

**1999 SENATE TRANSPORTATION**

**SB 2110**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2110

Senate Transportation Committee

Conference Committee

Hearing Date January 14, 1999

Tape Number	Side A	Side B	Meter #
1	x		1,670-3589
2	x		4575-4,608
January 21, 1999-1		x	4438-End
January 21, 1999-2	x		1-275
Committee Clerk Signature <i>Aoni A. Schaeffner</i>			

Minutes:

SENATOR STENEHJEM opened the hearing on SB 2110. Committee members present were Sens. Bob Stenehjem-Chairman, R. Schobinger, D. Cook, D. Mutch, D. O'Connell, V. Thompson, and D. Bercier.

JO ZSCHOMLER, DIRECTOR OF OMB RISK MANAGEMENT DIVISION testified in support of SB 2110 (see testimony).

SENATOR SCHOBINGER What is progressive discipline?

JO ZSCHOMLER I can let the Department of Transportation answer that. Sometimes if there are a number of incidents that are determined to be preventable, an employee may have one day without pay. Sometimes if it is essential to the job function that you operate a vehicle then it could mean dismissal.

SENATOR COOK Are there any other state agencies besides the Department of Transportation that are involved in risk management now?

JO ZSCHOMLER Risk management does not have a motor vehicle accident exchange board now. The only one that I'm aware of right now that does have one is the Department of Transportation.

SENATOR COOK Could this be accomplished without statutory law?

JO ZSCHOMLER No, unfortunately not. We need legislative authority in order to establish this board.

SENATOR STENEHJEM Why didn't you do it with an administrative policy? On line 19, it states the board will establish it's own policy.

JO ZSCHOMLER I'm not sure OMB has rule making authority.

JOANNE TOTH, ASSISTANT ATTORNEY GENERAL REPRESENTING THE RISK MANAGEMENT FUND Agencies do have rule making authority such as the Department of Transportation and even the Office of Management and Budget. The reason for this bill being needed in statutory form rather than rule making form because OMB only has the authority to establish rules for their agency but no other agencies. Also, we need the statute because we need to establish confidentiality. The Risk Management Fund has statutes that make risk management confidential but it does not make the Department of Transportation records confidential. So, right now, we're running the risk that if a plaintiff wants to come in and get Department of Transportation records and bring a lawsuit against the state, arguable they could do that. It's the best way to bring everyone one under the umbrella and provide confidentiality.

SENATOR STENEHJEM How is this funded?

JOANNE TOTH The Risk Management Fund was set up when the state lost sovereign immunity in 1995. Sovereign immunity means the state couldn't be sued for tort acts. In other words, someone could not sue the state if they came in and slipped and fell because we left a puddle of water on the ground. A tort action against the state must follow some steps and these are listed in the Century Code under the 32-12-2. We are trying to take a proactive step to help prevent lawsuits in the first place and the fund is there so that we are not liable.

SENATOR STENEHJEM How is the board going to appoint the other two members?

JO ZSCHOMLER The other two members would be selected from agencies whose employees do use state vehicles. That will be on a rotating basis.

SENATOR STENEHJEM Is there other testimony in support of SB 2110?

PAUL FEYEREISEN, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION testified in support of SB 2110 (see testimony). The Highway Patrol also has a crash review process. When an officer has a crash, they are held accountable depending upon whether it is preventable or not.

SENATOR COOK Paul, out of those 300 crashes a year, how many of them involve a citation to the state board?

PAUL FEYEREISEN I'm not sure but I would guess 10%. I would also say out of those 300 crashes, the Department of Transportation snow plows are considered among those crashes.

SENATOR STENEHJEM Mr. Feyereisen, how many vehicles come under your control which would be the fleet management control?

PAUL FEYEREISEN We do manage every state fleet vehicle that the state owns. Today that count is 2621 and that includes the university system and state agencies.

SENATOR STENEHJEM So what vehicles would be captured by the Risk Management Board by passing this bill that would not be reviewed on the DOT level? In other words, how many of those vehicles are DOT vehicles?

PAUL FEYEREISEN DOT has approximately 700 vehicles out of the 2621.

SENATOR STENEHJEM Do you feel confident in the makeup of that board or do you feel someone from the Department of Transportation should be on that board?

PAUL FEYEREISEN I believe the bill designates the Director of the Department of Transportation to the board. I do feel confident about the makeup of the board.

SENATOR STENEHJEM Are there any other questions? Are there any other testimonies in support of SB 2110? Are there any in opposition? Are there any on a neutral position? We will close the hearing on SB 2110.

There was committee discussion on SB 2110. Tape #2

SENATOR B. STENEHJEM Are there any questions?

SENATOR B. STENEHJEM I think they need the word "rules" instead of "policies" on line 19. I discussed it with Mr. Feyereisen and JoAnne Toth and they thought if the board had to operate on the rules there would not be a problem with that. This way, it will still be under confidentiality. We'll have the clerk check with Legislative Council on how to change lines 15 through 19 on page 2. We'll hold SB 2110.

January 21, 1999- Tape 1-Side 2 #4438

SENATOR B. STENEHJEM proposed amendment 98189.0101. This allows OMB to make rules concerning accident reports.

SENATOR THOMPSON I don't know if I want to give them the authority.

SENATOR B. STENEHJEM I might agree with you in some instances. The basis is whether the state should have a risk management board. If you don't set up the risk management board, the accidents become public knowledge. They need rules to deal with these instances not policies.

SENATOR COOK If we wouldn't have given up sovereign immunity we wouldn't be seeing this.

SENATOR THOMPSON What if we pass the bill without the amendment?

SENATOR B. STENEHJEM It would work but I think they need rules not policies. Policies can be changed on a day-to-day basis; rules have a hearing process. I was cautious in this drafting. They should have the ability to make rules just in the risk management section. I want to limit it to just this instance.

SENATOR COOK motioned for a Do Pass on amendment 98189.0101.

SENATOR THOMPSON seconded that motion.

The amendment passed (5 Yeas, 1 Nay, and 1 Absent and Not Voting).

SENATOR COOK moved a Do Pass as Amended.

SENATOR THOMPSON seconded the motion.

SENATOR BERCIER How does this just apply to this section?

JOHN WALSTAD, STATE ATTORNEY was called to the meeting for clarification. The Office of Management and Budget is not an administrative agency. They don't have to go through the formal rule making procedure. This amendment requires them to go through the rulemaking process.

Roll call was taken on a Do Pass as Amended for SB 2110. (5 Yeas, 1 Nay and 1 Absent and Not Voting).

**FISCAL NOTE**

(Return original and 10 copies)

Bill/Resolution No.: SB 2110 Amendment to: \_\_\_\_\_

Requested by Legislative Council Date of Request: 12-30-98

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:**

All participants on the board would be salaried state employees. Accordingly, the only fiscal impact of this measure would be occasional, incidental travel expenses.

2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	0	0	0	0	0	0
Expenditures:	0	0	0	0	0	0

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: none
- b. For the 1999-2001 biennium: none
- c. For the 2001-03 biennium: none

4. **County, City, and School District** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

If additional space is needed, attach a supplemental sheet.

Signed Johanna Zschomler

Typed Name Johanna Zschomler

Date Prepared: 1/4/99

Department Risk Management Division OMB

Phone Number 328-4901

Date: January 21, 1999  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2110

Senate Transportation Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken No Pass as Amended

Motion Made By Senator Cook Seconded By Senator Thompson

Senators	Yes	No	Senators	Yes	No
Sen. B. Stenehjem-Chairman	X				
Sen. R. Schobinger-V. Chair		X			
Sen. Duane Mutch					
Sen. Dwight Cook	X				
Sen. David O'Connell	X				
Sen. Vern Thompson	X				
Sen. Dennis Bercier	X				

Total (Yes) 5 No 1

Absent 1

Floor Assignment Senator Thompson

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



**REPORT OF STANDING COMMITTEE**

**SB 2110: Transportation Committee (Sen. B. Stenehjem, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2110 was placed on the Sixth order on the calendar.

Page 1, line 3, after "board" insert "; and to amend and reenact subdivision a of subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to an exemption from the Administrative Agencies Practices Act"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 28-32-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The office of management and budget except with respect to rules made under section 2 of this Act, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1."

Page 1, underscore lines 7 through 18

Page 1, line 19, replace "establish its own policies and procedures" with "adopt rules" and underscore "concerning receiving accident reports, holding"

Page 1, underscore lines 20 through 23

Page 2, underscore lines 1 through 14

Page 2, remove line 15

Page 2, line 16, remove "chapter 28-32." and underscore "The board must be deemed a state agency loss-control committee under"

Page 2, underscore lines 17 through 19

ReNUMBER accordingly

**1999 HOUSE TRANSPORTATION**

**SB 2110**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2110

House Transportation Committee

Conference Committee

Hearing Date February 25, 1999

Tape Number	Side A	Side B	Meter #
1	x		35.1-55.0
1		x	21.0-26.0
Committee Clerk Signature <i>Laura Hen</i>			

Minutes:

CHAIRMAN KEISER OPENED THE HEARING ON SB 2110; A BILL RELATING TO THE ESTABLISHMENT OF A RISK MANAGEMENT MOTOR VEHICLE ACCIDENT REVIEW BOARD.

JOHANNA ZSCHLOMMER, Office of Management and Budget, introduced SB 2110. (See written testimony).

REP. MICKELSON asked how many accidents occur in state fleet vehicles yearly and in states that have implemented this - have they seen a reduction?

JO replied that she was unsure of the number of accidents per year as it is generally third party claims that are reported. As for other states with this plan, Maine has this same program and has been very successful with it.

REP. MEYER asked if there was a fiscal note for this.

JO said no.

CHAIRMAN KEISER noted that the governor vowed this year to eliminate some of the "boards" and not to create any more. Isn't this doing the same?

JO said that this is different as it is a group within the OMB. Also, there are some areas where they need legislative authority to operate and this will apply here.

REP. SCHMIDT asked how many vehicles are in the state fleet system?

JO referred the question to the D.O.T.

CHAIRMAN KEISER asked what a "preventable accident" is.

JO said it would be up to the chair of the board to decide that.

ARDEN JOHNSON, ND D.O.T. testified in support of SB 2110. He presented written testimony for Paul Feyereisen. He noted that there are 2,700 vehicles in the state fleet system.

REP. KEMPENICH questioned the number of crashes per miles driven by state fleet vehicles?

ARDEN said that there have been 300 crashes and the cars average 36 million miles a year.

REP. KEMPENICH also questioned the number of fatalities in state fleet vehicles.

ARDEN said that the last one was in July of 1995 with a fatal rollover of a university van.

REP. MICKELSON asked what happens to the driver of the vehicle who crashes it?

ARDEN said that it is dealt with inside the agency. It is their responsibility to apply disciplinary action or suspension or a letter of reprimand or a defensive driving course.

REP. SCHMIDT asked who determines the number of vehicles that each agency gets.

ARDEN said that they bid for them in August after all of the new vehicles have been accounted for.

CHAIRMAN KEISER CLOSED THE HEARING ON SB 2110.

Page 3

House Transportation Committee

Bill/Resolution Number Sb 2110

Hearing Date February 25, 1999

GENERAL DISCUSSION TOOK PLACE. REPS. GRUMBO, KEISER, THORPE, JENSEN,  
AND SCHMIDT PARTICIPATED.

COMMITTEE ACTION

REP. KEMPENICH moved a DO PASS on SB 2110. REP. LEMIEUX seconded the motion

The motion carried.

ROLL CALL - 7 YEA, 4 NAE, 3 ABSENT AND NOT VOTING.

FLOOR ASSIGNMENT - REP. GRUMBO

Date: 2/25  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2110**

House Transportation Committee

- Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

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

Action Taken DO PASS

Motion Made By REP KEMPENICH Seconded By REPLEMIEUX

Representatives	Yes	No	Representatives	Yes	No
Representative Keiser, Chair	✓		Representative Thorpe		✓
Representative Mickelson, V. Ch.		✓			
Representative Belter	✓				
Representative Jensen	✓				
Representative Kelsch		✓			
Representative Kempenich	✓				
Representative Price					
Representative Sveen	✓				
Representative Weisz					
Representative Grumbo	✓				
Representative Lemieux	✓				
Representative Mahoney					
Representative Meyer		✓			
Representative Schmidt	✓				

Total (Yes) 7 No 4

Absent 3

Floor Assignment Rep Grumbo

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

**REPORT OF STANDING COMMITTEE (410)**  
**February 25, 1999 11:24 a.m.**

**Module No: HR-34-3534**  
**Carrier: Grumbo**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2110: Transportation Committee (Rep. Keiser, Chairman) recommends DO PASS**  
**(7 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING). SB 2110 was placed on the**  
**Fourteenth order on the calendar.**

**1999 TESTIMONY**

**SB 2110**



**Testimony by Jo Zschomler**  
**Director of the Risk Management Division of OMB**  
**Senate Bill 2110 – Transportation Committee**  
**January 14, 1999**

Mr. Chairman, members of the Transportation Committee, my name is Jo Zschomler. I am the Director of the Risk Management Division of OMB. I appear today to request support for Senate Bill 2110 which will establish the risk management motor vehicle accident review board in an attempt to reduce state fleet vehicle preventable accidents.

The day-to-day activities of the Risk Management Division include administering tort claims and lawsuits filed against the State and state employees, providing for the defense of the State or an employee of the State, and providing loss control services. The tort claims we administer include claims and lawsuits resulting from negligent operation of state owned or state leased vehicles by state employees.

Our loss control efforts are directed to promoting safety and reducing loss resulting from claims by identifying and measuring risks of loss for the State and implementing appropriate measures to address those risks. The establishment of a risk management motor vehicle accident review board as proposed in SB 2110 is an example of effective loss control.

The Department of Transportation has had an accident review board overseeing the vehicle accidents involving DOT employees operating state vehicles since 1946. We are seeking authority to expand that concept to include all state employees operating state owned or leased vehicles. DOT employees who have been involved in administering the existing program are here this morning and will be addressing the Committee following my remarks.

By establishing the risk management motor vehicle accident review board, all state employees would be held to the same standard for the safe operation of state owned or state leased vehicles.

The activities of the proposed board would provide a method to address preventable crashes and incidents. For example, if one employee is involved in a number of “fender benders,” by proactively addressing that situation, we will be able to prevent a major accident or injury. Possibly that employee requires additional training for operating a certain vehicle. Possibly the employee requires an examination (physical, eye, or written) to identify a problem pertinent to the operation of the state vehicle. Maybe there is just a need to promote awareness.

As proposed by SB2110, the accident review board would consist of three permanent board members and two rotating board members. The permanent board members would be: a designee from the Risk Management Division of OMB, a highway patrol officer who is trained in accident investigation, and a designee of DOT’s State Fleet who would serve as chairman of the board. The two non-permanent board members who would serve for 2 years would be selected from state agencies whose employees operate state fleet vehicles.

State Fleet and our office maintain records of all crashes involving state owned and state leased vehicles. It is proposed that, based on a review of those records, the chairman of the board would recommend what crashes or incidents should be reviewed by the board. That recommendation would be based on a preliminary determination that the incident appeared to be preventable, and/or a citation was issued to the operator of the state vehicle. The employee and the employee’s supervisor would be notified of the board’s intent to review the incident and the employee would be afforded an opportunity to fully explain the circumstances surrounding the incident. In addition,

the employee would be entitled to present evidence or witnesses who could offer pertinent information concerning the incident.

If the board makes the determination that the accident was preventable by the state employee, it will recommend corrective action to the director of the agency where the operator is employed. Such recommendations may include additional training, examinations, restricted operation of vehicles on state business or progressive discipline. The employee and the employee's supervisor would be advised of the board's decision and of the recommendations made to the director of the agency. It would be the decision of the director of the agency whether or not to implement the recommended corrective actions.

You will note that we have proposed that the board be deemed to be a state agency loss control committee under section 32-12.2-12. Without this protection the board's meetings would be considered open meetings and its activities, arguably, could be accessed by anyone. That information could be very prejudicial to the State in any related litigation.

That concludes my prepared remarks. If members of the Committee have any questions, I will be happy to attempt to answer them.

**SENATE TRANSPORTATION COMMITTEE**  
**January 14, 1999**

**North Dakota Department of Transportation**  
**Paul Feyereisen, Director, State Fleet Services Division**

**SB 2110**

---

The North Dakota Department of Transportation supports SB 2110. We believe it will reduce the number of crashes and save the state money.

State Fleet Services Division has always encouraged other agencies to use an accident review process. A review board determines what caused a crash and whether it was preventable, and then recommends changes aimed at preventing future crashes.

State Fleet vehicles are involved in about 300 crashes a year. Many of these could have been prevented by the state employee, but under the current rules an agency or board never reviews the crash to determine if the employee did everything reasonable to prevent it. State Fleet reviews all crashes and publishes summaries and safety bulletins that address crashes and crash prevention.

**Testimony by Jo Zschomler**  
**Director of the Risk Management Division of OMB**  
**Senate Bill 2110 – Transportation Committee**  
**February 25, 1999**

Mr. Chairman, members of the Transportation Committee, my name is Jo Zschomler. I am the Director of the Risk Management Division of OMB. I appear today to request support for Engrossed Senate Bill 2110 which will establish the risk management motor vehicle accident review board which is proposed to attempt to reduce state fleet vehicle preventable accidents.

The day-to-day activities of the Risk Management Division include administering tort claims and lawsuits filed against the State and state employees, providing for the defense of the State or an employee of the State, and providing loss control services. The tort claims we administer include claims and lawsuits resulting from negligent operation by state employees of state owned or state leased vehicles.

Our loss control efforts are directed to promoting safety and reducing loss resulting from claims by identifying and measuring risks of loss for the State and implementing appropriate measures to address those risks. The establishment of a risk management motor vehicle accident review board as proposed in SB 2110 is an example of effective loss control.

The Department of Transportation has had an accident review board overseeing the vehicle accidents involving DOT employees operating state vehicles since 1946. We are seeking authority to expand that concept to include all state employees operating state owned or leased vehicles. By establishing the risk management motor vehicle accident review board, all state employees would be held to the same standard for the safe operation of state owned or state leased vehicles. DOT employees who have been involved in administering the existing program are here this morning and will be addressing the Committee following my remarks.

The activities of the proposed board would provide a method to address preventable crashes and incidents. For example, if one employee is involved in a number of "fender benders," by proactively addressing that situation, we may be able to prevent a major accident or injury. Possibly that employee requires additional training for operating a certain vehicle. Maybe there is just a need to promote awareness.

As proposed by SB2110, the accident review board would consist of three permanent board members and two rotating board members. The permanent

board members would be: a designee from the Risk Management Division of OMB, a highway patrol officer who is trained in accident investigation, and a designee of DOT's State Fleet who would serve as chairman of the board. The two non-permanent board members who would serve for 2 years would be selected from state agencies whose employees operate state fleet vehicles.

State Fleet and our office maintain records of all crashes involving state owned and state leased vehicles. It is proposed that, based on a review of those records, the chairman of the board would recommend what crashes or incidents should be reviewed by the board. That recommendation would be based on a preliminary determination that the incident appeared to be preventable, and/or a citation was issued to the operator of the state vehicle. The employee and the employee's supervisor would be notified of the board's intent to review the incident and the employee would be afforded an opportunity to fully explain the circumstances surrounding the incident. In addition, the employee would be entitled to present evidence or witnesses who could offer pertinent information concerning the incident.

If the board makes the determination that the accident was preventable by the state employee, it will recommend corrective action to the director of the agency where the operator is employed. Such recommendations may include additional training, examinations, restricted operation of vehicles on state business or progressive discipline. The employee and the employee's supervisor would be advised of the board's decision and of the recommendations made to the director of the agency. It would be the decision of the director of the agency whether or not to implement the recommended corrective actions.

You will note that we have proposed that the board be deemed to be a state agency loss control committee under section 32-12.2-12. Without this protection the board's meetings would be considered open meetings and its activities, arguably, could be accessed by anyone. That information could be very prejudicial to the State in any related litigation.

That concludes my prepared remarks.