

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRANSPORTATION COMMITTEE

Thursday, July 17, 2003
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator David P. O'Connell, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators David P. O'Connell, Duane Mutch, Dave Nething, Tom Seymour; Representatives Craig Headland, Joyce Kingsbury, Dan J. Ruby, Dorvan Solberg, Elwood Thorpe, Robin Weisz, Ray H. Wikenheiser

Others present: See attached appendix

SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE

At the request of Chairman O'Connell, Mr. John D. Olsrud, Director, Legislative Council, reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*.

RAILROAD RIGHT-OF-WAY STUDY

At the request of Chairman O'Connell, committee counsel presented the memorandum *Railroad Right-of-Way Study - Background Memorandum* relating to the study directed by Senate Bill No. 2358.

Mr. Brian Bjella, legal counsel, North Dakota Grain Dealers Association, presented written testimony on the study. He said lessees of railroad property can be held to unreasonable terms and have little choice but to agree or get off the property. He said lessees are not in a typical buyer-seller relationship when there is some balance of leverage. He said House Bill No. 1291 and Senate Bill No. 2358 do not take effect until August 1, 2003, so it is too early to see what effect the bills will have. He said under House Bill No. 1291 the sale price of abandoned railroad property must be equitable and that the language expresses a legislative intent that the sale price be comparable to the value of the surrounding property. He said Senate Bill No. 2358 started out covering all lessees and was limited to grain and potato warehouses. He said the lessees not covered by the law may want to be included in any future possible statutory changes. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator O'Connell, Mr. Bjella said the typical rate for the sale of railroad right of way is 10 times the yearly lease amount. He said some tenants on abandoned lines have negotiated the sale price down from the typical amount.

In response to a question from Senator Nething, Mr. Bjella said the law has not resulted in any preemptive action by the railroads before the effective date of the law.

Mr. Dan Kuntz, representing the Burlington Northern Santa Fe Railroad, provided testimony on the study. He said the provisions in ground leases are standard provisions. He said the state of North Dakota uses similar provisions in ground leases with other entities. He said lease provisions for warehouses are the same as for other commercial ventures. He said the provisions are not onerous or unfair. He said insurance provisions in the lease protect the lessee because if an accident happens on the leased property, the lessee will most likely be sued regardless of the railroad's involvement. He said after the new law takes effect, the railroad will have to look at leases more closely to see if the risks of leasing can be covered by the insurance and indemnity provisions allowed by state law. He said the railroad supports the change in the law relating to the priority of sale of abandoned property. He said railroad employees are covered by the federal Employers Liability Act and not workers' compensation. He said the federal Employers Liability Act holds the railroad liable under all situations, including when the employee is injured on the lessee's land.

Mr. David Drach, Manager of Soo Line leases, Canadian Pacific Rail Company, Minneapolis, provided testimony on the study. He said the majority of land leased by the railroad is owned in fee simple. He said the liability provisions in leases are the same as terms 100 years ago. He said the law changes will make it more difficult to manage liabilities on leased property. He said railroads will have to measure the risk and benefit for each lease in light of the new law. He said the best solutions are those to which private parties agree.

In response to a question from Senator O'Connell, Mr. Drach said the Soo Line does not have any right of way for sale.

In response to a question from Representative Ruby, Mr. Drach said the agreement the railroad has with a lessee is that the lessee bears the burden of risk from foreseeable events that happen on leased property. He said the railroad cannot obtain insurance for all the different kinds of risks posed by all the

different kinds of tenants. He said if the risk is borne by the railroad, the railroad will have to raise rates.

In response to a question from Representative Ruby, Mr. Drach said the increased cost of insurance for being located next to a railroad should be incremental to the lessee, unless the lessee does not have enough insurance in the first place. He said the law may limit the railroad to offer leases only to small entities for which the limits in the law will adequately cover the risks engaged in by a small entity. He said a large entity may have to pay higher prices to make the lease of railroad right of way profitable.

Senator Nething said railroads obtained right of way as a form of government-supported economic development. He said the committee should receive testimony on the responsibilities that interested parties have to the public.

Senator Nething said railroads say they should be able to transfer risk like an ordinary landlord does with a tenant. He said the landlord-tenant relationship between the railroad and lessees is different from most landlord-tenant relationships. He said the railroad is a high-risk landlord and leases to mostly low-risk tenants. He said most landlords do not engage in high-risk activities. He said the committee should receive testimony on risk management options from risk management professionals.

Representative Weisz said the committee should receive testimony from different lessees, including restaurants, warehouses, businesses that once needed railroad services and now do not, public utilities that need easements to use railroad right of way, and urban and rural lessees. He said urban and rural lessees are in a different situation but are treated the same in leases. He said after receiving the testimony from lessees, the committee should receive testimony from the railroad in response to the testimony of the different lessees.

Senator Mutch said there have been a number of name changes in the entities that lease railroad right of way. He said with the changes there have been higher rates. He said there should be testimony on the ownership and operation of railroads as it relates to railroad right of way.

MOTOR VEHICLE NO-FAULT, UNDERINSURED, AND UNINSURED INSURANCE

At the request of Chairman O'Connell, committee counsel presented the memorandum *Motor Vehicle No-Fault, Underinsured, and Uninsured Insurance - Background Memorandum* relating to the study directed by Senate Bill No. 2262, Section 1. He provided as handouts a copy of *A Consumer's Guide to Automobile Insurance* by the North Dakota Insurance Department and a copy of *North Dakota No-Fault: A Guide for Adjusting PIP Claims* by Lawrence R. Klemin. A copy of each handout is on file in the Legislative Council office.

Mr. Rob Hovland, North Dakota Domestic Insurers Association, provided testimony on the study. He said the association represents 10 mutual insurance companies. He said customers complain about increased motor vehicle insurance rates. As mutual companies, he said, the companies are sensitive to consumer complaints. He said the association reviewed where consumers are not getting a good value for their expenditure. He said customers are not getting a good value from no-fault insurance. He said no-fault insurance is a poor value because it has no cost-containment measures. For example, a chiropractor has raised fees from \$28 to \$60 per visit if the injury is covered by no-fault insurance. He said the lack of cost-containment measures are an incentive to attribute any injury to a motor vehicle accident. He said it is easy to get a prescription for items not ordinarily thought of as medical expenses. He said, for example, a lady received a prescription for a new bed to remedy her injured back. He said the prescription merely stated "new bed" and she bought a bed in excess of \$1,000. He said when no-fault insurance was created, it was assumed that the medical benefits would be for up to maximum medical improvement. He said this would provide quick disposition of the claim. He said with chiropractic care, medical expenses can be incurred for five or six years.

Mr. Hovland said because no-fault insurance is a mandated coverage, courts interpret the law expansively. For example, he said a court has interpreted no-fault to include injuries sustained by an individual shooting a rifle while resting the rifle on the hood of a car.

Mr. Hovland said it is expensive to administer no-fault insurance. He said insurance companies need to hire someone to review each bill to see if the injury was caused by the accident.

Mr. Hovland provided an example of estimated amounts of premium that go to insured persons. He said out of each \$1 in no-fault premiums, approximately 35 cents goes for administration. He said of the remaining 65 cents, approximately 25 cents is attributable to the lack of cost-containment. He said health insurance has approximately an eight-cent administrative cost for each dollar of premium. He said no-fault insurance has increased by approximately 12 percent per year since its inception. He said liability insurance is the most important kind of motor vehicle insurance because it protects innocent third parties. He said in the recent past the percentage of individuals that have maximum limits on their liability insurance has decreased from 25 to 17 percent. He said customers have lowered their coverage to manage the cost of insurance. He said because insurance companies pass on the cost of the no-fault system to consumers, consumers would benefit from lower premiums if no-fault insurance was repealed.

In response to a question from Representative Thorpe, Mr. Hovland said the cost of no-fault insurance is approximately between \$60 and \$260 per year without discounts for a certain insurance company.

In response to a question from Representative Ruby, Mr. Hovland said there are high administrative costs for no-fault insurers because no-fault insurance forces automobile insurers into operating health insurance. He said health insurance covers treatment regardless of cause and no-fault requires a review of the cause of the injury. He said no-fault insurance has required audits that are expensive.

Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota, provided testimony on the study. He said Colorado repealed its mandatory no-fault insurance law effective July 1, 2003. He said the main reason for the repeal was the cost of insurance. He said Florida changed its no-fault law because it had abuse of the system. He said the Insurance Department has an Insurance Fraud Division and can investigate fraud in no-fault insurance. He said no-fault laws vary from state to state. He said comparing this state to other states may be like comparing apples to oranges. He said this state's no-fault insurance is inexpensive compared to other states. He said shifting no-fault benefits to health insurance is based on the assumption that everyone has health insurance. He said employers are having difficulty paying for health insurance and decreased no-fault benefits may increase health insurance premiums. He said the shift from no-fault to health insurance may result in fewer people insured by health insurance. He said if there are abuses of the no-fault system by chiropractors, the abuses have not been reported to the State Board of Chiropractic Examiners. He said automobile insurers can operate cost-containment measures. He said Blue Cross Blue Shield is against the removal of mandatory basic no-fault but may be open to minor changes.

In response to a question from Representative Ruby, Mr. St. Aubyn said that liability, uninsured, and underinsured insurance cover the same situations that no-fault covers except that a person does not have to sue for benefits under no-fault insurance.

Ms. Bonnie Staiger, North Dakota Chiropractic Association, provided testimony on the study. She said the committee should receive information to dispel sweeping generalities against lawyers, chiropractors, and insurance agents. She said they are professionals and rely on their reputations.

Mr. Pat Ward, North Dakota Domestic Insurers Association, provided testimony on the study. He said the committee should take a careful look at Colorado. He said premiums are decreasing in Colorado since the repeal of no-fault insurance. He said there are a lot of uninsured motorists. He said uninsured motorists may buy insurance if they only had to purchase

liability insurance. He said no-fault insurance is duplicate coverage. He said the committee may want to make no-fault insurance optional. He said independent medical examinations have been studied twice by the Insurance Department. He said insurers use independent medical examinations on 3 percent of claims. He said fraud is estimated at 15 percent.

Representative Weisz said the committee should look at other states and the effect of and rationale for changes in no-fault laws.

Senator Nething said the committee should receive information on expenses other than medical expenses paid by insurance companies under no-fault coverage. He said an increase in coordination of benefits reduces the amount of the \$30,000 limit that may be used for benefits other than medical expenses. He said the committee should balance the benefits and detriments of repealing the no-fault law. He said the committee should receive testimony on the benefits and detriments from interested parties.

Representative Kingsbury said people must have liability insurance to register a motor vehicle. She said the committee should investigate tracking purchase and removal of liability insurance.

ALTERNATIVE METHODS FOR RECORDING AND DISCHARGING MOTOR VEHICLE LIENS STUDY

At the request of Chairman O'Connell, committee counsel presented the memorandum *Alternative Methods for Recording and Discharging Motor Vehicle Liens Study - Background Memorandum* relating to the study directed by Senate Concurrent Resolution No. 4011.

Mr. Keith Magnusson, Director, Driver and Vehicle Services, Department of Transportation, provided testimony on the study. He said the department welcomes the study but did not request this study. He said the department has investigated electronic filing of liens and could allow financial institutions to voluntarily engage in the electronic filing of liens. He said the department cannot mandate the filing of electronic liens. He said large lenders support electronic liens and would pay for the cost of filing liens electronically.

In response to a question from Representative Ruby, Mr. Magnusson said electronic lien filing could be mandated to financial institutions but should not be mandated to private parties.

In response to a question from Representative Thorpe, Mr. Magnusson said the title with the lien release is mailed from the financial institution to the owner of the vehicle. He said most owners do not file the certificate of title with the Department of Transportation, thereby removing the lien from the title, because of the cost.

LICENSING OF SNOWMOBILE AND ALL-TERRAIN VEHICLE DEALERS

At the request of Chairman O'Connell, committee counsel presented the memorandum *Licensing of Snowmobile and All-Terrain Vehicle Dealers - Background Memorandum* relating to the study directed by Senate Concurrent Resolution No. 4030.

Mr. Magnusson provided testimony on the study. He said the department asked for this study. He said dealer licensure is a consumer protection issue. He said the department had given free certificates to dealers, but because of an Attorney General's opinion, the department may no longer do that. He said if all-terrain vehicle and snowmobile dealers are licensed, then so should the low-speed vehicle

dealers be licensed. He said motorcycle dealer licensure provides a good model for snowmobile, all-terrain vehicle, and low-speed vehicle licensure. He said the committee may want to expand the study to look at motorcycle dealers.

No further business appearing, Chairman O'Connell adjourned the meeting at 12:00 noon.

Timothy J. Dawson
Committee Counsel

ATTACH:1