**Transcript[[1]](#footnote-1)**

**Minnesota Senate Committee on Judiciary**

**Tuesday, March 16, 2010**

**Testimony on S.F. 2595**

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**SENATOR MOUA[[2]](#footnote-2)**: Senator Dibble, welcome to the committee.

**SENATOR DIBBLE**: Thank you, Madam Chair and members, for the opportunity to present Senate File 2595. And Madam Chair, members, this is the result of extended and lengthy negotiation on a number of tenant and landlord statutory provisions that protect tenant interests and landlord interests that has needed some attention and some update in state statute for quite a while. This is the merger of a number of bills that have come into, into ⎯ four bills that have come into this one bill. Much has been left to the, to the side. All the agreed-upon points that the results of the negotiation between the tenant advocates and interests and the landlord advocates and interests are represented in this bill and, to that, Madam Chair, there is an A2 amendment that kind of buttons up the final part of that piece of that negotiation.

**SENATOR SCHEID**: Madam Chair, I move the amendment.

**SENATOR MOUA**: Senator Scheid moves the A2 amendment. Senator Dibble or Mr. Elwood, could you explain the A2 amendment and what it does to the bill?

**SENATOR DIBBLE**: Thanks, Madam Chair. I can go through it very quickly, and Ron Elwood here is from legal, is here from Legal Services who can provide greater detail. So one of the items that was attempted to be addressed was the effort to be able to hold an expungement hearing at an eviction hearing in those cases when the eviction was, was declined, but there was no agreement, so we’re deleting that entirely. There was agreement, Madam Chair, on, on late fees and those circumstances when late fees are charged, how they’re provided for in the lease, to make sure that that’s specified, and capping out the late fee at eight percent, making sure that late fees are not considered interest. Moving on, the next issue that was under discussion was receipts for rent paid. There’s a provision in section four ⎯ if you’re looking at the first engrossment ⎯ section four ⎯ these sections are going to change with the amendment. For provisions for receipts given when rent is paid in cash. That issue is also carried over to the back in section thirteen, starting on the bottom of page seven, moving onto page eight, providing for receipts and dealing with disputes when a claim of rent has been paid and there’s some disagreement when the rent has been paid with a money order and how to provide for a rebuttable ⎯ how to rebut the rebuttable presumption that rent has or has not been paid. So that’s section four and section thirteen, those are for receipts for rent paid. I think I’ve got a question?

**SENATOR MOUA**: That’s the A2 amendment?

**SENATOR DIBBLE**: Yes, yes, well . . .

**SENATOR MOUA**: As it applies throughout the bill?

**SENATOR DIBBLE**: Right, right.

**SENATOR MOUA**: Senator Betzold.

**SENATOR BETZOLD**: Madam Chair, Senator Dibble, I do have a question about the A2 amendment, and on page one, line fourteen, it says, “If the residential lease specifies an action, etc., where the [pause] may recover attorneys’ fees between the landlord and tenant, it is implied in law that the tenant is entitled to attorneys’ fees if the tenant prevails.” Why do we need the phrase “it is implied in law that”? Can’t we just strike that, those words out and just say the tenant’s entitled to attorneys’ fees under these circumstances?

**SENATOR DIBBLE**: That was the next issue I was going to cover, and this is the whole issue ⎯ just to speak to the larger issue for one second. This is when there’s been a provision that landlords can recover attorneys’ fees when there’s an action against the tenant that has not been reciprocal. That’s the issue. The agreement

**SENATOR MOUA**: Mr. Elwood?

**SENATOR DIBBLE**: is to make it more reciprocal.

**MR. ELWOOD**: Madam Chair and members of the committee and Senator Betzold, I think the purpose of that was to be crystal clear that since one is in writing and the other would not be that there would be an equivalency of recovery, but I think we would certainly leave it to the will of the committee if you think it’s unnecessary verbiage but captures the concept that essentially what’s good for the goose is good for the gander is what the idea is. We would certainly just ⎯ whatever you think is, is appropriate, we certainly would find that . . .

**SENATOR MOUA**: Senator Betzold?

**SENATOR BETZOLD**: Madam Chair, I mean, I don’t know what the words “it is implied in law” means because I don’t like to imply stuff, I like to say so, so I think that if we just strike the words “it is implied in law that” out of there, I mean, we’re just saying what the policy is, so.

**SENATOR SCHEID**: Madam Chair?

**SENATOR MOUA**: Senator Scheid, and then Senator Olson.

**SENATOR SCHEID**: Oh, Madam Chair, I don’t disagree. I that caught my eye as well, but I think it’s kinda pretty. [*Others chuckle.*] But I guess we don’t do pretty here, so. [*More chuckling.*]

**SENATOR MOUA**: Senator Olson?

**SENATOR OLSON**: Madam Chair, I was just going to say ditto to what Senator Betzold said.

**SENATOR BETZOLD**: OK, then I’ll move that on page one, line fourteen of the A2 amendment, strike the words “it is implied in law that.”

**SENATOR MOUA**: On the motion, any further discussions? [*Pause.*] All those in favor signify by saying “aye.”

**COMMITTEE**: Aye.

**SENATOR MOUA**: All those opposed say “no.” [*No response from committee.*] [*Gavel.*] Motion prevails. Any ... ?

**SENATOR DIBBLE**: Thank you, Madam Chair. Just moving on quickly, I’ll just cover the rest of the issues that are covered in the

**SENATOR LIMMER**: Madam Chair?

**SENATOR MOUA**: Senator Limmer? Yes, Senator Limmer.

**SENATOR LIMMER**: Madam Chair, reference to eight percent, page one, line six of the amendment, which makes reference to page two on line twenty-five. We’re being rather specific in mentioning a percentage: “in case of a late fee not to exceed eight percentage of the rent payment.” How did you arrive at the eight percent figure?

**SENATOR MOUA**: Mr. Elwood?

**MR. ELWOOD**: Madam Chair and Senator Limmer, right now there, there’s really no cap at all, and we’ve seen extraordinarily, in some cases, extraordinarily high late fees, per day of twenty-five dollars that add up extremely quickly. And so in the discussions that we began with the Multi Housing Association, we talked about just generally saying that we’d like to cap those fees. And the question then became, “Do we cap it at a number, or do we cap it at a percentage?” And we both agreed that a percentage was more appropriate, and then the question narrowed to, well, what is a fair percentage, and we simply started discussing what we felt was a, a reasonable percentage based on various levels of rent, and the eight percent seemed to be the number that both of us felt was sufficient to incent payment but yet not excessive, burdensome, on the tenant.

**SENATOR LIMMER**: Madam Chair?

**SENATOR MOUA**: Senator Limmer.

**SENATOR LIMMER**: On the amendment, on line 1.5, you make reference to “the agreement must specify when the late fee will be imposed.” So you’re trusting that both parties to the contract can agree that date, but why don’t you recognize the, the duties of both people signing the contract and let them figure out the late fee and put it into a contract rather than we in state government telling them what the interest rate should be?

**SENATOR MOUA**: Mr. Elwood?

**MR. ELWOOD**: Madam Chair and Senator Limmer, I think we would believe that in, in the landlord-tenant setting, the, typically the drafter of those leases are the landlords, and where the bargaining positions and the relative knowledge of landlord-tenant law, we would believe that the landlord typically is the initiator of those agreements, and therefore, to kind of leave it to the whims of the marketplace results in the, in some cases, the large late fees that we see today. That’s why we thought it was a, and our colleagues at the Multi Housing Association believe, that it was reasonable to just set some parameters given the, what we experience in the marketplace today.

**SENATOR LIMMER**: Well, Madam Chair?

**SENATOR MOUA**: Senator Limmer.

**SENATOR LIMMER**: But it’s, it’s okay to let the market figure out when the late fee will be imposed by the parties in the contract, where, in your case, you may say that the default of this relationship is that the landlord would establish the late fee due. Is, is that right?

**SENATOR MOUA**: Mr. Elwood?

**SENATOR DIBBLE**: Well, I would

**SENATOR MOUA**: Senator Dibble.

**SENATOR DIBBLE**: I would take a stab at the question about, that statement that the agreement must specify when the late fee will be imposed actually is more prescriptive than it appears to be because the problem that that was trying to solve was of kind of it not being specified in the lease, in the contract, at all, and so, it’d be kind of subject to the whims of the landlord

**SENATOR LIMMER**: Madam Chair.

**SENATOR DIBBLE**: when this late fee would be imposed.

**SENATOR DIBBLE**: Oh, I’m sorry.

**SENATOR MOUA**: Senator Limmer.

**SENATOR LIMMER**: One last thing, going back to your eight percent figure. Is that eight percent based on an annual basis? Is it monthly? What is it? What kind of interest computation is it based on? It doesn’t have a reference here, so it could be eight percent of anything, so, and, maybe compounded in a different way than you may intend. Maybe an additional reference of, like, an annual percentage rate, prorated, or whatever it is, but I think that would be a helpful for the purposes of this bill.

**SENATOR MOUA**: Senator Limmer, I think it’s eight percent of the rent payment.

**SENATOR LIMMER**: Per month? Madam Chair. Or?

**SENATOR MOUA**: The monthly rental payment. So maybe we, I don’t know, if it’s not clear, you should, we should put in there “monthly.”

**MR. ELWOOD**: Well

**SENATOR MOUA**: Mr. Elwood?

**MR. ELWOOD**: Excuse me, Madam Chair and members, there are occasions where it’s not⎯the reason we left it as of the “rent payment” is because sometimes the rent is paid biweekly. It’s not always a monthly rent, so I think it’s understood that it’s whatever the periodic rent payment would be. I suppose you could use that word, but we were comfortable with the language that we had. Obviously it’s up to you. This is a very precise committee.

**SENATOR MOUA**: Senator Limmer.

**SENATOR LIMMER**: I’ll throw a suggestion out to you. If you go to line twenty-five of the bill, where it, where it goes, when you put in the eight percent “of the,” maybe include the word “total amount of the rent payment.” Might be a tad more specific. Rent payment could mean anything. Like you say, it could be a bimonthly, it could be a monthly. In some cases it could be quarterly, and so this doesn’t specify the actual installment of rent payment, but at least it maybe gives it a little more specificity into what we’re talking about percentage-wise.

**MR. ELWOOD**: Madam Chair?

**SENATOR MOUA**: Mr. Elwood.

**MR. ELWOOD**: And Senator Limmer, I think that would be a very friendly amendment because that’s what we meant would be the total amount of rent payment, so thank you for that.

**SENATOR MOUA**: Mr. Liloquese? Liloquis, is that okay? Liloquist? Sorry, I’m sorry, I’m butchering your name. I know your name.

**Mr. LILJENQUIST**: Yeah, yeah, that’s fine.

**SENATOR MOUA**: Please state it for the record so I may learn it again.

**MR. LILJENQUIST**: Madam Chair, Todd Liljenquist for the Minnesota Multi Housing Association. Yes, that would be fine.

**SENATOR SCHEID**: Madam Chair? Madam Chair, that was me.

**SENATOR MOUA**: Senator Scheid.

**SENATOR SCHEID**: I was thinking that, I think I understand what Senator Limmer is getting at, but I think you still don’t know for what period that is, so why don’t we say on line 2.25 “in no case may the late fee exceed a certain percentage of the overdue rent payment” or something to that effect. Or, excuse me, eight percent of the overdue rent payment, whatever it is, if it’s weekly or biweekly or monthly, that kind of

**SENATOR LIMMER**: I think I like that better, Madam Chair.

**SENATOR MOUA**: Senator Limmer, did you make a motion with respect to your language?

**SENATOR LIMMER**: I think I’ll let Senator Scheid make the motion. She has

**SENATOR MOUA**: Senator Dibble, are you okay with that?

**SENATOR DIBBLE**: Yes, I’m comfortable with that.

**SENATOR MOUA**: Senator Scheid moves on line 2.25F after the word “the” insert the word “overdue.” Is that correct, Senator Scheid?

**SENATOR SCHEID**: Madam Chair, that’s correct.

**SENATOR MOUA**: All right . . .

**UNKNOWN PERSON:** The last over [pause] the last “the”?

**SENATOR SCHEID:** Madam Chair, yes.

**SENATOR MOUA**: Discussions on that motion? [*Pause.*] All those in favor signify by saying “aye.”

**COMMITTEE**: Aye.

**SENATOR MOUA**: All those opposed say “no.” [*No response from committee.*] [*Gavel.*] Motion prevails.

**SENATOR DIBBLE**: Madam Chair, moving on, looking at the first engrossment, section six. This has to do with how screening fees are handled, and what this attempts to do is to make sure that screening fees are accepted, that you know, one fee at a time. The issue that they’re trying to address is those instances when screening fees are collected by multiple applicants for units and really only, you know, one applicant is gonna, is gonna be rented to. So making sure that one screening fee is essentially captured at a time. That, that the screening fees are not collected after someone else has agreed to rent the particular unit, that the screening fees are used for the purposes that they’re supposed to be used for, that⎯that the criteria upon which the screening fee is going to, or an applicant is going to be considered is fully disclosed, and also providing, of course, for those instances when a tenant provides materially false information or omits relevant information, and so that’s what section six attempts to remedy. Madam Chair, moving on then to section seven. That has to do when a deposit, a damage deposit, has not been returned by a landlord for bad faith purposes. This is just raising of the punitive damage from 200 to 500, that hasn’t been raised in many, many years, so it’s just kind of keeping up with the times. Section eight has to do with⎯I’m going to have Mr. Elwood help me explain it just a bit⎯but this has to do with those instances when the utility costs that the tenant is going to be obligated to pay haven’t been disclosed properly to that, to that tenant.

**SENATOR MOUA**: Mr. Elwood?

**MR. ELWOOD**: Madam Chair and members of the committee, this provision was agreed to because we ⎯ the requirement several years ago was when a landlord was going to apportion utility costs and a new tenant wants to lease up. The law states that the new tenant is to get some information about, “Well, what’s the utilities going to cost me? ‘Cause I know what my rent is, but what’s the cost of this building, so how much over the rent is it going to cost me for my utility payments?” And there was some references to a remedy for the failure to provide that information, but in a recent court of appeals case, it⎯the court of appeals let us know that it was unclear in statute, and in the case where the landlord had clearly violated the law, the tenant unfortunately did not obtain the remedies that we thought were available, and so what this provision does is make it absolutely clear that there are remedies available for that tenant so this problem that occurred recently will not occur again.

**SENATOR MOUA**: Senator Dibble?

**SENATOR DIBBLE**: Thank you, Madam Chair. And then, section nine, ten, eleven, and twelve are, is, language that provides conformance to federal statutes recently adopted to deal with those circumstances⎯renters that are in foreclosed properties, their rights of notice, their rights⎯their rights to stay, the grounds for eviction, etc. I confess I’m not closely acquainted with the particulars and the details. I do know that it’s to bring our statutes into conformance with federal statutes very recently enacted. For detail I refer to the experts.

**SENATOR LIMMER**: Madam Chair?

**SENATOR DIBBLE**: And then we already talked about section thirteen . . .

**SENATOR MOUA**: Senator Limmer?

**SENATOR LIMMER**: Senator Dibble, could I bring your attention to section eleven of the bill, on page seven, grounds on the person holding over as a tenant in a foreclosed property subject to a contract for deed. And I’m trying to read the paragraph here, but I don’t see the term contract⎯oh, I guess I do find, finally find contract for deed, but what’s the relationship of the tenant now that there’s a contract for deed as opposed to any other type of financing? Is it a contract for deed that’s soon to be foreclosed upon or ⎯ canceled is the appropriate word for a contract for deed, so I don’t know if foreclosure or foreclosed is the right word to use in the heading, but I’m just wondering if ⎯ could you tell me what the relationship that you’re trying to establish here in light of a contract for deed financing?

**SENATOR MOUA**: Mr. Elwood?

**MR. ELWOOD**: Madam Chair and Senator Limmer and members, the current law has essentially a one-size-fits-all provision, so whether you’re a tenant in a foreclosed property subject to a mortgage or whether you’re a tenant in a foreclosed property that’s been subject for contract for deed, we ⎯ two years ago, three years ago, Senator Scheid, Senator Higgins, Senator Moua, led groups of ⎯ with a foreclosure relief efforts and improved our laws in terms of giving notice to vacate in these situations, but right now it’s a one size fits all. A year . . . about a year ago, the fed or the Congress enacted a law that gave tenants greater rights of notice and the ability to, as Senator Dibble mentioned, to stay in the property up to the end of the lease, depending on the circumstances. The federal law only covered foreclosed properties subject to a mortgage; it did not address properties subject to foreclosure, or properties in foreclosure subject to contracts for deed. So this was a very difficult section to draft because the whole concept here generally was to mesh the federal law with our state law that didn’t mesh very well on its own. So what this attempt was is to make them fit precisely together, and in doing so we were required to separate out the contract for deed section because that is not covered in federal law, so what you see here in section eleven is exactly what’s in statute right now; it’s just now moved to a new section because it had to be severed.

**SENATOR LIMMER**: Madam Chair

**SENATOR MOUA**: Senator Limmer.

**SENATOR LIMMER**: with the federal treatment of mortgages, is that, was that originally just for banks or mortgage companies with a federal charter? And then those that had a state charter would not be subject to the federal foreclosure language, or is that now merged together, and then this contract for deed is now being merged in addition to all of that? Is that what’s happening?

**SENATOR MOUA**: Mr. Elwood?

**MR. ELWOOD**: Madam Chair and Senator Limmer, you’ve obviously done your homework. You are correct in that the federal statute was addressing federally ⎯ I don’t, forget the word, it’s not “chartered,” but . . . subject to the federal, like Fannie Mae and Freddie Mac and those sorts of mortgages ⎯ but the federal law absolutely was explicit in allowing any state protections that were greater to continue to be in effect. So that’s exactly what we ⎯ essentially what we did here was take the federal Congress’ and Minnesota’s greatest hits and put ‘em together and made sure that the tenants received the maximum protections available under both without there being any conflicts, and one of the conflicts was the federal law did not address contracts for deeds, so we felt it would be inappropriate to go any further beyond where we are right now because the federal government didn’t even, didn’t even address it.

**SENATOR DIBBLE**: Madam Chair?

**SENATOR MOUA**: Senator Dibble.

**SENATOR DIBBLE**: I would mention that the real property section of the bar, the banks, the landlords, the realtors, have all seen these sections and have agreed to this language as well.

**SENATOR MOUA**: Any other questions? Senator Higgins.

**SENATOR HIGGINS**: Madam Chair, I’m chuckling at this section, section ten and eleven, because it has, like, three paragraphs, and each paragraph is one big, long, darn sentence, and paragraph b, it just makes me laugh, because it says “da da da da da ‘provided that,’ ‘except that,’ ‘given that,’ ‘provided that,’” and I don’t know who’s ever going to untangle it enough to know what it actually means, but that’s kind of what we see federal legislation being a lot of time. And when you said you mirrored the federal language, I just had to laugh because Ms. Pontius would never’ve written it like this, Mr. Backus would never’ve written it like this. [*Laughter.*]

**SENATOR MOUA**: For purposes of future litigation, though, as this bill passes this committee, we understand everything that this bill is staying.

**UNKNOWN PERSON:** It’s a gold mine.

**SENATOR HIGGINS**: You’re the chair, Madam. Maybe you understand it. [*Laughter.*]

**SENATOR MOUA**: And English is my second language.

**SENATOR HIGGINS**: There you go.

**SENATOR LIMMER**: Madam Chair, one last question.

**SENATOR MOUA**: Sentor Limmer.

**SENATOR LIMMER**: On the amendment, you’re making a change from sixty days to two months in the section on ⎯ section eleven, and that’s in regard to written notice. So it actually could mean “in excess of” six, of two months, because if you get in the middle of a month, you have to do at least two months, two formal months, before something occurs, so you’re actually two months, or, let’s say, sixty days plus up to maybe twenty-nine more days.

**MR. ELWOOD**: Madam Chair?

**SENATOR MOUA**: Mr. Elwood.

**MR. ELWOOD**: Madam Chair and Senator Limmer, actually the credit for that goes to Mr. Liljenquist [*laughter*], and what he did ⎯ and he does deserve credit, actually. I wasn’t being sarcastic ⎯ because what he did catch was that the federal law gives tenants ninety days, and when, and I had crafted this, and I went from ninety days, and in this situation ⎯ ‘cause in Minnesota law, it’s two months, but I used the phrase “sixty days,” which was inaccurate. And Mr. Liljenquist pointed out that our current statute says two months, and that we should make sure we that we are accurately capturing what is in current law, so that is the reason that it’s now, it was amended today to read two months rather than sixty days. It was my mistake.

**SENATOR MOUA**: Any further discussions? Senator Higgins moved the A2 amendment⎯Senator Scheid moved the A2 amendment. We actually adopted an amendment in between, so Senator Scheid will re-move the A2 amendment as amended by Senator Betzold.

**SENATOR SCHEID**: Yes, I do.

**SENATOR MOUA**: Further, any discussions on the amendment? [*Pause.*] On that motion, all those in favor signify by saying “aye.”

**COMMITTEE**: Aye.

**SENATOR MOUA**: All those opposed say “nay.” [*No response from committee.*] [*Gavel.*] Motion prevails. Now Senator Scheid moves that Senate File 2595 as amended be recommended to pass and be re-referred to the senate floor.

**SENATOR DIBBLE:** Madam Chair, Mr. Liljenquist did have a comment.

**MR. LILJENQUIST**: Yes, just one comment. The negotiating parties in this language you see before you have been working very hard to come up with this language, but there is one other issue that we have yet to resolve that is not included in this package, and the reason it has yet to be resolved is there is one additional party that wasn’t originally part of the original discussions, and that is related to abandoned personal property ⎯ abandoned personal property, not abandoned property as was discussed before. I want to clarify that. Abandoned personal property. And there’s current statute on this topic. And there are three, three areas that we are currently still discussing. We agree in principle on all three, but just some of the logistics have to be worked out yet. We’ll continue to negotiate with the other parties as well as Minnesota NAHRO; they are the third party in this discussion, if you will. So I just wanted to put that on the record in case, in case an agreement is reached at some point that an amendment may take place at some point.

**UNKNOWN SENATOR**: Madam Chair, what’s Minnesota NAHRO?

**MR. LILJENQUIST**: Minnesota - it’s the National Association of Housing and Redevelopment Officials, the public housing folks.

**SENATOR MOUA**: Senator Scheid renews her motion. On the motion, all those in favor signify by saying “aye.”

**COMMITTEE**: Aye.

**SENATOR MOUA**: All those opposed say “no.” [*No response from committee.*] [*Gavel.*] Motion prevails. Thank you, Senator Dibble.

1. The transcript is verbatim except for eliminating the words “uh”, “um”, “uhm” and “em”. The transcript only covers the time the committee considered SF 2595, not other bills. The audio is available at <http://www.senate.leg.state.mn.us/media/media_list.php?ls=86&archive_year=2010&archive_month=03&category=committee&type=audio&ver=new#monthnav> (go to part 2 of Judiciary on March16) [↑](#footnote-ref-1)
2. The committee minutes, which include a roster of attendees with full names, are available at <http://www.senate.leg.state.mn.us/schedule/hearing_minutes.php?ls=86&hearing_id=5559&type=minutes> [↑](#footnote-ref-2)