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FISCAL NOTE STATEMENT

Senate Bill or Resolution No. SB 2340

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness
Senior Fiscal Analyst

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2017 SENATE POLITICAL SUBDIVISIONS

SB 2340

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2340
2/3/2017
Job # 27882

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to fees charged by a county recorder for filing mortgage disclosures

Minutes:

Written testimony # 1 Nick Hacker
Written testimony # 2 Paula Bachmeier
Written testimony # 3 Michelle Gibbons
Written testimony # 4 Howard Malloy
Written testimony # 5 Debbie Kroshus
Written testimony # 6 Beth Knutson for Ann Johnsrud
Written testimony # 7 Katie Nadeau
Written testimony #8 Blaine Johnson
Additional testimony #9 Susan J. Froemke
Additional testimony #10 Jewel Spies
Additional testimony #11 Vicki Kubat
Additional testimony #12 Carrie Krause

Chairman Burckhard opened the hearing on SB 2340. All senators are present.

Senator Scott Meyer, District 18, Grand Forks, introduced the bill and explained it to the committee. This bill is helping the consumer, making things uniform with these fees. As far as lending concerns, we have to document up front our fees to make sure they are all uniform and when you get the closing disclosures. But basically we're looking at primary residence mortgages and studying a fee of \$55 when you record that mortgage.

Senator Anderson: We hear from the one side right now that they have standard fees for everything that is recorded. Then we hear from you that you want a standard fee for this one. It seems to me that there is kind of conflict, there is misinformation about what a standard fee is. There is many documents which a county recorder records and it's easier for them to have a standard fee for all, but what I am hearing from your people is you get the bill and it's not always what you anticipated, so it actually varies.

Senator Meyer: your right. So what we are saying here is you know you could have riders attached to the mortgage, extra pages, sign out of the margin and things like that; those numbers can change and what we'll end up doing is over-disclosing on our fees. If those fees go up someone is going to have to eat it. It could be the title company or the bank. That's why we are trying to find a set number here.

Senator J. Lee: Having looked at a whole lot of settlement statements in my life, if you over disclose, in other words a few bucks more than it might end up being, on the estimate, the customer will be happy because they didn't pay what the estimate was. But it is an estimate. So have you given any thought to a tiered system depending on the number of pages? I can't imagine that there would be some resistance. There is a big difference between a simple deed being recorded or a mortgage satisfaction, and something that involves a lot more complicated legal description or whether or not there are any kinds that caused a title to be cleared up and all that kind of stuff. Tell me what you think?

Senator Scott Meyer: your right, actually it should make people happy when their coming in less. I have actually had people in my industry kind of bark at you as to why your numbers are off. This is the biggest transaction in their life, their investment so they want to know what their numbers are and I feel it is just another way to make things uniform.

5.18 John Ward: Lobbyist representing the ND Land Title Association. I would just like to introduce Nick Hacker. We also will be having some other members testifying today and we try to pay attention so that what the testimony you hear is not redundant. They will all focus on separate areas.

5.40-18.08 Nick Hacker, Legislative committee chair of the ND Land Title Association, also a practitioner in the industry. Spoke in favor of SB 2340. Written testimony #1.

Chairman Burckhard: Did I hear you say sometimes it is even just sloppy signature that gets into the margin that affects things? Tell me about that?

Mr. Nick Hacker: You can get charged if you enter into those margins with a tail of a signature so where you see that problem is right-handed people. Depending on the recording jurisdiction, some will enforce that fee and some may not, where they charge an additional \$10. What that does is take us out of compliance on the closing disclosure form, we then go back and update the CD and have to resubmit that to the customer. Actually, the lender does that.

Senator J. Lee: I just can't believe that is such a big deal to explain to somebody that a) that the original form is an estimate, b) the \$300,000 purchase that \$3 is a big area. Besides that, somebody should be going over that final closing statement with that buyer, before you get to the closing table. The realtor is involved they ought to be doing it, then someone else should be engaged in this transaction should be explaining, remember that estimate, this is what we are looking at now, it's real and we know exactly what's going on. It doesn't seem like a lot of hassle for \$3.

Mr. Nick Hacker: It is a lot of hassle for \$3.00. **Senator Judy Lee:** When do we stand up and say let's talk about this.

Mr. Nick Hacker: What happens today is we are hopeful that the agent will go over the closing figures with the customer ahead of the closing. Sometimes it happens, sometimes it doesn't and sometimes there is no agent involved. The fees are required to be disclosed three days ahead of the closing. It is a part of the law that is very, very good for consumers. It's that 3- day window and the reason the fee changes in the 3- day window before they

arrive for closing, is because in the US we pride ourselves on roughly 30-day closing day time line, it saves people on interest costs, etc. We are the fastest country in the world to close real estate transactions the most, safest and secure. When in that process, the lender orders an appraisal that's the one document that tells the lender the characteristics of the property that they can rely on which may have a manufacture home on it for instance. They don't get that appraisal back until right before closing and when they get that, then they can go to final underwriting within the lenders world and process. They will read that appraisal and they will say we need a rider on our mortgage for the manufactured and that's what's adding the extra pages and it's happening right before the closing.

21.22-30.04 Paula Bachmeier: North Dakota Guaranty and Title Company, Minot, ND. Written testimony # 2. (References 3-day disclosure before closing)

30.15- 41.17 Michelle Gibbons: Attorney in Cando, ND. In support of SB 2340. Written testimony # 3. (References margins)

41.31- 46.14 Howard Malloy: President of Bismarck Title Company and Morton County Title Company, in support of SB 2340. Written testimony # 4. (References margin violations and recording fees)

46.37- 58.19 Debbie Kroshus: Burleigh County Recorder. Asked for a Do Not Pass on SB2340. Written testimony # 5.

Senator D. Larson: First of all, you talked about this tiered system, can you tell me more about the tiered system, was that the final one that you referred to that you thought that was the good one but you thought was equitable?

Ms. Debbie Kroshus: That is the one that we felt was the most equitable. After presenting flat fees, that is kind of hard to come up with a flat fee that will cover all documents when you're dealing with oil documents. The tiered system that we talked and presented at our December meeting to our recording partners, was one to five pages \$25.00 flat fee; six to 25 pages was \$50.00; that in itself would take care of all those residential mortgages that the title companies are speaking of, because most residential mortgages are maybe 20 pages, maybe up to 25 with all the riders attached. So that would satisfy that need that they have to have a flat fee at disclosure. 26 pages and more we would add or continue with adding \$5 a page after that which would satisfy the oil counties and those large documents that they get. Right now they get documents that cost the submitter \$36,000 to record. So, we felt this was a fair equitable proposal. We were met with resistance from the oil and petroleum companies and some attorneys stating that a deed would go from \$13 for two pages to \$25. Even though the deed results in the most work for county employees because it goes to so many different areas and touches so many different hands. So \$13 to \$25 they felt was too much of a jump for them and that's why we didn't have full support from all of our recording partners. We've always had support from the Land Title Association, as this would make their job easier.

Senator Anderson: Are all the fees someplace in the Century Code now?

Ms. Debby Kroshus: Yes, they are. In Chapter 11:18, is the chapter that governs the recorders duties and fees. They are specifically spelled out. We charge \$10 for the page.

Senator Anderson: Maybe this committee should look at your proposal that you're offered in December, as an alternative here. Then the people opposed to you would have the discussion before this committee and maybe we could sort it out. If you would be willing to provide that suggestion to us?

Ms. Debbie Kroshus: Absolutely. We had discussed the proposal with the land title people and suggested that be amended or proposed in the bill that they presented. We opposed the bill as it's presented. We are still willing to work to come up with this. We have Katie Nadeau from Ramsey County who has put our numbers together. Beth Knutson is a recorder from McLean and has the proposal right here.

Beth Knutson: McLean County. I have a whole testimony ready, but Debby has pretty much covered it. There are a few things that I will touch on after, but this is Ann Johnsrud's testimony, who was unable to attend today. (Written testimony # 6).

Senator Anderson: I think what we would like would be to see your proposal in writing so that we can look at it in the form of an amendment to this bill. Those numbers unfortunately mean very little to me, and I think the rest of us the specifics, if we could see those in writing in the form of an amendment to this bill then. The people who disagree with you can come into us and say this is why we disagree specifically with what you've said. That would be possible?

Ms. Beth Knutson: I was going to touch on that margin fee that they had all talked about. I know that they said that a stamp being in the margin or the tail of a letter be in a margin would result in a \$10 fee. According to the Century code, you have to pick up all four margins of the page before the fee is actually assessed. So it being in just one margin is not going to cause the fee. The signature would have to be on all four sides that the infraction occurred in order for the \$10 to be assessed. I know I have run into it sometimes the closing agents will print a legal size mortgage on a letter size piece of paper, which spreads it out into all the margins. So therefore resulting in the margins.

Senator Anderson: Well, to say that you know these are legal signatures and it's going to be a permanent record there, so that's the impetus behind wanting to be sure it's all there, so I can see later if you're the guy that really signed it or not.

Ms. Beth Knutson: That also comes into play on some of those bigger documents that are recorded in more than one county. That is where the margins became into play. When the document is recorded in 10 different counties then every county has to put a label on each page that margin is taken up very quickly, and then there is no place to put a label in order to identify that page of the document.

Senator Kannianen: Just to clarify, now, the bill is dealing strictly with the residential mortgages and the proposal you were working on during interim and the proposal that you have with your structure fee, does that apply to all mortgages? If I am correct in my understanding, one of the issues that you have is that it would be a challenge to split that up to have one fee structure for residential mortgages and one for everything else? That would be a challenge for you in addition to maybe contesting just the flat fee.

Ms. Beth Knutson: Our biggest concern is that singling out one document. Right now when someone calls and asks for our recording fees, no, we rattle off the \$10 for 1st page, \$3 for each additional page. It is a spiel, that we give to them and by the time we get to the important stuff, they are not listening anymore. This just adds another step, except if your mortgage is a real estate mortgage, now it's \$55 and like we discussed we don't have a way of knowing those for sure. That is not our line of work, so you could stamp mortgage that is 600 pages long and I wouldn't know any different. It would be \$55 instead of \$5000. So that is one of our concerns, also the opening up of legislation in the future to the oil and gas companies to decide if they want their leases a flat fee or affidavits a flat fee. We don't want to single out any special document. We would rather have one fee for all documents, easy for our submitters to follow and easy for us to apply the document.

Senator D. Larson: So, in this long interim study on this proposal some of the disagreement didn't come just from different entities, they also came within the recorders, right? The recorders didn't agree from one jurisdiction to the next on what would be the best proposal, is that right?

Ms. Beth Knutson: Yes, that is correct. Where do you meet in state? I mean you have Cass County who does 8000 mortgages, probably a vary percentages of real estate mortgages, then you have McKenzie county where 80% of their recordings are oil and gas. So they hardly have any real estate mortgages. So there was a little conflict within our association as to which way to lean. You know they don't want to lose money on the oil and gas documents and they don't want the other side to lose money on residential documents. So it was a hard task for us to come up with a compromise in the middle where we felt everyone was still benefitting yet we are all on the same page.

Senator J. Lee: I don't know why were even setting fees in statute. If McKenzie County or Williams County is different from Cass county I think you've got to figure out what it costs. Heaven knows legislatures like to regulate everything, but really this is so ridiculous because you're absolutely right. Every county needs and circumstances vary and I cannot imagine why we haven't just left it to the recorders and county commissioners to figure out what in the world you are going to be able to charge for this. So this whole conversation gives me fits because we should not be putting \$22 or \$55 or anything else in statute at all because you're going to be back, rightfully so, in a few years to say we can't possibly do it this way because there is a new federal law that says new documents have to be whatever, and here we are. So, I don't know, that's a pretty radical solution. But, here you go.

Senator Anderson: With all respect to Senator Lee, and my penchant to put things in rules instead of in statute, there is a lot of people here who do business with every county and all across the country and they would like to see uniformity, so, that they do business.

Senator J. Lee: There is not unanimity between North Dakota and all the other states anyway, so there is someplace where there is going to be less of problem here.

Ms. Beth Knutson: There is another issue I guess, they are just setting a single flat fee for the mortgage, but when they go to close, there is usually an affidavit, there is a deed, there's a mortgage, there is satisfaction and I know that they've done the numbers that the mortgage is probably most commonly calculated in error but there are those four other documents that

play into that disclosure statement that could possibly still cause the numbers to be wrong. So it's not going to solve everything. It will solve the problem on one document, and for one entity of the whole real estate transaction.

1.13.14 Ms. Katie Nadeau, Ramsey County Recorder. I am testifying in opposition to SB2340. Written testimony # 7. Off testimony a little bit. Ms. Gibbons was more convinced than I am that every residential mortgage would have this certification with a stamp on it. My local bank, when they do a closing that is not with the title company their documents are fairly uniform. If they fall under that \$55 fee, I don't believe their going to put the stamp on; I recorded one yesterday and it was a 5- page mortgage. It was \$22. It was obviously a residential home, and I don't know why you would pay \$55, or charge a customer \$55 when you know for a fact that it's going to be \$22. If you don't, put the certification on. That is one of my issues with the bill is as Nick said, it is elective. It's allowed, it is not required. So lenders can go whichever way they see fit. It becomes impossible for us to understand how that's going to affect the recording revenue for the county. I am a very factual person which is probably why they appointed me to deal with numbers and I don't like unknowns, loopholes, and I feel that is what this bill creates.

Sen. D. Larson: A couple of you have mentioned that you don't know if it's a commercial, residential finances. There isn't anything that notifies you that this is just going to be a residential one so that you can automatically go into that. Nothing identifies it as a residential loan?

Ms. Katie Nadeau: Not on every mortgage. So, lots of our mortgages just say mortgage. There are mortgages that do say that it is a residential or a commercial mortgage but it's not consistently all of them.

Sen. D. Larson: So would that consistency help with your consistency?

Ms. Katie Nadeau: I am going to speak for Ramsey county. We do our best to make our system as user friendly as possible, so our document type for mortgage is mortgage. So if you search her office looking for a commercial mortgage you're going to have to look through all of the mortgages. Otherwise you have hundreds of document types. So for us, to put a stamp on it, it would make it easier obviously, because we would see that it was a residential mortgage and it needed the stamp. But in that regard as it stands now, that wouldn't help us.

Neutral Position

1.18.43 Jeff Olson, Credit Union Association of the Dakotas. We are neutral on this bill. Just a little background on it. We were involved in the study and we appreciate all the work that was put into it. When we met in December, this proposal came out and we didn't have a lot of time to look at it. Now when the bill is released we have the opportunity to go to our members and get some feedback. We see this as really an advantage to us in the mortgage industry and don't have any opposition to it. But we also see some of the concerns that the recorders could bring up. Just a couple of things we would like to mention, in the spacing it was brought it, that we would have to change our forms. Some members said that actually is a positive thing and they would not have to change any of their software programs. In reference to the Truth and Lending Disclosures we have no issues currently with that and

didn't see any other federal regulations with this change as well. But we also said that we have been able to easily estimate some of those costs right now and haven't had any losses. Perhaps that's because the title company has been picking up some of those losses, I don't know, but we really see this proposal as a number of positive things to it. If there is some significant changes we may have to take a stance one way or the other.

Senator H. Anderson: You said in December when you met with the county recorders and their proposal, did you see any problems with that proposal or have you since seen any problems with that proposal?

Mr. Jeff Olson: We really didn't have a lot of time to look at. I think that Nick and Howard brought this proposal to the table at that time. There are a lot of different factions at that meeting and we all had different opinions and I think we all needed a little recess to take a look at it. We thought actually there wasn't going to be a bill this session. Once the bill was released, we had the opportunity to see what the language was, we did circulate it and got good feedback from our members.

Senator J. Lee: What was your reaction to the tiered schedule that has been proposed during the meeting?

Mr. Jeff Olson: We didn't really have a lot of opinion on that. A lot of these things are passed on to consumers. Speaking on behalf of the credit unions, anytime you have to pass so many fees to the members we are concerned about that and we wanted to know if those fees were going to be reasonable. I thought they were fair.

Senator J. Lee: I just don't think that \$20 variation, give or take, is really a huge deal on something like a residential mortgage. That is just me, but I really think it's not huge.

Mr. Jeff Olson: I don't disagree.

1.21.57-1.25.48 Blaine J. Johnson: Practitioner and Attorney with Crowley and Fleck. I played a role in drafting the bill before you. SBAND is taking a neutral position on this. (State Bar Association of North Dakota) Written testimony # 8.

Senator H. Anderson: When you talked about the Minnesota situation, the \$46 is that just apply to mortgages or apply to all recording or what?

Mr. Blaine Johnson: All documents, any documents. Flat fee.

Senator H. Anderson: So the several thousand- page oil and gas filing would be the same \$46?

Mr. Blaine Johnson: If Minnesota had oil and gas which to rely on that, that would be the case. But you're right, there would likely be legislation to address that particular issue. North Dakota is unique with those circumstances. That was one of the difficulties in having these round table discussions with the stakeholders as to what proposal is going to work best for everybody. I would suggest that perhaps this is a unique problem that does not have a global solution.

Senator H. Anderson: The current per page for the oil and gas is \$3.00 is that my understanding?

Mr. Blaine Johnson: Replied, \$ 10 for the first page, \$3 dollars for each additional page.

Senator H. Anderson: so the proposal was for that to go to \$5.

Mr. Blaine Johnson: That was my understanding, yes.

Chairman Burckhard: closed the hearing on SB 2340.

Attachments 9-12 was submitted later.

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2340
2/9/2017
Job # 28126

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to fees charged by a county recorder for filing mortgage disclosures

Minutes:

Attach #1 Christmas tree amendment

Chairman Burckhard opened the discussion for SB 2340 regarding the county recorder for filing and mortgage disclosures. Mr. Nick Hacker, Paula Bachmeier, Michelle Gibbons, and Howard Malloy in favor of the bill and opposition came from several recorders, Burleigh County, McClean County and Ramsey County. All senators are present.

Sen. Anderson: For the purposes of discussion I would like to propose that a Christmas tree bill which you have, which basically what was worked out over the interim, with the county recorders and others. The number is 3001 on the end. The one has the modifications. (Attach #1)

Chairman Burckhard: This amendment was to do with a lot of different fees, and not just the filing mortgage disclosure fees, is that correct?

Sen. Anderson: Right, this is an effort to standardize the fees across the board rather than just pick one particular one which would be like the county recorders. This is an attempt to make it uniform across the board and solve the problems for everybody at the same time. They agreed from the \$5 fee per page to the \$3 per page fee due to the oil companies request to lessen the fees due to lengthy recordings.

Chairman Burckhard: The bill is just filing mortgage disclosures fees. **Sen. Anderson:** Residential mortgages. **Chairman Burckhard:** Your amendment wants to address all the other fees that recorders are charging.

Sen. D. Larson: I am definitely going to oppose this amendment. We heard from a lot of different people that had been at the table for 2 years trying to work out a solution for this. We heard from real estate, title companies, oil industries, land people, all kinds of people that have worked on this and all of them agreed this would be something that they could agree with. Then the recorders came into oppose it but when I asked if the recorders were in agreement with each other, from one county to the next, they said, no their not. I am very

reluctant to want to change something for some recorders as opposed to everybody else at the table.

Sen. Anderson: I got the proposal from the county recorders and their organization and they did make some adjustments in it and I think they are in agreement with what we presented here now.

Chairman Burckhard: do you think we should go there, if the bill doesn't go there? Is that something we need to get together to discuss and agree on and promote a bill further down the road? **Sen. Anderson:** I would oppose because the county recorders were opposed to the bill the way it is, just the residential mortgages because I think they presented enough information about how that doesn't work very well for them. But, if we can standardize the thing across the board, the county recorders were in favor of that. I think that the real estate residential were also in favor of this proposal because it accomplishes what they wanted as well as what was in their original bill.

Chairman Burckhard: The residential real estate people who do you speak on that?

Mr. Nick Hacker: Legislative Committee chair for the ND Land Title Association. The proposal is pretty close to what an interim group of industry and county recorders had discussed. As I mentioned in my testimony we passed these fees along in general most of the time to consumers. So from our view, the proposal works pretty well. We aren't the only user of the records and any time your kind of creating these buckets, you're going to alienate one type of document or other. So, really today we collect \$22 on a 5 page, document; this would be collecting \$25 on a 5- page document. So I say alienate certain type of documents, we're talking about one page documents which today we collect and pay \$10 for, so it all kind of a moving target. From our industry stand point we can live with this and it solves our issue. It is much broader than what we proposed in the bill. Our bill was narrow in scope the one we testified on.

Sen. J. Lee: If you could help out with this. I'm looking at not only the bill but this recorder fee schedule but I would like you to do, I want to see what it is now, compared to what it is going to be in a chart. So you said that 1 page is \$10, and today its \$22, for 1-5.

Mr. Nick Hacker: one page, \$10. 2 pages- \$13; **Sen. J. Lee:** \$3 per page after 25 pages. **Mr. Nick Hacker:** here is what kind of happens, 25 pages. **Sen. J. Lee** on this proposal is \$50 for 6-25 pages. So what is it today? **Mr. Nick Hacker:** on a 25- page document, **Sen. J. Lee:** for 6-25? **Mr. Nick Hacker:** for 25, it is \$83. If you took a 6-page document, you would be at \$25. So when they are capping it at \$50, it falls somewhere in the middle in those documents between 6-25, today we pay \$83 on a 25- page document.

Sen. J. Lee: So do you prefer it done by the page, or in a category? If you got your druthers and you wanted to say \$60 for 6-25 pages, or do you like having it charged by the page? **Mr. Nick Hacker:** We would prefer the two categories that have been proposed how you price those categories.

Chairman Burckhard: The filing is for fees charged for filling mortgage disclosures. So now we're talking about, but I didn't hear a lot of consensus amongst the recorders about anything. Is that something that should be figured out with some kind of consensus over the next year?

Mr. Nick Hacker: Under the current bill as it is, there was some concerns by the recorders, concerns about that stamp being overused maybe on transactions that are not residential homes. I can only speak that that would create a lot of liability for whoever is attesting to that. The other argument then is if you had a document that was going to be \$46 charge, that the submitter would elect to do \$46, and if you had a document that as \$63 to record the submitter would pick the \$55 because it's cheaper. That was one of their other arguments. We don't feel that way because we think industry doesn't care whether it's \$5 or \$10 more or less as long as they have certainty, that is our argument.

Sen. Kannianen: What was the average number of pages again for residential mortgage?

Mr. Nick Hacker: Just over 14 pages, residential. **Sen. Kannianen:** Is there ever a possibility where you can run into the same problem if anything residential could potentially be 5 pages or 6 pages, and you have a glitch where they set it was one thing and it comes to be another? Then you run into the fee difference again.

Mr. Nick Hacker: You're exactly right, there is always going to be tipping point if we use 2 tiers. So when we go from 5 pages to 6, if we added a page for a legal description and the mortgage was 5, and we thought it was going to \$25, and then it would become \$50, in our practice we wouldn't see that happening very often at all. The smallest mortgage is about 7 pages on a residential property. That upper tier catches the small all the way to the top the way they proposed.

Sen. J. Lee: We've heard from Mr. Hacker would you like to hear from the other gentleman in the room who has testified and has points of view of this as well while we are waiting?

Mr. Ron Ness, President of ND Petroleum Council, representing the land companies, oil operators and all the heavy users. We were part of the discussion throughout the interim. The proposal similar to what you have before us was brought to the Land Mans Association and they unanimously opposed it, with the recorders who brought that to us we opposed it in the final discussions frankly because just as Mr. Hacker said, you're taking a \$25 the highest fee today at \$5 to \$22. So you would be between \$10-\$22, for any new recording of 1-5 pages. There would be moving it to \$25, so you're looking at a 150% increase on a \$10 document; on a 1 page; or 5- page document a \$22-\$25 increase. These recordings are done by land man, small land companies, oil companies, a lot of times they are tiered work, tweaking and getting literary thousands of these a month, the average company would do may be \$5-6000 per month on these recordings, so when you start talking about relatively small documents, on the upper side the bigger bills are 30-50,000 on major lease recordings, so the challenge becomes the fee on the Christmas tree version on page 8. Our average documents are between 2-3 pages, on line 8 pg.1. So our average document today is between \$14-\$16 dollars. This is where the rub came between the recorders who were seeking essentially a fee increase versus trying to resolve an issue for the title folks who I understand have a Dodd Frank problem, and we all recognize that and let's leave the fee structure where it is and give them a single rate like we would for any other users.

Chairman Burckhard: You would say Mr. Ness that we should leave the original fine for filing mortgage disclosures?

Mr. Ron Ness: The simplest thing to us at the conclusion of the 2 years was they have a significant issue as a federal government charged gives them their residential fee and let them stamp it, like you would keep it simple. The bill is fair other than the fact that the 1-5 page document is a significant 25-31% fee increase at the average 2-3 pages.

Sen. J. Lee: I don't get real excited about % of small numbers because 50% of 2 =1 and I don't think that \$12 kills anybody. But is there instead an alternative to that initial fee. If your documents are usually 5 pages or under, you want something that would be by the page, who pays that fee? Are you passing it on to a client, taking it out of your own pocket, do you raise your rates to cover the cost of your additional expenses?

Mr. Ron Ness: yes, percentages of increase are relatively large to small members but when you look at spending \$50,000-\$60,000 a year and now you're talking \$\$80,000-\$90,000 somewhere in that if you take that amortize that up. That is per company paying that on an annual basis. That would be your owners who have leased that typically the oil operator who maybe developing that lease or others who have leased. It could be anybody that is dealing with their lease. If you as a landowner want to update you title, you're paying that. Typically, your land for the oil producer, the land entity that you work for, that is doing work for you and is paying for you, and typically the bigger ones always pass on the rate. The majority is passed on at the end of the day somebody is paying for it. If there is a solution, it is line 8, 14-16 dollars instead of \$25. **Sen. J. Lee:** How about \$15 in the middle? **Mr. Ron Ness:** \$50- \$15.

Sen. Anderson: This is actually a comparison of the fees. The pink is the fees that would go up and the yellow is the fees that would go down based on the proposal that they have. So you can see on left the number of pages and then the current fee is in white, and the new fee would be in the pink or the yellow there. I don't have a problem if there are a lot of small filings that we adjust that \$25 fee, and make 3 categories.

Chairman Burckhard: A 10- page item would go to \$50, correct. **Sen. Anderson:** As far as the individual's concern I don't know how many they file that are smaller and how many bigger. They say some of the oil fields for example say they file quite a few small ones so those fees would go up unless we make a smaller category which I am not opposed to doing that.

Sen. D. Larson: One of the reasons that they wanted to do this is so that when a homeowner/buyer was going to their closing date they would know what that amount was going to be, instead of having to say, now we're already talking about a tipping point between the \$5 & \$25, so that it would be where the realtor would get this done for a certain fee. Fluctuating numbers is one of the reasons for them wanting them wanting to have this kind of a bill, so that there would be a certainty when they went to the closing and they don't have to keep disclosing things when it wasn't the right number they were given.

Sen. Anderson: I think we should go to 2 tiers. For the recorders of those mortgages, they said that there is fall between the bottom ones or they get bigger. Those 2 tiers would cover as far as the filings of the real estate/mortgages and I think they would be included in here as

they are the same fees we talked about in the bill for them. I don't see why that would be a problem for the real estate/home mortgage people.

Sen. J. Lee: I don't think it's a problem for the real estate people. The Dodd Frank requirements about exact numbers, are a pain. But the difference in dollars is not significant and once an estimate appropriately is only one transaction as a rule, one buyer occasionally unless somebody is a big property purchaser and seller and then they get the system. It is up to the parties who are involved with the transaction. The closing company and if there is a realtor involve who can explain that. I don't think anybody at a closing is going to get excited about \$12 if their told ahead of time that it might a few dollars more or less. You just have to explain what the deal is. But the oil and gas people I understand why the small number of pages would something that is a big concern to them. If we had a category that was 5 pages or less, would that alleviate some the concerns? I am trying to find a solution here.

Mr. Ron Ness: Yes, I think like I said, the \$15 on line 8 replacing \$25 puts you in the middle of the bracket which your starting \$3 higher than the maximum and your \$15 higher than the minimum. So if you go in as name change and go into a one- page name change on a current leasing document, it is \$15 more than it was before and you can imagine how many you might do. I think changing \$25 to \$15 fixes. These gentlemen need a fix and we were fine with it without the proposed increase.

Mr. Nick Hacker: Senator Lee asked Mr. Hacker about his response to the idea of \$15 fee for pages 1-5? Yes, that would work fine for us too. We do end up paying for some documents, its more than what you would think. I know that for our small company we spend thousands a year, in just recording tiered documents. So the \$15 obviously works for us; the other piece you could be looking at is \$15, move the page count 5 to 4, we are always in the 2-3 page; so 1-4 is \$15, 5-25 pages is two tiers and because the large count is about \$83.00 move that fee up \$10.00, go from \$50-\$60. From our view if you had said 5-25 is \$60, 1-4 \$ 15, that would work just as well for us as what the amendments that were proposed.

Sen. Anderson: I think that with Nick's suggestion there so that we that.

Chairman Burckhard: So 1-4 pages is \$15, 5-25 pages is \$60 or \$50? **Sen. Anderson:** \$60 is good if its good with the people in the room.

Sen. J. Lee: So just to clarify so line 8 would be \$15; line 9 would 1-4 pages and \$60; is that correct Sen. Anderson? He replied yes. (Attachment #1)

Chairman Burckhard: You moved that right? We are still talking about the amendments that .03001 on SB2340 is that correct? **Sen. Judy Lee:** But we haven't adopted it.

Chairman Burckhard: Sen. Anderson moved and 2nd by Sen. Kannianen to accept the amendment 17.0849.03001, with line 8 saying \$15, line 9 saying 4 pages and \$60.00.

Sen. D. Larson: Does that then put it in conflict with any other rest of the bill? Do we need to change elsewhere in the bill?

Sen. J. Lee: Yes, on page 2. **Chairman Burckhard:** Line 22, 1-4, \$60.

Sen. Dotzenrod: I don't know how the recorders are going to respond when they look at that but when we get into a discussion with them at some future time, about this and they're not happy we could take that to \$25 down to \$20, we are lowering the 5 down to 4, and there's another possibility of page numbers. Our category now goes to 1-4, 5 pages up to 25, at \$60 and I those are good suggestions. We find some recorders don't like that we could take that to 25 pages down to 20 pages and that would allow them recover the per page fee.

Chairman Burckhard: Here's the amendment: \$15 for pages 1-4; \$60 for documents containing 5-25 pages.

Roll call vote: 6 Yes, 0 No, 0 Absent

Amendment passes

Chairman Burckhard: SB 2340 as amended and we have the Christmas version and we've made some changes to it to accommodate what we just amended.

Chairman Anderson: do you want to see the highlighted version before we move on the bill?
Chairman Burckhard: We could act on it tomorrow.

Sen. Anderson: I move a do pass as amended

Sen. Judy Lee: 2nd

Roll call vote: 6 Yea, 0 No, 0 Absent

Motion passes as amended

Carrier: Senator Anderson

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB 2340
2/10/2017
Job # 28186

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to fee charged by a county recorder for filing mortgage disclosures

Minutes:

Written testimony # 1 Bar chart, Beth Knutson

Chairman Burckhard opened the committee for further discussion on SB2340. All senators are present. I failed to let some people know that we were going to talk about this yesterday and so I apologize and allow for input this morning from anybody who wants too, but specifically the recorders to talk about what they think we could do better.

Beth Knutson: McLean County recorder. We actually are fairly easy to get along with. This amendment actually isn't that bad. This is what we've been asking for in all of our meetings that we've had with all of the parties involved. There's never been another option offered to us. We came with proposals and we heard no, but never any other options. So, we are okay with the \$15, on the 1-4 pages, we are fine with the \$60 after that. with this compromise we would like to ask that the related sections and related documents go back to one and three like they were before instead of giving 20 as it states now.

Chairman Burckhard: We don't know what you're referring too? **Sen. J. Lee:** I don't see that.

Ms. Beth Knutson: I have this bar chart which shows the ones in pink which was supposed to be red are the documents, with the new amendment with the \$15 and \$60. (attachment #1) The one I sent Sen. Anderson was the \$25 and \$50. It is in paragraph B, under subsection 1, which is on the second page.

Chairman Burckhard: Around line 19 on page 2, is that what you're saying. **Ms. Beth Knutson:** Yes, it would be 22-28 where that would be affected. Currently right now we charge \$3 for every related document number after the first one; then \$1 per section after the first 5. They get the first 5 free. In our proposal we had changed those both to 20, in order to lessen the increase on their side, that would be a \$57 we would be giving them on the 20 extra sections and the 15 on the 20 extra related sections. **Chairman Burckhard:** We aren't following where are you referring too? **Ms. Beth Knutson:** It would be in lines 4 and 5 where it says \$3 per reference document listed after the first 20. **Sen. Anderson:** where is it in the

bill? **Ms. Beth Knutson:** It is in subsection B, line 26 and line 27. Line 24 is actually where it starts, I believe right now.

Chairman Burckhard: We are looking at a Christmas tree version of this already.

Sen. J. Lee: What she just said is what is on the recorders sheet and that's what is in the bill, I don't see what the problem is here.

Ms. Beth Knutson: But it's changed to 20 reference instruments, right now it's three. We would like it put back to 3, because of the \$57 dollar decrease that we would be losing on those large documents.

Sen. D. Larson: it seems that one of the things we were trying to get to in this bill was to have something that would be a little bit more standardized instead of kind of all over the place. Frankly I felt like when you weren't in the room, that they tried very hard to take the recorders concerns into consideration when these things. Looking at the first page, on line 8, it had gone from 10 to 25 they put it back to 15 instead of back to 10; it felt to me like they were already going to go farther but they were trying to be fair and equitable in proposals knowing you weren't in the room but that they had talked with you before the folks who were in the room yesterday. So I am not sure why we want to start going back to something that is kind of all over the place again.

Ms. Beth Knutson: Our issue I guess with the amendment is the larger documents in the oil counties. The worst case scenario right now would be a 25- page document with 20 related and 20 sections. Recorded today that would be \$87 plus \$57 for the related documents plus \$15 for the extra sections. Under the new amendments it would \$60, it would be \$159 decrease on those sort of documents which oil documents with related sections where they are assigning oil and gas leases and that sort of stuff.

Sen. D. Larson: Can you tell me where this money goes? Does this cover your costs or does this not cover your costs of printing?

Ms. Beth Knutson: The money that we bring in on recordings doesn't come close to funding our offices. So another decrease will just be an increase on the tax dollars that we use.

Sen. D. Larson: Tax dollars from where?

Ms. Beth Knutson: From the county tax. Right now the way that the bill is, if we went back to the 3, one related and 5 sections, we would still be losing money about \$22 on every document over 25 pages, but the way that the sections and the related work are counted will be exactly the same as it is now. For mortgage documents they rarely have over 5 sections, they don't have related documents, so it wouldn't affect the unified cost of mortgage documents or closing documents.

Sen. J. Lee: is there no number between 20 and 3 that might be workable? Well honestly.

Ms. Beth Knutson: Of course there is. We can compromise we just feel that we compromising a lot and trying to fix a problem that really isn't ours and this is one thing that would help those oil and gas counties not lose money on those larger documents.

Mr. Nick Hacker: I realize the county recorders weren't here yesterday which may cause some confusion as we are talking with two different parts of the bill. What there speaking to is not the per page count that affects us. Their speaking to very specifically line 24, right after that first word that says "pages" (Christmas tree one) on page 2, they are speaking to this plus \$3 for additional pages after 25, but that's not related to what we're talking about. This is actually related to the references made to other documents that are recorded. So if I take a document and record it, and I write in there and I reference a different document, so many documents do that. Generally speaking, most surface documents specifically residential absolutely do not reference very many other documents, ever. In the proposal from last summer, they had proposed moving that number where they start the count those along with the reference document as well as the number of sections that we list in the legal description of the document that we are record. They proposed moving those numbers up. Right now folks that remit those documents start paying earlier so really its after that. It is confusing how the statute is written. Also removing the changes on line 26 is what they are speaking too, as well as removing the new changes on line 27. They are talking about the referenced instruments as well as the separate section.

Sen. D. Larson: I am trying to understand this because just when I think I know what you're talking about, I get all confused again. So would this be similar to on our first page of the bill for example under the title, sometimes we have related to, all of these different sections of law when you read the title, is it sort of like that and then counting the pages of those sections of law, is that what we are talking about in here. Is it all of these different sections?

Mr. Nick Hacker: What we are speaking to when we are talking about sections is we are talking about sections of land. It can be confusing. So we're talking about how many numbers of sections. So I might record a mortgage on agricultural land and I might record that mortgage on 5 different sections of land or 21 sections, we might be referencing 19-21 sections of land and so what they were proposing was up to 20 for free and you don't pay the extra fee. Good for us, but the reality is we don't have a problem with counting those sections when we record those big farm mortgages. Sections of land, and more than 5 and they want to keep it at 5, leave the statute alone as it is right now, with counting sections as well as leave the statute along right now as when it's referencing other recorded documents.

Sen. J. Lee: this is not new to us. The fee stuff here is because of the amendments and all. Tell me from your perspective representing the Land Title Association, how you would like to see page 2, from lines 19-31 that the amendments leave, if you were king for a day.

Mr. Nick Hacker: We would leave it right as it's written right in this bill. **Chairman Burckhard:** The Christmas tree bill. **Mr. Nick Hacker:** But what they are speaking too really doesn't affect us which is the additional instrument and additional sections. It wasn't our concern from the onset of the original bill.

Sen. J. Lee: but the amendment part is okay with you, not back to the original bill but the amended part is okay with you and then how about if its 25 and 15 or 5 pages or 4 pages, or is it \$50 or \$60; do you care about that one way or the other?

Mr. Nick Hacker: Not really one way or the other. I think we are getting close to that sweet spot.

Todd Kranda: North Dakota Petroleum Council, While Nick may not have a concern with section and the changes being considered, we do. We like it the way it is and the draft. If you have some specifics, I could ask Mr. Jeff Herman to step up and cover it. It does impact us. Those changes that are being contemplated now over and beyond what you've already were going to pass out 6-0, does cause us some heartache. We think the proposed amendment that was originally approved by this committee before you pulled it back, is the appropriate way to go.

Chairman Burckhard: I think it was passed with amendments 5-1 if I recall them.
Sen. J. Lee: If you were king for a day how would you like to see that paragraph read? I mean let's be sensible here recognizing the need for collaborative spirit.

Todd Kranda: I guess that's where maybe Mr. Herman would be able to be the king for the day.

Jeff Herman, Petro Hunt, LLC: Region manager in Bismarck: We like the bill just the way it is. The change would affect us greatly when we do a lot of big transfer documents. There is a lot of sections involved. So this would be a huge increase for us, if they go with the amendments that they are proposing. We think that even with the bill as amended yesterday, our recording fees are going to go up about 20%. We do a lot of 2-4 page documents. We think we are already agreeing to an increase.

Sen. J. Lee: for clarification please, if you could tell me when you're saying the way the bill was, do you want it the way it was before anything happens before anybody drafted a bill, or are you satisfied with... **Mr. Jeff Herman:** What was passed yesterday. **Sen. J. Lee:** so the \$15 and \$4, and \$60 in that one. Well that amendment was \$25, \$5, \$50. **Mr. Jeff Herman:** What you passed yesterday was \$4 and \$60. **Sen. J. Lee:** Right but are you objecting to the \$15, \$4, and \$6? Or are you objecting to the \$25, \$5, \$50? **Mr. Jeff Herman:** I am objecting to the last part of the bill that we were just talking about on pg. 24. **Sen. J. Lee:** Yes, but the one we discussed yesterday and accepted was \$15 for documents 1-4 pages, and \$60 for documents more than 5 pages. **Mr. Jeff Herman:** What's in the bill right would like it at. It's in the bill right now that we would like to have.

Sen. Anderson: If you look at this thing here, totally separate from the negotiations on the 4th pages, **Sen. J. Lee:** The number 1 and number 2 one? **Sen. Anderson:** both of them have similar information on the bottom. This is not affected by the 4-page minimum or the 25 pages, whatever else. This is for documents that need to be recorded related to whatever the main recording was. Where the \$15 or the \$60 now applies. It used to be that they got one related document free, and then they paid the \$3 after each one. Now what their suggesting is they want to go back to that because we cut their fee in the other areas. They want to go back to charging for those related pages, so that now they want to get one related document free and they charge for the other 19 you see. When we changed it the recorders stepped up and they volunteered that we reduce that for collecting after one to collecting after 20. This is totally different than the \$25, or the \$15 that we negotiated in the \$60. This is additional documents that have to be recorded because you said I referenced this in the recordings. Then the recorder has to find that reference and attach it to your file.

Sen. J. Lee: But when I look at what, which was is it? That's what I am trying to ask?

Chairman Burckhard: We've got changes to the Christmas tree version. I would like to see a Christmas tree version with what it is we've agreed on before we go any further because I don't think we're getting anymore clarification without it.

Sen. J. Lee: It is always easier to change the numbers, so unless my notes are correct, on page 1 line 8, we had changed yesterday changed \$25 to \$15, on line 9 we changed 5 pages to 4, and we changed \$50 to \$60.

Mr. Jeff Herman: That is what we would like to stay with rather than go back to the original.

Sen. J. Lee: And then when we move over to page 2, this is what we talked about yesterday, we went to line 22, the fee would be \$15, for documents 1-4 pages, we moved to line 23 and \$60 for documents containing more than 5 pages. We all approved of that one as well.

Sen. Anderson: then the question comes up when we look at line 25, it used to say, "and \$3 for each additional document", now it says "after the first 20". Before it used to be each additional document after the first page. So that's where the recorders are saying we would like to go back to the original language which said "after one" additional document.

Sen. J. Lee: Is there a number between 1-20 that we could live with here? Because it boils down to one number, throw me something would you?

Chairman Burckhard: We can compromise on that one. Let's go in half. **Sen. J. Lee:** 10, have you ever asked the recorders what they think? We need to find a place to move here.

Ms. Beth Knutson: That was our intention was to go in half. We went back to the original, I apologize I always assume that everybody knows what I am talking about. Sections are land, related are related documents, so if we would change the 20 to 10 related, on line 26, page 2, the 20 would be 10 reference documents, in line 27, 10 is okay there, also on line 20 that would have to say 10 instruments previously recorded. **Sen. J. Lee:** Are you okay with that, with those 10's? I know I'm looking.

Chairman Burckhard: Todd Kranda are you okay with that? Jeff is giving you a thumbs up so we're having an okay. **Ms. Beth Knutson:** We are fine with that. The other parts of the amendment we were fine with, we just feel that by decreasing that to 10, instead of 20, it won't affect our oil counties revenue as much as the 20.

Sen. J. Lee: We don't have to reconsider as we can further amend. **Sen. Anderson:** We passed it out finally, then we have to reconsider don't we?

Sen. Judy Lee: I move that we reconsider our actions by which we passed SB2340 as amended.

2nd: Senator Dotzenrod

Roll Call vote: 6 Yea, 0 No, 0 Absent

Sen. Judy Lee: I move that we amend 2340 so that on page 1, line 8 we would have \$15, instead of \$25; so that on line 9, we would have 4 pages instead of 5 on line 10; and \$60 instead of \$50. Then on page 2, on line 20 we are going to change the 20 instruments to 10 instruments, on line 22 change \$25 to \$15; on line 23 were going to say 4 pages instead of

5 pages; and \$60 instead of \$50; line 26 we will say 10 references instead of 10, and on line 27 we will say 10 references instead of 20. On line 23 the 5 needs to be changed to 4 at the end of line 23.

Ms. Beth Knutson: Just on line 12 on the first page, that 5 should be changed to 10 you have there. **Sen. Judy Lee:** That's my amendment on page 1 line 12, that we have 10 sections. Correct everybody? Everybody nodded their heads okay.

Chairman Burckhard: Motion from Sen. Judy Lee and 2nd from Sen. Diane Larson on those noted changes that she itemized. Is there any discussion.

Roll Call Vote: 6 Yea, 0 No, 0 absent

Sen. Judy Lee: I move do pass as amended on SB2340.

2nd. Sen. Kannianen

Roll Call vote: 6-0-0

Carrier: Senator Anderson

February 9, 2017

CM
2/9/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2340

Page 1, line 8, overstrike "ten" and insert immediately thereafter "fifteen"

Page 1, line 8, overstrike "the first page and three dollars for each additional"

Page 1, line 9, overstrike "page" and insert immediately thereafter "documents containing one to four pages and sixty dollars for documents containing more than four pages plus three dollars for each additional page after the first twenty-five pages"

Page 1, line 11, overstrike the third "the"

Page 1, line 12, overstrike "first page of"

Page 1, line 18, after "recording" insert "and, unless the form was issued by a government agency, must have a font size equal to or larger than ten point calibri"

Page 2, line 4, overstrike "must" and insert immediately thereafter "may"

Page 2, line 4, remove the underscored period

Page 2, remove lines 5 through 11

Page 2, line 12, remove "under this chapter"

Page 2, line 14, overstrike "one instrument" and insert immediately thereafter "twenty instruments"

Page 2, line 15, overstrike "ten dollars for the first page and three dollars for each"

Page 2, line 16, overstrike "additional page plus" and insert immediately thereafter "a fee of fifteen dollars for documents containing one to four pages, sixty dollars for documents containing more than four pages plus three dollars for each additional page after the first twenty-five pages, and"

Page 2, line 16, overstrike "such"

Page 2, line 17, overstrike "and page" and insert immediately thereafter "after the first twenty referenced instruments"

Page 2, line 18, overstrike "five" and insert immediately thereafter "twenty"

Renumber accordingly

February 10, 2017

E7
2-10-17
p. 1 of 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2340

- Page 1, line 8, overstrike "ten" and insert immediately thereafter "fifteen"
- Page 1, line 8, overstrike "the first page and three dollars for each additional"
- Page 1, line 9, overstrike "page" and insert immediately thereafter "documents containing one to four pages and sixty dollars for documents containing more than four pages plus three dollars for each additional page after the first twenty-five pages"
- Page 1, line 10, overstrike "five" and insert immediately thereafter "ten"
- Page 1, line 11, overstrike the third "the"
- Page 1, line 12, overstrike "first page of"
- Page 1, line 18, after "recording" insert "and, unless the form was issued by a government agency, must have a font size equal to or larger than ten point calibri"
- Page 2, line 4, overstrike "must" and insert immediately thereafter "may"
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- Page 2, line 16, overstrike "additional page plus" and insert immediately thereafter "a fee of fifteen dollars for documents containing one to four pages, sixty dollars for documents containing more than four pages plus three dollars for each additional page after the first twenty-five pages, and"
- Page 2, line 16, overstrike "such"
- Page 2, line 17, overstrike "and page" and insert immediately thereafter "after the first ten referenced instruments"
- Page 2, line 18, overstrike "five" and insert immediately thereafter "ten"
- Page 2, line 20, overstrike "the first page of"
- Re-number accordingly

Date: 2-9-17
 Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2340**

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 17.0849.03002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Howard Anderson Seconded By Sen. Henneman

Senators	Yes	No	Senators	Yes	No
Chairman Randy Burckhard	✓		Senator Jim Dotzenrod	✓	
Vice-Chairman Howard Anderson	✓				
Senator Jordan Kannianen	✓				
Senator Diane Larson	✓				
Senator Judy Lee	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Line 8 \$15.00
Line 9 1-4 pgs \$60
Line 22 1-4 pg \$60

Date: 2.9.17
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2340

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 17.0849.03002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. N. Anderson Seconded By Sen. Judy Lee

Senators	Yes	No	Senators	Yes	No
Chairman Randy Burckhard	✓		Senator Jim Dotzenrod	✓	
Vice-Chairman Howard Anderson	✓				
Senator Jordan Kannianen	✓				
Senator Diane Larson	✓				
Senator Judy Lee	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senata Anderson

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

REPORT OF STANDING COMMITTEE

SB 2340: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2340 was placed on the Sixth order on the calendar.

Page 1, line 8, overstrike "ten" and insert immediately thereafter "fifteen"

Page 1, line 8, overstrike "the first page and three dollars for each additional"

Page 1, line 9, overstrike "page" and insert immediately thereafter "documents containing one to four pages and sixty dollars for documents containing more than four pages plus three dollars for each additional page after the first twenty-five pages"

Page 1, line 10, overstrike "five" and insert immediately thereafter "ten"

Page 1, line 11, overstrike the third "the"

Page 1, line 12, overstrike "first page of"

Page 1, line 18, after "recording" insert "and, unless the form was issued by a government agency, must have a font size equal to or larger than ten point calibri"

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Page 2, line 16, overstrike "such"

Page 2, line 17, overstrike "and page" and insert immediately thereafter "after the first ten referenced instruments"

Page 2, line 18, overstrike "five" and insert immediately thereafter "ten"

Page 2, line 20, overstrike "the first page of"

Renumber accordingly

2017 HOUSE POLITICAL SUBDIVISIONS

SB 2340

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

SB 2340

3/16/2017

Job # 29355

Subcommittee

Conference Committee

Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to fees charged by a county recorder for filing mortgage disclosures

Minutes:

1,2,3,4,5,6,7,8

Chairman Klemin: Opened the hearing on SB 2340.

Senator Meyer: Introduced the bill. We made some changes in the Senate. The original bill has flat recording fees and then amended it to different figures. But everyone came together on agreement. The purpose of this bill is to make mortgage fees more consistent for a borrower and it will create less confusion.

Chairman Klemin: As a mortgage lender are you required to make disclosures to the borrowers as to what the costs of the closing will be? Would those costs include these types of recording fees?

Senator Meyer: Recording fees are disclosed on the loan estimate at the beginning. If we are short on those fees, if we disclose and the fees are higher either and the bank will eat it or the title companies will eat it.

Chairman Klemin: The objective here is to try and make those fees more predictable?

Senator Meyer: Exactly, create less confusion is the biggest thing and more uniform. We are trying to predict and have everything set for the borrowers.

Rep K. Koppelman: How many people read all of the documents at a mortgage closing?

Senator Meyer: I have only had two. The main one that people really want to look at are the numbers. I break it down, the loan estimate at the beginning, then break it down again at the closing. I just want them to be aware of where their money is going.

Chairman Klemin: Don't you have to make a good faith disclosure of all these costs in advance of the closing?

Senator Meyer: Absolutely, we do that at the beginning. It can change based on the number of pages and in this bill we have addressed that. One to four pages will be \$15, any mortgage recorded from up to 25 will be set at \$60, after that it will be \$3 for each additional page.

Nick Hacker, ND Land Title Association: (Testimony # 1 and proposed amendments #2)
(Time 4:18 to 14:33)

Chairman Klemin: We had some testimony from Pat Ward being handed out, did you hand this out?

Mr. Hacker: Explained proposed amendments #2.

Rep. Johnson: How many \$3 cumulative are we speaking in one year of these entities are you going to have to eat?

Mr. Hacker: The company that I lead operates in fourteen different counties in ND. We close thousands of transactions a month. We tested 110 files, the nation's largest lender is very concerned about the fees because of the liability of the Consumer Finance Protection Bureau. They rely on the vender which is the title company anytime we are short the title company eats it not the bank. Anytime we are long we have to refund. When we tested those 110 files we found we were incorrect 34% of the time. That is a combination between the title company and the lender. The lender dictates how many pages the mortgage should be. We are wrong 60% of the time on the recording fee.

Rep. Johnson: Why is 4 magic number, 4 to 5 that jump?

Mr. Hacker: In the Senate committee we discussed the pages. We were trying to accommodate the many other users of the public record. The numbers were shifted to accommodate smaller document recordings.

Rep. Johnson: So you find that the majority of the documents recorded are 4 pages?

Mr. Hacker: I will leave that question to the county recorders.

Rep. Ertelt: There are the two categories the 1 to 4 page documents then the 5 to 25? The 1 to 4 page documents do you know what the average is in length of those documents?

Mr. Hacker: I don't know the average.

Rep. Ertelt: If you don't that average how did you determine the fee?

Mr. Hacker: We will quote the fee we know the deed will be 1 to 2 pages. We prepare that document.

Rep. Ertelt: Within the bill itself the \$15 then the \$60 how did you arrive at those values if you are not using some type of average?

Mr. Hacker: We relied on the county recorders, on the page count and the fee and how did we accommodate as much as we could for remitters that were 2 page documents.

Rep. Ertelt: You are relying the on the county recorder for that average document size but do we know an actual cost?

Mr. Hacker: The would be a question for the county recorders.

Rep. R. S. Becker: I'm confused on the 1 to 4 pages and 5 plus. Your fee structure you are talking about a flat fee sounds good it would minimize the confusion of things, but I don't know how you go about coming up with a flat fee when you have a thick document. Can you address what your bill is trying to do? And how do you measure to come to a flat rate?

Mr. Hacker: For our purposes we have deeds, affidavits, small 1 to 3 page documents. The mortgage is usually around 11 to 17 pages. The fee covers all of those documents whether it's 11 documents or 15. The federal government went on to launch Dodd Frank which created the Consumer Finance Protection Bureau. They said we are going to whack the stack they wanted to combine all the forms and put new rules in place. The stack got thicker, so we are still dealing with 100 pages but ultimately only 2 documents in that package need to be recorded with the county recorder's office. The deed and the affidavit which are 1 to 3 pages and the mortgage. Our greatest fee in mortgage is \$63. The \$60 covers us so we are good from our view.

Rep. R. S. Becker: You indicated it is not uncommon for you to be 2/3 of the time wrong, how do you protect yourself and your clients? Are you are guessing what the flat fee is going to be to cover the 2/3 of the time you're wrong?

Mr. Hacker: Basically we are always pretty close but we might be off by one page which is the \$3 higher or lower. We have to disclose accurately to the best of our knowledge. When we are off we are not off by 10 pages we are off one to two pages.

Rep. Beadle: The bottom of page 1 last sentence why do you care what the font is?

Mr. Hacker: This was association for the county recorders. About 1 ½ to 2 years ago they came out with guidance and interpretation was legibility was based on font size. They instituted a discussion that said 10-point font. The statue reads that they interpret legibility. So this is to clarify that.

Rep. Beadle: This says 10 point Calibri font, what if some feels a different font is more legible? Why do we care that?

Mr. Hacker: That was the font that they thought would work best.

Rep K. Koppelman: Ten point seems to make sense, but aren't we micromanaging when we are naming the font?

Mr. Hacker: We are getting myopic on calling out the type font. We don't want recorders rejecting documents, the only person that gets harmed is the borrower or the insurance

company. Using 9.9 font legibility is up to interpretation, they set a standard as an association to 10 point. We agreed, all of our software is set at is 10-point font.

Chairman Klemin: On the Calibri font a lot of court systems the judicial systems don't say Calibri font they might say Arial or Times New Roman. If it is large enough why do you have to specify the type of font?

Mr. Hacker: There are some fonts that are not easy to read.

Pat Ward, Attorney representing the ND Land and Title Association (Handed out testimony #3) (Time 31:16 to 34:15) Discussed the proposed amendment (#2) Discussed Michelle Gibbens (attachment #3).

Rep. Johnson: Whatever drives a document to become more than 4 pages, can you relate that to a home?

Mr. Ward: The standard document that gets recorded from a residential mortgage is the deed and the satisfaction, those tend to be 2 pages. There are a lot of documents to sign it is intimidating most of them don't get recorded. This bill is designed to address the residential mortgage situation.

Paula Bachmeier, ND Guaranty and Title Company: (Testimony # 4) (Time 36:26 to 43:45)

Chairman Klemin: What was the significant of October 2015?

Ms. Bachmeier: That is when the new rule came into effect. That is when we had to start using the new coding disclosures.

Chairman Klemin: The new rule from who?

Ms. Bachmeier: Mr. Obama with Dodd Frank.

Howard Malloy, Bismarck Title Company and Morton County Title Company, ND Land Title Association: (Testimony #5) (Time 44:27 to 48:05) When we amended the bill in the Senate we discussed on page 2 item 4 line 9, recorder may add a page, if the 3inch margin is violated the recorder can add a page. On page 1 section 1a 4-page document has a \$15 recording fee and 25-page document has a \$60 recording fee. Our concern is if the recorders add a page to the instrument and the 4-page becomes a 5-page that fee goes from \$15 to \$60. That is to significant of a change in the recording fee for us. I do not have mandatory language but if a page is added because of a margin violation that it will not trigger an additional recording fee. Under subsection d if there is a margin violation the fee is \$10. Under item 4 you have to have a 3inch margin across the top. Under d line 26-30 instruments require a 1inch margin all the way around the document. If you violate all 4 of those 1inch margins the recorder will add an additional fee of \$10. There common practice is they will add a page and put there recording stamp on the extra page. The reason for section d is so the recorders can put on their barcode. We don't want the additional page to trigger an additional recording fee from \$15 to \$60.

Chairman Klemin: What are you proposing to do? I would prefer to have something from someone who works with this instead of having the committee do it.

Mr. Malloy: We will draft it.

Rep. Ertelt: I believe Mr. Malloy did offer an additional charge of \$10 for that page as a flat rate as opposed to using the aforementioned fee schedule. Is that correct?

Mr. Malloy: The current practice is if there is margin violation the recorder will charge an additional \$10.

Rep. Longmuir: Is the issue with the recorders or with the financial institutions providing the documents?

Mr. Malloy: The recorders just assess the fees of the instruments they receive. We don't always know what we are going to get from the banks. It's too late by the time we get them to make any reasonable adjustments to what we charge.

Rep. Ertelt: You referenced that barcode the bill is asking to change the margin from 4 inches by 3 ½ down to 3 inches but you said this is 3 5/8, but that would not fit within this.

Mr. Malloy: There is two margins in the statute, the former margin requirement for a county recorder stamp was 3 ½ inches by 4 ½ inches. Under the bill this is being changed to 3 inches across the top.

Rep. Ertelt: In most incidents that is going to be sufficient?

Mr. Malloy: The will be sufficient but some recorders also use a barcode on each page. If they are affixing a barcode on each page they need room to put that on the instrument. That is where the 1inch margin under subsection d, they want to make sure there is at least 1inch on one of the 4 sides to affix the barcode. If there is a violation of the 1inch margin it doesn't change the recording fee from \$15 to \$60.

Chairman Klemin: Are you coming back with a proposed amendment?

Mr. Malloy: Yes.

Beth Knutson, McLean County Recorder: (Testimony #6 and proposed amendment)
(53:09 to 56:33)

Rep. Beadle: How much time and cost does it take the recorder's office to process and file a mortgage?

Ms. Knutson: A deed takes longer, we receive them and they are taken to the auditor's office to check taxes and apply the stamp for transfer. When that is done we record it and then indexed and validate and scanned it into the system and validated and returned the next day. Mortgages don't have to go to any other offices so it doesn't take as much time.

Rep. Beadle: Do you what it costs you to do that? Do the fees cover that?

Ms. Knutson: The fees now do not cover it. There are only a few recorders offices in the state that fund themselves.

Rep K. Koppelman: It appears that your suggested amendment conflicts with Mr. Hacker and Mr. Ward's advocated earlier. Am I correct?

Ms. Knutson: Yes, there are a few changes. The only changes we have seen that the title company was bringing forward was, additional page charge, may be levied, we would like that changed to, must. There are some recorders that cave for someone that is not happy with them because they added a page. That will in turn cause their document to be recorded for less than it would in another county. The other thing I had taken out was after it says, an additional page charge, I had them take out, charge. The page charge right now is \$3per page.

Rep K. Koppelman: What you are saying is even though the language authorizes in statute the authority of the recorder to charge, you want it mandatory so no one can refuse to charge or fail to charge?

Ms. Knutson: Yes.

Chairman Klemin: How do you respond to the concern of an additional page added that changes a 4-page document from \$5, we increased the flat fee from \$15 to \$60?

Ms. Knutson: Our initial proposal was for 1 to 5 pages. The amount of documents that are 1 to 4 pages that we collected was 65% to 70%. The \$15 right now is an average for those 4 documents of what we charge right now.

Chairman Klemin: If the flat fee was \$15 for the first 5-pages the same argument would apply if you add the 6th page. When you add 1-page and go from \$15 to \$60 is a big jump. Is there no remedy for that?

Ms. Knutson: The reason there is that step because there was a lot of concern from oil and gas industry and some other industries about those 1 to 4 and 1 to 5 documents because they record a lot of those.

Chairman Klemin: You would be ok with having 5 pages and still have a \$15 fee?

Ms. Knutson: No. I believe we would lose revenue on that because of the percentage of 1 to 5 page documents.

Rep. Johnson: You said 65 to 70% are in the 1 to 4-page category. What percent of the remaining 30 to 35% how many are within the 5 to 25 or beyond 25?

Ms. Knutson: Almost all of them. Some of the oil counties are the ones that are having the larger documents. They have 600 to 700 page documents which can cost up to \$36,000 to record.

Rep. Johnson: Two different categories 5 to 25 and beyond 25, you said almost all of them?

Ms. Knutson: Past 25 is very few, the oil counties would have the most.

Chairman Klemin: Why specify a particular font?

Ms. Knutson: The font size and the font were taken from the national standards.

Chairman Klemin: If it was 10-point and it Times New Roman or Arial font would it make a difference to people in ND as long as it is 10-point?

Ms. Knutson: It says equal to. A lot of times the pitches on those fonts will be different and a lot of times you can't read it.

Chairman Klemin: It doesn't have to Calibri, it just has to be equal to or larger than that?

Ann Johnsrud: I want to reiterate a couple of things. When you think about the fees for the recorders that we take in, you have to remember the fees for these documents also are for preservation for that document forever. The onetime fee they pay keeps that document and we are by statute to keep them, store them, do whatever we need to do to keep them for eternity. The 3-inch margin on the top, we did have 3 ½ by 4inch space requirement for our recording and that is on the first page and the last page on every single document. So making it 3inches across the entire top we can put all of our recording information across the top. We also require a 1inch margin for our stamps. It is for our barcode and to put our document number and our page numbers on every page. Right now if you don't have that on one of the 4sides there is a \$10 fee assessed, that is still in the proposed bill.

Ron Ness, Petroleum Council: We see the 4 to 5pages we see that as you have done, something in error and you have to pay a penalty.

Rep K. Koppelman: Which set of amendments seem reasonable?

Mr. Ness: There was two sets offered by Mr. Hacker and Mr. Ward. They were separate things we had not seen but we read through them and they were sixes.

Rep K. Koppelman: There was different versions offered here?

Mr. Ness: I know there was a, may must, thing.

Rep K. Koppelman: I know which one you read then.

Nancy Willis, Association of Realtors: We support the bill with the exception of Mr. Malloy's amendments. We were not aware of those.

Rep. Johnson: Could you become aware of them and let us know what you think?

Ms. Willis: Yes.

Chairman Klemm: No more testimony. Closed the hearing on SB 2340. We will work on this bill tomorrow if there are additional amendments we would like them by 9:00 tomorrow morning.

(Testimony # 7 & 8) Handed out.

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

SB 2340
3/17/2017
Job # 29392

- Subcommittee
 Conference Committee

Cameron Hick

Explanation or reason for introduction of bill/resolution:

Relating to fees charged by a county recorder for filing mortgage disclosures

Minutes:

1

Chairman Klemin: Opened for committee work. We have three different proposed amendments. One proposed by the recorders, one was proposed by Land Title Company from Mr. Ward, and those two are similar except the language, must versus may. The third proposed amendment from Pat Ward which provides for an additional charge of \$10 for an added page.

Rep. Ertelt: I would like to offer an amendment. That would be to reduce the charge page 1 line 9 from \$60 to \$50. The reason for that during testimony I don't believe we received substantial information of what the actual costs were. I tried to make some inference with the information provided and that most of the mortgages were the longer documents and most weren't close to 25 pages. Mr. Hacker said they were 11 to 17 pages long. If you split that difference and use the current structure that would put the cost at \$49, so \$50 would be a reasonable amount. I also applied that to smaller page number of 1 to 4 pages and it seems like most of those were 1 to 3 and I am willing to leave that at \$15.

The motion would be to amend page 1 line 9 strike \$60 and replace that with \$50.

Chairman Klemin: What about on page 2 that is similar?

Rep. Ertelt: The same would apply there too. Page 2 line 15, strike \$60 and replace it with \$50.

Rep. Johnson: Second the motion.

Rep. Pyle: I had discussions after the hearing and the \$60 was agreed upon by both parties.

Rep. Zubke: I will also resist this motion. The political subdivisions are not making money they are trying to recover their expenses. There was a process they worked on for a couple of years and the agreement was the \$60.

Rep. Maragos: I also will resist the amendment. The folks that brought this bill to us know best what their expenses are and how this best will help them manage the situation.

Rep. Longmuir: I will resist this, after dealing with abstract company, some of these fees barely cover the actual costs of recording the documents.

Rep. Ertelt: We were told as the bill was introduced that this was a number of years in the making and that all the parties affected worked on it together. Yet when we heard from those parties we got multiple amendments offered to us. I think we should keep in mind that this is a service to serve the public and all costs are not going to be reclaimed when you are providing that service. There is a reason we pay taxes and you can't expect all of your costs covered by the services you provide either.

Roll call vote 6 yes, 8 no, 1 absent. Ertelt amendment failed.

Rep. Zubke: (Amendment #1) I have an amendment this is the what the county recorder from McLean proposed. Basically the same that Mr. Ward proposed in one of his emails. It is 17.0849.05000, it should be 05001. Page 2 line 7, remove, except as provided in paragraph 5, if. Page 2 line 8, 9, overstrike, recording information can only be placed on the reverse side on the instrument, insert immediately after, if there is no three-inch margin across the top of the first page. Page 2 line 9 replace, may, with must. Page 2 line 10 after levied we would insert, in accordance with the fee structure. Page 2 line 17-18 remove the overstrike over, and page. And renumbered accordingly.

Chairman Klemin: Page 2 line 10, we are not changing line 10?

Rep. Zubke: It would say, an additional page charge may be levied. Which is what the bill says in its present form.

Rep. Zubke: Made a motion on his proposed amendment.

Rep. Longmuir: Second the motion.

Rep. Beadle: We learned through testimony that the federal statutes in regards to financial disclosures for purchasing a property and financing a property is requiring the three days prior to close you need to have all the proper paperwork filed with the settlements so you know exactly what all the expenses for the purchaser are. Anytime we have an additional fee at the filing point we're still are not satisfying the problem where they have to have all those fees clearly delineated three days before hand on the closing table. The fact that we have the late fee we are not going to able to be to solve their issue of being at the closing table and have that fee being exactly what it was three days prior when they were given the notice. If we allow them to add a page but they wouldn't be able to charge for the that page. That is the only way we can be sure those fees don't end up being adjusted from three days out to the closing table. I think we should strike that fee out of there and say you can add a page if the margins aren't correct but we can't charge for that page because it's going to go against the federal laws that were the genesis of this bill.

Rep. Zubke: But this is extremely clear the way it is. If someone can't look at this after the amendments and figure what those fees are going to be.

Rep. Beadle: I agree the amendments you are proposing make it better from where it is now. But if you are dealing with the Bank of NY Mellon or US Bank Mortgage Services or one of the national groups where you don't get the mortgage paperwork until you walk up to the table. You have to get the ruler out to measure the margins and the measure the font then we are still not going to conform with what is required under the federal financial disclosure reform legislation. We are still going to have that added page and they are still going to have that eaten by the title companies because they will get to the closing table and there will be a different fee than what was federally required be given to you three days prior. It will still be in violation of the federal statutes and the companies will have to eat those costs.

Rep. Ertelt: There are changes in subsection 4 that need to happen to make the language coincide with the rest of the bill. The amendment would go contrary to the primary reason this bill was brought forward. Yes, it can be added but to be more clear that it can't be included in the count of the pages for a charge.

Chairman Klemin: I doubt if most of the people filing this are going to leave space for the possibility of an additional charge so the recorder doesn't have to add a page?

Rep. Beadle: In practicality you go in and apply for the mortgage, the title company puts together the costs, you show up to the title company to do the work, they are operating off the paperwork provided to them by the financing entity. Now the title company are going to take all the documentation that they complied but was given them from other entities. So they are acting as the intermediary, the intermediary is the one paying the fee based on the margin not being proper. You are incentivizing the person to make any adjustments to make that happen.

Chairman Klemin: The amendment the Rep. Zubke is proposing is one submitted by Mr. Hacker that was prepared by Pat Ward and is consistent with the ones submitted by the recorders.

Rep. Beadle: I talked to both of them and asked them how in practice this will end up happening they said they are going to have to continue to eat those fees as a company because they can't pass those one. I still don't think that will solve the situation that brought this bill forward.

Rep. Johnson: We heard testimony that of a thousand transfers of property in a month 60% are incorrect. If we go from \$3 to \$10 we are now jacking it up to a \$6000 problem a month. This was all initiated because there was so much stuff going on because the oil boom. The parties came together with their best efforts and I think it should stay that way.

Rep. Zubke: There was a two-year process of putting this together but they all also agreed there were problems. I think the margin issue is confined to the 1 to 4-page document.

Rep. Beadle: We had testimony based off of the financial disclosure requirements based on federal law dealing with real-estate transactions for home owners. They were having the fee adjusted based on the number on the pages.

Rep K. Koppelman: To avoid confusion we have two amendments that are numbered the same but different. They are both from Mr. Ward with different dates. The March 14 versus March 16. As I am hearing the discussion I am thinking the March 16 might be a good compromise.

Chairman Klemin: The motion we have is the March 14 version.

Rep. Zubke: The March 16 is not a good compromise, my information is they would just as soon kill the whole thing if we are going to use the March 16 amendment.

Rep K. Koppelman: I am thinking perhaps this will probably be in conference regardless of what we do.

Rep. Longmuir: We are trying to address an issue that should be addressed between the title company and the financial institutions. When the paperwork is coming to the title company, it is the financial institution that is preparing it. If the title company's keep eating the \$3 or \$10 fee that is something they need to be taking that up with the financial company, they are dealing with.

Rep. Beadle: I agree the amendment is better than the bill. I just think we are not solving the problem.

Rep. Johnson: Could you tell us how you amended the amendment.

Rep. Zubke: I went off the March 14th which is identical to the amendments that were presented by the McLean County recorder. They match other than the reference to paragraph 5 which no longer exists.

Zubke amendment passed roll call vote 8 yes, 6 no, 1 absent.

Rep. Beadle: In terms on the original bill I would make a motion to amend Page 2 line 10 after the work, may, insert the word, not. Made a motion to that change.

Rep. Toman: Second the motion.

Rep K. Koppelman: It appears that the proposed amendment would be more severe change than the Ward March 16th amendment. Am I correct?

Rep. Beadle: Talking with Mr. Ward and Mr. Burst afterwards they indicated they would still have to eat these charges because nothing would be able to be passed on the consumer. I am making sure that this would not be passed on so we comply with federal statute.

Rep. Zubke: Then the political subdivisions will eat the charges.

Rep. Ertelt: I agree the political subdivisions would eat this but I don't think one page would cost \$3 to attach. Especially if this becomes a routine thing they do with every document. This amendment is the only way to stick with the intent of the bill. If we do not pass this the same problem is still going to exist and there two years of conferring is going to be for not.

Rep. Zubke: That is not correct, they have worked for two years on this, they came to an agreement, then came to us but at the very last minute one of the parties changed. By passing this amendment and passing this bill we are rewarding them for two years of work.

Rep. Pyle: I want to add that 70% of the documents that are filed with the recorders are wrong. It is not the recorders fault or the counties fault that this is happening and we are penalizing people that have no say if this amendment passes.

Rep. Beadle: I understand it might not be fair to the recorders, I also don't think adding a blank page and slapping a barcode when needed is going to be too onerous compared to them having to measure the margins.

Rep. Pyle: If I was to buy a house and all the fees were to go through, could they quote me the \$60 and it would end up being \$15? Do you think people would be more apt to cash the \$45 than a \$3 check?

Vice Chairman Hatlestad: Isn't there some way that we can assess the party that screwed up?

Roll call vote on Beadle amendment passed 8 yes, 6 no, 1 absent.

Rep. Zubke: Made a do not pass on Engrossed SB 2340 as amended.

Rep. Longmuir: Second the motion.

Failed 3 yes, 11 no, 1 absent.

Rep. Johnson: Made a do pass motion on SB 2340 as twice amended.

Rep. Beadle: Second the motion.

Rep. Toman; Does this solve the time frame problem?

Rep. Beadle: From what we heard in the testimony one of the main reasons was when they record it and find the fee was different then it changes. So I think so.

SB 2340 as twice amended 9 yes, 5 no, 1 absent.

Carrier will be Rep. Beadle.

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

SB 2340
3/30/2017
Job # 29831

- Subcommittee
 Conference Committee

Carmen Hickel

Explanation or reason for introduction of bill/resolution:

Relating to fees charged by a county recorder for filing mortgage disclosures

Minutes:

1,2

Chairman Klemin: Opened SB 2340 for committee work.

Rep. Zubke: Move to reconsider action.

Rep. Longmuir: Second to reconsider.

Carried 12 yes, 1 no, 2 absent

Rep. Zubke: Moved to reconsider adoption of the amendments.

Vice Chairman Hatlestad: Second the motion.

Voice vote carried

Rep. Zubke: (Proposed amendments #1, #2) When they started meeting they wanted to keep the recorder's offices revenue neutral and provide consistency in fees because there were some federal disclosure requirements that were causing problems for some of the closing agents. Pages 1-6 would be \$20, 7-25 pages would be \$65, every page after \$3. Page 2 line 7 remove a reference to paragraph 5 because there is no paragraph 5 anymore. Also strike words on page 2 line 17 & 18 the words, and page. Moved the amendments 05003.

Vice Chairman Hatlestad: Second the motion.

Rep K. Koppelman: This represents a compromise that everyone has agreed to?

Rep. Zubke: Yes, we met in person or by phone and everyone is in agreement.

Rep. Ertelt: We didn't hear about electronic filing during the hearing. I came in wanting to go from 4 to 5 pages so having 6 pages covers the same idea. So I am in favor of that. Why did we decide to up from \$60 to \$65?

Rep. Zubke: There is no recorder's office that is making money, if you take 25 pages and figure out the fee right now it is at \$82. So that will now drop to \$65. The Petroleum Council was comfortable with \$65, with the understanding the recorder's will have some additional money because of the less page documents but the more page documents they will still be losing money.

Rep. Ertelt: If all the parties involved are fine with it I do not have hesitation.

Voice vote carried

Rep. Zubke: Do pass as amended.

Rep. Longmuir: Second the motion.

Carried 11 yes, 2 no, 2 absent.

Rep. Zubke: Will carry the bill.

Proposed Amendment to Engrossed SB 2340
Version 17.0849.05000

Pat Ward

March 14, 2017
House – Political Subdivisions Committee

Page 2, line 7, remove “Except as provided in paragraph 5, if”

Page 2, line 8 and 9, overstrike “recording information can only be placed on the reverse side of an instrument,” and insert immediately thereafter “If there is no three-inch margin across top of the first page”

Page 2, line 9, replace “may” with “must”

Page 2, line 10, overstrike “must” and immediately thereafter insert “may”

Page 2, line 10, after “levied” insert “in accordance with the fee structure”

Page 2, line 17 and 18, remove the overstrike over “and page”

Renumber accordingly

March 17, 2017

3/17/17 DPA

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2340

Page 2, line 7, remove the overstrike over "f"

Page 2, line 7, remove "Except as provided in paragraph 5, if"

Page 2, overstrike line 8

Page 2, line 9, overstrike "instrument" and insert immediately thereafter "a space of at least three inches [7.62 centimeters] is not provided across the top of the first page"

Page 2, line 9, replace "may" with "shall"

Page 2, line 10, after "may" insert "not"

Page 2, line 10, after "levied" insert "in accordance with the fee structure"

Page 2, line 17, remove the overstrike over "and"

Page 2, line 18, remove the overstrike over "page"

Renumber accordingly

3/30/17 VJH

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2340

In lieu of the amendments as printed on pages 1052 and 1053 of the House Journal, Engrossed Senate Bill No. 2340 is amended as follows:

Page 1, line 8, replace "fifteen" with "twenty"

Page 1, line 9, replace "four" with "six"

Page 1, line 9, replace "sixty" with "sixty-five"

Page 1, line 10, replace "four" with "six"

Page 2, line 7, remove the overstrike over "f"

Page 2, line 7, remove "Except as provided in paragraph 5, if"

Page 2, overstrike line 8

Page 2, line 9, overstrike "instrument" and insert immediately thereafter "a space of at least three inches [7.62 centimeters] is not provided across the top of the first page"

Page 2, line 9, replace "may" with "shall"

Page 2, line 10, remove the overstrike over "must"

Page 2, line 10, remove "may"

Page 2, line 10, after "levied" insert "in accordance with the fee structure"

Page 2, line 14, replace "fifteen" with "twenty"

Page 2, line 15, replace "four" with "six"

Page 2, line 15, replace "sixty" with "sixty-five"

Page 2, line 16, replace "four" with "six"

Page 2, line 17, remove the overstrike over "and"

Page 2, line 18, remove the overstrike over "page"

Re-number accordingly

Date: 3-17-17
 Roll Call Vote: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2340**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: Ertelt Proposed Amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Ertelt Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin		/	Rep. Guggisberg		/
Vice Chairman Hatlestad		/	Rep. Hanson		/
Rep. Beadle	/				
Rep. Becker	/				
Rep. Ertelt	/				
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Longmuir		/			
Rep. Maragos		/			
Rep. Pyle		/			
Rep. Simons	/				
Rep. Toman	/				
Rep. Zubke		/			

Total (Yes) 6 No 8

Absent 1

Floor Assignment _____

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

Page 1 line 9 STRIKE \$60 replace with \$50
Page 2 line 15 STRIKE \$60 replace with \$50

Date: 3-17-17
 Roll Call Vote: 2

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2340**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: Zubke amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Zubke Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg	/	
Vice Chairman Hatlestad	/		Rep. Hanson	/	
Rep. Beadle		/			
Rep. Becker		/			
Rep. Ertelt		/			
Rep. Johnson		/			
Rep. Koppelman		/			
Rep. Longmuir	/				
Rep. Maragos	/				
Rep. Pyle	/				
Rep. Simons	/	/			
Rep. Toman	/	/			
Rep. Zubke	/				

Total (Yes) 8 No 6

Absent 1

Floor Assignment _____

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

attachment #1
 Pat Ward - march 14, 2017

Date: 3-17-17
 Roll Call Vote: 3

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2940

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: Beadle Amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Beadle Seconded By Rep. Toman

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin		/	Rep. Guggisberg		/
Vice Chairman Hatlestad		/	Rep. Hanson	/	
Rep. Beadle	/				
Rep. Becker	/				
Rep. Ertelt	/				
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Longmuir		/			
Rep. Maragos	/				
Rep. Pyle		/			
Rep. Simons	/				
Rep. Toman	/				
Rep. Zubke		/			

Total (Yes) 8 No 6

Absent 1

Floor Assignment _____

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

Page 2 line 10 insert, not, after may.

Date: 3-17-17
 Roll Call Vote: 4

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2340**

House Political Subdivisions Committee _____
 Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Zubke Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin		/	Rep. Guggisberg		/
Vice Chairman Hatlestad		/	Rep. Hanson		/
Rep. Beadle		/			
Rep. Becker		/			
Rep. Ertelt		/			
Rep. Johnson		/			
Rep. Koppelman		/			
Rep. Longmuir	/	/			
Rep. Maragos		/			
Rep. Pyle	/	/			
Rep. Simons	/	/			
Rep. Toman		/			
Rep. Zubke	/				

Total (Yes) 3 No 11

Absent 1

Floor Assignment _____

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

Date: 3-17-17
 Roll Call Vote: 5

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2340**

House Political Subdivisions Committee _____

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Johnson Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg		/
Vice Chairman Hatlestad	/		Rep. Hanson	/	
Rep. Beadle	/				
Rep. Becker	/				
Rep. Ertelt	/				
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Longmuir		/			
Rep. Maragos	/	/			
Rep. Pyle		/			
Rep. Simons		/			
Rep. Toman		/			
Rep. Zubke		/			

Total (Yes) 9 No 5

Absent 1

Floor Assignment Rep. Beadle

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

Date: 3-30-17
 Roll Call Vote: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2340**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Zubke Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg	/	
Vice Chairman Hatlestad	/		Rep. Hanson	/	
Rep. Beadle	/				
Rep. Becker	/				
Rep. Ertelt	/				
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Longmuir	/				
Rep. Maragos	/				
Rep. Pyle	/				
Rep. Simons		/			
Rep. Toman		/			
Rep. Zubke	/				

Total (Yes) 12 No 1

Absent 2

Floor Assignment _____

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

Date: 3-30-17
Roll Call Vote: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2340

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____
amendment previously adopted

Motion Made By Rep. Zubke Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin			Rep. Guggisberg		
Vice Chairman Hatlestad			Rep. Hanson		
Rep. Beadle					
Rep. Becker					
Rep. Ertelt					
Rep. Johnson					
Rep. Koppelman					
Rep. Longmuir					
Rep. Maragos					
Rep. Pyle					
Rep. Simons					
Rep. Toman					
Rep. Zubke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VOICE vote carried

Date: 3-30-17
Roll Call Vote: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2340

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 17.0849.05003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Zubke Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin			Rep. Guggisberg		
Vice Chairman Hatlestad			Rep. Hanson		
Rep. Beadle					
Rep. Becker					
Rep. Ertelt					
Rep. Johnson					
Rep. Koppelman					
Rep. Longmuir					
Rep. Maragos					
Rep. Pyle					
Rep. Simons					
Rep. Toman					
Rep. Zubke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VOICE VOTE Carried

Date: 3-30-17
 Roll Call Vote: 4

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2340

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Zubke Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg	/	
Vice Chairman Hatlestad	/		Rep. Hanson	/	
Rep. Beadle		/			
Rep. Becker	/				
Rep. Ertelt	/				
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Longmuir	/				
Rep. Maragos	/				
Rep. Pyle	/				
Rep. Simons	/				
Rep. Toman		/			
Rep. Zubke	/				

Total (Yes) 11 No 2

Absent 2

Floor Assignment Rep. Zubke

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

REPORT OF STANDING COMMITTEE

SB 2340, as engrossed: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2340 was placed on the Sixth order on the calendar.

Page 2, line 7, remove the overstrike over "If"

Page 2, line 7, remove "Except as provided in paragraph 5, if"

Page 2, overstrike line 8

Page 2, line 9, overstrike "instrument" and insert immediately thereafter "a space of at least three inches [7.62 centimeters] is not provided across the top of the first page"

Page 2, line 9, replace "may" with "shall"

Page 2, line 10, after "may" insert "not"

Page 2, line 10, after "levied" insert "in accordance with the fee structure"

Page 2, line 17, remove the overstrike over "and"

Page 2, line 18, remove the overstrike over "page"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2340, as engrossed and amended: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2340, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments as printed on pages 1052 and 1053 of the House Journal, Engrossed Senate Bill No. 2340 is amended as follows:

Page 1, line 8, replace "fifteen" with "twenty"

Page 1, line 9, replace "four" with "six"

Page 1, line 9, replace "sixty" with "sixty-five"

Page 1, line 10, replace "four" with "six"

Page 2, line 7, remove the overstrike over "If"

Page 2, line 7, remove "Except as provided in paragraph 5, if"

Page 2, overstrike line 8

Page 2, line 9, overstrike "instrument" and insert immediately thereafter "a space of at least three inches [7.62 centimeters] is not provided across the top of the first page"

Page 2, line 9, replace "may" with "shall"

Page 2, line 10, remove the overstrike over "must"

Page 2, line 10, remove "may"

Page 2, line 10, after "levied" insert "in accordance with the fee structure"

Page 2, line 14, replace "fifteen" with "twenty"

Page 2, line 15, replace "four" with "six"

Page 2, line 15, replace "sixty" with "sixty-five"

Page 2, line 16, replace "four" with "six"

Page 2, line 17, remove the overstrike over "and"

Page 2, line 18, remove the overstrike over "page"

Renumber accordingly

2017 TESTIMONY

SB 2340

Committee Hearing on SB 2340
Testimony from the ND Land Title Association
2/3/2017

SB 2340
2.3.2017
Written testimony
#1
p. 1/4

Good Morning Mr. Chairman and Members of the Committee,

The title insurance and real estate closing services industry's help drive our nation's economy through the safe and efficient transfer of real property. In the current housing market and regulatory environment these services are increasingly important for the confidence of lenders to compliantly provide loans to homebuyers.

In the 2015 session a study bill was filed to identify alternatives to the current process by which documents are charged when they are filed of record in the County Recorder's office. That study ultimately failed as the parties agreed to take a look at potential solutions during the interim. The ND County Recorders Association undertook an extension and inclusive process of reviewing the fees and coming up with alternatives. Their work was greatly appreciated, however, ultimately because of the broad approach to a solution many users of the public record would be impacted and hence unanimous agreement could not be reached. We are here today to take a very narrowly focused approach to the issue of estimating predictable recording fees ahead of knowing how many pages a document will be.

SB 2340 establishes an elective flat or predictable recording fee for residential mortgages.

Why is it important? As a result of Federal Law, new closing forms were adopted on all residential consumer mortgage closings. The new rules and forms were created to help consumers better understand the costs associated with buying a home and they include tighter restrictions on fee changes from the time a borrower is quoted the fees to when they close on the home. North Dakota has clear statutes of what the recording fee will be based on number of pages. However, during the home loan process the number of pages of the mortgage is many times not known until shortly before the closing. The result is inaccurate fees being quoted to the borrower several days before closing and then shortly before the closing when the actual page count is known the fee changes. The change in the fee results in a change in the amount of money the borrower has to bring to closing and significant explanation to the borrower during a time they are focused on moving into their new home.

Who else is doing it? Eleven states already have flat recording fees including our neighbors, Minnesota and South Dakota. An additional 9 states are now considering bills.

What is the cost? Senate Bill 2340 takes a narrow approach to flat recording fees that will only affect residential mortgages. It does not affect many other types of documents recorded in the public record such as easements, mineral documents and small one page documents such as mortgage satisfactions or deeds. From a sampling of 8 counties across the state the average number of pages of a residential mortgage is 14.06 and the average fee was \$48.94. The

proposed legislations requests a flat fee of \$55 on these documents to ensure recording offices are not harmed financially and to give industry certainty.

Why does the closing industry need this bill? The bill provides certainty and predictability of closings cost as it relates to one of the smallest fees charged in a real estate transaction, the recording fee. The recording fee is the most volatile fee to change just before closing compared to all other fees which are known well in advance. The fee also has some of the strictest federal rules in regards to its accuracy. More importantly, when fees change; borrowers are confused, closing companies cover the shortages and if they fee is over estimated, by law, closing companies have to refund the fee. The challenge is the overages are generally small and include many \$3 refunds. When a \$3 check is issued frequently that check does not get cashed. In turn, this causes significant administrative costs to turn the funds over to unclaimed property.

How will industry partners adopt? Lenders rarely look up century code to calculate the recording fees. Instead the settlement industry uses online calculators to predict fees for lenders or lenders reach out in advance of the closing to request estimates of recording fees directly from our offices. We provide that estimate which is used in the transaction. We will simply provide them with the flat fee for their mortgage. A flat fee would also allow, those lenders that choose to, the ability to hard code the fee in their lender operating systems.

Our E-Recording software partner has estimated the time it would take to program the software changes at less than 1 hour and they will not charge for this work. The functionality to electronically submit the fee data is already in place as a result of how other states have already adopted similar fees.

We are requesting that our industry, which has firsthand knowledge of the Federal rules and the document to be recorded, address the issue of volatile changing of the recording fee just before closing. The bill before you avoids negatively impacting other parties and provides a solution to the problem without recorders needing to interpret documents sent for recording. We would ask the committee to provide a Do Pass as amended recommendation.

Sincerely, Nick Hacker
NDLTA, Legislative Chair - (701) 751-4988– nick@thetitleteam.com

SB 2340
2.3.2017
1.3
P.3/4

Current stamp or language used on almost all real estate deeds filed as a result of a closing

I certify that the requirement for this statement of full consideration does not apply as is Exempted by _____ of NDCC 11-18-02.2(7)
Signed _____ Date _____
Grantee or Agent

New stamp language for residential mortgages:

I certify this document's recording fees are pursuant to NDCC 11-18-05 (1)(a)(5)

Signed _____ Date _____
Grantee or Agent

SB 2340
2.3.2017
1.4
1.4/4

Residential Mortgage Recording Fees

Averages are based on a random sampling of 50 residential mortgages in each county listed

<u>County</u>	<u>Average Pages</u>	<u>Average Fee</u>
Grand Forks	13.82	48.46
Cass	13.3	46.9
Ward	13.34	47.02
Burleigh	14.3	49.9
Morton	13.9	48.7
Stark	14.98	49.96
McKenzie	14.54	50.62
<u>Williams</u>	<u>14.32</u>	<u>49.96</u>
Average Total	14.0625	48.94

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2.3.2017
#2
p. 1/2

SENATE BILL 2340
An answer to last minute changes and confusion at the closing table

In October, 2016, new federal regulations were implemented wherein the settlement statement document portion of a regular home closing was completely changed. Together with the form change, strict time requirements for the delivery of the settlement document to the buyer, were also implemented – with strong penalties for any violations.

The consumer now must have the new form – referred to as a Closing Disclosure – three days in advance of the closing date. For example, if closing is scheduled for Thursday, the consumer has to see the Closing Disclosure and acknowledge the receipt thereof by end of day Monday.

I have provided you a copy of page two of that Closing Disclosure. Page two deals directly with the actual hard costs of the transaction. Just a FYI lenders are required to provide the consumer with a Loan Estimate in advance of providing the Closing Disclosure so where reference is to change (or tolerance) it is in reference to the estimate that was provided to the consumer and to how close a lender has to be when providing the estimates.

As you can see, Parts A, B, C, F, G and H are always firm numbers and known well in advance of the Closing Disclosure being provided to the consumer. The big variable then is Section E – the recording fees. Those fees are dependent upon the number of pages of the document being recorded. In any transaction, we will always know the recording fees for Deeds, Affidavits, Powers of Attorney, or other title curative documents in advance as those documents have been ordered and are ready in anticipation of the closing. That leaves us with the mortgage recording fee. When we get the instructions from the lender, they will have the hard fees, but typically do not include the number of pages of the mortgage. In fact, just this week out of the 25 closings that qualified under the new rule, only 12 of the lenders provided us with the number of pages of their mortgage with their **initial** instructions.

I just want to give you an example today of how that adversely affected a military veteran first time homebuyer who was using a VA loan this past week. We were provided closing instructions last Tuesday for a closing scheduled for 10:00 this Monday – plenty of time to meet the 3-day rule. The instructions did not give us the page count for the mortgage but we were provided with 12 - \$43 then being the fee. We then confirmed the bottom line number and cash to close were a match so the lender could get the Closing Disclosure out in time to meet the 3-day requirement. The appropriate settlement disclosures were then sent to the seller and buyers realtor for distribution to their clients. We then waited for the closing package to arrive to complete preparation for closing.

Monday morning comes and the package arrives – we immediately go to put the package in order and double check the recording fees for the mortgage. In this VA – first time home buyer transaction, the mortgage in fact was 12 pages which was disclosed, but what the lender failed to disclose was that there was a 2 page VA Assumption Rider and a 1 page NDHFA Assumption Rider – thereby increasing the recording fee by \$9.00. We then started the “scramble”. We had to amend the Closing Disclosure and resend to the lender (we MUST use their disclosure) so they could get us a new one to be provided at the closing table. In this case there were contractual obligations where the seller had to pay part of the closing costs and we hadn’t used all of them, so the seller side changed to add the \$9.00 to their cost so the disclosure sent to the seller was wrong and their bottom line changed. This also changed the recording fee from the Loan Estimate by more than the 10% allowance, so the lender ended up having to give the buyer a credit of \$2.30. All of these changes back and forth were done while buyer, seller, loan officer, and two realtors were sitting in the lobby!

While this doesn’t seem like a big deal - I just want to state that we had 13 out of 47 recording fee changes for mortgages in the last 15 days – 28%. The uniform recording fee for mortgages governed under the new regulations would eliminate all of this last minute changing for buyers, sellers, realtors, lenders and title companies – all of the folks directly involved in the closing process.

Thank you for your consideration.

Paula Bachmeier
North Dakota Guaranty and Title Company – Minot
701-838-1907
paula@thetitleteam.com

Closing Cost Details

SB 2340
2.3.2017 2.1

P. 7/2

Loan Costs	Borrower-Paid		Paid by Others
	At Closing	Before Closing	
A. Origination Charges			
01 % of Loan Amount (Points)			
02			
03 CANNOT CHANGE – ALWAYS KNOWN IN ADVANCE			
04 (lender fees to do the loan – origination, processing, etc)			
05			
06			
07			
08			
B. Services Borrower Did Not Shop For			
01			
02 CAN CHANGE 10% – ALWAYS KNOWN IN ADVANCE			
03 (appraisal, credit report, flood certification, title fees, etc)			
04			
05			
06			
07			
08			
09			
10			
C. Services Borrower Did Shop For			
01 CAN CHANGE – ALWAYS KNOWN IN ADVANCE			
02			
03			
04			
05			
06			
07			
08			
D. TOTAL LOAN COSTS (Borrower-Paid)			
Loan Costs Subtotals (A + B + C)			
Other Costs			
E. Taxes and Other Government Fees			
01 Recording Fees Deed: Mortgage:			
02 CAN CHANGE 10% – UNKNOWN UNTIL NEAR CLOSING			
F. Prepays			
01 Homeowner's Insurance Premium (mo.)			
02 Mortgage Insurance Premium (mo.)			
03 Prepaid Interest (per day from to)			
04 Property Taxes (mo.)			
05 CAN CHANGE – ALWAYS KNOWN IN ADVANCE			
G. Initial Escrow Payment at Closing			
01 Homeowner's Insurance per month for mo.			
02 Mortgage Insurance per month for mo.			
03 Property Taxes per month for mo.			
04			
05 CAN CHANGE – ALWAYS KNOWN IN ADVANCE			
06			
07			
08 Aggregate Adjustment			
H. Other			
01 CAN CHANGE – ALWAYS KNOWN IN ADVANCE			
02 (home inspection, home warranty, etc)			
03			
04			
05			
06			
07			
08			
I. TOTAL OTHER COSTS (Borrower-Paid)			
Other Costs Subtotals (E + F + G + H)			
J. TOTAL CLOSING COSTS (Borrower-Paid)			
Closing Costs Subtotals (D + I)			
Lender Credits			

Gibbens Law Office

SB 2340

2.3.2017

Written testimony #3

Attorneys at Law

J. Bruce Gibbens

Michelle Gibbens

Nathan C. Gibbens

Mailing Address

P.O. Box 708
Cando, ND 58324-0708

Telephone No. (701) 968-3342

Fax No. (701) 968-4239

bruce@gibbenslaw.com
michelle@gibbenslaw.com
nathan@gibbenslaw.com

February 3, 2017

TO: Political Subdivisions Committee
North Dakota Senate

RE: In support of a DO PASS on Senate Bill 2340

Mr. Chairman and members of the Committee,

I am an attorney and owner of an abstract company in rural North Dakota, and I would like to offer you several comments in support of SB 2340.

The proposed change to subsection 1.a.(4) will create a straightforward margin requirement, which will result in uniformity among documents presented for recording.

The proposed addition of subsection 1.a.(5) will address a need that arose as a result of new federal regulations on closing procedures, which took effect in 2015. These new regulations provided for the creation of a new form called a Closing Disclosure; a form which outlines the fees and costs associated with obtaining a residential mortgage, and which must be presented to the consumer (borrower) at least 3 days prior to closing.

Unfortunately, if any of those fees should increase or change after the disclosure is provided, the lender must redisclose the information and cause the consumer to wait an additional 3 days before they can close their loan. By far the most common increase on the form is the fee associated with recording the mortgage. A flat recording fee for residential mortgages would solve that problem in its entirety.

I believe you can also be assured of the following:

- A \$55 flat recording fee for residential mortgages will result in increased revenue for counties across the State. The statewide average recording fee for a residential mortgage is currently between \$43 and \$46.
- Recordors will not be forced to change their practices as a result of this amendment. The certification that the document is a residential mortgage will simply alert the recorder that a \$55 fee will be charged.
- Certainty in closing fees and procedures is one of the most important issues in our industry, so lenders will not ignore the flat fee so that they can save a few dollars.
- Implementation of the flat fee will work within the recording systems used by the county recordors, as only one new document type will be added into their programs. I also believe that the increase in revenue from the flat fee will allow the recorders' offices to very quickly recoup their expenses for any necessary software changes.

These are the reasons I am in favor of, and why I hope you will give a DO PASS to SB 2340.

Sincerely,
Michelle Gibbens
Attorney at Law

Senate Political Subdivisions Committee

Mr. Chairman and Committee Members –

My name is Howard Malloy. I am President of Bismarck Title Company and Morton County Title Company, which provide title and closing services in Burleigh and Morton Counties, ND. I am also a member of the Legislative Committee of the North Dakota Land Title Association.

I am here today testifying in support of Senate Bill 2340. As you have heard from other testimony, the Consumer Financial Protection Bureau (“CFPB”) has mandated rules which govern the lending and settlement industries in the U.S., and these rules are created under “TRID” (Truth-in-Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure Rule). One of those rules requires the settlement agency to disclose exact closing figures to the borrower/consumer prior to closing. One of the fees disclosed is the cost of recording the real estate mortgage given as part of the loan closing transaction. Recording fees chargeable by the County Recorder in North Dakota under subsection 1 of NDCC 11-18-05 are based on the number of pages of the instrument, along with other fees imposed for violation of margin rules for recording [See NDCC 11-18-05.1(a), (4), and (b)].

A couple problems occur with recording the real estate mortgage between the time the page count of the mortgage is provided by the lender to the settlement agent and the actual recording fee is levied by the County Recorder:

1. The number of pages of the mortgage changes, resulting in a change in the recording fee;

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4.1
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2. One or more of the pages of the mortgage do not comply with the margin requirements, resulting in an increase in the recording fee.

The "CFPB" created "TRID" rules prohibit the changing of fees on the disclosure statement after delivery to the consumer/borrower three business days prior to the settlement date. So, if we discover at or after the settlement date (which would be after delivery of the disclosure statement to the consumer/borrower) that the mortgage contains additional pages, or pages that do not comply with the statutory margin requirements, which in turn increases the recording fee, we cannot change the closing disclosure statement and must absorb those additional fees. Furthermore, if after closing it is discovered we have collected more recording fees than charged by the County Recorder to record the mortgage, we must write a check to the consumer for the difference. If we undercharge, we pay, and if we overestimate, we pay. Sort of a lose/lose proposition. As we have worked on this recording fee problem since the inception of the "CFPB" rules on October 3, 2015, we have improved the process of page count (lender giving us an accurate page number), but the problem persists (they make mistakes). The margin rule violation continues to be the biggest cost to us as it is impossible to predict when a page on a mortgage will be outside the margin limits. Senate Bill No. 2340 would fix both of these problems.

I was able to participate in the process undertaken by the North Dakota County Recorder's Association task force and I commend them on their efforts in establishing a recording fee structure to address the problem created by the "CFPB" rules. Unfortunately, the North Dakota Land Title Association and its members, including me, seem to be the only participants in the process that supported the proposal made by the Recorder's Association. All

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other industry members were opposed to one part or another of the Recorder's proposal. All those industry players that are neutral to our proposed legislation were opposed to what the Recorder's Association was proposing. It was suggested numerous times by the other industries represented in the meetings I attended that the Recorder's Association should just fix the mortgage recording problem and leave the rest of the statute alone. Not seeing any support for the proposal on the table, the legislative committee of the North Dakota Land Title Association offered at the last meeting a proposal for a flat fee for mortgages only, which is now in the form of Senate Bill No. 2340. This bill leaves intact the existing recording fees applied to all other instruments presented for recording. It fixes our problem without increasing recording fees for other industry members which regularly record instruments in County Recorder Offices throughout the state.

The County Recorder's Association task force has done much work in determining the average cost of recording instruments across the state and shared those findings in the meetings we had and may have that information available today. By my estimation for mortgages recorded by my company in Burleigh/Morton Counties, the average mortgage subject to the "CFPB" requirements is 13 to 14 pages, which under the current statute would cost either \$46 or \$49 to record. The actual average recording cost of Senate Bill No. 2340 would raise that fee to \$55.

As Senate Bill No. 2340 would effectively address the issues created by federal rules implemented by the Consumer Financial Protection Bureau, I respectfully request Mr. Chairman and members of the committee that you give Senate Bill No. 2340 a "do pass" vote.

Thank you. I am happy to answer any questions you may have of me.

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Howard L. Malloy
President, Bismarck Title Company and Morton County Title Company
Member, Legislative Committee, North Dakota Land Title Association
701-222-4247
howard@bismarckttitle.com

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Written testimony #5
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TO: Chairman Burckhard

From: Debbie Kroshus, Burleigh County Recorder

RE: SB 2340

Chairman Burckhard and Committee Members,

My name is Debbie Kroshus and I am the Burleigh County Recorder. I would like to address information presented to you for SB 2340 requesting a change to recording fees defined in NDCC 11-18-05 for "residential mortgages". I would like to take this opportunity to request a Do Not Pass on SB 2340 as presented. In the 2015 legislative session a bill was introduced to have a legislative study of recorder fees on certain documents. We urged a DO NOT PASS on that bill and asked for the opportunity to research our fees, work with title companies, banks and other recording partners to come up with flat fees or predictable fees that would be beneficial to all concerned parties.

The county recorders established a task force to gather all pertinent information, to include number of documents recorded and fees charged. We selected several counties to research from across the state to give a sampling of oil, non-oil, large and small counties. After extensive research and number crunching, we were ready to present a flat fee schedule to our recording partners. We invited members from the Land Title Association, Bankers Association, Farm Credit, Independent Community Bankers, Credit Unions, Realtors, and Attorneys to participate in a round table informational discussion to begin the process of working towards a common goal of predictable fees. We presented the information we had gathered and suggested a flat fee that would cover all recording documents to make it fair for oil and non-oil counties. This figure was high and met with great resistance so we asked our recording partners to help us find a fair, predictable fee we could all agree to. Our task force went back to the drawing board with input from our partners. We held a second meeting to discuss other options for

predictable fees. Again we were met with resistance. We spoke at conferences and meetings of our recording partners across the state to explain our findings and suggested predictable fees. We have discussed our proposals with other members of these associations that come into our offices. Most had favorable comments to our last proposal.

We held four separate meetings with our recording partner representatives and presented different predictable fee structure proposals. At every meeting we asked for their suggestions and input. At the final meeting held in December 2016 we proposed a tiered fee structure that would be cost effective and easily provide a predictable fee structure for all recording partners. The Landsman's Association and the Petroleum Council attended the latter meetings and strongly opposed our fee change proposal. We also met with resistance on some fee changes from attorneys. It was at this last meeting, last minute, this "residential mortgage" fee was proposed. We opposed it then as we had no time to research the consequences. Since we could not come to an agreement on predictable fees with our recording partners at that time, we agreed not to bring any fee changes to legislation this session. We fulfilled our promise to the 2015 legislature to form a task force and work with recording partners to determine fair and equitable predictable fees. We worked hard and spent countless hours trying to reach an agreement with them but to no avail. We will not bring forth legislation without their support and would continue to work toward a solution for all.

Addressing specifics of this bill, page 1 lines 22 through 24 and page 2 lines 1 through 4, removing "a space of at least four inches by 3 and one-half inches square" and replacing it with a "space of at least three inches across the top of the first page of each instrument..... for recording information" and concludes "with the exception of any instrument recorded under subsection 11-18-05 1. A (5)". We proposed a three inch margin requirement on the first page of all documents however the bankers and others on the task force said it would be very costly to change their software to update the forms they currently use. We do not agree with the exception portion of this change.

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My bigger concern, also on page 2 lines 5 through 12, adds a new paragraph (5), referencing a Closing Disclosure required by 12 CFR 1026.38, which is a FEDERAL Law which we have no control over. 12 CFR 1026.38 pertains to requirements for banks and closing agents, NOT RECORDERS. NDCC 11-18 governs Recorders duties and fees, this doesn't. The added paragraph goes on to change fees for one type of document only. This does not work for recorders current fee structure as well as our software systems.

The unintended consequences of this legislation as presented would be detrimental. There would be no way of holding the submitters of these documents accountable. There would be many opportunities for submitters to "cheat" the system by not stamping their "residential mortgages" when they could save money by not doing so or stamping a non-residential mortgage to save money if that would cost more. I also question if out of state title companies and lenders would agree to purchase the certification stamp that is outlined in this bill. It would not take long for a submitter to realize if they do not "stamp" their 7 page mortgage, they would only need to pay \$28 in recording fees and not \$55.

Another unintended consequence of this bill would be that all mortgages that are submitted with this stamp will need to be recorded hard copy and not electronically as many are today. We would need to manually adjust the fee which is difficult on an electronic submission. This would also require all recording offices to work with their software vendors and electronic recording vendors to develop changes to the fee structures and add new document codes. Today, a mortgage is a mortgage, no matter if it is a commercial, residential, short term or refinance. Passing this bill as presented could be a costly endeavor for recorders and could place more burden on tax payers. We feel our final proposal presented to our recording partners in December was very fair and equitable for all concerned parties.

For all of these reasons and many more not mentioned, I respectfully urge a DO NOT PASS on SB 2340.

Do you have any questions for me? Thank you for your time.

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"pre

TO: Chairman Burckhard
FROM: Ann Johnsrud, McKenzie County Recorder
RE: SB 2340

Chairman Burckhard and Committee Members,

My name is Ann Johnsrud and I am the McKenzie County Recorder from Watford City, a position I have held for 20 years.

I am here to ask for a DO NOT PASS on SB 2430, a request to change recording fees in NDCC 11-18-05 for "residential mortgages" only. As has been stated in previous testimony, this is not a Recorder bill, and as a Recorder, I am not in favor of this bill.

I would like to present you with a little historical data regarding fee changes in the Recorder's offices over the years. I can speak to this as I have been on the Legislative Committee for the ND Recorders Association for the past 20 years.

In 1989, fees were \$5.00 for the first page and \$2.00 for each additional page with a \$3.00 fee for each related document number. In 1993, the fees were changed to \$7.00 for the first page and \$3.00 for each additional page. In 1999 a \$10.00 margin fee penalty was added for those documents not containing a 1 inch margin on the top or bottom or either side, as Recorders had begun to computerize their offices and were using a label for numbering instead of the old numbering stomper machines. In 2001 a \$3.00 fee was added to the first page of every document, that \$3.00 to be put into a "Document Preservation Fund" in the counties, for use by Recorders to computer, digitize, repair old paper document books, a costly endeavor, and to preserve all records held by the counties. The cost for certified copies has stayed the same since before 1989, \$5.00 first page and \$2.00 each additional page.

You can see by this information, the Recorder's office has not had an increase to the basic fee since 1993.....24 years. That is a long time.

I recognize that fees will increase slightly for our recording partners if a new fee schedule is put in place, but it will certainly satisfy the needs of the closing companies and banks for a

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"predictable fee". They will be able to record the majority of their documents without having to "count" anything. This seems to be the biggest issue they have

A one-time recording fee per document is paying for that document to be preserved, stored and available to the public for eternity.

Thank you for your time and consideration.

Ann Johnsrud, McKenzie County Recorder

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Recorder Fee Schedule Proposal NDCC 11-18-05

\$25.00 for documents containing 1-5 pages

\$50.00 for documents containing 6-25 pages

Plus \$3.00 per page after 25 pages

\$3.00 per referenced document number listed after the first 20

\$1.00 per section number listed after the first 20

A one- inch margin on the top, bottom, or either side on all pages of the document is REQUIRED, but the penalty fee would be removed.

A space of at least 3 inches must be provided across the top of the first page of each instrument for the recorders recording information. If the recording information can only be placed on the reverse side of an instrument, the recorder may add a page and an additional page charge must be levied.

Document font must be equal to or larger than 10 pt Calibri

All other parts of NDCC 11-18-05 stay as they are under this section. The above mentioned would be the only changes.

TO: Chairman Randall A. Burckhard

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#6.3

Political Subdivisions Committee

From: Beth A. Knutson, McLean County Recorder

RE: SB 2340

Chairman Burckhard, and Committee Members,

My name is Beth A. Knutson and I am the McLean County Recorder. I am opposing SB 2340 which would make mortgages a flat fee of \$55.00, but not all mortgages, only mortgages that fall under a federal regulation that is followed by closing agents.

This bill will require the mortgagor or a mortgagors agent to physically put a stamp on ONLY the mortgages that fall under this federal regulation and to sign and date it. Through our research we have found that almost all of the mortgages that could fall under this regulation are 25 pages or less. Currently a 16 page mortgage fee is \$55.00. If this bill were to pass, all mortgages over 16 pages would have a recording fee, lower than the current fee, and all of the mortgages under 16 pages would have a higher recording fee.

1. My first concern is that as a county recorder I have no idea which mortgages fall under this regulation and should have this stamp affixed to them.
2. My second concern is who is going to make sure the stamps are purchased and available to be put on the mortgage? I am not as concerned about the North Dakota closing agents having the stamp and affixing it, I am however, concerned about the larger companies and the out of state companies. We accept mortgages from all across the United States and I do not foresee, as an example, Wells Fargo purchasing this stamp for all of their closing agents and affixing it to their mortgages.
3. My third concern is the mortgages that are under 16 pages. There is nothing in this bill that says these mortgages HAVE TO BE STAMPED. My concern is that it will not take closing agents or lending institutions long to realize that if they do NOT stamp their mortgages with fewer than 16 pages, the recording fee would be less than the \$55.00. Counties will lose revenue on the mortgages over 16 pages because it is costs less to record them with a stamp and our revenue on the mortgages under 16 pages will remain the same as it is now, which will result in a loss of overall revenue that will have to be made up for with taxpayer dollars.
4. My fourth concern is singling out one document type for a "special" fee, with a different fee for all other documents. In McLean County we currently have between 350 and 400 document types that are recorded using the same fee schedule, this bill will remove one document type and make it a separate fee. I feel this opens the door for future legislation to single out other documents and change their fees as well, which will result in an even more confusing fee schedule for our submitters.

All of these concerns I have mentioned are my reasons for opposing SB 2340, and because of these concerns I would like to take this opportunity to ask that you give SB 2340 a Do Not Pass. The unintended consequences of this bill will affect many entities while solving a problem for only one entity.

Thank you for your time and consideration, I will answer any questions that you may have at this time.

Beth A. Knutson

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TO: Chairman Randall A. Burckhard
Political Subdivisions Committee

FROM: Katie Nadeau, Ramsey County Recorder

RE: SB 2340

Chairman Burckhard and Committee Members,

My name is Katie Nadeau and I am the Ramsey County Recorder. I am testifying in opposition to SB 2340. I am a member of the Task Force that has been studying Recorder fees in an effort to make the fees more predictable. My main role on the Task Force was to gather recording fee data and then use that data to come up with new fee models that would not only be more predictable, but would not result in a loss of revenue to counties.

From a numbers standpoint, SB 2340 has some unique challenges as we are unable to predict what effect the flat fee for this certain type of mortgage will have on our recording revenue. We do not track mortgages by their types, such as commercial, residential, refinance and so on. Therefore, it is impossible for me to pull these types of mortgages to plug into this new fee model of \$55. Also, since the stamp provided for in SB 2340 is not a requirement, there are no guarantees that every mortgage would be charged accordingly. This makes for too many unknowns as to how this bill would affect counties.

I personally have researched numerous new fee models which included flat fees, tiered fees and more. These involved varying dollar amounts, page counts and add-ons. The Task Force would then look at each, discussing the pros and cons and narrow it down to a fee that would work for all documents in all North Dakota counties. As stated before, these ideas were then brought to our recording partners for their input and feedback. We then went back to the models to see how we could tweak them to better

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meet everyone's needs. Unfortunately, each idea was met with some type of opposition and a compromise could not be met.

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SB 2340 is a quick fix for only one type of transaction and I believe it will create more problems than it solves. I would respectfully urge a **DO NOT PASS** on SB 2340.

Thank you for listening and I would be happy to answer any questions you may have.

Katie Nadeau

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<u>pages</u>	<u>current fees</u>	<u>proposed fees</u>
1	10	25
2	13	25
3	16	25
4	19	25
5	22	25
6	25	50
7	28	50
8	31	50
9	34	50
10	37	50
11	40	50
12	43	50
13	46	50
14	49	50
15	52	50
16	55	50
17	58	50
18	61	50
19	64	50
20	67	50
21	70	50
22	73	50
23	76	50
24	79	50
25	82	50
26	85	53
27	88	56
28	91	59
29	94	62
30	97	65
31	100	68
32	103	71
33	106	74
34	109	77
35	112	80
36	115	83
37	118	86
38	121	89
39	124	92
40	127	95
41	130	98
42	133	101
43	136	104
44	139	107
45	142	110
46	145	113

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47	148	116
48	151	119
49	154	122
50	157	125

1 free related
5 free sections

20 free relateds
20 free sections

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Blaine T. Johnson
100 West Broadway, Suite 250
PO Box 2798
Bismarck, ND 58502-2798
701.223.6585

February 3, 2017

Chairman Randall Burckhard
Vice Chairman Howard Anderson, Jr.
House Judiciary Committee

TESTIMONY OF BLAINE T. JOHNSON
CONCERNING SB2340

Chairman Burkhard, Vice Chairman Anderson and members of the Political Subdivisions Committee, good morning. My name is Blaine Johnson and for those of you who do not know me, I am a partner at the law firm of Crowley Fleck PLLP in Bismarck, North Dakota. I have been in private practice for 14 years focusing on real estate related matters, banking, estate planning and probate. I am a member of the Real Property Section of the State Bar Association North Dakota, a member of the mineral title standards committee, and a member of the legislative committee. I have presented seminars across the United States on North Dakota real property issues ranging from construction liens, oil and gas leasing, mineral title issues, and probate. I have authored a law review article on North Dakota's Marketable Title Act and other real estate title issues for the University of North Dakota Law Review.

The first half of my career was spent in Minnesota where I conducted thousands of real estate closings. During this time, we experienced the impact of Dodd Frank and the corresponding federal regulations commonly referred to as RESPA and TILA – TRID [TILA RESPA Integrated Disclosure] imposed on the financial industry. In essence the consumer was entitled to know exactly how much financing would cost when their home was on the line. This allowed the consumer to accurately compare proposals made by various lenders, but more importantly the consumer would not arrive at closing to be surprised with fees charged by mortgage brokers and lenders that were never mentioned before – leaving the consumer with little option but to accept the fees to obtain the financing as planned.

In the grand scheme of things recording fees play but a small part in the closing process. But because of the disclosure requirements, the fees must be specifically stated well in advance of the closing. In fact they are disclosed prior to the underwriting of the financing. This means that if the underwriting discloses the need for a rider to be attached to the mortgage, or a lengthy legal description the number of pages of the mortgage will increase and as a result so will the recording fee.

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#8.1
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Testimony of Blaine T. Johnson
Opposition to HB 1177
January 17, 2017

The accurate disclosure of fees is undoubtedly beneficial for consumers – the constituents of the State of North Dakota. However fees that are based upon facts that are not yet determined are impossible to accurately disclose. Once underwriting has been completed, closings are typically scheduled very shortly afterwards. Documents are often not prepared until the day of closing. Any change to the number of pages of a mortgage results in a change of fees. Changes in fees are required to be redisclosed and cause the consumer to wait extra days until the transaction can be closed; or the lender or title company must cover the difference.

What has not been discussed today is that the number of pages of a mortgage has virtually no bearing on the amount of work that a recorder must do to properly record the mortgage. Assuming that a mortgage covers one tract of land and has the same number of parties, the only difference in work is the amount of time it takes to scan 25 pages instead of 7... or seconds.

If you recall the last legislative session attempted to introduce a bill that would have established an exploratory committee to research this particular issue and determine suitable solutions. It was opposed by the records, who justifiably wanted the opportunity to put their knowledge and needs of the recording system to work to provide an answer. This resulted in numerous informational meetings, several variations of proposals and at least three roundtable discussions with stakeholders including bankers, land title association, the oil and gas industry, SBAND and recorders. The proposals brought forth for discussion would have implemented global changes. That to say that the fees charged would apply to all types of documents, both surface and mineral, and would continue to be based upon a formula of page numbers, tracts and documents referenced. Proposals ranged from a flat fee of \$75 (which could have been a 750% increase) to a tiered system of \$25 and \$50 based upon page numbers. These proposals impacted stakeholders in various ways. What may have been beneficial to resolving the mortgage disclosure problem, would have increased recording fees for elderly simply trying to convey their property to their children to avoid probate; would have increased recording fees for the lengthy oil and gas assignments and conveyances, did not even seem to have consensus among the county records – this pitted east vs. west/small counties vs. large counties – there are simply competing interests.

The solution then was to narrowly tailor this bill to address the problem at hand without adversely effecting all other stakeholders. We could not say all mortgages, because oil and gas mortgages and deeds of trusts may include hundreds of tracts and document references that justifiably require more time and demand a larger fee. The choice was made to provide a flat fee for those mortgages in which a disclosure was made allowing lenders to know in advance that the recording fee will be \$55.00 regardless of what underwriting discloses. The certification allows the mortgagor, the closing agent and the recorder all to rely on a single fee without counting pages, or tracts. It should technically be less work for the recorders who no longer have to count pages. The amount of the fee was based on a midpoint of what typical mortgage documents are recorded so should be financially neutral. The objection raised concerning the potential for wrongdoing by not stamping the mortgage to save a few dollars is questionable. The value of a consistent, predictable fee is far more important than a few dollars. Furthermore, if a mortgage is under the 16 pages and is not stamped, the recorder would receive no more or no less money under this bill than they would currently.

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Testimony of Blaine T. Johnson

Opposition to HB 1177

January 17, 2017

#8.2

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The concerns raised about a messy fee schedule are likewise suspect. Right now we have a fee formula based upon page numbers, tracts, document references, and then imposition of surcharges for improper margins, stray signatures and the like. Every single document has a different fee.

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Written Testimony
#9

TO: Chairman Randall A. Burckhard

Political Subdivisions Committee

From: Susan J. Froemke, Ransom County Recorder

RE: SB 2340

Chairman Burckhard, and Committee Members,

I am writing to ask for a DO NOT PASS on SB 2340 that will be heard on Friday, February 3.

This bill requires recording fees on one specific type of document (residential mortgage) to have a flat fee of \$55.00. This would create havoc with our current fee schedule for various types of mortgages and other documents.

Another problem with this bill is that all county Recorders would have to update their recording software programming for one document. The flat fee on this one document type would not work with our current fee structure. This would be a costly venture for all the Recorder Offices. Also, if we had just one type of mortgage with a flat fee, we would not be able to e-record those special mortgages.

I would strongly urge a DO NOT PASS on SB 2340.



Susan J. Froemke

Ransom County Recorder

TO: Chairman Burckhard
FROM: Jewel Spies, Cass County Recorder
RE: SB 2340

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2.3.2017
Written testimony
#10

Chairman Burckhard and Committee Members

My name is Jewel Spies, I am the Cass County Recorder, located in Fargo, ND.

I am writing in regard to SB 2340 and asking for a do not pass.

In 2015, the legislature directed Recorders to study our fees and try to find, what is now referred to as, a "predictable fee". I was a member of the Task Force that our association formed to take on this task.

We had many meetings, email dialogues, and we attended the different associations meetings to give presentations of our findings. After all of our hard work, with many compromises, we were told by our recording partners, lending institutions, title companies, and oil and gas that they would not support us in the solution that we presented.

We took this project very seriously. We are a unique state, in that we have 53 counties and 17 of these counties do oil business. Finding a solution that would not reduce fees for the oil counties and also not adversely affect the other counties was not easy. We returned again and again to the bargaining table to find a solution that would be agreeable to all 53 counties and that also would not be an outrageous cost to the consumer. We feel that we have done due diligence in this. Land and Title has been the driving force for a predictable fee from the beginning. We actually already have a predictable fee. At the last meeting our recording partners all stated they knew how to count and add fees.

Land and Title has presented this bill to change the fees on only one document, which would be impossible to police and ensures that recorders will lose recording fees. We don't believe it is possible for the counties to change our software for "one" document to calculate the correct fee. We would prefer to change the base fees for all documents. In Cass County, we recorded 8,811 mortgages in 2015. My office does not have the time to read through each mortgage and then decide whether it fits under their federal code or not. I don't believe the banks and especially out of state lending institutions will practice due diligence on this. I believe that we will lose recording fees if this bill passes and then it goes back to the general fund taxpayer to make up the difference.

I strongly believe this bill should not be passed and any fee changes to our fee structure should be brought forth by the Recorders Association. Thank you for your time and consideration.

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Written testimony
#11

TO: Chairman Randall A. Burckhard

Political Subdivisions Committee

From: Vicki Kubat, Cavalier County Recorder (Langdon, ND)

RE: SB 2340

Chairman Burckhard and Committee Members,

My name is Vicki Kubat and I am the Cavalier County Recorder. I am writing to encourage a **DO NOT PASS** of SB2340.

This bill is requesting a flat fee or predictable fee for only one of the many documents that are recorded with the County Recorders, "Residential mortgages" defined in NDCC 11-18-05. I am a member of the Task Force that was formed after the 2015 Legislative session requesting a study of our recording fees for 3 types of documents in an effort to make fees more predictable. After many meetings with our recording counterparts, we were unable to compromise on a fair and equitable fee for all counties in ND. This bill only involves one type of document being recorded in our offices. Where will this lead us in the future? More confusion for determining recording fees. I feel that we have the most fair and equal fee structure now.

The unintended consequences of this bill will affect many entities while solving a problem for ONLY one entity involved with our offices.

I ask for a DO NOT PASS on SB 2340

Respectively submitted by

Vicki Kubat

Cavalier County Recorder

SB 2340
2.3.2017
Written testimony
#12

TO: Chairman Burckhard

From: Carrie K. Krause, Wells County Recorder

RE: SB 2340

Chairman Burckhard and Committee Members,

My name is Carrie K. Krause and I am the Wells County Recorder. I would like to express opposition for SB 2340 requesting a change to recording fees defined in NDCC 11-18-05 for "residential mortgages". This is not a County Recorder's bill and I would like to request a Do Not Pass on SB 2340.

Since the 2015 legislative session after a bill was introduced to have a legislative study of recorder fees, a task force was formed to find a predictable fee that worked with all recording partners involved. We worked diligently to come up with a predictable fee that was fair to all the parties involved with no avail. Without the support of all of our recording partners we decided not to propose a bill for a fee change.

One of my concerns with this bill lies in lines 5-12 on page 2, adding a new paragraph (5), referencing a Closing Disclosure required by 12 CFR 1026.38, which is a federal law in which we as County Recorders have no control over. 12 CFR 1026.38 pertains to requirements for banks and closing agents, not County Recorders. The added paragraph goes on to change fees for only one type of document, which does not work for our current fee structure as well as our software programs. There would have to be software changes to pull out one document type, of which I have over 200, and change that one fee structure.

The unintended consequences of SB2340 would be detrimental. There would be no way of holding the submitters of residential mortgages accountable as there would be many opportunities for them to decide which fee they would use by not stamping or stamping "residential mortgages" on their document. For instance, if the residential mortgage is less than 16 pages it would be a savings for them to not stamp it, in order to get the cheaper fee and anything over 16 pages would be beneficial for them to stamp it as they would save on recording fees. The Counties, as a whole would lose on this fee and the cost to implement a new recording fee for one document will be a significant and unnecessary burden to our taxpayers.

I ask for a DO NOT PASS on SB2340

Thank you

Carrie K. Krause

Wells County Recorder

SB 2340
2-9-2017
2/9
from Sen. Anderson #1

Introduced by

Senators Meyer, Burckhard, Casper

Representatives Beadle, Louser, Delmore

1 A BILL for an Act to amend and reenact subsection 1 of section 11-18-05 of the North Dakota
2 Century Code, relating to fees charged by a county recorder for filing mortgage disclosures.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Subsection 1 of section 11-18-05 of the North Dakota Century
5 Code is amended and reenacted as follows:

6 1. For recording an instrument affecting title to real estate:

7 a. Deeds, mortgages, and all other instruments not specifically provided for in this
8 subsection, ~~ten~~¹⁵ ~~twenty-five~~ dollars for ~~the first page and three dollars for each~~
9 ~~additional page~~ documents containing one to ~~five~~⁴ pages and ~~five~~⁶⁰ dollars for
10 ~~documents containing more than five~~⁴ pages plus three dollars for each additional
11 ~~page after the first twenty-five pages~~. In addition, for all documents recorded
12 under this section that list more than ~~five~~¹⁰ sections of land, a fee of one dollar for
13 each additional section listed which is to be recorded in the tract index. Three
14 dollars of the fee collected for ~~the first page of~~ each instrument recorded under
15 this subdivision must be placed in the document preservation fund.

16 (1) "Page" means one side of a single legal size sheet of paper not exceeding
17 eight and one-half inches [21.59 centimeters] in width and fourteen inches
18 [35.56 centimeters] in length.

19 (2) The printed, written, or typed words must be considered legible by the
20 recorder before the page will be accepted for recording and, unless the form
21 was issued by a government agency, must have a font size equal to or
22 larger than ten point calibri.

1 (3) Each real estate instrument must have a legal description considered to be
2 adequate by the recorder before such instrument will be accepted for
3 recording.

4 (4) A space of at least four inches by three and one-half inches [10.16 by
5 8.89 centimeters] square ~~three inches [7.62 centimeters]~~ must be provided
6 ~~en~~ across the top of the first or last page of each instrument for the
7 recorder's recording information. ~~Except as provided in paragraph 5, if~~
8 recording information can only be placed on the reverse side of an
9 instrument, the recorder may add a page, and an additional page charge
10 must ~~may~~ be levied.

11 ~~(5) If a mortgage for which a closing disclosure was issued containing~~
12 ~~information required under title 12, Code of Federal Regulations, part~~
13 ~~1026.38 and the first page of the mortgage explicitly states in bold lettering~~
14 ~~or stamped and signed by the mortgagor or the mortgagor's agent, "I certify~~
15 ~~this document's recording fee applies under section 11-18-05 of the North~~
16 ~~Dakota Century Code" the recorder shall assess a fee of fifty-five dollars.~~
17 ~~Mortgages filed under this paragraph are not subject to any other fees~~
18 ~~under this chapter.~~

19 b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending,
20 or extending more than ~~one instrument~~ ⁽¹⁰⁾ twenty instruments previously recorded in
21 the county in which recording is requested, ~~ten dollars for the first page and three~~
22 ~~dollars for each additional page plus~~ a fee of ^{15.-} twenty-five dollars for documents
23 ~~containing one to five pages, fifty dollars for documents containing more than five~~
24 ~~pages plus three dollars for each additional page after the first twenty-five pages,~~
25 ~~and three dollars for each such additional document number or book and~~
26 ~~page after the first~~ ⁽¹⁰⁾ twenty referenced instruments. In addition, for all documents
27 recorded under this section which list more than ~~five~~ ⁽¹⁰⁾ twenty separate sections of
28 land, a fee of one dollar for each additional section listed which is to be recorded
29 in the tract index. Three dollars of the fee collected for the first page of each
30 instrument recorded under this subdivision must be placed in the document
31 preservation fund.

*recorders want 20
back to 23*

Sixty-fifth
Legislative Assembly

- 1
 - 2
 - 3
 - 4
 - 5
 - 6
 - 7
- c. Plats, twenty dollars for twenty lots or fewer and fifty dollars for more than twenty lots.
 - d. All instruments presented for recording after June 30, 2001, must contain a one-inch [2.54-centimeter] top, bottom, or side margin on each page of the instrument for the placement of computerized recording labels. An instrument that does not conform to this margin requirement may be recorded upon payment of an additional fee of ten dollars.

SB2340
 2.10.17
 Beth Knutson
 Written Testimony #1

pages	current fees	proposed fees	Difference
1	10	15	5
2	13	15	2
3	16	15	-1
4	19	15	-4
5	22	60	38
6	25	60	35
7	28	60	32
8	31	60	29
9	34	60	26
10	37	60	23
11	40	60	20
12	43	60	17
13	46	60	14
14	49	60	11
15	52	60	8
16	55	60	5
17	58	60	2
18	61	60	-1
19	64	60	-4
20	67	60	-7
21	70	60	-10
22	73	60	-13
23	76	60	-16
24	79	60	-19
25	82	60	-22
26	85	63	-22
27	88	66	-22
28	91	69	-22
29	94	72	-22
30	97	75	-22
31	100	78	-22
32	103	81	-22
33	106	84	-22
34	109	87	-22
35	112	90	-22
36	115	93	-22
37	118	96	-22
38	121	99	-22
39	124	102	-22
40	127	105	-22
41	130	108	-22
42	133	111	-22
43	136	114	-22
44	139	117	-22
45	142	120	-22
46	145	123	-22
47	148	126	-22
48	151	129	-22
49	154	132	-22
50	157	135	-22

1 free related 20 free relateds
 5 free sections 20 free sections

3-16-17 SB 2340

#1

Committee Hearing on SB 2340
Testimony from the ND Land Title Association

Good Morning Mr. Chairman and Members of the Committee,

The title insurance and real estate closing services industry's help drive our nation's economy through the safe and efficient transfer of real property. In the current housing market and regulatory environment these services are increasingly important for the confidence of lenders to compliantly provide loans to homebuyers.

At issue is the ability to estimate predictable recording fees ahead of knowing how many pages a document is in order accurately disclose the fee to consumers.

In the 2015 session a study bill was filed to identify alternatives to the current process by which documents are charged when they are filed of record in the County Recorder's office. That study ultimately failed as the parties agreed to take a look at potential solutions during the interim. The ND County Recorders Association undertook an extension and inclusive process of reviewing the fees and coming up with alternatives. Ultimately, unanimous agreement could not be reached. As a result a very narrowly focused bill was filed that helped address some issues but still had some challenges. In the Senate Committee all parties testifying were able to agree on a more perfect approach and amend the bill to the version before you today.

Why is a change important? As a result of Federal Law, new closing forms were adopted on all residential consumer mortgages. The new rules and forms were created to help consumer's better understand the costs associated with buying a home and they include tighter restrictions on fee changes from the time a borrower is quoted the fees to when they close on the home. North Dakota has clear statutes of what the recording fee will be based on number of pages. However, during the home loan process the number of pages of the documents to be recorded is many times not known until shortly before the closing. This results in inaccurate fees being quoted to the borrower before closing and then shortly before the closing, when the actual page count is known, the fee changes. The change in the fee results in a change in the amount of money the borrower has to bring to closing and significant explanation to the borrower during a time they are focused on moving into their new home.

What does SB 2340 do and what is the cost? Senate Bill 2340 is not meant to increase the cost of recording but change the process by which fees are charged from per individual page to three categories based on page count. Documents with 1-4 pages will be \$15 and documents with 5-25 pages will be \$60 instead of documents costing \$10 for the first page and \$3 for each page thereafter.

Why does the closing industry need this bill? The bill provides certainty and predictability of closings cost as it relates to one of the smallest fees charged in a real estate transaction, the recording fee. The recording fee is the most volatile fee to change just before closing compared to all other fees which are known well in advance. The fee also has some of the strictest federal rules in regards to its accuracy. More importantly, when fees change; borrowers are confused, closing companies cover the shortages and if the fee is over estimated, by law, closing companies have to refund the fee which we believe is appropriate. The challenge is the overages are generally very small and include many \$3 refunds because our estimate was off by one page. When a \$3 check is issued frequently that check does not get cashed. In turn, this causes significant administrative costs to turn the funds over to unclaimed property.

Who else is doing it? Eleven states already have flat recording fees including our neighbors, Minnesota and South Dakota. An additional 9 states are now considering bills.

How will industry partners adopt? The settlement industry uses online calculators to predict fees for lenders or lenders reach out to us in advance of the closing to request estimates of recording fees. We provide that estimate which is used in the transaction. Instead of providing a floating number we will simply provide estimates based on the type of document to be recorded, which is known in advance. For example we will quote a Deed = \$15, Satisfaction = \$15 and Mortgage = \$60. Further, a flat fee will allow lenders the ability to hard code the fees in their software systems.

SB 2340 is also flexible in nature and in some instances will reduce the cost of recording large mineral documents and agriculture transactions with multiple sections or it will not affect them at all.

A few parts of the amendments on the next page were inadvertently missed in the Senate which we request to be added.

We would ask the committee to adopt the amendments and provide a Do Pass recommendation.

Thank you,

Nick Hacker
NDLTA, Legislative Chair - (701) 751-4988– nick@thetitleteam.com

SB 2340 Amendments needed which were inadvertently missed in the Senate.

Page 2, Line 7-10:

- (4) “A space of at least four inches by three and one-half inches [10.16 by 8.89 centimeters] square three inches [7.62 centimeters] must be provided on across the top of the first or last page of each instrument for the recorder's recording information. ~~If Except as provided in paragraph 5, if recording information can only be placed on the reverse side of an instrument,~~ if no three inch margin across top of first page the recorder ~~may~~ must add a page, and an additional page charge ~~must~~ may be levied in accordance with the fee structure.”

Reason: The original bill had a paragraph 5, paragraph 5 no longer exists and direction to the county recorder is needed when the margin requirement set forth in the paragraph is not met.

Page 2, Line 17-18:

“...additional document number or book and page...”

Reason: County records are referred to as either “document numbers” or where the document that was recorded exists in the county records which is “book **and page**”. To easily find the recorded document a searcher needs to look up the document number or know where the document is found by book and page number.

SB 2340

#2

3-16-17

Proposed Amendment to Engrossed SB 2340
Version 17.0849.05000

Pat Ward

March 14, 2017
House – Political Subdivisions Committee

Page 2, line 7, remove "Except as provided in paragraph 5, if"

Page 2, line 8 and 9, overstrike "recording information can only be placed on the reverse side of an instrument," and insert immediately thereafter "If there is no three-inch margin across top of the first page"

Page 2, line 9, replace "may" with "must"

Page 2, line 10, overstrike "must" and immediately thereafter insert "may"

Page 2, line 10, after "levied" insert "in accordance with the fee structure"

Page 2, line 17 and 18, remove the overstrike over "~~and page~~"

Renumber accordingly

SB 2340

3-16-17

#3

Gibbens Law Office

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michelle@gibbenslaw.com
nathan@gibbenslaw.com*

March 16, 2017

TO: Political Subdivisions Committee
North Dakota House of Representatives

RE: In support of a DO PASS on Engrossed Senate Bill No. 2340

Mr. Chairman and members of the Committee,

I am an attorney and owner of an abstract company in rural North Dakota, and I would like to offer you several comments in support of SB 2340.

The proposed structure and fee changes of subsections 1.a. and 1.b. will address a need that arose as a result of new federal regulations regarding the Closing Disclosure (CD) form, which took effect in 2015. The CD must be presented to the consumer (borrower) at least 3 days prior to closing. By far the most common increase on the CD is the fee associated with recording the mortgage, which prompts a redisclosure of the updated CD, and a new 3-day waiting period to close. With mortgages averaging 14 or 15 pages, a flat \$60 recording fee for 5- to 25-page documents will solve that problem in its entirety.

Another issue that is addressed by this amendment is the challenge attorneys face with recording government forms, such as death certificates, which are recorded to terminate life estates or joint tenancies. However, a North Dakota death certificate does not contain 1-inch margins or the minimum font size, and includes an official seal embossed on the back of the document. This creates 3 separate recording violations: 1) The margin size is inadequate; 2) The font size is inadequate; and 3) The fee sent in with the document is inadequate, as the page number is often miscounted due to the embossed seal.

Some county recorders understand our inability to change the certificate to meet recording specifications and do not charge extra fees for margin or font violations. Almost all recorders will add an extra page to include the embossed seal on the back of the certificate. But other county recorders do charge additional fees for margin or font violations, and there is no way to know what we will encounter from county to county. The proposed changes would put the death certificate into the 1-4 page category, which would carry a flat fee of \$15 and solve the page number problem, with the amended subsection 1.a.(2) solving the font size problem. Unfortunately, the amendment does not address the margin issue on government forms, which is the only area where I feel this amendment falls short.

I believe this amendment will help to create certainty and uniformity among recorded documents. These are the reasons I am in favor of, and why I hope you will give a DO PASS to Engrossed SB 2340.

Should you have any questions or if you would like additional examples of how SB 2340 will positively impact North Dakota's legal community, please do not hesitate to contact me.

Sincerely,
Michelle Gibbens
Attorney at Law

3-16-17

SENATE BILL 2340***An answer to last minute changes and confusion at the closing table***

In October, 2016, new federal regulations were implemented wherein the settlement statement document portion of a regular home closing was completely changed. Together with the form change, strict time requirements for the delivery of the settlement document to the buyer, were also implemented – with strong penalties for any violations.

The consumer now must have the new form – referred to as a Closing Disclosure – three days in advance of the closing date. For example, if closing is scheduled for Thursday, the consumer has to see the Closing Disclosure and acknowledge the receipt thereof by end of day Monday.

I have provided you a copy of page two of that Closing Disclosure. Page two deals directly with the actual hard costs of the transaction. Just a FYI lenders are required to provide the consumer with a Loan Estimate in advance of providing the Closing Disclosure so where reference is to change (or tolerance) it is in reference to the estimate that was provided to the consumer and to how close a lender has to be when providing the estimates.

As you can see, Parts A, B, C, F, G and H are always firm numbers and known well in advance of the Closing Disclosure being provided to the consumer. The big variable then is Section E – the recording fees. Those fees are dependent upon the number of pages of the document being recorded. In any transaction, we will always know the recording fees for Deeds, Affidavits, Powers of Attorney, or other title curative documents in advance as those documents have been ordered and are ready in anticipation of the closing. That leaves us with the mortgage recording fee. When we get the instructions from the lender, they will have the hard fees, but typically do not include the number of pages of the mortgage. In fact, just this week out of the 25 closings that qualified under the new rule, only 12 of the lenders provided us with the number of pages of their mortgage with their **initial** instructions.

I just want to give you an example today of how that adversely affected a military veteran first time homebuyer who was using a VA loan this past month. We were provided closing instructions last Tuesday for a closing scheduled for 10:00 this Monday – plenty of time to meet the 3-day rule. The instructions did not give us the page count for the mortgage but we were provided with 12 - \$43 then being the fee. We then confirmed the bottom line number and cash to close were a match so the lender could get the Closing Disclosure out in time to meet the 3-day requirement. The appropriate settlement disclosures were then sent to the seller and buyers realtor for distribution to their clients. We then waited for the closing package to arrive to complete preparation for closing.

Monday morning comes and the package arrives – we immediately go to put the package in order and double check the recording fees for the mortgage. In this VA – first time home buyer transaction, the mortgage in fact was 12 pages which was disclosed, but what the lender failed to disclose was that there was a 2 page VA Assumption Rider and a 1 page NDHFA Assumption Rider – thereby increasing the recording fee by \$9.00. We then started the “scramble”. We had to amend the Closing Disclosure and resend to the lender (we MUST use their disclosure) so they could get us a new one to be provided at the closing table. In this case there were contractual obligations where the seller had to pay part of the closing costs and we hadn’t used all of them, so the seller side changed to add the \$9.00 to their cost so the disclosure sent to the seller was wrong and their bottom line changed. This also changed the recording fee from the Loan Estimate by more than the 10% allowance, so the lender ended up having to give the buyer a credit of \$2.30.

To add to the tribulations, the seller on the above referenced transaction was buying “back to back” after the sale. So their settlement on their proceeds changed – which had been provided in advance to their purchase lender. So we had to then wait for approval of that part of the seller’s transaction. The seller then had to scramble to find \$9.00 as they already had their cashier’s check in hand.

All of these changes back and forth were done while buyer, seller, 2 loan officers, and four realtors were sitting in the lobby!

While this doesn’t seem like a big deal - I just want to state that we had 13 out of 47 recording fee changes for mortgages in the last 15 days – 28%. The uniform recording fee for mortgages governed under the new regulations would eliminate all of this last minute changing for buyers, sellers, realtors, lenders and title companies – all of the folks directly involved in the closing process.

Then there is the side issue that arises. We count pages and assume we have them exact, send documents for recording and in the post-closing process (which now has to be done within 30 days of closing), we discover we have over collected \$3.00 on the consumer’s side for recording charges. We then have to reach out to the lender to see how they want us to handle the refund – give directly to the customer, or in the case where there is a minimum down payment requirement, issue it to the lender as a principal reduction. In any event, the lender then has to send out a new CD to the consumer. In the case where we issue these \$3.00 checks, we then have to follow up again if the check is not cashed or we have to turn the funds over to unclaimed property at the state.

As you can see, we just cannot express how important it is to get to a uniform recording fee.

Thank you for your consideration.

Paula Bachmeier
North Dakota Guaranty and Title Company – Minot
701-838-1907
paula@thetitleteam.com

Closing Cost Details

Loan Costs	Borrower-Paid		Paid by Others
	At Closing	Before Closing	
A. Origination Charges			
01 % of Loan Amount (Points)			
02			
03 CANNOT CHANGE – ALWAYS KNOWN IN ADVANCE			
04 (lender fees to do the loan – origination, processing, etc)			
05			
060			
07			
08			
B. Services Borrower Did Not Shop For			
01			
02 CAN CHANGE 10% – ALWAYS KNOWN IN ADVANCE			
03 (appraisal, credit report, flood certification, title fees, etc)			
04			
05			
06			
07			
08			
09			
10			
C. Services Borrower Did Shop For			
01 CAN CHANGE – ALWAYS KNOWN IN ADVANCE			
02			
03			
04			
05			
06			
07			
08			
D. TOTAL LOAN COSTS (Borrower-Paid)			
Loan Costs Subtotals (A + B + C)			
Other Costs			
E. Taxes and Other Government Fees			
01 Recording Fees Deed: Mortgage:			
02 CAN CHANGE 10% – UNKNOWN UNTIL NEAR CLOSING			
F. Prepays			
01 Homeowner's Insurance Premium (mo.)			
02 Mortgage Insurance Premium (mo.)			
03 Prepaid Interest (per day from to)			
04 Property Taxes (mo.)			
05 CAN CHANGE – ALWAYS KNOWN IN ADVANCE			
G. Initial Escrow Payment at Closing			
01 Homeowner's Insurance per month for mo.			
02 Mortgage Insurance per month for mo.			
03 Property Taxes per month for mo.			
04			
05 CAN CHANGE – ALWAYS KNOWN IN ADVANCE			
06			
07			
08 Aggregate Adjustment			
H. Other			
01 CAN CHANGE – ALWAYS KNOWN IN ADVANCE			
02 (home inspection, home warranty, etc)			
03			
04			
05			
06			
07			
08			
I. TOTAL OTHER COSTS (Borrower-Paid)			
Other Costs Subtotals (E + F + G + H)			

3-16-17

#5

SB 2340

House Political Subdivisions Committee

Mr. Chairman and Committee Members –

My name is Howard Malloy. I am President of Bismarck Title Company and Morton County Title Company, which provide title and closing services in Burleigh and Morton Counties, ND. I am also a member of the Legislative Committee of the North Dakota Land Title Association.

I am here today testifying in support of Senate Bill 2340. As you have heard from other testimony, the Consumer Financial Protection Bureau (“CFPB”) has mandated rules which govern the lending and settlement industries in the U.S., and these rules are created under “TRID” (Truth-in-Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure Rule). One of those rules requires the settlement agency to disclose exact closing figures to the borrower/consumer prior to closing. One of the fees disclosed is the cost of recording the real estate mortgage given as part of the loan closing transaction. Recording fees chargeable by the County Recorder in North Dakota under subsection 1 of NDCC 11-18-05 are based on the number of pages of the instrument, along with other fees imposed for violation of margin rules for recording [See NDCC 11-18-05.1(a), (4), and (b)].

A couple problems occur with recording the real estate mortgage between the time the page count of the mortgage is provided by the lender to the settlement agent and the actual recording fee is levied by the County Recorder:

1. The number of pages of the mortgage changes, resulting in a change in the recording fee;

2. One or more of the pages of the mortgage do not comply with the margin requirements, resulting in an increase in the recording fee.

The "CFPB" created "TRID" rules prohibit the changing of fees on the disclosure statement after delivery to the consumer/borrower three business days prior to the settlement date. So, if we discover at or after the settlement date (which would be after delivery of the disclosure statement to the consumer/borrower) that the mortgage contains additional pages, or pages that do not comply with the statutory margin requirements, which in turn increases the recording fee, we cannot change the closing disclosure statement and must absorb those additional fees. Furthermore, if after closing it is discovered we have collected more recording fees than charged by the County Recorder to record the mortgage, we must write a check to the consumer for the difference. If we undercharge, we pay, and if we overestimate, we pay. Sort of a lose/lose proposition. As we have worked on this recording fee problem since the inception of the "CFPB" rules on October 3, 2015, we have improved the process of page count (lender giving us an accurate page number), but the problem persists (they make mistakes). While not addressing the margin rule violation problem, Senate Bill No. 2340 would almost eliminate the problem of page counting, as nearly all residential real estate mortgages (the mortgages governed by "CFPB") recorded are less than 25 pages, in my experience.

As Senate Bill No. 2340 would effectively address the issues created by federal rules implemented by the Consumer Financial Protection Bureau, I respectfully request Mr. Chairman and members of the committee that you give Senate Bill No. 2340 a "do pass" vote.

Thank you. I am happy to answer any questions you may have of me.

Howard L. Malloy
President, Bismarck Title Company and Morton County Title Company
Member, Legislative Committee, North Dakota Land Title Association
701-222-4247
howard@bismarcktitle.com

3-16-17
SB 2340 #6

TO: Chairman Lawrence r. Klemin
Political Subdivisions Committee
From: Beth A. Knutson, McLean County Recorder
RE: SB 2340

Chairman Klemin and Committee Members,

My name is Beth A. Knutson and I am the McLean County Recorder. I am here in support of SB 2340 with a couple of amendments. These amendments are necessary to clarify the bill.

The North Dakota County Recorders Task Force spent a large amount of time and resources studying the Recorder fees and working toward a new fee schedule that would help solve the issues the Land and Title Association are having with the new requirements handed down from the federal Consumer Fraud Protection Bureau. Recorders worked to keep the fee schedule feasible and easy to understand, for everyone involved. The main concern was to keep the fees uniform in order for the closing companies to have accurate disclosure statements. With our current fees there are a lot of variables that come into play when recording a document. These variables can cause inconsistencies between Recording offices and cause documents to be charged differently from county to county.

I agree and support the amendment to Page 2 line 17-18 this was simply an over sight when amending the bill on the Senate side. Our newer documents are recorded with document numbers, the old documents were recording using a book and page format so the addition of "and page" needs to be included in order to cover all of our recording formats.

The amendment to page 2, line 7-10 is the area of the bill that could cause some inconsistencies. I would like to see it read as follows, beginning on line 7 after recorder's recording information. If no three inch margin across the top of the first page the recorder must add a page, and the charge for the document, including the additional page, must be levied in accordance with the fee structure. By changing the wording to include MUST instead of MAY will make it clear that all counties will have to charge including the page that is added. This will reduce amount of inconsistency

For these reasons I support SB 2340 with these amendments, and respectfully ask for a DO PASS on this bill.

Thank you for your time and I will answer questions you may have for me.

Beth A. Knutson

SB2340 Amendments needed which were inadvertently missed in the Senate.

Page 2, Line 7-10:

- (4) “A space of ~~at least four inches by three and one half inches [10.16 by 8.89 centimeters]~~ square three inches [7.62 centimeters] must be provided ~~on~~ across the top of the first ~~or last~~ page of each instrument for the recorder’s recording information. ~~If~~ Except as provided in paragraph 5, if recording information can only be placed on the reverse side of an instrument ~~If no~~ three inch margin across the top of the first page the recorder ~~may~~ must add a page, and the charge for the document, including the ~~and an~~ additional page ~~charge, must~~ may be levied in accordance with the fee structure.”

Reason: The original bill had a paragraph 5, paragraph 5 no longer exists and direction to the county recorder is needed when the margin requirement set forth in the paragraph is not met.

Page 2, Line 17-18:

“...additional document number or book and page...”

Reason: County records are referred to as either “document numbers” or where the document that was recorded exists in the counties records which is referenced by “book **and page**”. To easily find the recorded document a searcher needs to look up the document number or know where the document is found by book and page number.

SB 2340

#7

3-16-17

TO: Chairman Klemin

From: Carrie K. Krause, Wells County Recorder

RE: SB 2340

Chairman Klemin and Committee Members,

My name is Carrie K. Krause and I am the Wells County Recorder. I would like to express support for SB 2340 requesting a change to the County Recorders fee schedule.

Since the 2015 legislative session, after a bill was introduced to have a legislative study of recorder fees, a task force was formed to find a predictable fee that worked with all recording partners involved. For the past two years we worked diligently to attain a predictable fee that is fair to all the parties involved and I believe this is the best solution for that predictable fee.

I ask for a DO PASS on SB2340

Thank you

Carrie K. Krause

Wells County Recorder

SB 2340

#8

3-16-17

TO: Chairman Rep. Lawrence R. Klemin

Political Subdivisions Committee

From: Vicki Kubat, Cavalier County Recorder (Langdon, ND)

RE: SB2340

Chairman Klemin and Committee Members,

My name is Vicki Kubat and I am the Cavalier County Recorder. I would like to encourage your support for SB 2340 requesting a change to the County Recorders fee schedule.

Since the 2015 legislative session, our Recorders Association has worked very hard to come up with a flat fee or predictable fee that was fair and equitable with all recording partners involved. I believe that this SB 2340 will do just that.

I ask for a DO PASS on SB2340

Thank You

Vicki Kubat

Cavalier County Recorder

Proposed Amendment to Engrossed SB 2340
Version 17.0849.05000

3-17-17

Pat Ward

March 14, 2017

House – Political Subdivisions Committee

Page 2, line 7, remove “Except as provided in paragraph 5, if”

Page 2, line 8 and 9, overstrike “recording information can only be placed on the reverse side of an instrument,” and insert immediately thereafter “If there is no three-inch margin across top of the first page”

Page 2, line 9, replace “may” with “must”

Page 2, line 10, overstrike “must” and immediately thereafter insert “may”

Page 2, line 10, after “levied” insert “in accordance with the fee structure”

Page 2, line 17 and 18, remove the overstrike over “and page”

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2340

In lieu of the amendments as printed on pages 1052 and 1053 of the House Journal, Engrossed Senate Bill No. 2340 is amended as follows:

Page 1, line 8, replace "fifteen" with "twenty"

Page 1, line 9, replace "four" with "six"

Page 1, line 9, replace "sixty" with "sixty-five"

Page 1, line 10, replace "four" with "six"

Page 2, line 7, remove the overstrike over "f"

Page 2, line 7, remove "Except as provided in paragraph 5, if"

Page 2, overstrike line 8

Page 2, line 9, overstrike "instrument" and insert immediately thereafter "a space of at least three inches [7.62 centimeters] is not provided across the top of the first page"

Page 2, line 9, replace "may" with "shall"

Page 2, line 10, remove the overstrike over "must"

Page 2, line 10, remove "may"

Page 2, line 10, after "levied" insert "in accordance with the fee structure"

Page 2, line 14, replace "fifteen" with "twenty"

Page 2, line 15, replace "four" with "six"

Page 2, line 15, replace "sixty" with "sixty-five"

Page 2, line 16, replace "four" with "six"

Page 2, line 17, remove the overstrike over "and"

Page 2, line 18, remove the overstrike over "page"

Re-number accordingly

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2340

Introduced by

Senators Meyer, Burckhard, Casper

Representatives Beadle, Louser, Delmore

1 A BILL for an Act to amend and reenact subsection 1 of section 11-18-05 of the North Dakota
2 Century Code, relating to fees charged by a county recorder for filing mortgage disclosures.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Subsection 1 of section 11-18-05 of the North Dakota Century
5 Code is amended and reenacted as follows:

6 1. For recording an instrument affecting title to real estate:

7 a. Deeds, mortgages, and all other instruments not specifically provided for in this
8 subsection, ~~ten~~ fifteen ~~twenty~~ dollars for the first page and three dollars for each
9 additional paged documents containing one to ~~four~~ six pages and ~~sixty~~ sixty-five
10 dollars for documents containing more than ~~four~~ six pages plus three dollars for
11 each additional page after the first twenty-five pages. In addition, for all
12 documents recorded under this section that list more than ~~five~~ ten sections of
13 land, a fee of one dollar for each additional section listed which is to be recorded
14 in the tract index. Three dollars of the fee collected for ~~the first page of each~~
15 instrument recorded under this subdivision must be placed in the document
16 preservation fund.

17 (1) "Page" means one side of a single legal size sheet of paper not exceeding
18 eight and one-half inches [21.59 centimeters] in width and fourteen inches
19 [35.56 centimeters] in length.

20 (2) The printed, written, or typed words must be considered legible by the
21 recorder before the page will be accepted for recording and, unless the form
22 was issued by a government agency, must have a font size equal to or
23 larger than ten point calibri.

- 1 (3) Each real estate instrument must have a legal description considered to be
2 adequate by the recorder before such instrument will be accepted for
3 recording.
- 4 (4) A space of at least ~~four inches by three and one-half inches [10.16 by~~
5 ~~8.89 centimeters]~~ square three inches [7.62 centimeters] must be provided
6 ~~en~~ across the top of the first or last page of each instrument for the
7 recorder's recording information. ~~If~~ Except as provided in paragraph 5, if
8 ~~recording information can only be placed on the reverse side of an~~
9 ~~instrument~~ a space of at least three inches [7.62 centimeters] is not
10 provided across the top of the first page, the recorder ~~may~~ shall add a page,
11 and an additional page charge ~~must~~ may be levied in accordance with the
12 fee structure.
- 13 b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending,
14 or extending more than ~~one instrument~~ ten instruments previously recorded in the
15 county in which recording is requested, ~~ten dollars for the first page and three~~
16 ~~dollars for each additional page plus a fee of~~ fifteen twenty dollars for documents
17 containing one to ~~four~~ six pages, ~~sixty~~ sixty-five dollars for documents containing
18 more than ~~four~~ six pages plus three dollars for each additional page after the first
19 twenty-five pages, and three dollars for each ~~such~~ additional document number
20 or book and page after the first ten referenced instruments. In addition, for all
21 documents recorded under this section which list more than ~~five~~ ten separate
22 sections of land, a fee of one dollar for each additional section listed which is to
23 be recorded in the tract index. Three dollars of the fee collected for ~~the first page~~
24 ~~of each instrument recorded under this subdivision must be placed in the~~
25 document preservation fund.
- 26 c. Plats, twenty dollars for twenty lots or fewer and fifty dollars for more than twenty
27 lots.
- 28 d. All instruments presented for recording after June 30, 2001, must contain a
29 one-inch [2.54-centimeter] top, bottom, or side margin on each page of the
30 instrument for the placement of computerized recording labels. An instrument that

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- 1 does not conform to this margin requirement may be recorded upon payment of
- 2 an additional fee of ten dollars.