-others--in--financial--counseling~~
7 ~~and-mediation-or-negotiation-techniques-and-who-works-to-aid~~
8 ~~financially-distressed-farmers-through-this-program-~~

9 ~~{7}--"Program"--means--the--agricultural-assistance-and~~
10 ~~counseling-program-provided-for-in-80-13-103-~~

11 ~~{8}{6}~~ (a) "Secured creditor" means:

12 ~~{a}{i}~~ the holder of a mortgage on agricultural
13 property;

14 ~~{b}{ii}~~ a vendor of a contract for deed of agricultural
15 property;

16 ~~{c}{iii}~~ a person with a statutory lien or a perfected
17 security interest in agricultural property; or

18 ~~{d}{iv}~~ a judgment creditor with a judgment against a
19 debtor engaged in agricultural production.

20 (b) The term applies to creditors described in
21 subsection (6)(a) who are:

22 (i) the United States or an agency of the United
23 States;

24 (ii) corporations, partnerships, or other business
25 entities; and

1 (iii) individuals.

2 ~~{9}{7}~~ "Unsecured creditor" means a person who:

3 (a) does not have a perfected security interest in
4 agricultural property; and

5 (b) extends credit without--a--perfected--security
6 interest to a farmer for the purchase of goods or services
7 used in agricultural production. (Terminates July 1,
8 1987--sec. 15, Ch. 9, Sp. L. March 1986.)"

9 NEW SECTION. Section 3. Right to mediation -- notice
10 -- applicability. (1) A creditor desiring to initiate a
11 proceeding to enforce a debt against agricultural property
12 that is real estate, to terminate a contract for deed to
13 purchase agricultural property, to enforce a secured
14 interest in agricultural property, or to garnish, levy on,
15 execute on, seize, or attach agricultural property shall
16 serve a notice on the farmer advising him of the right to
17 mediation under this chapter. Such notice must include
18 information concerning the procedure for requesting
19 mediation. A creditor shall file with the department a copy
20 of any notice served upon a farmer pursuant to this section.
21 The creditor may not commence the proceeding until the
22 creditor and the farmer have completed mediation or until
23 the creditor receives a mediation release.

24 (2) This section does not apply to any proceeding
25 involving agricultural property with a fair market value of

1 less than \$20,000.

2 Section 4. Section 80-13-201, MCA, is amended to read:

3 "80-13-201. (Temporary) ~~Voluntary-mediation~~ Mediation
4 request -- filing procedure ---dismissal-of-requests. (1) A
5 Within 14 days following service of notice under [section
6 3], a farmer who-is-in-danger-of-foreclosure-on-agricultural
7 property or a secured creditor may request mediation of the
8 farmer's indebtedness by filing a request for mediation with
9 the department on a form prescribed by the department.

10 (2) In filing or responding to a mediation request,
11 the farmer shall provide:

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

14 (b) the amount owed to each creditor;

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

17 (d) any financial statements and pro forma cash flow
18 statements, including those related to any nonfarm
19 activities; and

20 (e) any additional information the department may
21 require.

22 (3) In filing or responding to a mediation request, a
23 secured creditor shall provide:

24 (a) information pertaining to the basis of the credit
25 determination;

1 (b) financial statements and pro forma cash flow
2 statements on the respective farmer;

3 (c) statements regarding the status of the farmer's
4 loan performance;

5 (d) the name and title of the representative of the
6 creditor authorized to enter into a binding mediation
7 agreement; and

8 (e) any additional information the department may
9 require.

10 (4) A farmer or secured creditor who ~~agrees--to~~
11 ~~participate-in~~ is a party to mediation shall authorize the
12 release to the department of any information held by a
13 creditor.

14 ~~{5}--Upon-receipt-of--a--properly--completed--mediation~~
15 ~~request-form,--the-department-shall-direct-a-mediator-to-meet~~
16 ~~with-the-farmer-and-secured-creditor-to-assist-in-mediation,--~~
17 ~~An-unsecured-creditor-may-participate-in-mediation-between-a~~
18 ~~farmer--and--secured-creditor-if-each-party-agrees-or-if-the~~
19 ~~mediator--determines--that--an--unsecured--creditor---is---a~~
20 ~~necessary-party-to-the-mediation,--~~

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

25 ~~{a}--a-secured-creditor-does-not-agree--to--participate~~

1 in-mediation-requested-by-the-farmer, or
 2 (b) the farmer does not agree to participate in any
 3 mediation requested by a secured creditor.
 4 (7) If the mediation request involves more than one
 5 secured creditor and any one creditor does not agree to
 6 participate in mediation, the department shall dismiss the
 7 mediation request only insofar as it relates to that
 8 creditor. (Terminates July 1, 1987--sec. 15, Ch. 9, Sp. L.
 9 March 1986.)"

10 NEW SECTION. Section 5. Waiver of right to mediation.
 11 A farmer or creditor who fails to file a timely mediation
 12 request waives the right to mediation provided for under
 13 this chapter. The department shall notify a creditor,
 14 stating that the creditor may proceed in an action against
 15 agricultural property because the farmer has failed to file
 16 a mediation request.

17 NEW SECTION. Section 6. Credit analyst. After
 18 receiving a request for mediation, the department may refer
 19 the farmer to a credit analyst who is knowledgeable in
 20 agricultural and financial matters. The credit analyst shall
 21 assist the farmer in the preparation of financial
 22 information that will be required at the initial mediation
 23 meeting.

24 NEW SECTION. Section 7. Initial mediation meeting --
 25 notice. Upon receipt of a properly completed mediation

1 request form that includes the information required in
 2 80-13-201, the department shall serve a mediation meeting
 3 notice to the farmer and each creditor, specifying a time
 4 and place for an initial mediation meeting. After serving
 5 such notice, the department shall appoint a mediator to meet
 6 with the farmer and the secured creditor to assist in
 7 mediation. An unsecured creditor may participate in
 8 mediation between a farmer and secured creditor if each
 9 party agrees or if the mediator determines that an unsecured
 10 creditor is a necessary party to the mediation.

11 NEW SECTION. Section 8. Effect of mediation meeting
 12 notice -- stay of action. (1) Upon service of a mediation
 13 meeting notice, neither the farmer nor the creditor may take
 14 any further legal action in court concerning the farmer's
 15 indebtedness to that creditor until the mediator has signed
 16 a release order as provided for in [section 9]. Such release
 17 order is final and is not subject to an appeal.

18 (2) Proof of service of a mediation meeting notice is
 19 effective in any court in this state to obtain a continuance
 20 or delay, except that such delay may not cause any person to
 21 lose any legal rights and all applicable statutes of
 22 limitations must toll.

23 NEW SECTION. Section 9. Mediation -- good faith
 24 requirement -- release order. (1) The mediator shall
 25 commence mediation within 14 days following service of a

1 mediation meeting notice.

2 (2) If the farmer and the creditor have acted in good
3 faith to mediate, the mediator shall sign a release order
4 after 45 calendar days have elapsed following commencement
5 of mediation. However, the mediator in his discretion may
6 declare that either party has failed to act in good faith
7 during the mediation and may extend the 45-day period
8 accordingly, provided that the mediator notifies the farmer
9 and the creditor that days have been lost because either
10 party has failed to act in good faith as provided in
11 [section 10].

12 (3) Once the 45-day period provided for in subsection
13 (2) has ended, no mediation may continue beyond 10 days if
14 either the farmer or the creditor serves notice that further
15 mediation would not be effective.

16 NEW SECTION. Section 10. Obligation of good faith.

17 (1) A farmer and a creditor who are parties to mediation
18 under this chapter shall act in good faith with respect to
19 mediation. A farmer or a creditor does not act in good faith
20 if he:

21 (a) fails on a regular or continuing basis to attend
22 and participate in mediation sessions without good cause;

23 (b) does not provide full information regarding his
24 financial obligations to other parties;

25 (c) fails to designate a representative to participate

1 in mediation with adequate authority to fully settle,
2 compromise, or otherwise mediate the matter; or

3 (d) demonstrates other behavior that evidences lack of
4 good faith to mediate.

5 (2) A failure to reduce, restructure, refinance, or
6 forgive debt does not, in itself, evidence a lack of good
7 faith by the creditor.

8 Section 11. Section 80-13-202, MCA, is amended to
9 read:

10 "80-13-202. (Temporary) Duties and requirements of
11 mediators -- prohibitions. (1) A mediator must be qualified
12 to provide the services required under this chapter. A
13 mediator must be an impartial person knowledgeable in
14 agricultural and financial matters.

15 (2) In carrying out his properly authorized duties,
16 the mediator shall:

17 (a) listen to the farmer and any creditor desiring to
18 be heard;

19 (b) attempt to negotiate an agreement that:

20 (i) extends the term of credit;

21 (ii) reduces the dollar amount of payments under
22 credit; or

23 (iii) permits the farmer to continue in agricultural
24 production and provides reasonable security to the creditor;
25 and

1 (c) advise, counsel, and assist the farmer and the
2 creditor in attempting to arrive at a satisfactory
3 agreement.

4 (3) A mediator may attempt to:

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

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

10 (4) A mediator may not:

11 (a) advise a farmer or creditor about the law; or

12 (b) assist a farmer or creditor in reserving or
13 establishing legal rights. (Terminates July 1, 1987--sec.
14 15, Ch. 9, Sp. L. March 1986.)"

15 Section 12. Section 80-13-203, MCA, is amended to
16 read:

17 "80-13-203. (Temporary) Mediation agreement. (1) If an
18 agreement is reached between the farmer and a creditor, the
19 mediator shall draft a written mediation agreement to be
20 signed by the farmer and the creditor.

21 (2) A farmer and any creditor who are parties to a
22 mediation agreement and creditors who have filed claim forms
23 as provided in [section 13] and have not objected to the
24 mediation agreement:

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

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

3 (c) may use the mediation agreement as a defense
4 against an action contrary to the mediation agreement.
5 (Terminates July 1, 1987--sec. 15, Ch. 9, Sp. L. March
6 1986.)"

7 NEW SECTION. Section 13. Creditor not attending
8 mediation meeting -- claim form -- objection to agreement.
9 (1) Unless he files a claim form, a creditor who is served
10 notice of a mediation meeting as provided for in [section 7]
11 is subject to and bound by a mediation agreement if he does
12 not attend mediation meetings. In lieu of attending a
13 mediation meeting, a creditor may file a notice of claim and
14 proof of claim on a claim form with the mediator before the
15 scheduled meeting. By filing a claim form, the creditor
16 agrees to be bound by a mediation agreement reached during
17 mediation unless an objection is filed as provided in
18 subsection (2). The mediator shall notify each creditor who
19 has filed a claim form of the terms of any mediation
20 agreement.

21 (2) A creditor who has filed a claim form may serve a
22 written objection to the terms of a mediation agreement to
23 the mediator and the farmer within 10 days after receiving
24 notice of the agreement. If a creditor files an objection to
25 the terms of an agreement, the mediator shall meet with the

1 farmer and creditor within 10 days after receiving the
2 objection and attempt to mediate a new agreement.

3 Section 14. Section 80-13-211, MCA, is amended to
4 read:

5 "80-13-211. (Temporary) Confidentiality of records.
6 (1) All materials, data, and information received by the
7 department or its agent with respect regard to any request
8 filed aspect of mediation under ~~80-13-201~~ this chapter are
9 confidential and are not subject to examination or
10 disclosure as public information.

11 (2) No official, employee, or agent of the department
12 may knowingly disclose any materials, data, or information
13 concerning a any aspect of mediation request without the
14 consent of the farmer and the creditor. (Terminates July 1,
15 1987--sec. 15, Ch. 9, Sp. L. March 1986.)"

16 Section 15. Section 80-13-212, MCA, is amended to
17 read:

18 "80-13-212. (Temporary) Closed meetings. Meetings
19 ~~between-a-farmer-and-any-creditor~~ conducted by--a--mediator
20 under this chapter are not open to public participation and
21 are not subject to the provisions of the open meeting law
22 contained in 2-3-203. (Terminates July 1, 1987--sec. 15,
23 Ch. 9, Sp. L. March 1986.)"

24 NEW SECTION. Section 16. Mediator immunity from suit.
25 A mediator is immune from civil liability for actions

1 occurring within the scope of his authorized duties.

2 NEW SECTION. Section 17. Fees and expenses of
3 mediation. (1) The department shall assess and collect fees
4 to defray the costs of mediation.

5 (2) All parties to mediation shall contribute equally
6 to the payment of the costs of mediation.

7 NEW SECTION. Section 18. Adoption of rules. (1) The
8 department shall adopt rules to set the compensation of
9 mediators and credit analysts, except that the compensation
10 of mediators may not exceed \$20 an hour.

11 (2) The department may adopt any other rules necessary
12 for the administration of this chapter.

13 Section 19. Section 15, Chapter 9, Special Laws of
14 March 1986, is amended to read:

15 "Section 15. Effective date -- termination. (1) This
16 act is effective on passage and approval, ~~and-terminates~~

17 (2) Sections 1, 3 through 5, 9, 12, and 14 terminate
18 July 1, 1987.

19 (3) Sections 2, 6 through 8, 10, 11, and 13 terminate
20 July 1, 1991."

21 NEW SECTION. Section 20. Effective date --
22 termination. This act is effective July 1, 1987, and
23 terminates July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB321, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an Act entitled: "An act providing for the right to mediation of agricultural indebtedness; authorizing the Department of Agriculture to provide mediation services; granting the department rulemaking authority; providing for payment of fees to defray the costs of mediation; amending Sections 80-13-102, 80-13-201 through 80-13-203, 80-13-211 and 80-13-212, MCA, and Section 15, Chapter 9, Special Laws of March 1986; and providing an effective date and a termination date.

ASSUMPTIONS:

1. 10% of Montana farms experiencing serious financial difficulties - 25% of those will face danger of foreclosure per year. Results in case load of 600 clients/year. (Department of Agriculture estimate)
2. Total cost of mediation borne by creditors and borrowers participating in mediation. No net General Fund impact if all receivables are collected after initial start up phase to develop program (coordinate development, train mediators/financial analysts, etc.)
3. General Fund appropriation for full program cost, all fees collected revert back to General Fund.
4. Assume payment in advance of mediation services. Reimburse client/creditor if overpayment, bill client/creditor if underpayment.
5. Assume 5% of total receivable becomes uncollectable which would result in a General Fund impact of \$35,625/year.
6. Assume 80% of the clients will receive credit analysis assistance. Analysts will assess debt restructuring options, etc.
7. Train 15-20 credit analysts and 25-30 mediators/year. Retain 15-20 credit analysts and 40 mediators.
8. 2.33 FTE administrative staff estimated.

FISCAL IMPACT:

Expenditures:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Personal Services	\$ 0	\$ 65,240	\$ 65,240	\$ 0	\$ 65,153	\$ 65,153
Operating Expense	0	600,440	600,440	0	600,440	600,440
Equipment	0	700	700	0	0	0
TOTAL	\$ 0	\$ 666,380	\$ 666,380	\$ 0	\$ 665,593	\$ 665,593
<u>Funding:</u>						
General Fund*	\$ 0	\$ 666,380	\$ 666,380	\$ 0	\$ 665,593	\$ 665,593
<u>Revenues:</u>						
Service Fees**	\$ 0	\$ 630,755	\$ 630,755	\$ 0	\$ 629,968	\$ 629,968

*Funding assumes that 5% of total receivables become uncollectable.

**Fees collected would revert to the general fund.

David L. Hunter DATE 2/16/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Greg Jerguson DATE 2/17/87
GREG JERGESSON, PRIMARY SPONSOR

Fiscal Note for SB321, as introduced.

LC 0564/01
COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION
RECOMMEND DO NOT PASS
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 3 *Theresa Kapp-Swink* *Ally* *Lehy* *Yellowtail* *Lybeck*
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2 80-13-202 to ~~serve as a negotiator~~ assist in mediation
3 between a farmer and a creditor.

4 ~~(6) "Peer counselor" means a person who is or has been~~
5 ~~involved in production agriculture and who has been trained~~
6 ~~through the department and others in financial counseling~~
7 ~~and mediation or negotiation techniques and who works to aid~~
8 ~~financially distressed farmers through this program.~~

9 ~~(7) "Program" means the agricultural assistance and~~
10 ~~counseling program provided for in 80-13-103.~~

11 ~~(8)(6)~~ (a) "Secured creditor" means:

12 ~~(a)(i)~~ the holder of a mortgage on agricultural
13 property;

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16 ~~(c)(iii)~~ a person with a statutory lien or a perfected
17 security interest in agricultural property; or

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9 require.

10 (4) A farmer or secured creditor who agrees--to
11 participate-in is a party to mediation shall authorize the
12 release to the department of any information held by a
13 creditor.

14 ~~{5}--Upon receipt of--a--properly--completed--mediation~~
15 ~~request form, the department shall direct a mediator to meet~~
16 ~~with the farmer and secured creditor to assist in mediation.~~
17 ~~An unsecured creditor may participate in mediation between a~~
18 ~~farmer and secured creditor if each party agrees or if the~~
19 ~~mediator determines that an unsecured creditor is a~~
20 ~~necessary party to the mediation.~~

21 ~~{6}--Subject to the provisions of subsection {7}, the~~
22 ~~department shall immediately terminate an attempt at~~
23 ~~mediation and dismiss the mediation request if at any time~~
24 ~~it finds that:~~

25 ~~{a)--a secured creditor does not agree to participate~~

1 in-mediation-requested-by-the-farmer, or
 2 (b) the farmer does not agree to participate in any
 3 mediation requested by a secured creditor.
 4 (7) if the mediation request involves more than one
 5 secured creditor and any one creditor does not agree to
 6 participate in mediation, the department shall dismiss the
 7 mediation request only insofar as it relates to that
 8 creditor. (Terminates July 1, 1987--sec. 15, Ch. 9, Sp. L.
 9 March 1986.)"

10 NEW SECTION. Section 5. Waiver of right to mediation.
 11 A farmer or creditor who fails to file a timely mediation
 12 request waives the right to mediation provided for under
 13 this chapter. The department shall notify a creditor,
 14 stating that the creditor may proceed in an action against
 15 agricultural property because the farmer has failed to file
 16 a mediation request.

17 NEW SECTION. Section 6. Credit analyst. After
 18 receiving a request for mediation, the department may refer
 19 the farmer to a credit analyst who is knowledgeable in
 20 agricultural and financial matters. The credit analyst shall
 21 assist the farmer in the preparation of financial
 22 information that will be required at the initial mediation
 23 meeting.

24 NEW SECTION. Section 7. Initial mediation meeting --
 25 notice. Upon receipt of a properly completed mediation

1 request form that includes the information required in
 2 80-13-201, the department shall serve a mediation meeting
 3 notice to the farmer and each creditor, specifying a time
 4 and place for an initial mediation meeting. After serving
 5 such notice, the department shall appoint a mediator to meet
 6 with the farmer and the secured creditor to assist in
 7 mediation. An unsecured creditor may participate in
 8 mediation between a farmer and secured creditor if each
 9 party agrees or if the mediator determines that an unsecured
 10 creditor is a necessary party to the mediation.

11 NEW SECTION. Section 8. Effect of mediation meeting
 12 notice -- stay of action. (1) Upon service of a mediation
 13 meeting notice, neither the farmer nor the creditor may take
 14 any further legal action in court concerning the farmer's
 15 indebtedness to that creditor until the mediator has signed
 16 a release order as provided for in [section 9]. Such release
 17 order is final and is not subject to an appeal.

18 (2) Proof of service of a mediation meeting notice is
 19 effective in any court in this state to obtain a continuance
 20 or delay, except that such delay may not cause any person to
 21 lose any legal rights and all applicable statutes of
 22 limitations must toll.

23 NEW SECTION. Section 9. Mediation -- good faith
 24 requirement -- release order. (1) The mediator shall
 25 commence mediation within 14 days following service of a

1 mediation meeting notice.

2 (2) If the farmer and the creditor have acted in good
3 faith to mediate, the mediator shall sign a release order
4 after 45 calendar days have elapsed following commencement
5 of mediation. However, the mediator in his discretion may
6 declare that either party has failed to act in good faith
7 during the mediation and may extend the 45-day period
8 accordingly, provided that the mediator notifies the farmer
9 and the creditor that days have been lost because either
10 party has failed to act in good faith as provided in
11 [section 10].

12 (3) Once the 45-day period provided for in subsection
13 (2) has ended, no mediation may continue beyond 10 days if
14 either the farmer or the creditor serves notice that further
15 mediation would not be effective.

16 NEW SECTION. Section 10. Obligation of good faith.

17 (1) A farmer and a creditor who are parties to mediation
18 under this chapter shall act in good faith with respect to
19 mediation. A farmer or a creditor does not act in good faith
20 if he:

21 (a) fails on a regular or continuing basis to attend
22 and participate in mediation sessions without good cause;

23 (b) does not provide full information regarding his
24 financial obligations to other parties;

25 (c) fails to designate a representative to participate

1 in mediation with adequate authority to fully settle,
2 compromise, or otherwise mediate the matter; or

3 (d) demonstrates other behavior that evidences lack of
4 good faith to mediate.

5 (2) A failure to reduce, restructure, refinance, or
6 forgive debt does not, in itself, evidence a lack of good
7 faith by the creditor.

8 Section 11. Section 80-13-202, MCA, is amended to
9 read:

10 "80-13-202. (Temporary) Duties and requirements of
11 mediators -- prohibitions. (1) A mediator must be qualified
12 to provide the services required under this chapter. A
13 mediator must be an impartial person knowledgeable in
14 agricultural and financial matters.

15 (2) In carrying out his properly authorized duties,
16 the mediator shall:

17 (a) listen to the farmer and any creditor desiring to
18 be heard;

19 (b) attempt to negotiate an agreement that:

20 (i) extends the term of credit;

21 (ii) reduces the dollar amount of payments under
22 credit; or

23 (iii) permits the farmer to continue in agricultural
24 production and provides reasonable security to the creditor;
25 and

1 (c) advise, counsel, and assist the farmer and the
2 creditor in attempting to arrive at a satisfactory
3 agreement.

4 (3) A mediator may attempt to:

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

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

10 (4) A mediator may not:

11 (a) advise a farmer or creditor about the law; or

12 (b) assist a farmer or creditor in reserving or
13 establishing legal rights. (Terminates July 1, 1987--sec.
14 15, Ch. 9, Sp. L. March 1986.)"

15 Section 12. Section 80-13-203, MCA, is amended to
16 read:

17 "80-13-203. (Temporary) Mediation agreement. (1) If an
18 agreement is reached between the farmer and a creditor, the
19 mediator shall draft a written mediation agreement to be
20 signed by the farmer and the creditor.

21 (2) A farmer and any creditor who are parties to a
22 mediation agreement and creditors who have filed claim forms
23 as provided in [section 13] and have not objected to the
24 mediation agreement:

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

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

3 (c) may use the mediation agreement as a defense
4 against an action contrary to the mediation agreement.
5 (Terminates July 1, 1987--sec. 15, Ch. 9, Sp. L. March
6 1986.)"

7 NEW SECTION. Section 13. Creditor not attending
8 mediation meeting -- claim form -- objection to agreement.

9 (1) Unless he files a claim form, a creditor who is served
10 notice of a mediation meeting as provided for in [section 7]
11 is subject to and bound by a mediation agreement if he does
12 not attend mediation meetings. In lieu of attending a
13 mediation meeting, a creditor may file a notice of claim and
14 proof of claim on a claim form with the mediator before the
15 scheduled meeting. By filing a claim form, the creditor
16 agrees to be bound by a mediation agreement reached during
17 mediation unless an objection is filed as provided in
18 subsection (2). The mediator shall notify each creditor who
19 has filed a claim form of the terms of any mediation
20 agreement.

21 (2) A creditor who has filed a claim form may serve a
22 written objection to the terms of a mediation agreement to
23 the mediator and the farmer within 10 days after receiving
24 notice of the agreement. If a creditor files an objection to
25 the terms of an agreement, the mediator shall meet with the

1 farmer and creditor within 10 days after receiving the
2 objection and attempt to mediate a new agreement.

3 Section 14. Section 80-13-211, MCA, is amended to
4 read:

5 "80-13-211. (Temporary) Confidentiality of records.

6 (1) All materials, data, and information received by the
7 department or its agent with respect regard to any request
8 filed aspect of mediation under 80-13-201 this chapter are
9 confidential and are not subject to examination or
10 disclosure as public information.

11 (2) No official, employee, or agent of the department
12 may knowingly disclose any materials, data, or information
13 concerning a any aspect of mediation request without the
14 consent of the farmer and the creditor. (Terminates July 1,
15 1987--sec. 15, Ch. 9, Sp. L. March 1986.)"

16 Section 15. Section 80-13-212, MCA, is amended to
17 read:

18 "80-13-212. (Temporary) Closed meetings. Meetings
19 ~~between-a-farmer-and-any-creditor~~ conducted ~~by--a--mediator~~
20 under this chapter are not open to public participation and
21 are not subject to the provisions of the open meeting law
22 contained in 2-3-203. (Terminates July 1, 1987--sec. 15,
23 Ch. 9, Sp. L. March 1986.)"

24 NEW SECTION. Section 16. Mediator immunity from suit.
25 A mediator is immune from civil liability for actions

1 occurring within the scope of his authorized duties.

2 NEW SECTION. Section 17. Fees and expenses of
3 mediation. (1) The department shall assess and collect fees
4 to defray the costs of mediation.

5 (2) All parties to mediation shall contribute equally
6 to the payment of the costs of mediation.

7 NEW SECTION. Section 18. Adoption of rules. (1) The
8 department shall adopt rules to set the compensation of
9 mediators and credit analysts, except that the compensation
10 of mediators may not exceed \$20 an hour.

11 (2) The department may adopt any other rules necessary
12 for the administration of this chapter.

13 Section 19. Section 15, Chapter 9, Special Laws of
14 March 1986, is amended to read:

15 "Section 15. Effective date -- termination. (1) This
16 act is effective on passage and approval and-terminates

17 (2) Sections 1, 3 through 5, 9, 12, and 14 terminate
18 July 1, 1987.

19 (3) Sections 2, 6 through 8, 10, 11, and 13 terminate
20 July 1, 1991."

21 NEW SECTION. Section 20. Effective date --
22 termination. This act is effective July 1, 1987, and
23 terminates July 1, 1991.

-End-

SENATE BILL NO. 321

INTRODUCED BY JERGESON, BARDANOUVE, HIRSCH,
RAPP-SVRCEK, ASAY, SCHYE, YELLOWTAIL, LYBECK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE RIGHT
TO MEDIATION OF AGRICULTURAL INDEBTEDNESS; AUTHORIZING THE
DEPARTMENT OF AGRICULTURE TO PROVIDE MEDIATION SERVICES;
GRANTING THE DEPARTMENT RULEMAKING AUTHORITY, PROVIDING FOR
PAYMENT OF FEES TO DEPRAY THE COSTS OF MEDIATION; AMENDING
SECTIONS SECTION 80-13-102, 80-13-201 THROUGH 80-13-203,
80-13-211, AND 80-13-212, MCA, AND SECTION 15, CHAPTER 9,
SPECIAL LAWS OF MARCH 1986; AND PROVIDING AN EFFECTIVE DATE
AND A TERMINATION DATE."

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

NEW SECTION. Section 17 legislative findings. The
legislature finds that the agricultural sector of the
state's economy is under severe financial stress due to low
farm commodity prices, continuing high interest rates, and
reduced net farm income. The suffering agricultural economy
also adversely affects the economic conditions for
businesses in rural communities. The legislature further
finds that hundreds of this state's farmers are unable to
meet current interest and principal payments on mortgages
and other loan obligations and are threatened with the loss

of their farmland, equipment, crops, and livestock through
mortgage and lien foreclosures, cancellation of contracts
for deed, and other debt collections. Therefore, the
legislature finds that an economic emergency exists that
requires an orderly process for the adjustment of
agricultural indebtedness to preserve the general welfare of
the citizens of Montana.

Section 1. Section 80-13-102, MCA, is amended to read:

"80-13-102. (Temporary) Definitions. As used in this
chapter, 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



1 production.

2 (5) "Mediator" means a person authorized under

3 80-13-202 to ~~serve as a negotiator~~ assist in mediation

4 between a farmer and a creditor.

5 ~~{6}--"Peer-counselor"--means-a-person-who-is-or-has-been~~

6 ~~involved-in-production-agriculture-and-who-has-been-trained~~

7 ~~through-the-department-and-others-in-financial-counseling~~

8 ~~and-mediation-or-negotiation-techniques-and-who-works-to-aid~~

9 ~~financially-distressed-farmers-through-this-program;~~

10 ~~{7}--"Program"--means--the--agricultural-assistance-and~~

11 ~~counseling-program-provided-for-in-80-13-103;~~

12 ~~{8}{6} (a) "Secured creditor" means:~~

13 ~~{a}{i} the holder of a mortgage on agricultural~~

14 ~~property;~~

15 ~~{b}{ii} a vendor of a contract for deed of agricultural~~

16 ~~property;~~

17 ~~{c}{iii} a person with a statutory lien or a perfected~~

18 ~~security interest in agricultural property; or~~

19 ~~{d}{iv} a judgment creditor with a judgment against a~~

20 ~~debtor engaged in agricultural production.~~

21 {b} The term applies to creditors described in

22 subsection (6)(a) who are:

23 {i} the United States or an agency of the United

24 States;

25 {ii} corporations, partnerships, or other business

1 entities; and

2 {iii} individuals.

3 ~~{9}{7} "Unsecured creditor" means a person who:~~

4 ~~{a} does not have a perfected security interest in~~

5 ~~agricultural property; and~~

6 ~~{b} extends credit without a perfected security~~

7 ~~interest to a farmer for the purchase of goods or services~~

8 ~~used in agricultural production. (Terminates July 1,~~

9 ~~1987--sec. 15, Ch. 9, Sp. L. March 1986.)"~~

10 NEW SECTION:--Section 3:--Right to mediation-----notice

11 ----applicability;--{i}--A creditor desiring to initiate a

12 proceeding to enforce a debt against agricultural property

13 that is real estate;--to terminate a contract for deed to

14 purchase agricultural property;--to enforce a secured

15 interest in agricultural property;--or to garnish; levy on;

16 execute on; seize; or attach agricultural property--shall

17 serve a notice on the farmer advising him of the right to

18 mediation under this chapter. Such notice must include

19 information concerning the procedure for requesting

20 mediation. A creditor shall file with the department a copy

21 of any notice served upon a farmer pursuant to this section.

22 The creditor may not commence the proceeding until the

23 creditor and the farmer have completed mediation or until

24 the creditor receives a mediation release.

25 {2}--This section does not apply to any proceeding

1 involving agricultural property with a fair market value of
2 less than \$20,000.

3 Section 4, Section 80-13-201, MCA, is amended to read:
4 "80-13-201. (Temporary) Voluntary mediation Mediation
5 request --- filing procedure --- dismissal of requests; (1) A
6 Within 14 days following service of notice under [section
7 3], a farmer who is in danger of foreclosure on agricultural
8 property or a secured creditor may request mediation of the
9 farmer's indebtedness by filing a request for mediation with
10 the department on a form prescribed by the department.

11 (2) In filing or responding to a mediation request,
12 the farmer shall provide:

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

15 (b) the amount owed to each creditor;

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

18 (d) any financial statements and pro forma cash flow
19 statements, including those related to any nonfarm
20 activities; and

21 (e) any additional information the department may
22 require;

23 (3) In filing or responding to a mediation request, a
24 secured creditor shall provide:

25 (a) information pertaining to the basis of the credit

1 determination;

2 (b) financial statements and pro forma cash flow
3 statements on the respective farmer;

4 (c) statements regarding the status of the farmer's
5 loan performance;

6 (d) the name and title of the representative of the
7 creditor authorized to enter into a binding mediation
8 agreement; and

9 (e) any additional information the department may
10 require;

11 (4) A farmer or secured creditor who agrees to
12 participate in is a party to mediation shall authorize the
13 release to the department of any information held by a
14 creditor;

15 (5) Upon receipt of a properly completed mediation
16 request form, the department shall direct a mediator to meet
17 with the farmer and secured creditor to assist in mediation.
18 An unsecured creditor may participate in mediation between a
19 farmer and secured creditor if each party agrees or if the
20 mediator determines that an unsecured creditor is a
21 necessary party to the mediation;

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

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

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

5 (7) if the mediation request involves more than one
6 secured creditor and any one creditor does not agree to
7 participate in mediation, the department shall dismiss the
8 mediation request only insofar as it relates to that
9 creditor; (Terminates July 1, 1987 sec. 15, Ch. 97, Sp. B.
10 March 1986.)*

11 NEW SECTION, Section 5, Waiver of right to mediation:
12 A farmer or creditor who fails to file a timely mediation
13 request waives the right to mediation provided for under
14 this chapter. The department shall notify a creditor,
15 stating that the creditor may proceed in an action against
16 agricultural property because the farmer has failed to file
17 a mediation request.

18 NEW SECTION, Section 6, Credit analyst: After
19 receiving a request for mediation, the department may refer
20 the farmer to a credit analyst who is knowledgeable in
21 agricultural and financial matters. The credit analyst shall
22 assist the farmer in the preparation of financial
23 information that will be required at the initial mediation
24 meeting.

25 NEW SECTION, Section 7, Initial mediation meeting:

1 notice. Upon receipt of a properly completed mediation
2 request form that includes the information required in
3 80-13-2017 the department shall serve a mediation meeting
4 notice to the farmer and each creditor, specifying a time
5 and place for an initial mediation meeting. After serving
6 such notice, the department shall appoint a mediator to meet
7 with the farmer and the secured creditor to assist in
8 mediation. An unsecured creditor may participate in
9 mediation between a farmer and secured creditor if each
10 party agrees or if the mediator determines that an unsecured
11 creditor is a necessary party to the mediation.

12 NEW SECTION, Section 8, Effect of mediation meeting
13 notice - stay of action: (1) Upon service of a mediation
14 meeting notice, neither the farmer nor the creditor may take
15 any further legal action in court concerning the farmer's
16 indebtedness to that creditor until the mediator has signed
17 a release order as provided for in {section 9}. Such release
18 order is final and is not subject to an appeal.

19 (2) Proof of service of a mediation meeting notice is
20 effective in any court in this state to obtain a continuance
21 or delay, except that such delay may not cause any person to
22 lose any legal rights and all applicable statutes of
23 limitations must toll.

24 NEW SECTION, Section 9, Mediation - good faith
25 requirement - release order: (1) The mediator shall

1 commence mediation within 14 days following service of a
2 mediation meeting notice;

3 (2) If the farmer and the creditor have acted in good
4 faith to mediate, the mediator shall sign a release order
5 after 45 calendar days have elapsed following commencement
6 of mediation. However, the mediator in his discretion may
7 declare that either party has failed to act in good faith
8 during the mediation and may extend the 45-day period
9 accordingly, provided that the mediator notifies the farmer
10 and the creditor that days have been lost because either
11 party has failed to act in good faith as provided in
12 (section 10);

13 (3) Once the 45-day period provided for in subsection
14 (2) has ended, no mediation may continue beyond 10 days if
15 either the farmer or the creditor serves notice that further
16 mediation would not be effective;

17 NEW SECTION. Section 10, Obligation of good faith,
18 (1) A farmer and a creditor who are parties to mediation
19 under this chapter shall act in good faith with respect to
20 mediation. A farmer or a creditor does not act in good faith
21 if he:

22 (a) fails on a regular or continuing basis to attend
23 and participate in mediation sessions without good cause;

24 (b) does not provide full information regarding his
25 financial obligations to other parties; OR

1 (c) fails to designate a representative to participate
2 in mediation with adequate authority to fully settle,
3 compromise, or otherwise mediate the matter; or

4 (d) demonstrates other behavior that evidences lack of
5 good faith to mediate;

6 (2) A failure to reduce, restructure, refinance, or
7 forgive debt does not, in itself, evidence a lack of good
8 faith by the creditor;

9 Section 11, Section 00-13-202, MCA, is amended to
10 read:

11 "00-13-202. (Temporary) Duties and requirements of
12 mediators prohibitions. (1) A mediator must be qualified
13 to provide the services required under this chapter. A
14 mediator must be an impartial person knowledgeable in
15 agricultural and financial matters;

16 (2) In carrying out his properly authorized duties,
17 the mediator shall:

18 (a) listen to the farmer and any creditor desiring to
19 be heard;

20 (b) attempt to negotiate an agreement that:

21 (i) extends the term of credit;

22 (ii) reduces the dollar amount of payments under
23 credit; or

24 (iii) permits the farmer to continue in agricultural
25 production and provides reasonable security to the creditor;

1 and

2 (c) advise, counsel, and assist the farmer and the

3 creditor in attempting to arrive at a satisfactory

4 agreement.

5 (3) A mediator may attempt to:

6 (a) arrange mutually agreed upon forbearance from

7 litigation, rescheduled or renegotiated debt, voluntary

8 sale, or other liquidation of any agricultural property; and

9 (b) obtain assistance from any public or private

10 agency.

11 (4) A mediator may not:

12 (a) advise a farmer or creditor about the law; or

13 (b) assist a farmer or creditor in reserving or

14 establishing legal rights. (Terminates July 17, 1987--sec.

15 15, Ch. 9, Sp. B. March 1986.)"

16 Section 12, Section 80-13-203, MCA, is amended to

17 read:

18 "80-13-203. (Temporary) Mediation agreement. (1) If

19 an agreement is reached between the farmer and a creditor,

20 the mediator shall draft a written mediation agreement to be

21 signed by the farmer and the creditor.

22 (2) A farmer and any creditor who are parties to a

23 mediation agreement and creditors who have filed claim forms

24 as provided in {section 13} and have not objected to the

25 mediation agreement:

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

2 (b) may enforce the mediation agreement as a legal

3 contract; and

4 (c) may use the mediation agreement as a defense

5 against an action contrary to the mediation agreement;

6 (Terminates July 17, 1987--sec. 15, Ch. 9, Sp. B. March

7 1986.)"

8 NEW SECTION. Section 13, Creditor not attending

9 mediation meeting--claim form--objection to agreement:

10 (1) Unless he files a claim form, a creditor who is served

11 notice of a mediation meeting as provided for in {section 7}

12 is subject to and bound by a mediation agreement if he does

13 not attend mediation meetings. In lieu of attending a

14 mediation meeting, a creditor may file a notice of claim and

15 proof of claim on a claim form with the mediator before the

16 scheduled meeting. By filing a claim form, the creditor

17 agrees to be bound by a mediation agreement reached during

18 mediation unless an objection is filed as provided in

19 subsection (2). The mediator shall notify each creditor who

20 has filed a claim form of the terms of any mediation

21 agreement.

22 (2) A creditor who has filed a claim form may serve a

23 written objection to the terms of a mediation agreement to

24 the mediator and the farmer within 10 days after receiving

25 notice of the agreement. If a creditor files an objection to

1 the--terms-of-an-agreement, the mediator shall meet with the
2 farmer and creditor within 10 days after receiving the
3 objection and attempt to mediate a new agreement.

4 Section 14, Section 80-13-211, MCA, is amended to
5 read:

6 "80-13-211. (Temporary) Confidentiality of records:
7 (1) All materials, data, and information received by the
8 department or its agent with respect regard to any request
9 filed aspect of mediation under 80-13-201 this chapter are
10 confidential and are not subject to examination or
11 disclosure as public information.

12 (2) No official, employee, or agent of the department
13 may knowingly disclose any materials, data, or information
14 concerning a any aspect of mediation request without the
15 consent of the farmer and the creditor. (Terminates July 1,
16 1987--sec. 15, Ch. 9, Sp. B. March 1986.)"

17 Section 15, Section 80-13-212, MCA, is amended to
18 read:

19 "80-13-212. (Temporary) Closed meetings. Meetings
20 between a farmer and any creditor conducted by a mediator
21 under this chapter are not open to public participation and
22 are not subject to the provisions of the open meeting law
23 contained in 2-3-203. (Terminates July 1, 1987--sec. 15,
24 Ch. 9, Sp. B. March 1986.)"

25 NEW SECTION. Section 16. Mediator immunity from suit.

1 A mediator is immune from civil liability for actions
2 occurring within the scope of his authorized duties.

3 NEW SECTION. Section 17. Fees and expenses of
4 mediation: (1) The department shall assess and collect fees
5 to defray the costs of mediation.

6 (2) All parties to mediation shall contribute equally
7 to the payment of the costs of mediation.

8 NEW SECTION. Section 18. Adoption of rules: (1) The
9 department shall adopt rules to set the compensation of
10 mediators and credit analysts, except that the compensation
11 of mediators may not exceed \$20 an hour.

12 (2) The department may adopt any other rules necessary
13 for the administration of this chapter.

14 Section 2. Section 15, Chapter 9, Special Laws of
15 March 1986, is amended to read:

16 "Section 15. Effective date -- termination. (1) This
17 act is effective on passage and approval, and terminates

18 (2) Sections 1, 3 through 5, 9, 12, and 14 terminate
19 July 1, 1987.

20 (3) Sections 2, AND 6 through 8, 10, 11, and 13
21 terminate July 1, 1991 1989."

22 NEW SECTION. Section 3. Effective date --
23 termination. This act is effective July 1, 1987, and
24 terminates July 1, 1991 1989.

-End-

SENATE BILL NO. 321

INTRODUCED BY JERGESON, BARDANOUVE, HIRSCH,
RAPP-SVRCEK, ASAY, SCHYE, YELLOWTAIL, LYBECK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE RIGHT
TO MEDIATION OF AGRICULTURAL INDEBTEDNESS; AUTHORIZING THE
DEPARTMENT OF AGRICULTURE TO PROVIDE MEDIATION SERVICES;
GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; PROVIDING FOR
PAYMENT OF FEES TO DEFRAY THE COSTS OF MEDIATION; PROVIDING
FOR PAYMENT OF FEES TO DEFRAY THE COSTS OF MEDIATION;
APPROPRIATING MONEY; AMENDING SECTIONS SECTION 80-13-102,
80-13-201 THROUGH 80-13-203, 80-13-211, AND 80-13-212, MCA,
AND SECTION 15, CHAPTER 9, SPECIAL LAWS OF MARCH 1986; AND
PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION Section 1. Legislative findings. The
legislature finds that the agricultural sector of the
state's economy is under severe financial stress due to low
farm commodity prices, continuing high interest rates, and
reduced net farm income. The suffering agricultural economy
also adversely affects the economic conditions for
businesses in rural communities. The legislature further
finds that hundreds of this state's farmers are unable to
meet current interest and principal payments on mortgages

and other loan obligations and are threatened with the loss
of their farmland, equipment, crops, and livestock through
mortgage and lien foreclosures, cancellation of contracts
for deed, and other debt collections. Therefore, the
legislature finds that an economic emergency exists that
requires an orderly process for the adjustment of
agricultural indebtedness to preserve the general welfare of
the citizens of Montana.

Section 1. Section 80-13-102, MCA, is amended to read:

"80-13-102. (Temporary) Definitions. As used in this
chapter, 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

1 farm or ranch primarily for the purpose of agricultural
2 production.

3 (5) "Mediator" means a person authorized under
4 80-13-202 to ~~serve as a negotiator~~ assist in mediation
5 between a farmer and a creditor.

6 ~~{6}--"Peer counselor" means a person who is or has been~~
7 ~~involved in production agriculture and who has been trained~~
8 ~~through the department and others in financial counseling~~
9 ~~and mediation or negotiation techniques and who works to aid~~
10 ~~financially distressed farmers through this program.~~

11 ~~{7}--"Program" means the agricultural assistance and~~
12 ~~counseling program provided for in 80-13-103.~~

13 ~~{8}{6}~~ (a) "Secured creditor" means:

14 ~~{a}{i}~~ (i) the holder of a mortgage on agricultural
15 property;

16 ~~{b}{ii}~~ (ii) a vendor of a contract for deed of agricultural
17 property;

18 ~~{c}{iii}~~ (iii) a person with a statutory lien or a perfected
19 security interest in agricultural property; or

20 ~~{d}{iv}~~ (iv) a judgment creditor with a judgment against a
21 debtor engaged in agricultural production.

22 (b) The term applies to creditors described in
23 subsection (6)(a) who are:

24 (i) the United States or an agency of the United
25 States;

1 (ii) corporations, partnerships, or other business
2 entities; and

3 (iii) individuals.

4 ~~{9}{7}~~ "Unsecured creditor" means a person who:

5 (a) does not have a perfected security interest in
6 agricultural property; and

7 (b) extends credit without a perfected security
8 interest to a farmer for the purchase of goods or services
9 used in agricultural production. (Terminates July 1,
10 1987--sec. 15, Ch. 9, Sp. L. March 1986.)"

11 NEW SECTION--Section 3--Right to mediation--notice
12 --applicability:--{1}--A creditor desiring to initiate a
13 proceeding to enforce a debt against agricultural property
14 that is real estate, to terminate a contract for deed to
15 purchase agricultural property, to enforce a secured
16 interest in agricultural property, or to garnish, levy on,
17 execute on, seize, or attach agricultural property shall
18 serve a notice on the farmer advising him of the right to
19 mediation under this chapter. Such notice must include
20 information concerning the procedure for requesting
21 mediation. A creditor shall file with the department a copy
22 of any notice served upon a farmer pursuant to this section.
23 The creditor may not commence the proceeding until the
24 creditor and the farmer have completed mediation or until
25 the creditor receives a mediation release.

1 (2) This section does not apply to any proceeding
 2 involving agricultural property with a fair market value of
 3 less than \$20,000.

4 Section 4, Section 80-13-201, MCA, is amended to read:

5 "80-13-201. (Temporary) Voluntary mediation Mediation
 6 request filing procedure dismissal of requests. (1) A
 7 Within 14 days following service of notice under section
 8 37 a farmer who is in danger of foreclosure on agricultural
 9 property or a secured creditor may request mediation of the
 10 farmer's indebtedness by filing a request for mediation with
 11 the department on a form prescribed by the department.

12 (2) In filing or responding to a mediation request,
 13 the farmer shall provide:

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

16 (b) the amount owed to each creditor;

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

19 (d) any financial statements and pro forma cash flow
 20 statements, including those related to any nonfarm
 21 activities; and

22 (e) any additional information the department may
 23 require;

24 (3) In filing or responding to a mediation request, a
 25 secured creditor shall provide:

1 (a) information pertaining to the basis of the credit
 2 determination;

3 (b) financial statements and pro forma cash flow
 4 statements on the respective farmer;

5 (c) statements regarding the status of the farmer's
 6 loan performance;

7 (d) the name and title of the representative of the
 8 creditor authorized to enter into a binding mediation
 9 agreement; and

10 (e) any additional information the department may
 11 require;

12 (4) A farmer or secured creditor who agrees to
 13 participate in is a party to mediation shall authorize the
 14 release to the department of any information held by a
 15 creditor;

16 (5) Upon receipt of a properly completed mediation
 17 request form, the department shall direct a mediator to meet
 18 with the farmer and secured creditor to assist in mediation.
 19 An unsecured creditor may participate in mediation between a
 20 farmer and secured creditor if each party agrees or if the
 21 mediator determines that an unsecured creditor is a
 22 necessary party to the mediation;

23 (6) Subject to the provisions of subsection (7), the
 24 department shall immediately terminate an attempt at
 25 mediation and dismiss the mediation request if at any time

1 it finds that:

2 (a) a secured creditor does not agree to participate

3 in mediation requested by the farmer; or

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

5 mediation requested by a secured creditor;

6 (7) If the mediation request involves more than one

7 secured creditor and any one creditor does not agree to

8 participate in mediation, the department shall dismiss the

9 mediation request only insofar as it relates to that

10 creditor. (Terminates July 1, 1987--sec. 15, Ch. 97, Sp. B.

11 March 1986.)"

12 NEW SECTION. Section 5. Waiver of right to mediation.

13 A farmer or creditor who fails to file a timely mediation

14 request waives the right to mediation provided for under

15 this chapter. The department shall notify a creditor,

16 stating that the creditor may proceed in an action against

17 agricultural property because the farmer has failed to file

18 a mediation request.

19 NEW SECTION. Section 6. Credit analyst. After

20 receiving a request for mediation, the department may refer

21 the farmer to a credit analyst who is knowledgeable in

22 agricultural and financial matters. The credit analyst shall

23 assist the farmer in the preparation of financial

24 information that will be required at the initial mediation

25 meeting.

1 NEW SECTION. Section 7. Initial mediation meeting.

2 notice. Upon receipt of a properly completed mediation

3 request form that includes the information required in

4 00-13-201, the department shall serve a mediation meeting

5 notice to the farmer and each creditor, specifying a time

6 and place for an initial mediation meeting. After serving

7 such notice, the department shall appoint a mediator to meet

8 with the farmer and the secured creditor to assist in

9 mediation. An unsecured creditor may participate in

10 mediation between a farmer and secured creditor if each

11 party agrees or if the mediator determines that an unsecured

12 creditor is a necessary party to the mediation.

13 NEW SECTION. Section 8. Effect of mediation meeting

14 notice. (1) Upon service of a mediation

15 meeting notice, neither the farmer nor the creditor may take

16 any further legal action in court concerning the farmer's

17 indebtedness to that creditor until the mediator has signed

18 a release order as provided for in (section 9). Such release

19 order is final and is not subject to an appeal.

20 (2) Proof of service of a mediation meeting notice is

21 effective in any court in this state to obtain a continuance

22 or delay, except that such delay may not cause any person to

23 lose any legal rights and all applicable statutes of

24 limitations must toll.

25 NEW SECTION. Section 9. Mediation. good faith

1 requirement-----release--order,---(1)--The--mediator--shall
2 commence--mediation--within--14--days--following--service--of--a
3 mediation--meeting--notice;

4 (2)--If--the--farmer--and--the--creditor--have--acted--in--good
5 faith--to--mediate,--the--mediator--shall--sign--a--release--order
6 after--45--calendar--days--have--elapsed--following--commencement
7 of--mediation. However,--the--mediator--in--his--discretion--may
8 declare--that--either--party--has--failed--to--act--in--good--faith
9 during--the--mediation--and--may--extend--the--45--day--period
10 accordingly,--provided--that--the--mediator--notifies--the--farmer
11 and--the--creditor--that--days--have--been--lost--because--either
12 party--has--failed--to--act--in--good--faith--as--provided--in
13 {section--10};

14 (3)--Once--the--45--day--period--provided--for--in--subsection
15 (2)--has--ended,--no--mediation--may--continue--beyond--10--days--if
16 either--the--farmer--or--the--creditor--serves--notice--that--further
17 mediation--would--not--be--effective;

18 NEW-SECTION:--Section--10.--Obligation--of--good--faith.
19 (1)--A--farmer--and--a--creditor--who--are--parties--to--mediation
20 under--this--chapter--shall--act--in--good--faith--with--respect--to
21 mediation.--A--farmer--or--a--creditor--does--not--act--in--good--faith
22 if--he:

- 23 (a)--fails--on--a--regular--or--continuing--basis--to--attend
24 and--participate--in--mediation--sessions--without--good--cause;
- 25 (b)--does--not--provide--full--information--regarding--his

1 financial--obligations--to--other--parties; OR
2 (c)--fails--to--designate--a--representative--to--participate
3 in--mediation--with--adequate--authority--to--fully--settle,
4 compromise,--or--otherwise--mediate--the--matter; or

5 (d)--demonstrates--other--behavior--that--evidences--lack--of
6 good--faith--to--mediate;

7 (2)--A--failure--to--reduce,--restructure,--refinance,--or
8 forgive--debt--does--not,--in--itself,--evidence--a--lack--of--good
9 faith--by--the--creditor;

10 Section--11,--Section--80-13-202,--MCA,--is--amended--to
11 read:

12 "80-13-202,--(Temporary)--Duties--and--requirements--of
13 mediators --prohibitions--(1)--A--mediator--must--be--qualified
14 to--provide--the--services--required--under--this--chapter.--A
15 mediator--must--be--an--impartial--person--knowledgeable--in
16 agricultural--and--financial--matters;

17 (2)--In--carrying--out--his--properly--authorized--duties,
18 the--mediator--shall:

19 (a)--listen--to--the--farmer--and--any--creditor--desiring--to
20 be--heard;

21 (b)--attempt--to--negotiate--an--agreement--that:

- 22 (i)--extends--the--term--of--credit;
- 23 (ii)--reduces--the--dollar--amount--of--payments--under
24 credit; or

25 (iii)--permits--the--farmer--to--continue--in--agricultural

1 production-and-provides-reasonable-security-to-the-creditor,
 2 and
 3 (c)--advise, counsel, and assist the farmer and the
 4 creditor in attempting to arrive at a satisfactory
 5 agreement;
 6 (3)--A mediator may attempt to:
 7 (a)--arrange mutually agreed upon forbearance from
 8 litigation, rescheduled or renegotiated debt, voluntary
 9 sale or other liquidation of any agricultural property, and
 10 (b)--obtain assistance from any public or private
 11 agency;
 12 (4)--A mediator may not:
 13 (a)--advise a farmer or creditor about the law; or
 14 (b)--assist a farmer or creditor in reserving or
 15 establishing legal rights. (Terminates July 1, 1987 sec.
 16 15, Ch. 9, Sp. B. March 1986.)⁴
 17 Section 12, Section 80-13-203, MCA, is amended to
 18 read:
 19 "80-13-203. (Temporary) Mediation agreement. (1) If
 20 an agreement is reached between the farmer and a creditor,
 21 the mediator shall draft a written mediation agreement to be
 22 signed by the farmer and the creditor.
 23 (2) A farmer and any creditor who are parties to a
 24 mediation agreement and creditors who have filed claim forms
 25 as provided in (section 13) and have not objected to the

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 (Terminates July 1, 1987 sec. 15, Ch. 9, Sp. B. March
 8 1986.)⁴
 9 NEW SECTION. Section 13. Creditor not attending
 10 mediation meeting claim form objection to agreement.
 11 (1) Unless he files a claim form, a creditor who is served
 12 notice of a mediation meeting as provided for in (section 7)
 13 is subject to and bound by a mediation agreement if he does
 14 not attend mediation meetings. In lieu of attending a
 15 mediation meeting, a creditor may file a notice of claim and
 16 proof of claim on a claim form with the mediator before the
 17 scheduled meeting. By filing a claim form, the creditor
 18 agrees to be bound by a mediation agreement reached during
 19 mediation unless an objection is filed as provided in
 20 subsection (2). The mediator shall notify each creditor who
 21 has filed a claim form of the terms of any mediation
 22 agreement.
 23 (2) A creditor who has filed a claim form may serve a
 24 written objection to the terms of a mediation agreement to
 25 the mediator and the farmer within 10 days after receiving

1 notice-of-the-agreement, if-a-creditor-files-an-objection-to
2 the-terms-of-an-agreement, the-mediator-shall-meet-with--the
3 farmer--and--creditor--within--10--days--after-receiving-the
4 objection-and-attempt-to-mediate-a-new-agreement;

5 Section-14,--Section--80-13-211,--MCA,--is--amended--to
6 read:

7 "80-13-211,--(Temporary)--Confidentiality--of--records:
8 (1)--All-materials, data, and--information--received--by--the
9 department or--its-agent with-respect regard to-any-request
10 filed aspect-of-mediation under-80-13-201 this-chapter are
11 confidential--and--are--not--subject--to--examination--or
12 disclosure-as-public-information.

13 (2)--No-official, employee, or-agent-of-the--department
14 may--knowingly--disclose-any-materials, data, or-information
15 concerning-a any-aspect-of mediation--request--without--the
16 consent-of-the-farmer-and-the-creditor;--(Terminates-July-1,
17 1987--sec--15, Ch-9, Sp-B, March-1986.)"

18 Section-15,--Section--80-13-212,--MCA,--is--amended--to
19 read:

20 "80-13-212,--(Temporary)--Closed--meetings,--Meetings
21 between--a--farmer--and-any-creditor-conducted-by-a-mediator
22 under-this-chapter are-not-open-to-public-participation--and
23 are--not--subject--to-the-provisions-of-the-open-meeting-law
24 contained-in-2-3-203,--(Terminates-July-1,--1987--sec--15,
25 Ch-9, Sp-B, March-1986.)"

1 NEW-SECTION,--Section-16,--Mediator-immunity-from-suit:
2 A--mediator--is--immune--from--civil--liability--for-actions
3 occurring-within-the-scope-of-his-authorized-duties.

4 NEW-SECTION,--Section-17,--Fees--and--expenses--of
5 mediation,--(1)--The-department-shall-assess-and-collect-fees
6 to-defray-the-costs-of-mediation;

7 (2)--All--parties-to-mediation-shall-contribute-equally
8 to-the-payment-of-the-costs-of-mediation;

9 NEW-SECTION,--Section-18,--Adoption-of-rules,--(1)--The
10 department--shall--adopt--rules--to--set-the-compensation-of
11 mediators-and-credit-analysts, except-that-the--compensation
12 of-mediators-may-not-exceed-\$20-an-hour.

13 (2)--The-department-may-adopt-any-other-rules-necessary
14 for-the-administration-of-this-chapter;

15 NEW SECTION. Section 2. Fees and expenses of
16 mediation. The department may assess and collect fees to
17 defray the costs of providing mediation services under this
18 chapter.

19 NEW-SECTION,--SECTION-3,--APPROPRIATION----EXPENDITURE
20 OF--FEES--AUTHORIZED,--(1)--THERE--IS--APPROPRIATED-FROM-THE
21 GENERAL-FUND-TO-THE-DEPARTMENT-OF-AGRICULTURE--THE--SUM--OF
22 \$50,000--FOR--THE--BIENNIAL--ENDING--JUNE--30, 1989, FOR-THE
23 PURPOSE-OF-PROVIDING-MEDIATION-SERVICES;

24 (2)--IN-ADDITION--TO--THE--APPROPRIATION--CONTAINED--IN
25 SUBSECTION--(1),--THERE-IS-APPROPRIATED-TO-THE-DEPARTMENT-OF

1 AGRICULTURE--\$25,000--IN--AVAILABLE--FEES--COLLECTED---UNDER
2 SECTION--2--FOR-EACH-YEAR-OF-THE-BIENNIUM--SUCH-FEES-MUST-BE
3 APPLIED-TOWARD-THE-COSTS-OF-PROVIDING-MEDIATION--UNDER--THIS
4 ACT-

5 NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION.
6 SECTION 2 IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF
7 TITLE 80, CHAPTER 13, PART 2, AND THE PROVISIONS OF TITLE
8 80, CHAPTER 13, PART 2, APPLY TO SECTION 2.

9 Section 4. Section 15, Chapter 9, Special Laws of
10 March 1986, is amended to read:

11 "Section 15. Effective date -- termination. (1) This
12 act is effective on passage and approval. ~~and terminates~~

13 (2) Sections 1, 3 through 5, 9~~7~~-12~~7~~, and 14 terminate
14 July 1, 1987.

15 (3) Sections 2~~7~~ AND 6 through 8~~7~~--10~~7~~--11~~7~~ and 13
16 terminate July 1, 1991 1989."

17 NEW SECTION. Section 5. Effective date --
18 termination. This act is effective July 1, 1987, and
19 terminates July 1, 1991 1989.

-End-

STANDING COMMITTEE REPORT

HOUSE

March 18

19 87

Mr. Speaker: We, the committee on AGRICULTURE, LIVESTOCK & IRRIGATION

report SENATE BILL 321

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Duane W. Compton
REP. DUANE W. COMPTON Chairman

1. Title, line 9.

Following: "r"

Insert: "PROVIDING FOR PAYMENT OF FEES TO DEFRAY THE COSTS OF MEDIATION; APPROPRIATING MONEY;"

2. Page 14, line 14.

Following: line 13

Insert: "NEW SECTION. Section 2. Fees and expenses of mediation. The department may assess and collect fees to defray the costs of providing mediation services under this chapter.

NEW SECTION. Section 3. Appropriation -- expenditure of fees authorized. (1) There is appropriated from the general fund to the department of agriculture the sum of \$50,000 for the biennium ending June 30, 1989, for the purpose of providing mediation services.

(2) In addition to the appropriation contained in subsection (2), there is appropriated to the department of agriculture \$25,000 in available fees collected under [section 2] for each year of the biennium. Such fees must be applied toward the costs of providing mediation under this act."

NEW SECTION. Section 4. Codification instruction. Section 2 is intended to be codified as an integral part of Title 80, chapter 13, part 2, and the provisions of Title 80, chapter 13, part 2, apply to section 2.

Renumber: subsequent sections

Rep. Ted Schye will carry SB 321 on the House floor.

MS.
Third reading copy (Blue)
color

STANDING COMMITTEE REPORT

HOUSE

March 28 19 87

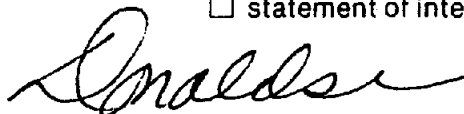
Mr. Speaker: We, the committee on HOUSE APPROPRIATIONS

report SENATE BILL 321

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached



Chairman

1. Committee Report from the Committee on Agriculture, Livestock, and Irrigation dated March 18, 1987, be further amended as follows:
 1. Amendment 2.
Strike: New Section 3 in its entirety
Renumber: subsequent sections.