2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1118

# 2011 HOUSE STANDING COMMITTEE MINUTES

**House Government and Veterans Affairs Committee**
Fort Union Room, State Capitol

HB 1118
January 7, 2011
12646

☐ Conference Committee

Committee Clerk Signature Carmen Hart

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

Review of accidents involving state motor vehicle

**Minutes:**

**Chairman Bette Grande** opened the hearing on HB 1118. All were present and there was a quorum.

**Tag Anderson, Director, OMB Risk Management Division,** appeared in support of HB 1118. **Attachment 1.**

**Chairman Bette Grande:** As you note on Page 3 of his handout, he has the amendment drafted there for you. If you look at Page 2 of the bill, Line 26, go the period after the word board he is asking to add "The department may defer to the determinations and recommendations of an agency loss control committee approved by the board," and then he is going to continue into the language "An employee may request further review of the board of any determination or recommendation of the department." See how that works? I only say that because I have 6 freshmen in the room so this is their first opportunity to see how amendments are drafted. Thank you for that teaching moment.

**Tag Anderson:** I have to look at the bill draft manually every two years myself.

**Chairman Bette Grande:** You can see how that would take place there so that you are clear. When he offers that amendment, that is what he is asking us. He is offering it. The committee will discuss it, and we will decide and make motions to put it in at a later date.

**Rep. Bill Amerman:** There will be a Risk Management Review Board that will review accidents with bodily harm or heavy property damage. Then DOT will review all accidents and then possibly there is an agency that has their own board and it could be referred to them to review it. Is that how this is set up?

**Tag Anderson:** Essentially, the larger agencies have effective loss control committees that function already, and they review all of the incidents that potentially could give rise to liability for the state of North Dakota including motor vehicle accidents. For those routine accidents, those agencies review them, determine whether they are preventable or not, and make recommendations. They submit those reports currently to the full board and we

either approve them or disapprove them. For the routine accidents I am not aware of any situation where we have not approved their determinations and recommendations because they are usually quite obvious. That practice would continue except DOT Motor Vehicle wouldn't have to be involved. It would be left to the individual agency except for those involving bodily injury or serious, significant property damage. Those would have to come to the full board.

**Rep. Bill Amerman:** If an employee was reviewed by just his agency for the minor __, where does the appeal go to, the DOT or to your board?

**Tag Anderson:** Currently and as proposed under this language, for minor accidents they would not be able to appeal to the full accident review board. Our powers only are to make recommendations to the employing agency in any event. It really would be sort of a meaningless exercise for us to hear an appeal involving a minor accident when the agency gets to decide ultimately whether they deem it preventable and what corrective action should be taken.

**Rep. Karen Rohr:** What percentage of accidents go to full board review?

**Tag Anderson:** I would estimate that we see probably on average per quarter somewhere in the neighborhood of 40 to 50 accidents in total. Probably two thirds of those are simply our review of the recommendations that have already been made by the larger agencies.

**Rep. Lisa Meier:** Let's say a situation occurs where you have a whiplash that doesn't show up right away, but later on that individual would have problems and how would this apply?

**Tag Anderson:** Hopefully, if there is whiplash involved, it would have been flagged immediately as an accident that involved some degree of personal injury and, therefore, subject to the full board review. If later on we learned that it involved an injury to the neck or the like, I suppose the Risk Management Division could simply flag at that time and submit it to the full board for its review. I guess I hadn't thought of that. I just assumed that most accidents whether there is harm or not is pretty obvious immediately upon the occurrence.

There was no one neutral or in opposition of this bill.

**The hearing was closed.**

**Chairman Bette Grande:** There is a fiscal note. I am not seeing any impact that is going to affect the placement of this bill so we can look at that and we do not have to refer it.

**Vice Chairman Randy Boehning** made a motion to adopt the amendments as presented by OMB. **Rep. Mark Sanford** seconded the motion. A voice vote was taken and the amendments were adopted.

**Rep. Karen Karls** made a motion for a **Do Pass as amended. Rep. Karen Rohr** seconded the motion. Discussion followed.

**Rep. Vicky Steiner:** Are we going to address whiplash?

**Rep. Lisa Meier:** I do have a little reservation on this bill because so much of the time—I have a friend that actually had an occurrence where her situation was at the time of the accident there was no bodily damage. Later on she established severe back pain. I don't know how that would all fit into this.

**Rep. Karen Rohr:** Lisa, what would be your concern? Could you elaborate for us what it is that this policy would impact or how it would impact to her?

**Rep. Lisa Meier:** My concern is for the state employee. What if, for example, at the time there was nothing that was analyzed. Let us say the employee was able to walk away from the accident, maybe didn't go to the doctor, seemed fine, but later on, there is an occurrence of a back injury or a neck injury and that employee would have serious damage. Let's say at that time, then, that employee incurs a lot of cost because of the injury. Then it would be up for review at that time but that is all subject.

**Rep. Karen Rohr:** That depends upon the physician or provider in terms of is the whiplash or the back pain relevant to the accident that occurred depending upon when it occurred basically.

**Rep. Lisa Meier:** Correct.

**Chairman Bette Grande:** Part of the issue that we have come up with is how long do you wait then and how do you leave things open. Wow, what a can of worms. I think injuries that may be coming up and occurring later is something that there may be policy and direction that could be looked at probably from Workers' Comp. Maybe they would be able to offer risk management that directive that need be. Tag, what is significant property damage and where is defined?

**Tag Anderson:** I actually anticipated that question. I thought about defining in the legislation itself but the problem is that you can have a fairly minor accident in the sense that we would all recognize it as being minor but the actual dollar value would be quite high given the location on the fender. Some of the fenders you replace now are $1,000. Likewise, you have a serious rollover where the damage to the vehicle itself is virtually nil. My thought was to leave it to the operative construction placed upon by the specialist at Motor Vehicle—sort of know it when you see it.

**Chairman Bette Grande:** I guess the concern for me is do you think you need it spelled out? You are the one who has to deal with this on more of the daily basis type thing where if you and the experts that are working on this understand what that is.

**Tag Anderson:** With input from this management, Highway Patrol, and DOT, I think cooperatively we can have an understanding of what it is the employees within Motor Vehicle Division should be flagging.

**Chairman Bette Grande:** My concern would be as you start to do that and quality of cars or things that come up change, we are constantly coming back to Code and trying to readdress a definition that may or may not need to be in Code.

**Tag Anderson:** That is why I specifically decided to not define it. You could have a pretty serious one that is very low dollar and a minor one that is very high dollar depending on the vehicles and where the exact location of the impact occurs.

**Chairman Bette Grande:** That lends me to the thought of the definition of bodily injury. Bodily injury—if I am in an accident and the only thing that happens is the windshield shatters and I end up with some cuts, there is bodily injury all the way down to a hidden whiplash. Again, we are trying to define a whole lot of things in Code where is better left to those that have these kinds of definitions and ideas in place for policy in their own particular rulemaking.

**Tag Anderson:** We do have rulemaking authority as well. I envision that anytime there is any personal injury even if it is a mere cut from glass, we would be reviewing it. Particularly given Rep. Meier's concern, seemingly minor things can later develop into larger things.

**Rep. Gary Paur:** It would appear the purpose of this bill is to enhance the safety. It isn't a matter of medical liability or anything like that. It is a program to enhance the safety, right?

**Tag Anderson:** That is exactly right. Our determination has no bearing on compensability at Workers' Comp., liability against the state, or a third party. Our review is simply one of reviewing the accident to determine how it happened and whether it was preventable, and if it was preventable and the state employee is the person that was negligent, what do we do to make sure that accident doesn't happen again. We make recommendations to the employing agency. Typically, defensive driver training and the routine accidents, but we can also ask the agency to do a medical exam if we believe, for example, eyesight related. We can even make recommendations that the employee not be allowed to drive state fleet vehicles if it was a repeat occurrence and it was a serious accident.

**Rep. Karen Rohr:** My only comment about that individual, Rep. Lisa, would be that she was assured that there was an appeal process in place if she didn't feel her needs were being met, and that is not what this bill is about, correct?

**Tag Anderson:** Correct.

**Rep. Glen Froseth:** If you review a case, do you close that case and if you do, what is your process that needs to be reopened and reviewed?

**Tag Anderson:** Under the administrative rules that have promulgated governing the accident review board, an employee has the request for the review if they disagree with our assessment. We do, in fact occasionally, take a second look at it. In fact we have taken a second look at it and agreed with the employee that it wasn't their fault.

**Vice Chairman Randy Boehning:** What is the timeline? How long does it take to get this process through?

**Tag Anderson:** We meet quarterly or as needed. If there was a very serious accident, I believe we would expedite our normal process and review that accident in a timely fashion. Most accidents don't require anything to be done immediately and, therefore, we review them quarterly.

**Rep. Lonny Winrich:** Just a comment on Rep. Meier's concern later injuries developing. That can be a problem, but I don't see that this bill changes anything with respect to that. If it is going to be a problem, it is already a problem under the current practice. If there is a need to address it, and I think Rep. Froseth's question brought out the point that it can be addressed by reopening of the case that should solve the problem.

**Rep. Ron Guggisberg:** If we don't statutorily determine what a minor accident is, who is responsible?

**Tag Anderson:** That is determined by the board in cooperation with Motor Vehicle Division.

**Rep. Ron Guggisberg:** I am wondering if a snowplow driver gets in an accident today, and he doesn't think it is major but down the road it is determined it is major. Should he tell his supervisor or if he has a question on if this is major or minor, who does he ask?

**Tag Anderson:** Employees are required, generally, to file an incident report with Risk Management which then is generated and transmitted to DOT Motor Vehicle regardless of how minor they believe the accident to be. In fact, we often get incident reports from state employees that backed into a post and they can't detect any damage but yet they still filed the claim. On your example of a snowplow, it is our expectation and DOT's expectation as well that anytime a snowplow operator makes contact with another vehicle or object, they must absolutely file an incident report so that it would be flagged and reviewed. DOT is one of the larger agencies that actually has their own internal loss control committee so that would be reviewed internally by them.

**Rep. Ron Guggisberg:** I am a fire captain so I run into this all the time. People ask me how I became a fire captain. I always say because I was a horrible driver. That is something we run into. Something minor happens. Well, is this major? Do we have the call the safety committee in?—things like that. That is why I asked.

**Tag Anderson:** Certainly snowplows are big, heavy dangerous pieces of equipment, and we expect to be reported and reviewed.

**Rep. Lisa Meier:** What about like for insurance? Let's say if an employee is at fault of the accident, does it affect their insurance that they have or the state?

**Tag Anderson:** It depends whether they are driving a state fleet vehicle or not and the circumstances under which they are driving. If they are driving a state fleet vehicle, it would be reported to State Fleet Risk Management. Risk Management would cover their negligence so long as they were operating the vehicle within the scope of their employment. Their insurance company would never even know the accident happened. If they were driving their personal vehicle but they were forced to drive their personal vehicle

because a state fleet vehicle wasn't available, we would also be primary in that situation and cover their liability that would arise from the operation of their own vehicle again so long as it was within the scope of the employment. If a state employee, however, wants to drive their own personal vehicle because they want to do some adjunct personal activity and their agency approves that, their insurance would be primary even while they are driving to and from.

**Rep. Karen Rohr:** This is a tag on to Rep. Guggisberg. Taking that one step further—if this situation occurs, then the individual has to report whether they feel they were injured or not, but is there a baseline assessment done by a healthcare provider at the time? Is that required in case they would come back two to three, four to six weeks later, they would have a baseline in which to determine the differences?

**Tag Anderson:** Risk Management would require that there would be an incident report filed. Should there be any indication that there may be personal injury as well, they would have to file a workers' comp. report as well. It is fairly unlikely that there would ever be an injury that didn't somehow get flagged and appropriately funneled into the appropriate process.

**DO PASS AS AMENDED, 13 YEAS, 0 NAYS, O ABSENT. REP. KAREN KARLS WILL CARRY THE BILL.**

# FISCAL NOTE

Requested by Legislative Council
12/21/2010

Bill/Resolution No.: HB 1118

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

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

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

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

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

There is no fiscal impact from HB 1118. Activities under this bill are already performed by members of the Accident Review Board and Department of Transportation employees as outlined in Chapter 4-11-01 of the North Dakota Administrative Code.

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

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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

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

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

11.8100.01001
Title.02000

Prepared by the Legislative Council staff for
House Government and Veterans Affairs
Committee

January 7, 2011

VRC
1/11/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1118

Page 2, line 26, after the underscored period insert "The department may defer to the determinations and recommendations of an agency loss control committee approved by the board."

Renumber accordingly

Date: 1-17-11
Roll Call Vote #: 1

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**
**BILL/RESOLUTION NO.** 1178

House GOVERNMENT AND VETERAN AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.8100.01001

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Boehning Seconded By Rep Sanford

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Bette Grande | | | Bill Amerman | | |
| Vice Chairman Randy Boehning | | | Ron Guggisberg | | |
| Glen Froseth | | | Lonny Winrich | | |
| Karen Karls | | | | | |
| Lisa Meier | | | | | |
| Gary Paur | | | | | |
| Karen Rohr | | | | | |
| Mark Sanford | | | | | |
| Vicky Steiner | | | | | |
| Roscoe Streyle | | | | | |
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Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote
amendment accepted

Date: 1-7-11

Roll Call Vote #: 1

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**
**BILL/RESOLUTION NO.** 1178

House GOVERNMENT AND VETERAN AFFAIRS 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 Karen Karls Seconded By Rep Karen Rohr

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Bette Grande | X | | Bill Amerman | X | |
| Vice Chairman Randy Boehning | X | | Ron Guggisberg | X | |
| Glen Froseth | X | | Lonny Winrich | X | |
| Karen Karls | X | | | | |
| Lisa Meier | X | | | | |
| Gary Paur | X | | | | |
| Karen Rohr | X | | | | |
| Mark Sanford | X | | | | |
| Vicky Steiner | X | | | | |
| Roscoe Streyle | X | | | | |
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Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep Karls

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

**REPORT OF STANDING COMMITTEE**

**HB 1118: Government and Veterans Affairs Committee (Rep. Grande, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1118 was placed on the Sixth order on the calendar.

Page 2, line 26, after the underscored period insert "The department may defer to the determinations and recommendations of an agency loss control committee approved by the board."

Renumber accordingly

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1118

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Government and Veteran's Affairs Committee**
Missouri River Room, State Capitol

HB 1118
March 4, 2011
14943

☐ Conference Committee

Committee Clerk Signature Katie Oliver

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

Relating to accidents involving state motor vehicles which are reviewed by the risk management accident review board or the department of transportation.

**Minutes:** Testimony Attached

**Tag Anderson**: See attached testimony #1.

**Chairman Dever**: Right now any accident would have to be reviewed.

**Tag Anderson**: That is correct.

**Chairman Dever**: What is the level now at which it must be reported to the police?

**Tag Anderson**: State employees are required to report anything that happens to the police.

**Chairman Dever**: Routine accident is an oxymoron.

**Tag Anderson**: The most frequent thing that we see is people backing up and hitting something, driving a car that they are not familiar with. We just feel that is something that the DOT can deal with.

**Chairman Dever**: Was this amended in the House?

**Tag Anderson**: DHS has a loss control committee and the amendment would show focus that they have the committee and would be able to handle that within their own channels.

**Chairman Dever**: What would be the determination of significant property damage?

**Tag Anderson**: Trying to put a monetary value on it. It is best left to the judgment of people who investigate.

**Senator Berry**: This lets the DOT review it and if they felt for some reason that is needs to be investigated by the full board then it would, yes.

**Tag Anderson**: That is exactly right.

**Senator Nelson**: There are other things that can happen that aren't accidents. In some cases they are not your fault at all, do you have a sheet that lists what you don't investigate?

**Tag Anderson**: If the car is being moved then they are reviewed but when things like a rock and a semi happen we see it as non preventable.

**Senator Berry**: How many agencies have their own review for accidents?

**Tag Anderson**: Most of the larger entities do, there whole gamut of potentials exposures.

Closed public hearing.

A motion for a do pass was made by Senator Cook with a second by Senator Nelson. There was no further discussion, roll was taken and the motion passed 7-0 with Senator Berry carrying the bill to the floor.

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

## 2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
## BILL/RESOLUTION NO. 118

Senate Government and Veterans Affairs 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 Cook Seconded By Nelson

| Senators | Yes | No | Senators | Yes | No |
|---|---|---|---|---|---|
| Chairman Dever | X | | Senator Marcellais | Y | |
| Vice Chairman Sorvaag | X | | Senator Nelson | X | |
| Senator Barry | Y | | | | |
| Senator Cook | Y | | | | |
| Senator Schaible | Y | | | | |

Total (Yes) 7 No 0

Absent _____

Floor Assignment Sen Berry

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

## REPORT OF STANDING COMMITTEE

**HB 1118, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1118 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1118

Attachment 1

Testimony on HB 1118
Tag Anderson, Director
**OMB Risk Management Division**
January 7, 2011

Chairman Grande, and members of the House Government and Veterans Committee, my name is Tag Anderson. I am the Director of the Risk Management Division of OMB. I appear today in support of HB 1118.

The Risk Management Accident Review Board was statutorily established in 1999 and directed to review accidents involving state owned or leased motor vehicles. The purpose of the Board was to review accidents and make recommendations to hopefully reduce the overall numbers accidents with state vehicles.

The current statutory language is broad and requires the Board to review all accidents that could possibly have been prevented. However, experience has shown that for the vast majority of accidents, the determination of whether the accidents was preventable and what recommendations are appropriate as corrective measures is not an inquiry that requires a deliberative body with expertise from the Highway Patrol, Risk Management, and the Department of Transportation. This bill would streamline the process with DOT internally reviewing and addressing the more routine accidents that we see with the Board reviewing only those more serious accidents where injuries or significant property damage results. Consistent with current practice, the Board would also be available to review those cases where a state employee disputes a determination that the accident was preventable.

Finally, we do offer an amendment to this bill to clarify a concern that was raised. Currently, many larger agencies have effective internal loss control committees that review incidents including motor vehicle accidents. The Board has the ability to exempt these accidents from having to be reviewed by the Motor Vehicle Division at DOT. The proposed amendment would remove any ambiguity over whether this process could continue and specifically allow for agency review where the Board determines the agency has an effective loss control committee. Accidents involving bodily injury or significant property damage would continue to be reviewed by the Board.

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

Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1118

Page 2, line 26, after the underscored period insert "The department may defer to the determinations and recommendations of an agency loss control committee approved by the board."

Renumber accordingly

Testimony on HB 1118
Tag Anderson, Director
**OMB Risk Management Division**
March 4, 2011

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The current statutory language is broad and requires the Board to review all accidents that could possibly have been prevented. However, experience has shown that for the vast majority of accidents, the determination of whether the accidents was preventable and what recommendations are appropriate as corrective measures is not an inquiry that requires a deliberative body with expertise from the Highway Patrol, Risk Management, and the Department of Transportation. This bill would streamline the process with DOT internally reviewing and addressing the more routine accidents that we see with the Board reviewing only those more serious accidents where injuries or significant property damage results. Consistent with current practice, the Board would also be available to review those cases where a state employee disputes a determination that the accident was preventable.

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

Thank you.