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ROLL NUMBER

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2277

2007 SENATE AGRICULTURE

SB 2277

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2277

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3286

Committee Clerk Signature

Cassie Krohn

Minutes:

Sen. Flakoll opened the hearing on SB 2277, a bill relating to sales under execution. All members (7) were present.

Malcolm Brown, on behalf of the Real Property Probate and Trust Section of the State Bar Association, testified in favor of the bill. See attached testimony.

Sen. Flakoll- how does this play out with the official newspaper, does it have any bearing on the official newspaper of like the counties requirements for publication?

Malcolm Brown- no.

Sen. Flakoll- is there any concern about like if you live in Bismarck and the Bismarck Tribune costs you lets say \$125 to run a little classified ad, that you may go to the Bismarck state college paper and run it for \$5 and really not have the circulation impended?

Malcolm Brown- I don't know if you could say that that paper would have general circulation.

Sen. Flakoll- how about the penny finder?

Malcolm Brown- I think that we call that the finder. The current law is the newspaper printed in the county and I know we don't have any printed in morton county and I am sure there are a lot of counties. So this is to try to have the notice published in a paper that is widely circulated.

And the current law doesn't reference to official newspaper.

Sen. Behm- the official newspaper of a county has a first chance of publishing these legally?

Malcolm Brown- not today.

Sen. Klein- so what we are doing is just more clearly helping both on the law side and the folks out there.

Malcolm Brown- yes it would read easier.

No opposition to the bill.

Sen. Flakoll closed the hearing.

Sen. Klein motioned for a do pass to adopt amendments and **Sen. Erbele** seconded the motion, roll call vote 1: 7 yea, 0 nay, 0 absent.

Sen. Klein motioned for a do pass as amended and was seconded by **Sen. Wanzek**, roll call vote 2: 7 yea, 0 nay, 0 absent. **Sen. Heckaman** was designated to carry the bill to the floor.

REPORT OF STANDING COMMITTEE

SB 2277: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2277 was placed on the Sixth order on the calendar.

Page 4, line 16, replace "names" with "name", replace "all parties" with "each plaintiff and defendant", and after "action" insert "or served in the foreclosure by the advertisement"

Page 4, line 17, remove "The", overstrike "certificate must be executed by the" and insert immediately thereafter "The", after "officer" insert "shall execute the certificate", overstrike "acknowledged" and insert immediately thereafter "acknowledge", and overstrike "proved" and insert immediately thereafter "prove the certificate"

Page 4, line 18, overstrike "may be" and overstrike "by law"

Renumber accordingly

2007 HOUSE AGRICULTURE

SB 2277

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2277

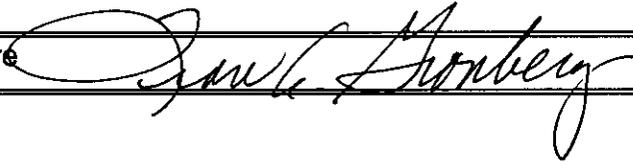
House Agriculture Committee

Check here for Conference Committee

Hearing Date: 3-8-07

Recorder Job Number: 4701

Committee Clerk Signature



Minutes:

Chairman Johnson opened the hearing on SB 2277.

Malcolm Brown, on behalf of the Real Property, Probate and Trust Section of the State Bar Association: (testimony attached)

I have spoken to Senator Holmberg and he has no objection to the amendment and on behalf of my group, we have no objection to the amendment.

Rep Uglem: Does that amendment put the official newspaper back in? (section 1)

Brown: The proposed amendments would eliminate the posting.

Jack McDonald, ND Newspaper Association: (testimony attached)

The best place for people to get the information is to have it in the official county newspaper and not just posted in five places in the county.

Rep Froelich: Sioux county's paper has half the circulation of the close SD paper. Can we use the SD paper?

McDonald: You can use it as well, but it must also be in the official paper.

No opposition

Chairman Johnson closed the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2277

House Agriculture Committee

Check here for Conference Committee

Hearing Date: 3-8-07

Recorder Job Number: 4719

Committee Clerk Signature



Minutes:

Chairman Johnson asked the committee for a vote on SB 2277.

Rep Wall moved the amendments for SB 2277

Rep Belter seconded the motion

The motion passed on a voice vote

Rep Mueller made a motion for a Do Pass as Amended

Rep Wall seconded the motion

(yes) 10 (no) 1 (absent) 2

Carrier: Rep Wall

Date: 3/8/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do Pass on the Amendments

Motion Made By Wall Seconded By Beltz

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Tracy Boe		
Vice Chair Joyce Kingsbury			Rodney Froelich		
Wesley Belter			Phillip Mueller		
Mike Brandenburg			Kenton Onstad		
Craig Headland			Benjamin Vig		
Brenda Heller					
John D Wall					
Gerry Uglem					

Total (Yes) X No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Vote

Date: 3
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number 2277

Action Taken Do Pass As Amended

Motion Made By ~~Rep Mueller~~ Seconded By Rep Wall

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	✓		Tracy Boe	✓	
Vice Chair Joyce Kingsbury	✓		Rodney Froelich		✓
Wesley Belter	✓		Phillip Mueller	✓	
Mike Brandenburg			Kenton Onstad	✓	
Craig Headland			Benjamin Vig	✓	
Brenda Heller	✓				
John D Wall	✓				
Gerry Uglen	✓				
	/				

Total (Yes) 10 No 1

Absent 2

Floor Assignment Rep Thall

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2277, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2277 was placed on the Sixth order on the calendar.

Page 1, line 8, overstrike "before the"

Page 1, line 9, overstrike "officer proceeds to sell the" and remove "property"

Page 1, line 10, after "~~such~~" insert "the"

Page 1, line 11, overstrike the first comma, replace "a" with "the county's official", remove "of general circulation", and overstrike "in the county"

Page 1, line 12, remove "as" and overstrike "designated by the judgment creditor or the judgment creditor's"

Page 1, line 13, overstrike "attorney, or," and overstrike "by posting advertisements in five public"

Page 1, line 14, overstrike "places in the county"

Page 1, line 20, overstrike "or posting"

Page 2, line 12, overstrike "a" and insert immediately thereafter "the county's official" and remove "of"

Page 2, line 13, remove "general circulation" and overstrike "in the county"

Renumber accordingly

2007 SENATE AGRICULTURE

CONFERENCE COMMITTEE

SB 2277

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2277

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: 2277

Recorder Job Number: 5695

Committee Clerk Signature

Cassie Krow

Minutes:

Sen. Erbele opened the conference committee on SB 2277. All senate, **Sen. Erbele**, **Sen. Wanzek**, **Sen. Heckaman**, and all Representatives, **Rep. Wall**, **Rep. Vig**, **Rep. Heller**, were present.

Rep. Wall explains what the House did to the bill, 00:44- 2:18.

Sen. Erbele- does anyone have any questions or discussion that we need to put on the table regarding this issue?

Sen. Wanzek- the major issue is the language about whether it be listed in the paper in the official county newspaper or being able to be listed in a newspaper that could be in a joining county if there is no official county.

Rep. Wall- correct.

Sen. Wanzek- and there is only two counties that really impacts and you feel in a previous session with some past language that you feel what addresses that problem already?

Rep. Wall- that is correct,, I believe that it is Sioux and Slope county so that they could get the official ballot adjoining counties official newspaper became, for all practical purposes, their official newspaper now. So we could say that every county does have an official newspaper now.

Sen. Wanzek- so in a sense there is almost a definition already in law with an official county newspaper even when you don't have one?

Rep. Wall- that is correct. We felt for what is a public notice or official notice it should be in an official newspaper vs. one of general circulation.

Sen. Erbele- is this just dealing with real estate or is it with other types of sales?

Rep. Wall- it is any sales of real value.

Sen. Erbele- typically in such cases of these sales to the principal involved in sale are also notified via other methods as well aren't they, through the courts and so on? Aren't the notices more for the purpose of the general public rather than the principals involved in the proceedings?

Rep. Wall- I think that is correct. I do believe relatives and others who might be interested in coming and bidding on the property, they would not be notified. But the immediate people would be notified and come.

Sen. Erbele closed the conference.

The committee recommends that the Senate Accede to the House amendments on pages 851-852 and place 2277 on the Seventh order. Motion was made by **Sen. Wanzek** and was seconded by **Sen. Heckaman**, 6 yea, 0 nay, 0 absent.

REPORT OF CONFERENCE COMMITTEE

SB 2277, as engrossed: Your conference committee (Sens. Erbele, Wanzek, Heckaman and Reps. Wall, Vig, Heller) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 851-852 and place SB 2277 on the Seventh order.

Engrossed SB 2277 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2277

Senate Agriculture Committee
February 9, 2007

Senate Bill 2277

Testimony of Malcolm H. Brown on behalf of the Real Property, Probate and Trust Section of the State Bar Association.

Senate Bill 2277 relates to amendments to Chapter 28-23 of the Century Code, Sales Under Execution. "Execution" is the process of collecting or enforcing a judgment, whether it be for collecting a sum of money or requiring some other action to enforce it. Chapter 28-23 deals with the method of collection of a judgment by the selling of real or personal property.

The proposed amendments were drafted in order to separate, to the extent possible, the different procedures for the sale of real property (land, houses attached to land) from personal property, like cattle or crops. In Sections 1 and 3 of SB 2277 a change has been made with regard to where the notice of sale must be published. Current law requires the notice of sale to be published in a newspaper "printed" in the county, whereas the amendment requires publication in a newspaper "of general circulation" in the county. Although I do not know for sure, I suspect there are several counties in North Dakota that have newspapers of general circulation, but that are not "printed" in that county. Morton County comes to mind.

Section 6 of SB 2277 proposes to amend the current law relating to the sale of real property that consists of several lots or parcels. The amendment would permit that sale to be combined if "...they constitute one parcel upon which improvements have been constructed."

Section 8 of SB 2277 proposes to add more information to the

sheriffs certificate, specifically to require the stating of the time period of redemption, and the names of all parties to a foreclosure, if it is a foreclosure action. Our Section has also requested amendments to Chapter 28-21 N.D.C.C. in Senate Bill 2307 heard by the Judiciary committee on January 30. SB 2307 also proposes an amendment to Sec. 28-23-11 that is different than that found at Section 8 of this bill, thus I would propose the following amendment to SB 2277:

At line 16 on page 4:

The names of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by advertisement.

and at Line 17 on page 4:

2. ~~Such~~ The certificate must be executed by the officer shall execute the certificate and acknowledged or proved the certificate as may be required by law for deeds of real property.

Moved 2-09-07
Klein - Erbe
7-D

House Agriculture Committee

March 8, 2007

Senate Bill 2277

Testimony of Malcolm H. Brown on behalf of the Real Property, Probate and Trust Section of the State Bar Association.

Senate Bill 2277 relates to amendments to Chapter 28-23 of the Century Code, Sales Under Execution. "Execution" is the process of collecting or enforcing a judgment, whether it be for collecting a sum of money or requiring some other action to enforce it. Chapter 28-23 deals with the method of collection of a judgment by the selling of real or personal property.

The proposed amendments were drafted in order to separate, to the extent possible, the different procedures for the sale of real property (land, houses attached to land) from personal property, like cattle or crops.

In Sections 1 and 3 of SB 2277 a change has been made with regard to where the notice of sale must be published. Current law requires the notice of sale to be published in a newspaper "printed" in the county, whereas the amendment requires publication in a newspaper "of general circulation" in the county. Although I do not know for sure, I suspect there are several counties in North Dakota that have newspapers of general circulation, but there are no newspapers "printed" in that county. Morton County comes to mind.

Section 4 of SB 2277 removes the requirement that the sheriffs

sale be held at the county courthouse, but still allows the sheriff to designate where the sale will be held. In some cases, for instance a foreclosure of a large commercial property, that the sale be held at the location of the property, for viewing by potential bidders.

Section 6 of SB 2277 proposes to amend the current law relating to the sale of real property that consists of several lots or parcels. The amendment would permit that sale to be combined if "...they constitute one parcel upon which improvements have been constructed."

Section 7 of SB 2277 requires that a surplus in the amount required to be collected be paid to the judgment debtor, except in the case of a foreclosure sale. Sec. 32-19-10 and 11 N.D.C.C. already address the issue of a surplus in a foreclosure sale.

Section 8 of SB 2277 proposes to add more information to the sheriffs certificate, specifically to require the stating of the time period of redemption, and the names of all parties to a foreclosure, if it is a foreclosure action, not just the names of the mortgagors.

March 8, 2007

HOUSE AGRICULTURE COMMITTEE
SB 2277

CHAIRMAN JOHNSON AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of the North Dakota Newspaper Association. We have no objection to most of this bill, but would ask for just two teensy little amendments on the back of this testimony to assure that the public actually gets the notice of these sales.

We've talked with the sponsor of the bill, Sen. Holmberg, and one of the individuals involved with it, former Representative Grant Shaft from Grand Forks, and they have no objection to these amendments.

The bill deals with what are called execution sales. When a creditor sues a debtor and gets a money judgment, he then has to go after the debtor to get his money. He usually does this by first getting a document called an "execution" from the Clerk of Court. He then gives this to the sheriff and tells the sheriff to go out and grab anything he can from the debtor to satisfy the judgment.

The sheriff then holds a public sale of whatever he can get, and the proceeds of the sale go to satisfy the judgment. The law wisely requires public notice of these sales for many reasons. One is so it attracts the most potential buyers so the creditor can satisfy his judgment.

But most importantly, it allows the debtor, or his family and friends, the opportunity to "redeem" his property by buying it back at the sale. We believe that by allowing the option of just posting this notice at five places anywhere in the county will not give proper notice to either the public or the debtor, and may deprive the debtor of this opportunity to redeem his property.

Every county in North Dakota has an official county newspaper. In nearly all instances this is a paper published in the county. However, there are two counties where no newspaper is published – Sioux and Slope. The 2005 Legislature changed the law to allow newspapers in adjoining counties that are generally circulated in counties with no newspaper to get on the ballot and run for official newspaper.

Our proposed amendments basically say that notice of the sales of personal and real property should be published in the official county newspaper to assure the public gets adequate notice of these sales.

We respectfully request you adopt the amendments following my testimony. I'd be glad to answer any question. THANK YOU FOR YOUR TIME AND CONSIDERATION.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2277

On page 1, line 8, remove the strike through over the comma following "property and strike though "before the"

On page 1, line 9, strike through "officer proceeds to sell the" and remove "property"

On page 1, line 10, after "of" insert "the"

On page 1, line 11, strike through the comma after the word "sale"; after the first word "in" insert "the county's official"; remove "a" and "of general circulation"; and strike through "in the county,"

On page 1, line 12, remove "as" and strike through the remainder of the line

On page 1, line 13, strike through the entire line

On page 1, line 14, strike through "places in the county" but retain the period.

On page 1, line 20, strike through "or posting"

On page 2, line 12, after "in" insert "the official" and strike though "a"

On page 2, line 13, remove "general circulation" and strike through "in"

Renumber accordingly.

WITH MY PROPOSED AMENDMENTS, THE TWO SECTIONS WOULD READ:

§ 28-23-01. Sale of personal property--Notice of sale. The officer who levies upon personal property, other than crops or perishable property, shall give public notice of the time and place of the sale by advertisement published once each week for two successive weeks next before the day of sale in the county's official newspaper.

§ 28-23-04. Sale of real property--Notice of sale—Contents.

1. Before any real property or interest in real property taken on execution may be sold, the officer making the sale shall give public notice of the time and place of the sale by advertisement in the official newspaper of the county once a week for three successive weeks, the last publication to be at least ten days before the making of the sale.
2. Except for parties who have an ownership interest in the real property, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days before the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.