

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIAL PROCESS COMMITTEE

Monday, February 27, 2006
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Stanley W. Lyson, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Stanley W. Lyson, Carolyn Nelson, Constance Triplett; Representatives Ron Carlisle, Dawn Marie Charging, Duane DeKrey, Lois Delmore, Kathy Hawken, Dennis Johnson, Lawrence R. Klemm, Kim Koppelman, William E. Kretschmar, Shirley Meyer

Members absent: Senator John T. Traynor; Representative Joyce Kingsbury

Others present: See attached appendix

It was moved by Representative Delmore, seconded by Senator Nelson, and carried on a voice vote that the minutes of the January 10, 2006, meeting be approved.

NORTH DAKOTA LOTTERY REPORT

Chairman Lyson called on Mr. Chuck Keller, Director, North Dakota Lottery Division, for a report on the operations of the lottery. Mr. Keller said serving as the director of the North Dakota Lottery Division has been a challenging job. He said the lottery is the state's newest government-sponsored business enterprise. He said the mission of the lottery is to maximize net proceeds for the benefit of the state by promoting entertaining games; providing quality customer service to retailers and players; achieving the highest standards of integrity, security, and accountability; and maintaining public trust.

Mr. Keller said the lottery employs eight full-time employees and two part-time operators. For the 2003-05 biennium, he said, the lottery's operating revenue was \$25.3 million. He said this was more than twice the amount initially projected. He said the state general fund revenue was \$7.19 million. He said this was five times the amount initially projected. For the 2005-07 biennium, he said, the lottery's projected sales are \$38.5 million with state general fund revenue of \$10 million. He said the lottery is on track to meet or exceed those projections. He said for the period March 25, 2004, through December 31, 2005, total sales were \$35.1 million. He said for the period March 25, 2004, to date, total operating revenue has exceeded \$40 million. He said there have been nearly 1.7 million winning tickets.

Mr. Keller said at least once per year the lottery transfers its net proceeds, less \$200,000 allocated to the compulsive gambling prevention and treatment fund and the Multi-State Lottery Association grand

prize and set prize reserve amounts, to the State Treasurer for deposit in the state general fund. He said this state's 32 cents per dollar in net proceeds is the highest among states of similar size. He said North Dakota is the only state that is restricted to multistate online lottery games.

Mr. Keller said to maximize revenue for the state general fund, the lottery must offer exciting and attractive games that add value to the lottery's product mix for players to play, license retailers that are in convenient locations to sell tickets, create effective annual marketing plans, provide quality customer service to retailers and players, and control operating expenses. He said total sales are highly affected by the size of the game's jackpot. He said larger jackpots generate higher sales. He said during the 2005-07 biennium, the lottery plans to launch one or two new games that add value to the lottery's product mix. He said one of those games--2by2--was launched on February 2, 2006. He said the lottery launched a subscription service on November 1, 2005. He said to date there are 527 subscriptions for \$45,760 in subscription sales.

Mr. Keller said in accordance with state law, the lottery established a debt setoff program in which a lottery prize of \$600 or more is used to set off a delinquent debt owed to a state agency or collected through a state agency on behalf of a third party. He said as of February 23, 2006, there have been 11 prize claims of \$600 or more. He said there have been three claims against those prizes totaling \$2,904.

Mr. Keller said Scientific Games International, Inc., provides the lottery with online and secondary online gaming systems hardware, games management system software, retailer telecommunications network, 400 lottery terminals, electronic scrolling and logo backlit signs, primary and secondary internal control systems, and five field technicians to provide service to lottery retailers. He said the lottery does not own this equipment. He said the lottery's online and secondary online gaming systems are collocated with the primary and secondary online gaming systems of the Montana lottery at a Scientific Games-owned computer data center in Helena, Montana. He said the lottery's online gaming systems will be moved to Oklahoma City, Oklahoma, in March 2006.

Mr. Keller said a five-member Lottery Advisory Commission serves as a policy advisor to the Attorney General and the director of the lottery and as the audit

committee of the lottery. He said the commission provides an independent perspective on issues and operation of the lottery and presents ideas and recommends solutions while it represents the best interests of the state, public, and lottery industry. He said the commission meets at least quarterly and has met 18 times since the members were appointed on July 1, 2003. He said a volunteer 12-member Retailer Advisory Board is an informal board that serves as a front-line retailer and player advisor to the lottery. He said the board meets periodically and has met three times since members were appointed in spring 2005. Mr. Keller submitted a written copy of the report, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Lyson, Mr. Keller said a person must be 18 years of age to subscribe to the lottery service.

In response to a question from Senator Nelson, Mr. Keller said the burden is on the retailers to ensure that the persons who are buying lottery tickets are at least 18 years of age. He said there have not been any complaints or reports from retailers that anyone under age 18 has tried to buy tickets.

Representative Delmore said the lack of problems with the lottery is attributable to the due diligence of Mr. Keller.

In response to a question from Representative Delmore, Mr. Keller said there has been little turnover in retail sites. He said they lost 10 retail sites during the first year. He said eight of those sites lost were liquor stores. He said the lottery requires retailers to have a minimum of \$250 per week in ticket sales. He said if a site does not maintain the minimum, a letter is sent to the retailer. He said the result may be the issuance of a conditional license. He said there are plans for removing terminals at three locations. He said the Department of Human Services contracts for the gambling addiction treatment services that are funded with the \$400,000 biennial appropriation. He said the lottery is the only industry that is funding gambling addiction treatment in the state.

In response to a question from Representative Klemin, Mr. Keller said the lottery has a disaster recovery plan in place. He said the plan includes sending the staff to Helena, Montana. He said the staff could then duplicate everything that happens onsite in the lottery's office here at the Capitol.

Representative Hawken said Mr. Keller's work with the lottery has been very professional and his hard work is appreciated. She said research indicates that the lottery is not the type of gambling that is a major contributor to compulsive gambling.

In response to a question from Representative Koppelman, Mr. Keller said he believes the saturation point for North Dakota is five or six lottery games. He said the games offered have a range of odds. He said the lottery's plan is to launch one or two new games during this biennium. One of the two possible games was launched in early February. He said if a fifth game were to be added, it would be a "niche" game.

He said it was projected that the newest game--2by2-- would result in \$950,000 in sales in the first 12 months. He said almost \$500,000 in 2by2 ticket sales were made in the first four weeks. He said North Dakota has taken all four 2by2 jackpots that have been won during those four weeks. He said the lottery is the state's newest business enterprise and is similar to the Mill and Elevator and the Bank of North Dakota. He said there are many eyes on the lottery, especially those of legislators. He said it is important to keep the product line fresh. He said the games are ever changing.

In response to a question from Representative Meyer, Mr. Keller said as of December 31, 2005, the total value of unclaimed winning lottery tickets was \$483,000. He said about \$7,000 to \$8,000 of prize money per week goes unclaimed. He said the money from unclaimed tickets is used for expenses and lottery net proceeds.

In response to a question from Representative Kretschmar, Mr. Keller said the 400 lottery terminals are located in 127 cities. He said there are terminals in remote parts of the state, such as Fortuna and Marmarth, which are not meeting the required sales quota. He said the lottery has to strike a balance between trying to service all areas of the state and looking at the bottom line. He said he believes North Dakota should have its own lottery.

In response to a question from Representative Klemin, Mr. Keller said the other multistate lottery in the United States is Mega Millions. He said Mega Millions is a competitor to the Multi-State Lottery Association. He said the Multi-State Lottery Association would permit one of its members to be a member of Mega Millions, but Mega Millions prohibits its members from being members of the Multi-State Lottery Association. He said there are rumors that the two organizations may join forces on a single game.

JUDICIAL CONDUCT STUDY

Chairman Lyson called on Mr. Bill Neumann, Executive Director, State Bar Association of North Dakota, Bismarck, for testimony regarding the findings and recommendations of the Judicial Selection Task Force. Mr. Neumann said the task force has identified three areas of concern regarding judicial elections, including the North Dakota Code of Judicial Conduct; the North Dakota election statutes, including North Dakota Century Code (NDCC) Section 16.1-11-08; and the method of selecting judges in North Dakota. Regarding the first area of concern, he said, the task force has received reports on the activities of the Supreme Court Judiciary Standards Committee. He said that committee has met several times and has recommended to the Supreme Court several amendments to the Code of Judicial Conduct intended to meet the requirements of *Minnesota Republican Party v. White* and the *Family Alliance* lawsuits but at the same time minimize the undesirable effects of those rulings. He said changes already adopted by the court include a restriction on judges and

candidates making "pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office," and a definition of "impartiality" that includes not only absence of bias or prejudice for particular parties but also "an open mind in considering issues that may come before the judge." He said recommendations that have been forwarded to the Supreme Court for its consideration include retaining the limitations on active involvement with "political organizations," but adding an expanded definition of "political organization" that would include not only political parties but also organizations whose purpose is to "support or oppose the continuation, amendment, repeal, enactment, initiative or referendum of any constitutional, statutory or regulatory provision." The basis for this proposed change is the Eighth Circuit's criticism of the old canon's ban on political involvement as underinclusive. He said the Judiciary Standards Committee also has recommended adding comments explaining the state's compelling interest in maintaining the impartiality of the judiciary, including the need to keep judges and judicial candidates from undue political influence and inappropriate political pressure in order to preserve public trust and confidence in the judicial system.

Mr. Neumann said the task force understands it is the intent of the Supreme Court to have all amendments in place in time for the 2006 election cycle. He said the task force is closely following the work of the Judiciary Standards Committee and the proposed changes to the Code of Judicial Conduct.

Addressing the second area of concern, Mr. Neumann said the task force received an oral report from Assistant Attorney General Tag Anderson. He said Mr. Anderson reported that his research indicates the *White* and *Family Alliance* cases have no impact on the use of a no-party ballot in North Dakota and therefore raise no concern for the constitutionality of NDCC Section 16.1-11-08 as long as the possibility of endorsement by political parties or other interest groups is permitted.

Mr. Neumann said much of the task force's discussions have centered on the method of judicial selection in North Dakota. He said it was the consensus of the task force that the subject of judicial selection in North Dakota requires further study before any recommendation can be made to this committee. He said the chairman of the task force has appointed a subcommittee to consider the matter and make recommendations to the task force. He said the task force will also suggest that the State Bar Association of North Dakota promulgate a position statement regarding the exercise of free speech by judicial candidates similar to a statement produced by the Minnesota Bar Association. Mr. Neumann submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Neumann said the Minnesota position statement recognizes the right for judges and judicial

candidates to say certain things but recognizes the importance of maintaining dignity and to use discretion.

In response to a question from Representative Klemin, Mr. Neumann said there is a constitutional requirement that a judge be recused or disqualified if the judge has commented previously on an issue that is before the court. He said recusals and disqualifications may result in a shortage of judges available to hear cases. He said if judges are disqualified because of statements they make, the state may need more judges.

In response to a question from Representative Koppelman, Mr. Neumann said North Dakota voters may be put off by too much political pandering by judicial candidates. He said the proposed canons would limit political endorsements. He said if the proposed canons stand up to the requirements set forth in the federal cases, seeking an endorsement would be prohibited. He said the proposed canons would permit an organization to give a letter of support.

In response to a question from Representative Hawken, Mr. Neumann said the proposed canons would not prevent a judge or judicial candidate from giving an opinion but would not require the judge or judicial candidate to give an opinion.

In response to a question from Representative Delmore, Mr. Neumann said as long as the judicial canons require disqualification for making statements, it would be a violation of the canons to do so. He said a judge who fails to disqualify himself or herself could be subject to discipline that could include the removal from office.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS UPDATE

Chairman Lyson called on Ms. Robin Huseby, Executive Director, Commission on Legal Counsel for Indigents, Valley City, for testimony regarding the status of the commission. Ms. Huseby said she has been interviewing for staff for the new public defender offices to be set up in Williston, Minot, and Dickinson. She said there will be two attorneys and one administrative staff person in the Williston and Dickinson offices. She said there will be three attorneys, one administrative staff person, and a paralegal or legal assistant in the Minot office. She said the commission will be making offers of employment within a week. She said the offices will be operational by April 15, 2006. She said there will be a transition time when the courts and present counsel for indigents will be assigning new indigent cases to the public defenders. She said it is important that the transition goes smoothly and does not disrupt the judicial process in the districts in which public defenders will be located. She said the public defenders will be taking cases for the large cities and surrounding counties in their districts. She said the local bar associations will still be providing conflict

counsel in all cities as it is inevitable in any situation that there will be some conflicts. She said the conflict attorneys will be working under the auspices of the commission and local public defenders. She said the commission is very excited about the public defender offices and believes that the offices will be a real benefit to the court system and clients.

Ms. Huseby said the commission meets monthly. She said the commission's next meeting is on March 23, 2006, in the Fort Union Room of the State Capitol. She said the members of the Judicial Process Committee are encouraged to attend if possible. She said the final member of the commission has been appointed. She said the new commission member is Mr. Ted Seibel of Harvey. She said the commission is conducting its first annual attorney training in May. She said Mr. Robert Spangenberg of the Spangenberg Group as well as one other speaker will be speaking at the training. She said she is working with the Supreme Court regarding budget issues. Ms. Huseby submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Lyson, Ms. Huseby said the public defender offices are being established in the areas of the state in which there were not any attorneys who were willing to take the indigent defense contract. She said there is not a concern that the public defenders will be taking work away from private attorneys.

In response to a question from Representative Meyer, Ms. Huseby said the indigent defense cases currently are being handled on a case-by-case basis in the areas in which a public defender office will be located. She said all existing cases will continue to be handled by the attorneys who are handling those cases. She said the public defenders will only be assigned new cases.

In response to a question from Senator Lyson, Ms. Huseby said even in areas with a public defender, there still will be a need to use private attorneys to handle conflict cases.

IDENTITY THEFT STUDY

Chairman Lyson called on Mr. Matt Schmitz, Postal Inspector, United States Postal Service (USPS), Fargo, for testimony regarding methods used by the United States Postal Service to combat identity theft. Mr. Schmitz said the postal inspector's office is the law enforcement branch of USPS. He said postal inspectors handle cases relating to mail theft, mail fraud, and burglary. He said identity theft is a big issue for USPS. He said 4 percent of people who have had their identity stolen said the theft occurred through the United States mail. He said one way identity is stolen is by stealing mail either from a mailbox or from a person's trash. He said, however, most cases involve an item fraudulently mailed through USPS. He said USPS uses a financial crimes data base to track identity theft cases. He said customers can report cases to this data base. He

said USPS also uses education to combat identity theft. He said USPS conducts a national consumer week once per year. He said USPS gives presentations to the public on how to prevent identity theft. He said USPS encourages people to mail their letters by using the blue boxes rather than by using the flag on their home mailboxes. He said the convenience checks sent by credit card companies are one of the most sought after items by thieves. He said identity theft is one of the fastest growing crimes in the country. He said USPS uses a change of address validation program to prevent fraudulent attempts to change an address.

In response to a question from Representative Delmore, Mr. Schmitz said USPS attempts to educate people on the advantages of having locked mailboxes. He said USPS encourages locked mailboxes but often cost is an issue. He said locked mailboxes significantly reduce the incidents of mail theft.

Chairman Lyson called on Mr. Doug Merkel, Postmaster, Bismarck, for testimony regarding identity theft. Mr. Merkel said education is the key to reducing identity theft. He said during national consumer week, USPS sets up booths at shopping centers to provide information on how to protect oneself from identity theft. He said information is also available on www.usps.com. He said USPS processes 45 million change of address requests each year. He said USPS requires change of address cards to be signed. He said USPS sends a confirmation of the change of address to both the person's old address and the person's new address. The confirmation letter tells the recipient to contact USPS if the address change is not valid. He said most new housing developments use a locked mailbox system. He said in established areas, USPS cannot change the mode of delivery unless the customers contact USPS. Mr. Merkel and Mr. Schmitz distributed materials that USPS uses to educate customers about identity theft, copies of which are on file in the Legislative Council office.

In response to a question from Senator Lyson, Mr. Merkel said USPS does not have any plans to require all customers to have locked mailboxes.

In response to a question from Representative Carlisle, Mr. Schmitz said if the United States Attorney does not have sufficient evidence to prosecute in federal court for stealing mail, the case may be referred to state court.

In response to a question from Representative Meyer, Mr. Schmitz said there are many jurisdictional issues when dealing with international mail crimes. He said lottery scams create big problems for USPS. He said USPS has two postal inspectors who only work on foreign lottery scams.

In response to a question from Representative Meyer, Ms. Marilyn Foss, North Dakota Bankers Association, Bismarck, said banks are very attentive to requiring identification from customers. She said banks are very concerned about identity theft.

In response to a question from Senator Nelson, Mr. Schmitz said USPS gives presentations to groups to provide education on identity theft.

Chairman Lyson called on Mr. Parrell D. Grossman, Director, Consumer Protection and Antitrust Division, Attorney General's office, for testimony regarding the identity theft study. Mr. Grossman said the Attorney General would like the Judicial Process Committee to consider legislation that would prohibit third parties from "assisting and facilitating" consumer fraud upon the consumers in our state. He said as consumer fraud proliferates, it becomes more organized and more complicated. He said this often requires the assistance of third parties, such as third-party processors, in order to facilitate and perpetrate the fraud. He said these third parties are not the individuals directly engaged in the fraudulent solicitations but they are critical to the process of completing the fraud. He said the telemarketing fraud industry is largely dependent upon third-party processors, which are businesses that handle the mechanics of taking money out of consumers' bank accounts and transferring that money to the fraudulent telemarketers. He said the Attorney General has started to investigate the third parties that facilitate fraudulent activity by, for instance, collecting payments from North Dakota victims. He said the Attorney General would like clear legislation authorizing the Attorney General to take enforcement action against third parties that facilitate or assist others who are initially more directly engaged in fraudulent conduct. He said the Attorney General would like the Judicial Process Committee to consider proposed legislation that would provide authority that is similar to the authority granted to federal agencies to prosecute persons engaged in assisting and facilitating consumer fraud in North Dakota. Mr. Grossman submitted written testimony and a copy of proposed legislation, copies of which are on file in the Legislative Council office.

In response to a question from Senator Nelson, Mr. Grossman said the Attorney General is vigorously enforcing the "do not call" list. He said the Attorney General's office has conducted more than 60 investigations of complaints. He said complaints are taken seriously and every complaint is investigated.

In response to a question from Representative Carlisle, Mr. Grossman said the callers who are trying to scam people do not care whether you are on a do not call list. He said their purpose is to steal money from you.

In response to a question from Representative Delmore, Mr. Grossman said the Attorney General is considering legislation regarding the selling of cell phone call lists.

Chairman Lyson called on Representative Klemin for testimony regarding the identity theft study. Representative Klemin said 37 states are considering or have enacted legislation that allows a person to request that a credit reporting agency put a "credit

freeze" on the person's credit history. He said this credit freeze would prohibit the credit reporting agency from providing the person's credit report without the authorization of the owner. Representative Klemin provided information regarding the credit freeze laws, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Meyer, Representative Klemin said there is not a federal law that allows a person to authorize a credit freeze. He said he is not aware of any federal preemption in this area.

In response to a question from Representative Koppelman, Representative Klemin said he is not sure if the legislation in the other states only allows for a credit freeze in the case of identity theft or if the freeze can be put on at any time. He said the purpose of the legislation is to prevent someone from getting your credit report without your authorization.

In response to a question from Representative Koppelman, Mr. Grossman said the Attorney General considered introducing similar legislation in 2005. He said the legislation is somewhat controversial in the credit reporting community. He said such a freeze would cause a person delays in obtaining credit. He said this is one area that has not been preempted by federal legislation. He said states are free to implement this type of legislation. He said he would work with Representative Klemin on the issue.

Ms. Foss said the North Dakota Bankers Association has been tracking credit freeze legislation. She said uniformity among states is a concern for banks. She said different states may enact different standards for lifting a freeze. She said in all the states that have passed such legislation, the person must be an identity theft victim to use the credit freeze. She said one state is considering the authorization of a credit freeze without the requirement that there must be a victim. She said the credit freeze would impact more than delays in applying for loans. She said credit histories are used for renewing insurance and credit cards. She said this is a complex subject.

Representative Meyer said a credit freeze would give consumers more control over their credit. She said she is aware of a situation in which a person's insurance premiums were increased because of too many credit history requests.

Representative Klemin said the purpose of bringing this idea before the committee is to start a discussion on the topic. He said the committee should receive more information on the legislation enacted and being considered in other states.

Representative Koppelman said the Insurance Commissioner should be invited to a future meeting to discuss Representative Meyer's concerns about insurance premiums.

EMINENT DOMAIN STUDY

Chairman Lyson called on Mr. Casey Chapman, Legal Counsel, North Dakota Association of Realtors, Bismarck, regarding the eminent domain study.

Mr. Chapman said he was asked by Mr. Claus Lembke of the North Dakota Association of Realtors to give his opinion on whether the proposed constitutional amendment on eminent domain would permit the government to resell a parcel of land that had been taken by eminent domain. He said Mr. Clair Watne shared his e-mail response to that question with the Judicial Process Committee at the committee's January 10, 2006, meeting in Minot. He said when he initially read the second sentence of the proposed initiated measure, he read it from a procedural point of view. He said in a recent article in the *Gavel*, which was written by Ms. Heidi Heitkamp and Mr. Howard Swanson, Mr. Swanson's position was that if the measure passed, property taken by eminent domain could not be resold for private use. He said Ms. Heitkamp agreed with that position and added that the government should take only the amount of land that is necessary for public use. He said after reviewing the measure, he tends to agree that land taken by eminent domain cannot be resold for private use. He said this is an interpretation that may be better than his interpretation. Mr. Chapman provided information that summarizes each state's constitutional provisions, statutes, and case law governing the use of eminent domain, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Klemin, Mr. Chapman said the North Dakota Association of Realtors is concerned about the *Ke/lo* decision and the proposed initiated measure may address those concerns. He said the association supports the proposed initiated measure.

Chairman Lyson called on Mr. Ladd Erickson, McLean County State's Attorney, Washburn, for testimony regarding the initiated measure. Mr. Erickson said he is concerned about the impact the proposed initiated measure would have on projects in McLean County. He said he is concerned about the government's ability to get easements. He said he is concerned about the distinction between fee title takings and easements. He said easements are a part of eminent domain. He said easements are necessary to agribusiness and development. He said any legislation dealing with changes to eminent domain should also address concerns about easements. Mr. Erickson submitted written information, a copy of which is on file in the Legislative Council office.

Chairman Lyson called on Ms. Heidi Heitkamp for testimony regarding the eminent domain study. Ms. Heitkamp said there is nothing in the proposed initiated measure that would affect the continuation of traditional government services. She said the measure does not prohibit the taking of property to build a road or to provide any other essential government service to an economic development project. She said the measure is not ambiguous on this point. She said the measure only prevents the taking of property when any or all of the motivation for the taking is economic development, including an

increase in tax base, tax revenue, employment, or general economic health. She said on its face, the measure does not prevent the taking of property for public uses, such as a public road, park, or schools. For example, she said, assume a pasta plant is being built and to accommodate the transportation needs of the public in getting access to and from the project, the county needs to provide a road or improve an existing road to the project. She said as long as any person in the public would have access to that road, the taking of property would be permissible under this measure because the public purpose of the taking is to provide transportation. She said it is not fatal to the taking that the road would also have an incidental economic benefit to the government and the people and businesses served by that government.

Ms. Heitkamp said the provision of the measure which prohibits the selling of land taken by eminent domain to another private purpose will not prevent the use of eminent domain in public projects, such as the widening of the Burdick Expressway. She said the measure does not prevent property taken by eminent domain from ever being transferred to any one other than the original owner or the heirs without the approval of the original owner. She said this is true regardless of the public purpose of the taking. She said the measure does not prevent the property from being taken in the first place as long as the public use meets the constitutional standards. She said this restriction will not prevent the sale of land purchased by the government. She said it only applies to land taken by eminent domain. She said another criticism is that as a result of this measure, unused government property will remain idle and not available for development. She said she rejects that argument because it presupposes that only the government can develop land. She said she believes that the original owner could also develop the residual property and put that property to use. She said it is governmental arrogance to suggest otherwise. She said perhaps the greatest complaint about this measure is that if it passes, it will be more difficult for the government to take property. She said that is the sponsor's intention. Ms. Heitkamp submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Lyson, Ms. Heitkamp said if the stated purpose of a Department of Transportation project is to provide public transportation, then the proposed measure would have no effect on the taking of land for that project. She said there may be a problem if the stated purpose of a project is economic development.

In response to a question from Representative Klemin, Ms. Heitkamp said land that is no longer needed for a public use could be returned to any successor in interest or assignment. She said if the measure passes there may be a need for legislation to address the transferability of property.

In response to a question from Representative Carlisle, Ms. Heitkamp said the measure would not affect the taking of land for a road that will be

available for public use. She said it is the job of the government to provide public transportation.

Chairman Lyson called on Mr. Curly Haugland for testimony regarding the eminent domain study. Mr. Haugland said the measure would not affect the ability of the government to take land for public use, such as a public road. In most cases, he said, the property owners are willing to sell their property. He said the term economic development is used very loosely.

No further business appearing, Chairman Lyson adjourned the meeting at 3:25 p.m.

Vonette J. Richter
Committee Counsel

[ATTACH:1](#)