

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## JUDICIARY B COMMITTEE

Monday, August 20, 2001  
Roughrider Room, State Capitol  
Bismarck, North Dakota

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

**Members present:** Representatives Lois Delmore, Curtis E. Brekke, David Drovdal, G. Jane Gunter, Lyle Hanson, Dennis E. Johnson, William E. Kretschmar, Todd Porter, Elwood Thorpe; Senators Dennis Bercier, Michael A. Every, Thomas Fischer, Ben Tollefson, John T. Traynor, Tom Trenbeath

**Members absent:** Representatives Jon O. Nelson, Dorvan Solberg

**Others present:** See attached appendix

At the request of Chairman Delmore, Mr. Jay E. Buringrud, Assistant Director, Legislative Council, reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*.

### FEES AND POINT DEMERITS FOR TRAFFIC OFFENSES

At the request of Chairman Delmore, committee counsel presented the memorandum *Fees and Point Demerits for Traffic Offenses - Background Memorandum* relating to the study directed by House Concurrent Resolution No. 3005.

Ms. Marsha M. Lembke, Drivers License and Traffic Safety Division, Department of Transportation, presented written testimony on the study. Ms. Lembke said the State Auditor's office conducted an audit of the driver's license master system. She said the audit recommended study of discrepancies and ambiguities in legislative intent and of drivers continuing to drive while under suspension. She said this study relates to the former recommendation. She said there is an ambiguity about how the legislature intended points to be handled when a driver comes off a lengthy suspension. She said under North Dakota Century Code Section 39-06.1-12, the department reduces a driving record to 11 points when a licensee completes a period of suspension. She said under Section 39-06.1-13, the department reduces the points on a driving record by one point for each three-month period during which no points are recorded against the record. She said it is unclear whether the sections are intended to run concurrently or consecutively. She said other inequities exist. She said a driver driving 90 miles per hour in a 25-mile-per-hour zone would have committed a noncriminal traffic offense and would be assessed 15 points and a

\$200 fee. Under the same circumstances, a driver convicted of the criminal traffic offense of reckless driving would pay a fine of up to \$1,000 or be imprisoned up to 30 days, or both; however, the driving record would be assessed eight points. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Representative Kretschmar, Ms. Lembke said the state of a nonresident who is cited for speeding in this state would be notified of the offense under a state compact.

In response to a question from Representative Porter, Ms. Lembke said a driver from this state cited for speeding in another state would not have the points of the other state assessed against the license in this state.

Senator Stenehjem presented testimony on the study. He said the emphasis of the study should be on creating a balance of fees and points. He said this is difficult to do during a legislative session because of the limited time. He said these changes are usually made in a piecemeal basis during the session. He said this committee has the opportunity to review in total and over a longer period of time the fees and points for traffic offenses.

In response to a question from Senator Fischer, committee counsel said home rule cities may exceed the fees for traffic offenses which are listed in the North Dakota Century Code.

In response to a question from Senator Bercier, committee counsel said the general rule is that home rule cities may make and enforce their own ordinances. He said there are some exceptions specifically provided by law.

### CENTRALIZED PROCESS FOR TRAFFIC VIOLATION ADMINISTRATION

At the request of Chairman Delmore, committee counsel presented the memorandum *Study of Centralized Process for Administering Noncriminal Traffic Violations - Background Memorandum* relating to the study directed by Senate Concurrent Resolution No. 4042.

Ms. Lembke presented written testimony on the study. She said the primary objective of the study should be to reduce delays in processing traffic citations. She said the committee should explore a central processing location for citations. She said the

centralized system could be anywhere because of the use of technology to process citations. A copy of her testimony is on file in the Legislative Council office.

Senator Traynor said there was a recent incident in which a city court did not transmit the notice of appeal to district court for a traffic offense. He said the charges were dismissed. He said this was a flaw in the traffic offense process.

### **TRUSTS FOR INDIVIDUALS ON GOVERNMENT ASSISTANCE**

At the request of Chairman Delmore, committee counsel presented the memorandum *Trusts for Individuals Receiving Government Assistance - Background Memorandum* relating to the study directed by Senate Bill No. 2187.

Mr. Blaine Nordwall, Director of Economic Assistance Policy, Department of Human Services, presented written testimony on the study. Mr. Nordwall said the department is working with Guardian and Protective Services Inc. to create pooled special needs trusts. He said this allows a group of individuals to have professional management services without the high cost. He said by the end of the month, the department will have electronic forms available for the creation of third-party special needs trusts and self-settled special needs trusts. He said the forms will be accompanied by detailed instructions. He said there is more to filling out the forms than filling in the blanks. He said creating these trusts will most likely require the assistance of an attorney. He said the forms should lower the cost for the creation of these trusts. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Nordwall said the forms are meant as a template for an attorney to change to fit the circumstances of the client.

In response to a question from Senator Traynor, Mr. Nordwall said tax consequences are one reason an attorney should be consulted in the drafting of these trusts.

In response to a question from Senator Traynor, Mr. Nordwall said the department intends to work with the State Bar Association of North Dakota in the editing of these forms. He said legislation in this area is not necessary, especially after the forms are available.

In response to a question from Representative Porter, Mr. Nordwall said the bill introduced last legislative session which would have given the court reformation powers over these trusts would have been a major change in the law. He said the general rule is that the court must follow the intent of the settlor. He said allowing courts to change the instrument without evidence of the intent of the settlor would be in violation of this rule.

In response to a question from Senator Trenbeath, Mr. Nordwall said the reason the third-party trust form

provides for an irrevocable trust is for the sake of simplicity.

At the request of Chairman Delmore, committee counsel presented the memorandum *Effect of Educational Trusts for Children on Eligibility for Human Services Programs - Background Memorandum* relating to the study directed by Senate Concurrent Resolution No. 4032.

Mr. Nordwall presented written testimony on the study. He said a common instance of grandparents saving for a grandchild is through a joint savings account. He said sometimes grandparents do this without the child's knowledge. He said the department has allowed grandparents to change the account when the child's household applies for government assistance.

### **RESIDENT AND NONRESIDENT HUNTING ISSUES**

At the request of Chairman Delmore, committee counsel presented the memorandum *Resident and Nonresident Hunting Issues Study - Background Memorandum* relating to the study directed by House Bill No. 1269.

Mr. Roger Rostvet, Deputy Director, Game and Fish Department, presented testimony on the study. He said the department supports the study.

In response to a question from Senator Traynor, Mr. Rostvet said although the Legislative Assembly passed a resolution requesting that the beginning of waterfowl hunting seasons begin no later than September 15, the federal government does not allow the beginning of waterfowl hunting seasons until around October 1. He said there has been success with earlier seasons for resident Canada geese, a youth hunting season, and sandhill cranes. He said as for ducks and geese, they are considered a national resource, and other states do not want this state to have an earlier season.

In response to a question from Representative Porter, Mr. Rostvet said economic impact data is being updated on a five- to six-year basis. He said the last economic data made by the state was for the 1996-97 season.

In response to a question from Representative Porter, Mr. Rostvet said the Game and Fish Department pays over \$300,000 in lieu of property taxes. He said the department pays in lieu of taxes on owned and leased land. He said the department owns approximately 78,000 acres and leases about 100,000 acres.

Mr. Mike Donahue, North Dakota Wildlife Federation, Bismarck; Mr. Kyle Blanchfield, North Dakota Professional Guides and Outfitters Association, Devils Lake; Mr. Larry Knoblich, North Dakota Sportsmen's Alliance, Jamestown; Mr. Randy Frost, Devils Lake Chamber of Commerce, Devils Lake; and Mr. Terry A. Fleck, Bismarck, resident hunter, offered assistance to the committee in the completion of the study.

Mr. Knoblich said there is some argument as to the statistics used in the memorandum. He said the Sportsmen's Alliance wants to stop the large influx of nonresident hunters. Mr. Frost said hunting is important to the economic future of rural North Dakota. Mr. Fleck said there are approximately 30,000 resident waterfowl hunters who no longer hunt. He said they are in the state and not spending money on hunting. He said if the reasons they do not hunt were removed, this would create economic development.

### RETENTION OF ELK

At the request of Chairman Delmore, committee counsel presented the memorandum *Retention of In-state Elk - Background Memorandum* relating to the study directed by House Concurrent Resolution No. 3022.

Mr. Rostvet presented testimony on the study. He said every state with a large ungulate population has problems with them. He said the national park creates a problem because the core population of these ungulates cannot be managed by the state. He said elk generally do well if they wander into the state and establish a herd. He said placing groups of elk in the state and hoping they do well generally does not work. He provided an example of placing elk in an area, which included a history of elk, in the Killdeer Mountains and an example of the Corps of Engineers placing elk on a peninsula on Lake Sakakawea. He said elk do not stay where they are placed. He said the Game and Fish Department does not support hauling elk to places around the state and releasing them.

In response to a question from Senator Every, Mr. Rostvet said the largest running population of elk in this state is in the northeast portion of the state. He said there have been 100 to 125 elk for the last 10 years in the northeast portion of the state. He said that group of elk came into this state from Canada.

In response to a question from Senator Bercier, Mr. Rostvet said elk will do well in any area in North

Dakota. He said there are approximately 5,000 elk in this state, mostly on elk farms. He said elk will do well but do not interact well with humans.

Senator Traynor said using the excess elk in the park for elk farms within this state is preferable to shipping them out of state. He said this would be economic development.

Representative Hanson said he and others pay thousands of dollars to hunt wild elk in other states.

Representative Drovdal said some landowners are adamantly against elk, and some are for more elk. As time passes, he said, the problem with elk will get greater. He said the federal management of elk is not working.

Representative Delmore provided copies of a letter and an article provided by the Alliance to Manage Elk in North Dakota. The Alliance to Manage Elk in North Dakota is an effort to prevent future exports of elk from this state. The group is organizing a video conference on Saturday, August 25. A copy of the letter and a copy of the article are on file in the Legislative Council office.

### REPORT ON NO-PAY/NO-PLAY

At the request of Chairman Delmore, committee counsel presented the memorandum *Report on Effectiveness of Exempting a Secured Person from Noneconomic Loss by Certain Injured Persons Operating a Motor Vehicle - Background Memorandum* relating to the report required by 1999 Senate Bill No. 2376. The report is required of the director of the Department of Transportation in 2002.

No further business appearing, Chairman Delmore adjourned the meeting at 2:45 p.m.

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Timothy J. Dawson  
Committee Counsel

ATTACH:1