

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2220

2007 SENATE POLITICAL SUBDIVISIONS

SB 2220

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2220**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 1, 2007**

Recorder Job Number: **2658**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the committee to order. All members (5) present.

Chairman Cook opened the hearing on SB 2220 relating to recording of instruments by the county recorder.

Malcolm Brown, Attorney, Member of the Real Property Probate Trust Section, ND State Bar Association, introduced SB 2220 and recommended a Do Not Pass. The Attorney Generals Office indicating that there might be some problems with the Uniform Commission Code. I understand that the secretary of state is also concerned about that. The support on this bill has vanished.

Ann Johnsrud, McKenzie County Recorder, representing the ND County Recorders Association passed out her testimony for the senators to read. (Attachment #1)

Opposed to SB 2220

Brain Bjella, Landman's Association of ND testified in opposition of SB 2220. (see Attachment # 1)

No further testimony on SB 2220.

Chairman Cook closed the hearing on SB 2220.

Senator Hacker moved a Do Not Pass on SB 2220

Senator Olafson seconded the motion.

Discussion: None

Roll call vote: 5 Yes 0 No 0 Absent

Carrier: **Senator Hacker**

Date: 2-1-07
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2220

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Senator Hacker Seconded By Senator Olafson

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X		Senator Arden C. Anderson	X	
Senator Curtis Olafson, ViceChair	X		Senator John M. Warner	X	
Senator Nicholas P. Hacker	X				

Total Yes 5 No 0

Absent 0

Floor Assignment Senator Hacker

If the vote is on an amendment, briefly indicate intent: at 10:00 AM ~~at 10:00 AM~~

REPORT OF STANDING COMMITTEE (410)
February 9, 2007 10:58 a.m.

Module No: SR-28-2698
Carrier: Hacker
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2220: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO NOT PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2220 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

SB 2220

To: Chairman Cook
Members of the Political Subdivision Committee

From: Ann Johnsrud – McKenzie County Recorder
North Dakota County Recorders Association

RE: SB 2220

For the record my name is Ann Johnsrud, Mckenzie County Recorder, representing the North Dakota County Recorders Association.

We are here to oppose SB 2220, amendments to section 11-18-01 of the North Dakota Century Code.

We feel that all of the requirements for recording documents are already set out in the North Dakota Century Code and to further amend the code is not necessary.

A document is deemed "recordable" under the following statues:

NDCC 47-19-03.4 A document must have original signatures;

NDCC 11-18-05.1(a)(2) The printed, written or typed words must be considered legible by the recorder before the page will be accepted for recording;

NDCC 47-19-03 Before an instrument can be recorded its execution must be established;

NDCC 11-18-05.1(a)(3) Each real estate instrument must have a legal description considered to be adequate by the recorder before such instrument will be accepted for recording; and

NDCC 11-18-01.1 If the person offering the instrument for recording pays to the recorder the fees provided by law.

The amendment on page 2 line 3 of SB 2220 states "The recorder shall record every instrument presented for recording for which the recording fees are paid if the instrument is executed or acknowledged as required by law, contains a legal description and has all

other statutory requirements.” These requirements are already set out in the North Dakota Century Code as I previously listed.

Page 2 line 6 of SB 2220 states “If the legal description appears to be erroneous or incomplete, the recorder shall record the document and shall to the extent possible, index the document.” We believe you would be hard pressed to find a Recorder who does not try, to the best of their ability, to index documents as they are presented. As recorders we are to “keep a full and true record” as stated in NDCC 11-18-01.1. This is what a Recorder in North Dakota does, to the best of his or her ability. Generally, if a Recorder notices an error or an incomplete legal description on a document, a courtesy phone call is made to the individual or company that presented the document, inquiring if they intended the description to be as presented or if they would like to correct the error or further expand on the legal description. In general, the customer is usually more than happy to correct an error before the document is recorded to save corrective documents later or create a cloud in the title. In some instances, the customer wants the document recorded “as is” and the Recorder will record the document and “to the best of their ability” index the document. For example, if a Recorder received a document with a legal description of Township 151 Range 101 Section 32, it could be assumed that the document was to be indexed against the whole section, all four quarters. If the document stated Township 151 Range 101 with no section listed, would we then assume the document was to be indexed against all 36 sections in that township? This could certainly be an inadequate legal description. If recorded and indexed this way, there would certainly be added fees and this could be an erroneous document indexed in 35 other sections. NDCC 12.1-11-05.1(a) states that a person is guilty of an offense if he

knowingly makes a false entry in or false alteration of a government record. What is to stop people from recording all kinds of documents with erroneous or false legal descriptions? This would be a nightmare for land and mineral owners when they request abstracts or title opinions on their property.

These amendments seem to be redundant and also open up the Recorders office to all sorts of erroneous recordings and certainly, to incomplete titles to property, which would complicate things for abstractors, realtors, landmen and others who rely on the County Recorders "full and true" records.

I urge you to give a Do Not Pass to SB 2220.

Thank you for your time and I would be happy to answer any questions you may have.



LANDMAN'S ASSOCIATION OF NORTH DAKOTA
P.O. Box 935, Bismarck, ND 58502-0935

In re: Senate Bill 2220
Senate Political Subdivisions Committee

My name is Brian Bjella, appearing on behalf of the Landman's Association of North Dakota (LAND). The approximately 175 members of LAND are Landmen representing oil and coal companies who research titles in the county courthouses and acquire mineral leases for the development of coal mines and oil wells in the State of North Dakota.

I am an attorney, and have examined mineral titles and prepared title opinions for over 25 years. If this bill is passed and deeds with erroneous or incomplete legal descriptions are recorded, it would likely mean that title to any parcel of land or home where such a document appears could not be transferred. Extensive and possibly expensive curative may be needed to clear the title.

LAND is in opposition to this bill for the following reasons:

- Real estate titles must be accurate in order to have "certainty of title," this bill would allow deeds which are inaccurate to be recorded, clouding not only title to the parties to the deed but potentially someone else's title.
- If a coal or oil lease is sent for recording with the wrong township on it so that the lands are not even in the county the lease is sent for the recording, how is the Recorder going to record it?
- If an incorrect deed is recorded covering the wrong lands, how is anyone to know about it? It could create serious problems where, for example, A claims to own a parcel of land but no deed is recorded against the land (because of an error in legal description, the deed was recorded against someone else's land).
- North Dakota titles are based upon the tract index system, not a grantor/grantee system. Should this bill pass it could force title examiners to search not only the tract index but the grantor/grantee index, which is much more time consuming and more prone to error.

LAND urges a do not pass on Senate Bill 2220. Thank you.