

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 913

SHORT TITLE: Prelitigation Farm Mediation

SPONSOR(S): Representative Willis Brown

FISCAL IMPACT: Expenditures: Increase () Decrease ()
Revenues: Increase () Decrease ()
No Impact (x) Revenue/Expenditures expected to be
offsetting
No Estimate Available ()

FUNDS AFFECTED: General Fund (x) Highway Fund () Local Fund ()
Other Fund ()

BILL SUMMARY: Establishes farm assistance mediation program in the Administrative Office of the Courts (AOC) to provide voluntary mediation of farm-related disputes, upon request, and mandatory mediation prior to initiating civil action. Purpose is to resolve disputes arising out of expansion of nonagricultural land uses in agricultural areas and intensification of agricultural operations. Defines dispute as controversy between a farm resident and another person arising from a claim eligible for resolution in court and relates to action of one person alleged to be a nuisance interfering with the enjoyment of property rights of the farm resident. Civil action will be dismissed if mediation not requested unless such a dismissal would cause irreparable harm or unless dispute is class action. Mediation agreement is enforceable as a contract and the mediator must issue a release upon agreement or waiver of mediation or failure of farm resident to participate. Does not require agreement. Filing of request for mediation suspends time periods, including statute of limitations. Cost of mediation itself is to be borne by parties to the dispute. Provides for confidentiality of mediation communications and immunity from liability for mediators and mediation service employees.

Administratively, requires AOC Director or designee to develop and coordinate program and to contract with a non-profit organization to provide mediation services. Requires Supreme Court to develop standards and procedures and allows AOC to charge fee for certification of mediators and of mediator training programs.

EFFECTIVE DATE: October 1, 1995

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Department

FISCAL IMPACT

	<u>FY</u> 95-96*	<u>FY</u> 96-97	<u>FY</u> 97-98	<u>FY</u> 98-99	<u>FY</u> 99-00
EXPENDITURES					
RECURRING	\$17,671	\$23,561	\$23,561	\$23,561	\$23,561
NON-RECURRING	<u>7,764</u>				
TOTAL	25,435				
REVENUES/RECEIPTS					
RECURRING	\$25,345	\$23,561	\$23,561	\$23,561	\$23,561
NON-RECURRING					
TOTAL EXPENDITURES	0	0	0	0	0
POSITIONS:	.50	.50	.50	.50	.50

* 1995-96 costs assume October 1 effective date

ASSUMPTIONS AND METHODOLOGY:

HB 913 has four areas of potential cost impact. Our analysis indicates, however, that there would be no fiscal impact. Each area is discussed below.

1. Position -- Farm Assistance Program Coordinator

The bill requires the Director of the AOC, or the Director's designee, to serve as the farm assistance program coordinator. It is assumed that the Director will have to designate a farm assistance program coordinator and that the position will need to be a mid-level professional staff position in order to manage the certification process.

The duties of the program coordinator, as determined by reviewing the bill and discussions with the AOC, appear to be to develop and monitor a contract with a non-profit organization to provide farm mediation services; develop and manage rules and procedures for operation of the farm mediation service and for certifying mediators and trainers (for the Supreme Court); develop the appropriate forms and procedures for conducting the mediation service, including mediation request forms; and, review requests for waiver of mediation fees if parties indicate paying fees would be a financial hardship.

Given the assumption that the number of farm mediation cases will not be significant and that direct mediation services will be contracted to a non-profit organization, it is assumed that the AOC would only need part-time staff (.50) at a position level comparable to staff for the current mediated settlement pilot program (pilot program expires June 30,1995 under current statutes). Recurring cost for the position and support is estimated at \$23,561 annually; the first year non-recurring cost is \$7,764.

It is assumed for purposes of this note that these costs will be offset by receipts. HB 913 allows the AOC to establish an administrative fee to be charged to applicants for certification as mediators and to certify mediator training programs; the intent of the bill according to the sponsor is to use this fee to cover all administrative costs if feasible.

The premise that administrative costs will be offset by receipts is based on three assumptions (1) fees for certification of training programs and for certification of mediators should be reasonable in order to ensure participation by current mediators and new mediators; (2) the majority of the current 350 certified mediators would request certification; and, (3) the fee charged would be an annual fee, not one-time.

Regarding certification of mediators, there are currently 350 mediators certified in North Carolina according to the AOC (certified without charge for the mediated settlement pilot program). In order to cover the administrative costs of the bill of \$25,545 the first year and \$23,561 the second, a fee of approximately \$67 would need to be charged; this assumes all 350 mediators would choose to handle farm mediation cases. (Fees for training programs are not considered since there are only four active mediator training programs in North Carolina and the bulk of receipts are likely to come from certifying mediators).

Another scenario assumes that not all 350 mediators would be interested in doing farm mediation. If 200 mediators apply for certification, the fee would be set at approximately \$118 in order to cover the full administrative costs of the program.

However, it should be noted that if a small number of mediators apply for certification, the full administrative costs outlined in the fiscal impact table would not be covered without charging an exceptionally high and perhaps prohibitive fee.

2. Development of Forms and Procedures

The AOC indicates that there would be no additional cost for developing forms and procedures other than the use of the farm assistance program coordinator. This conclusion assumes that the current Supreme Court Dispute Resolution Committee and the program coordinator could develop forms and procedures as a normal course of business.

3. Mediation Services/Conferences

HB 913 indicates the cost of mediated settlement conferences would be borne by the parties involved unless fee payment causes undue hardship. Thus the cost of mediation service should be offset by the fees (current average charge for mediated settlement is \$100 per hour at approximately 3.5 hours per mediation).

The AOC did indicate that it would need to be determined who would absorb the cost of certain administrative services (scheduling initial meetings of the parties and mediation sessions) -- the parties involved in the mediation as part of the mediation fee, the farm mediation service, or the mediators.

4. Judicial Review

HB 913 limits judicial review to a determination of whether the refusal to issue a mediation release by the farm mediation service was based on clear and convincing evidence. This review could require additional court time and cost in Superior Court but this cost should be indirectly offset by reduced court time for farm-related civil actions because of the farm mediation service. Regardless, it is anticipated that the number of reviews would not substantially effect court time and that these reviews could be absorbed within current resources.

SOURCES OF DATA: Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

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