

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1428

2005 HOUSE TRANSPORTATION

HB 1428

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. HB 1428

House Transportation Committee

Conference Committee

Hearing Date February 4, 2005

| Tape Number                                      | Side A | Side B | Meter #   |
|--|--------|--------|-----------|
| 2  | X      |        | 13.2-37.4 |
|  |        |        |           |
|  |        |        |           |
| Committee Clerk Signature <i>DeLour Alphonik</i> |        |        |           |

Minutes:

**Chairman Weisz** opened the hearing on HB 1428 A Bill for an Act to amend and reenact section 49-09-04.2 of North Dakota Century Code, relating to the sale of railroad right of way.

**Rep. Wrangham:** I introduced HB 1428 at the request of a constituent. We have had legislation in past session similar. In fact much of what you see in this bill was changed just one session ago. The bill is to change the word abandon. Presently if a railroad abandons a line and then is going to sell off the right of way. This list steps A,B,C & D on how they would do this and getting it back into private ownership. If a railroad owns any right of way it would be handled in the same way. My constituent is here today and will talk to you.

**Arnold Schieve:**(15.9) The railroad leased out their right of way and gave the landowner first choice to lease this railroad right of way. Another land owner came in and leased the land, and he doesn't even own any land adjacent and without notification from the railroad. I feel that the landowners adjacent to the land should get first choice to farm the hay land or lease the land. We

have had lots of problems with the person that rented the land next to ours. I am not only talking for myself. I know that a lot of people have had this problem.

**Chairman Weisz** Anyone else here in support of HB 1428. Anyone here in opposition of HB 1428?

**Brian Sweeney:** (See attached testimony)

**Rep. Meyer** It would not be that hard to give a land owner right of first refusal. It could be stated right in your lease. It is done all the time.

**Brian Sweeney:** This becomes a problem where you grant a right to a set group of people is we have situations where people come in and they want to build a new industry in town and they need to get onto our property. They need to use our property for that. They would not be able to because the adjacent property owner would get right of first refusal on it. Under this statute not only that person, but any one who has any investment at all in the property; however small would have first priority. In affect stringing out the process so long to the point of having a deal fall through. It is better to have that flexibility. We have had situations where someone comes in and wants 10 acres; two of those acres they want are already under lease to someone else who has some small capital improvement on the project. Rather than have a situation where we buy that party out and are compensated for those facilities. Instead the whole 10 acre project could be messed up by this law.

**Rep. Meyer** It would work like any other right of first refusal. You go to the adjoining landowner and if he says no to meeting the price, that is it.

**Bryan Sweeney:** It could be a problem. You have a list of people in the statute who have to be death with before you sold the property. So all of them would have to be given the right to exercise their rights under the statute.

**Rep. Thorpe** How about an amendment that says for agriculture only?

**Brian Sweeney:** It is singling out one class of commodity and putting restrictions on it. It would be requiring what we typically do anyway. Whatever happened in this particular case that is driving this whole thing is really the exception to how things work out. Typically it is the adjacent property owner that we deal with first. I don't think it calls for legislation that would put limitations on all our properties.

**Rep. Owens** You mentioned several times we normally do this. You mentioned elevators wanting to expand. Say you got the land and the elevator to the south and they want to expand west, but now there is also agricultural land too. Who has right of first refusal?

**Brian Sweeney:** We have a situation sometimes when it is tough sometimes to figure who is first in line. We can have adjacent property owners who would have a right of first refusal.

**Chairman Weisz** Anyone else here in opposition of HB 1428.

**David Dry, Director of Marketing for Union Pacific Railroad:** I am also an attorney and specialize in real estate. We are opposed to this bill for a number of reasons. This is the first time I heard the component of the bill and their reasoning behind it. By enlarge our property with the Sioux Line we went out and bought it and paid a premium price for it. There was some land grants, but it was not free. The priority of interest in the property. The BN was there before the state and now the priority has changed. You know what it is our land and we should not be told how to sell you land. The law from before was very vague. In this one you look at this bill and

try to figure out what right of way is. Depends on who you talk to. Could vary in footage. They have a right or option to buy the property. What exactly do we have to offer them. It gives them the ability to control the situation. It puts too many restriction and takes away our options. The present bill was not real great, but the difference under abandoned property its application was very narrow. Generally it is the way we do things anyway. This bill is so large and so vague that it is like killing flies with a shot gun.

**Rep. Schmidt (34.1)** When the property is abandoned and there are noxious weeds growing on that property, isn't it the landowners responsible for controlling noxious weeds?

**David Dry:** As this bill is structured it would prevent the railroad from selling to another railroad. We could not sell a corridor? I will be glad to talk to you afterwards, but I don't think that this is in the scope of this bill.

**Chairman Weisz** Anyone else in opposition. We can't debate this issue.

Closed hearing (37.4)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. HB 1428

House Transportation Committee

Conference Committee

Hearing Date February 10, 2005

| Tape Number                                       | Side A | Side B | Meter #   |
|---|--------|--------|-----------|
| 2   | X      |        | 47.7-52.4 |
|   |        |        |           |
|   |        |        |           |
| Committee Clerk Signature <i>DeLour A. Shemel</i> |        |        |           |

Minutes:

**Chairman Weisz** reopened HB 1428.

Motion made by Rep. Hawken Seconded made by Rep. Delmore

**Rep. Thorpe** What was the big problem with this bill.

**Chairman Weisz** I lease railroad property, but with this bill the adjacent land owner can come and take it away from me. He said he should have first change to lease or buy.

**Rep. Weiler** It also goes so far as to say a railroad could not sell their track or any part of the land to another railroad.

Motion Made by Rep. Hawken Seconded by Rep. Delmore

DO NOT PASS 15 Yes 0 No 0 Absent Carrier: Rep. Thorpe

(52.4)

Date: 2-10-05  
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1728

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Rep Hawken Seconded By Rep. Delmore

| Representatives           | Yes | No | Representatives | Yes | No |
|---------------------------|-----|----|-----------------|-----|----|
| Rep. Weisz - Chairman     | ✓   |    | Rep. Delmore    | ✓   |    |
| Rep. Hawken - Vice Chair. | ✓   |    | Rep. Meyer      | ✓   |    |
| Rep. Bernstein            | ✓   |    | Rep. Schmidt    | ✓   |    |
| Rep. Dosch                | ✓   |    | Rep. Thorpe     | ✓   |    |
| Rep. Iverson              | ✓   |    |                 |     |    |
| Rep. Kelsch               | ✓   |    |                 |     |    |
| Rep. Owens                | ✓   |    |                 |     |    |
| Rep. Price                | ✓   |    |                 |     |    |
| Rep. Ruby                 | ✓   |    |                 |     |    |
| Rep. Vigesaa              | ✓   |    |                 |     |    |
| Rep. Weiler               | ✓   |    |                 |     |    |
|                           |     |    |                 |     |    |
|                           |     |    |                 |     |    |
|                           |     |    |                 |     |    |

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Thorpe

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE (410)**  
February 10, 2005 1:03 p.m.

**Module No: HR-27-2407**  
**Carrier: Thorpe**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1428: Transportation Committee (Rep. Weisz, Chairman) recommends DO NOT PASS**  
**(15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1428 was placed on the**  
**Eleventh order on the calendar.**

**2005 TESTIMONY**

HB 1428

HB 1428  
2-7-05

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SCOTT K. PORSBORG\*\*\*  
DEENELLE L. RUUD\*  
JACLIN M. WIKE

ALSO LICENSED IN:  
\*MINNESOTA  
\*\*MONTANA  
\*IOWA  
\*\*SOUTH DAKOTA

July 7, 1993

Mr. Kevin Glatt  
Burleigh County Auditor  
City/County Building  
Bismarck, ND 58501

FOR DISTRIBUTION TO THE  
COUNTY COMMISSIONERS  
HEARING OF JULY 7, 1993

Dear Mr. Glatt:

The matter of Braun's Angus, Inc. and Arnold Schieve relative to the section line dispute creates a real quandary for the County Commissioners due to the repetitious nature of the continuing problem. In order to facilitate the Schieve explanation, I will summarize his position with the hope that this will reduce arguments to a minimum and give the Commission members a focus on the problems which exist.

There is no question but what Mr. Schieve owns the SE $\frac{1}{4}$  of Section 2 which is located in Apple Valley Township, Township 138 North, Range 79 West. Burlington Northern is the owner of a railroad easement which comprises an area of 200 feet on each side of a railroad track as is located over the SE $\frac{1}{4}$  of Section 2. This grant to the railroad was pursuant to the Act of July 2, 1864. The nature of the railroad company's right is for the maintenance of a railroad and is an easement or a limited fee upon an implied condition of reverter. Northern Pacific RY v. Townsend, 190 U.S. 267. The extent of the railroad's right under this grant is no greater than is necessary for the railroad use. Barden v. Northern Pacific Railroad, 154 U.S. 288. Grants under this Act carry with them the implied condition that the lands are not to be used except for the purpose of legitimate railroad operation. Moreover, the Northern Pacific right of way cannot be used for other and foreign uses since it is clear that Congress intended that the right of way should be held and used exclusively for railroad purposes. L. D. Holland Co. v. Northern Pacific Railway Co., 214 Fed. 920. Another statute which involves the right of way and which provides for distribution of railroad right of ways upon termination of their use for railroad purposes, is the Act of March 8, 1922, 43 U.S.C. 912, which provides for transfer of title to the right of way to the owners of the adjoining tracts. Thus, when abandoned or partially surrendered, Mr. Schieve would appear to be the owner of the property, subject only to legitimate burdens thereon.

Akin to the state of ownership is the subleasing of a portion of a right of way by the railroad to the State of North Dakota as evidenced by an instrument recorded as Document No. 97215. This grant purports to reserve certain terminable rights to the railroad but specifically burdens the state with vegetation removal. Of further consideration is the fact that Mr. Schieve pays taxes on all of the SE $\frac{1}{4}$  of Section 2, T138N-R79W, less an abatement for approximately 7 acres. In the quarter section involved, the 1,320' x 400' right of way portrays an easement burden of approximately 12.33 acres.

Mr. Schieve has been at odds with Mr. Braun concerning the section line and the utility of a portion of that which restricts utilization of travel in the full width of 66 feet. As you are aware, the section line is a public road by Congressional grant. This is incorporated in the North Dakota Law Chapter 24-07, N.D.C.C. One cannot obstruct a section line unless written permission is obtained and other conditions meet Chapter 24-06-28, N.D.C.C. Authority of the County Commission is found under Section 24-06-29 for removal of obstructions. A section line may only be closed under the provision of Chapter 24-07-03 upon public hearing and of a public benefit resulting therefrom.

Mr. Schieve has requested consideration that the section line, 33 feet on each side, be open and unobstructed so that the Congressional easement is effective pursuant to the needs of the traveling and using public. In other words, back the plowing and planting by either party to 33 feet from the section line, leaving it unobstructed and usable on both sides of the section line for travel. The determination against closing of the section line was made on November 23, 1992 and is evidenced by the minutes of the Burleigh County Commission.

As to the railroad right of way, Mr. Schieve has only requested that, as the owner in fee of the property adjacent to the right of way, his rights be considered and that the easement burdens, together with appurtenances afforded to an adjoining owner, be accurately reflected, together with a reduction of taxable base resulting from the easement burdens.

Since it is a fact that the railroad right of way and the ancillary grant by the railroad to the State Highway Department are restricted to specific use, then Arnold Schieve, as the fee owner, be and is entitled to a general use, including haying, since such activity does not diminish or impair the specific usage of the property for railroad and highway, but is, in effect, beneficial thereto.

Very truly yours,

RUSSELL R. MATHER

**Testimony of BNSF Railway Company Opposing HB 1428  
(Conveyance of Railroad Property)  
House Transportation Committee Feb. 4, 2005**

Good morning Mr. Chairman and members of the Committee. My name is Brian Sweeney, I am legislative counsel for BNSF Railway Company. BNSF opposes HB 1428 because it would needlessly complicate the sale and leasing of railroad property and could actually hurt efforts in many communities to locate or expand businesses and create jobs.

First, I want to emphasize that when we convey land, we typically do what the bill calls for, which is deal with those who have an investment in the property, are already using it or own the adjacent land. So there is no widespread problem for this amendment to address. And there is no comparable limitation that I am aware of on any other class of property in the state.

The existing statute deals only with abandoned right of way. It was designed to address the disposition of land the railroads are essentially not using for any purpose. It sets up a priority ranking of who has first rights to that land. It is aimed at a very specific, narrow class of property. Further, the statute was amended just last session because the old statute was vague and complicated. If anything, the law was makin it harder to convey land. We said then that the best way to simplify this statute would be to repeal it. Expanding it to cover all of our property makes things that much more complicated.

Finally, our Economic Development Department has a number of projects in the pipeline in North Dakota that would be affected by this amendment. That's because each of them involves the lease or sale of right of way property for structures or sidings. Projects in Richardton, Minot, Grand Forks, Tioga, West Fargo, Jamestown and Ardoch: All would be screwed up by this amendment, because all of them would take a back seat to a number of other parties when it comes to using the railroad property they need to build, expand and add jobs.

HB 1428 should not be passed. It is a bad idea that addresses a small or nonexistent problem by handcuffing economic development in North Dakota.