

2015 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2316

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB2316
1/26/2015
Job Number 22479

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To provide for an excess damage program

Minutes:

Attachment

Chairman Klein: Opened the hearing.

Vice Chairman Campbell: This bill provides a onetime catastrophic two hundred million dollar fund for the excess damages program for the victims of the train-bus accident in Larimore. (:55-3:18)

Chairman Klein: Asked why he chose the insurance commissioner and not the risk manager for being the administrator.

Vice Chairman Campbell: He did visit with some others and they suggested that. They were under a deadline and learned a lot of things later on and are open to some amendments.

Roger Abbe, Superintendent of Schools in the Larimore School District: Written Testimony Attached (1). (4:15-8:32)

Senator Poolman: Asked about the five hundred thousand dollar limit and if it was per child or is it per family.

Roger Abbe: Per incident regardless of how many people are involved.

Chairman Klein: I believe you are correct that it is per incident.

Senator Sinner: If this bill doesn't pass and these funds made available for the insurance policy and the insurance coverage, is there some obligation on behalf of the school district or are they held free from any further liability?

Roger Abbe: Said it's better answered by some of the better experts here. I heard that this could be a bit of a test situation as to whether there would be liability law suits come about that wouldn't of otherwise.

Senator Sinner: What is the financial capability of the school district to handle an extra couple million out of their budget?

Roger Abbe: A couple of million, no we couldn't. At this moment I have been assured that there is no liability to the school district itself.

Chairman Klein: You spoke to the precedent issue and I think that is probably going to be the major hurdle. I didn't realize the gravity we were dealing with.

Vice Chairman Campbell: Commented about the date and said it would be a starting date that all the claims would probably be in by then.

Rebecca Ternes, Deputy Insurance Commissioner with the North Dakota Insurance Department: This is a tough one because we all know about this accident. They have sent a letter to offer support in working with the different insurance policies. She said that stacking is going on here, personal auto if you have it. If you have personal auto insurance and your child was on this bus the law says, you go to your personal auto no fault insurance. Most people have thirty thousand dollars and only if you don't can you go to North Dakota Insurance Reserve Fund.

Chairman Klein: They are the ones that carry the schools and counties?

Rebecca Ternes: Correct. They were a little surprised when this landed with their name in it as well. It's not a specialty of theirs. That was one of their concerns because they are not really set up to handle that kind of a thing.

Steve Spilde, CEO of the North Dakota Insurance Reserve Fund: Said that they provide liability coverage to nearly all of the school districts in North Dakota including Larimore Public School and he spoke to the concerns for the school district. The two hundred and fifty thousand per individual and five hundred thousand per occurrence cap on damages is in place for political sub divisions in North Dakota. Whether they have insurance or are self-insure, we are a self-insurance pool. In essence what we do is pool resources from all of our members but the torque limit cap is in place and we use that as would an individual self-insured entity, if a claim would come up. If there is a claim and there is a determination on whether there is liability on the part of the school district and there are funds available through either settlement or judgment with regard to addressing the fault, if there is some determined, then the self-insurance carriers can come in and access those funds that are made available through the claim process. (18:03-21:11)

Senator Murphy: Asked if he saw the bill and does he think they should amend it to NDIRF, would that be a suitable amendment in your view?

Steve Spilde: I don't believe so; we would be pretty much in a conflict of interest position here. Our mode would be in defending against the claim that would be made against the school district. It probably wouldn't be the appropriate entity.

Senator Poolman: In this case, in terms of the definition of the law, the incident is the school bus crash. It's not a different incident for each family or each child, so is that a maximum of five hundred thousand dollars that can be split up between all of the families or is it considered two hundred and fifty thousand dollars per child with no maximum or do we hit that max at five hundred thousand?

Steve Spilde: As I understand the circumstances of the accident, it is one incident. The two hundred and fifty thousand dollars would apply to individuals but the five hundred thousand dollar maximum would apply over the entire number of persons involved in the accident.

Chairman Klein: We would divide the five hundred by fourteen?

Steve Spilde: Potentially yes but as understand it some injuries are far more serious than others.

Sara Behrans, Attorney for the North Dakota Insurance Department: Said she has concerns that the bill isn't constitutional as it is written. (24:49-27:27)

Vice Chairman Campbell: Asked if she had a definition of poor, related to the definition of the North Dakota constitution.

Sara Behrans: At this point I don't have, it doesn't specifically define what is meant by poor in the constitution and that isn't something I haven't had adequate time to look at.

Vice Chairman Campbell: Asked if they could put it into the other bill and amend it to put two million dollars from the general fund in. Raising that five hundred thousand dollar cap so in essence you're not giving money away but you're expanding a cap on a liability fund.

Chairman Klein: You don't have to answer that Sara. We're going to close the hearing because there are obviously a lot of things that need to be dealt with. We don't want to let this go but I think Senator Campbell has some questions that could be worked out with your agency. Also, maybe there is a different direction we can take for the funding to get off of those concerns. He closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2316
2/4/2015
Job Number 23224

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

To provide for an excess damage program

Minutes:

Attachment

Chairman Klein: Opened the meeting.

Senator Campbell: Explained the amendment and said what they are attempting to change the amount to two million dollars. Amendment Attached (1).

Senator Miller: Why the city and why is it constitutional?

Senator Campbell: It was the legislative council and himself and they met in the attorney general's office. It is no different than a lot of other ways of administering funds where you're not giving it directly to the individual.

Senator Miller: What is the city going to do with the money and how are they going to distribute it?

Senator Campbell: They are going to distribute after one and a half years because they have to allocate this money before the biennium is up and if there are any claims above the half a million dollar liability they will distribute it on the claims above and beyond that.

Senator Sinner: Is there a reason why this isn't going to the school district instead of the city?

Senator Campbell: It could mean the school; local political subs could mean anybody. That's a good point.

Senator Burckhard: What if there are no claims what happens to the two million dollars?

Senator Campbell: It would probably be returned to the OMB or the general funds because there was no need for it.

Committee continued to discuss the bill. (3:10-5:36)

Senator Campbell: Moved to adopt the amendment.

Senator Miller: Seconded the motion.

Roll Call Vote: Yes-5 No-2 Absent-0

Chairman Klein: We have the bill as amended. This bill would be do pass as amended and rerefer to appropriations. This is our bill the only one we have with a chunk of change in it that needs to move down to the other end of the hall.

Senator Miller: Do pass as amended and rerefer to appropriations.

Senator Campbell: Seconded the motion.

Chairman Klein: Called for discussion.

Senator Miller: Said he doesn't know what makes this in its current form any more or less constitutional than the previous bill, it's a political subdivision.

Chairman Klein: Said in the previous one it said we would pay claims to individuals where here were used to dumping money out to political subdivisions rather than individuals and that is how they got around that constitutional question.

Senator Sinner: Asked if the money was going to go to pay the medical bills of the individuals injured in the accident.

Senator Campbell: Said no this is just liability insurance. First they go to the auto insurance and then they go to your health insurance and then it would be the liability insurance.

Committee continued discussion on the bill. (10:15-15:47)

Chairman Klein: We have a motion for a do pass as amended and rereferd to appropriations.

Roll Call Vote: Yes-2 No-5 Absent-0

Senator Miller: Made a motion to do not pass.

Senator Poolman: Seconded the motion.

Roll Call Vote: Yes-5 No-2 Absent-0

Senator Klein will carry the bill.

February 3, 2015

TD
2/4/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2316

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a grant program to political subdivisions for the settlement of claims; to provide an appropriation; and to provide retroactive application."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. GRANTS FOR THE SETTLEMENT OF CLAIMS. During the 2015-17 biennium, the office of management and budget shall administer a grant program to political subdivisions that apply for funding for the settlement of claims that are a result of this Act. Under section 32-12.1-03, the liability limit of five hundred thousand dollars for injury to three or more persons during any single occurrence does not apply to a political subdivision for an occurrence on January 5, 2015, to the extent the political subdivision settles the claims within the grant awarded under this Act. If asserted claims exceed the grant award, the political subdivision may reduce the settlement of the claims on a pro rata basis. To qualify for a grant under this section, after receiving claims, a political subdivision shall submit an application with the office of management and budget. Any claim against a political subdivision under this Act must be paid by June 30, 2017. This section does not expand a political subdivision's liability beyond the amount of a grant awarded to the political subdivision under this section.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of making grants to political subdivisions under section 1 of this Act, for the biennium beginning July 1, 2015, and ending June 30, 2017.

SECTION 3. RETROACTIVE APPLICATION. This Act applies retroactively to an event occurring on January 5, 2015."

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2316**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: 15.0960.01001

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 Senator Campbell Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard		x			
Senator Miller	x				
Senator Poolman		x			

Total (Yes) 5 No 2

Absent 0

Floor Assignment _____

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

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Motion Made By Senator Miller Seconded By Senator Campbell

Senators	Yes	No	Senators	Yes	No
Chairman Klein		x	Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner		x
Senator Burckhard		x			
Senator Miller		x			
Senator Poolman		x			

Total (Yes) 2 No 5

Absent 0

Floor Assignment _____

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

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BILL/RESOLUTION NO. SB 2316**

Senate Industry, Business and Labor Committee

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Amendment LC# or Description: _____

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Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Miller Seconded By Senator Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy		x
Vice Chairman Campbell		x	Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Klein

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

REPORT OF STANDING COMMITTEE

SB 2316: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2316 was placed on the Sixth order on the calendar.

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2015 TESTIMONY

SB 2316

Committee Testimony, January 26, 2015

Senator Klein and Committee Members,

My name is Roger Abbe. I'm superintendent of schools in the Larimore School District. I'm sure you realize that I'm here to speak in favor of SB 2316. The tragic accident at Larimore was three weeks ago today. The Highway Patrol's investigation is still in progress so I won't speak to anything related to their investigation. My concern today is the impact the accident has had on the families rather than the accident itself.

There were six families and a total of fourteen people directly impacted by the accident. One family had three children in the accident and another family had four children in it. The bus driver, who was also a teacher, and one student died in the accident. Two students were not taken to the hospital and, to my knowledge, that family has incurred minimal expenses. Of the other students, several were dismissed within a few days, two were airlifted to Minneapolis, one was airlifted to Fargo and the others stayed in Grand Forks with a variety of injuries. Thankfully, all are now out of the hospital and are returning to school.

According to State law, the personal insurance for each family must act first and then coverage from the North Dakota Insurance Reserve Fund (NDIRF) takes effect. I'm sure you are aware that current law limits the NDIRF coverage for this accident to \$500,000. This amount was set in 1971 and has not been adjusted since.

I don't have information about the specific needs of the families at this time. Altru Health System has generously agreed to work with us to provide emotional and technical support for these families. The technical support will include assisting families as they work through the steps they must take with their insurance companies, NDIRF, and other agencies. As a part of this process, we should learn more about the needs. We are still working out details for this support but I hope that all families will be visited within the next week. Some families might have good personal insurance but others probably have very little coverage. Even though I don't know specific details, I believe it's safe to say that the needs are far beyond what the insurance companies, NDIRF and numerous fundraisers and donations will handle. Some families could be financially destroyed if the current limits apply to this incident.

I know that more specific information will make your decision about this bill easier and I hope we can have that for you in several weeks. I also know that, in spite of the sympathy that exists for these families, there are serious concerns about establishing a precedent. I assure you that I understand this concern. I've been an administrator for almost 20 years and have often been in the same situation. I'm well aware of problems that arise even when you think you're doing a good thing. I've sometimes thought of putting a sign in my office that reads "No good deed goes unpunished". I'll admit that there are times that I've decided against an action because of precedent concerns but there have been other times that I felt the right thing needed to be done regardless of the complications that might result from that decision. I feel that this is clearly one of those situations.

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Also, it doesn't need to be a precedent if the law is updated and includes an escalator clause. Senator Campbell has filed another bill to address that. The important fact now is that the current per/incident maximum hasn't been increased since 1971. It would be very unfair to make these families the innocent victims of 44 years of inaction on that law.

In closing, I want to thank Senator Campbell for his dedication and work on this bill. Senator Campbell and I, along with many other people, are very dedicated to trying to do what is best for these families. We can't claim we're doing everything we can to support them if we don't address the unfairness of the current NDIRF limits. I hope you will support us, and more importantly, these families, by supporting this bill.

Thank you for listening and I will now try to answer any questions you may have.

Dr. Roger Abbe, Superintendent
Larimore Public School #44
71-343-2366
roger.abbe@larimoreschools.com

2/4/15

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15.0960.01001
Title.

Prepared by the Legislative Council staff for
Senator Campbell
February 3, 2015

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