

**2013 HOUSE JUDICIARY**

**HB 1025**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1025  
January 9, 2013  
17038

☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to liability and immunity during disaster responses

## Minutes:

Testimony attachments 1 & 2."

**Chairman Kim Koppelman:** Opened HB 1025

**John Bjornson, Legislative Council:** Provided testimony regarding the background of the bill. The ACIL (Advisory Commission on Intergovernmental Relations) initiated its own studies regarding disaster response and mitigation. During the study issues of liability related to disaster response came up. When property is commandeered or otherwise used in response to a disaster and the Governor orders the property be commandeered then the property owner would be eligible for compensation. Section 1 of the bill would change the language of the current bill. Line 10 of the bill states compensation for the property or damage to the property is the responsibility of the responsible jurisdiction. If the city commandeered property in response to a disaster then the city would be responsible for the appropriate compensation. Section 2 of the bill deals with general immunity granted in response to disaster response mitigation action. Under the law the state, county and city or any other person would be eligible to have this immunity if they acted in response to a disaster function. The interim committee requested to reduce this immunity to individuals

and remove the immunity that would apply to the state, the cities and the counties. Page 2  
Section 3 deals with private immunity, if a person volunteers their property and allow the city or state to use this property for a disaster under the existing law I would not be civilly liable for action in response to injury or property damage even from negligence. This bill would purpose to change to limit the liability only if I am grossly negligent. Gross negligence is the absence of any care as the property owner. Section 4 would provide under the disaster relief fund compensation could be paid in response to an injury suffered as the result of response to disaster.

**Rep. Diane Larson:** Questioned if there was damage to her own home caused by others during a disaster situation, who would be liable for the damage?

**John Bjornson, Legislative Council:** Under existing law there may not have been an avenue for you to recover those damages you would need the Governor to specifically have said this is what you need to do. The intent of this bill is to provide a recourse and a place to look for a person to receive some compensation for damages that occurred.

**Rep. Bill Kretschmar:** The current law states it is an emergency declared by the Governor disaster under the proposal that is taken out, who determines if it is a disaster?

**John Bjornson, Legislative Council:** Disaster declarations can be made by the Governor also there can be local disaster declarations by appropriate local officials.

**Rep. Gary Paur:** Questioned clarification as negligently was crossed out and replaced by gross negligence.

**John Bjornson, Legislative Council:** Under the statute there is different degrees to negligence and gross negligence is the degree which you are showing little disregard for care. The gross negligence is next step in line from intentional conduct or misconduct. There is still immunity but if you act with no care you will not get this granted immunity.

**Rep. Gary Paur:** You're increasing the liability?

**John Bjornson, Legislative Council** The statute as it stands doesn't set the standard as negligent behavior it's saying that I am civilly liability either if I am negligent cause the injury to a person. The proposal is to change it to say I am not civilly liable but if I am grossly negligent I may be liable.

**Vice Chairman Larry Klemin,** Chairman of the Advisory on Intergovernmental Relations: Advisory Commission on Intergovernmental Relations has the authority to set its own addenda and they discussed the disasters of 2011 gave rise to a number of issues, some of the issues were not covered under other interim committees and some very not. One had to do with liability on immunity during disasters responses and the state disasters relief fund. The state relief fund has been in existence in North Dakota for a long time. But the history of that is there has never been a claim paid from the state disaster relief fund. They looked at that to see why this was as there has been several disasters. One reason is the way the statute had been construed. It had to be a disaster or an emergency situation

which could be declared by a city mayor. This only covered situations declared by the Governor and destruction was ordered by the Governor. To his knowledge there has never been a situation where the Governor had ordered destruction. The way this is been amended now it would apply to the state, cities, counties and townships. If property is destroyed as the result of a disaster or emergency and there has not been an agreement made prior to that destruction or damage. Then the thought is it better for society as a whole to cover the loss rather than the individual person who owned that property. Why should the individual person alone be responsible to cover the loss for the society as a whole in the particular disaster or emergency? **Refer to photos attachment 1.** Insurance policies had excluded damage caused by government activities or damage related to mitigating an emergency or disaster that is brought about by government. The committee took out the language that it doesn't apply to those government entities so the state, the city, the county or township could now be liable for the damage if they didn't have an agreement in advance to cover it. If you are not a private landowner who allows his property to be used by a government entity during a disaster or emergency , the way it is under the current law they are not liable if someone is dies or is injured on the property even if it is his fault. The language was broad so we reduced it to say that it still will not be liable even if it was your fault except if you very grossly negligent as the private landowner. This means if you know there is a dangerous situation on your property and you don't care. If something happens where you are negligent in the usual sense in the failure to use standard care you will be immune from liability. But if you are found liable for gross negligence that is the failure to use even slight care, then that immunity from liability might be taken away. State disaster relief fund was created and has never paid any claims. We added to that that it paid claims and payment of any expenses incurred or authorized by the

chapter. The bill states if we have a disaster relief fund it would actually be a disaster relief fund not just take up space in the Century Code. Also we should not expect private individual to bear alone the cost defending the public in an emergency or disaster unless there is an agreement in advance concerning that.

**Rep. Karen Karls:** Are you saying the state relief fund exists only in code? Is there actually money in it?

**Vice Chairman Larry Klemin:** No there has never been money in it.

**Rep. Lois Delmore:** If there is no money in it then would there be an appropriation with the bill? It doesn't seem to make a lot of sense to pass this bill if there is not a capability for some funds somewhere to take care the problems people might experience.

**Vice Chairman Larry Klemin:** There are no appropriations for this. There are other procedure to fund the liabilities of the state should that occur. There is a fiscal note with this bill saying we don't know what kind of money would be necessary. Because it is extremely difficult to predict the unpredictable. The fiscal note show zero.

**Rep. Lois Delmore:** That will also be a problem for township, counties, and cities to know where they will find the money if there should be a major disaster. She feels there should be some time of fund established so that a city that has no way to compensate this because they couldn't predict this was going to happen would have a source that they could do to.

**Vice Chairman Larry Klemin:** They all have plans how to respond in case of a disaster but sometimes it is difficult to predict that you are going to have damage that might be covered by this. Should you have a reserve fund set aside in that eventuality that would be up to those entities to determine and it might be prudent to do that. But you may never have a situation that would arise where you would be called for payment. If something is done to a private property in part of the state that is not covered by any agreement then it was needed to mitigate related to an emergency or disaster, should that one resident in on the edge of town be wiped out and say sorry to bad the rest of the city benefitted by this and don't have to pay a cent.

**Chairman Kim Koppelman:** Asked for Neutral testimony

**Greg Wilz, Deputy Director, Dept. of Emergency Services:** See written testimony attached. HB 1025 seeks to rectify a practice that has occurred in recent disasters. The Legislature has money appropriated in the Disaster Response Fund (DRF). There is \$30 plus million in the DFR today. The Legislature has been very proactive in the past couple of years because of the disasters that we have had.

**Rep. Andy Maragos:** Currently can the jurisdictions that we are talking about here do they have to go through you to access DRF funds?

**Greg Wilz, Deputy Director, Dept. of Emergency Services:** That is absolutely correct, those funds based on state law cannot be accessed unless the Governor declares an

emergency. Those funds can only be used for state incurred costs in support of the disaster and for cost shares associated with FEMA reimbursements for damages.

**Rep. Andy Maragos:** By deleting declared by the Governor and they putting in jurisdiction with proper authority, if the Governor doesn't declare the disaster say the city or county commission declares a disaster then they would not be eligible to do to DRF under what you just said that it has to be a Governor's declaration, is that correct?

**Greg Wilz, Deputy Director, Dept. of Emergency Services:** Yes that is correct.

**Vice Chairman Larry Klemin:** Thanks for correction, as I had contacted OMB and asked about the funds available in the Disaster Relief Fund to pay claims and I was told there were no funds.

**Greg Wilz, Deputy Director, Dept. of Emergency Services:** We have not paid out any claims from DRF. We have had claims but have been able to mitigate those claims going back to 2009 in Fargo. We had the parking lot issue when the Guard moved in and damaged the parking lot. We also commandeered one of the West Fargo schools for shelter. In both cases we were able to mitigate those claims with FEMA dollars along with state cross shares. We can call them a claim but they were resolved so it was not something that arose to a level of contest.

**Chairman Kim Koppelman:** So other monies did come into play then?



**Greg Wilz, Deputy Director, Dept. of Emergency Services:** Yes sir.

**Rep. Kathy Hogan:** Do you have any idea how many claims there might be out there that you haven't seen? Because we have has a lot of disaster.

**Greg Wilz, Deputy Director, Dept. of Emergency Services:** I know there are a lot. I do not have a number. I am aware of them simply at some level citizens seek help and often times will end up at the Dept. of Emergency Services looking of some avenue of help. Our belief is that if the state commandeers the property and we have in the past, then we become liable for it and any expenses based on the damages. Then at the local level the same thing needs to occur. I believe the bill before you cements that if you commandeer locally, if you decide where the dike line needs to go and you fail to secure the right of entry agreements and damage waivers then you become responsible for the damage of that property.

**Chairman Kim Koppelman:** In those cases were it typical for the cities to come in and mitigate some damage at their expense or just revert back to the property owner?

**Greg Wilz, Deputy Director, Dept. of Emergency Services:** He did not know the final resolution because they are not in the issue. There are avenues to protect cities they get the right of entry agreements or damage waivers. The Corp requires to have these signed but in many case they are not signed prior to the start of the work.

**Tag Anderson, Director of Risk Management of OMB:** provided background information.

There has been a claim involving a farmer saying the water surrounding his grain bins has risen 6 additional inches as a result of a dike put up by Cass County to avoid overland flooding going into Harwood. The claim was the County activities directed by FEMA, was operating in authority to the Governor's declaration of disaster. The argument being through a causal chain of events the state was responsible for the additional 6 inches of water that went over the dike around the grain bins and it was denied. The second point deals with Immunity provisions. The state responds to claims of negligence on the part of its employees that are operating in pursuitant to disaster mitigations efforts. That statue interpreted by his office as immunizing those duties of care that would arise specifically to the mitigation efforts themselves, not all activities that are associated with the disaster efforts. For example driving there is an independent duty of care relative to driving. We have paid claims for Guard employees while building dikes caused accidents. The notion that State employees are off the hook for not exercising due care in any activity they are engaged in simple because they are related to mitigation efforts is not the case.

**Chairman Kim Koppelman:** Does insurance coverage either currently or under this bill would other insurance coverage come into play at all as to whether a claim would or would not be honored?

**Tag Anderson, Director of Risk Management of OMB:** No, insurance would not be bases for denying a claim.

**Chairman Kim Koppelman:** Who decides when you talk about denying who makes that decision? Is it your office, can it be appealed or is it a final decision if someone does submit a claim?

**Tag Anderson, Director of Risk Management of OMB:** In the case of the claim under the 37-17.1 statute that is directed to Director of OMB, Pam Sharp made the ultimate decision with input from me as well as our assigned Assistant Attorney General. We went through analysis under the statute and got the concurrences of our Assistant Attorney General and we submitted a letter to the Attorney representing them.

**Chairman Kim Koppelman:** So if they objected to the denial and wanted an appeal they would go to the courts, I assume at that point or is there no avenue for appeal?

**Tag Anderson, Director of Risk Management of OMB:** I don't believe there is appeal mechanism. I think the recourse would be to bring an action against the state under condemnation principles.

**Chairman Kim Koppelman:** A few years ago we inserted the public duty doctrine into law which was an idea but it wasn't recutified anywhere. Does that come into play in these circumstances at all?

**Tag Anderson, Director of Risk Management of OMB:** The immunity under this section of this bill is similar to the public duty doctrine. We are only immunizing those duties that are public in nature and related to the mitigation efforts themselves.

**Chairman Kim Koppelman:** The public duty doctrine even though the government has a public duty to do something doesn't mean they have a specific duty to you. It's a general duty not a specific duty.

**Tag Anderson, Director of Risk Management of OMB:** That is a duty to all and a duty to no one.

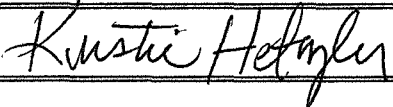
**Chairman Kim Koppelman:** Closed hearing on HB1025

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1025  
January 15, 2013  
Job 17258

☐ Conference Committee



## Explanation or reason for introduction of bill/resolution:

Liability and immunity during disaster responses.

## Minutes:

Re-opened:

**Chairman Koppelman:** Refers back to January 9 2013, funds?

**Rep Delmore:** Questions to fund amount?

**Rep Klemin:** An email from Greg Wilz, about 30 million, correct?

**Chairman Koppelman:** Did we get an adequate answer on who decides whether the claims are accepted or denied?

**Rep Klemin:** OMB makes that decision and there is no appeal available.

**Rep Klemin:** Do Pass

**Rep: Delmore:** Second

**Carried by:** Rep Klemin

Discussion:

**Rep Klemin:** Damages for these types of claims are better covered by the community that's benefitted rather than by an individual property owner having the entire loss himself because it is not covered by insurance. Greg Wilz testified neutral but he does support HB 1025 in front of the advisory commission.

**Rep Boehning:** Asks Rep Klemin, What happens in a situation, your neighbor's house is burning down and the Fire Dept uses your property to extinguish the fire and leaves a hole in the backyard and you fall into it and get injured. What happens in that situation?

**Rep Klemin:** That is not covered by HB 1025. Section on no private liability talks about is a person owning or controlling real estate or other premises that voluntarily and without compensation grants the use of his/her property for the purpose of emergency management activities.

**Rep Larson:** If somebody comes on to my land and says we need to use your land to assist us in taking care of a natural disaster that is happening, I say its ok and they do damage to my property, since I gave them permission then they are not liable for the damages.

**Rep Klemin:** Core of Engineers has a form that they require to be completed for rights of entry.

**Rep Larson:** If the form is filled out and you agree?

**Rep Klemin:** Correct (refers back to bill)

**Rep Larson:** My concern is that if it's an emergency there is not going to be time for me to consult an attorney?

**Rep Klemin:** That is really another issue, what this is saying is that if you have an agreement before the use of the property, then you cannot make this claim, but if they do damage the property and didn't have an agreement then you do have a claim.

**Rep Paur:** The agreement covers the claim, right?

**Rep Klemin:** It could.

**Rep Paur:** Isn't that the purpose of the agreement?

**Rep Klemin:** I haven't seen those agreements myself, so.....

**Rep Klemin:** The Core of Engineers will not cover any damages unless there has been an agreement ahead of time. You have a right to say no, you cannot use my property.

**Rep Karls:** Who are we protecting here?

**Rep Klemin:** The compensation is not going to be paid even without an advanced agreement. And what this does is say the property owner can be compensated for damaged that occurred.

**Chairman Koppelman:** Minot example. A house was damaged while making dikes, they did not have an agreement with property owners and the Governor did not authorize the destruction of this property himself, this statute said they had no claim.

**Rep Larson:** So the people are being protected?

**Chairman Koppelman:** Yes, they will now be able to make a claim.

**Rep Hanson:** No agreement in Minot?

**Rep Klemin:** Right, so the Core did not have to cover damages and personal insurance would not either.

Do Pass.

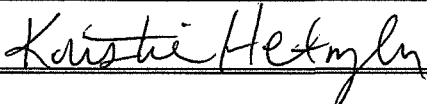
Closed.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1025  
January 23, 2013  
Job 17629

☐ Conference Committee



## Explanation or reason for introduction of bill/resolution:

Relating to liability and immunity during disaster responses.

## Minutes:

**Chairman Koppelman:** Opens the committee hearing for HB 1025. With Rep Klemin recommending a Do Pass. There are some questions, some minor amendments so it was brought back from the floor.

Motion and the second to bring back HB 1025 for further recommendation was made. (who made the motions is inaudible). Motion carried.

**Chairman Koppelman:** HB 1025 is before us.

Rep Klemin: Hands out an amendment to HB 1025, what this amendment does is to delete the last section of the bill. Reason is we have been informed the State disaster relief fund was a special fund that was created only for the purpose of paying the States portion of Presidential declared disasters. Wouldn't be appropriate for us to be putting other things to come out of the same fund. Moves the amendments.

**Rep Delmore:** Second.

**Chairman Koppelman:** The feeling of the appropriations committee on this is that what will happen is if we give the bill a do pass with the amendment we are still passing the policy portion and OMB will just have to come before them to figure out where the money is going to come from. All in favor?

**Yah:** 12      **Nay:** 0      **Absent:** 2

**Rep Boehning:** Do Pass as amended

**Rep Hanson:** Second.

**Yes:** 12



**No:** 0

**Absent:** 2

**Carried by:** Klemin

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/19/2012**

Bill/Resolution No.: HB 1025

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Compensation for property or damage to property used in management of a disaster or emergency is to be paid by jurisdiction that commandeered it's use.

- 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.*

Section 1 Subsection 3 would have a fiscal impact to a jurisdiction using property if damages occurred. It is extremely difficult to project a fiscal impact due to the unpredictability of a disaster actually occurring.

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.*

N/A

- 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.*

If expenditures did occur, as written, the State Disaster Relief fund would be utilized.

- 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.*

N/A

**Name:** Holly Gaugler

**Agency:** Adjutant General

**Telephone:** 701-333-2079

**Date Prepared:** 12/21/2012

13.0037.04002  
Title.05000

Prepared by the Legislative Council staff for  
Representative Klemin  
January 18, 2013

1/18/13  
CJG

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1025

Page 1, line 2, replace the first comma with " and"

Page 1, line 2, remove ", and 37-17.1-27"

Page 2, remove lines 25 through 30

Page 3, remove lines 1 and 2

Renumber accordingly

Date: 1-15-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1025

House Judiciary 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 Rep Klemin Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner					
Rep. Nathan Toman	/				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Klemin

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

Date: 1-23-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1025

House Judiciary 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 Rep. Delmore Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Voice Vote - Carried

Date: 1-23-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1025

House Judiciary 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 Rep. Klemin Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Voice vote - Carried

Date: 1-23-13  
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1025**

House Judiciary 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 Rep. Boehning Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Klemin

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



**REPORT OF STANDING COMMITTEE**

**HB 1025: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **DO PASS**  
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1025 was placed on the  
Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1025: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1025 was placed on the Sixth order on the calendar.

Page 1, line 2, replace the first comma with " and"

Page 1, line 2, remove ", and 37-17.1-27"

Page 2, remove lines 25 through 30

Page 3, remove lines 1 and 2

Renumber accordingly

**2013 SENATE JUDICIARY**

**HB 1025**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1025  
2/19/2013  
Job #19195

☐ Conference Committee

Committee Clerk Signature



## Minutes:

*Attached testimony*

Relating to liability and immunity during disaster response

Senator David Hogue - Chairman

Representative Lawrence R. Klemin - District 47 - See written testimony (1)

Senator Armstrong asks if this would impact a fire department. Rep. Klemin replies this is not intended for those types of situations. This is for a presidential or governor declared disaster. Senator Hogue gives an example that happened in Minot and asks if that would apply. Rep. Klemin replies that is exactly what it is for. He says private insurance does not cover these properties because of exclusions in most home owner's policies relating to government action. The Advisory Commission feels that if there is no right of entry agreement is it better for the community as a whole to bear the responsibility of that property which was taken for the greater good or should it be up to the individual to absorb the cost not covered by insurance. The Advisory Commission feels the community should bear the responsibility for the loss in those situations. The committee discusses who should pay and the right of entry agreement.

Greg Wilz - Deputy Director, Dept. of Emergency Services - See written testimony (2)

He says the bottom line is when the Corp is asked to come in on a disaster to help with flood preparation they have a standard memorandum of agreement that they sign with local communities and included in that is that the local city becomes responsible for securing ROE's (Right to Entry Agreement) to every piece of land that Corp goes into to build the levee. He explains how ROE's were skipped in many communities and homeowners found dikes in their backyards and now want to know who is going to pay for it. He said this has been an issue in many cities in ND. He says this bill has been needed for a while and urges support.

## Opposition

Aaron Birst - Association of Counties - Relays his concern is the local political subdivisions. The fund that has been created could not handle these situations. He would like to work through this bill. Committee talks of the Insurance Reserve Fund. Birst says they only cover the negligence losses. If Political Subdivisions are liable they would not pay.

Murray Sagsveen - League of Cities - He relays situations in Minot that still are not resolved today. He asked that this hearing be postponed so they can possibly come back with something that may be acceptable to everyone. Senator Hogue agreed to keep the hearing open.

Hearing adjourned

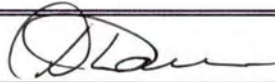
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1025  
3/19/2013  
Job #20257

☐ Conference Committee

Committee Clerk Signature



## Minutes:

*Attached testimony*

**Senator David Hogue - Chairman**

### Committee work

Committee listens to testimony regarding flood procedures in Fargo and Minot.

Connie Sprynczynatyk - League of Cities - Explains the interim process of this bill. She says the way this is written will open the political sub-divisions to liability. She adds that the League has facilitated a process among the city attorneys and the NDIRF.

Steven Spilde - Chief Executive Officer of the ND Insurance Reserve Fund (NDIRF). See written testimony **(1)**

John Van Grinsven - City Attorney for Minot - See written testimony **(2)**

Erik R. Johnson - City Attorney for Fargo - See written testimony **(3)**

Senator Hogue clarifies the intent of the amendment they have brought in.

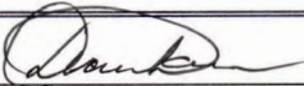
# 2013 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1025  
4/2/2013  
Job #20789

☐ Conference Committee

Committee Clerk Signature



**Minutes:**

Vote

**Senator David Hogue - Chairman**

## **Committee work**

Senator Hogue explains the bill and that it deals with immunity relating to political subdivisions that commandeer private property and whether or not the private property owner whose property is commandeered during a declared emergency are entitled to mandatory compensation. He speaks of an exception in common law when like in the situation in Minot where they built dikes across backyards, in a true declared emergency the property owner may not be compensated for the commandeered public use. The committee discusses the proposed amendment.

Senator Nelson motions a do not pass  
Senator Grabinger seconded

Vote - 3 yes, 4 no  
Motion fails

Senator Armstrong moves the E. Johnson amendment  
Senator Berry seconded

## **Discussion**

Senator Sitte would like to add in, by a jurisdiction. The committee discusses who can declare an emergency. Senator Hogue thinks the way it is worded, property authority, is the correct way.

Vote - 2 yes, 5 no  
Motion fails

Vote on the Johnson amendment  
7 yes, 0 no  
Motion passes

Senator Sitte moves a do pass as amended  
Senator Armstrong seconded

Senate Judiciary Committee  
HB1025  
4/2/2013  
Page 2

Vote 6 yes, 1 no  
Motion passes

Senator Hogue will carry



**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/25/2013**

Revised  
Amendment to: HB 1025

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Compensation for property or damage to property used in management of a disaster or emergency is to be paid by jurisdiction that commandeered it's use.

- 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.*

Section 1 Subsection 3 would have a fiscal impact to a jurisdiction using property if damages occurred. It is extremely difficult to project a fiscal impact due to the unpredictability of a disaster actually occurring.

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.*

N/A

- 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.*

N/A

- 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.*

N/A

**Name:** Holly Gaugler

**Agency:** Adjutant General

**Telephone:** 701-333-2079

**Date Prepared:** 01/29/2013

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/19/2012**

Bill/Resolution No.: HB 1025

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Compensation for property or damage to property used in management of a disaster or emergency is to be paid by jurisdiction that commandeered it's use.

- 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.*

Section 1 Subsection 3 would have a fiscal impact to a jurisdiction using property if damages occurred. It is extremely difficult to project a fiscal impact due to the unpredictability of a disaster actually occurring.

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.*

N/A

- 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.*

If expenditures did occur, as written, the State Disaster Relief fund would be utilized.

- 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.*

N/A

**Name:** Holly Gaugler

**Agency:** Adjutant General

**Telephone:** 701-333-2079

**Date Prepared:** 12/21/2012

April 2, 2013

  
4-2-13  
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1025

Page 1, line 1, replace "subsection" with "subsections"

Page 1, line 1, after "3" insert "and 4"

Page 1, line 2, replace the first "and" with a comma

Page 1, line 2, after "37-17.1-17" insert ", and 40-22-01.1"

Page 1, line 3, after "responses" insert "and financing of repairs"

Page 1, line 7, overstrike "must" and insert immediately thereafter "may"

Page 1, line 8, remove the overstrike over "~~declared~~"

Page 1, line 9, replace "by a jurisdiction having" with "under"

Page 1, line 10, remove ". Compensation for property or damage to property is the responsibility of the"

Page 1, line 11, replace "jurisdiction that commandeered or otherwise used the property" with "and only"

Page 1, line 11, remove the third "the"

Page 1, line 12, remove "responsibility was"

Page 1, line 12, replace "mitigated by agreement" with "waived or agreed upon"

Page 1, line 13, after the period insert "A claim made against the state must be filed and resolved as provided under subsections 4 and 5. A claim made against a county or city must be made in writing to the appropriate governing body within one year after the use, damage, loss, or destruction of the property under proper authority is discovered or reasonably should have been discovered, may only be for actual damages not recovered from claimants' property or other applicable insurance, and may be paid from any combination of funds provided under section 40-22-01.1, disaster relief funds made available to a county or city for this purpose, or other funds at the discretion of the governing body."

**SECTION 2. AMENDMENT.** Subsection 4 of section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

4. Any person claiming compensation for the use, damage, loss, or destruction of property by the state under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim for compensation must be received by the office of management and budget within one year after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived."

Page 1, line 18, remove the overstrike over "~~The state, a county or city, any~~"

2 of 2

Page 1, line 18, remove "Any"

Page 1, line 21, remove the overstrike over "person"

Page 1, line 21, remove "individual"

Page 1, line 22, remove the overstrike over "person"

Page 1, line 22, remove "individual"

Page 2, line 4, after "property" insert "except as compensation may be provided in section 37-17.1-12"

Page 2, line 22, remove "gross"

Page 2, line 23, replace "negligence" with "willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity"

Page 2, after line 24, insert:

"**SECTION 5. AMENDMENT.** Section 40-22-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**40-22-01.1. Restoration of certain property damaged in flood control or during a declared disaster or emergency - Special assessments for costs.**

When any city ~~shall have~~ has constructed any temporary emergency flood control protection devices or works to protect property located within a portion of a city from flood damage or expended funds for the protection of the city from flood or other peril under chapter 37-17.1 or otherwise, the city may ~~cause the removal of~~ maintain and remove material used in the construction of ~~such the~~ temporary emergency flood control protection devices or works and ~~the repair of~~ damages to land, buildings, or personal property caused by the operation of its equipment upon the property while in the process of installing or removing ~~such the~~ temporary emergency flood protection systems. ~~Such~~ The city may create by resolution of its governing board a special assessment district encompassing the protected area. Special assessments against the property within the district ~~shall~~ must be imposed to cover the costs incurred by the city in constructing and maintaining the emergency flood protection devices or works and in removing the material used and in repairing the damages caused by the operation of equipment while installing or removing such the temporary emergency flood protection systems. The amount to be assessed must be established by a resolution adopted by the governing board. Special assessments against any property in the district ~~shall~~ must be determined and made in the same manner as is provided for improvements by special assessments to the extent consistent herewith, and the certification and collection, including lien provisions, applicable to other special assessments ~~shall be~~ are applicable hereto. Provided, however, that the provisions of sections 40-22-15, 40-22-17, and 40-22-18, relating to a resolution of necessity and protests against special assessments, ~~shall~~ sections 40-22-10, 40-22-11, and 40-22-29, relating to engineers' reports, plans, and estimates, and section 40-22-19, relating to contract proposals, do not apply to special assessment districts created pursuant to under this section."

Renumber accordingly

Date: 4-2-13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1025

Senate JUDICIARY 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 S. Nelson Seconded By S. Grabinger

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue		X	Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson		X			
Senator Spencer Berry		X			
Senator Kelly Armstrong		X			

Total (Yes) 2 13 No 2 4

Absent \_\_\_\_\_

Floor Assignment Motion fails

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



Date: 4-2-13  
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1025

Senate JUDICIARY Committee

☐ Check here for Conference Committee

*Add line nine, bya jurisdiction*

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

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

☐ Rerefer to Appropriations ☐ Reconsider

*to amendment  
E. Johnson amendment*

Motion Made By S Sitte Seconded By S Berry

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue		X	Senator Carolyn Nelson		X
Vice Chairman Margaret Sitte	X		Senator John Grabinger		X
Senator Stanley Lyson		X			
Senator Spencer Berry	X				
Senator Kelly Armstrong		X			

Total (Yes) 2 No 5

Absent \_\_\_\_\_

Floor Assignment Fails

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



Date: 4-2-13  
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1025

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number E. Tolson amendment

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Armstrong Seconded By S. Berry

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment amend passes

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

Date: 4-2-13  
Roll Call Vote #: 4

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1025

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0037.05001

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Sitte Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger		X
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 6 No 1

Absent \_\_\_\_\_

Floor Assignment S. Hogue

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

**REPORT OF STANDING COMMITTEE**

**HB 1025, as engrossed: Judiciary Committee (Sen. Hogue, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1025 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection" with "subsections"

Page 1, line 1, after "3" insert "and 4"

Page 1, line 2, replace the first "and" with a comma

Page 1, line 2, after "37-17.1-17" insert ", and 40-22-01.1"

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Page 1, line 11, replace "jurisdiction that commandeered or otherwise used the property" with "and only"

Page 1, line 11, remove the third "the"

Page 1, line 12, remove "responsibility was"

Page 1, line 12, replace "mitigated by agreement" with "waived or agreed upon"

Page 1, line 13, after the period insert "A claim made against the state must be filed and resolved as provided under subsections 4 and 5. A claim made against a county or city must be made in writing to the appropriate governing body within one year after the use, damage, loss, or destruction of the property under proper authority is discovered or reasonably should have been discovered, may only be for actual damages not recovered from claimants' property or other applicable insurance, and may be paid from any combination of funds provided under section 40-22-01.1, disaster relief funds made available to a county or city for this purpose, or other funds at the discretion of the governing body."

**SECTION 2. AMENDMENT.** Subsection 4 of section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

4. Any person claiming compensation for the use, damage, loss, or destruction of property by the state under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim for compensation must be received by the office of management and budget within one year after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived."

Page 1, line 18, remove the overstrike over "~~The state, a county or city, any~~"

Page 1, line 18, remove "Any"

Page 1, line 21, remove the overstrike over "person"

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Page 2, line 22, remove "gross"

Page 2, line 23, replace "negligence" with "willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity"

Page 2, after line 24, insert:

**"SECTION 5. AMENDMENT.** Section 40-22-01.1 of the North Dakota Century Code is amended and reenacted as follows:

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When any city ~~shall have~~has constructed any temporary emergency flood control protection devices or works to protect property located within a portion of a city from flood damage or expended funds for the protection of the city from flood or other peril under chapter 37-17.1 or otherwise, the city may ~~cause the removal of~~maintain and remove material used in the construction of ~~such~~the temporary emergency flood control protection devices or works and the repair of damages to land, buildings, or personal property caused by the operation of its equipment upon the property while in the process of installing or removing ~~such~~the temporary emergency flood protection systems. ~~Such~~The city may create by resolution of its governing board a special assessment district encompassing the protected area. Special assessments against the property within the district ~~shall~~must be imposed to cover the costs incurred by the city in constructing and maintaining the emergency flood protection devices or works and in removing the material used and in repairing the damages caused by the operation of equipment while installing or removing ~~such~~the temporary emergency flood protection systems. The amount to be assessed must be established by a resolution adopted by the governing board. Special assessments against any property in the district ~~shall~~must be determined and made in the same manner as is provided for improvements by special assessments to the extent consistent herewith, and the certification and collection, including lien provisions, applicable to other special assessments ~~shall be~~are applicable hereto. Provided, however, that the provisions of sections 40-22-15, 40-22-17, and 40-22-18, relating to a resolution of necessity and protests against special assessments, ~~shall~~sections 40-22-10, 40-22-11, and 40-22-29, relating to engineers' reports, plans, and estimates, and section 40-22-19, relating to contract proposals, do not apply to special assessment districts created ~~pursuant to~~under this section."

Renumber accordingly

**2013 CONFERENCE COMMITTEE**

**HB 1025**



# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1025  
JOB #21216  
Date: April 17, 2013

☒ Conference Committee

*Q. Mae Kueh*

## Explanation or reason for introduction of bill/resolution:

(Conference Committee)

Relating to liability and immunity during disaster responses

## Minutes:

**Rep. Bill Kretschmar:** Opened Conference Committee on HB 1025.

**Rep. Larry Klemin:** Asked to have the Senators go through the changes they made in the bill.

**Sen. Hogue:** The amendments the Senate adopted were a product of a consortium of City Attorneys from our larger cities, Fargo, Grand Forks, and Minot. We had input from other city attorneys. Under common law when a political subdivision commandeered property in an emergency, that political subdivision was not held liable for that taking. That was because it wasn't a traditional taking like for a highway. It was taking property for a true emergency, diking for example. They would like that immunity to continue for that type of situation. In recent emergency events they have been able to make private property owners whole when they have commandeered their property.

They changed some language further in Section 1 to make clear that the way you present a claim against the state is different than if you present a claim against a political subdivision. That is also true in Section 2.

**Rep. Larry Klemin:** On Section 1, line 15 "claims made against a county or city." This bill originated with the Advisory Commission on Intergovernmental Relations which I was the chairman during the interim. Line 15 doesn't mention townships. Is there a reason why townships aren't included?

(5:35)

**Sen. Hogue:** There is no reason. Townships don't have the ability to function the way counties and cities do. Townships meet maybe once or twice per year and have limited mill levy authority to set up a special fund like a large political subdivision would have.

**Rep. Larry Klemin:** I would agree to a certain extent, but some townships are very active and heavily populated around the cities. If we don't have a process to include a way for someone who has been damaged by the activity of a township, they should be included the same as cities and counties.

**Sen. Grabinger:** How many of those townships have the governing authority to commandeer like the cities and counties?

**Rep. Larry Klemin:** It wouldn't hurt to have them included so somebody is not making claims against townships outside the scope of this section. I am not looking for a way to make a township liable. I am looking to include townships in the process of how claims are made.

(8:30)

**Sen. Grabinger:** On line 7 where it says compensation for property may be only paid if the property was commandeered or otherwise used in the management of a disaster or emergency declared. I don't know if they would fall under that.

**Rep. Larry Klemin:** Dickey County had some issues during the interim.

Another question, on line 16 it says a claim must be made within one year. You can only get covered from actual damage not recovered from other insurance. It may take more than one year to resolve that.

**Sen. Hogue:** I don't think anybody was stuck on one year. We heard when someone starts putting a dike across the backyard, the insurance company for the political subdivision is not going to cover that because you are intentionally destroying someone's property. Some homeowners' insurance did cover that damage. You might be right, a year is too short.

**Sen. Grabinger:** We did have some discussion, it says a "reasonable time." If the dike is up for two years, you don't have the damage until the dike is down.

**Rep. Larry Klemin:** "Is discovered" or "reasonably should have been discovered" is a typical standard used to start a limitations period. That would be the beginning of a one-year period. If a dike is being constructed and a piece of equipment falls off the dike that is not an intentional act. That might be negligence. If it falls off the dike and into a house, the one-year period would start right then. The one-year period may not be long enough if he has to argue with the insurance company first.

**Sen. Hogue:** I wouldn't disagree with that. What we heard was the secondary loss where the political subdivision is constructing the dike and a piece of equipment unintentionally damages a piece of property, may be covered. The act of placing the dirt and compacting the soil on the property owner's back yard would not be regarded as an insurable event.

(15:05)

**Rep. Larry Klemin:** I have looked at a lot of insurance policies. The typical exclusion from coverage is for damage caused by governmental activity whether it is intentional or negligent.

On lines 18 and 19, what if the private property insurance does cover the loss? In a usual case the insurance company is going to have a right of subrogation against the party that caused the loss.

**Sen. Hogue:** You raised an issue we did not consider.

**Rep. Bill Kretschmar:** We need to recess on 1025.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1025  
JOB 21265  
Date April 18, 2013

X Conference Committee



Minutes:

**Representative Kretschmar:** Reopened Conference Committee on HB 1025.

**Representative Klemin:** Section 1 we talked about townships and if they should be included and asked John Bjornson to research as to the effect that it may have with townships and we agreed townships don't have the authority to commandeer property or do anything in a disaster or emergency. He suggested on section 1, line 13 and 14, he didn't think that was necessary and we don't need cross language to the following subsection in the same section of the statute. We talked about subrogation. I don't think this affects a contractual right of subrogation that an insurance company have with its insured to be subrogated. That's not the intention of this section from my reading of it.

**Senator Grabinger:** Back to subrogation, I am not following that.

**Representative Klemin:** When an insurance company pays a claim that's submitted by its insured, it's subrogated to the rights of that insured with respect to any claims that insured may have against the person who may have done the damage. Gave an example.

**Senator Grabinger:** They should be able to sue the city to get that money back.

**Representative Klemin:** Correct. That's the general rule.

**Senator Grabinger:** I don't think we are affecting that subrogation. Did you want to change that?

**Representative Klemin:** No, I don't want to change it and want to make it clear that it is not changed.

**6:24 Senator Hogue:** My understanding of subrogation has been that the insurer steps into the shoes of its insured and only has the legal rights that its insured would have to make that recovery. If an insurance company made a payment to their insured yet the insured had no right to recover against the city or county that insurance company stepping into the shoes of the insured is going to have that same legal barrier to making a recovery. The bill in its amended form doesn't impose liability it's discretionary so I'm not sure how the subrogation or how would the insurance company have a subrogated right to recover when the insured doesn't.



**Representative Klemin:** The way I read this the insured is going to have a right to recover otherwise there would be no point of this if the political subdivision could say in all cases sorry we're not going to pay because its discretionary. I agree that a right of subrogation doesn't give the insurance company any greater rights than the insured had.

**8:22 Representative Kretschmar:** Do we want to proceed with any motions.

**Representative Klemin:** On line 7 where it says compensation for property may be paid, are you saying Senator Hogue that it's discretionary with the state or the political subdivision as to whether it pays or not? Are there any parameters to that?

**Senator Hogue:** I think that one word is the crux of this bill. Under the common law we haven't had this liability for years and we are in the position where we are making decisions in an emergency not withstanding that immunity. We would rather be able to work with property owners affected and compensate them.

**11:19 Representative Klemin:** If they have a process in place they are going to use I don't think there is an issue there. But if a city or county says this is discretionary and we're going to say we're not going to do it at all, we're not going to have a process in place to pay anything ever, too bad. This isn't covering the unmet need. Fargo is not just denying payment. This would allow them to do that.

**12:09 Senator Hogue:** Gave an example of the Minot issue. They did not have a policy in place but they found a way to compensate those homeowners. They looked at what we talked about.

**13:35 Senator Grabinger:** We had a similar thing in Jamestown. Gave an example of driveways where they had gone with loaders with sandbags that damaged driveways but then we had claims for replacing a whole parking lot when we only damaged a portion if it.

**14:37 Representative Klemin:** I would be interested in the legal authority that they presented to the Senate committee to establish that they continue to have immunity from liability. Did they present anything?

**Senator Hogue:** I believe it was a memorandum from the City Attorney in Grand Forks. The import of the analysis was that during an emergency when private property has to be commandeered, there is immunity for that.

**16:12 Representative Klemin:** In that situation there are regulations that do provide for compensation that is all in place. We have the right as a city or county to decide whether we're going to pay or not and under what circumstances and how much. If we decide not to pay anything, then that's appropriate.

**Senator Hogue:** Yes, you would expect democratic governments to never compensate people for damage. You are right in the case of Minot there was nothing in place that said how these people would be compensated but they were.

**17:03 Representative Klemin:** Common law has statues relating to that and in Title one, evidence of common law is found in the decisions of the Tribunals. Section 10106 in the state there is no common law in any case in which the law is declared by this code. Two chapters of the code address the liability of the state and the political subdivisions. Continued with comments.

**23:27 Senator Grabinger:** Section 3, paragraph 1, of subsection 1, it states except as compensation may be provided in that subsection. Does that section provide us immunity? Continued reading information provided.

**24:36 Representative Klemin:** I think Section 12 sets out the destruction of the property would never be ordered by the Governor. This criterion made this a novelty. That's been taken out of the statute. We were trying to find a method whereby we could provide for compensation. And whether the (lines 12 and 13 of colored sheet) in only to the extent otherwise waived or agreed upon before the use of the property.

**26:39 Senator Grabinger:** I was informed that did happen in Jamestown. What happened afterwards those agreements is going to be rewritten. Connie, in Jamestown was there an Attorney General's opinion that allowed the city to go ahead with that? Do you know the agreement to compensate those residents, didn't they ask for an Attorney General's opinion or was it an attorney's opinion from a local attorney?

**Connie Sprynczynayk, League of Cities:** I don't know. Section 3 of the bill regarding the statutory for the immunity, isn't that where you find the answer?

**Representative Kretschmar:** We have to continue this further. Meeting was adjourned.

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Judiciary Committee Prairie Room, State Capitol

HB 1025  
JOB 21390  
Date April 22, 2013

☒ Conference Committee

*Caamen Hickle*

Explanation or reason for introduction of bill/resolution:

Relating to liability and immunity during disaster responses

Minutes:

Handouts # 1,2

**Rep. Bill Kretschmar:** Reopens Conference Committee HB 1025.

**Rep. Larry Klemin:** Handed out #1 Common Law and #2 proposed amendments and explained them. Handed out #1 and explained it, see attached. Also proposed amendments #2, see attached and explained them. Section one provides a statute of limitations period of two years rather than one year. This is if it takes a property owner to resolve something with a private insurance company. He also added that a city or county may establish reasonable provisions for the payment of compensation the intention is while a city or county make decisions concerning payments of compensation they cannot do so in a way that would be arbitrary or unreasonable. The original reason for this bill was in the event of a disaster that affects private property where there has not been a rite of entry agreement to start with. This sets out the terms to the extent not otherwise waived or agreed upon before the use of the property. In those situations we do have provisions here on how claims are to be made. Section two is the same thing relating to claims against the state; change that to two years statute of limitations period also. Section three, I changed it back to the way it was in the House version of this bill and deleted "the state, a county or city". That is based on the common law of North Dakota is that there is no governmental or sovereign immunity in this state. Section four deals with private liability, that law original says there is no liability for negligent of a private property owner or negligently causing death or injury to a person or that persons property. The Commission changed it to "gross negligence" as the meaning of negligent is very broad. The Senate took out negligent completely and changed it into an "intentional tort standard". Section five I did not propose a change as that is a special assessment type process that the cities use and the only thing I would note is there is nothing that talks about counties. Except if you go into Chapter 32-12.1 dealing with government liability there are already provisions in there that permit counties and cities to have special assessment districts to pay off judgments or claims against the political subdivisions.

**Rep. Larry Klemin:** made a motion to move the amendments.

**Rep. Lois Delmore:** Second the motion.

**Sen. Grabinger:** I am wondering if setting this to two years instead of one year, what if there was a previous agreement and there is a time in that? Should we have language "unless otherwise

declared in a previous agreement"? We don't want to supersede somebody's agreement, I think we have to honor their agreements.

**Rep. Larry Klemin:** It seems that the limitation period here is the statutory time limit which can be extended by the parties by agreement.

**Sen. Grabinger:** Or reduced by an agreement?

**Rep. Larry Klemin:** Possibly. But here we have a limitation period by law and if the parties agree differently, unless the court would set it aside, I don't know why you couldn't do that.

**Sen. Hogue:** I don't know if I have a problem going from one year to two year, it is a deviation from the timeline how we present claims but it seems reasonable. My trouble with the motion goes to Section 3 page 2 distributed by Rep. Klemin, it relates to 37-17.1-16. That is the crux of this bill and two different approaches between the House and the Senate. The Senate made the judgment that it was good policy that in these emergencies situations that the actors, who are primarily state and political subdivision employee actors, have free rein to act and to respond to an emergency situation. That's the purpose of granting them some form of limited immunity in these situations. I can't agree that we should take away their limited immunity by striking them out on the subsection one. The state and the political subdivisions have done an outstanding job of making individuals whole when their property has been commandeered. When you get to the planning stages where these emergencies you want the public officials to be able to act to that situation in an unfettered manner so they don't have to always be concerned about property rights. You want to be able to act in a rapid fashion because that is the nature of the event. It's an emergency you don't have the time to deliberate, so you don't want to have to consider property rights, lawsuits, lawyers, legal bills, you want to be able to act for the public good. I see Section three of the amendment as being problematic. I think it goes against the intent of the Senate, we voted so at least the political subdivisions to retain their immunity in these situations and provide redress after the emergency has subsided.

**Rep. Lois Delmore:** I seconded the motion because I did feel there should be discussion about the amendment. I will oppose the amendments as well.

**Rep. Larry Klemin:** I think I did set out what the common law of North Dakota is on governmental immunity. If we leave this language in Section three then we would be leaving that for a court to determine if that is going to be the case or not. There may be situations when a government body does have to act rapidly but in other cases the governmental entity has a lot more time. I would be willing to leave this in to resolve the Conference Committee. Eventually I would expect the courts would have to decide whether this truly provides governmental immunity or not. I would be willing to remove the amendment from Section three.

**Rep. Bill Kretschmar:** It is my understanding under the proposed amendment in Section three that the individual workers are immune but the state, city and county isn't immune. On the second line of the amendment in Section three.

**Sen. Grabinger:** Yes, remove the over strike, leave "the state, a county or city, any" in there.

**Rep. Bill Kretschmar:** I would certainly go along with that.

**Rep. Larry Klemin:** Would the rest of it be acceptable?

**Sen. Grabinger:** I still question whether we need something regarding prior agreements.



**Rep. Bill Kretschmar:** If the parties are making the agreement it would be binding on them.

**Sen. Grabinger:** Correct, except I don't want our state law telling them that is null and void because it goes against the state law.

**Rep. Bill Kretschmar:** I don't think it would be the case.

**Rep. Larry Klemin:** Motion to amendment the proposed amendment to delete Section 3 of the bill putting it back to the original bill.

**Sen. Hogue:** Second on the motion.

**Rep. Bill Kretschmar:** The roll call will be on only removing Section three from the amendment.

Vote Yes 6, no 0 absent 0.

**Rep. Bill Kretschmar:** Now we have the rest of Rep. Klemin's amendments before us.

**Sen. Hogue:** Jus to clarify, in the terms of statute of limitations any agreement that would be entered into after the effective date of this bill August one if the parties had no agreement and there was an emergency response that created liability they would have two years from the date of the destruction of their property to commence a claim if they thought they were entitled to something?

**Rep. Larry Klemin:** It would be effective August one. Up until then it's going to be one year or what's in the original statute.

**Rep. Bill Kretschmar:** Any further discussion.

**Rep. Larry Klemin:** Senate recedes from its amendments and further amend.

**Sen. Grabinger:** We are taking 6000 removing lines 11 and 12 regarding a claim and adding two years instead of one year. And adding the sentence down on Line 19 we would add "A city or county may establish reasonable provisions for the payment of compensation." Change two years again in Section two. Then add the final gross negligence.

**Rep. Larry Klemin:** We are taking the House bill as amended by the Senate and furthering amending it.

**Rep. Bill Kretschmar:** The Senate recede from its amendments to the House bill and the Conference Committee further amend with this.

**Sen. Hogue:** I think that motion isn't keeping with the intent of the committee if we are including not just the red language but the language that is underscored and overstruck.

**Rep. Bill Kretschmar:** That is my understanding.

Roll call vote yes 5, no 1, absent 0.

The bill and amendments were returned to Legislative Council as page one line 18 to move the overstrike on "The state, a county or city, any" as per Rep. Klemin and Rep. Kretschmar and front desk.

**FISCAL NOTE**  
**Requested by Legislative Council**  
**04/24/2013**

Amendment to: Engrossed HB 1025

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Compensation for property or damage to property used in management of a disaster or emergency and special assessments for property damaged in flood control or during a declared disaster or emergency.

- 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.*

Section 1 Subsection 3 may have a fiscal impact to a jurisdiction using property if damages occurred. Section 5 also creates a fiscal impact from special assessments for restoration of property damaged in flood control or during a declared disaster or emergency. It is extremely difficult to project a fiscal impact for either of those due to the unpredictability of a disaster actually occurring.

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.*

N/A

- 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.*

N/A

- 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.*

N/A

**Name:** Holly Gaugler

**Agency:** Adjutant General

**Telephone:** 701-333-2079

**Date Prepared:** 01/29/2013

**FISCAL NOTE**  
**Requested by Legislative Council**  
**04/03/2013**

Amendment to: HB 1025

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
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Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

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- 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.*

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N/A

- 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.*

N/A

- 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.*

N/A



**Name:** Holly Gaugler

**Agency:** Adjutant General

**Telephone:** 701-333-2079

**Date Prepared:** 01/29/2013

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/25/2013**

Revised  
Amendment to: HB 1025

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

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School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Compensation for property or damage to property used in management of a disaster or emergency is to be paid by jurisdiction that commandeered it's use.

- 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.*

Section 1 Subsection 3 would have a fiscal impact to a jurisdiction using property if damages occurred. It is extremely difficult to project a fiscal impact due to the unpredictability of a disaster actually occurring.

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.*

N/A

- 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.*

N/A

- 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.*

N/A

**Name:** Holly Gaugler

**Agency:** Adjutant General

**Telephone:** 701-333-2079

**Date Prepared:** 01/29/2013

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/19/2012**

Bill/Resolution No.: HB 1025

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
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Compensation for property or damage to property used in management of a disaster or emergency is to be paid by jurisdiction that commandeered it's use.

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N/A

- 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.*

If expenditures did occur, as written, the State Disaster Relief fund would be utilized.

- 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.*

N/A

**Name:** Holly Gaugler

**Agency:** Adjutant General

**Telephone:** 701-333-2079

**Date Prepared:** 12/21/2012

April 23, 2013

V.  
4/23/13  
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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1025

That the Senate recede from its amendments as printed on pages 1227-1229 of the House Journal and pages 1068-1070 of the Senate Journal and that Engrossed House Bill No. 1025 be amended as follows:

Page 1, line 1, remove "subsection 3 of section 37-17.1-12 and"

Page 1, line 1, after "sections" insert "37-17.1-12,"

Page 1, line 2, replace the first "and" with a comma

Page 1, line 2, after "37-17.1-17" insert ", and 40-22-01.1"

Page 1, line 3, after "responses" insert "and financing of repairs"

Page 1, replace lines 5 through 13 with:

**"SECTION 1. AMENDMENT.** Section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-12. Compensation - Entitlement - Time - Amount.**

1. Persons within this state shall conduct themselves and keep and manage their affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to effectively prevent, mitigate, prepare for, respond to, and recover from a disaster or emergency. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster or emergency. This chapter neither increases nor decreases these obligations but recognizes their existence under the Constitution of North Dakota and statutes of this state and the common law. Compensation for services or for the taking or use of property must be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered that person's services or property without compensation.
2. Personal services may not be compensated by the state or any county or city thereof, except pursuant to statute or local law or ordinance.
3. Compensation for property ~~must~~ may be ~~only~~ paid if the property was commandeered or otherwise used in management of a disaster or emergency declared ~~by the governor and its use or destruction was ordered by the governor under proper authority~~ to the extent not otherwise waived or agreed upon before the use of property.
4. A claim made against a county or city must be made in writing to the appropriate governing body within two years after the use, damage, loss, or destruction of the property under proper authority is discovered or reasonably should have been discovered, may only be for actual damages not recovered from claimants' property or other applicable insurance, and may be paid from any combination of funds provided under section

40-22-01.1. disaster relief funds made available to a county or city for this purpose, or other funds at the discretion of the governing body. A city or county may establish reasonable provisions for the payment of compensation.

5. Any person claiming compensation for the use, damage, loss, or destruction of property by the state under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim for compensation must be received by the office of management and budget within ~~one year~~two years after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived.

- ~~5.6.~~ Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the office of management and budget, the amount of compensation must be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state."

Page 1, line 21, remove the overstrike over "person"

Page 1, line 21, remove "individual"

Page 1, line 22, remove the overstrike over "person"

Page 1, line 22, remove "individual"

Page 2, line 4, after "property" insert "except as compensation may be provided in section 37-17.1-12"

Page 2, line 23, after "negligence" insert "or willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity"

Page 2, after line 24, insert:

"**SECTION 4. AMENDMENT.** Section 40-22-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**40-22-01.1. Restoration of ~~certain~~ property damaged in flood control or during a declared disaster or emergency - Special assessments for costs.**

When any city ~~shall have~~has constructed any temporary emergency flood control protection devices or works to protect property located within a portion of a city from flood damage or expended funds for the protection of the city from flood or other peril under chapter 37-17.1 or otherwise, the city may ~~cause the removal of~~maintain and remove material used in the construction of ~~such~~the temporary emergency flood control protection devices or works and the repair of damages to land, buildings, or personal property caused by the operation of its equipment upon the property while in the process of installing or removing ~~such~~the temporary emergency flood protection systems. ~~Such~~The city may create by resolution of its governing board a special assessment district encompassing the protected area. Special assessments against the property within the district ~~shall~~must be imposed to cover the costs incurred by the city in constructing and maintaining the emergency flood protection devices or works and in removing the material used and in repairing the damages caused by the

operation of equipment while installing or removing ~~such~~ the temporary emergency flood protection systems. The amount to be assessed must be established by a resolution adopted by the governing board. Special assessments against any property in the district ~~shall~~ must be determined and made in the same manner as is provided for improvements by special assessments to the extent consistent herewith, and the certification and collection, including lien provisions, applicable to other special assessments ~~shall be~~ are applicable hereto. Provided, however, that the provisions of sections 40-22-15, 40-22-17, and 40-22-18, relating to a resolution of necessity and protests against special assessments, ~~shall~~ sections 40-22-10, 40-22-11, and 40-22-29, relating to engineers' reports, plans, and estimates, and section 40-22-19, relating to contract proposals, do not apply to special assessment districts created ~~pursuant to~~ under this section."

Renumber accordingly



April 23, 2013

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1025

That the Senate recede from its amendments as printed on pages 1227-1229 of the House Journal and pages 1068-1070 of the Senate Journal and that Engrossed House Bill No. 1025 be amended as follows:

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Page 1, line 1, after "sections" insert "37-17.1-12,"

Page 1, line 2, replace the first "and" with a comma

Page 1, line 2, after "37-17.1-17" insert ", and 40-22-01.1"

Page 1, line 3, after "responses" insert "and financing of repairs"

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**37-17.1-12. Compensation - Entitlement - Time - Amount.**

1. Persons within this state shall conduct themselves and keep and manage their affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to effectively prevent, mitigate, prepare for, respond to, and recover from a disaster or emergency. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster or emergency. This chapter neither increases nor decreases these obligations but recognizes their existence under the Constitution of North Dakota and statutes of this state and the common law. Compensation for services or for the taking or use of property must be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered that person's services or property without compensation.
2. Personal services may not be compensated by the state or any county or city thereof, except pursuant to statute or local law or ordinance.
3. Compensation for property ~~must~~ may be ~~only paid~~ if the property was commandeered or otherwise used in management of a disaster or emergency declared by the governor and its use or destruction was ordered by the governor under proper authority to the extent not otherwise waived or agreed upon before the use of property.
4. A claim made against a county or city must be made in writing to the appropriate governing body within two years after the use, damage, loss, or destruction of the property under proper authority is discovered or reasonably should have been discovered, may only be for actual damages not recovered from claimants' property or other applicable insurance, and may be paid from any combination of funds provided under section

40-22-01.1, disaster relief funds made available to a county or city for this purpose, or other funds at the discretion of the governing body. A city or county may establish reasonable provisions for the payment of compensation.

5. Any person claiming compensation for the use, damage, loss, or destruction of property by the state under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim for compensation must be received by the office of management and budget within ~~one year~~two years after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived.
- 5.6. Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the office of management and budget, the amount of compensation must be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state."

Page 1, line 18, remove the overstrike over "~~The state, a county or city, any~~"

Page 1, line 18, remove "Any"

Page 1, line 21, remove the overstrike over "person"

Page 1, line 21, remove "individual"

Page 1, line 22, remove the overstrike over "person"

Page 1, line 22, remove "individual"

Page 2, line 4, after "property" insert "except as compensation may be provided in section 37-17.1-12"

Page 2, line 23, after "negligence" insert "or willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity"

Page 2, after line 24, insert:

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**40-22-01.1. Restoration of ~~certain~~ property damaged in flood control or during a declared disaster or emergency - Special assessments for costs.**

When any city ~~shall have~~has constructed any temporary emergency flood control protection devices or works to protect property located within a portion of a city from flood damage or expended funds for the protection of the city from flood or other peril under chapter 37-17.1 or otherwise, the city may ~~cause the removal of~~maintain and remove material used in the construction of ~~such~~the temporary emergency flood control protection devices or works and the repair of damages to land, buildings, or personal property caused by the operation of its equipment upon the property while in the process of installing or removing ~~such~~the temporary emergency flood protection systems. ~~Such~~The city may create by resolution of its governing board a special assessment district encompassing the protected area. Special assessments against

the property within the district ~~shall~~must be imposed to cover the costs incurred by the city in constructing and maintaining the emergency flood protection devices or works and in removing the material used and in repairing the damages caused by the operation of equipment while installing or removing such the temporary emergency flood protection systems. The amount to be assessed must be established by a resolution adopted by the governing board. Special assessments against any property in the district ~~shall~~must be determined and made in the same manner as is provided for improvements by special assessments to the extent consistent herewith, and the certification and collection, including lien provisions, applicable to other special assessments ~~shall be~~are applicable hereto. Provided, however, that the provisions of sections 40-22-15, 40-22-17, and 40-22-18, relating to a resolution of necessity and protests against special assessments, ~~shall~~sections 40-22-10, 40-22-11, and 40-22-29, relating to engineers' reports, plans, and estimates, and section 40-22-19, relating to contract proposals, do not apply to special assessment districts created pursuant to under this section."

Renumber accordingly

# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. 1025 as (re) engrossed

Date: April 17, 2013, April 18, 2013, April 22, 2013

Roll Call Vote #: \_\_\_\_\_

- Action Taken**
- ☐ HOUSE accede to Senate amendments
  - ☐ HOUSE accede to Senate amendments and further amend
  - ☐ SENATE recede from Senate amendments
  - ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Klemm Seconded by: Sen. Hogue

Representatives	<u>1</u>	<u>2</u>	<u>3</u>	Yes	No		Senators	<u>1</u>	<u>2</u>	<u>3</u>	Yes	No
Rep. Kretschmar	X	X	X	X			Sen. Hogue	X	X	X	X	
Rep. Klemm	X	X	X	X			Sen. Lyson		X	X	X	
Rep. Delmore	X	X	X	X			Sen. Grabinger	X	X	X	X	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

*Removing Section Three from the Amendment.*

# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. 1025 as (re) engrossed

Date: April 22, 2013

Roll Call Vote #: 2

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1227 .. 1229

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Klemin Seconded by: Rep. Delmore

Representatives				Yes	No		Senators				Yes	No
Rep. Kretschmar				X			Sen. Hogue				X	
Rep. Klemin				X			Sen. Lyson				X	
Rep. Delmore					X		Sen. Grabinger				X	

Vote Count Yes: 5 No: 1 Absent: \_\_\_\_\_

House Carrier Rep. Kretschmar Senate Carrier Sen. Hogue

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1025, as engrossed:** Your conference committee (Sens. Hogue, Lyson, Grabinger and Reps. Kretschmar, Klemin, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1227-1229, adopt amendments as follows, and place HB 1025 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1227-1229 of the House Journal and pages 1068-1070 of the Senate Journal and that Engrossed House Bill No. 1025 be amended as follows:

Page 1, line 1, remove "subsection 3 of section 37-17.1-12 and"

Page 1, line 1, after "sections" insert "37-17.1-12,"

Page 1, line 2, replace the first "and" with a comma

Page 1, line 2, after "37-17.1-17" insert ", and 40-22-01.1"

Page 1, line 3, after "responses" insert "and financing of repairs"

Page 1, replace lines 5 through 13 with:

**"SECTION 1. AMENDMENT.** Section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-12. Compensation - Entitlement - Time - Amount.**

1. Persons within this state shall conduct themselves and keep and manage their affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to effectively prevent, mitigate, prepare for, respond to, and recover from a disaster or emergency. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster or emergency. This chapter neither increases nor decreases these obligations but recognizes their existence under the Constitution of North Dakota and statutes of this state and the common law. Compensation for services or for the taking or use of property must be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered that person's services or property without compensation.
2. Personal services may not be compensated by the state or any county or city thereof, except pursuant to statute or local law or ordinance.
3. Compensation for property ~~must~~ may be ~~only~~ paid if the property was commandeered or otherwise used in management of a disaster or emergency declared ~~by the governor and its use or destruction was ordered by the governor under proper authority to the extent not otherwise waived or agreed upon before the use of property.~~
4. A claim made against a county or city must be made in writing to the appropriate governing body within two years after the use, damage, loss, or destruction of the property under proper authority is discovered or reasonably should have been discovered, may only be for actual damages not recovered from claimants' property or other applicable insurance, and may be paid from any combination of funds provided under section 40-22-01.1, disaster relief funds made available to a county or city for this purpose, or other funds at the discretion of the governing body. A city or county may establish reasonable provisions for the payment of compensation.



5. Any person claiming compensation for the use, damage, loss, or destruction of property by the state under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim for compensation must be received by the office of management and budget within one year two years after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived.
- 5.6. Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the office of management and budget, the amount of compensation must be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state."

Page 1, line 21, remove the overstrike over "person"

Page 1, line 21, remove "individual"

Page 1, line 22, remove the overstrike over "person"

Page 1, line 22, remove "individual"

Page 2, line 4, after "property" insert "except as compensation may be provided in section 37-17.1-12"

Page 2, line 23, after "negligence" insert "or willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity"

Page 2, after line 24, insert:

**"SECTION 4. AMENDMENT.** Section 40-22-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**40-22-01.1. Restoration of certain property damaged in flood control or during a declared disaster or emergency - Special assessments for costs.**

When any city ~~shall have~~has constructed any temporary emergency flood control protection devices or works to protect property located within a portion of a city from flood damage or expended funds for the protection of the city from flood or other peril under chapter 37-17.1 or otherwise, the city may ~~cause the removal of~~maintain and remove material used in the construction of ~~such~~the temporary emergency flood control protection devices or works and the repair of damages to land, buildings, or personal property caused by the operation of its equipment upon the property while in the process of installing or removing ~~such~~the temporary emergency flood protection systems. ~~Such~~The city may create by resolution of its governing board a special assessment district encompassing the protected area. Special assessments against the property within the district ~~shall~~must be imposed to cover the costs incurred by the city in constructing and maintaining the emergency flood protection devices or works and in removing the material used and in repairing the damages caused by the operation of equipment while installing or removing suchthe temporary emergency flood protection systems. The amount to be assessed must be established by a resolution adopted by the governing board. Special assessments against any property in the district ~~shall~~must be determined and made in the same manner as is provided for improvements by special assessments to the extent consistent herewith, and the certification and collection, including lien provisions, applicable to other special assessments ~~shall be~~are applicable hereto. Provided, however, that the provisions of sections 40-22-15, 40-22-17, and 40-22-18, relating to a resolution of necessity and protests against special assessments, ~~shall~~sections 40-22-10, 40-22-11, and 40-22-29, relating to engineers' reports, plans,

and estimates, and section 40-22-19, relating to contract proposals, do not apply to special assessment districts created pursuant to~~under~~ this section."

Renumber accordingly

Engrossed HB 1025 was placed on the Seventh order of business on the calendar.



**REPORT OF CONFERENCE COMMITTEE**

**HB 1025, as engrossed:** Your conference committee (Sens. Hogue, Lyson, Grabinger and Reps. Kretschmar, Klemin, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1227-1229, adopt amendments as follows, and place HB 1025 on the Seventh order:

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2. Personal services may not be compensated by the state or any county or city thereof, except pursuant to statute or local law or ordinance.
3. Compensation for property ~~must~~ may be ~~only~~ paid if the property was commandeered or otherwise used in management of a disaster or emergency declared by the governor and its use or destruction was ~~ordered by the governor under proper authority to the extent not otherwise waived or agreed upon before the use of property.~~
4. A claim made against a county or city must be made in writing to the appropriate governing body within two years after the use, damage, loss, or destruction of the property under proper authority is discovered or reasonably should have been discovered, may only be for actual damages not recovered from claimants' property or other applicable insurance, and may be paid from any combination of funds provided under section 40-22-01.1, disaster relief funds made available to a county or city for this purpose, or other funds at the discretion of the governing body. A city or county may establish reasonable provisions for the payment of compensation.

5. Any person claiming compensation for the use, damage, loss, or destruction of property by the state under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim for compensation must be received by the office of management and budget within one year two years after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived.
- 5.6. Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the office of management and budget, the amount of compensation must be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state."

Page 1, line 18, remove the overstrike over "~~The state, a county or city, any~~"

Page 1, line 18, remove "Any"

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Page 1, line 21, remove "individual"

Page 1, line 22, remove the overstrike over "~~person~~"

Page 1, line 22, remove "individual"

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Renumber accordingly

Engrossed HB 1025 was placed on the Seventh order of business on the calendar.

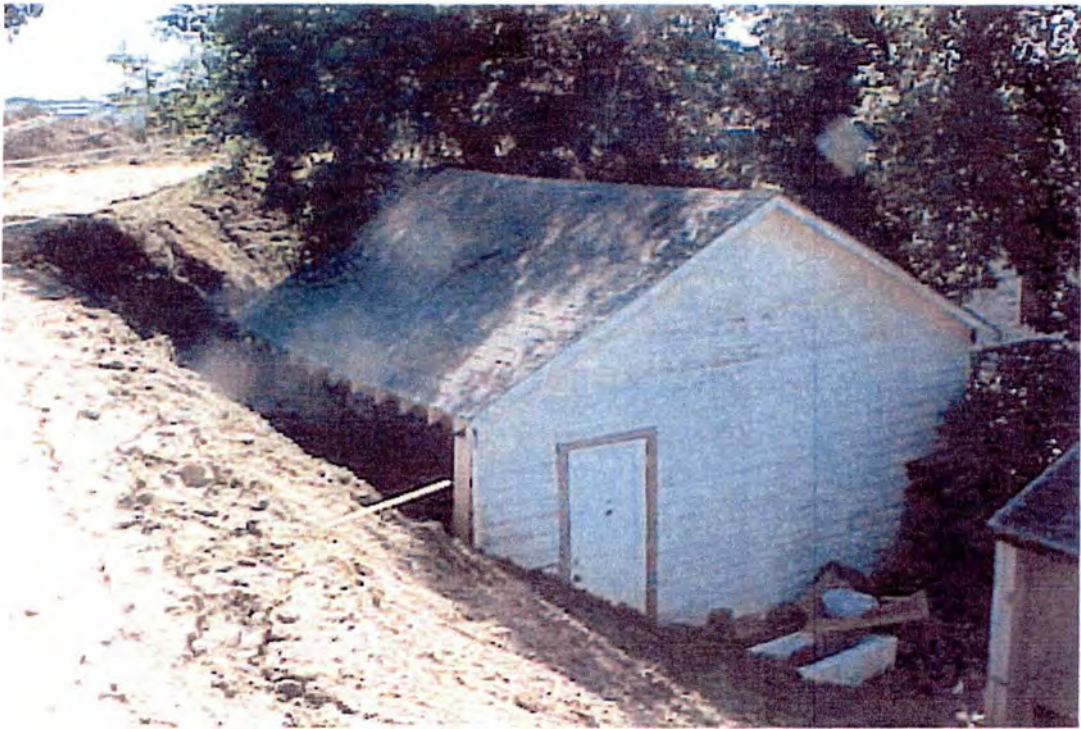
**2013 TESTIMONY**

**HB 1025**

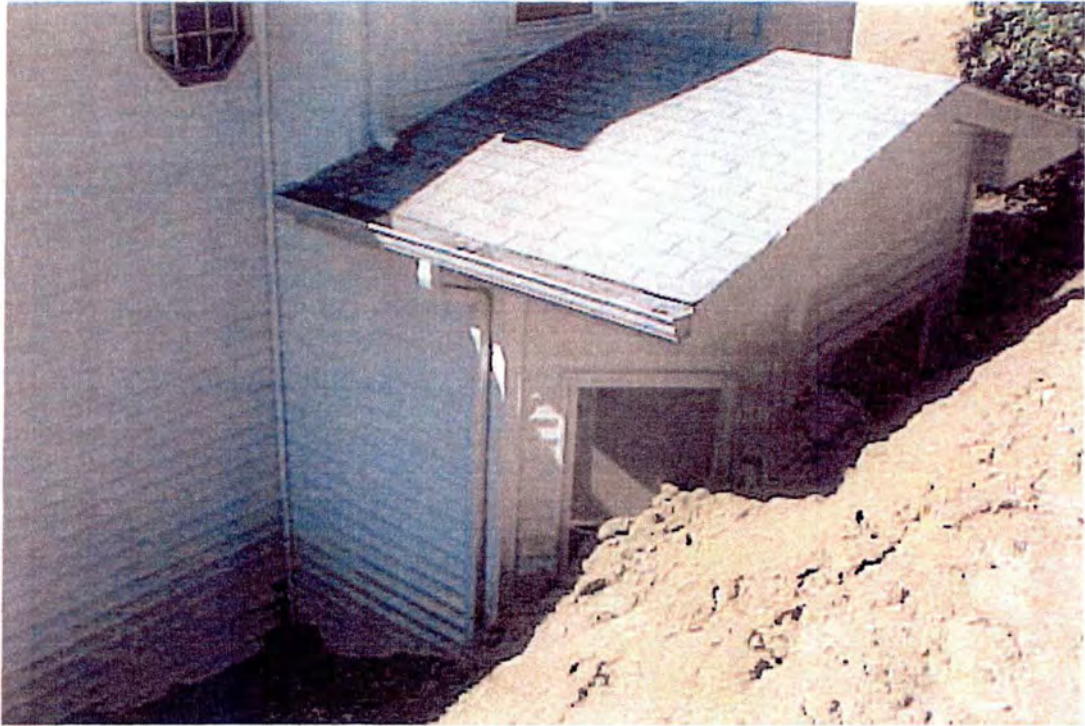




















TESTIMONY – HB 1025  
HOUSE COMMITTEE – JUDICIARY  
JANUARY 9, 2013  
BY GREG WILZ  
DEPUTY DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES

Mr. Chairman and members of the committee, my name is Greg Wilz. I am the Deputy Director of the North Dakota Department of Emergency Services (NDDDES) and Director of the Division of Homeland Security.

House Bill 1025 seeks to rectify a practice that has occurred in recent disasters. The language places financial responsibility for damages upon local jurisdictions that without prior agreement, commandeer property used in disaster management. Impacts will be minimal if jurisdictions simply secure use and right of entry agreements along with property damage waivers to preclude problems associated with building levees, destruction of property to gain access, or use of facilities including parking lots.

Agreements and waivers are required if jurisdictions receive support from the United State Corps of Engineers (USACE) under provisions in Public Law 84-99. Some jurisdictions attest to USACE the obligation has been fulfilled when the process has been only partially completed or not at all. In certain cases, the resolution of damages and associated costs between the jurisdictions and owners has been disputed for months.

It is important to note the Department believes it currently possess the authority required to provide monies from the Disaster Relief Fund to support expenditures in the bill without addition of lines one and two on page three of 37-17.1-27.

This concludes my testimony and I will endeavor to answer all questions.

2/19 ①  
1025

TESTIMONY OF REP. LAWRENCE R. KLEMIN  
SENATE JUDICIARY COMMITTEE  
HOUSE BILL NO. 1025  
FEBRUARY 19, 2013

Mr. Chairman and members of the Senate Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am also the Chairman of the North Dakota State Advisory Commission on Intergovernmental Relations. I am appearing before you today to testify in support of HB 1025.

During the 2011 to 2012 interim between the sessions, the Advisory Commission reviewed the extent to which unmet needs were being addressed in North Dakota following the flood disasters that occurred in 2011. One of the unmet needs related to the issue of liability for damage to private property as the result of actions taken by the state or local governments during a disaster without having first obtained a right of entry onto private property or an agreement on how to handle any resulting damage.

Chapter 37-17.1 is the North Dakota law relating to emergency services. Among other things, this chapter provides for compensation to be paid by the state for property taken or damaged during a disaster or emergency. Section 37-17.1-12 provides a procedure for filing claims with OMB on forms approved by OMB. This section also provides that claims for compensation can only be paid if the property was commandeered or used during the management of a disaster if the Governor ordered the destruction or use of the property. In other words, the Governor himself must have specifically ordered the destruction or use of particular property. There has never been such a specific order by the Governor. There are no forms for filing claims. OMB doesn't have a procedure for reviewing and approving claims. No claims have ever been paid. Only one claim has ever been filed and that claim was denied.

Section 1 allows for compensation to be paid for the use or damage of property by the jurisdiction having proper authority, including the state or local governments, to the extent the responsibility for the damage was not otherwise mitigated by an agreement before the damage to the property. In the usual case, there will be a right of entry agreement with the property owner. This section covers the situation where there is no prior agreement.

Section 2 provides that the qualified immunity for death, injury, or property damage only applies to individuals, and does not apply to the state, counties, or cities. This is consistent with other existing law. There no longer is any sovereign immunity for the state or local governments.

Section 3 provides for an exception to absolute private immunity in the case of gross negligence, which is the failure to use even slight care in preventing death or personal injury.

I encourage the committee to give favorable consideration to HB 1025.



# North Dakota Legislative Branch

## Advisory Commission on Intergovernmental Relations

### Interim Committee Studies and Assignments

(12 members)

2044 § 3 Study motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties

Study local government structure, fiscal and other powers and functions of local governments, relationships between and among local governments and the state or any other government, allocation of state and local resources, and interstate issues involving local governments (NDCC § 54-35.2-02)

### Group Housing Ordinances

- [Billings County Zoning](#)
- [Billings County Zoning Amendment](#)
- [Dickinson Ordinance](#)
- [Divide County](#)
- [Dunn County Application](#)
- [Dunn County Development Code](#)
- [First Health District](#)
- [Glen Ullin](#)
- [Golden Valley County Zoning](#)
- [Golden Valley Temporary Crew Housing](#)
- [Mercer County](#)
- [Mountrail County](#)
- [Williston](#)

### Chairman

- [Representative Lawrence R. Klemin \(R\)](#)

### Vice Chairman

- [Representative Brenda Heller \(R\)](#)

### Legislative Council Staff

- John Bjornson

### Legislative Members

- [Representative Thomas Beadle \(R\)](#)
- [Representative Ron Guggisberg \(D\)](#)

### Citizen Members

- Don Frye, *Mayor of Carrington*  
P.O. Box 501  
Carrington, ND 58421
- Shawn Kessel, *Dickinson City Administrator*  
99 Second Street E  
Dickinson, ND 58601
- Jon Martinson, *North Dakota School Boards Association*  
P.O. Box 7128  
Bismarck, ND 58507-7128
- Scott Ouradnik, *Slope County Commission*  
202 West Avenue  
Amidon, ND 58620
- Richard Riha, *Burleigh County State's Attorney*  
514 East Thayer Avenue  
Bismarck, ND 58501-4413
- Mike Schwartz, *President of the Board of Commissioners, Bismarck Parks and Recreation District*  
818 North First Street  
Bismarck, ND 58501
- Kenneth Yantes, *North Dakota Township Officers*  
P.O. Box 104  
Brockton, ND 58321-0104

### Committee Meetings

August 16, 2012 - 9:00am

#### Committee Documents

- [Notice](#) (8kb)
- [Agenda](#) (8kb)
- [Minutes](#) (42kb)

February 21, 2012 - 9:00am

#### Committee Documents

- [Notice](#) (8kb)
- [Agenda](#) (8kb)
- [Minutes](#) (45kb)

December 8, 2011 - 9:00am

#### Committee Documents

- [Notice](#) (8kb)
- [Agenda](#) (8kb)
- [Minutes](#) (46kb)

September 7, 2011 - 9:00am

#### Committee Documents

- [Notice](#) (19kb)
- [Agenda](#) (9kb)
- [Minutes](#) (51kb)

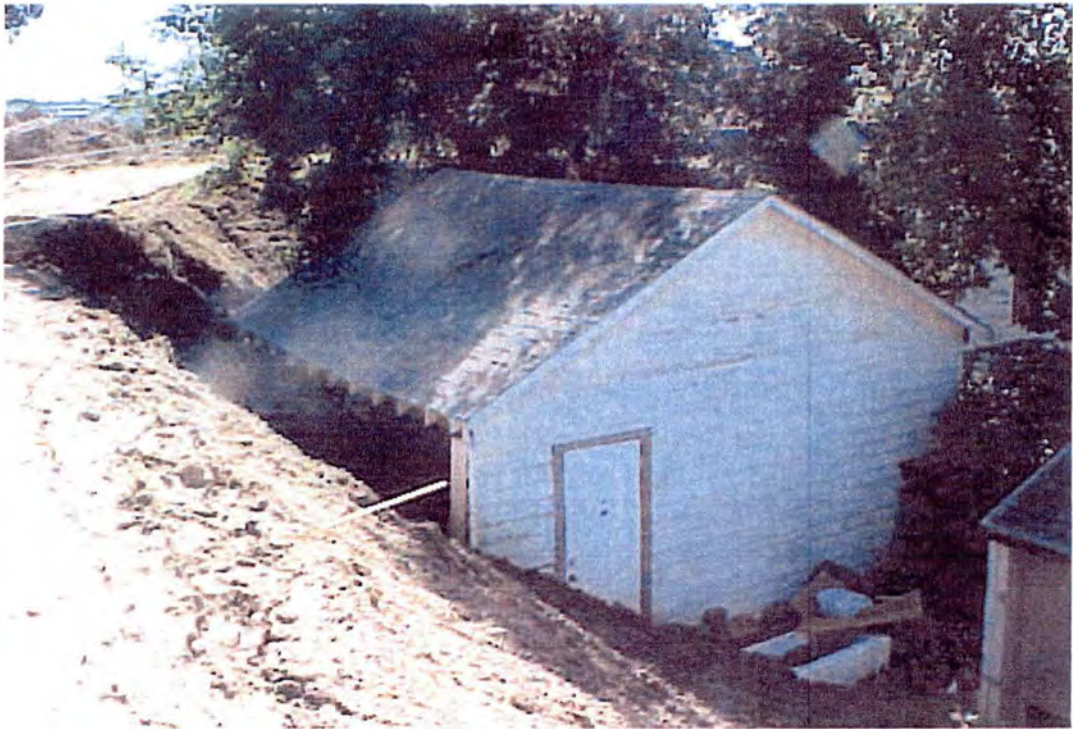
### Committee Memorandums

- [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#) (17kb)
- [Advisory Commission on Intergovernmental Relations - Background Memorandum](#) (37kb)
- [Motor Vehicle Permit Fees - Background Memorandum](#) (49kb)

Designee - Governor's Designee - Brandi Pelham



















2/19/13 (2)  
1025

TESTIMONY – HB 1025  
SENATE COMMITTEE – JUDICIARY  
February 19, 2013  
BY GREG WILZ  
DEPUTY DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES

Mr. Chairman and members of the committee, my name is Greg Wilz. I am the Deputy Director of the North Dakota Department of Emergency Services (NDDDES) and Director of the Division of Homeland Security.

House Bill 1025 seeks to rectify a practice that has occurred in recent disasters. The language places financial responsibility for damages upon local jurisdictions that, without prior agreement, commandeer property used in disaster management. Impacts will be minimal if jurisdictions simply secure use and right of entry agreements along with property damage waivers to preclude problems associated with building levees, destruction of property to gain access, or use of facilities including parking lots.

Agreements and waivers are required if jurisdictions receive support from the United State Corps of Engineers (USACE) under provisions in Public Law 84-99. Historical evidence demonstrates some jurisdictions attest to USACE the obligation has been fulfilled when the process has been only partially completed or not at all. In certain cases, the resolution of damages and associated costs between the jurisdictions and owners has been disputed for months.

This concludes my testimony and I will endeavor to answer all questions.

## **NDLA, S JUD - Davis, Diane**

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**From:** Klemin, Lawrence R.  
**Sent:** Monday, March 11, 2013 12:52 PM  
**To:** Connie Sprynczynatyk (connie@ndlc.org); Aaron Birst (Business Fax)  
**Cc:** -Grp-NDLA Senate Judiciary; NDLA, S JUD - Davis, Diane  
**Subject:** HB 1025 - Amendment - Disaster Liability Bill  
**Attachments:** HB 1025 amendment 3-11-13.docx

Connie and Aaron:

The Senate Judiciary Committee held its first hearing on this bill on Feb. 19 and then reopened the hearing on Feb. 25. I understand that action on this bill by the committee was held open to allow more time for the political subdivisions to consider the issue of how to pay for the disaster damages.

Although I spoke with Steve Spilde of the NDIRF last week about a possible method of paying for the disaster damages that a political subdivision may become liable for under HB 1025, I have not seen any amendments that have been proposed. I know that there are several alternatives available under NDCC 32-12.1.

Attached is a suggestion for you to consider. Under the attached amendment, compensation payable by a political subdivision for damages would be subject to the limitations of 32-12.1-03(2), which provides:

2. The liability of political subdivisions under this chapter is limited to a total of two hundred fifty thousand dollars per person and five hundred thousand dollars for injury to three or more persons during any single occurrence regardless of the number of political subdivisions, or employees of such political subdivisions, which are involved in that occurrence. A political subdivision may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.

I have no particular interest in the outcome of this issue, but am only presenting the bill as Chairman of the ACIR. As you know, the ACIR, which includes representatives appointed by your groups, unanimously approved the content of HB 1025.

Please discuss with Steve Spilde. I expect that the Senate Judiciary Committee will want to take up this bill in the near future.

Rep. Lawrence R. Klemin  
District 47, Bismarck  
<http://www.klemin.com>



TESTIMONY OF STEVEN L. SPILDE  
REGARDING HOUSE BILL NO. 1025  
NORTH DAKOTA SENATE JUDICIARY COMMITTEE

March 20, 2013

Chairman Hogue and Members of the North Dakota Senate Judiciary Committee, my name is Steven Spilde, I am chief executive officer of the North Dakota Insurance Reserve Fund ("NDIRF") and appear today in **opposition** to House Bill No. 1025.

The NDIRF is a governmental self-insurance pool, providing liability and other risk coverage to most political subdivisions in North Dakota, including all counties and approximately 350 cities.

HB 1025 originally contained a Section 4 providing, in the context of the State Disaster Relief Fund, "...for the payment of any expenses incurred under or authorized by this chapter." That section was removed in the House and HB 1025 is now, essentially, an unfunded mandate to political subdivisions.

There is no coverage available to political subdivisions for the costs sought to be imposed by HB 1025. Liability coverage exists to address **accidental** occurrences, not damage from intentional acts (such as building, breaching or removing dikes, setting backfires, etc.). The language used in HB 1025 establishes an absolute requirement for payment based on an open, undefined standard of "commandeered or otherwise used" coupled with a loss of immunity for damage to property. This creates the potential for catastrophic loss to a city as it could be held responsible for every property within it under the wrong circumstances. An entity such as the NDIRF, if it attempted to provide coverage, would be exposed to the same risk not only in that city but in many cities and possibly at the same time, as we saw in 2011. Insurance or reinsurance is not designed or available for this kind of exposure with no spread of risk.

NDCC Chapter 37-17.1 was originally enacted in 1973. It facilitates difficult but necessary choices regarding leadership decisions made, often under great time pressure, to protect the greater number of persons or properties (a concept of 40 years in statute in North Dakota and since time immemorial in practice). HB 1025, if enacted, would accomplish a complete reversal of that public policy. To the contrary, recent legislative history of NDCC Section 37-17.1-16 has been to expand this immunity, not contract it – in 2009 the legislature added "any other person providing goods or services..."; and in 2011 added "an employee of a federal agency on loan or leave to the state...".

Thank you for your consideration. I would be pleased to respond to any questions.

Testimony to the Senate Judiciary Committee  
Chairman David Hogue  
Prepared by John Van Grinsven, Minot City Attorney  
[john.vangrinsven@minotnd.org](mailto:john.vangrinsven@minotnd.org)

## HOUSE BILL 1025

Chairman Hogue, Senate Judiciary Committee Members, my name is John Van Grinsven, and I am the City Attorney for Minot, North Dakota. I appear before you today in the capacity of a City staff member, and I am respectfully requesting your consideration of my comments with respect to HB1025.

In late June of 2011, the City of Minot was inundated by an unprecedented flood event which extensively damaged thousands of homes and totally disrupted the lives of many of the citizens. The flood waters remained standing well into late July, and both the City Council, as well as City staff, began responding to the monumental task of seeking recovery. Based upon these experiences, occurring before, during, and after this tragic disaster, we now appear before this Committee to offer comments and testimony regarding House Bill 1025. We believe that the city's experiences in facing this disaster are both relevant and material to your consideration of this proposed legislation, and we would hope that you will find it instructive on the issues presented in these circumstances.

When a municipality faces the inception of a catastrophic disaster, numerous decisions have to be made under severe time constraints, and these factors do not permit the normal give and take in governmental decisions which may significantly affect the health and welfare of the community's citizens. Previously, these circumstances have led to legal and historical developments, wherein, ordinarily, municipal liability has not been imposed in circumstances where property was destroyed or damaged while battling a

catastrophic disaster. The rationale behind this position is justified under the contention that a city may exercise its police power and take property in emergency situations to protect the health, safety, and morals of its citizens. In these respects, the currently existing provisions of NDCC 37-17.1-16(1) specify that activities relating to emergency management are declared as governmental functions, and that where a city or emergency workers are providing services during such an emergency, a municipality is not liable for property damages as a result of such activities unless circumstances exist which constitute willful misconduct, gross negligence, or bad faith.

House Bill 1025 now appears to have been drafted to change these circumstances and severely limit any immunities or exemptions that were previously available to a municipality or city. Although the intention or goal behind this change may be well-intended, the abrupt and complete alteration of these immunities and exemptions proposed by this contemplated legislation will leave numerous cities within North Dakota facing future and potential decisions with unlimited financial consequences and without any current form of protection or existing coverage which is viable and not financially contentious to the city's residents in the payment of asserted damages. Minot City staff believes that this legislation, if accepted, will have unintended consequences and will force cities into making decisions that focus on liability issues, and may not, in the overall perspective, be in the best interests of the entire community's health, safety or welfare. Accordingly, we believe and submit that the better course of action in this matter is to either not pass the pending legislation, possibly make appropriate amendments, or conduct a further study which will permit the cities and affected citizens

to perhaps reach a more viable and acceptable alternative than HB1025 as presently written.

Based upon Minot's prior flood history and our analysis of HB1025, we believe a number of significant concerns exist with regard to this proposed legislation. These concerns are constituted by the following:

- (1) As previously indicated, this proposed legislation dramatically alters the legal rationale behind emergency immunity, and will force municipalities to focus almost entirely on issues of financial liability as opposed to making decisions which are in the best interests of the city and which will most benefit the health, safety and welfare of its residents. The attendant circumstances involved in a wide-scale emergency may require numerous and difficult decisions to be made in a narrow time frame, and municipalities need the flexibility and latitude to make these decisions without the threat of catastrophic financial liability.
- (2) This proposed legislation, as initially written, also appears to contradict the governmental liability limitations specified in NDCC 32-12.1-03(2).  
Although it is our understanding an amendment may be proposed to bring HB1025 into conformance with these financial caps, the initial version of this Bill did not reference these limitations.
- (3) As we experienced in the Minot flood event of 2011, the city was required, when seeking emergency assistance, to accept contractual provisions with the Corps of Engineers and/or other contractors assisting in the flood fight, which obligated the city to indemnify both the Corps or other workers for any

liability claims that might arise from their activities. Because of these circumstances, passage of House Bill 1025 will therefore leave a municipality totally responsible for the complete and entire liability claim without any existing coverage through the city's insurer (NDIRF).

- (4) HB1025, as proposed, appears to mandate compensation ("must be paid") for property, or property damage, as the responsibility of the jurisdiction that commandeered or otherwise used the property. Although this responsibility may be mitigated by an agreement before the use of the property, this mandate specified in the proposed amendment of subsection 3 of NDCC 37-17.1-12 again appears to be arguably inconsistent with the existing, intact and unmodified provisions of subsection (3)(f) of NDCC 32-12.1-03. Referencing the applicable language of this existing statute, subsection (3)(f) indicates that a political subdivision or a political subdivision employee may not be held liable for claims relating to injury directly or indirectly caused by the performance or non-performance of a public duty which includes the mitigation or abatement of any condition affecting health or safety. In these regards, it is submitted that the waging of a flood fight by a municipality certainly constitutes a public duty which mitigates or abates a condition affecting the health or safety of a city's residents.

In summary, HB1025 seeks to address certain unique circumstances in such a manner that the mandated provisions of liability and responsibility imposed upon the municipalities may very well result in decisions overriding what may be the best response to the emergency. For example, one might well expect that rather than building levies or



2

dikes in the backyards of residences abutting the river and as a result causing potential damages to these properties, the cities may seek to pursue the safer alternative by building the same dikes or levies in the streets fronting the riverside homes and thereby avoid the mandated compensation provisions required in HB1025. These emergency circumstances involve very complicated factors, and cities encountering these disasters need the flexibility and authorization to address these events in the most productive and feasible manner. Arguably, HB1025 needs further study and analysis with significant input from the affected North Dakota communities as to how to best address these difficult and emergency disasters. Furthermore, this course would also allow the cities both the time and the opportunity for addressing or potentially obtaining liability protection should the ultimate decision be made to accept a subsequent passage of HB1025. Therefore, due to the major changes contemplated by HB1025, and furthermore, due to the extremely complex factual circumstances involved in these emergency disasters, it is respectfully requested that the Senate Judiciary Committee not pass HB1025, possibly make appropriate amendments, or order that a more extensive study be conducted with respect to this proposed legislation.

We sincerely thank you for your consideration of our requests and comments with respect to HB1025. Should you wish to have further clarification or to speak further with us regarding this proposed legislation, please feel free to contact the Minot City staff at any time with respect to those matters.

**HB 1025****TESTIMONY OF ERIK R. JOHNSON****CITY ATTORNEY – FARGO**

I'm sure the city of Fargo is not alone in this experience--citizens have consistently stepped up to the plate to support flood-fighting efforts wherever support was needed. When asked, homeowners in Fargo have granted permission to the city to allow back yard levees to be constructed and given the city a signed "right of entry" form. City leaders responded responsibly in the aftermath of the 2009 flood by establishing a "backyard restoration" program that reimbursed homeowners for the cost to restore back yards where emergency flood levees had been installed. This same backyard restoration program provided reimbursement after the 2010 and the 2011 floods. House Bill 1025 would mandate what the city of Fargo government has done voluntarily and more. We are concerned that it goes too far and, while it may be well-intended, it will create unintended consequences and may seriously impair emergency flood fights and other emergency situations. In a nutshell, the concerns are:

1. The current culture in Fargo is one of volunteerism that has been wonderfully successful during flood fights! We worry that this bill will upset that apple cart. During flood fights (and other emergencies), decision makers must make difficult choices, often in a hurry and often when none of the alternatives are pleasant. HB 1025 would subject cities (and other local governments) to liability for such decisions. **For example, we are concerned that the exposure to liability created by HB 1025 will tip the decision-making scale so that the "easiest and safest" (from a liability standpoint anyway) decision is simply to place emergency levees on public streets rather than in back yards—thus placing homes on the wet side of the "public emergency levee". We think that is a very possible, but unfortunate, outcome that could result from HB 1025.**
2. This bill exposes cities (and other local governments) to unlimited liability:
  - a. Compensation not limited to "back yard damage" – city may need to compensate for "use" of back yards, too (e.g. temporary easement for flood levee).
  - b. Compensation must be paid even if damage covered by homeowner's insurance. In Fargo's 2009 flood fight, homeowner's insurance paid over \$800,000 of the total damages of \$1.3 million in damage claims. [A summary of Fargo's backyard restoration program and claims experience is attached.] HB 1025 may shift liability from homeowners' insurance to a city.
  - c. This "unlimited liability" is contrary to established liability caps contained within existing law (\$250,000 per person and \$500,000 per "occurrence")
  - d. This unlimited liability may break the bank for some cities. Also, if tax levy powers are limited by this legislature or future legislatures, cities will be

handcuffed—unable to fund substantial obligations triggered solely by disasters and emergencies outside a city’s control.

- e. Thus, HB 1025 will create exposure to liability NOT covered by the city’s insurance policies (or ND Insurance Reserve Fund insurance)—cities will have to pay such damages out of public coffers. As you know, insurance typically only pays on claims of “negligence” against the insured-- not claims stemming from an intentional placement of a flood levee in a back yard.
- f. Federal Stafford Act will prevent FEMA reimbursements to a city for damage payouts when such damages could be paid by private insurance (FEMA will not pay out when there is a “duplication of benefits”).
- g. This bill will apply to non-flood emergencies, too. What will this bill do during a tornado, fire, hazardous chemical release (i.e. anhydrous ammonia), riot or other emergency or disaster?
- h. Attached are some detailed observations regarding HB 1025 that are worth reading. They were compiled by Howard Swanson, the city attorney for Grand Forks.

**REQUESTED ACTION:**

We think the above-stated concerns warrant further study of HB 1025 and our first preference is that this bill be studied before it goes further. **However, if the legislature wishes to move forward to approve HB 1025 this session; then we propose certain amendments as follows:**

- I. That the requirement for payment be made “permissive”. In other words, return HB 1025 to its original purpose—to allow property owners who suffer damage to be compensated via a state claims process implemented and funded through the state’s Disaster Emergency Assistance office. Cities, too, may pay compensation if they choose to do so.
- II. Establishing a one-year limit within which claims may be filed.
- III. Clarifying that the immunity granted under existing law (Chapter 37-17.1) will continue to apply except to the extent compensation is provided under HB 1025 (and, therefore, NDCC §37-17.1-12).
- IV. Bolstering the immunity granted to private property owners who voluntarily allow use of their property during emergencies or disasters.
- V. Allowing cities to spread the cost of flood levees and other emergency or disaster-fighting measures against all property owners within the city who benefit from the flood levee (or other measures). Existing law allows cities to levy a special assessment for only removal and repair costs of a flood levy. We propose an amendment to that existing law to allow a special assessment to include the installation costs, maintenance

costs and repair costs for a flood levee and to allow special assessment of costs for non-flood emergencies and disasters as well.

**SUMMARY:** In conclusion, HB 1025 should only be approved if it has first been amended in accordance with proposed amendments attached to this testimony.

Thank you for your time and attention to this important bill.

**Erik R Johnson, Fargo City Attorney**

### OBSERVATIONS RELATING TO H.B. 1025

- Bill eliminates the application of a longstanding legal principle of emergency immunity for local governments. Emergency immunity can be traced to common law if not before. It has been codified in nearly all 50 states.
- Each disaster is unique and each response to a disaster is similarly unique.
- The reality of an emergency or disaster is that something is going wrong or is about to go wrong. The choices that must be made by local officials frequently are not easy to make. Indeed, often the options for which a course of action must be selected are all unpleasant. In many cases, the decisions are made to allocate limited resources for the protection of a community.
- Emergencies and disasters call for prompt decision making and the exercise of judgment, impacting personal lives, businesses, and property. Immunity provisions found within state disaster or emergency statutes are an attempt to remove impairments in the exercise of emergency decision making and to avoid subsequent litigation. These immunities extend to states, political subdivisions, and other entities or other individuals involved in emergency or disaster activities. Such emergency immunity, however, is typically not available if death, injury, or damages are the result of willful misconduct, gross negligence, wanton disregard, or bad faith on the part of the actor (*Delicate Art of Practicing Municipal Law Under Conditions of Hell or High Water*, 76 N.D. L. REV. 487, 499-500; see also Ken Lerner, *Governmental Negligence Liability and Exposure in Disaster Management*, 23 URB. LAW, 333, 335 (1991)).
- Bill penalizes local governments for attempting to protect the well-being of their community; liability for damages would arise, for example, if a levee were built in the rear yard of homes adjacent to a river whereas there would be no liability for a local government if it chose to avoid potential liability and did nothing in the form of flood protection. May encourage local governments to place protective measures on streets rather than on private property. The effect would be to leave homes or businesses unprotected on one side of the protective measures. This option would not create any potential exposure under the bill as the protective measures are intentionally placed on public property.
- The bill creates local government liability where it does not presently exist.
- Creates liability for local governments without any funding sources
  - \* not an insurable incident (private insurance or public risk pool)
  - \* no state funding
  - \* not eligible for FEMA reimbursement
- Eliminates current statutory immunities for local governments such as public duty doctrine or discretionary immunity.



- Exposes local governments to unlimited liability in contradiction to liability caps contained within NORTH DAKOTA CENTURY CODE §32-12.1.
- Creates an unlimited liability in times of the most demanding circumstances, i.e., a disaster or emergency.
- Liability under this statute can arise under various events such as fire, flood, tornado, accident, chemical spill, petroleum spill, radiological release, pollution incidents, epidemic, riot, civil disobedience, drought, snow, ice, blizzard, windstorm, building or structural collapse, hazardous substance spills or releases, explosions, loss of utility services, and other forms of emergencies or disasters. Bill does not appear to consider the various types of disasters and the potential that the private property upon which protective measures are taken may have been the cause or source of a disaster or emergency. Could the bill be argued by a property owner that a fire department, in responding to a large fire or other calamity, would need to pay damages to the property owner for simply fighting or responding to the emergency condition?
- Impacts ability to utilize pre or post-disaster assistance from United States Army Corps of Engineers (USACE). USACE requires cities to provide right of entry to private property as well as indemnification and hold harmless provisions for the USACE and their contractors.
- Stafford Act (federal disaster law) also requires local governments seeking assistance to provide agreements for indemnification and hold harmless which include federal government contractors. Thus, local government would be potentially required to fund damages without benefit of any avenue of immunity or protections for private contractors brought to the disaster by the federal government.
- Structures most often affected by advanced protective measures for flooding are also properties that are most likely included in voluntary acquisition programs in which the acquisition price is often based upon a pre-flood value. Are any damages paid by the local government considered to be a duplication of benefits deducted from the acquisition price like other disaster type payments? Is a property owner allowed to recoup insurance proceeds, damages to be paid by the local government, and a pre-disaster value in an acquisition program? These issues are unaddressed in the bill draft.
- Text of the bill is unclear as to whether any waivers of claims for damages are permitted in any authority to enter property which may be given by the property owner.
- Bill fails to address a large number of legal and practical issues. Bill results in many unintended consequences which are adverse to the best interests of local governments and the community as a whole. Bill would benefit from further study.

**City of Fargo**  
**Summary of "Backyard Flood Damage Restoration Program"**

Below are some numbers for the three years of floods. Determining actual costs verses the costs submitted are very difficult and time consuming. The city's "claim administrator" became good at flushing out frivolous requests toward the end of the 2011 program. Not all cities will have an "expert" on hand to deal with that or contract it out to private insurance adjusters. Not all insurance companies treated the flood fight damages in the same manner. For example, in 2009, one particular company was excellent at paying claims against their policies and this company did a great job with their customers. By contrast, another insurance company denied every claim they had.

**Summary – 2009:**

City Costs: \$451,962.92  
Homeowner payout: \$389,457.10  
Landscape Architect Fees: \$21,836.22  
Contractor (Option2): \$23,465.10  
Other Contractors: \$17,204.50  
Homeowner asked for: \$520,466.33  
Insurance Paid/Less Deductible: \$816,947.11  
**Total Damage: \$1,342,288.64**  
**About 230 people/claims**

Fargo's 2009 flood fight was very hectic. Back yards were heavily destroyed. Insurance companies were very involved. It was quite chaotic.

**Summary – 2010:**

City Paid out(Homeowner Payout): \$10,962  
Homeowners asked for: \$32,734.85  
Insurance Paid/Less Deductible: \$16,370.91  
**Total Damage: \$54,204.88**  
**About 19 people/claims**

In 2010 the flood level was much lower and the city bought plywood and used more precautions to limit any damage. Insurance companies were still involved.

**Summary – 2011:**

Total City Payout: \$19,196.69  
**Total Damages: \$52,401.71**  
**About 19 people/claims**

In 2011, insurance companies were telling homeowners that if they file for a third time, they would be paid and then their policies would be canceled. Therefore many homeowners did not file for anything. In 2011, the city provided skid steers and operators and plywood to limit damages to yards.

**Please note:** These numbers only reflect people that applied for the program. Not all damaged property owners applied for payments. Some claims were handled directly through homeowner's insurance and no claim filed against the city. HB 1025 may generate a substantially different experience.



## City of Fargo Yard Damage Restoration Claim

The City of Fargo has established the following procedures for filing a claim of property damage caused in the construction of primary/contingency protection levees to protect the city during the 2009 flood. Eligible claim items are listed on back.

Claim forms must be submitted to the City of Fargo Planning Department. Your claim will then be reviewed for approval or denial. Failure to submit your claim form in a timely fashion may prohibit and/or delay any reimbursement, even if your claim is otherwise valid. **The submittal deadline is August 31, 2009.**

To qualify for OPTION 1A and OPTION 2 of this program, the property owner must first have had a claim denied from their own insurance company **AND** a claim denied from FEMA. The claim must be reviewed by an adjuster and followed by a denial letter received from that company. A letter from the insurance agent stating that the damages are not covered is not acceptable.

The yard damage restoration program process is as follows:

**STEP 1.** Property owner itemizes damage to property caused by flood fighting efforts – particularly damage caused by vehicles other than those owned by the property owner.

**STEP 2.** Property owner submits claim to the property owner's own insurance company and submits claim to FEMA .

**STEP 3.** Fill out the attached claim form choosing Option 1 OR Option 2, below:

**OPTION 1:** Property owner hires contractor to restore (or does work himself/herself and keeps receipts) to pre-flood condition, or approximate equivalent condition:

- A.** CITY REIMBURSES AT 80% - to the extent FEMA and property owner's insurance does not pay the claim, the City will pay 80% of **eligible** expenses. [With respect to any claims or lawsuits made by property owners, or their insurers, the City reserves any and all defenses, including asserting statutory limitations of liability.]\* Certain items may be reimbursed on a depreciated value.
- B.** CITY WILL PAY INSURANCE DEDUCTIBLE. If the insurance company pays a portion of the claim and no other reimbursement is obtained, the CITY will pay 100% of the deductible (to a maximum deductible of \$2,000).

**OPTION 2:** City hires a contractor to restore

- City will have a landscape architect itemize the damage and identify the work order for restoration.
- Restoration work on the property will be performed by a landscaping contractor hired by the City.
- Property owner will co-pay 20%, which may be financed by the City through the special assessment process [property owner to sign petition for special assessment for co-pay amount.]\*
- Property owner to authorize the City and contractor to enter property for work to be done.

\* Clay levee installations directed by the city will be handled on a case by case basis.



**Step 4.** Submit to the City of Fargo Planning Department using one of the following options on or before August 31, 2009

- Mail Application and Attachments To:
  - Planning and Development  
Attn: Damage Restoration Claim  
200 3<sup>rd</sup> Street North  
Fargo, ND 58102
- Fax Application and Attachment To:
  - 701-241-1526  
Attn: Planning and Development
- E-mail Application and Attachments To:
  - floodrepair@cityoffargo.com

**ELIGIBLE DAMAGE/REPAIR COSTS:**

- Vegetation/Trees
- Restoration of lawn damage with Seed or Hydro-Seed
- Irrigation system repairs
- Patio blocks/paver repairs
- Driveways – from sidewalk to house
- Incidentals related to placement of the primary protection line
- Other (as applicable and verifiable)

**INELIGIBLE DAMAGE/REPAIR COSTS:**

- Garage damage
- Restoration of lawn damage with sod
- Damages caused by seepage
- Damages caused by sump pump failure or sewer backup
- Damages caused by loss of power
- Cracked foundations
- Sprinkler system expansions or relocations
- Equipment purchased privately to restore property
- Costs reimbursed by FEMA or other private insurance

**REPAIRS TO BE UNDERTAKEN BY CITY UNDER FEMA PUBLIC ASSISTANCE PROGRAM:**

- City Sidewalks
- Street Repair
- Miscellaneous Boulevard Repair

## **CHAPTER 40-22 IMPROVEMENTS BY SPECIAL ASSESSMENT METHOD**

### **40-22-10. Engineer's report required - Contents.**

After a special improvement district has been created, the governing body of a municipality, if it deems it necessary to make any of the improvements set out in section 40-22-01 in the manner provided in this chapter, shall direct the engineer for the municipality, or some other competent engineer if the municipality does not have a competent municipal engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement and an estimate of the probable cost of the improvement, including:

1. A separate statement of the estimated cost of the work for which proposals must be advertised under section 40-22-19; and
2. A separate statement of all other items of estimated cost not included under subsection 1 which are anticipated to be included in the cost of the improvement under sections 40-23-05 and 40-23.1-04.

### **40-22-11. Approval of plans, specifications, and estimates - Approval establishes grade of street.**

At any time after receiving the engineer's report required by section 40-22-10, the governing body may direct the engineer to prepare detailed plans and specifications for construction of the improvement. The plans and specifications shall be approved by a resolution of the governing body of the municipality. If the plans and specifications include the establishment of the grade of a street and such grade has not been established previously by ordinance, the resolution approving the plans, specifications, and estimates shall constitute an establishment of the grade.

### **40-22-19. Contract proposals.**

Proposals for the work of making improvements provided for in this chapter must be advertised for by the governing body in the official newspaper of the municipality once each week for two consecutive weeks. All other provisions for proposals under this chapter are governed by chapter 48-01.2.

### **40-22-29. Engineer's statement of estimated cost required - Governing body to enter into contracts.**

Before adopting or rejecting any bid filed under the provisions of this chapter, the governing body shall require the engineer for the municipality to make a careful and detailed statement of the estimated cost of the work for which proposals were advertised under section 40-22-19. The governing body may not award the contract to any bidder if the engineer's estimate prepared pursuant to this section exceeds the engineer's estimate of the cost of the work prepared pursuant to subsection 1 of section 40-22-10 by forty percent or more.

Sixty-third  
Legislative Assembly  
of North Dakota

REVISED HOUSE BILL NO. 1025  
(4th revision)

Introduced by

1 A BILL for an Act to amend and reenact subsections 3 and 4 of section 37-17.1-12 and  
2 sections 37-17.1-16, and 37-17.1-17 and 40-22-01.1 of the North Dakota Century Code,  
3 relating to liability and immunity during disaster responses and financing of repairs.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 3 of section 37-17.1-12 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 3. Compensation for property ~~must~~ may be only paid if the property was commandeered  
8 or otherwise used in management of a disaster or emergency declared ~~by the governor~~  
9 ~~and its use or destruction was ordered by the governor by a jurisdiction having under~~  
10 proper authority. Compensation for property or damage to property is the responsibility  
11 of the jurisdiction that commandeered or otherwise used the property to the extent the  
12 responsibility was not otherwise mitigated by agreement waived or agreed upon before  
13 the use of the property. Claims made against the state shall be filed and resolved as  
14 provided in subsections 4 and 5. Claims made against a county or city shall be made in  
15 writing to the appropriate governing body within one year after the use, damage, loss, or  
16 destruction of the property under proper authority is discovered or reasonably should  
17 have been discovered, may only be for actual damages not recovered from claimants'  
18 property or other applicable insurance, and may be paid from any combination of funds  
19 provided under section 40-22-01.1, disaster relief funds made available to a county or  
20 city for this purpose, or other funds at the discretion of the governing body.  
21

22 **SECTION 2. AMENDMENT.** Subsection 4 of section 37-17.1-12 of the North Dakota  
23 Century Code is amended and reenacted as follows:

24 4. Any person claiming compensation for the use, damage, loss, or destruction of  
25 property by the state under this chapter shall file a written claim therefor with the office  
26 of management and budget in the form and manner required by the office. The claim  
27 for compensation must be received by the office of management and budget within one  
28 year after the use, damage, loss, or destruction of the property pursuant to the  
29 governor's order under section 37-17.1-05 is discovered or reasonably should have  
30 been discovered or compensation under this chapter is waived.  
31

32 **SECTION 2 3. AMENDMENT.** Section 37-17.1-16 of the North Dakota Century Code is  
33 amended and reenacted as follows:

34 **37-17.1-16. Immunity and exemption.**

35 1. All functions hereunder and all other activities relating to emergency management are  
36 hereby declared to be governmental functions. The state, a county or city, any Any  
37 disaster or emergency worker, an employee of a federal agency on loan or leave to the  
38 state in support of emergency service response whether the emergency is declared or



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1 undeclared, or any other person providing goods or services during an emergency if the  
2 person individual is working in coordination with and under the direction of an  
3 appropriate governmental emergency or disaster response entity, complying with or  
4 reasonably attempting to comply with this chapter, or any executive order or disaster or  
5 emergency operational plan pursuant to this chapter, or pursuant to any ordinance  
6 relating to any precautionary measures enacted by any county or city of the state,  
7 except in case of willful misconduct, gross negligence, or bad faith, is not liable for the  
8 death of or injury to persons, or for damage to property except as compensation may be  
9 provided in section 37-17.1-12, as a result of any such activity. This section does not  
10 affect the right of any person to receive benefits to which that person would otherwise  
11 be entitled under this chapter, or under workforce safety and insurance law, or under  
12 any pension law, nor the right of any such person to receive any benefits or  
13 compensation under any Act of Congress.

14 2. Any requirement for a license to practice any professional, mechanical, or other skill  
15 does not apply to any authorized disaster or emergency worker who, in the course of  
16 performing the worker's duties, practices the professional, mechanical, or other skill  
17 during a disaster or emergency.

18 3. This section does not affect any other provision of law that may provide immunity to a  
19 person that is providing volunteer assistance.

20  
21 **SECTION 3 4. AMENDMENT.** Section 37-17.1-17 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **37-17.1-17. No private liability.**

24 Any person owning or controlling real estate or other premises who voluntarily and  
25 without compensation grants a license or privilege, or otherwise permits the designation  
26 or use of the whole or any part or parts of such real estate or premises for the purpose  
27 of emergency management activities during an actual, impending, mock or practice  
28 disaster or emergency, is, together with their successors in interest, if any, not civilly  
29 liable, except in the case of gross negligence willful and malicious failure to guard or  
30 warn against a dangerous condition, use, structure, or activity, for negligently causing  
31 the death of, or injury to, any person on or about such real estate or premises or for loss  
32 of, or damage to, the property of such person.

33  
34 **SECTION 5. AMENDMENT.** Section 40-22-01.1 of the North Dakota Century Code is  
35 amended and reenacted as follows:

36 **40-22-01.1. Restoration of certain property damaged in flood control or during a**  
37 **declared disaster or emergency – Special assessments for costs.** When any city  
38 shall have constructed any temporary emergency flood control devices or works to  
39 protect property located within a portion of a city from flood damage or expended funds  
40 for the protection of the city from flood or other peril pursuant to Chapter 37-17.1 or  
41 otherwise, the city may ~~cause the removal of~~ maintain and remove material used in the  
42 construction of such temporary emergency flood control protection devices or works and  
43 the repair of damages to land, buildings, or personal property caused by the operation  
44 of its equipment upon the property while in the process of installing or removing such  
45 temporary emergency flood protection systems. Such city may create by resolution of  
46 its governing board a special assessment district encompassing the protected area.  
47 Special assessments against the property within the district shall be imposed to cover

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1 the costs incurred by the city in constructing such emergency flood protection devices or  
2 works, in maintaining the same and in removing the material used and in repairing the  
3 damages caused by the operation of equipment while installing or removing such  
4 temporary emergency flood protection systems. The amount to be assessed shall be  
5 established by a resolution adopted by the governing board. Special assessments  
6 against any property in the district shall be determined and made in the same manner  
7 as is provided for improvements by special assessments to the extent consistent  
8 herewith, and the certification and collection, including lien provisions, applicable to  
9 other special assessments shall be applicable hereto. Provided, however, that the  
10 provisions of sections 40-22-15, 40-22-17, and 40-22-18, relating to a resolution of  
11 necessity and protests against special assessments, sections 40-22-10, 40-22-11, and  
12 40-22-29, relating to engineer's reports, plans, and estimates, and section 40-22-19,  
13 relating to contract proposals, shall not apply to special assessment districts created  
14 pursuant to this section.

Sixty-third  
Legislative Assembly  
of North Dakota

REVISED HOUSE BILL NO. 1025  
(4th revision)

Introduced by

1 A BILL for an Act to amend and reenact subsections 3 and 4 of section 37-17.1-12 and  
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8 or otherwise used in management of a disaster or emergency declared ~~by the governor~~  
9 ~~and its use or destruction was ordered by the governor by a jurisdiction having under~~  
10 proper authority. Compensation for property or damage to property is the responsibility  
11 of the jurisdiction that commandeered or otherwise used the property to the extent the  
12 responsibility was not otherwise mitigated by agreement waived or agreed upon before  
13 the use of the property. Claims made against the state shall be filed and resolved as  
14 provided in subsections 4 and 5. Claims made against a county or city shall be made in  
15 writing to the appropriate governing body within one year after the use, damage, loss, or  
16 destruction of the property under proper authority is discovered or reasonably should  
17 have been discovered, may only be for actual damages not recovered from claimants'  
18 property or other applicable insurance, and may be paid from any combination of funds  
19 provided under section 40-22-01.1, disaster relief funds made available to a county or  
20 city for this purpose, or other funds at the discretion of the governing body.  
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22 **SECTION 2. AMENDMENT.** Subsection 4 of section 37-17.1-12 of the North Dakota  
23 Century Code is amended and reenacted as follows:

24 4. Any person claiming compensation for the use, damage, loss, or destruction of  
25 property by the state under this chapter shall file a written claim therefor with the office  
26 of management and budget in the form and manner required by the office. The claim  
27 for compensation must be received by the office of management and budget within one  
28 year after the use, damage, loss, or destruction of the property pursuant to the  
29 governor's order under section 37-17.1-05 is discovered or reasonably should have  
30 been discovered or compensation under this chapter is waived.  
31

32 **SECTION 2 3. AMENDMENT.** Section 37-17.1-16 of the North Dakota Century Code is  
33 amended and reenacted as follows:

34 **37-17.1-16. Immunity and exemption.**

35 1. All functions hereunder and all other activities relating to emergency management are  
36 hereby declared to be governmental functions. The state, a county or city, any ~~Any~~  
37 disaster or emergency worker, an employee of a federal agency on loan or leave to the  
38 state in support of emergency service response whether the emergency is declared or



1 undeclared, or any other person providing goods or services during an emergency if the  
2 person individual is working in coordination with and under the direction of an  
3 appropriate governmental emergency or disaster response entity, complying with or  
4 reasonably attempting to comply with this chapter, or any executive order or disaster or  
5 emergency operational plan pursuant to this chapter, or pursuant to any ordinance  
6 relating to any precautionary measures enacted by any county or city of the state,  
7 except in case of willful misconduct, gross negligence, or bad faith, is not liable for the  
8 death of or injury to persons, or for damage to property except as compensation may be  
9 provided in section 37-17.1-12, as a result of any such activity. This section does not  
10 affect the right of any person to receive benefits to which that person would otherwise  
11 be entitled under this chapter, or under workforce safety and insurance law, or under  
12 any pension law, nor the right of any such person to receive any benefits or  
13 compensation under any Act of Congress.

14 2. Any requirement for a license to practice any professional, mechanical, or other skill  
15 does not apply to any authorized disaster or emergency worker who, in the course of  
16 performing the worker's duties, practices the professional, mechanical, or other skill  
17 during a disaster or emergency.

18 3. This section does not affect any other provision of law that may provide immunity to a  
19 person that is providing volunteer assistance.

20  
21 **SECTION 3 4. AMENDMENT.** Section 37-17.1-17 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **37-17.1-17. No private liability.**

24 Any person owning or controlling real estate or other premises who voluntarily and  
25 without compensation grants a license or privilege, or otherwise permits the designation  
26 or use of the whole or any part or parts of such real estate or premises for the purpose  
27 of emergency management activities during an actual, impending, mock or practice  
28 disaster or emergency, is, together with their successors in interest, if any, not civilly  
29 liable, except in the case of gross negligence willful and malicious failure to guard or  
30 warn against a dangerous condition, use, structure, or activity, for negligently causing  
31 the death of, or injury to, any person on or about such real estate or premises or for loss  
32 of, or damage to, the property of such person.

33  
34 **SECTION 5. AMENDMENT.** Section 40-22-01.1 of the North Dakota Century Code is  
35 amended and reenacted as follows:

36 **40-22-01.1. Restoration of ~~certain~~ property damaged in flood control or during a**  
37 **declared disaster or emergency – Special assessments for costs.** When any city  
38 shall have constructed any temporary emergency flood control devices or works to  
39 protect property located within a portion of a city from flood damage or expended funds  
40 for the protection of the city from flood or other peril pursuant to Chapter 37-17.1 or  
41 otherwise, the city may ~~cause the removal of~~ maintain and remove material used in the  
42 construction of such temporary emergency flood control protection devices or works and  
43 ~~the repair of~~ damages to land, buildings, or personal property caused by the operation  
44 of its equipment upon the property while in the process of installing or removing such  
45 temporary emergency flood protection systems. Such city may create by resolution of  
46 its governing board a special assessment district encompassing the protected area.  
47 Special assessments against the property within the district shall be imposed to cover

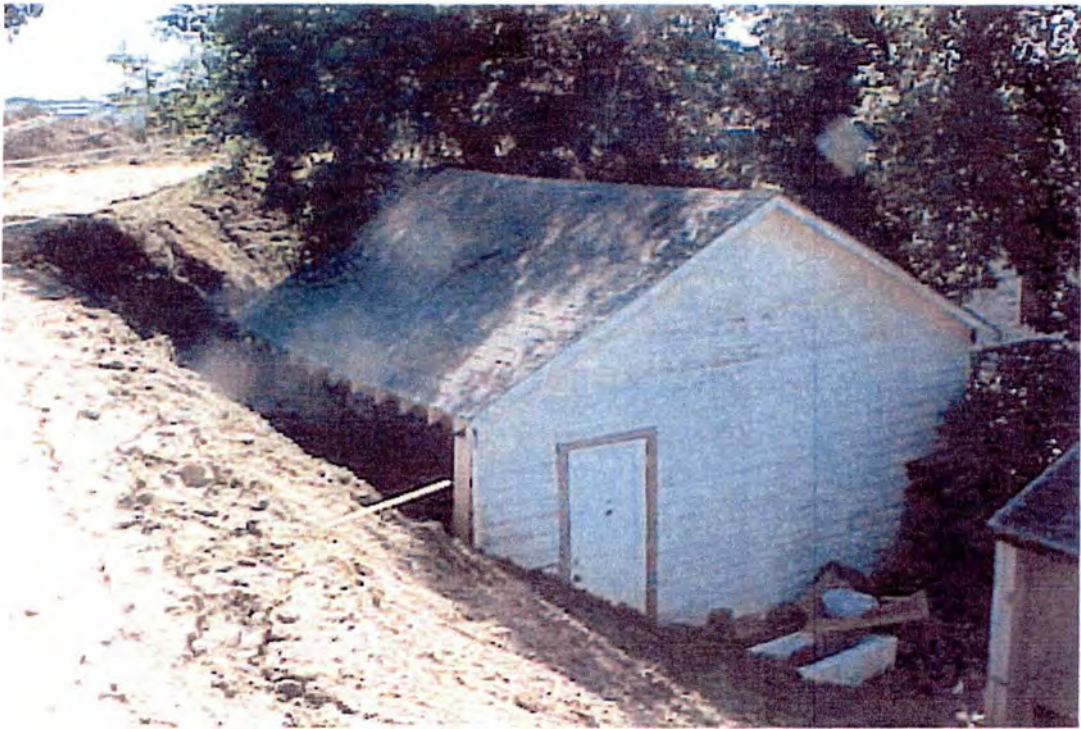
Sixty-third  
Legislative Assembly

1 the costs incurred by the city in constructing such emergency flood protection devices or  
2 works, in maintaining the same and in removing the material used and in repairing the  
3 damages caused by the operation of equipment while installing or removing such  
4 temporary emergency flood protection systems. The amount to be assessed shall be  
5 established by a resolution adopted by the governing board. Special assessments  
6 against any property in the district shall be determined and made in the same manner  
7 as is provided for improvements by special assessments to the extent consistent  
8 herewith, and the certification and collection, including lien provisions, applicable to  
9 other special assessments shall be applicable hereto. Provided, however, that the  
10 provisions of sections 40-22-15, 40-22-17, and 40-22-18, relating to a resolution of  
11 necessity and protests against special assessments, sections 40-22-10, 40-22-11, and  
12 40-22-29, relating to engineer's reports, plans, and estimates, and section 40-22-19,  
13 relating to contract proposals, shall not apply to special assessment districts created  
14 pursuant to this section.

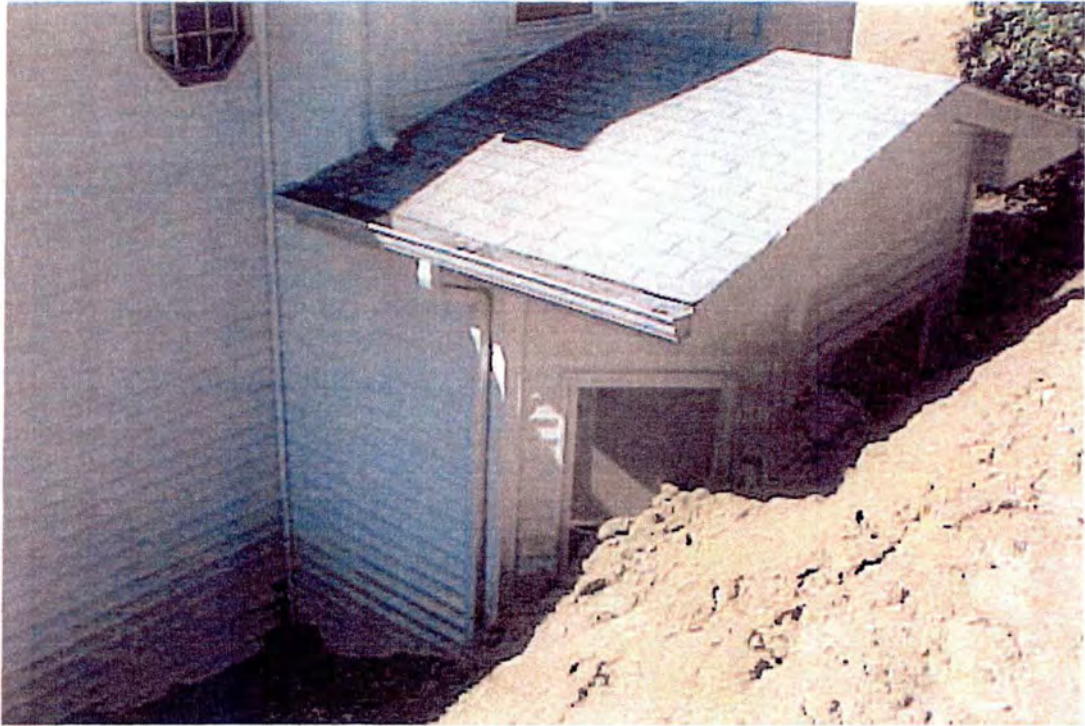




















**Common Law**

1-01-05. Evidence of common law.

The evidence of the common law is found in the decisions of the tribunals.

1-01-06. Code excludes common law.

In this state there is no common law in any case in which the law is declared by the code.

1-02-01. Rule of construction of code.

The rule of the common law that statutes in derogation thereof are to be construed strictly has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be construed liberally, with a view to effecting its objects and to promoting justice.

**Degrees of Care and Negligence**

1-01-14. Degrees of care.

There are three degrees of care and of diligence mentioned in this code, namely, slight, ordinary, and great. Each of the last two includes any lesser degree or degrees.

1-01-15. Degrees of care and diligence — Definition.

Slight care or diligence means such as a person of ordinary prudence usually exercises about that person's own affairs of slight importance. Ordinary care or diligence means such as a person usually exercises about that person's own affairs of ordinary importance. Great care or diligence means such as a person usually exercises about that person's own affairs of great importance.

1-01-16. Degrees of negligence.

There are three degrees of negligence mentioned in this code, namely, slight, ordinary, and gross. Each of the last two includes any lesser degree or degrees.

1-01-17. Degrees of negligence — Definition.

Slight negligence shall consist in the want of great care and diligence, ordinary negligence, in the want of ordinary care and diligence, and gross negligence, in the want of slight care and diligence.

## **Interpretation of Statute**

1-02-39. Aids in construction of ambiguous statutes.

If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble.



John N. Finstad and Lori L. Finstad, Plaintiffs and Appellants v. Ransom-Sargent Water Users, Inc., and/or Ransom-Sargent Water Users District, and/or Southeast Water Users District, and/or Southeast Water Users, and Jay Anderson, Scott Johnson, Don Lloyd, Don Smith, Larry Schultz and Patsy Storhoff, Defendants and Appellees

SUPREME COURT OF NORTH DAKOTA

2011 ND 215 2011 ND 215; 812 NW2d 323 812 N.W.2d 323; 2011 ND LEXIS 216 2011 N.D. LEXIS 216

No. 20110142

November 15, 2011, Filed

OVERVIEW: After the lessees had executed an agreement with the political subdivision to obtain lease-back rights in certain property, the political subdivision sent the lessees a letter informing the lessees that the political subdivision had voted to terminate the lessees' lease-back rights. The political subdivision advertised for bids for the right to lease the land and after the lessees submitted the highest bid, the political subdivision informed the lessees that their bid did not comply with the bid specifications. Thereafter, the lessees sued the political subdivision and included contract claims against the political subdivision. The trial court granted summary judgment to the political subdivision upon finding that the lessees' contract claims were barred by three-year statute of limitations of N.D.C.C. § 32-12.1-10. The state supreme court found that N.D.C.C. § 32-12.1-10 only applied to tort claims against the state, and that the political subdivision was an entity separate from the state for liability purposes. It also found that the existence of genuine issues of material fact precluded a grant of summary judgment in the political subdivision's favor.

OUTCOME: The state supreme court reversed the trial court's judgment and remanded the case to the trial court for further proceedings.

P11 Chapter 32-12.1's predecessor was 1975 N.D. Sess. Laws ch. 295, which the legislature passed in response to *Kitto v. Minot Park Dist.*, 224 N.W.2d 795 (N.D. 1974). In *Kitto*, the Court was asked to answer "the question of whether the legal doctrine of governmental immunity from tort liability to individual citizens should be sustained in North Dakota." *Kitto*, 224 N.W.2d at 797 (emphasis added). The Court concluded "governmental bodies, other than the state government, are subject to suit for damages to individuals injured by the negligent or wrongful acts or omissions of their agents and employees." *Id.* The Court further held that the abolition of governmental immunity would be applied prospectively except for the parties {812 N.W.2d 326} in *Kitto*, allowing the 44th Legislative Assembly to enact legislation it deemed appropriate in light of the decision. *Id.* at 804.



P12 The legislature enacted 1975 N.D. Sess. Laws ch. 295 in response to the Kitto decision. The legislature used almost identical language to the Kitto holding in describing claims that would subject a political subdivision to liability: "Each political subdivision shall be liable for money damages for injuries when such injuries are proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of his employment or office[.]" 1975 N.D. Sess. Laws ch. 295, § 2 (emphasis added). The legislature also described its intent in enacting ch. 295: "This Act is a temporary response to the recent judicial decision which held that the doctrine of governmental immunity from tort liability as it applies to political subdivisions should not be sustained in this state." 1975 N.D. Sess. Laws ch. 295, § 13 (emphasis added). The current version of this statute contains virtually the same language as 1975 N.D. Sess. Laws ch. 295, § 2. See N.D.C.C. § 32-12.1-03(1). The Kitto decision and subsequent legislation establish that N.D.C.C. ch. 32-12.1 was intended to apply only to a political subdivision's tort liability. Similarly, N.D.C.C. ch. 32-12.2 applies to tort liability of the state. See *Messiha v. State*, 1998 ND 149, ¶ 21, 583 N.W.2d 385 (noting, in response to this Court's abrogation of the state's sovereign immunity from tort liability, "the Legislature enacted 1995 N.D. Sess. Laws ch. 329, codified at N.D.C.C. ch. 32-12.2, for tort claims against the State.").

P16 We hold N.D.C.C. ch. 32-12.1 applies only to tort claims against political subdivisions. The district court erred in applying the three-year statute of limitations of N.D.C.C. § 32-12.1-10 to the Finstads' contract claims. As conceded by the Finstads at oral argument, to the extent their claims sound in tort, the district court properly applied section 32-12.1-10 to their tort claims. On remand, the district court must determine whether the ten-year statute of limitations of N.D.C.C. § 28-01-15 or the six-year statute of limitations of N.D.C.C. § 28-01-16 applies to the Finstads' contract claims.

Judy Ann Bulman, Plaintiff and Appellant v. Hulstrand Construction Co., Inc.; and the State of North Dakota, Defendants and Appellees and Otto Moe and Robert Heim, individually and as partners doing business as Custom Tool & Repair Service, a/k/a CT & RS, and Custom Tool & Repair Service (CT & RS), Defendants

SUPREME COURT OF NORTH DAKOTA

521 NW2d 632 521 N.W.2d 632; 1994 ND LEXIS 2021 1994 N.D. LEXIS 202

Civil No. 940047

September 13, 1994, Filed

PROCEDURAL POSTURE: Appellant wife sought review of an order from the District Court for Slope County (North Dakota), which dismissed her wrongful death claim against appellees, the construction company and the state. Constitutional provision permitted legislature to abolish sovereign immunity, but did not proscribe judicial abolition of the doctrine. The court overruled prior cases which held that only the legislature could abolish sovereign immunity.

OVERVIEW: The wife brought a wrongful death action after her husband was killed in an automobile accident at a road construction site after the construction company had suspended work on the project for the winter under the terms of its contract with the state. The district court granted summary judgment for defendants, and the wife sought review. On appeal, the court affirmed in part, reversed in part, and remanded. The court held that the construction company had no duty to the public because under the terms of its contract, it had no control over the construction site during the winter suspension. The court held that N.D. Const. art. 1, § 9 did not reserve solely to the legislature the power to abrogate state sovereign immunity and expressly overruled all previous cases that had held to the contrary. The court also held that except for cases immediately pending, the abrogation was prospective only and ordered that for other claims, its decision would take effect after the legislature had time to insure against potential tort liability.

OUTCOME: The court affirmed the dismissal of the wife's claim against the construction company, but partially abolished the doctrine of sovereign immunity, reversed the dismissal of the wife's claim against the state, and remanded for further consistent proceedings.

521 N.W.2d 636

In *Kitto*, supra, 224 N.W.2d at 801, 803, this Court abolished governmental immunity from tort liability for political subdivisions:

"We are persuaded that a reconsideration of the constitutional basis for governmental immunity establishes that this doctrine, as distinguished from sovereign immunity of the state itself, is not constitutionally mandated.

\* \* \* \* \* "The matter of sovereign immunity of the state itself, which is untouched by this decision, is one on which we would solicit legislative action. The injustices of state immunity remain for one who is injured by the wrongful act of the state government. In many states where the immunity doctrine has been abolished, some legislative modification or adjustment has been made."

521 N.W.2d 638

Historically, the doctrine of sovereign immunity has been justified on the grounds that the King could do no wrong, the diversion of funds required for other governmental purposes could bankrupt the State and retard its growth, the State could perform its duties more efficiently and effectively if it were not faced with the threat of a floodgate of actions involving tort liability, and it was more expedient for an individual to suffer than for society to be inconvenienced. See *Kitto*, supra; *Shermoen v. Lindsay*, 163 N.W.2d 738 (N.D. 1968); *Watland v. North Dakota Workmen's Compensation Bureau*, 58 N.D. 303, 225 N.W. 812 (1929); *State ex rel. Shafer v. Lowe*, 54 N.D. 637, 210 N.W. 501 (1926); *Vail v. Town of Amenia*, 4 N.D. 239, 59 N.W. 1092 (1894).

Whatever justifications initially existed for sovereign immunity, they are no longer valid in today's society. Few principles of modern law have been so uniformly and soundly criticized. See, e.g., *Kitto*, supra. Sovereign immunity from tort liability, like the governmental immunity for political subdivisions at issue in *Kitto*, perpetuates injustice by barring recovery for tortious conduct merely because of the status of the wrongdoer. Sovereign immunity contradicts the essence of tort law that liability follows negligence and that individuals and corporations are responsible for the negligence of their agents and employees acting in the course of their employment. We do not believe it requires laborious analysis to assert that the harshness and inequity of the doctrine of sovereign immunity are counterintuitive to any ordinary person's sense of justice. It is sufficient to comment that, even under the earliest common law of England, sovereign immunity did not produce the harsh results it does today and only rarely did it completely deny relief. 6 We are aware of no persuasive {521 N.W.2d 639} public policy reasons to continue a constitutional interpretation that condones an absolute bar to tort liability.

521 N.W.2d 639

In other areas, this court has declined to follow outdated common-law principles.  
(citations omitted)

We conclude that the State's sovereign immunity for tort liability is outdated and is no longer warranted. We expressly overrule our prior cases sustaining that obsolete doctrine, and we join those states that have judicially abolished it. (citations omitted)

Proposed Amendments to HB 1025 - Rep Klemin - April 18, 2013 - IN RED

SECTION 1. AMENDMENT. Subsection 3 of section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

3. Compensation for property ~~must~~may be ~~only~~paid if the property was commandeered or otherwise used in management of a disaster or emergency declared ~~by the governor~~ and its use or destruction was ordered by the governor under proper authority and only to the extent not otherwise waived or agreed upon before the use of the property.

~~4. A claim made against the state must be filed and resolved as provided under subsections 4 and 5.~~ A claim made against a county or city must be made in writing to the appropriate governing body within ~~one year~~ two years after the use, damage, loss, or destruction of the property under proper authority is discovered or reasonably should have been discovered, may only be for actual damages not recovered from claimants' property or other applicable insurance, and may be paid from any combination of funds provided under section 40 - 22 - 01.1, disaster relief funds made available to a county or city for this purpose, or other funds at the discretion of the governing body. A city or county may establish reasonable provisions for the payment of compensation.

SECTION 2. AMENDMENT. Subsection 4 of section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~5.~~ Any person claiming compensation for the use, damage, loss, or destruction of property by the state under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim for compensation must be received by the office of management and budget within



~~one year~~ two years after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived.

SECTION 3. AMENDMENT. Section 37-17.1-16 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-16. Immunity and exemption.

1. All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. ~~The state, a county or city, any~~ Any disaster or emergency worker, an employee of a federal agency on loan or leave to the state in support of emergency service response whether the emergency is declared or undeclared, or any other person providing goods or services during an emergency if the person is working in coordination with and under the direction of an appropriate governmental emergency or disaster response entity, complying with or reasonably attempting to comply with this chapter, or any executive order or disaster or emergency operational plan pursuant to this chapter, or pursuant to any ordinance relating to any precautionary measures enacted by any county or city of the state, except in case of willful misconduct, gross negligence, or bad faith, is not liable for the death of or injury to persons, or for damage to property except as compensation may be provided in section 37 - 17.1 - 12, as a result of any such activity. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, or under workforce safety and insurance law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any Act of Congress.

2. Any requirement for a license to practice any professional, mechanical, or other skill

does not apply to any authorized disaster or emergency worker who, in the course of performing the worker's duties, practices the professional, mechanical, or other skill during a disaster or emergency.

3. This section does not affect any other provision of law that may provide immunity to a person that is providing volunteer assistance.

SECTION 4. AMENDMENT. Section 37-17.1-17 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-17. No private liability.

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of emergency management activities during an actual, impending, mock or practice disaster or emergency, is, together with their successors in interest, if any, not civilly liable, except in the case of gross negligence or willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity, for ~~negligently~~ causing the death of, or injury to, any person on or about such real estate or premises or for loss of, or damage to, the property of such person.

SECTION 5. No change