

2015 HOUSE TRANSPORTATION

HB 1232

2015 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1232
1/22/2015
#22381

Subcommittee
Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to approval of local road remediation plan.

Minutes:

Attachment #1, #2, and #3

Chairman Dan Ruby opened the hearing on HB 1232.

Representative Mike Brandenburg, District 28, Supervisor of Nora Township, introduced HB 1232 and provided pictures of the damaged township roads. See attachment # 1.

Representative Mike Brandenburg: The township has a problem. Cenex Harvest States Elevator in Edgeley constructed a \$3,000,000 upgrade facility of the elevator. Buresh Building Systems, Inc. from Hampton, IA did the construction. They hauled gravel from a pit in Nora Township over 6 ½ miles of township roads in the spring when the roads were soft. We stopped them from hauling on Palm Sunday. We met with the contractor the next morning. The supervisors from the township were there, 4 members. We told them they couldn't haul on the soft roads. We were advised that they couldn't get gravel from anywhere else in the county because the county Superintendent had posted all the roads to get to any other pits. Tony Johannsson, local manager for CHS got involved. He told us that if they didn't work on this project now, the contractors were going to leave, and they wouldn't get back until July. Then the bin wouldn't be up for fall harvest. They made promises that they would PUT THE ROAD BACK TO AS GOOD AS OR BETTER THAN IT WAS. We even shook hands. We were told that we could even withhold money from the contractor if they didn't fix the road. The project continued, and they hauled 500 loads of gravel on these township roads. They even got stopped a few times for being overloaded, so instead of going to the highway, they stayed on the gravel township road. At that point they were using 6 ½ miles of township roads instead of 4 miles. The road was destroyed. I spoke with a local contractor who had put a bid in on the project. He told me that he lost the bid by \$20,000 because he had included the money to fix the roads that he would use. The out-of-state contractors bid low, don't fix the roads, and leave the state. Then there is nothing we can do. I am bringing this bill forward so that there must be a written contract with contractors that do not own property in the township of the project to fix any damage done to township roads. This will allow us to have civil litigation if we need to. We had to put \$7,000 per mile into the roads that were destroyed by the elevator project.

Vice Chairman Lisa Meier: After they left the state, did you attempt to recover the money from them for the damages that they had caused?

Representative Brandenburg: We talked to the contractor. The road was very bad about half way through the project, at that point we wanted to stop them. They assured us that they would FIX THE ROAD BACK TO AS GOOD AS OR BETTER THAN IT WAS. They lied right to our faces. In the end, we had a meeting, and asked what they were going to do about the road. They told us that they had put in a number of loads of fill sand, and they thought that maybe they could add 5-6 loads of gravel. The supervisors worked with them, and in September they gave us a check for \$3,500. We put \$26,000 into these 6 ½ miles of road. We had to use almost the entire township funding that we received from the legislature last session. Then we had the Road Superintendent from LaMoure County look at it. We did everything that we could to make sure that the road was fixed. In the end we got \$3,500. We can't take them to court because there is nothing in statute that will give us anything to stand on to sue them. Cenex Harvest States has chosen not to do anything either. We did go in to compromise for a lesser amount for about \$10,000, but they wouldn't even talk about it.

Representative Rick C. Becker: Referring to two sections in the bill, I have the same question about both. As far as the contractor not owning property in the county, and as far as jobs that are done for ranchers or farmers, is that because it involves good local guys that you feel you don't need a contract with? Is it because they will have to live with the rest of the people in the township?

Representative Brandenburg: You have people that live in the township that pay property taxes that use the road. We are not trying to force them to have an agreement, since they already pay property taxes. I am not quite sure of the language. There might have to be some adjustment to that.

Representative Rick C. Becker: My concern would be if a rancher hires a big out-of-state firm to do a big project for him, that you are no better off.

Chairman Dan Ruby: Do you think there might be an issue with out-of-state and not in-state? This language sets a different protocol for someone who might be both in-state, but one owns real property in the county and one doesn't. There are some inequities there that might be a cause for discrimination suit.

Representative Brandenburg: Yes, that is my concern also. We will have to work on the language. We just want there to be a written agreement with the contractors.

Chairman Dan Ruby: You don't have a limitation on the size of the project. It might be just someone who is hauling in a few loads to make an approach.

Representative Brandenburg: That is not what I want. I want to deal with the bigger projects.

Larry Severson, Chairman of the Board of Supervisors of Roseville Township of Trail County, Mayville, provided written testimony in support of HB 1232. See attachment #2.

(17:00)

Representative Chris Olson: What if we amended the bill to say that the board of township supervisors or the board of county commissioners in an unorganized township may require the contractor to follow or adopt the local road remediation plan? Then you could simply impose it on any project that you desire to.

Representative Brandenburg: I would be happy to work on whatever language that we come up with to make this work.

Chairman Dan Ruby: This is requiring that an agreement be made. If no agreement is made, then you can go back after them with documented damage. The last sentence allows for the civil damage.

Representative Brandenburg: We just need language to protect the townships.

Representative Mike Schatz: Does the Secretary of State require bonding of out-of-state contractors under these circumstances?

Representative Brandenburg: I'm sure that these guys are bonded. They do a lot of work for Cenex Harvest States in North Dakota. In this case they just didn't do what they said they were going to do.

Chairman Dan Ruby: Wouldn't the bond only apply to the construction company and who they are working with?

Representative Brandenburg: As soon as this happened I called John Bjornson at Legislative Council, and asked if there was anything that we could do to take them to court. There was nothing we could do as a township without a written agreement.

Representative Rick C. Becker: Were you prevented from forming a contract? Is there something that prevents you from having the ability to do that?

Representative Brandenburg: No, but we didn't do it. I was concerned, but I thought it would be okay when I went to Tony Johannsson, and he assured me that Beresth Building Systems, Inc. is a good company. I asked him, "What will we do if the road is wrecked?" He told me if they don't do what they say they are going to do, we can withhold money from the project. At that point I felt confident. This is a man that I have worked with for 30+ years. When this happened that they wouldn't pay us, then Tony was running for the hills. He just couldn't remember anything. That is why the legislation is important. We made a mistake, we trusted people. We got taken advantage of.

Representative Robin Weisz: When you got the advice that you couldn't sue, was it just that you were advised that you wouldn't win?

Representative Brandenburg: Yes, and it would have cost too much.

Representative Chris Olson: Could the board of the township have prevented these contractors from operating without a legal agreement that suited you?

Representative Brandenburg: Yes, we could have done that. We should have done that. We should have posted the road with weight limits. We do have it posted now at 65,000#, and we take it off during harvest. Next year we will keep it at 65,000#. It will allow people to haul hay at that weight.

Representative Chris Olson: If you have it posted, and they violate the rules, can you then go after them for civil damages if they cause damage while violating your laws?

Representative Brandenburg: We need written agreements. I had a lawyer in Jamestown look at this, and he said that we would be wasting our money.

Representative Ben Hanson: If we were to pass this, the vote here would mandate township boards and out-of-state contractors to have a reclamation agreement. Is that correct?

Representative Brandenburg: Yes, and I'm not so sure that it shouldn't be with in-state contractors as well. There is protection for state and county roads, but not for township roads.

Representative Ben Hanson: If we had a case of a township, and they used a contractor from SD, if we passed this, they would have to have a reclamation agreement?

Representative Brandenburg: Yes, I believe you are correct.

Representative Robert Frantzvog: Who would administer this for you?

Representative Brandenburg: We will have to work with the county on this. We are not going to have someone hired by the township, to go out and take care of the contracts. Someone will have to enforce the agreement or administer it. I think we can find a mechanism to make it work.

Chairman Dan Ruby: Isn't the weakness of the bill, starting on 13 it says, "...if there is no agreement, the township still may create the plan, and it must be based on the documented damage. 18 - A contractor does not make a good faith effort to follow the plan, created under this section. Then they are subject to civil damages." You had no "teeth" to file a civil suit before, but this would be the same as you have now. Is it going to do anything?

Representative Brandenburg: I know, I think it needs different language.

Representative Marvin Nelson: Do you have any ideas on documentation of damage? If the township has to call an engineer, you might as well let the guy haul.

Representative Brandenburg: The party that is doing the construction and the contractor should be involved in the contract. It should be an expense that is figured as part of their project to fix the road.

Representative Brandenburg: I will work on different language.

Representative Robert Frantzvog: If this passes, it will affect every township in North Dakota. Would it be reasonable to put a plan together to require a remediation plan, but make optional? It would be permissive.

Representative Brandenburg: I would have to think about that.

Representative Mike Schatz: You mentioned \$10,000. Did you try small claims court?

Representative Brandenburg: We tried that, but it didn't work.

Terry Trainer, Association of Counties, spoke to support HB 1232. He stated that he would like to support the concept, but is also wondering about the language. He explained that the same thing used to happen in counties as is happening now in the townships. Contractors would come in and use the county roads as haul roads. Over the years it has gotten better, because the Department of Transportation has helped on that. The Department of Transportation comes in and helps the counties with haul road agreements, so the contractors know what the expectation is. The expectation will be in the contract. This has been working relatively well for counties. There are a lot standard of haul road agreements. We have a basis to litigate if we need to. Fortunately for the counties we have States Attorneys, so there is someone who can litigate it. It is a challenge for townships. They don't have the road professionals, and they don't have the legal counsel. I don't know if putting something in the law is the answer. It would be nice if contractors that are going to bid on projects have an understanding that there is an expectation when the haul road agreement is in place. It needs to be negotiated with the road authority ahead of time, and that they would abide by the agreement. I think you would need to have a written agreement in place to be able to have a basis for litigation. Townships do have a big stick; they can lower the weight limits on the roads if they want to. Townships do need to be educated too, in what their abilities are and how they should proceed. They need standard agreements in place.

(44:16)

Representative Chris Olson: Is there something in statute that is requiring the counties and the contractor to have this haul road agreement with the county? Or is the county just good at enforcement and making sure that they have the agreement in place?

Terry Trainer: It is the latter. Most counties have a professional Road Superintendent. Most contractors know that, and they come into the county and tell them what they want to do.

Representative Chris Olson: Is there any potential for counties to subcontract with a township to provide the same level of service that is done for the county roads?

Terry Trainer: It is certainly feasible. The county with a joint powers agreement with a township could do that. It is whether the county feels that they can afford the time and the effort.

Representative Rick C. Becker: Two of the committee members have referenced language that would be more permissive, as in, "the board **may**...". Isn't that the case now?

Terry Trainer: I would say it is the case now. They have that power.

Chairman Dan Ruby: So, they could post the lower weights on a road when a project is starting, unless the company signs an agreement? Trusting a handshake won't work. I am hearing this would be more of an education tool, to say that they could put together a contract.

Terry Trainer: I think that is correct.

Representative Gary Paur: Would it make sense to take out all the extraneous provisions and just say that if a contractor does projects on roads outside of the interstate, they shall bring the roads back to pre-contractual levels? Just leave it at that. Then if the contractor does not make a good effort, he is subject to civil damages.

Terry Trainer: I think that is a great statement. I don't know if it is enforceable. What I think is important at the county level is pre-inspection with pictures and post-inspection with pictures, along with a document that states that we agree.

There was no further support for HB 1232.

Mark Dougherty, Membership Services Director for the Associated General Contractors of North Dakota spoke in opposition to HB 1232. He feels that there are a lot of unintended consequences in the way the bill is written. He stated that his group realizes that the roads are under severe stress right now. They also want to make sure the roads stay in good shape. Written testimony was provided. See attachment #3. He asked for a **DO NOT PASS** on HB 1232. His group would be willing to work with a subcommittee on the bill.

There was no further opposition to HB 1232.

The hearing was closed on HB 1232.

Chairman Dan Ruby: Generally, a subcommittee is formed with groups that have opposing views, they are given time, and the groups work together. I don't really see that we have that kind of situation with this bill. The responsibility to fix this bill is on the bill's sponsor. I will not appoint a subcommittee. Any of you that feel that you would like to assist with that are free to do so. I won't make a decision on the bill until I see the final product. We will hold the bill and give the sponsors some time to put some effort into it. It sounds to me that the townships can already use their stick of setting road restrictions, and force some kind of written agreement that the contractors would be bound to. Then, that could be used to justify further litigation. This is obviously a good way to notify the townships that they have that authority, if they don't already know it. I don't know if this is the right way to do that.

Representative Robin Weisz: I have been on the township board for 40 years. I think that the townships **do know** what authority they have when it comes to roads. If the whole intent of the bill is to make townships aware that they have the ability to make contracts, I don't think we need a bill for that.

There was no further discussion.

The hearing on HB 1232 was closed.

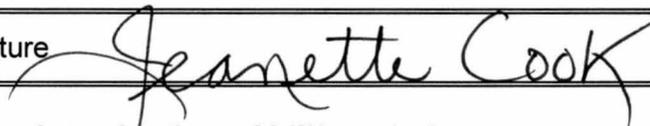
2015 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1232
2/12/2015
#23746

Subcommittee
Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to approval of local road remediation plan.

Minutes:

Attachment #1

Chairman Dan Ruby brought back HB 1232 to the committee.
Suggested amendments were provided. (15.0155.01001) See attachment #1.

Representative Ben Hanson: This was brought up in committee. The language is basically saying that they may request a reclamation clause put in their contract for contract work, which they are already completely able to do. If we amended it to this, I think we would be amending it to something that is already legal. I will not support the amendment because it is something that doesn't need to be staid into law.

Chairman Dan Ruby: I have a copy of what Ward County has for the use and agreement of a haul road. I will e-mail a copy to the committee.

Representative Robin Weisz: I will support the amendment, but Representative Ben Hanson is correct. The township can already do this with contractors. I probably won't support the bill.

Representative Robin Weisz moved the amendments for HB 1232. (15.0155.01001) See attachment #1.

Representative Lois Delmore seconded the motion.

**A roll call vote was taken: Aye 10 Nay 1 Absent 3
The motion passed.**

Representative Gary Paur: Is the State Township Association active at all?

Representative Robin Weisz: Yes, they hold annual and regional meetings and have the township attorney come and present legal issues.

Representative Gary Paur: Would it make sense to send them the contract that Chairman Dan Ruby has?

Representative Robin Weisz: That would be an excellent idea.

**Representative Kathy Hawken moved a DO NOT PASS as amended on HB 1232.
Representative Ben Hanson seconded the motion.**

**A roll call vote was taken: Aye 10 Nay 2 Absent 2
The motion carried.**

Representative Ben Hanson will carry HB 1232.

BA
2-12-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1232

Page 1, line 2, replace "approval of local road remediation plan" with "an agreement on haul roads"

Page 1, replace lines 6 through 19 with:

"County may provide agreement on haul road for township.

Upon the request of a township, a county may act for that township in making an agreement with a contractor to use a township road and to restore the township road after the contractor uses the township road for the movement of construction equipment and materials for a project. The agreement may include terms on maintenance, the inspection and recording of preexisting condition of the road, and standards for restoration."

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1232**

House Transportation Committee

Subcommittee

Amendment LC# or Description: 15.0155.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Representative Robin Weisz Seconded By Representative Lois Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Ruby	X		Rep. Delmore	X	
Vice Chairman Meier	X		Rep. Hanson		X
Rep. Rick Becker	X		Rep. Nelson	A	
Rep. Frantzvog	A				
Rep. Hawken	X				
Rep. Olson	X				
Rep. Owens	A				
Rep. Paur	X				
Rep. Schatz	X				
Rep. Sukut	X				
Rep. Weisz	X				

Total (Yes) 10 No 1

Absent 3

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

HB 1232: Transportation Committee (Rep. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1232 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "approval of local road remediation plan" with "an agreement on haul roads"

Page 1, replace lines 6 through 19 with:

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Upon the request of a township, a county may act for that township in making an agreement with a contractor to use a township road and to restore the township road after the contractor uses the township road for the movement of construction equipment and materials for a project. The agreement may include terms on maintenance, the inspection and recording of preexisting condition of the road, and standards for restoration."

Renumber accordingly

2015 TESTIMONY

HB 1232

HB1232
1-22-15
#1

1 of 7



CONTRACTOR:

BURESH BUILDING SYSTEMS, INC.
1219 IMPERIAL ROAD
HAMPTON, IA 50441
CONTACT: STACY BARRICK
BURESH BUILDING SYSTEMS, INC.
641-425-7011

OWNER:

CHS DAKOTA PRAIRIE AG
PROJECT ADDRESS: 102 6TH AVENUE WEST, EDGELEY,
HOME OFFICE ADDRESS: 306 1ST ST, EDGELEY, ND 58433
OWNER CONTACT: DARREL KLUNDT
DAKOTA PRAIRIE AG
701-830-9804

58433

NO TRESPASSING, General Contractor and Owner are NOT responsible for accidents
AUTHORIZED PERSONNEL ONLY **HARD HATS REQUIRED**
ALL VISITORS MUST SIGN IN AT MAIN OFFICE

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#1

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HB 12.32
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#1

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#1B1232
1-22-15
#1



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#1

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HB 1232
1-22-15

2

Support HB 1232

House Transportation Committee

January 22, 2015

Chairman Ruby and Committee members,

I am Larry Syverson from Mayville, I raise soybeans on my farm in Traill County, I am the Chairman of the Board of Supervisors of Roseville Township of Traill County and I am now the Executive Secretary of the North Dakota Township Officers Association. NDTOA represents the 6,000 Township Officers that serve in more than 1,100 dues paying member townships.

Township roads are very often damaged, and subject to over use, by contractors using the roads crossing the township to get to the next one. HB 1232 would call for developing a plan to see to it that roads are returned to pre-project condition.

NDTOA is grateful to Representative Brandenburg and the other sponsors for bringing HB1232 forward to remedy this problem.

Thank you Chairman Ruby and Committee Members, NDTOA asks your favorable recommendation for HB 1232.

HB 1232
1-22-15
#3

Testimony – HB 1232
January 22, 2015
House Transportation Committee

Mr. Chairman and committee members, I am Mark Dougherty and I am the Membership Services Director for the Associated General Contractors of North Dakota. The AGC of ND is a 500 member contractor's trade association including general, specialty, and sub-contractors along with material, equipment and service suppliers.

I am here to speak in opposition to HB 1232. The bill seems to require contractors working on a construction project located anywhere in any township to be responsible for following a plan; created by the township or county to repair any damage to the roads they use during the construction of the project. The bill does not give the contractor any part in the creation of the remediation plan other than to agree and if the contractor does not agree with or follow the plan they face ~~criminal~~ penalties.

* Civil

I see this bill as a no win situation for any contractor in North Dakota for a number of reasons:

- Un-fair competition with local contractors not having to follow a local road remediation plan and be responsible for repair costs of the "documented damage".
- If a non-resident of the ~~township~~ ^{* County} small contractor has a small project in the township with very minimal hauling and large resident contractor has a large project with a large amount of truck hauling and they're using the same roads the small non-resident contractor is responsible for all of the local road remediation plan costs.
- Another possibility is a contractor has agreed with the remediation plan and all is going well. Then a rainy patch of weather hits and contractor is forced to suspend work. While the road is wet someone else uses the road and creates damage we realize near the end of the contractors project. The contractor is now on the hook for damage he did not create.
- How does a contractor determine the cost of repairing the "documented damage" determined by the local road remediation plan to allow for its inclusion in the cost of the project?

We understand there is a lot of pressure on our entire road system today and we want to be a part of keeping it a viable system. However, we seem to be paying twice for the road use. We pay fairly large amount of fuel and excise taxes which go to road improvements and then every time we get a construction project someone wants us to pay for the repairs.

The AGC of North Dakota and its 500 member companies strongly urge the House Transportation committee to present a do not pass recommendation on HB 1232.

Thank you for the opportunity to testify today and if you have any questions, I would be happy to address them at this time.

* Changes made by presenter.

15.0155.01001
Title.

HB 1232
2-12-15
#1

Prepared by the Legislative Council staff for
Representative Brandenburg
January 27, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1232

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Renumber accordingly