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Short Title: Prelitigation Farm Mediation.

(Public)

Sponsors:

Referred to:

April 12, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR PRELITIGATION MEDIATION OF FARM DISPUTES
3 REGARDING NUISANCE CLAIMS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 106 of the General Statutes is amended by adding a new
6 Article to read:

7 **"ARTICLE 57B.**

8 **"PRELITIGATION MEDIATION OF FARM NUISANCE CLAIMS.**

9 **"§ 106-706.10. Legislative findings; purpose.**

10 The General Assembly makes the following findings:

11 (1) It is the policy of the State of North Carolina to promote the productive
12 use of the land in order to provide sustenance for its people and enhance
13 the prosperity of its communities.

14 (2) It is the policy of the State of North Carolina to further the investment in
15 and management of its farmland to facilitate the productivity of its farm
16 operations to benefit the health and welfare of its people.

1 (3) Agricultural operations on farmland may become the subject of
2 nuisance suits when nonagricultural land uses expand to include
3 historically agricultural areas.

4 (4) Agricultural operations may become the subject of nuisance suits when
5 historically agricultural operations are intensified.

6 The purpose of this Article is to accommodate the rights of both farm residents and other
7 parties to facilitate the resolution of conflicts that arise in the exercise of these rights, and
8 to reduce litigation between farm residents and other parties by establishing both
9 voluntary and mandatory prelitigation mediation proceedings.

10 **"§ 106-706.11. Definitions.**

11 As used in this Article, unless the context clearly requires otherwise:

12 (1) 'Dispute' means a controversy between a person who is a farm resident
13 and another person, which dispute arises from a claim:

- 14 a. Eligible to be resolved in a civil proceeding in law or equity, and
15 b. That relates to an action of one person that is alleged to be a
16 nuisance interfering with the enjoyment of the property rights of
17 the other party.

18 (2) 'Farmland' means agricultural land that is principally used for farming:
19 the cultivation of farmland for the production of crops, fruits,
20 vegetables, ornamental and flowering plants, dairy, livestock, poultry,
21 and all other forms of agricultural products having a domestic or foreign
22 market.

23 (3) 'Farm resident' means a person holding an interest in farmland, in fee,
24 under a real estate contract, or under a lease, when that person manages
25 farming operations on the land. A 'farm resident' includes a natural
26 person, or any corporation, trust, or limited partnership as defined in
27 G.S. 59-102.

28 (4) 'Mediation release' means an agreement or statement signed by all
29 parties, or by less than all the parties and the mediator, pursuant to G.S.
30 106-706.17 or G.S. 106-706.19.

31 (5) 'Nuisance' means:

- 32 a. An action injurious to health, indecent, or offensive to the senses,
33 or
34 b. An obstruction to the free use of property, that essentially
35 interferes with the comfortable enjoyment of life or property.

36 (6) 'Other party' means any person having a dispute with a farm resident.

37 (7) 'Participate' or 'participation' means:

- 38 a. Attending a mediation meeting, and
39 b. Having knowledge about and discussing issues concerning a
40 subject relating to a dispute.

41 **"§ 106-706.12. Voluntary mediation proceedings.**

42 A farm resident or other party may agree to mediation of a dispute at any time in
43 accordance with this Article.

"§ 106-706.13. Mandatory mediation proceedings.

Prior to initiating a civil action involving a dispute, a farm resident or the other party shall file a request for mediation with the farm assistance program coordinator. No civil action involving disputes shall be filed until the party instituting the action has obtained a mediation release pursuant to the provisions of this Article. An action brought by a party who has not obtained such release shall be dismissed without prejudice by the court, unless the court determines, after notice and hearing, that one of the following applies:

(1) The time delay required for the mediation would cause the person to suffer irreparable harm.

(2) The dispute involves a claim that has been brought as a class action.

"§ 106-706.14. Waiver of mediation or selection of mediator.

(a) Upon receipt of the request for mediation, the farm assistance program coordinator shall certify that date as the date the time periods affecting a claim in a civil action are suspended pursuant to G.S. 106-706.20 and shall furnish the parties with a list of available mediators and the appropriate mediation forms and instructions to enable the parties to agree on a waiver of mediation or the mutual selection of a mediator to serve. If the parties agree, mediation may be waived.

(b) If the parties choose to select a mediator, that mediator shall conduct the mediation. Upon the failure of the parties to designate a mediator within 14 days following the filing of a request for mediation, the farm assistance program coordinator shall appoint a mediator.

(c) Mediation under G.S. 106-706.12 or G.S. 106-706.13 shall be conducted in accordance with Article 65 of Chapter 7A of the General Statutes.

"§ 106-706.15. Initial mediation meeting.

(a) Unless all parties to the dispute waive mediation pursuant to G.S. 106-706.14(a), the mediator selected shall, within 21 days after the farm assistance program coordinator received the request for mediation, send a notice of the mediation to all parties to the dispute, setting a time and place for an initial mediation meeting between the parties. An initial mediation meeting shall be held within 21 days of the issuance of the mediation meeting notice.

(b) At the initial mediation meeting, a party to the dispute may represent himself or herself, be represented by counsel, or appear with a consultant to assist the party in mediation.

"§ 106-706.16. Mediation period.

The mediator may call mediation meetings during the mediation period. The mediation period may extend up to 42 days after the initial mediation meeting.

"§ 106-706.17. Mediation release.

(a) If an agreement is reached among all parties, the mediator shall supervise and assist in the preparation and execution of a written mediation agreement.

(b) The mediator shall issue a mediation release if the farm resident fails to participate in at least the initial mediation meeting, regardless of participation by the other party. If the other party desiring to initiate a civil action to resolve the dispute fails to participate in at least the initial mediation meeting, the mediator shall not issue a

1 mediation release. A party to a dispute may be represented by another person, if the
2 person participates in mediation and has authority to discuss the dispute on behalf of the
3 party being represented. This section does not require a party to reach an agreement.
4 This section does not require a person to change a position, alter an activity that is a
5 subject of the dispute, or restructure a contract in order to receive a mediation release.

6 (c) The mediator shall promptly notify a party to the dispute by certified mail of a
7 refusal to issue a mediation release and the reasons for the refusal. The notice shall state
8 that the party may seek judicial review pursuant to G.S. 106-706.19.

9 (d) The parties to the mediation agreement may enforce the mediation agreement
10 as a legal contract. The agreement constitutes a mediation release.

11 (e) If the parties waive mediation or if a mediation agreement is not reached, the
12 parties may sign a statement prepared by the mediator that mediation was waived or that
13 the parties did not reach an agreement, respectively. If any party does not sign the
14 statement, the mediator shall sign the statement. The statement constitutes a mediation
15 release.

16 **"§ 106-706.18. Extension of deadlines.**

17 Upon the petition of all parties to the dispute, the mediator may, for good cause,
18 extend a deadline imposed by G.S. 106-706.15 or G.S. 106-706.16 by up to 30 days.

19 **"§ 106-706.19. Judicial review.**

20 Judicial review shall be limited to whether the refusal to issue a mediation release is
21 based on clear and convincing evidence. This action may be brought in the county in
22 which the property is located. Upon reversing the mediator's decision, the court shall
23 order the mediator to issue a mediation release.

24 **"§ 106-706.20. Effect of mediation.**

25 (a) An interest in property or the rights and obligations under a contract are not
26 affected by the failure of a person to obtain a mediation release.

27 (b) Time periods, including applicable statutes of limitation, affecting a claim in a
28 civil action regarding a dispute subject to this Article shall be suspended on the date the
29 farm assistance program coordinator received the request for mediation under G.S. 106-
30 706.12 or G.S. 106-706.13. These suspensions shall terminate upon the signing of a
31 mediation release."

32 Sec. 2. Chapter 7A of the General Statutes is amended by adding the following
33 new Subchapter to read:

34 **"SUBCHAPTER XIV. FARM ASSISTANCE MEDIATION.**

35 **"ARTICLE 65.**

36 **"THE FARM ASSISTANCE PROGRAM.**

37 **"§ 7A-790. Legislative findings; purpose.**

38 The General Assembly makes the following findings:

- 39 (1) Mediation is a simple, nonbureaucratic means of resolving disputes
40 between parties.
41 (2) The independence and isolation of farm residents pose special obstacles
42 in dispute resolution.

1 (3) Legal proceedings may be a costly, time-consuming, and inefficient
2 means of settling disputes in which a farm resident is a party.

3 (4) Disputes may be better resolved in an informal setting where
4 understanding and accommodation may replace a formal and adversarial
5 proceeding.

6 The purpose of this Article is to make mediation available to the farm resident and
7 those other persons alleging nuisances resulting from the farm resident's use of the
8 farmland.

9 **"§ 7A-791. Farm assistance program coordinator; duties; pretrial mediation by**
10 **State agency.**

11 (a) Subject to subsection (c) of this section, the Director of the Administrative
12 Office of the Courts or the Director's designee shall serve as the farm assistance program
13 coordinator.

14 (b) The farm assistance program coordinator shall coordinate the activities and
15 proceedings involved in the prelitigation mediation of farm nuisance claims in
16 accordance with Article 57B of Chapter 106 of the General Statutes, including the
17 maintenance of a list of available and qualified mediators.

18 (c) In the event the State establishes an agency to administer a judicial system of
19 mediation that includes pretrial mediation, the Administrative Officer of the Courts may
20 transfer the duties of the farm assistance program coordinator to that agency, as
21 determined appropriate by the Administrative Officer of the Courts.

22 **"§ 7A-792. Confidentiality.**

23 (a) Mediation conferences conducted pursuant to this Article are not meetings of
24 public bodies within the meaning of Article 33C of Chapter 143 of the General Statutes.

25 (b) Evidence of statements made and conduct occurring in a mediation conference
26 shall not be subject to discovery and shall be inadmissible in any proceeding in the action
27 or other actions on the same claim; however, no evidence otherwise subject to discovery
28 shall be inadmissible merely because it is presented or discussed in a mediation
29 conference.

30 (c) No mediator shall be compelled to testify or produce evidence concerning
31 statements made and conduct occurring in a mediation conference in any civil proceeding
32 for any purpose, except disciplinary hearings before the State Bar or any agency
33 established to enforce standards of conduct for mediators.

34 **"§ 7A-793. Rules; fees; forms; costs.**

35 (a) The Administrative Office of the Courts shall adopt rules to implement the
36 farm mediation program under this Article, set costs of the farm mediation program as
37 determined by its actual costs, and set the compensation of mediators. When developing
38 its rules, the Administrative Office of the Courts shall consider the recommendations of
39 the farm assistance program coordinator.

40 (b) The Supreme Court may adopt standards for the certification and conduct of
41 mediators and for mediator training programs and procedures for the enforcement of
42 those standards.

1 (c) An administrative fee may be charged by the Administrative Office of the
2 Courts to applicants for certification as mediators and for mediator training programs.

3 (d) The Administrative Office of the Courts shall develop a voluntary mediation
4 application, mediation request forms, and other appropriate forms to implement the farm
5 mediation program under this Article.

6 (e) Mediation costs shall be borne by the parties to the dispute. Unless otherwise
7 ordered by the court or agreed to by the parties, the mediation costs, including mediation
8 fees and excluding counsel fees, shall be paid in equal shares by the parties. Upon
9 application to the farm assistance program coordinator and upon the recommendation of
10 the mediator, the mediation costs may be waived for any party, if the coordinator finds
11 that the payment of such costs would constitute a financial hardship sufficient to
12 terminate the mediation.

13 **"§ 7A-794. Immunity.**

14 (a) No mediator shall be liable for civil damages for a statement or decision made
15 in the process of mediation, unless the mediator acts in bad faith, with malicious purpose,
16 or in a manner exhibiting willful and wanton disregard of human rights, safety, or
17 property.

18 (b) A civil action that seeks an injunction, mandamus, or similar equitable relief
19 shall not be brought against a mediator until the mediation process is completed in
20 accordance with Article 57B of Chapter 106 of the General Statutes."

21 Sec. 3. Severability. The provisions of this act are severable. If any provision
22 of this act is held invalid by a court of competent jurisdiction, the invalidity does not
23 affect other provisions of the act that can be given effect without the invalid provision.

24 Sec. 4. This act becomes effective October 1, 1995, and applies to all disputes
25 as defined in G.S. 106-706.11, as enacted in Section 1 of this act, arising on or after that
26 date.