

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

March 11, 1998
Testimony before the
Senate Committee on Agriculture and Environmental Resources

by
Jo Ann Prust
Mediation Coordinator,
Farm Mediation and Arbitration Program
Wisconsin Farm Center

Good morning, Madame Chair, and ladies and gentlemen of the committee. Thank you for the opportunity to present testimony on Assembly Substitute Amendment 1, To 1997 Assembly Bill 392.

The department has requested the changes contained in the Substitute Amendment to AB 392 for a number of reasons. With the formation of the Wisconsin Farm Center a number of direct farm services were combined into one bureau within the Marketing Division. These include the Farmers Assistance Program, the Farm Mediation and Arbitration Program, the Farm Link Program, and the Rural Electrical Power Services Program (formerly stray voltage). Many of the statutes creating these programs have not been revised since their creation.

This Amendment addresses a number of concerns and provides more administrative consistency between the programs within the Wisconsin Farm Center and more importantly provides safeguards that allow the Wisconsin Farm Center to better meet the needs of farmers within the state. The changes include:

- 1) Consistency between programs regarding the definition of who is a "farmer".

This change is requested to clarify the definition and provide a more realistic definition under today's farm economy. Many of the farmers who fall under the definition of "farming" in s. 102.04(3) do not meet the acreage or gross sales requirements of s. 93.50(1)(d). These farmers may be beginning farmers who rent or buy facilities only, not meeting the acreage requirements. Although many exceed the gross income criteria currently outlined and in fact are full time farmers they are excluded under the current language of s. 93.50(1)(d). In addition by tying the gross sales requirement to the federal minimum wage the statute provides for automatic indexing as the minimum wage increases, without the need for further amendment. In addition, this definition will now apply to services provided by the Farmers Assistance Program, which currently do not include any definition of a farmer.

- 2) Requiring training and reimbursement for travel and necessary expenses for volunteer advisors in a similar manner as required under s. 93.50 (2)(am) and s.93.50(2)(b) for volunteer mediators.

Although the department currently provides for training and reimbursement of expenses this language mandates the department to do so. This ensures that the volunteer advisors will have access to training in the future and that consistent with provisions applying to volunteer mediators their travel and necessary expenses will be reimbursed by the department.

- 3) Providing confidentiality for oral and written communication obtained by volunteer advisors in the performance of their services (s.93.51), staff of the Rural Electrical Power Services Program (s. 93.41) and staff of the Dairy farmer exit-entry program (s.93.52).

This language is probably the most significant change overall providing protection for information obtained providing services through the Farmers Assistance Program, the Dairy farmer exit-entry program and the Rural Electrical Power Services Program. This protects information obtained by the department or volunteers working on behalf of the department from the open records requirements. The information would be not be admissible in evidence or subject to discovery or compulsory process, except where related to possible criminal conduct, where the individual consents to admission or discovery or where a court feels it is necessary to admit the evidence to prevent a manifest injustice.

This change protects the farmers of the state and encourages them to utilize the very important services provided by these Programs. It also provides protection to the volunteers who provide countless hours of services to the farm community of the state and whose services have been critical in resolving disputes through the Farm Mediation and Arbitration Program.

- 4) Removing language requiring that the Farm Mediation and Arbitration Program select only mediators who are residents of this state, thereby allowing the Program to select mediators who reside in contiguous states to fill shortages in areas such as the northwestern areas of Wisconsin bordering Minnesota and the area near the Upper Peninsula of Michigan.

The changes outlined above provide uniformity within the programs that make up the Wisconsin Farm Center both in terms of eligibility and protection of information obtained from farmers. The changes also provide Wisconsin Farm Center volunteer advisors with protection comparable to that already provided to volunteer mediators by s.93.50 and s.904.085.

Chairman:
Agriculture Committee



Member:
Environment & Utilities
Government Operations
Natural Resources
Rural Affairs

Al Ott

State Representative • 3rd Assembly District

April 29, 1998

The Honorable Tommy G. Thompson, Governor
State of Wisconsin
115 East, State Capitol
Madison, WI 53708

Dear Governor Thompson:

I am writing to respectfully request that you sign into law AB 392 at your earliest convenience.

The bill, which I introduced at the request of DATCP, makes important changes to several services provided within the Department's Farm Center program. The program's services that are affected are the Farmers Assistance program, the Farm Mediation and Arbitration program, the Farm Link program and the Rural Electrical Power Services program. Many of the statutes that created these programs have not been revised since they were created.

The bill received bipartisan support, passing both the Assembly and Senate unanimously.

Thank you in advance for your consideration of this request. If you have any questions, please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Al Ott', is written above the printed name.

Al Ott
State Representative
3rd Assembly District



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Alan T. Tracy, Secretary

2811 Agriculture Drive
Madison, Wisconsin 53704-6777

PO Box 8911
Madison, WI 53708-8911

August 25, 1997

State Representative Al Ott, Chair
Assembly Agriculture Committee
State Capitol
PO Box 8953
Madison, WI 53708

File with [unclear]

Dear Representative Ott:

Thank you for the opportunity to appear before the Committee to discuss changes requested for farmers assistance, farm/link, stray voltage, and mediation programs within the Wisconsin Farm Center here at the department.

One concern expressed by members was that of protecting communications within the farmer assistance programs, other than the mediation program, which already has this protection under current s. 904.085, Wis. Stats. The proposed section 904.15 would extend the protection to our other programs.

As you know, our farm credit advisors are volunteers trained by the department to work with farmers who are having financial difficulties due to debt load, diseases, crop losses, and stray voltage, among others. They are often involved in assisting with negotiated settlements or formal mediations through our programs. Yet, unlike communications of our volunteer mediators which are protected under s.904.085, Wis. Stats., communications with our volunteer advisors are not protected unless they are involved in a mediation case. Further, under s. 904.085(3)(b) mediators are not subject to subpoena. Our volunteer advisors are not similarly protected.

Often, our advisors do what could be called "pre-mediation" work. The vast majority of cases handled are resolved in this phase. Only the most difficult or complex cases advance to the formal mediation stage.

A major component of our farmer assistance program has been the volunteer program. Since 1984, nearly 400 Wisconsin citizens have helped thousands of our farm families through difficult times. A goal of the program has always been to resolve problems quickly so that the farmer can get on with the business of farming. This can happen only when the farmer has the trust and confidence in the process that the negotiation and/or mediation are confidential. If an advisor is subject to subpoena, that is a threat to the process of working out problems in confidence. The threat of subpoena may also deter citizens from volunteering their time to the program. Therefore, we have requested this change.

I have also included information on the history of program services which may serve as a helpful reminder of the work done at the Wisconsin Farm Center.

Please give me a call if I can be of further assistance. Thank you.

Sincerely,



Jeanne M. Meier

Director

Wisconsin Farm Center

608-224-5046

CHRONOLOGY OF THE FARMERS ASSISTANCE PROGRAM

1984--DATCP assigns staff to make recommendations to Board on department response to severe farm financial crisis.

JULY--forty volunteer farm credit advisors trained.

1985--1985 Wisconsin Act 153 establishes Wisconsin Farm Mediation and Arbitration Program

1986--FEBRUARY--toll free hotline established

Legislature establishes 3.0 FTE project positions in Farmers Assistance Program

-Staff attorney

-Calls, training, support

-Mediation coordinator

1987--Program continued for additional biennium due to continuing financial stress within farm community. Mediation coordinator position eliminated; duties absorbed by staff attorney.

1988--Drought--additional 2.0 staff added to deal with drought.

1989--319 requests for mediation; created new half-time coordinator position and .6 program assistant

1990--expanded program to include financial analysis services

1991--major increase in calls--falling milk prices

1992--Legislature made program permanent and added job counseling position

1993-94--Crisis counseling outreach component added--flood/wet weather

904.085 RELEVANCY AND ITS LIMITS

904.085 Communications in mediation. (1) PURPOSE. The purpose of this section is to encourage the candor and cooperation of disputing parties, to the end that disputes may be quickly, fairly and voluntarily settled.

(2) DEFINITIONS. In this section:

(a) "Mediation" means mediation under s. 93.50 (3), conciliation under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) 3 or 111.87, negotiation under s. 144.445 (9), mediation under ch. 655 or s. 767.11, or any similar statutory, contractual or court-referred process facilitating the voluntary resolution of disputes. "Mediation" does not include binding arbitration or appraisal.

(b) "Mediator" means the neutral facilitator in mediation, its agents and employees.

(c) "Party" means a participant in mediation, personally or by an attorney, guardian, guardian ad litem or other representative, regardless of whether such person is a party to an action or proceeding whose resolution is attempted through mediation.

(3) INADMISSIBILITY. (a) Except as provided under sub. (4), no oral or written communication relating to a dispute in mediation made or presented in mediation by the mediator or a party is admissible in evidence or subject to discovery or compulsory process in any judicial or administrative proceeding. Any communication that is not admissible in evidence or not subject to discovery or compulsory process under this paragraph is not a public record under subch. II of ch. 19.

(b) Except as provided under sub. (4), no mediator may be subpoenaed or otherwise compelled to disclose any oral or written communication relating to a dispute in mediation made or presented in mediation by the mediator or a party or to render an opinion about the parties, the dispute whose resolution is attempted by mediation or any other aspect of the mediation.

(4) EXCEPTIONS. (a) Subsection (3) does not apply to any written agreement, stipulation or settlement made between 2 or more parties during or pursuant to mediation.

(b) Subsection (3) does not apply if the parties stipulate that the mediator may investigate the parties under s. 767.11 (14) (c).

(c) Subsection (3) (a) does not prohibit the admission of evidence otherwise discovered, although the evidence was presented in the course of mediation.

(d) A mediator reporting child abuse under s. 48.981 or reporting nonidentifying information for statistical, research or educational purposes does not violate this section.

(e) In an action or proceeding distinct from the dispute whose settlement is attempted through mediation, the court may admit evidence otherwise barred by this section if necessary to prevent a manifest injustice of sufficient magnitude to outweigh the importance of protecting the principle of confidentiality in mediation proceedings generally.

History: Sup. Ct. Order No. 93-03, 179 W (2d) xv (1993).

Judicial Council Note, 1993: This section creates a rule of inadmissibility for communications presented in mediation. This rule can be waived by stipulation of the parties only in narrow circumstances [see sub. (4) (b)] because the possibility of being called as a witness impairs the mediator in the performance of the neutral facilitation role. The purpose of the rule is to encourage the parties to explore facilitated settlement of disputes without fear that their claims or defenses will be compromised if mediation fails and the dispute is later litigated.

1995--Legislature, through Dairy 2020 Initiative, adds position to farmers assistance to serve beginning and retiring farmers--entry/exit.

1996--Farmers Assistance, Farm Mediation and Arbitration, Agricultural Development and Diversification (ADD), Rural Electric Power Services (REPS, formerly stray voltage), Entry/Exit (Farm/Link) are reorganized within the department to create the Wisconsin Farm Center. (The idea for the Center was announced by the Governor at the 1995 Governor's Agriculture Conference in Oshkosh).

March, 1997--Wisconsin Farm Center grand opening.

Staff as of August 25, 1997

Roger James, Ag economist and financial analyst (former dairy farmer)
Gwen Garvey, Ag business grad-coordinates Farm/Link (former dairy farmer)
Kathy Schmitt, Vocational counselor-coordinates Future Fields; re-training
Bud Sholts, Ag economist, directs ADD program
Steve Sauer, Ombudsman for REPS program (former dairy farmer)
Roger Kasper, Engineer, reseacher--REPS program
John Roberts, Veterinarian on Stray Voltage Analysis Team
Mike Bandli, Ag marketing consultant, ADD program
Jo Ann Prust, Coordinator, mediation program
Theresa Boberg, Program Assistant, ADD
Margie Sprecher, Program Assistant, mediation program
Naomi Eisenmann, LTE Program Assistant, REPS
Jeanne M. Meier, Director, Wisconsin Farm Center (former dairy farmer)

Senate

COMMITTEE HEARINGS

Committee on Agriculture and Environmental Resources

The committee will hold a public hearing on the following items at the time specified below:

Wednesday, March 11, 1998
10:00 am
119 Martin Luther King Blvd
Lower Level - Hearing Room One
Madison, WI

BRANCEL, BEN, of Endeavor, as Secretary of the Department of Agriculture, Trade and Consumer Protection, to serve for the term ending at the pleasure of the Governor.

DUMMER, MICHAEL F., of Holmen, as a member of the Board of Agriculture, Trade and Consumer Protection, to serve for the term ending May 1, 2003.

BRADLEY, JAMES, of Sun Prairie, as a member of the State Fair Park Board, to serve for the term ending May 1, 2003.

LRB 4985/1

Relating to: limiting the establishment or expansion of certain livestock operations.

By Senator Clausing.

Assembly Bill 392

Relating to: the farm mediation and arbitration program, eliminating the farm mediation and arbitration board, the farmer assistance program, exit from and entry into the dairy industry, granting rule-making authority and making an appropriation.

By Representatives Ott, Otte, Brandemuehl, Sykora, Ward, Hahn, Ainsworth, Powers and Owens; cosponsored by Senator Roessler.

Assembly Bill 516

Relating to: the specified minimum percentage of postconsumer fiber contained in newsprint.

By Representatives Reynolds, Johnsrud, Gunderson, Nass and Hutchison.

LRB 4869/1

Relating to: ozone depleting refrigerant and mobile air conditioners.
By Senator Cowles.

An **Executive Session** may be held immediately following the hearing on the above listed items or other items that have previously received a hearing.

Senator Alice Clausing
Chair

- Changes in ASAI to AB398

① Def. of farmer:

Pg 2 line 5-7

gives Dept. authority to
waive gross sales requirement

② Evidence subject to
Discovery is admissible,
except possible criminal
conduct.

& previously only addressed
child abuse





1997 BILL

90783
90783 (H)
consideration
mediation
over illegal
...

1 **AN ACT to repeal** 15.135 (5) and 93.50 (1) (b); **to renumber and amend** 93.51;
2 **to amend** 20.115 (9) (a), 93.50 (1) (d), 93.50 (2) (title), 93.50 (2) (a), 93.50 (2)
3 (am), 93.50 (2) (b), 93.50 (2) (d), 93.50 (2) (e), 93.50 (2) (f), 93.50 (3) (am) 6., 93.50
4 (3) (b), 93.50 (3) (e), 93.50 (3) (f), 93.50 (4) (b) and 93.50 (4) (e); **to repeal and**
5 **recreate** 93.51 (1), (2) (title) and (c) and (3); and **to create** 93.52 and 904.15 of
6 the statutes; **relating to:** the farm mediation and arbitration program,
7 eliminating the farm mediation and arbitration board, the farmer assistance
8 program, exit from and entry into the dairy industry, granting rule-making
9 authority and making an appropriation.

Analysis by the Legislative Reference Bureau

Farmer assistance program

Current law authorizes the department of agriculture, trade and consumer protection (DATCP) to administer a farmer assistance program to provide consultation and assistance to distressed farmers. The program may use volunteers to advise farmers about financial matters and other concerns. Current law does not establish eligibility requirements for participation in the farmer assistance program.

BILL

Under this bill, to receive assistance under the farmer assistance program, a farmer's gross sales of farm products for the preceding year must equal or exceed 2,088 times the federal minimum hourly wage. The bill requires DATCP to provide any necessary training to persons who DATCP accepts as volunteer advisors under the farmer assistance program and to compensate those persons for travel and other necessary expenses. The bill requires DATCP and volunteer advisors to keep confidential all information obtained in providing advice and counseling, except that the confidentiality requirement does not apply to reports of child abuse.

Farm mediation and arbitration program

Under current law, DATCP and the farm mediation and arbitration board (board) administer the farm mediation and arbitration program. The board has rule-making authority and selects mediators and arbitrators. To be eligible to participate in the farm mediation and arbitration program a farmer must own or lease at least 60 acres of agricultural property and have gross sales of farm products of at least \$20,000 for the preceding year.

This bill eliminates the 60 acre requirement for eligibility to participate in the farm mediation and arbitration program and changes the minimum required value of gross sales of farm products to 2,088 times the federal minimum hourly wage. This bill eliminates the board and transfers the board's current responsibilities concerning the farm mediation and arbitration program, including rule-making, to DATCP.

Dairy farmer exit and entry

This bill requires DATCP to administer a program to assist in the transfer of farm operations from persons exiting the dairy industry to persons wishing to enter the industry. The bill requires DATCP to keep confidential information obtained under the program.

Admissibility of evidence

This bill provides that communication made in the course of providing assistance under the farmer assistance program, the dairy farmer exit and entry program or the stray voltage program is generally not admissible in evidence or subject to discovery or subpoena in any judicial or administrative proceeding.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 15.135 (5) of the statutes is repealed.
- 2 **SECTION 2.** 20.115 (9) (a) of the statutes is amended to read:
- 3 20.115 (9) (a) *General program operations.* The amounts in the schedule for
- 4 general program operations under ss. 93.50 and, 93.51 and 93.52.

BILL

1 **SECTION 3.** 93.50 (1) (b) of the statutes is repealed.

2 **SECTION 4.** 93.50 (1) (d) of the statutes is amended to read:

3 93.50 (1) (d) "Farmer" means a farmer, as defined in s. 102.04 (3), who owns
4 or leases ~~a total of 60 acres or more of~~ land that is agricultural property and whose
5 gross sales of farm products for the preceding year equaled ~~\$20,000 or more or~~
6 exceeded the product of 2,088 multiplied by the federal minimum hourly wage under
7 29 USC 206 (a) 1.

8 **SECTION 5.** 93.50 (2) (title) of the statutes is amended to read:

9 93.50 (2) (title) ~~BOARD, MEDIATORS~~ MEDIATORS AND ARBITRATORS.

10 **SECTION 6.** 93.50 (2) (a) of the statutes is amended to read:

11 93.50 (2) (a) *Selection of mediators.* The ~~board~~ department shall select as
12 ~~mediators who are residents of this state, persons~~ who have the character and ability
13 to serve as mediators and who have knowledge of financial or agricultural matters
14 or of mediation processes. The ~~board~~ department shall ensure that each mediator
15 receives sufficient training in mediation processes, resolving conflicts, farm finance
16 ~~and management and the farm credit system and practices to enable the mediator~~
17 credit and other subjects to develop or maintain the skills necessary to perform his
18 or her functions under this section.

19 **SECTION 7.** 93.50 (2) (am) of the statutes is amended to read:

20 93.50 (2) (am) *Selection of arbitrators.* The ~~board~~ department shall select as
21 ~~arbitrators who are residents of this state, persons~~ who have the character and
22 ability to serve as arbitrators and who have knowledge ~~of financial or agricultural~~
23 ~~matters or of arbitration or other conflict resolution~~ processes. The ~~board~~ shall
24 ensure that each arbitrator receives sufficient department may provide training in
25 arbitration processes, resolving conflicts, ~~farm finance and management and the~~

BILL

1 ~~farm credit system and practices to enable the arbitrator or agricultural issues as~~
2 ~~part of the process of selecting arbitrators or to arbitrators selected by the~~
3 ~~department to enable arbitrators to maintain the skills necessary to perform his or~~
4 ~~her their functions under this section.~~

5 SECTION 8. 93.50 (2) (b) of the statutes is amended to read:

6 ✖ 93.50 (2) (b) *Compensation of mediators and arbitrators.* Mediators and
7 arbitrators shall be compensated for travel and other necessary expenses in amounts
8 approved by the ~~board~~ department.

9 SECTION 9. 93.50 (2) (d) of the statutes is amended to read:

10 93.50 (2) (d) *Forms and publicity.* The ~~board~~ department shall prepare all
11 forms necessary for the administration of this section and shall ensure that forms are
12 disseminated and that the availability of mediation and arbitration under this
13 section is publicized.

14 SECTION 10. 93.50 (2) (e) of the statutes is amended to read:

15 ✖ 93.50 (2) (e) *Exclusion from open records law.* All mediators and arbitrators
16 shall keep confidential all information and records obtained in conducting mediation
17 and arbitration. The ~~board~~ department shall keep confidential all information and
18 records that may serve to identify any party to mediation and arbitration under this
19 section. Any information required to be kept confidential under this paragraph may
20 be disclosed if the ~~board~~ department and the parties agree to disclosure.

21 SECTION 11. 93.50 (2) (f) of the statutes is amended to read:

22 93.50 (2) (f) The ~~board~~ department may promulgate rules necessary to
23 implement this section. The ~~board~~ department may promulgate rules defining
24 owners and creditors of agriculturally related businesses and permitting owners and
25 creditors of such businesses to participate in mediation and arbitration subject to the

BILL

8/2

1 same terms and conditions applicable to farmers and creditors under this section.
2 ~~The board may promulgate a rule under sub. (3) (am) 6. specifying a kind of dispute~~
3 ~~as eligible for mediation only with the approval of the department.~~

4 SECTION 12. 93.50 (3) (am) 6. of the statutes is amended to read:

5 93.50 (3) (am) 6. A kind of dispute specified as eligible for mediation by the
6 board department by rule.

7 SECTION 13. 93.50 (3) (b) of the statutes is amended to read:

8 93.50 (3) (b) *Request for mediation; agreement to mediate.* To participate in
9 mediation, the farmer or other party to a dispute described in par. (am) shall submit
10 a request for mediation to the board department on forms prepared by the board
11 department. The board department may not proceed under this section until the
12 farmer and the other party have submitted an agreement to mediate.

13 SECTION 14. 93.50 (3) (e) of the statutes is amended to read:

14 93.50 (3) (e) *Selection of mediator.* If the board department has obtained the
15 agreement under par. (b), the farmer and the other party may request the board
16 department to provide the names, mailing addresses and qualifications of up to 3
17 mediators located in the geographical area in which the agricultural property or
18 farmer is located. The parties shall select a mediator or, upon request of the parties,
19 the board department shall designate a mediator for the parties.

20 SECTION 15. 93.50 (3) (f) of the statutes is amended to read:

21 93.50 (3) (f) *Mediation.* The function of the mediator is to encourage a
22 voluntary settlement among the parties. The mediator may not compel a settlement.
23 The mediator shall schedule meetings of the parties, direct the parties to prepare for
24 the meetings, attempt to achieve a mediated resolution to the issues among the
25 parties and, if the parties request, assist the parties in preparing a written

BILL

1 agreement. All mediation meetings shall be held in this state and be conducted
2 under the laws of this state.

3 **SECTION 16.** 93.50 (4) (b) of the statutes is amended to read:

4 93.50 (4) (b) *Request for arbitration; agreement to arbitrate.* To participate in
5 arbitration, the farmer and other party under par. (a) shall submit a request for
6 arbitration to the ~~board~~ department on a form prepared by the ~~board~~ department.
7 After receipt of the request, if the parties wish to proceed to arbitration under this
8 subsection, the ~~board~~ department shall require the parties to enter into an
9 agreement to binding arbitration on a form prepared by the ~~board~~ department.

10 **SECTION 17.** 93.50 (4) (e) of the statutes is amended to read:

11 93.50 (4) (e) *Selection of arbitrator.* After the ~~board~~ department has obtained
12 the agreement under par. (b), the farmer and the other party may request the ~~board~~
13 department to provide the names, mailing addresses and qualifications of up to 3
14 arbitrators located in the geographical area in which the agricultural property or
15 farmer is located. The parties shall select an arbitrator or, upon request of the
16 parties, the ~~board~~ department shall designate an arbitrator for the parties.

17 **SECTION 18.** 93.51 of the statutes is renumbered 93.51 (2) (a) and amended to
18 read:

19 93.51 (2) (a) The department may provide consultation and assistance to
20 distressed farmers, which may include but is not limited to providing employment
21 and retraining counseling for farmers needing employment other than farming,
22 operating a program in which volunteers advise or counsel farmers about financial
23 matters and other concerns and operating a crisis hotline for farmers. ~~In addition,~~
24 the

BILL

1 **(b)** The department may make grants to low-income farmers for the purpose
2 of paying all or part of the tuition for a farmer who enrolls in a course on farm and
3 business management techniques offered by a technical college.

4 **SECTION 19.** 93.51 (1), (2) (title) and (c) and (3) of the statutes are created:

5 **93.51 (1) DEFINITIONS.** In this section:

6 (a) “Farmer” has the meaning given in s. 93.50 (1) (d).

7 (b) “Farming” has the meaning given in s. 102.04 (3).

8 **(2) (title) ASSISTANCE PROGRAM.** (c) The department may promulgate rules
9 necessary to implement this section.

10 **(3) ADVISORS.** (a) The department may select volunteers to provide advice and
11 counseling services to distressed farmers. Advisors shall have expertise and
12 experience in relevant areas of knowledge.

13 (b) The department shall provide any necessary training to advisors, including
14 training concerning the making of voluntary child abuse reports under s. 48.981 (2).

15 (c) Advisors shall be compensated for travel and other necessary expenses in
16 amounts approved by the department.

17 (d) Advisors and the department shall keep confidential all information
18 obtained in the process of providing advice or counseling. Any such information
19 contained in a record is not subject to the right of public inspection and copying under
20 s. 19.35 (1). This paragraph does not apply to reports of child abuse under s. 48.981
21 (2).

22 **SECTION 20.** 93.52 of the statutes is created to read:

23 **93.52 Dairy farmer exit-entry program.** The department shall administer
24 a program to assist in the transfer of farm operations from persons exiting the dairy
25 industry to persons wishing to enter the industry, including assistance in negotiating

BILL

1 the financial and legal aspects of farm transfers. The department shall keep
2 confidential information obtained under the program. Any such information
3 contained in a record is not subject to the right of public inspection and copying under
4 s. 19.35 (1).

5 **SECTION 21.** 904.15 of the statutes is created to read:

6 **904.15 Communication in farmer assistance programs.** (1) Except as
7 provided under sub. (2), no oral or written communication made in the course of
8 providing or receiving advice or counseling under s. 93.51 or in providing or receiving
9 assistance under s. 93.41 or 93.52 is admissible in evidence or subject to discovery
10 or compulsory process in any judicial or administrative proceeding.

11 (2) (a) Subsection (1) does not apply to reports of child abuse made under s.
12 48.981 (2).

13 (b) Subsection (1) does not apply if the person receiving advice or counseling
14 under s. 93.51 or assistance under s. 93.41 or 93.52 consents to admission or
15 discovery of the communication.

16 (c) A court may admit evidence otherwise barred by this section if necessary
17 to prevent a manifest injustice.

18 **SECTION 22. Nonstatutory provisions.**

19 (1) FARM MEDIATION AND ARBITRATION BOARD.

20 (a) *Rules.* All rules promulgated by the farm mediation and arbitration board
21 that are in effect on the effective date of this paragraph remain in effect until their
22 specified expiration date or until amended or repealed by the department of
23 agriculture, trade and consumer protection.

24 (b) *Pending matters.* Any matter pending with the farm mediation and
25 arbitration board on the effective date of this paragraph is transferred to the

BILL

1 department of agriculture, trade and consumer protection and all materials
2 submitted to or actions taken by the farm mediation and arbitration board with
3 respect to the pending matter are considered as having been submitted to or taken
4 by the department of agriculture, trade and consumer protection.

5 (END)

- How are we going to explain us taking this out?

= take out confidentiality exemption for child abuse for this program if you have a "required reporter" (i.e. doctor, therapist, teacher) that volunteers for this program - they are stuck if there's a child abuse report possible

- under law if they have a suspicion they must report

- However, under confidentiality requirement of this program they couldn't say anything w/o child abuse exemption

- Have to make-up some kind of exemption ^{from confidentiality} for these volunteers for any perceived violation of the law

- Is this going to make farmers less likely to come forward?

FarmLand Pres.



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Alan T. Tracy, Secretary

2811 Agriculture Drive
Madison, Wisconsin 53704-6777

PO Box 8911
Madison, WI 53708-8911

Telefax Cover Sheet

Date: 11-4-97
To: ALOTT
From: Jeanne Meier
Wisconsin Farm Center
1-800-942-2474 or 608-224-5051 FAX 608-224-5111
SUBJECT: AB 392



3 Pages to Follow

Message:
Al - pages 3 + 7 + 8 w/changes -
Hope this works - Also, I'm not
concerned about the reference to
dairy exit-entry - We do that - and also
help other farmers outside of dairy -
let's leave it.

1997 - 1998 Legislature

- 3 -

LRB-2767/2
RGT:mfd:jf
SECTION 3**BILL**

1 **SECTION 3.** 93.50 (1) (b) of the statutes is repealed.

2 **SECTION 4.** 93.50 (1) (d) of the statutes is amended to read:

3 93.50 (1) (d) "Farmer" means a farmer, as defined in s. 102.04 (3), who owns
4 or leases a total of 60 acres or more of land that is agricultural property and whose
5 gross sales of farm products ^{per year for any two of the preceding three years} ~~for the preceding year~~ equaled \$20,000 or more or
6 exceeded the product of 2,088 multiplied by the federal minimum hourly wage under
7 29 USC 206 (a) 1.

8 **SECTION 5.** 93.50 (2) (title) of the statutes is amended to read:

9 93.50 (2) (title) ~~BOARD, MEDIATORS~~ MEDIATORS AND ARBITRATORS.

10 **SECTION 6.** 93.50 (2) (a) of the statutes is amended to read:

11 93.50 (2) (a) *Selection of mediators.* The ~~board~~ department shall select as
12 mediators ~~who are residents of this state, persons~~ who have the character and ability
13 to serve as mediators and who have knowledge of financial or agricultural matters
14 or of mediation processes. The ~~board~~ department shall ensure that each mediator
15 receives sufficient training in mediation processes, resolving conflicts, farm finance
16 and management ~~and the farm credit system and practices to enable the mediator~~
17 credit and other subjects to develop or maintain the skills necessary to perform his
18 or her functions under this section.

19 **SECTION 7.** 93.50 (2) (am) of the statutes is amended to read:

20 93.50 (2) (am) *Selection of arbitrators.* The ~~board~~ department shall select as
21 arbitrators ~~who are residents of this state, persons~~ who have the character and
22 ability to serve as arbitrators and who have knowledge of ~~financial or agricultural~~
23 ~~matters or of arbitration or other conflict resolution~~ processes. The ~~board~~ department shall
24 ensure that each arbitrator receives sufficient department may provide training in
25 arbitration processes, resolving conflicts, ~~farm finance and management and the~~

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SECTION 18**BILL**

1 **(b) The department may make grants to low-income farmers for the purpose**
2 **of paying all or part of the tuition for a farmer who enrolls in a course on farm and**
3 **business management techniques offered by a technical college.**

4 **SECTION 19. 93.51 (1), (2) (title) and (c) and (3) of the statutes are created:**

5 **93.51 (1) DEFINITIONS. In this section:**

6 **(a) "Farmer" has the meaning given in s. 93.50 (1) (d).**

7 **(b) "Farming" has the meaning given in s. 102.04 (3).**

8 **(2) (title) ASSISTANCE PROGRAM. (c) The department may promulgate rules**
9 **necessary to implement this section.**

10 **(3) ADVISORS. (a) The department may select volunteers to provide advice and**
11 **counseling services to distressed farmers. Advisors shall have expertise and**
12 **experience in relevant areas of knowledge.**

13 **(b) The department shall provide any necessary training to advisors, including**
14 **~~training concerning the making of voluntary child abuse reports under s. 49.001 (2).~~**

15 **(c) Advisors shall be compensated for travel and other necessary expenses in**
16 **amounts approved by the department.**

17 **(d) Advisors and the department shall keep confidential all information**
18 **obtained in the process of providing advice or counseling. Any such information**
19 **contained in a record is not subject to the right of public inspection and copying under**
20 **s. 19.35 (1). ~~This paragraph does not apply to reports of child abuse under s. 49.001~~**

21 **~~(e)~~**

22 **SECTION 20. 93.52 of the statutes is created to read:**

23 **93.52 Dairy farmer exit-entry program. The department shall administer**
24 **a program to assist in the transfer of farm operations from persons exiting the dairy**
25 **industry to persons wishing to enter the industry, including assistance in negotiating**

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SECTION 20**BILL**

1 the financial and legal aspects of farm transfers. The department shall keep
2 confidential information obtained under the program. Any such information
3 contained in a record is not subject to the right of public inspection and copying under
4 s. 19.35 (1).

5 **SECTION 21.** 904.15 of the statutes is created to read:

6 **904.15 Communication in farmer assistance programs.** (1) Except as
7 provided under sub. (2), no oral or written communication made in the course of
8 providing or receiving advice or counseling under s. 93.51 or in providing or receiving
9 assistance under s. 93.41 or 93.52 is admissible in evidence or subject to discovery
10 or compulsory process in any judicial or administrative proceeding.

11 ~~(2) (a) Subsection (1) does not apply to reports of child abuse made under s.~~

12 ~~49.091 (2).~~

13 (a) ~~(b)~~ Subsection (1) does not apply if the person receiving advice or counseling
14 under s. 93.51 or assistance under s. 93.41 or 93.52 consents to admission or
15 discovery of the communication.

16 (b) ~~(c)~~ A court may admit evidence otherwise barred by this section if necessary
17 to prevent a manifest injustice.

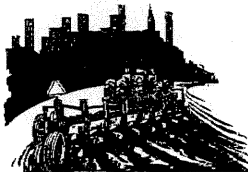
18 **SECTION 22. Nonstatutory provisions.**

19 (1) **FARM MEDIATION AND ARBITRATION BOARD.**

20 (a) *Rules.* All rules promulgated by the farm mediation and arbitration board
21 that are in effect on the effective date of this paragraph remain in effect until their
22 specified expiration date or until amended or repealed by the department of
23 agriculture, trade and consumer protection.

24 (b) *Pending matters.* Any matter pending with the farm mediation and
25 arbitration board on the effective date of this paragraph is transferred to the

Chairman:
Agriculture Committee



Member:
Environment & Utilities
Government Operations
Natural Resources
Rural Affairs

Al Ott

State Representative • 3rd Assembly District

November 19, 1997

State Senator Alice Clausing, Chairperson
Senate Committee on Agriculture and Environmental Resources
308 North Hamilton
Madison, WI 53707

Dear Senator Clausing:

I am writing to respectfully request and ask your indulgence in scheduling a public hearing and executive action on AB 392. The bill was recently referred to the Senate Committee on Agriculture and Environmental Resources.

AB 392, which has been introduced at the request of DATCP, makes important changes to several programs within the Wisconsin Farm Center program. The bill was passed unanimously by both the Assembly Agriculture Committee and the full Assembly. I am confident it will also receive the same bipartisan support in State Senate.

Thank you in advance for your consideration of this request. If you have any questions regarding the bill, please feel free to contact me at 6-5831 or Jeanne Meier at DATCP at 224-5046.

Sincerely,

Al Ott
State Representative
3rd Assembly District



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Alan T. Tracy, Secretary

2811 Agriculture Drive
Madison, Wisconsin 53704-6777

PO Box 8911
Madison, WI 53708-8911

August 25, 1997

State Representative Al Ott, Chair
Assembly Agriculture Committee
State Capitol
PO Box 8953
Madison, WI 53708

File w/ bill.

Dear Representative Ott:

Thank you for the opportunity to appear before the Committee to discuss changes requested for farmers assistance, farm/link, stray voltage, and mediation programs within the Wisconsin Farm Center here at the department.

One concern expressed by members was that of protecting communications within the farmer assistance programs, other than the mediation program, which already has this protection under current s. 904.085, Wis. Stats. The proposed section 904.15 would extend the protection to our other programs.

As you know, our farm credit advisors are volunteers trained by the department to work with farmers who are having financial difficulties due to debt load, diseases, crop losses, and stray voltage, among others. They are often involved in assisting with negotiated settlements or formal mediations through our programs. Yet, unlike communications of our volunteer mediators which are protected under s.904.085, Wis. Stats., communications with our volunteer advisors are not protected unless they are involved in a mediation case. Further, under s. 904.085(3)(b) mediators are not subject to subpoena. Our volunteer advisors are not similarly protected.

Often, our advisors do what could be called "pre-mediation" work. The vast majority of cases handled are resolved in this phase. Only the most difficult or complex cases advance to the formal mediation stage.

A major component of our farmer assistance program has been the volunteer program. Since 1984, nearly 400 Wisconsin citizens have helped thousands of our farm families through difficult times. A goal of the program has always been to resolve problems quickly so that the farmer can get on with the business of farming. This can happen only when the farmer has the trust and confidence in the process that the negotiation and/or mediation are confidential. If an advisor is subject to subpoena, that is a threat to the process of working out problems in confidence. The threat of subpoena may also deter citizens from volunteering their time to the program. Therefore, we have requested this change.

I have also included information on the history of program services which may serve as a helpful reminder of the work done at the Wisconsin Farm Center.

Please give me a call if I can be of further assistance. Thank you.

Sincerely,



Jeanne M. Meier
Director
Wisconsin Farm Center
608-224-5046

904.085 RELEVANCY AND ITS LIMITS

904.085 Communications in mediation. (1) PURPOSE. The purpose of this section is to encourage the candor and cooperation of disputing parties, to the end that disputes may be quickly, fairly and voluntarily settled.

(2) DEFINITIONS. In this section:

(a) "Mediation" means mediation under s. 93.50 (3), conciliation under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) 3 or 111.87, negotiation under s. 144.445 (9), mediation under ch. 655 or s. 767.11, or any similar statutory, contractual or court-referred process facilitating the voluntary resolution of disputes. "Mediation" does not include binding arbitration or appraisal.

(b) "Mediator" means the neutral facilitator in mediation, its agents and employees.

(c) "Party" means a participant in mediation, personally or by an attorney, guardian, guardian ad litem or other representative, regardless of whether such person is a party to an action or proceeding whose resolution is attempted through mediation.

(3) INADMISSIBILITY. (a) Except as provided under sub. (4), no oral or written communication relating to a dispute in mediation made or presented in mediation by the mediator or a party is admissible in evidence or subject to discovery or compulsory process in any judicial or administrative proceeding. Any communication that is not admissible in evidence or not subject to discovery or compulsory process under this paragraph is not a public record under subch. II of ch. 19.

(b) Except as provided under sub. (4), no mediator may be subpoenaed or otherwise compelled to disclose any oral or written communication relating to a dispute in mediation made or presented in mediation by the mediator or a party or to render an opinion about the parties, the dispute whose resolution is attempted by mediation or any other aspect of the mediation.

(4) EXCEPTIONS. (a) Subsection (3) does not apply to any written agreement, stipulation or settlement made between 2 or more parties during or pursuant to mediation.

(b) Subsection (3) does not apply if the parties stipulate that the mediator may investigate the parties under s. 767.11 (14) (c).

(c) Subsection (3) (a) does not prohibit the admission of evidence otherwise discovered, although the evidence was presented in the course of mediation.

(d) A mediator reporting child abuse under s. 48.981 or reporting nonidentifying information for statistical, research or educational purposes does not violate this section.

(e) In an action or proceeding distinct from the dispute whose settlement is attempted through mediation, the court may admit evidence otherwise barred by this section if necessary to prevent a manifest injustice of sufficient magnitude to outweigh the importance of protecting the principle of confidentiality in mediation proceedings generally.

History: Sup. Ct. Order No. 93-03, 179 W (2d) xv (1993).

Judicial Council Note, 1993: This section creates a rule of inadmissibility for communications presented in mediation. This rule can be waived by stipulation of the parties only in narrow circumstances [see sub. (4) (b)] because the possibility of being called as a witness impairs the mediator in the performance of the neutral facilitation role. The purpose of the rule is to encourage the parties to explore facilitated settlement of disputes without fear that their claims or defenses will be compromised if mediation fails and the dispute is later litigated.

CHRONOLOGY OF THE FARMERS ASSISTANCE PROGRAM

- 1984--DATCP assigns staff to make recommendations to Board on department response to severe farm financial crisis.
JULY--forty volunteer farm credit advisors trained.
- 1985--1985 Wisconsin Act 153 establishes Wisconsin Farm Mediation and Arbitration Program
- 1986--FEBRUARY--toll free hotline established
- Legislature establishes 3.0 FTE project positions in Farmers Assistance Program
- Staff attorney
 - Calls, training, support
 - Mediation coordinator
- 1987--Program continued for additional biennium due to continuing financial stress within farm community. Mediation coordinator position eliminated; duties absorbed by staff attorney.
- 1988--Drought--additional 2.0 staff added to deal with drought.
- 1989--319 requests for mediation; created new half-time coordinator position and .6 program assistant
- 1990--expanded program to include financial analysis services
- 1991--major increase in calls--falling milk prices
- 1992--Legislature made program permanent and added job counseling position
- 1993-94--Crisis counseling outreach component added--flood/wet weather

1995--Legislature, through Dairy 2020 Initiative, adds position to farmers assistance to serve beginning and retiring farmers--entry/exit.

1996--Farmers Assistance, Farm Mediation and Arbitration, Agricultural Development and Diversification (ADD), Rural Electric Power Services (REPS, formerly stray voltage), Entry/Exit (Farm/Link) are reorganized within the department to create the Wisconsin Farm Center. (The idea for the Center was announced by the Governor at the 1995 Governor's Agriculture Conference in Oshkosh).

March, 1997--Wisconsin Farm Center grand opening.

Staff as of August 25, 1997

Roger James, Ag economist and financial analyst (former dairy farmer)
Gwen Garvey, Ag business grad-coordinates Farm/Link (former dairy farmer)
Kathy Schmitt, Vocational counselor-coordinates Future Fields; re-training
Bud Sholts, Ag economist, directs ADD program
Steve Sauer, Ombudsman for REPS program (former dairy farmer)
Roger Kasper, Engineer, reseacher--REPS program
John Roberts, Veterinarian on Stray Voltage Analysis Team
Mike Bandli, Ag marketing consultant, ADD program
Jo Ann Prust, Coordinator, mediation program
Theresa Boberg, Program Assistant, ADD
Margie Sprecher, Program Assistant, mediation program
Naomi Eisenmann, LTE Program Assistant, REPS
Jeanne M. Meier, Director, Wisconsin Farm Center (former dairy farmer)

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER
PROTECTION
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

August 21, 1997
Testimony before the Assembly Committee on Agriculture

by
Jeanne M. Meier
Director, Wisconsin Farm Center

Good morning, Mr. Chairman, and ladies and gentlemen of the committee. Thank you for the opportunity to present testimony on Assembly Bill 392.

The department has requested the changes in AB 392 for a number of reasons. First, several of our direct farm services have been combined to form the Wisconsin Farm Center. These include the Farmers Assistance Program, the Farm Mediation and Arbitration Program, the Agricultural Development and Diversification Program, the Farm Link Program, and the Rural Electrical Power Services Program (formerly stray voltage). Statutes creating these programs have not been revised since their creation.

The bill addresses four distinct changes which provide uniform application to all programs within the Wisconsin Farm Center:

- 1) defines "farmer" for eligibility purposes
- 2) eliminates the Farm Mediation and Arbitration Board
- 3) requires DATCP to train volunteer advisors
- 4) requires confidentiality of information obtained in providing advice and counseling

We have requested a change in the definition of "farmer" from the current requirement that the individual own or operate at least 60 acres and gross \$20,000 or more. The reason for the request is that some of today's farmers,

beginners, for example, are renting or buying facilities only, not meeting the acreage minimum, but often far exceeding the gross income criteria. In searching for a measure which made sense given current changes in agriculture, we believe that a farmer should be someone whose gross farm income is at least what a full time worker would gross working at the federal minimum wage. By tying the definition to a product of the federal minimum wage, no amendment would be necessary in the future if the minimum wage is changed. Also, this definition would apply to eligibility for farmers assistance programs as well as the farm mediation and arbitration program. Currently, there is no definition of a farmer for the farmers assistance program services.

Second, the bill eliminates the Farm Mediation and Arbitration Board, transferring functions, including rule-making authority to the department.

Third, the bill requires the department to provide training for volunteer advisors, as it is currently required to do for volunteer mediators. The department currently does provide training for its advisors. This bill makes it mandatory to do so.

Fourth, and of major importance, the bill requires the department to keep confidential information obtained in the course of providing assistance to farmers under the farmers assistance program, the entry and exit program, or the stray voltage program making such information not subject to the right of public inspection and copying under s. 19.35(1) and generally not admissible in evidence or subject to discovery or subpoena in any judicial or administrative proceeding. This also applies specifically to our volunteer advisors. Similar protections for the mediation program are already in place.

The changes outlined above will provide uniform protection of information obtained from all farmers receiving services under the various programs within the Wisconsin Farm Center. The changes also protect our volunteers in the field. The changes also apply a uniform standard of eligibility for services from farmers assistance and farm mediation programs.

Thank you. I will be happy to answer any questions you may have.



WISCONSIN
FARMERS
UNION



MEMO

To: Members, Assembly Committee on Agriculture
From: David H. Nispel
Subject: 1997 Assembly Bill 392, Farm Mediation and Arbitration Program
Date: August 21, 1997

This memorandum is written in lieu of a personal appearance at today's committee hearing. Unfortunately, I will not be able to attend the hearing due to another business appointment at the same time.

The Wisconsin Farmers Union supports most of the provisions of AB-392, but has serious concerns about one provision. The WFU supports the eligibility requirement regarding assistance under the farmer assistance program. The WFU also supports the elimination of the 60 acre requirement for eligibility to participate in the farm mediation and arbitration program and the change in the required value of gross sales of farm products.

The dairy farmer exit and entry program also would appear to be a beneficial program for those persons wishing to enter the industry.

However, the WFU opposes Section 21 (page 8) of the AB-392, which concerns admissibility of evidence. We can not support such a provision which takes away legal rights of our members. Also this section is very broad, as it refers to all oral and written communications. If there is a problem that exists, perhaps it can be addressed in another manner, without taking away existing legal rights.

In addition, the WFU wonders why the stray voltage program is included in this bill and in Section 21. We would prefer that all aspects of the stray voltage problem be addressed in a bill that is devoted exclusively to stray voltage issues.

Finally, we note that Sec. 93.50 (2) (c), Wisconsin Statutes, already provides for immunity from civil liability for mediators and arbitrators for any act or omission within the scope of their performance under the farm mediation and arbitration program.

Thank you.