

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1119

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1119
January 11, 2011
12728

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Voluntary liability coverage to student drivers driving vehicles owned or leased by the state of North Dakota as part of a course of curriculum.

Minutes:

Chairman Keiser: Opens the hearing on HB 1119.

Tag Anderson~Director Risk Management Division of OMB: (see attached testimony 1).

Vice Chairman Kasper: Do you purchase reinsurance for yourself insured fund or are you fully self insured reserve and if so what is your reserve?

Tag Anderson: The risk management fund itself has a reinsurance policy.

Vice Chairman Kasper: Do you recall what you're deductible is?

Tag Anderson: It written over the statutory caps. The risk management fund assumes liability for the 250 per person or 1 million per occurrence.

Vice Chairman Kasper: This is a policy you are purchasing from a private insurance company?

Tag Anderson: That correct.

Representative Kreun: The attorney general advised this information, what did we do in the past and what precipitated to advise this at this time?

Tag Anderson: I'm not aware of any situation that arose in the past. There was an incident that arose at the BSC campus where a student was driving as part of a class room instruction and couldn't fairly make the argument that any state employee had been negligent. The only negligent actor was the student who was not a state employee and that's what brought it to the attorney general's office. There was also an issue that arose at the Department of Human Services, they do business with outside groups to do some of the home visits and part of contractual relationship, with them and they use state vehicles.

Representative Ruby: All these vehicles that the college uses, they are not college property, it's property of the state.

Tag Anderson: The vehicles, whether they are held by the university or state fleet, they are still are state vehicles that we provide liability coverage thru the fund.

Chairman Keiser: If they are driving their own vehicle under the jurisdiction, because there isn't state vehicle available, what happens as a student?

Tag Anderson: Good question, I hadn't thought of that.

Chairman Keiser: Would the student know?

Tag Anderson: The coverage we are providing under this bill is very narrow and it only goes to the situations where driving is an integral part of the class room instruction. Namely the CDL programs, some of the tech programs where a student has to be able to drive a vehicle to understand if there is a problem with the vehicle.

Chairman Keiser: Explain to me why we have the language "if the student hires their own attorney" then this law becomes invalid?

Tag Anderson: That language tracks the indemnification language for state employees in the tort claims act, virtually identical.

Chairman Keiser: If the student does hire their own attorney and receives more compensation, does the state have any claim for that additional compensation. We have run into this with WSI.

Tag Anderson: I believe the answer is no, there is an agreement between risk management and WSI.

Chairman Keiser: But WSI subrogates whenever they can but we will not subrogate in this situation if they get their own attorney? Do we forgo? They are out of our system.

Tag Anderson: That's a question that I haven't thought of. This bill is design to address liability that a student owes to some third party that has been harmed. I don't think the state will take any interest in taking would take any position in claiming any interest in claiming those funds.

Chairman Keiser: I understand, but it says that the student can hire their own attorney and protection under this chapter. What about subrogation, what about the claim for the dollars for the car when they go get their own attorney, we say we are washing our hands of it, where is our right to subrogate in this language?

Tag Anderson: There is nothing in this language that addresses that. This bill was designed solely address in the fact that a student, as part of the course of instruction, is put into a state vehicle to learn. Yet under the current language, 3212.2 we can't pay a third party that has been harmed by the negligent driving of that student. In most cases, the

agreement can be made that there was negligent supervision on part of a state employee in any event. We can pay on that basis. So that is what this is designed to do. Whether state fleet would take a position that they still have the right to indemnify or seek subrogation against the student's private insurance to pay for the loss, I haven't thought of that.

Chairman Keiser: The courts will think about. You are asking that we don't provide coverage, what they owe us. We should ask the attorney general's office to look at that.

Vice Chairman Kasper: There could be a situation where the student is harmed by the vehicle in poor repair or instructor not doing something appropriate, now the student has to defend themselves, because they want to take action against the state. What you are saying is if they do that, they have no coverage. How do you address that circumstance if that occurs?

Tag Anderson: If a student makes allegations against the state, they would be treated just like any other third party that makes a claim against the state. Pursuant to this language, they would have PIP coverage, no fault benefits up to the minimum required amounts as well. Does that answer your question?

Vice Chairman Kasper: No it doesn't. You have a couple of incidences going that are potentially, the damage to the vehicle, damage to the other person and the student in the car. I think you have a problem

Tag Anderson: You may have a legitimate question there, but it's probably no different than what state employees currently.

Chairman Keiser: You know our concern and you can take it back and review, you see what happens with the subrogation issue. Check it out.

Tag Anderson: I'll do that and currently when a state employee is negligent and damages a fleet vehicle; state fleet does not seek any subrogation against the employee themselves.

Chairman Keiser: Anyone else in support of HB 1119?

Dave Clark~Executive Vice President at Bismarck State College: (see attached testimony 2).

Representative Kreun: Of the \$14,146, how many students would that cover?

Dave Clark: That would cover approximately 80 to 90 students.

Chairman Keiser: The definition of an education program with a student using a state vehicle, instructor need something, need it right now at the direction of the instructor and they jump in their car, is it a problem.

Dave Clark: We've not had an incident occur, they are doing this on a voluntary basis and if it's on a voluntary basis, they are covered. This is part of the curriculum for the academic program and that what this bill will coverage for.

Chairman Keiser: I would argue that, it's under the direction of them, so what is the liability to BSC if an instructor says "jump in your car and get what they need for class" and they get in an accident, what happens?

Dave Clark: I don't know what that result of that would be, I don't know if we would instruct our faculty to not allow students to be using their private vehicles in any curriculum thing or activities.

Chairman Keiser: In the court, as an attorney, you know the law, law is clear. I'm concern about protecting students, we have employee pretty well protected.

Dave Clark: We thought students were covered if they were doing it at part of their academic program.

Chairman Keiser: Take this back to the chancellor and say let's send out a memo to the instructors.

William Woodworth~Legislative Lobbyist for the North Dakota Student Association:
(see attached testimony 3).

Chairman Keiser: Should we have an emergency clause on this bill?

Tag Senator Anderson: I believe so, line workers are continually going and an accident could occur at any time, so an emergency clause would make sure that students are covered asap.

Dave Clark: We did purchase liability insurance so that we could maintain that part of the operation for the program. We are using private insurance currently to cover that exposure.

Chairman Keiser: If we put the emergency clause on you might get a refund?

Dave Clark: We would cancel the policy and get some form of a refund.

Chairman Keiser: Anyone else here in support of HB 1119, opposition, neutral. **Closes the hearing on HB 1119.** Representative Ruby, can you get the emergency clause.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1119
January 11, 2011
12777

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Work Session Minutes:

Representative Ruby: This deals with the liability for students driving state owned vehicles, since they are not covered like state employees. (Read email testimony from **Tag Anderson~Director Risk Management Division of OMB**, see attached email testimony). I think it addresses the issue.

Representative Ruby: Moves the amendment.

Representative Gruchalla: Second.

Vice Chairman Kasper: Reading the amendment. The student is protected with the self insurance plan but making the claim some negligence occurred and they need to hire an attorney to protect themselves and they own interests. As I read this, if they do that, they have no protection under the fund.

Chairman Keiser: It's striking this; this is language that was in the bill. This is removing it. We are clarifying and I think this is a good amendment.

Voice vote~motion carried.

Representative N Johnson: We discussed an emergency clause. Moves to adopt amendment.

Chairman Keiser: What are the wishes of the committee?

Representative Ruby: Move Do Pass as Amended.

Representative Kreun: Second.

Roll call taken for a **Do Pass as Amended** on HB 1119 with 14 yeas, 0 no's and 0 absent and **Representative Ruby** is the carrier.

FISCAL NOTE
Requested by Legislative Council
12/21/2010

Bill/Resolution No.: HB 1119

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

There should be no fiscal impact. Contributions to the Risk Management Fund for vehicle liability are actuarially determined by the number/type of vehicles, not the identification of drivers or driver classification. The Risk Management Fund currently files as a self-insured under NDCC 26.1-41-05.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Tag Anderson	Agency:	OMB, Risk Management Division
Phone Number:	701-328-7580	Date Prepared:	12/21/2010

Date: Jan 11-2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1119

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

for Ruby amendment
voice vote
motion carried

Date: Jan 11-2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1119

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Johnson Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote motioned carried

Total Yes 14 No 0

Absent 0

Floor Assignment _____

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

voice vote
motion carried

Date: Jan 11-2011

Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1119

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Johnson Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Add Emergency Clause

January 11, 2011

VIR
1/12/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1119

Page 1, line 3, after "curriculum" insert "; and to declare an emergency"

Page 1, line 16, remove "In order to obtain protections under this section, a student must"

Page 1, remove lines 17 through 21

Page 1, after line 21, insert:

"**SECTION 2. EMERGENCY.** This Act is declared to be an emergency
measure."

Renumber accordingly

Date: Jan 11 - 2011

Roll Call Vote # 4

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1119

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 14 No 0

Absent 0

Floor Assignment Rep Ruby

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

REPORT OF STANDING COMMITTEE

HB 1119: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1119 was placed
on the Sixth order on the calendar.

Page 1, line 3, after "curriculum" insert "; and to declare an emergency"

Page 1, line 16, remove "In order to obtain protections under this section, a student must"

Page 1, remove lines 17 through 21

Page 1, after line 21, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency
measure."

Renumber accordingly

2011 SENATE TRANSPORTATION

HB 1119

2011 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee Lewis and Clark Room, State Capitol

HB 1119
March 4, 2011
14975

☐ Conference Committee

Hange

Explanation or reason for introduction of bill/resolution:

A motor vehicle crash in October of 2009 involving the BSC Lineworker program brought to light that student operation of state owned vehicles in that program was not covered by OMB Risk Management even though driving by the student was part of the academic instructions.

Minutes:

Three attached written testimony

Chairman Senator G. Lee opened the hearing on HB 1119 relating to providing voluntary liability coverage to student drivers driving vehicles owned or leased by the state of North Dakota as part of a course of curriculum; and to declare an emergency.

Tag Anderson, Director of the Risk Management Division of OMB, testified in support of HB 1119. Written testimony #1

Senator Sitte asked how many students are participating in these programs and is it just involving CDLs.

Mr. Anderson said that he didn't have an exact number but Scott Brand will be testifying and he may have a better idea. He did say that it is not just the CDL programs, it includes more programs. Examples would be the over the road trucking program at Williston, the lineworkers program at BSC, and the law enforcement training at Lake Region.

Senator Lee asked if it was just students enrolled in a program that requires them to drive.

Mr. Anderson replied that was correct.

Scott Brand, Law Enforcement Supervisor at Bismarck State College, testified in support of HB 1119. Written testimony #2

Senator Lee asked if the additional premium cost for the insurance was passed on to students.

Mr. Brand replied that they did not at this time, but if they have to continue to purchase this insurance that the cost will have to be passed on to the students.

Senator Nething asked how many students collectively we have at a given time in these programs.

Mr. Brand replied that he couldn't answer for all the program but he was familiar with the peace officers training at Lake Region State College and there are about 24 students in that class, just for the emergency vehicle operation course. There are approximately 30 students in the lineworkers program at BSC and an estimation of about 24 in both the automotive and automotive collision technology program. He could not answer for other colleges.

Senator Nething asked Mr. Brand if they could have a list of the number of students in each of these programs.

William Woodworth, North Dakota Student Association Legislative lobbyist, testified in support of HB 1119. Written testimony #3

Senator Mathern asked if he thought their students would get a reduction in their premiums if this bill passes because most of them already have insurance.

Mr. Woodworth wasn't sure how that would work. He said that he does presently attend BSC and the college has purchased its own insurance for this year because of the fact that they had to keep these programs going.

Senator Mathern asked if he didn't also have insurance.

Mr. Woodworth said he didn't know if that would cover a state vehicle. Mr. Anderson might be the one to direct those questions to.

Senator Sitte asked for some details of what happened in that 2009 accident. She asked if that student wasn't covered by insurance, who would pick up the costs.

Mr. Brand explained what happened and how it was covered.

Robert Vallie, Executive Commissioner for North Dakota Student Government, testified in support of HB 1119. He said that for NDSU there use of state fleets in this particular purpose is limited. In the College of Agriculture there is usage of these vehicles for programs such as animal and plant sciences as well as our GO Sciences Department when taking experienced trips out to western ND or elsewhere across the state. They also support the passage of this bill in order to support North Dakota's two year institutions who use these vehicles on regular bases.

Senator Lee said that his understanding of HB 1119 is for operation of vehicles in conjunction with a course that they are taking. He understood Mr. Vallie to say that if I am driving from Fargo to Medora for an archeology dig and I am driving there as a student; it is my understanding that this would not be covered. It would have to be a CDL course or some other curricular course that you are required to drive to be covered under this.

Mr. Vallie said that his understanding is that not only did it apply with the definition that Senator Lee gave but also in the terms of individuals who are part of these programs that have the capacity to use them appropriately for an educational curriculum such as using them for field experiences. He said that he could have understood this wrong and if he did, he apologize for that, but that is his understanding of the interpretation of this bill.

No opposing testimony.

Senator Lee asked Mr. Anderson to clarify the intent of the bill.

Mr. Anderson said that Senator Lee's understanding of the bill is what their intention is. The intent being that we cover student drivers who are driving as part of a course of curriculum. When you have students having to travel to a location as part of a course of curriculum and a student is asked to drive to a site, he now becomes a volunteer and is then considered an employee of the State of North Dakota. This bill does not allow student activities to come in and use a state fleet vehicle.

Senator Lee asked if the volunteer answer happens often and if they are paid for that time.

Mr. Anderson replied yes it happens often and no they are not paid, they are volunteers.

Senator Oehlke commented that their volunteer is treated like an employee.

Mr. Anderson said that is correct.

Senator Oehlke said that if an accident happens and the student is injured in the accident he would be covered by WSI for his injuries.

Mr. Anderson said that they hope all agencies. when they bring on volunteers to undertake activities on behave of the State of ND, address the WSI ahead of time and get them volunteer coverage.

Senator Oehlke said let's take it a step further to the student participating in a trucking course. This student has an accident and the student (the driver) is injured. According to section 26-14106, there coverage for their injuries would be basic HIP or personal injury protection which would be \$30,000 coverage for all their medical expenses.

Mr. Anderson said that was correct, however, in our estimation and experience, whenever there is an accident in one of these programs, ordinarily you can say that the State of ND through its supervising staff out there, did something wrong. In that case, that student could look to the fund, the negligent acts of a state employee that perhaps wasn't supervising that driving appropriately.

Senator Lee closed the hearing on HB 1119.

Senator Nething moved a Do Pass.

Senator Sitte seconded the motion.

Senate Transportation Committee

HB 1119

March 4, 2011

Page 4

Roll call vote: 6-0-0. **Motion passed.**

Senator Nething is the carrier.

Date: 3-4-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Eng 1119

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nething Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator Tim Mathern	✓	
Vice Chairman Dave Oehlke	✓				
Senator Dave Nething	✓				
Senator George Nodland	✓				
Senator Margaret Sitte	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nething

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

REPORT OF STANDING COMMITTEE

HB 1119, as engrossed: Transportation Committee (Sen. G. Lee, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1119 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1119

1

Testimony on HB 1119
Tag Anderson, Director
OMB Risk Management Division
January __, 2011

Chairman Keiser, and members of the House Industry, Business and Labor Committee, my name is Tag Anderson. I am the Director of the Risk Management Division of OMB. I appear today in support of HB 1119.

The Risk Management Fund was established by the 1995 Legislature to address the loss of sovereign immunity. The Risk Management Fund covers liability exposures faced by the state, its agencies and employees. The administration of the Fund is governed by N.D.C.C. chap. 32-12.2, sometimes referred to as the State Tort Claims Act. Liability for the operation of state owned or leased vehicles was assumed under the Fund effective June 30, 1997. At the advice of the Attorney General's office, the Risk Management Fund filed as a self-insurer with the Insurance Department under N.D.C.C. section 26.1-41-05 and has continuously maintained its status as a self-insurer. The undertaking filed with the Insurance Department provides that the Fund will meet only the minimum requirements imposed under state law for a program of self-insurance.

Recently, the Attorney General's office advised that filing as a self-insurer would not authorize indemnifying a non-state employee for liability arising from the operation of a state vehicle under N.D.C.C. 32-12.2. For independent contractors using state-owned vehicles that provide services to the State this does not present a problem as the contractual relationship can simply require the contractor to maintain insurance fully covering the use of the vehicle. In those cases where an outside contractor uses state vehicles, this is done.

For students that drive state owned or leased vehicles as part of a class at one of the college campuses, private insurance must be purchased by the college to cover these activities. This bill would allow the Risk Management Fund to cover student driving where driving is part of the class instruction and avoid these costs.

This concludes my prepared remarks and I would be happy to answer any questions you may have. Thank you.

Bismarck State College
North Dakota Senate Bill No. 1119
Testimony to the House Industry, Business and Labor Committee

Dave Clark
Executive Vice President, Bismarck State College
January 11, 2011

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Dave Clark. I am the Executive Vice President at Bismarck State College and am here in support of HB 1119.

Bismarck State College has a number of career and technical education programs that require our students to operate state owned or leased vehicles as part of their academic program. As you know, Higher Education participates in the state motor pool and thus does not own the vehicles used by Higher Education. An incident this past year involving the BSC Lineworker program brought to light that student operation of state owned vehicles in that program was not covered by OMB risk management even though driving by the students was part of the academic instruction. HB 1119 would ensure that driving of state owned vehicles by students done as part of their academic curriculum is adequately covered.

BSC has other programs that require driving of state vehicles as part of their academic program. This would include our Automotive Technology and Automotive Collision Technology programs. In addition, we are aware of other programs within the NDUS that this same issue pertains to including: Peace Officers training at Lake Region State College, Truck Driving training at Williston State College and a number of programs at North Dakota State College of Science.

Once we were aware of our programs not being covered under OMB risk management, we purchased insurance coverage from private industry to cover our risk and maintain operations at a premium cost of \$14,146. The insurance coverage was difficult to obtain, requiring numerous requests for information and program description, and now has resulted in the additional premium expense.

It would seem to make sense to have risk management coverage to extend to students who are required to drive vehicles as part of their curriculum. In the case of the BSC Lineworker program, for example, the CDL certification is required for their employment in the industry.

BSC and the NDUS strongly support HB 1119.

Thank you for this opportunity and I'd be happy to answer any questions you may have.



Representative Keiser and members of the committee, my name is William Woodworth. I am currently the Legislative Lobbyist for the North Dakota Student Association. We are in favor of passing the bill HB 1119, proposed by the Office of Management and Budget and requested by the State Board of Higher Education. According to the State Board of Higher Education, student drivers not employed by their respective institutions who utilize State Fleet Vehicles do not receive any form of liability coverage. The recent automobile accident by a Bismarck State College student driver utilizing a state vehicle, illustrates the need for voluntary liability coverage for students not employed by the state. As it stands currently only employees of the state are given liability insurance in case of an accident. Students will remain at risk when driving state owned vehicles until this legislation is passed. We feel as proposed the legislation would ensure the burden of insurance not rest solely on the students, as the use of State Fleet Vehicles is essential as part of a course of curriculum. Thank you for your time.

William Woodworth

North Dakota Student Association Legislative Lobbyist

Ruby, Dan J.

From: Anderson, Tag C.
Sent: Tuesday, January 11, 2011 12:58 PM
To: Ruby, Dan J.
Cc: Goulet, Cynthia W.
Subject: Proposed Amendments HB 1119
Attachments: PROPOSED AMENDMENTS TO HB 1119.docx

Rep. Ruby,

Attached are proposed amendments that I have discussed with legal counsel from the North Dakota University System that we believe should address the items raised at the committee hearing this morning. I unfortunately borrowed language from another statute in NDCC 32-12.2 in a situation where it really does not apply.

The purpose of this bill is to allow a student to be a permissive driver of a state vehicle as part of a class instruction and allow payments from the Risk Management Fund to be made through our program of self insurance for this permissive driver scenario. The student is not being brought under the Fund and NDCC chap. 32-12.2 like a state employee and therefore the last three sentences are unnecessary. Issues of subrogation from a responsible third party would be dealt with the same way any motor vehicle owner and their insured deal with when a permissive user is involved in a motor vehicle accident. State Fleet would not seek to recover property losses from a student as a permissive user any more than they would seek monies from state employees or the Risk Management Fund.

Let me know if you or any other committee members have any further questions.

Thanks,

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1119

Page 1, line 16 through 21, remove "In order to obtain protections under this section, a student must provide complete disclosure and cooperation in the defense of any claim. A defense shall be provided by or under the control of the attorney general or the attorney general's designee. A student may choose to hire the student's own attorney to defend any claim, but in the event the student chooses to hire separate defense counsel, the protections afforded under this section do not apply."

Renumber accordingly

Testimony on HB 1119
Tag Anderson, Director
OMB Risk Management Division
March 4, 2011

Chairman Lee, and members of the Senate Transportation Committee, my name is Tag Anderson. I am the Director of the Risk Management Division of OMB. I appear today in support of HB 1119.

The Risk Management Fund was established by the 1995 Legislature to address the loss of sovereign immunity. The Risk Management Fund covers liability exposures faced by the state, its agencies and employees. The administration of the Fund is governed by N.D.C.C. chap. 32-12.2, sometimes referred to as the State Tort Claims Act. Liability for the operation of state owned or leased vehicles was assumed under the Fund effective June 30, 1997. At the advice of the Attorney General's office, the Risk Management Fund filed as a self-insurer with the Insurance Department under N.D.C.C. section 26.1-41-05 and has continuously maintained its status as a self-insurer. The undertaking filed with the Insurance Department provides that the Fund will meet only the minimum requirements imposed under state law for a program of self-insurance.

Recently, the Attorney General's office advised that filing as a self-insurer would not authorize indemnifying a non-state employee for liability arising from the operation of a state vehicle under N.D.C.C. 32-12.2. For independent contractors using state-owned vehicles that provide services to the State this does not present a problem as the contractual relationship can simply require the contractor to maintain insurance fully covering the use of the vehicle. In those cases where an outside contractor uses state vehicles, this is done.

For students that drive state owned or leased vehicles as part of a class at one of the college campuses, private insurance must be purchased by the college to cover these activities. This bill would allow the Risk Management Fund to cover student driving where driving is part of the class instruction and avoid these costs.

This concludes my prepared remarks and I would be happy to answer any questions you may have. Thank you.

Bismarck State College
North Dakota House Bill No. 1119
Testimony to the Senate Transportation Committee

Scott Brand
Law Enforcement Supervisor, Bismarck State College
March 4th, 2011

Chairman Lee and members of the Senate Transportation Committee, my name is Scott Brand. I am the Law Enforcement Supervisor at Bismarck State College and am here in support of HB 1119.

Bismarck State College has a number of career and technical education programs that require our students to operate state owned or leased vehicles as part of their academic program. As you know, Higher Education participates in the state motor pool and thus does not own the vehicles used by Higher Education. A motor vehicle crash in October of 2009 involving the BSC Lineworker program brought to light that student operation of state owned vehicles in that program was not covered by OMB Risk Management even though driving by the students was part of the academic instruction. HB 1119 would ensure that driving of state owned vehicles by students done as part of their academic curriculum is adequately covered.

BSC has other programs that require driving of state vehicles as part of their academic program. This would include our Automotive Technology and Automotive Collision Technology programs. In addition, we are aware of other programs within the NDUS that this same issue pertains to including: Peace Officers training at Lake Region State College, Truck Driving training at Williston State College and a number of programs at North Dakota State College of Science.

Once we were aware that student driving within our programs was not covered under OMB Risk Management, we purchased insurance coverage from private industry to cover our risk and maintain operations at a premium cost of \$14,146. The insurance coverage was extremely difficult to obtain, requiring numerous requests for information and program descriptions. We finally obtained the insurance in August of 2010 and now have resulted in the additional premium expense.

It would seem to make sense to have risk management coverage to extend to students who are required to drive vehicles as part of their curriculum. In the case of the BSC Lineworker program, for example, the CDL certification is required for their employment in the industry.

BSC and the NDUS strongly support HB 1119.

Thank you for this opportunity and I'd be happy to answer any questions you may have.



Policies and Procedures

SBHE Policies

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SUBJECT: 500s: Student Affairs **EFFECTIVE:** April 8, 2010

Section: 512 Student Drivers and Use of State Vehicles by Student Groups

1. NDCC section 39-01-03 prohibits private use of state vehicles. State vehicles may be used by employees or others acting on behalf of the state, including student employees and students who are acting on behalf of the state as a volunteer or in an unpaid status in performing duties assigned by competent authority. As a general rule, all passengers in the vehicle must also be acting on behalf of the state. Liability coverage for accidents involving state vehicles is provided by NDCC chapter 32-12.2. Chapter 32-12.2 provides coverage for state employees and persons acting on behalf of the state, with or without compensation, who are using a vehicle for state business and who are operating that vehicle within the scope of their employment.
2. To the extent permitted by state law, student drivers, acting as employees of an institution or otherwise acting on behalf of the institution, may be allowed to operate state vehicles for approved purposes. Each institution shall adopt a policy and procedures governing operation of state vehicles by students. Institution policy shall include guidelines governing operation of state vehicles by students and procedures to document a student driver is performing duties assigned by competent authority. Institution guidelines and procedures shall require:
 - a. Proof of a valid and current driver's license for the student driver, issued by a state of the United States; a state of Mexico; or a province of Canada. If the student driver has a license issued by a foreign country other than Mexico or Canada, the proposed driver must provide a valid and current driver's license from that individual's country of residency and a valid and current International Driver's Permit. The student driver must be at least 18 years of age.
 - b. Requests for students to operate state vehicles for an event or activity affiliated with a course or program to be submitted on an approved form to the designated office or officer at the institution by the instructor or staff member responsible for the course, program, event or activity. If the event or activity is not affiliated with a course or program, such as membership in or appointment to student government, NDSA, and NDUS councils and committees, then the student shall submit a request on an approved form to the designated office or officer at the institution.
 - c. All requests for student operation of state vehicles must comply with provisions of the North Dakota State Fleet Services Policy Manual, issued by the North Dakota Department of Transportation.

- d. The request to permit a student to operate a state vehicle must show that the student driver is providing a service to the institution by operating a vehicle.
3. NDCC chapter 32-12.2 does not provide vehicle liability coverage for students enrolled in instructional programs that involve the education or training of students in the operations of equipment or vehicles. Institutions that offer instruction in programs requiring operation of state vehicles by students must purchase vehicle liability coverage for this purpose. Institutions shall establish guidelines for eligibility of a student to operate state vehicles in connection with that student's training in a specified course or program of instruction.
 4. Use of state vehicles by or on behalf of student associations, clubs, groups or organizations ("student groups") may be allowed for approved purposes. Institution policies and procedures governing operation of state vehicles shall include guidelines governing operation of state vehicles by or on behalf of student groups. The guidelines shall require:
 - a. Identification of the proposed driver or drivers, and proof of a valid and current driver's license for each proposed driver of a vehicle, issued by a state of the United States; a state of Mexico; or a province of Canada. If the proposed driver has a license issued by a foreign country other than Mexico or Canada, the proposed driver must provide a valid and current driver's license from that individual's country of residency and a valid and current International Driver's Permit. Each driver must be properly licensed and have the required training to operate the particular class of vehicle proposed to be used by the student group (for example, Class C license necessary to operate vans which can carry 15 or more passengers). A driver must be at least 18 years of age.
 - b. Requests for use of state vehicles by or on behalf of a student group for an event or activity affiliated with a course or program to be submitted on an approved form to the designated office or officer at the institution by the instructor or staff member responsible for the course or program.
 - c. Requests by or on behalf of a student group to use a state vehicle must show that the student group is acting on behalf of the institution by its members' attendance at or participation in a proposed event or activity. Use of state vehicles by members of student groups for private or personal purposes is prohibited.

REFERENCES: N.D.C.C. chapter 32-12.2; N.D.C.C. section 39-01-03

History:

New Policy. SBHE Minutes, April 8, 2010.

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Senator Lee and members of the committee, my name is William Woodworth. I am currently the Legislative Lobbyist for the North Dakota Student Association. We support HB 1119, which was proposed by the Office of Management and Budget and requested by the State Board of Higher Education. According to the State Board of Higher Education, student drivers not employed by their respective institutions who utilize State Fleet Vehicles do not receive any form of liability coverage. The recent automobile accident by a Bismarck State College student driver utilizing a state vehicle, illustrates the need for voluntary liability coverage for students not employed by the state. As it stands currently only employees of the state are given liability insurance in case of an accident. Students will remain at risk when driving state owned vehicles until this legislation is passed. We feel HB 1119 would ensure the burden of insurance not rest solely on the students, as the use of State Fleet Vehicles is essential as part of a course of curriculum. The House's amendments to the bill also ensure that the bill is more effective at achieving these goals. The emergency clause will allow the insurance coverage to become effective immediately since classes that use State Fleet vehicles as an integral part of their instruction are still in session. The other amendment the House made to HB 1119 will protect students in the situation that a third party causes damages and that student seeks relief in the judicial system. For the foregoing reasons, NDSA urges this committee to give a do-pass recommendation to HB 1119. Thank you for your time.

William Woodworth

North Dakota Student Association Legislative Lobbyist