2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1104

2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1104
January 11, 2011
12727

☐ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:
Financial assurance requirements for property subject to institutional controls or responsibility Exemptions.

Minutes:

Chairman Keiser: Opens the hearing in HB 1104.

Dave Glatt~Chief of the Environmental Health Section of the North Dakota Department of Health: (see attached testimony). I would like to delete, starting on line 16 at the beginning of the sentence where it says "a determination by the department" and ending on line 18 where the sentence ends with "requires for the property".

Vice Chairman Kasper: I'm familiar with a piece of property in Fargo that has been in existence for 100 years along the railroad tracks. The land is owned by the railroad, the building on that piece of property has been purchased and sold numerous times. There was contamination underneath the building. It ended in hands of someone I know quite well, who had been leasing this building, brought the attention of the spill to the railroad and nothing was done about it. At the end of the lease, the lease was not renewed and the railroad took the building back, which went to the Supreme Court. That contamination is still there and this person is out over 1 million dollars. What would your department do in this situation?

Dave Glatt: I don't have knowledge of every contaminated area in the state, but in those instances, we are required a full site assessment. Once we have identified the complete contamination with sufficient information, then we make a determination whether or not how that land or property can be used. I don't know of any remediation that is 100% effective in removing all the contamination, but it can remove it to a level where it doesn't pose a risk. We can require monitoring or no action at the time. We may say that the risk is minimal and there is no further action. Once we make that determination, it's up to the land-building owner, what agreement they want to have. The railroad has decided on a lot of property, they are just taking it back and won't lease it anymore because they don't want the liability. We are involved in accessing the contamination in making those determinations and how the land can be used. As it goes forward, it's an agreement on two parties and how they want to make that happen.

Vice Chairman Kasper: If the original owner gets the building and the land back and they wish to do nothing, there is nothing you can do about it unless the contaminant is causing human problems.

Dave Glatt: That is true. We made that determination as a policy as we move forward and that started out with underground storage tanks. There wasn't a facility in the state that didn't have some contamination. We could basically break the bank going to those owners and say we want every molecule taken care. We had to make the determination to have that flexibility because in some cases, that it just didn't make sense to invest 1, 2 million in cleaning it up, when it wasn't posing a health risk.

Chairman Keiser: Striking the language you proposed but don't we need to address the issue that you were attempting to address in that language? As I read it you were doing was saying that we can put an end to the insurance product, but that language when on to say that there could still be some further additional action if as some later date, new technology comes along. We have a right to go back. Don't we need something that gives us, when we go to the court that the Heath Department has the advantage?

Dave Glatt: Yes we do and I believe that the existing language within various state laws, gives the state that if, you put the contamination there, you own the property, you own the contamination and you need to take care of that. It has to be that way because we are in the position of giving away liability protection, who accepts the liability, it's the state. We don't want to do that. I believe and I have a representative from the Attorney General's office, that we already have that protection.

Chairman Keiser: That's nice to have on the record. Any further questions? Anyone else here to testify in support of HB 1104, opposition, neutral, seeing none, closes the hearing on HB 1104. What are the wishes of the committee?

Representative Ruby: Moves the adoption of proposed amendment.

Representative N Johnson: Second.

Chairman Keiser: Page 1, lines 16-18, striking the complete sentence.

Chairman Keiser: Voice vote taken, motion carried.

Representative Ruby: Move a Do Pass as Amended.

Representative Kreun: Second.

Chairman Keiser: Roll call was taken for a **Do Pass as Amended** with **14 yea's, 0 nay's, 0 absent** and **Representative Kreun is the carrier.**

Adopted by the Industry, Business and Labor Committee

January 11, 2011

VK
1/11/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1104

Page 1, line 16, remove "A determination by the department that financial assurance is no"

Page 1, remove line 17

Page 1, line 18, remove "remediation the department requires for the property."

Renumber accordingly

Date: Jan 11 - 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1104

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Ruby Seconded By Johnson

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

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

voice vote motion carries

Date: Jan 11-2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1104

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Ruby Seconded By Kreun

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

Total Yes 14 No 0

Absent 0

Floor Assignment Kreun

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

REPORT OF STANDING COMMITTEE

HB 1104: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1104 was placed on the Sixth order on the calendar.

Page 1, line 16, remove "A determination by the department that financial assurance is no"

Page 1, remove line 17

Page 1, line 18, remove "remediation the department requires for the property."

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1104

2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1104
February 9, 2011
Job Number 14252

☐ Conference Committee

Committee Clerk Signature Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to financial assurance requirements for property subject to institutional controls or responsibility exemptions

Minutes: Testimony Attached

Chairman Klein: Opened the hearing on House Bill 1104.

Scott Radig, Director of Waste Management Division of the North Dakota Department of Health: Testimony Attached.

Senator Laffen: Asked how the financial assurance works, does the developer carry lines of credit or put money in it.

Scott: Stated that Mandan was a special case, the law does apply State wide. In Mandan the trust is now a responsibility party. Individual businesses do not need to maintain a financial assurance because the trust has been put in place for downtown Mandan. At other locations in North Dakota, if it would be a large cleanup project which would potentially cost over a half a million dollars, that is the only time financial assurance may be required. Smaller projects would not necessarily require that. The responsible party would be the person that was required to obtain the financial assurance, the person who put the contamination there in the first place, not the lender or the new purchaser.

Senator Laffen: Asked if there was an old gas station with leaky tanks and a developer buys the site would the former owner of the gas station still be liable.

Scott: Yes that would be correct. He said if it was considered to be a large cleanup project that would have a significant cost to clean up, over ½ million dollars. In that case there is also the petroleum tank fund which would cover most of that.

Chairman Klein: Stated that the person who owned the property initially was still liable but they are going to release them from that liability if someone has said that it was all cleaned up.

Scott: Yes that would be correct. In the case of Mandan they will probably not use the total trust but the trust will be in place indefinitely because there is no time limit put on maintaining that financial assurance. They would require evidence of the cleanup, ground water monitoring, testing of the fuel thickness of the site for a number of years past when they think it is cleaned up. Once they see it is stable and no more risk, then the trust can apply to the department, provide all the documentation and data and they could eventually determine the trust could be released. The way the law is written now the trust would need to be maintained indefinitely.

Senator Andrist: Asked if the department is proactive on this or do they wait for Burlington Northern to ask to be relieved of it.

Scott: He said the way the law is written the responsible party or the person maintaining the financial assurance would need to apply to the department.

Senator Andrist: Asked if the department was comfortable with the House removing three lines.

Scott: Yes they are.

Senator Schneider: Asked what kind of assurance the BSF was required to post.

Scott: The settlement that was reached was twenty four million for the cleanup and several million more that was put into a supplemental environmental trust fund which was used for special projects in downtown Mandan.

Senator Schneider: Asked if that special fund was the assurance.

Scott: Said the remediated trust fund is the financial assurance in place.

Senator Schneider: Asked for the amount still in the fund.

Scott: He said about 8 ½ million dollars.

Senator Laffen: Asked if the trust was released in the case of downtown Mandan, does that money that is left goes back to BSF?

Scott: Stated that was a separate case and the money went into a trust fund when the fund is released the money will go back to the City of Mandan because they were also members in the action against BSF. It will be used for community development in downtown Mandan.

Senator Andrist: He feels that a small gas station owner should be notified to the fact that he can get his money back and that the department should be proactive in notifying people of this right.

Scott: In case of the small gas station they would be covered under the petroleum tank compensation fund, so it wouldn't rise to the level of a minimum of ½ million dollar cleanup project, so small sites would not fall into this.

Chairman Klein: Asked if there was a lot of work in other parts of the State on a regular basis, as a result of something like this.

Scott: Said that the project in Mandan was the biggest cleanup project they have going and there are some other projects in place. Some are under the hazardous waste rules, some under the underground storage tank rules.

Chairman Klein: Asked if they were going to be able to give some of the others a release eventually.

Scott: He said that the Mandan project is the only one that they have financial assurance required for.

Chairman Klein: Asked if they were just getting ready then in case something happened.

Scott: Stated it is for that but specifically for Mandan finishing up there cleanup.

Senator Nodland: Asked if he got involved with oil spills and if the cost was over the ½ million would this apply.

Scott: Said that if the site contaminated ground water, a river, creek then the department is active in working with the oil company to get those sites cleaned up. It may apply if it was a long term project.

Chairman Klein: Closed the hearing.

Senator Andrist: Moved a do pass.

Senator Laffen: Seconded the motion.

Chairman Klein: Said they would hold the motion on the bill.

2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1104
February 14, 2011
Job Number

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to financial assurance requirements for property subject to institutional controls or responsibility exemptions

Minutes: Discussion and Vote

Chairman Klein: Called the meeting to order on Engrossed House Bill 1104.

Discussed the changes made on the bill.

Chairman Klein: There is a motion on the floor from Senator Andrist and Seconded by Senator Laffen.

Motion for a do pass.

Roll Call Vote: Yes-7 No-0

Senator Schneider to carry

Date: 2/14/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1104

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Andrist Seconded By Senator Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Schneider

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

REPORT OF STANDING COMMITTEE

HB 1104, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1104 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1104

Testimony
House Bill 1104
House Industry, Business and Labor Committee
Jan. 11, 2011; 8 a.m.
North Dakota Department of Health

Good morning, Chairman Keiser and members of the Industry, Business and Labor Committee. My name is Dave Glatt, and I am chief of the Environmental Health Section of the North Dakota Department of Health. I am here today to testify in support of House Bill 1104, which addresses financial assurance requirements for property subject to institutional controls or responsibility exemptions.

The Department of Health is proposing this amendment to clarify the original legislation from 2005 dealing with requirements for contaminated properties. The purpose of section 23-20.3-03.1 of the Hazardous Waste Management law is to provide a means for liability protection for individuals who would like to continue to use or redevelop contaminated properties or for lenders who would like to finance such ventures. The Department of Health has the responsibility to review and approve all requests for liability protection.

The best case in point is redevelopment in downtown Mandan in the area of the railroad diesel contamination. The Department of Health reached a settlement with Burlington Northern Santa Fe Railway, and the money was put into a trust for cleanup of the area. Tremendous progress has been made – new buildings are being constructed, businesses are being bought and sold, and the Department of Health is now looking forward to the closure of the active remediation system in a few years.

The current law requires financial assurance on large projects such as this in case some contamination is not completely cleaned up and a problem shows up in the future. The Department of Health thinks that financial assurance is appropriate in these cases. However, as written, the law does not provide an ending date or time limit for maintaining the financial assurance, meaning it would need to be maintained indefinitely. The proposed change in House Bill 1104 would allow financial assurance to be discontinued when it is demonstrated that there is no longer a significant risk to public health or the environment. In evaluating the potential public or environmental risk of a site the Department may require a complete review of the contaminant, location and extent of the contaminant in the environment, site geology and hydrogeology, exposure pathways and potential use of the property. If the conditions are appropriate and sufficient information has been presented, the Department may

determine that a location poses minimal risk to the public or environment. It is important to note that although financial assurance may not be required it does not relieve the responsible party from future liability associated with the site.

This concludes my testimony. I am happy to answer any questions you may have.

Testimony
House Bill 1104
Senate Industry, Business and Labor Committee
Wednesday, Feb. 9, 2011; 10 a.m.
North Dakota Department of Health

Good morning, Chairman Klein and members of the Senate Industry, Business and Labor Committee. My name is Scott Radig, and I am director of the Waste Management Division of the North Dakota Department of Health. I am here today to testify in support of House Bill 1104, which addresses financial assurance requirements for property subject to institutional controls or responsibility exemptions.

The Department of Health is proposing this amendment to clarify the original legislation from 2005 dealing with requirements for contaminated properties. The purpose of section 23-20.3-03.1 of the Hazardous Waste Management law is to provide a means for liability protection for individuals who would like to continue to use or redevelop contaminated properties or for lenders who would like to finance such ventures. The Department of Health has the responsibility to review and approve all requests for liability protection.

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This concludes my testimony. I am happy to answer any questions you may have.

HB1104 #1