

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 916*

Short Title: Prelitigation Farm Mediation.

(Public)

Sponsors: Senators Albertson, Dannelly, Speed, Warren, Hoyle, Hobbs, Cooper, Winner, Gulley, Rand, Allran, Martin of Pitt, Martin of Guilford, Perdue, Odom, Conder, and Webster.

Referred to: Judiciary I/Constitution

May 1, 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 farm resident.

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 mediation service' means the organization selected to provide this
24 service pursuant to G.S. 7A-791.

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

30 (5) 'Mediation release' means an agreement or statement signed by all
31 parties, or by less than all the parties and the mediator, pursuant to G.S.
32 106-706.17.

33 (6) 'Nuisance' means:

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

39 (7) 'Other party' means any person having a dispute with a farm resident.

40 (8) 'Participate' or 'participation' means:

- 41 a. Attending a mediation meeting, or
42 b. Having knowledge about and discussing issues concerning a
43 subject relating to a dispute.

1 **"§ 106-706.12. Voluntary mediation proceedings.**

2 A farm resident or other party may request mediation of a dispute by applying to the
3 farm mediation service. The farm mediation service shall make voluntary mediation
4 application forms available. The farm mediation service shall evaluate each request.
5 Parties may select a mediator within 14 days, or the farm mediation service may direct a
6 mediator to meet with the farm resident and other party to assist in mediation.

7 **"§ 106-706.13. Mandatory mediation proceedings.**

8 (a) Prior to initiating a civil action involving a dispute, a farm resident or the other
9 party shall file a request for mediation with the farm mediation service. No civil action
10 involving disputes shall be filed until the party instituting the action has obtained a
11 mediation release pursuant to the provisions of this Article. An action brought by a party
12 who has not obtained such release shall be dismissed by the court, unless the court
13 determines, after notice and hearing, that one of the following applies:

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

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

17 (b) Upon receipt of the request for mediation, the farm mediation service shall
18 conduct an initial consultation with each party to the dispute privately and without
19 charge. If the parties agree, mediation may be waived after this initial consultation.

20 (c) If the parties choose to designate a mediator, the mediation shall be conducted
21 by that mediator. Upon the failure of the parties to designate a mediator within 14 days
22 following the filing of a request for mediation, the farm mediation service shall appoint a
23 mediator.

24 **"§ 106-706.14. Initial mediation meeting.**

25 (a) Unless both parties to the dispute waive mediation, the farm mediation service
26 shall, within 21 days after receiving a mediation request, send a notice of the mediation
27 meeting to all parties to the dispute, setting a time and place for an initial mediation
28 meeting between the parties and the name of the mediator to assist in the mediation. An
29 initial mediation meeting shall be held within 21 days of the issuance of the mediation
30 meeting notice.

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

33 **"§ 106-706.15. Standards for mediators and certification of training program; fees.**

34 (a) The Supreme Court may adopt standards for the certification and conduct of
35 mediators and for mediator training programs and procedures for the enforcement of
36 those standards.

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

39 **"§ 106-706.16. Mediation period.**

40 The mediator may call mediation meetings during the mediation period. The
41 mediation period shall extend up to 42 days after the farm mediation service received the
42 mediation request.

43 **"§ 106-706.17. Mediation release.**

1 (a) If an agreement is reached among all parties, the mediator shall prepare a
2 written mediation agreement. The mediation agreement shall be signed by the parties and
3 submitted to the farm mediation service.

4 (b) The mediator shall issue a mediation release unless the other party desiring to
5 initiate a civil action to resolve the dispute fails to participate in at least one mediation
6 meeting. The mediator shall issue a mediation release if the farm resident waives or fails
7 to participate in at least one mediation meeting, regardless of participation by the other
8 party. A party to a dispute may be represented by another person, if the person
9 participates in mediation and has authority to discuss the dispute on behalf of the party
10 being represented. This section does not require a party to reach an agreement. This
11 section does not require a person to change a position, alter an activity that is a subject of
12 the dispute, or restructure a contract in order to receive a mediation release.

13 (c) The mediator shall promptly notify a party to the dispute by certified mail of a
14 refusal to issue a mediation release and the reasons for the refusal. The notice shall state
15 that the party has seven days from the date that the notice is delivered to appeal the
16 mediator's decision, pursuant to procedures adopted by the farm mediation service. After
17 a final decision by the farm mediation service, the party may seek an action for judicial
18 review pursuant to G.S. 106-706.19.

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

21 (e) If the parties waive mediation or if a mediation agreement is not reached, the
22 parties may sign a statement prepared by the mediator that mediation was waived or that
23 the parties did not reach an agreement respectively. If any party does not sign the
24 statement, the mediator shall sign the statement. The statement constitutes a mediation
25 release.

26 **"§ 106-706.18. Extension of deadlines.**

27 Upon the petition of all parties to the dispute, the farm mediation service may, for
28 good cause, extend a deadline imposed by G.S. 106-706.14 or G.S. 106-706.16 by up to
29 30 days.

30 **"§ 106-706.19. Judicial review.**

31 Judicial review shall be limited to whether the refusal to issue a mediation release is
32 based on clear and convincing evidence. The judicial standard of review of the decision
33 by the administrative head of the farm mediation service is whether the decision was an
34 abuse of discretion. The action may be brought in either the Superior Court of Wake
35 County or in the superior court of the county in which the affected farm resident resides.
36 Upon reversing the decision by the farm mediation service, the court shall order the
37 service to issue a mediation release.

38 **"§ 106-706.20. Effect of mediation.**

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

41 (b) Time periods relating to a claim, including applicable statutes of limitations,
42 shall be suspended upon filing a request for mediation under this Article. Time periods
43 affecting a claim in a civil action shall be suspended upon filing a request for mediation

1 under this Article. The suspension shall terminate upon the signing of a mediation
2 release."

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

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

6 **"ARTICLE 65.**

7 **"THE FARM ASSISTANCE PROGRAM.**

8 **"§ 7A-790. Legislative findings; purpose.**

9 The General Assembly makes the following findings:

- 10 (1) Mediation is a simple, nonbureaucratic means of resolving disputes
11 between parties.
12 (2) The independence and isolation of farm residents pose special obstacles
13 in dispute resolution.
14 (3) Legal proceedings may be a costly, time-consuming, and inefficient
15 means of settling disputes in which a farm resident is a party.
16 (4) Disputes may be better resolved in an informal setting where
17 understanding and accommodation may replace a formal and adversarial
18 proceeding.

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

22 **"§ 7A-791. Farm assistance program coordinator to contract for mediation services.**

23 (a) The Director of the Administrative Office of the Courts or the Director's
24 designee shall serve as the farm assistance program coordinator.

25 (b) The farm assistance program coordinator shall contract with an association
26 chartered in this State to provide farm mediation services as provided in Article 57B of
27 Chapter 106 of the General Statutes. The contract may be terminated by the coordinator
28 upon written notice and for good cause. The organization awarded the contract is
29 designated as the farm mediation service for the duration of the contract. The farm
30 mediation service is not a State agency.

31 **"§ 7A-792. Confidentiality.**

32 (a) Conferences of the farm mediation service are not meetings of public bodies
33 within the meaning of Article 33C of Chapter 143 of the General Statutes.

34 (b) Verbal or written information relating to the mediation process and transmitted
35 between a party to a dispute and the farm mediation service, including a mediator or the
36 mediation staff, or any other person present during any stage of the mediation process
37 conducted by the service, whether reflected in notes, memoranda, or other work products
38 in the case files, is a confidential communication. Mediators and staff members shall not
39 be examined in any judicial or administrative proceeding regarding confidential
40 communications and are not subject to judicial or administrative process requiring the
41 disclosure of confidential communications.

42 **"§ 7A-793. Rules, forms, and costs.**

1 (a) The Administrative Office of the Courts shall adopt rules and set costs of the
2 mediation service as determined by its actual costs. The Administrative Office of the
3 Courts shall set the fees of mediators, and, when developing its rules governing
4 mediation use the recommendations of the farm assistance program coordinator.

5 (b) The Administrative Office of the Courts shall develop a voluntary mediation
6 application, mediation request forms, and other appropriate forms to implement the
7 service.

8 (c) Costs of mediated settlement conferences, excluding the initial informal
9 consultation conducted by the farm mediation service, shall be borne by the parties to the
10 dispute. Unless otherwise ordered by the court or agreed to by the parties, the mediation
11 costs including mediation fees and excluding counsel fees, shall be paid in equal shares
12 by the parties. The costs of the mediation proceeding may be waived for any party upon
13 application to the farm assistance program coordinator and a finding that the payment of
14 such costs would constitute a financial hardship sufficient to terminate the mediation.

15 **"§ 7A-794. Immunity.**

16 (a) No member of the farm mediation service, including a mediator, employee, or
17 agent of the service, or member of the board for the service, shall be liable for civil
18 damages for a statement or decision made in the process of mediation, unless the member
19 acts in bad faith, with malicious purpose, or in a manner exhibiting willful and wanton
20 disregard of human rights, safety, or property.

21 (b) A civil action that seeks an injunction, mandamus, or similar equitable relief
22 shall not be brought against the farm mediation service, including a mediator, employee,
23 or agent of the service, or a member of the board for the service until the mediation
24 process is completed in accordance with Article 57B of Chapter 106 of the General
25 Statutes."

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

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