

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### **JUDICIARY B COMMITTEE**

Wednesday and Thursday, May 8-9, 2002  
Dakota and Evergreen Rooms, Best Western Badlands Inn  
Dickinson, North Dakota  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Lois Delmore, Chairman, called the meeting to order at 9:00 a.m., Wednesday, May 8, 2002.

**Members present:** Representatives Lois Delmore, David Drovdal, G. Jane Gunter, Lyle Hanson, Dennis E. Johnson, William E. Kretschmar, Jon O. Nelson, Todd Porter, Dorvan Solberg, Elwood Thorpe; Senators Dennis Bercier, Thomas Fischer, Ben Tollefson, John T. Traynor, Tom Trenbeath

**Members absent:** Representative Curtis E. Brekke; Senator Michael A. Every

**Others present:** See attached appendix

**It was moved by Representative Drovdal, seconded by Representative Porter, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.**

#### **FEES AND POINT DEMERITS FOR TRAFFIC OFFENSES**

##### **Review of Bill Draft Relating to Speed Limits**

At the request of Chairman Delmore, committee counsel reviewed a bill draft relating to speed limits. He said the bill draft raised the speed limit on the interstates to 75 miles per hour and created one speed limit of 65 miles per hour for paved two-lane highways instead of a 65 miles per hour for day and 55 miles per hour for night speed limit on paved two-lane highways.

Representative Kretschmar said having a consistent 65 miles per hour speed limit on paved two-lane highways is the most important aspect of the bill draft. He requested that committee counsel decouple the bill draft on the increased speed limits. He said he is for increased penalties to ensure compliance with the speed limits.

Representative Thorpe said raising the speed limit from 70 to 75 miles per hour on the interstates will not do much to change the behavior of drivers. He said he is opposed to the increase.

Representative Solberg said he is opposed to an increase in the interstate speed limit to 75 miles per hour. He said this proposal failed during the 2001 session and was vetoed by the Governor in

another bill. He said people now drive at least 75 miles per hour on the interstate.

Representative Delmore said the Governor vetoed the increase in speed limit because of a lack of corresponding increases in fees and points.

Representative Nelson said the removal of the 55 miles per hour nighttime speed limit for two-lane paved highways is more important than an increase to 75 miles per hour on the interstates which has been defeated previously. He said the Highway Patrol wants increased enforcement on safety measures, including seatbelts, if there is an increase in speed limits. He said law enforcement has great influence and the committee should see what law enforcement wants so that law enforcement would not be against any speed limit increase proposed by the committee. He said the committee may need to compromise and consider safety legislation proposed by law enforcement.

Senator Trenbeath said he is not in favor of primary seatbelt enforcement. He said he wears his seatbelt but does not think government should mandate this use. He said government does not mandate what you should eat even though there are things that are bad for a person to eat. He said wearing a seatbelt, like diet, is a matter of personal choice.

##### **Review of Bill Draft Relating to Fees and Points for Speeding**

At the request of Chairman Delmore, committee counsel reviewed a bill draft that would create a singular point and singular fee scale for driving in excess of the speed limit.

Representative Drovdal said he introduced the fines and fees bill draft for discussion purposes. He said he has received many comments from citizens and most of it is positive. He said most legislators have given him negative comments. He said the \$5 per mile over the limit fee is much less than what other states charge for speeding. He said home rule cities make their own fees and they are generally more than \$5 per mile over the limit. He said he would be open to leaving the points as they are and changing the fees. He said there is some concern

with increased insurance rates if points are increased above the level that is reportable to insurance companies.

Representative Porter said the Legislative Assembly changed the point scheme last session to make them more consistent. He said points are not used in most states and speed limits should be enforced primarily through fines. He said enforcing speed limits through points gives insurance companies an excuse to raise rates.

### **CENTRALIZED PROCESS FOR TRAFFIC VIOLATION ADMINISTRATION**

At the request of Chairman Delmore, committee counsel presented a bill draft creating a centralized process for state noncriminal traffic offense administration.

In response to a question from Senator Traynor, committee counsel said if there is a citation issued in Devils Lake for a violation of a city ordinance, there will be no change in the procedure because this bill draft deals with state noncriminal traffic offenses.

Ms. Paulette Reule, Clerk of Court, Stark County, testified in support of the bill draft. She said most traffic citations are not a judicial function and should be transferred so that clerks may focus on judicial functions. She said the Stark County clerk of court's office is state-funded and a .25 full-time employee is allocated to traffic offense administration. She said she is not a member of the Clerks of Court Association and does not know if the Clerks of Court Association has a position on the bill draft.

Representative Delmore said she spoke with the clerks of court in Grand Forks, and she said they supported the bill draft because it removes duplication in data entry.

Ms. Marsha Lembke, Drivers License and Traffic Safety Division, Department of Transportation, presented testimony on the study. She said the department wants to work with all interested parties to make a better process for the disposition of state noncriminal traffic offenses. She said this would better serve the driving public. She said a centralized process for the administration of traffic offenses could be placed anywhere in this state but would be supervised by the department.

Ms. Lynn Heinert, Driver Improvement Services Manager, Drivers License and Traffic Safety Division, Department of Transportation, presented testimony in support of the bill draft. Her testimony was based upon two handouts summarizing the current citation process and the proposed centralized citation process. She said a state law requires the court to notify the Department of Transportation within 10 days of a conviction for a driving offense. She said she has heard that federal legislation may require the same notification for commercial driver's licenses. She said this bill draft would speed up the process. A copy of

her handouts is on file in the Legislative Council office.

Senator Trenbeath said he does not want the department to sacrifice efficiency for service. He said local entities are known for providing personal and friendly service.

In response to a question from Senator Trenbeath, Ms. Heinert said service is a concern of the department. She said data entry would be outsourced, but the division would be in charge of the administration of the process.

Representative Porter said there were concerns after the child support system was centralized in that it was not providing good service.

In response to a question from Representative Drovdal, Ms. Heinert said the department's records are protected from terrorism by being stored offsite and out of state.

Mr. Ted Gladden, Assistant State Court Administrator for trial court operations, Supreme Court, answered questions for the committee. In response to a question from Representative Nelson, Mr. Gladden said the fees for traffic offenses used to go to the counties, but now these fees go to the state. He said electronic ticketwriters would streamline the process. He said the economies through a centralized system are gained by one-time data entry by people with that sole responsibility.

In response to a question from Representative Nelson, Mr. Gladden said 39 county clerks of court are being automated in the state system soon.

Representative Nelson said history shows that most centralized processes are located in Bismarck. He said he was concerned with this process being placed in Bismarck.

In response to a question from Representative Nelson, Mr. Gladden said courts are entering the data even though 95 percent of offenders pay the fine and have no interaction with the court. He said the court receives the money and sends it to the state. He said the courts are doing data processing for the Department of Transportation. He said it would be more streamlined for the Department of Transportation to do the data entry and send the 5 percent of drivers who request a hearing back to the courts.

In response to a question from Representative Nelson, Mr. Gladden said if there is no major arterial highway going through an area, there is not much work relating to traffic citations. He said the counties the Supreme Court contracts with for clerk services would lose some money and approximately 3.5 full-time positions statewide. He said 3.5 full-time positions statewide is \$9,104 per month. He said the 3.5 full-time employees are dispersed in 42 counties.

In response to a question from Representative Kretschmar, Mr. Gladden said the combination of all clerks' time spent on traffic offense administration is 7.4 full-time employees throughout the state.

In response to a question from Representative Porter, Mr. Gladden said he does not anticipate the loss of any employees in the 11 counties in which clerks are state employees. He said the savings in contract counties would offset the cost of the centralized process. He said the Department of Transportation has stated the process will be fiscally neutral to the state because the centralized process can more efficiently complete the data entry.

In response to a question from Representative Kretschmar, Ms. Heinert said it would take more than two full-time employees to get the process started and then two full-time employees after the process is established.

In response to a question from Representative Solberg, Ms. Heinert said the two employees required to run the process will cost the same as the \$9,104 per month saved from the removal of 3.5 full-time employees from the contracted clerks of court.

In response to a question from Senator Bercier, Ms. Heinert said she is not aware of any state with a centralized system.

Mr. Wade Williams, Association of Counties, presented testimony on the bill draft. He said there was some concern with the bill draft by clerks. He said the concern is with the duties of the clerks being eliminated by the state.

In response to a question from Representative Delmore, Mr. Williams said \$1,000 is the most any one county would lose per month. He said most contract counties would lose a couple hundred dollars a month. He said this is not a major budgetary concern, but the concern is whether this is the first of other erosions of the duties of clerks.

Representative Delmore said the purpose of the bill draft is to provide better services to the citizens of this state. She said she does not think there are any other nonjudicial duties that could be removed from the clerks.

In response to a question from Representative Kretschmar, Mr. Williams said the Clerks of Court Association does not have a position on the bill draft. He said the association has a meeting in June.

Ms. Deb Simenson, Clerk of Court, Burleigh County, presented testimony on the bill draft. She said there is a half-time employee in Burleigh County used for traffic offense administration. She said other filings are up so the person doing traffic offense administration would be able to focus on other required duties.

### **RETENTION OF ELK**

At the request of Chairman Delmore, committee counsel presented a resolution draft urging Congress to allow the hunting of elk in the Theodore Roosevelt National Park under the regulation of the Game and Fish Department. He said the committee requested the resolution draft at its previous meeting.

Mr. Russ Johnson, Alliance to Manage Elk in North Dakota, presented testimony in favor of alternatives to the exportation of elk from this state. He said the Game and Fish Department has the option of using the elk under a memorandum of understanding with the Park Service. He urged the committee to require the department to create an opportunity for the hunters of this state. He provided signatures on a petition in opposition to the periodic exporting of wild elk from the western part of this state. He said these signatures in combination with signatures previously provided total more than 4,300 citizens. A copy of the petition is on file in the Legislative Council office.

Mr. Johnson said there were problems with the resolution draft. He said the resolution draft does not provide a solution soon enough. He said there is a roundup of elk in the park scheduled for January. He said the resolution draft would not get to Congress in time. He said animal rights groups would be against the resolution draft and the media would report their opposition. He said the resolution draft is not the public relations tool North Dakota needs.

In response to a question from Senator Traynor, Mr. Johnson said it requires an Act of Congress to allow hunting in the park.

Mr. Ike Hecker, Medora Grazing Association, presented written testimony to the committee in opposition to the resolution draft and to the release of elk on public land in this state. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Nelson, Mr. Hecker said he assumes that elk have a homing instinct and will return to the park if released elsewhere in the state.

Mr. Loren Jacobson, Director, Little Missouri Grazing Association Board, presented written testimony to the committee. He said the association of 110 members opposes the release of elk from the park. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Jacobson said he would not want elk released even if there were incentive programs, the elk were fenced onto public land, and depredation costs were paid.

In response to a question from Representative Solberg, Mr. Jacobson said bow hunting in the park may be an acceptable solution.

Senator Traynor said Sully's Hill Game Preserve is fenced and he knows of no incident of an elk escaping from the preserve. He said excess animals are sold for slaughter.

Mr. Noel Poe, Superintendent, Theodore Roosevelt National Park, presented written testimony in opposition to the resolution draft. He said hunting in the park is contrary to the purpose of the park. He said the park is only five to six miles wide and 10 miles long. He said the park is too small to have elk hunting. He said hunting would have an impact on

other wildlife in the park. He said the committee may embarrass itself by recommending hunting in a national park. He said he does not think there is any likelihood Congress would allow hunting in the park. He invited everyone to come visit the park before making any decision. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Poe said in addition to elk, bison and horses are rounded up and given away.

In response to a question from Representative Delmore, Mr. Poe said 1 out of 58 national parks allow hunting and that park is Grand Teton. He said there are other national park properties that allow hunting, but those properties are not parks.

Representative Nelson said elk have been reintroduced in this state and the elk have fared pretty well and ranchers are becoming extinct. He said the problem is with elk getting out of the park and causing damage.

In response to a question from Representative Nelson, Mr. Poe said the Park Service spends a considerable amount of time on repairing fences. He said the Badlands are filled with gullies and hills and it is hard to build a fence that will keep in wild animals. He said the summer hunt instituted by the Game and Fish Department has helped with depredation complaints. He said there will be a roundup in January and problems with depredation will decrease.

In response to a question from Representative Nelson, Mr. Poe said there is no surplus of deer in the park because the fences have crawl spaces built in them so that smaller species can go in and out of the park.

Representative Drovdal said there is less than a 1 percent chance that this idea would get through Congress.

In response to a question from Representative Drovdal, Mr. Poe said tourism drops off in the fall; however, if one person came across a hunter there would be a complaint.

In response to a question from Senator Krauter, Mr. Poe said he has a good working relationship with the Game and Fish Department. He said there is a disagreement on the elk management issue. He said the director of the Game and Fish Department has stated that a solution would be to allow hunting inside the park.

In response to a question from Senator Tollefson, Mr. Poe said allowing the placement of elk outside the park is a decision for the Game and Fish Department.

In response to a question from Senator Tollefson, Mr. Poe said once elk get out of the park, the elk are the problem of the Game and Fish Department and are no longer the Park Service's responsibility.

In response to a question from Representative Porter, Mr. Poe said the Park Service is attempting to purchase the Elkhorn Ranch on the Little Missouri. He said this property is intended to be designated as

a national preserve. He said hunting is permitted on a national preserve. He said the 5,000 acres of the ranch that are presently not available for hunting would be available for hunting consistent with Game and Fish Department regulations.

In response to a question from Senator Traynor, Mr. Poe said elk in the park are tagged in their ear and have a microchip embedded in their neck for identification with a laser scanner.

In response to a question from Senator Traynor, Mr. Poe said he does not know if the Park Service would be for or against a resolution urging Congress to appropriate money to pay for depredation caused by elk escaping from the park.

Ms. Laura Griffin presented written testimony in opposition to elk on the Little Missouri National Grasslands. She said the Park Service should assume full responsibility of the elk problem and should ship excess elk out of this state. A copy of her testimony is on file in the Legislative Council office.

Mr. Brad Heidel, Rocky Mountain Elk Foundation, provided testimony on the resolution draft. He said elk are a treasure and any solution needs to have serious consideration.

Mr. Gordon Gerbig presented written testimony against the placement of elk outside the park. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Nelson, Mr. Gerbig said he is opposed to the release of elk anywhere in this state because they are a burden no matter where they are located.

Mr. Connie Redmond, rancher, Billings County, provided written testimony against elk on the national grasslands.

Mr. Wayne Gerbig provided written testimony to the committee. He said there are studies showing that elk push mule deer out of prime habitat. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Nelson, Mr. W. Gerbig said collared elk were released in Billings County in the early 1990s and multiplied until they were removed through hunting.

Mr. Roger Rostvet, Deputy Director, Game and Fish Department, said the Park Service has been good with managing animals in the park. He said this study is about what to do with the surplus elk in the park. He said the department does not know of any area in this state to place more elk.

In response to a question from Senator Tollefson, Mr. Rostvet said the problem of elk outside the park is dealt with through flexible landowner licenses and an early hunting season. He said it is rare for cows to move out of the park to be hunted and so bulls are more commonly shot during hunting seasons. He said the department has leased cornfields and provided fencing to alleviate depredation.

In response to a question from Senator Tollefson, Mr. Rostvet said the department provides assistance but does not provide monetary compensation for depredation.

In response to a question from Senator Trenbeath, Mr. Rostvet said when relocating a turkey it must be moved at least 20 miles to prevent it from going back to its original location. He said elk can cover many miles in a day. He said they could return to their original habitat in a very short time.

In response to a question from Senator Trenbeath, Mr. Rostvet said some elk will stay upon relocation, but dispersion will begin immediately.

In response to a question from Senator Krauter, Mr. Rostvet said the department assists landowners with approximately \$26,000 a year for elk depredation. He said up to a \$1 million per year has been spent for deer depredation, but \$40,000 to \$50,000 is the norm in an easy winter.

The Slope County Board of County Commissioners provided a resolution in opposition to the release of elk on any portion of the national grasslands outside the park. A copy of the resolution is on file in the Legislative Council office.

## RESIDENT AND NONRESIDENT HUNTING ISSUES

### Testing of Guides and Outfitters Bill Draft

At the request of Chairman Delmore, committee counsel reviewed a bill draft requiring guides and outfitters to be tested on state and federal laws on the hunting of wild game.

Mr. Dean Hildebrand, Director, Game and Fish Department, answered questions for the committee. In response to a question from Representative Nelson, Mr. Hildebrand said to administer the test of hunting guides and outfitters, the department would work with the North Dakota Professional Guides and Outfitters Association through the rulemaking procedure. He said he envisions the test being administered at certain times and places by the department.

**It was moved by Representative Porter, seconded by Representative Hanson, and passed on a recorded roll call vote that the bill draft requiring guides and outfitters to be tested on state and federal laws on the hunting of wild game be recommended to the Legislative Council.** Representatives Delmore, Drovdal, Gunter, Hanson, Johnson, Kretschmar, Porter, Solberg, and Thorpe and Senators Fischer, Tollefson, Traynor, and Trenbeath voted "aye." Representative Nelson voted against the bill draft.

### Testimony on Guide and Outfitter Issues

Mr. Pat Candrian, Cannonball Company, presented written testimony on the regulation of guides and outfitters, relating to hunting guides and outfitters licensing definitions, a guide and outfitter policy and disciplinary commission, and the positions

of the North Dakota Professional Guides and Outfitters Association on bill drafts and other issues. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Porter, Mr. Candrian said the association supports outfitters having to be residents of this state; however, he said, guides should not have to be residents of this state. He said requiring guides to be residents of this state denies employment to nonresidents and prevents individuals with the expertise required to set up decoys and to call in waterfowl from working in this state.

In response to a question from Representative Porter, Mr. Candrian said most professional guides would not have difficulty with season limitations because most professional guides do not hunt or carry guns while with clients.

In response to a question from Representative Porter, Mr. Candrian said a license cap of 300 is for outfitters, not guides. He said outfitters could have as many employee guides as is desired by the outfitter. He said the association supports grandfathering in present guides and outfitters so that no one is put out of business.

In response to a question from Representative Porter, Mr. Candrian said he has heard rumors of drug abuse and the association supports random drug testing of guides. He said the industry does not want any black eyes. He said individual guides and outfitters could test themselves or their employees; however, a state law would make testing consistent.

In response to a question from Senator Traynor, Mr. Candrian said the disciplinary commission suggested by the association would not issue the license. He said the license would be issued by the Game and Fish Department.

In response to a question from Representative Delmore, Mr. Candrian said he hopes the association's suggestions result in a bill draft and not a rule.

In response to a question from Representative Nelson, Mr. Candrian said in the past the Legislative Assembly has not wanted to damage small family-owned outfitter operations. He said the association does not want regulations relating to guides and outfitters to affect people merely charging an access fee.

Mr. Kyle Blanchfield, President, North Dakota Professional Guides and Outfitters Association, provided testimony and answered questions for the committee. He said cardiopulmonary resuscitation and first aid require two 4-hour classes. He said guides and outfitters take clients to remote areas and cardiopulmonary resuscitation and first aid should be required of guides and outfitters.

In response to a question from Representative Nelson, Mr. Blanchfield said there are about 125 members of the association. He said approximately one-quarter of them are certified guides and

outfitters. He thinks this fraction will increase to one-half this year.

In response to a question from Senator Krauter, Mr. Rostvet said the department needs specific direction from the Legislative Assembly to make rules relating to guides and outfitters, even though the department has rulemaking authority. He said a bill was killed in a previous session because legislators told the department to make rules by working with the association. He said the department did as requested and the rules then were invalidated by the Administrative Rules Committee because the bill had been killed in the previous session and thus the rules were contrary to legislative intent.

Representative Nelson said specific authority should be given to the Game and Fish Department; however, it should allow the Game and Fish Department to have flexibility in rulemaking.

In response to a question from Senator Tollefson, Mr. Candrian said an individual does not need to be in the association to be a guide or outfitter.

In response to a question from Representative Nelson, Mr. Blanchfield said approximately 75 percent of the association's members are ranchers and farmers. He said not everything the association supports is supported by all guides and outfitters.

Representative Porter said in the 2001 legislative session there was a bill to prohibit guides from carrying weapons in the field. He said the association was for the bill draft, but other guides were against the bill and the bill failed. He said no matter what decision is made, there will be some unhappy individuals.

In response to a question from Senator Krauter, Mr. Rostvet said the department works well with the association; however, the association does not represent all guides and outfitters.

Mr. James Cragle presented testimony on the suggestions of the association. He said he did not support having licenses become a commodity. He said it is difficult to balance having too many or not enough licenses. He said if there are too few licenses then outfitting becomes a major investment.

### **Records of Guides and Outfitters Bill Draft**

At the request of Chairman Delmore, committee counsel presented the second draft of a bill draft relating to the reporting by guides of clients' names and addresses to the Game and Fish Department. He said the first draft required the report of names and addresses to the Game and Fish Department. He said the second draft requires that the records are confidential and are not public records subject to the open records law. He said the bill draft requires the director to disclose the names and addresses to a state or federal tax agency for tax enforcement purposes, upon the request of the agency.

Representative Hanson said the reason for the bill draft was to easily allow a cross-check so that there

would be less income tax evasion for guides and outfitters paid with cash.

Senator Traynor said the federal Internal Revenue Service and state Tax Commissioner have the power to look at the records kept by guides and outfitters through an audit. He said as an attorney he would not want to give up a list of his clients unless there was a good reason, such as an audit.

Representative Nelson said if there were a tax evasion problem, the Legislative Assembly would have heard from the Tax Commissioner. He said the committee has not heard any testimony that there is a problem with guides and outfitters evading taxes. He said the committee should not hinder the business community. He said South Dakota does not regulate guides and outfitters and the system works well in South Dakota. He said if the Tax Commissioner has a problem with tax evasion by guides and outfitters, the Tax Commissioner should propose a bill draft. He said he is concerned that the list may be used for more purposes than taxes in the future. He said the bill draft promotes a negative attitude toward nonresident hunters. He said he is opposed to the bill draft.

Representative Porter said last session he heard concerns from the Tax Commissioner that cash income is not being reported by guides and outfitters.

Ms. Shirley Meyer presented testimony on the bill draft. She said she is concerned with the uses of the list. She said the records requirement would make it more difficult to start and maintain a small business.

In response to a question from Representative Hanson, Mr. Candrian said the Cannonball Company does not pay income tax because it is an S corporation. He said the income tax is paid by shareholders. He said the Cannonball Company does collect sales tax on lodging.

In response to a question from Senator Krauter, Mr. Candrian said the Game and Fish Department can inspect the records of a guide and outfitter at the guide and outfitter's place of business.

In response to a question from Senator Traynor, Mr. Candrian said he has no position on the bill draft; however, he said, he does not want guides and outfitters regulated out of business.

Mr. Blanchfield said the association has no major problem with the annual report if it is kept private.

In response to a question from Representative Delmore, Mr. Rostvet said the department requires records at the place of business and they are open to inspection by the department, but the department does not require the records to be submitted because they would become public records.

Senator Trenbeath said under Section 20.1-02-05(17), the director can require records and reports as the director deems necessary.

Representative Delmore said the records are not protected if collected by the director. She said the bill draft would protect the records.

Representative Hanson said the bill draft protects guides and outfitters because the director could presently request the information and it would not be confidential. He said he is in support of the bill draft.

Representative Drovdal said if the concern is that cash income is not being reported, then it is the Tax Commissioner's duty to investigate, not the Game and Fish Department's. He said the Tax Commissioner can receive the information now and it is protected by law.

In response to a question from Representative Drovdal, Mr. Rostvet said the Game and Fish Department has little use for the names and addresses of guides' and outfitters' clients.

In response to a question from Representative Delmore, Mr. Rostvet said the records are checked regularly at the guide's or outfitter's place of business. He said if the records are used in an enforcement action they are confidential.

Senator Trenbeath suggested the following amendment: Page 1, line 7, replace "The" with "At a minimum, the". He said the amendment would make the first and second sentences not sound like the second sentence of subsection 17 is a limitation on the first sentence, which allows the director to require records and reports.

Senator Trenbeath said the idea of requiring the information to be sent and the idea of keeping the information private can be separated. He suggested amending the bill draft to read "If the information is collected, then the information is confidential."

In response to a question from Representative Hanson, Mr. Rostvet said although the records are regularly checked, clients are not randomly contacted. He said clients are contacted based upon a complaint. He said complaints are forwarded to the Attorney General's Consumer Protection Division.

In response to a question from Representative Porter, Mr. Rostvet said there is very little statistical information relating to guides and outfitters, in particular, relating to the number of days hunted and the amount paid.

In response to a question from Senator Traynor, Mr. Rostvet said days hunted, how many clients, how long they stayed in the state, and what part of the state they hunted in would provide useful information.

Representative Porter said the tax enforcement portion of the bill draft does not provide a new remedy. He said the important concept of the bill draft is to allow the Game and Fish Department to collect information on the guide and outfitter industry. He said the bill draft is the first step in a data collection process. He said the Legislative Assembly needs valid information on guides and outfitters to be able to make decisions. He said without the information, all the information received is based on emotion or anecdote. He said the bill draft would allow the Game and Fish Department to collect information while keeping trade secret information confidential. Representative

Porter suggested removing the language relating to tax enforcement purposes.

In response to a question from Senator Fischer, Mr. Rostvet said the bill draft implies only names and addresses and asking for other information may be impliedly restricted.

In response to a question from Representative Delmore, Mr. Rostvet said the department could ask for this information presently; however, the department would have to go to each guide and outfitter and then survey the clients. He said more useful information would be obtained by directly asking the guide or outfitter the questions.

In response to a question from Representative Hanson, Mr. Rostvet said waterfowl hunters are surveyed on a regular basis. He said there are no questions about guides and outfitters in the survey. He said more questions result in fewer responses.

Representative Nelson said the information the department finds useful could be gained by surveys of hunters. He said there should be protections for the confidentiality of records.

Representative Drovdal said other businesses are not required to file information relating to customers. He said it would not be fair to require this of guides and outfitters. He said he likes the suggestions made for amendments to the bill draft.

Representative Porter said a survey of hunters does not get to the root of the questions that are needed to be asked. He said there needs to be a survey of the guide and outfitter operations. He said the information obtained should be confidential.

### **Other Testimony**

Mr. Rostvet provided testimony on recent activities of the Game and Fish Department. He said the access survey should be concluded by July 1. He said the hunter expenditure survey should be finalized by the North Dakota State University Agricultural Economics Department by late fall. He said the Game and Fish Advisory Board is meeting in May to receive comments on the fall waterfowl season. He said the issues under consideration are an earlier waterfowl opener and concepts for the regular season. He said it appears there is a good chance for an earlier duck season. He said the advisory board wants to investigate options, including a resident-only season, a normal season, a half-day season, or not to accept the increased season. He said the advisory board will look at hunter satisfaction with the present waterfowl season.

Senator Traynor said he was the sponsor of the resolution that requested an earlier duck season opener no later than September 15 because of depredation caused to crops. He said the state should seize upon the opportunity to open the duck hunting season earlier. He said the hunting season for upland game in South Dakota does not open until 12:00 noon and the hunters go shopping in the morning. He said

the Game and Fish Department should consider closing duck season at 1:00 p.m. for a period at the beginning of the season. He said it would keep the ducks in the state by allowing them to rest and would benefit local merchants.

Representative Hanson said a half-day season in the morning would be detrimental to young people who are in school in the morning. He said a half-day season would help keep ducks in this state.

In response to a question from Representative Kretschmar, Mr. Rostvet said the early duck hunting season will not result in a shorter season by the removal of the week at the end of the season. He said the number of hunting days is not as important as when hunters are allowed to hunt.

In response to a question from Representative Kretschmar, Mr. Rostvet said the Attorney General said the Governor cannot regulate the numbers of nonresident upland game hunters but can regulate nonresident waterfowl hunter numbers.

Representative Nelson said there is a possibility of a landowner revolt if there are limitations on nonresident hunters. He said landowners control the access. He said one solution would be for a landowner data base of what landowners do with their land in relation to hunting. The data base would tell if they posted and allowed hunting, did not post, or posted and did not allow hunting. He said a data base needs to be created and promoted statewide by the Game and Fish Department.

In response to a question from Representative Nelson, Mr. Rostvet said a hunter and landowner relationship is a personal relationship and may not benefit from a statewide data base. He said some chambers of commerce have tried to provide a matchmaking service. He said the phenomena of abundant nonresident hunters is new. He said it is difficult to find economic information on the effect of nonresident hunters.

In response to a question from Senator Krauter, Mr. Rostvet said the new money for access will not go into the coverlocks program. He said the coverlocks program is the only program with a 30-year easement. He said the money will be used for habitat rentals and for conservation reserve program cost shares.

Mr. John Hanson provided testimony to the committee. He said there needs to be a human resource division of the Game and Fish Department. He said the division could be financed by an increase in the habitat stamp to \$50 for residents and \$85 for nonresidents. He said the increased fees would pay for the division and the programs it would administer. He said the purpose of the division would be to facilitate hunting by managing hunters. The division would manage people for wildlife instead of vice versa as is done now by the Game and Fish Department.

In response to a question from Representative Delmore, Mr. Hanson said work needs to be done so

that landowners see wildlife as an asset instead of a liability.

In response to a question from Representative Drovdal, Mr. Hanson said the increased fees would bring in between \$5 million and \$7 million per year. He said \$2 million per year could be used for the operation of the division.

Mr. Hildebrand said two years ago the Game and Fish Department hired four resource people to do what Mr. Hanson suggested in his testimony.

Ms. Terri Thiel, Executive Director, Dickinson Convention and Visitors Bureau, presented written testimony on hunting as economic development. A copy of her testimony and handouts is on file in the Legislative Council office.

Mr. Ron Wanner, President, West River Regional Tourism Council, provided testimony to the committee. He said the recent controversies have resulted in nonresidents not feeling welcome in this state. He said this is not the perception this state needs because our major selling point is hospitality. He said the Game and Fish Department needs to manage the wildlife, not the hunters. He said rural America needs to have the opportunity to survive through various income sources without limitations placed on it by state government. He said the eastern part of the state is being vocal and has made the ranchers in the western portion of the state upset. He said people in the east and the west need each other.

In response to a question from Representative Hanson, Mr. Wanner said although nonresident bow licenses have increased for mule deer hunters while resident rifle hunters have decreased, the actual animals harvested by nonresident bow hunters is quite small.

Mr. Jim Erickson, Hunting for Humanity, New England, presented testimony to the committee. He said he had an idea that would take the pressure off hunting on public lands, enhance business opportunities, and increase opportunities for nonresident hunters. He suggested the creation of a new hunting license for private land only for nonresident hunters. He said the license would work well with pheasant and waterfowl. Mr. Erickson said these licenses could be given beyond any caps.

In response to a question from Representative Thorpe, Mr. Erickson said the license could be for residents as well.

Senator Trenbeath said this kind of license would encourage foreign ownership of land for hunting purposes.

In response to a question from Senator Krauter, Mr. Blanchfield said Mr. Erickson's proposal solves competition problems on public land and allows resident landowners to let their nonresident family members hunt on their own land.

Mr. Candrian provided information on South Dakota's pheasant hunting. He said 41 percent of the conservation reserve program land in South Dakota is

not posted. A copy of his handout is on file in the Legislative Council office. He said he is not in favor of any bill draft that limits the number of hunters.

### **Waterfowl Hunting Bill Drafts**

At the request of Chairman Delmore, committee counsel reviewed a bill draft capping nonresident waterfowl hunters at 15,000 per year; a bill draft creating two 7-day and two 10-day periods for nonresident waterfowl hunters and limiting the number of hunters to 7,500 per period; a bill draft creating four 7-day periods for nonresident waterfowl hunters and limiting the number of hunters to 7,500 per year with a discount in fee for the last two periods; and a bill draft creating seven-day consecutive periods for nonresident waterfowl hunting and limiting the number of hunters to 5,000 per period.

Representative Hanson said the committee should wait for the recommendations from the advisory board before taking any action on the bill drafts.

Representative Porter said his bill draft, which has seven-day consecutive periods for nonresident waterfowl hunting and limits the number of hunters to 5,000 per period, issues licenses through a lottery. He said he assumes the Game and Fish Department would hold the lottery early enough so people could plan for the hunting season. He said his bill draft requires 10 percent of the licenses to be purchased by guides and outfitters. He said if a person wants to be guaranteed a waterfowl license, one could be purchased from a guide or outfitter.

In response to a question from Representative Solberg, Representative Porter said there are no zones in his bill draft because it is difficult to tell where migratory birds will be located in this state at any time. He said a license with no zones is a better license for hunters than a license with zones.

Mr. Blanchfield said the association does not like caps or lotteries and that other solutions should be investigated by the committee.

Mr. Randy Frost, Devils Lake Chamber of Commerce, provided testimony to the committee. He said his organization supports the early duck opener. He said there are pieces of the bill drafts that may provide a workable solution. He said the new bill drafts allow growth while managing hunters. He said having licenses set aside for guides and outfitters is a good idea. He said he is concerned that caps would be installed by the Game and Fish Department for the next season as a result of the advisory board meetings. He said a solution should be for the long term and not for one season.

Senator Trenbeath said his hope is that the Game and Fish Department will not do anything with caps unless something serious happens to waterfowl numbers.

Representative Drovdal said the Legislative Assembly said "no" to a cap last session. He said he would be disappointed if the executive branch

superseded the legislative branch by placing a cap on nonresident waterfowl hunters for the next season.

Representative Drovdal said the Legislative Assembly said "no" to a cap last session. He said he would be disappointed if the executive branch superseded the legislative branch by placing a cap on nonresident waterfowl hunters for the next season.

Representative Johnson said he is concerned with the imposition of caps, especially considering the unbelievably high number of ducks.

Mr. Tom Bodine, Farm Bureau, presented testimony to the committee. He said caps should be used for conservation purposes and not for people management. He said the duck season is being expanded because there are so many ducks while there is talk of placing a cap on the number of hunters. He said this is a contradiction. He said the timing of the advisory board meetings is during planting season and the advisory board will not get as much comment from landowners as it would have if the meetings would have been more conveniently scheduled. He said placing a cap on nonresident hunters would be sending a mixed message. He said the state has told people to take risks and to diversify. He said nonresident hunter limits would place business in a bad position.

In response to a question from Representative Drovdal, Mr. Rostvet said there are two peaks in the number of hunters for the waterfowl season. He said the first peak is the opening weekend and the second larger peak is the third week that coincides with teachers' convention. He said there are approximately 10,000 nonresident hunters on opening weekend and 12,000 nonresident hunters on the third weekend that are licensed to hunt.

Mr. Bodine said 10 percent of the licenses to guides and outfitters results in 500 tags per week or 1.6 tags per guide and outfitter. He said this may not be enough tags for guides and outfitters.

Representative Hanson said guides and outfitters can still have clients that get tags through the lottery system, the other 90 percent. He said the 10 percent is reserved for guides and outfitters and the 10 percent could be saved for hunters that plan late.

In response to a question from Representative Hanson, Mr. Bodine said a guide or outfitter cannot guarantee a tag if it is issued through a lottery. He said most people hunt in groups and need the whole group to get a license before they will come hunting.

In response to a question from Representative Nelson, Mr. Bodine said most hunting parties are groups of friends that hunt for three days.

In response to a question from Representative Nelson, Mr. Bodine said if one member of a group does not get a license, the entire group may go to another state where there is a guaranteed license.

Representative Porter said the lottery system was meant to be done far enough in advance to provide hunting parties with enough time to plan. He said he

envisioned the lottery system to be like the deer lottery, which allows party applications. He said the 10 percent of licenses for guides and outfitters could be used by guides and outfitters to give a license to a person in a group who was otherwise denied through the lottery.

Mr. Mike Donahue, North Dakota Wildlife Federation and United Sportsmen of North Dakota, presented written testimony on nonresident waterfowl licensing and a lottery, on waterfowl caps, on resident and nonresident license fee increases, and nonresident upland licensing and a lottery. He said the organizations he represents support a waterfowl licensing cap for nonresident hunters of 10,500. He said a lottery system should have an application fee of \$3. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Nelson, Mr. Donahue said although there is some concern of a backlash by landowners against hunters, it will not be major. He said the east/west division in this state is media-driven.

Representative Nelson said he thinks there will be a major backlash if caps are imposed on nonresident hunters. He said if there is a backlash, both resident and nonresident hunters will lose access.

Representative Nelson said in the northern part of the state waterfowl season is done by November. He said any cap is a third worse for that part of the state. He said the northern part of the state welcomes nonresident hunters.

In response to a question from Representative Nelson, Mr. Donahue said migration drives where the hunting will occur. He said it is unrealistic to put into law the changing migration of waterfowl. He said assigning waterfowl hunters a certain time period would leave the quality of waterfowl hunting for that period to chance.

In response to a question from Senator Bercier, Mr. Donahue said other states have restrictions on nonresident hunters.

Ms. Connie Krapp, Marketing Director, Northern Plains Cooperative, presented testimony to the committee. She said the cooperative promotes economic development because the more successful people are, the more electricity is used. She said she conducts a fee hunting operation and it has added to the bottom line. She said there does not seem to be evidence of a problem with access. She said a 1996 survey by the Game and Fish Department showed

that 83.6 percent of landowners give permission when asked to hunt. She said until there is another study that says access is a problem, there is no need to limit economic development. She said in 1975 there were two million breeding ducks and 73,000 hunters and in 2001 there were four million breeding ducks and 66,000 hunters. She said the ratio of ducks to hunters has increased over the years. She said the reduction in resident duck hunters may be the result of the declining rural population. She said the people left in the rural areas need to make a living. She said there is a lot of emotion in hunting issues and there could be a backlash by landowners in Stutsman County if there is a cap placed on nonresident hunters.

Representative Hanson said nonresident hunters come to this state because they have harvested all the ducks in their own state. He gave the example of one hunter in Wisconsin who got two ducks in a weekend. He said this state cannot handle all the duck hunters if they all come at once to one place in this state. He said there are too many nonresident hunters in certain areas of this state.

In response to a question from Representative Hanson, Ms. Krapp said more information should be obtained before there are any limitations placed on nonresident hunters. She said she is not convinced that limiting nonresident hunters will give more access to resident hunters. She said access is mainly a landowner decision.

In response to a question from Representative Hanson, Ms. Krapp said it is a matter of opinion that ducks are being scared out of this state by hunting pressure. She said her opinion is that the number of ducks in this state is determined by the amount of water and not hunting pressure. She said opinions should not resolve the issue, but scientific information should be the basis of the committee's decision.

No further business appearing, Chairman Delmore adjourned the meeting at 10:50 a.m., Thursday, May 9, 2002.

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Timothy J. Dawson  
Committee Counsel

ATTACH:1