

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2217

2007 SENATE POLITICAL SUBDIVISIONS

SB 2217

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2217**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 1, 2007**

Recorder Job Number: **2654**

Committee Clerk Signature



Minutes:

Chairman Cook called the Senate Political Subdivision to order. All members (5) present.

Chairman Cook opened the hearing on SB 2217 relating to abstractor fees.

Malcom Brown, Attorney in Bismarck, Member of the Real Property Probate and Trust

Section of the State Bar Association. SB 2217 was introduced on their behalf by Senator Holmberg. He introduced Mr. Dean Rindy to testify in support of SB 2217.

Dean Rindy, Attorney, Fargo ND, Abstractor and Title Insurance Agent, testified in support of SB 2217. (See attachment #1)

Senator Warner asked when the fees were last amended.

Dean Rindy answered six years ago. (2001)

Phyllis Sutherland, Carrington, ND, President of the ND Land Title Association testified in support of SB 2217. (See attachment #2)

Sue Cosgriff, President of Cass County Abstract Company/Red River Title Services, Inc., Fargo, ND testified in support of SB 2217 (See attachment # 3)

Howard Malloy, President of Bismarck Title Company, testified in support of SB 2217 (See attachment #4)

Testimony Opposed.

Claus Lemke, North Dakota Association of Realtors spoke in opposition of SB 2217. We have some concerns. I take exception to the fact that technology makes it more difficult. Is it more affordable to use these computers? I do believe the retrieving, sorting or assembling when the abstract is due is by public record electronically much more affordable then doing it by hand and by paper work. We are not convinced that this larger increase should be. In a couple of sections there is a forty percent increase and another section twenty five percent. We think that the technology makes it cheaper and it should be pennies not dollars.

Senator Hacker: Since 2001 until today in the major communities, how much is the price of real estate going up. Is it about three percent?

Claus Lemke: In the last seven years we have had a variety of increases and they were more than three percent on the average. I think Grand Forks might be a little less because of the flood.

Steve Tomac, Executive Director, North Dakota Farm Credit Council, testified in opposition of SB 2217. (See attachment # 5)

Senator Hacker: Are we the only state that charges a fee or do some states charge a percentage?

Steve Tomac: I think that is an excellent question. I don't know what other states do. I do think there are only two other states in the country left that require abstracts like the state of North Dakota does. The rest have an option or rely on title insurance as another vehicle. That title insurance creates a competition.

Senator Warner: Do you have amendments that might suggest improvements to the bill.

Steve Tomac: No I don't. I will leave that to the committee. I would think that some more modest adjustment just in the numbers makes some sense. Again, our main objection to the bill is not the bill by itself. It is a combination of these bills that fail to move the industry in a more modern way. I do think that the committee should be aware that there are fees that abstractors can charge that are not in this legislation. There is a title search fee that is unbridled and is not capped and I know some abstractor rely on that as a method of recouping and getting revenue.

Greg Tschider, Mid America Credit Union Association, testified in opposition of SB 2217.

These fees don't impact credit unions directly but they impact the members and we feel this is a consumer issue. The real concern is when you put SB 2217 and SB 2218 together. Forty eight states in the union don't have abstracts, they use title insurance. In the real world out there it is title insurance, not abstracts. When you buy title insurance it is based upon the amount of insurance that you want. It is no different than if you buy property insurance or something of that nature. So if we were dealing with title insurance policies in North Dakota we wouldn't need these fees. We are concerned that we are going to have excessive cost and the consumer gets to pay.

No further testimony in favor, opposed or neutral on SB 2217.

Chairman Cook closed the hearing on SB 2217.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2217**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 9, 2007**

Recorder Job Number: **3257**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the committee to order and ask them to go to SB 2217.

Chairman Cook had amendments for SB 2217 for the study. He asked if committee wanted to put the other amendments on to the study.

Committee agreed to combine amendments.

Senator Hacker moved the amendments to SB 2217.

Senator Anderson seconded the motion.

Discussion

Senator Anderson moved a Do Pass as Amended.

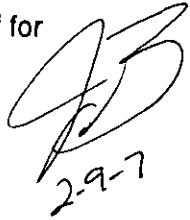
Senator Hacker seconded the motion.

Discussion

Roll Vote: Yes 4 No 1 Absent 0

Carrier: **Senator Warner**

February 6, 2007



2-9-7

PROPOSED AMENDMENTS TO SENATE BILL NO. 2217

Page 1, line 2, after "fees" insert "; and to provide for a legislative council study"

Page 2, after line 3, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY - ABSTRACTERS, TITLE OPINIONS, AND TITLE INSURANCE. The legislative council shall consider studying, during the 2007-08 interim, abstracters, title opinions, and title insurance, including a review of the orderly and efficient transfer of real property which provides adequate assurances of title. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2217: Political Subdivisions Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2217 was placed on the Sixth order on the calendar.

Page 1, line 2, after "fees" insert "; and to provide for a legislative council study"

Page 2, after line 3, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY - ABSTRACTERS, TITLE OPINIONS, AND TITLE INSURANCE. The legislative council shall consider studying, during the 2007-08 interim, abstracters, title opinions, and title insurance, including a review of the orderly and efficient transfer of real property which provides adequate assurances of title. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 HOUSE POLITICAL SUBDIVISIONS

SB 2217

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2217

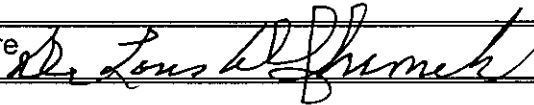
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: 4812

Committee Clerk Signature



Minutes:

Chairman Herbel: Opened the hearing on SB 2217. Senator Holmberg would not be here but someone else would be here representing the abstracters. Do we have any testimony in support of 2217?

Dean Rindy: (see testimony #1)

Rep. Donald Dietrich: When you do an update of the abstract do you normally have title insurance involved?

Dean Rindy: There may or may not be. If there is title insurance involved we will update the abstract for either myself or the company issuing the title insurance. On average 30-40% of those abstract updates are for title insurance and probably 60-65% of those abstract updates are non-title insurance updates.

Rep. Donald Dietrich: I certainly appreciate you using the example. Not to suggest that the realtor fees are more.

Dean Rindy: Rep. Donald Dietrich they work very hard for their money as do the abstracters. They participate in the increase in the value of the property whereas the abstracters; while having additional risks do not gain any additional fee income.

Rep. Donald Dietrich: A couple years ago closing fees on both sides of the transaction were \$125 per side; seller and buyer side and that has increase to \$187 which is a \$52 increase in both sides, which is \$104 for both real estate transactions. That is just for the closing agent. The claim for the increases is for technology and we have found visiting with the owners that is absolutely correct. I just wanted that to be said.

Rep. Lawrence Klemin: With regard to the question that was asked about title insurance this morning has been established in Slope County.

Dean Rindy: I would say other than the larger populated counties like Cass, Grand Forks, Burleigh, Ward. Title insurance, at least as it is used in ND is primarily a residential product. My experience has been that commercial and the agricultural lenders don't use title insurance very much. You are aware that ND is more an agricultural state rather than a residential or commercial state. In response to Rep. Donald Dietrich question to help answer your question, the abstracts that we update in Richland County are probably only 30% for title insurance. They are primarily residential. The others are for agricultural land and very rarely for title insurance.

Rep. Lawrence Klemin: For the closings I understand abstracters don't do the closings.

Dean Rindy: I don't know the percentage. I do know that the abstracters in Richland County; we both close transactions and write title insurance and update abstracts. Not every abstracter we update will close for title use. About 30% of the abstract orders we receive we will actually update the title insurance and close ourselves. 60% will go to the various banks who will close themselves and will not seek title insurance. A lot of the counties, especially the smaller populated ones will use title insurance. It may be written by an abstracter who doesn't even live in the county because the abstracter in that county is not a title insurance agent so if they want title insurance they will contact a title insurance agent in another county.

Rep. Lawrence Klemin: Most of these counties have one abstractor per county?

Dean Rindy: That is correct. I think Cass County, Burleigh, Richland, Stark, Williams; probably five or six counties that have more than one, but all the other ones have only one.

Rep. Lawrence Klemin: So those counties, because of the increase cost of doing business, who is going to do the work if they are not there to do it?

Dean Rindy: Because of right now they are standing in there taking the hits and are doing it at a loss. I don't know how much longer they can do it. They are not making enough money to keep the doors open, not alone to become automated and technically advanced the response time is going to decrease and a county without an abstractor I don't know what is going to happen.

Rep. Nancy Johnson: What is a mechanic's lien?

Dean Rindy: A mechanic's lien files by either a contract or supplier of materials on a piece of property to give notice to any one searching that chain of title that they have not been paid for their supplies or labor. Gave an example of who this works. A mechanic's lien is now filed with the county recorder so therefore there is no need to search the clerk of court for a mechanic's lien any longer because you won't find them there. You will find them in the regular chain of title that abstracters typically search.

Rep. Kari Conrad: Why would we want a Legislative Study?

Dean Rindy: I don't know. It was not part of the bill as it came out of the Senate committee. It was not part of the bill as we knew it.

Rep. Kim Koppelman: Can you explain how technology is worked into this industry?

Dean Rindy: As I said in my introductory remarks, we created an abstract company in Richland County that is 100% automated. What we did is we worked with the county recorder to allow us to image their documents as they sat in their office so we went through all the deed

books; all the mortgage books, all the miscellaneous books; all their records and imaged them digitally to a data base. The data base is huge because the images take up a lot of space, but once those images were imaged into a data base they were tagged with a document reference which now with the software that we purchased through a software vender, we can actually retrieve those documents by either typing in the legal description, or document number, or grantor or grantee's name or retrieve them by types. It now saves us a lot of time and travel.

Rep. Kim Koppelman: How do you keep track of a change on a specific property?

Dean Rindy: At least once every other day we will go down to the county records office and retrieve all the documents that have been recorded in that time frame. We will retrieve those documents digitally. We are fortunate that the county recorder of Richland County is also digital now from 1992 forward so after they enter the documents we will go down with a small stick and put them onto the stick and bring them back and put them onto our data base and then our people will place those documents based on the legal description etc.

Rep. Kim Koppelman: If the fees abstracters earn are set in statue how do you compete? I think I understood from your testimony earlier that you are not the only one in town. What is the competitive factor? Most of us in business would have to offer more quality or better service; how do you stand out in the county?

Dean Rindy: 1) We are digital from 1992 forward 2) We believe the digital product is a better product and over time the ability to produce the document with fewer errors in almost real time will give us the competitive edge that even if we are at par with the competitor down there in pricing we can beat them in speed and accuracy.

Rep. Kim Koppelman: How long has it been since the fees have been increased?

Dean Rindy: Six years since the last increase.

Rep. Donald Dietrich: The information you have computerized now, records and documents now. As you work with the communities, bankers and lending institutions and agents using that information such as marketing analysis?

Dean Rindy: It is much easier to communicate with those entities now that the documents are digital because most people have a lap top or home computer or and an office computer and they contact us asking us can we see the last chain of record for purposes of market appraisal or if an attorney calls us and asks for the last deed of record in preparation of a new deed we have that information immediately and can email it to them in that digital form.

Rep. Donald Dietrich: Right now there is not. Richland County is a relatively small county. Another reason we entered into Richland County, I have working relationship with the attorneys there; being a Cass County attorney. With share information because the attorney's wife and daughter work for me so we have a competitive edge.

Rep. Lawrence Klemin: Isn't it true that most of the title companies around the state still use older methods that are much more labor intensive.

Dean Rindy: Yes, our goal is to establish one in ND and get people acquainted with that. But with the fee schedule that presently exists there is no way that smaller counties are going to be able to operate. Not that every county in the state will get digital in the near future, but at least this fee will give them a little breathing room to automate some. Hopefully with the fee increase they can start coming into the technology age.

Phyllis Sutherland: (See testimony #2)

Rep. Chris Griffin: Do you see a need for the increased labor costs?

Phyllis Sutherland: The amount of labor maybe, it definitely increases the efficiency, but as Mr. Rindy was saying you really need to be an expert in title and technology. The salaries are

going up because the people you need to hire have to be professional not only in the title industry but in the technology area also.

Rep. Kim Koppelman: The competitive, which are few that we heard about. I noticed that these amounts are maximum. Are there people out in the abstracting world that are not charging the maximum because of competitiveness?

Phyllis Sutherland: In our county we do not charge the maximum. That is why we feel we need to work together to help out the smaller counties get technological advanced. We do not charge maximum in Cass County.

Rep. Kim Koppelman: You said you represent the Association?

Phyllis Sutherland: The board is really did not feel that they should take a stand on this bill.

Rep. William Kretschmar: Would your profession be better off if the legislature just abolish all the fee things and you try it on your own?

Phyllis Sutherland: Actually I am not sure why our fees are set by the legislation, but I think the economy itself would drive the prices so I am not sure why the Legislative vote.

Steve Tomac: Farm Credit Services of ND. I am here in favor of the Study Resolution and was part of drafting that it was the Senate Committee's observation that perhaps there is a need for the study and we agreed with that. Two years ago I was here before this committee with some concerns about title insurance and we had a good discussion and debate on it. If all consumers had title insurance it probably would not look like the system we have in place today. It may or may not include some form of abstracting and title insurance. As you recall in the testimony of two years ago, when we introduced the title insurance bill, it would have made it easier to get title insurance through the state as a replacement for abstracting, you might remember that there were two abstracters that did not even have fax machines yet. For that reason we are very much in support of some type of study resolution to try and help this

industry modernize. As you can well imagine farm credit does the major portion of ag and the major portion is prime real estate loans. Farm credit handles approximately 40% of the ag real estate loans in the state so we deal with the abstracters every day of every week. We have to say the most of them are not modernized. Forty to forty five percent of the rural counties that do not have competition and so they haven't had to modernize. We find our selves in a quandary; how can we modernize without a fee increase and how can give a fee increase that is tied to some kind of modernization? How can we encourage this industry to modernize? We do have some question about whether the fee increase is really justified. Our question is more how to help them modernize? How do we drag this industry along? We feel Rep. Kari Conrad that the study is very important so we can tend to iron out what and where we should be going. To answer Rep. Lawrence Klemin question about title insurance and why there isn't title insurance where 40-45 counties do not sell title insurance because it is a duplication of cost. We can't buy title insurance without an updated abstract so you have an updated abstract and that is a method of title assurance, then why would you go ahead and invest in title insurance? There is a lot of confusion out there in the industry and there is good cause to study it. I hope the committee would also encourage the Legislative Counsel to adopt that study during the interim to hear sides from the lenders and abstracters to try and help move this industry into the 21st century. Farm Credit did raise some question about the percentage of the fee increase in the Senate side. When you look at the percentages it is 27% and 33% respectively. I think the abstracters have done a very good job explaining that. Our major concern is there a way to tie modernization to fee increases?

Dean Rindy: I know Mr. Tomac did not intentionally mislead this committee, but the statement that an abstract update and title insurance are a duplication of costs is absolutely incorrect. I have closed loans in 15 other states. Each of those states either the abstract or chain of title

needs to be examined before a title insurance company will insure the property. In each of those states including Minnesota the cost of that examination whether it be called an abstract update or a title search is always been greatly in excess of what the abstract update or the attorney opinion cost is in ND. In Florida that search fee is \$850. The closing fee is 1% of the purchase price. In Minnesota those abstracters along the Red River Valley do pretty much what ND does because it is a competitive market. In Minneapolis, St. Paul the search fee is anywhere from \$500 - \$750. No one in the US will give you title insurance without someone searching down that title and someone certifying the status of that title. So whether it is an abstracter searching it and an attorney examining it or a certified abstracter or licensed attorney there is going to be a fee for it and that fee is going to be greater than what it is in ND.

I agree Mr. Tomac if we came in here today and say give us a living wage so we can try to automate ourselves.

Opposition: None

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

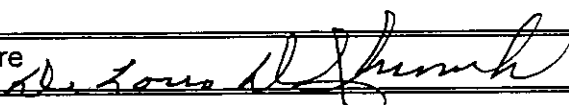
Bill No. SB 2217

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 22, 2007

Recorder Job Number: 5433

Committee Clerk Signature 

Minutes:

Chairman Herbel reopened the hearing on SB 2217.

Rep. Kim Koppelman: (Handed out proposed amendment) essentially after the hearing the Chairman Herbel and some others decided there were a couple of the increases that were pretty substantial percentage. During the hearing I looked back to 1993 and looked at the history of what the increases were then and looked at 2001 and they have been primarily inflation or maybe a little more or less depending on the year. The amendment does is changes ten to seven; that is a 67% increase right now. The next one instead of going 75 to 85 that would have been a 32% jump; and this brings it down to more inflationary. The other change on line 22; where we go from three to five; we would go from three to four. The other ones I thought we in line with normal inflation. I ask should be even do this and that is something we will have to decide.

Rep. Kim Koppelman made a motion to move the amendment; Seconded By Rep. Chris Griffin

Discussion:

Rep. Lawrence Klemin: I would ask the committee to resist these amendments. (Handed out US Department of labor index) I want to talk to you about the merits of doing this. I did not have anything to do with this bill. I am very well acquainted on how abstracting works. So

what I did was pulled out figures from the US Department of Labor. If we use those figures that Rep. Kim Koppelman just gave us on the amendment we would be just a little bit behind, even on inflation since 2001. The point is if you go back to 1993 you can see that the inflation has been a fairly steady graft going up so I made an assumption that is probably going to continue similar. I am wondering if it is really appropriate for us to say to these people and how they are going to stay in business or be able to sell out as they get older. Over the years we need the counties to increase the charges and do it to a point that they can afford to keep up with technology and costs involved. My point is I think we need to keep these companies in business and just giving them a cola is not reasonable. We have 53 counties; there are more abstract companies than that; in about six counties we have competition. These set in the statutes are maximums. The counties will go out of business where there is competition; most of them don't charge the maximum. The other 47 counties where there is no competition. This is not a monopoly that we created. Those counties can't afford to have more than one abstract company. We require them to do all these things. They have to maintain abstract liability insurance. They have all the overhead costs like we do and if we had to tell them you have to make a significant investment to maintain your title plat in your office and all we are going to allow you is a very minimum increase. Even though everyone else is getting increased costs and land values have gone up and a lot of that is a result of higher seller prices for landowners when they sell the property. When we look at the title costs with these people we say we are sorry, you can't get anything more than you did before. I think that is just not fair. These people are not getting rich as it is now. I can't think of any other business we have that the government says to a private business these are the exact fees that you may charge to your prime customers and not more. We don't do that to anyone else in this room, I am sure.

These people did not come in asking us to repeal the statute; they came in with something they thought was reasonable. I think that is reasonable.

Rep. Donald Dietrich: I can think of one fee and that is tax collection.

Rep. Lawrence Klemin: We limit the amount of fees that tax collectors charge to the person they are collecting from, but we don't limit the amount that they charge to their own customer.

Rep. Steve Zaiser: Since we are talking about repealing this section of law?

Rep. Kim Koppelman: I am not talking about repealing it. They did not ask that be done. I just want to scale it back so that the costs are not so drastic of an increase.

Rep. Steve Zaiser: I am concerned that we are micro managing this business.

Rep. Kim Koppelman: We have a lot of businesses that are regulated. We have an entire department of state government called the Public Service Commission that tells us how much other companies can charge for their services etc. There is nothing worse than a monopoly but this isn't a monopoly that the government has created. I think they deserve an increase and I am not opposed to the bill. We thought it was a large jump and we wanted to get it passed on the floor. The premise the Rep. Lawrence Klemin has is that we are not going to adjust this for 6 years so therefore we ought to adjust it high enough that it will last 6 more years. Discussed the fact that the man that testified from Richland County chose to go into this business so he made that decision and there is competition there for him.

Rep. Lee Kaldor: I am thinking of some of the council that I represent. I know there are some rural counties that currently a slight adjustment doesn't accommodate what they have to do. I have not heard of any larger abstract companies taking over business across the lines. What Rep. Lawrence Klemin is saying, in urban populated counties where there are a lot of transactions, this is a limit and probably will not be reached, but in those counties where it is less likely or probably then an abstractor company will go out of business. I happen to know a

few of those abstracters that are getting close to retirement and probably won't have a sale for those abstract companies so I can see them laying behind that premise and I don't know if we want to address this every year. I think I think myself siding with Rep. Lawrence Klemin.

Chairman Herbel: Personally when Rep. Kim Koppelman and I were visiting about the fees. We were concerned they may not make it on the floor if the fee increase was too great. I think there is an issue and if this committee is comfortable with the bill as it is going to make it on the floor because we have a tendency sometimes we don't want to increase fees too much.

Rep. Lawrence Klemin: There is just not enough business even though there is no competition.

Rep. Louis Pinkerton: Both your arguments are good. If we averaged it out to 2013 they would have a small period where they would be making money toward the end. (discussed the handout and figures on it).

Rep. Donald Dietrich: Since I deal in real estate I am a little closer to abstracter and insurance and the costs involved. What is coming down the line is abstracters can not make any money in their business and they will so be switched to title insurance. The trend in ND now is in Grand Forks we close with title insurance. The testimony of one of the folks that was here they had closed on a fee on property and the abstracting was \$102. Another instance it was \$110 and \$160. If I was to put title insurance on a \$150,000 today it would be approximately \$400. If we don't give these folks some leeway, large title insurance companies will come in and then it will cost more. I have to resist the amendment. We do not need to force the hand of the abstracter.

Rep. Kari Conrad: There was no opposition to the fee when the bill was heard.

Rep. Kim Koppelman: I just want to get this bill passed and I am not married to the numbers so I do not care what you do.

Chairman Herbel did a voice vote and it failed on the amendment.

Do Pass Motion Made By Rep. Nancy Johnson; Seconded By Rep. Kim Koppelman

Rep. Donald Dietrich: My worry is if we don't give them an adjustment today these people will not be able to stay in business.

Vote: 14 Yes 0 No 0 Absent Carrier: Rep. Donald Dietrich

Hearing closed.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2217

Page 1, line 9, replace "ten" with "seven"

Page 1, line 11, replace "one hundred" with "eighty-five"

Page 1, line 22, replace "five" with "four"

Renumber accordingly

