

**2015 SENATE JUDICIARY**

**SB 2071**

# 2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2071  
1/7/2015  
21736

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Minutes:

Attachment #1

Ch. Hogue: We will open the hearing on SB 2071.

Gunner laCour, Director, ND Racing Commission: (see attachment #1).

Sen. Grabinger: What is the average size of a bond that's requested by the Racing Commission; is it the same amount as the letter of credit.

Gunner laCour: They vary based on the level of wagering that each company does; dependent on the tax revenue that we receive each month. If we received \$10,000 in tax revenue from a company each month that would be one of our larger companies; it would probably be a minimum of \$50,000 bond. Our largest bond is \$100,000 and there is a company that is smaller that goes down to \$5,000 because they don't have that large of an operation. The rest of them are not less than \$25,000.

Ch. Hogue: How come it doesn't specify an "irrevocable letter of credit"?

Gunner laCour: I probably should have said irrevocable letter of credit when I drafted this. They are revocable but only on notice. So for example, the ND Racing Commission would give a 30 day notice prior to any entity that is with our bond or our letters of credit, deciding to revoke that bond or letter of credit. That's in our bonds, and that would be similar with any letter of credit as well.

Ch. Hogue: Do you have some type of administrative rule that allows you to specify the terms of the bond.

Gunner laCour: We have to approve any bond that's provided to us. So if the terms aren't acceptable on their paperwork (we have forms that we generally use for the bond) after my review of them, I will approve or disapprove of them based on whether I think the terms are acceptable. Generally, they copy and paste our language into their form.

Ch. Hogue: Is 30 days enough for you to decide whether you want to draw on that letter. Why the 30 days.

Gunner laCour: The 30 days is pretty much a standard term. Sometimes it can be longer, it could be 60, 90 or something of that nature. It is generally enough time for us to decide whether we are going to draw on it. If they were revoking the letter of credit and if they were up-to-date on their taxes, the only issue that we would have to face would be that they need to get another bond in place or another letter of credit in place, before they could proceed on to the next month of wagering. If they don't, then they stop. If they were late on their taxes, say it was the 29<sup>th</sup> day before that became effective, if they have not remedied that situation, then I would simply call the bond at that time, or the letter of credit, whichever they have.

Ch. Hogue: So is it part of your process that you have to approve the bond or letter of credit.

Gunner laCour: Yes.

Ch. Hogue: So I can't come to your office and say here's a letter of credit from Kelly Armstrong.

Gunner laCour: That wouldn't fly. I review the terms, review the entity providing it. I like the letters of credit because I know that there is cash collateral, but that ties up cash for some companies and they like to do it with a bond. I think if we have the option, it helps us work through some of those issues with many smaller companies.

Sen. Luick: Would that change of the "irrevocable" need to be in the bill.

Gunner laCour: They often refer to irrevocable letters of credit, but they are often times actually revocable. So that makes me concerned that if that is put in there, that we would be asking them for something that they don't actually provide. The title of the document may be "irrevocable letter of credit" but in the terms of the document it may say that we can on 30 days' notice revoke this letter of credit. I would just be concerned that the technical language of the statute would be specifying something that isn't something that anyone provides.

Ch. Hogue: How about the language, "letter of credit on terms approved by the state", because you have in the next line there, "letter of credit payable to the State with good security as approved by the Commission". So that gives you the discretion or the latitude to approve the terms of the letter.

Gunner laCour: Exactly. If that was language that you felt would cover that better, I don't think that would be a problem. As a matter of course, I always review the terms of every letter of credit for their acceptability to the Commission.

Ch. Hogue: I think that "as approved by the Commission" gives you that discretion.

Gunner laCour: Yes.

Sen. C. Nelson: So are you accepting letters of credit now. It sounds like you are accepting letters of credit now; it sounds like you are even though you aren't supposed to.

Gunner laCour: Yes, that is the problem. As I went through and reviewed our processes and procedures, I went through our regulations and statutes to make sure that we were doing what we were supposed to. They wanted a lawyer to review these items, which I did. When I reached this point, which was sometime this fall, I figured out that this was not technically in line with the statute. But I understand why people had gotten confused in the past and thought that these were acceptable, so I wanted to submit this to the legislature to see if we could continue this practice because I think it is in the best interest of the Racing Commission. We had already erred at that point.

Sen. C. Nelson: Are there any other instruments that might be used other than bond or letter of credit. I am trying to look and see if there is a more inclusive word that could have gone in here instead delineating bond or letter of credit, or is there something else.

Gunner laCour: I don't know of any instrument that could be used instead of these two. These are the two forms that I am aware of that provide this type of security.

Ch. Hogue: Well it could be amended to say bond, letter of credit or other instrument satisfactory to the Commission.

Gunner laCour: One of the concerns that I have with getting too broad, is that, for example, I was asked at one point, whether the Commission would accept a lump sum of money like you do with a letter of credit, but that we would hold it in an account and we would essentially use that as our letter of credit in a separate account. Well, when I went to the AG's office with some of this, they said that you need a third party arbitrator to decide whether our call is valid rather than the Racing Commission calling the bond/letter of credit and we deem it to be valid, so we are taking the money that you gave us. You need the 3<sup>rd</sup> party in the middle and I don't know that any other financial instrument gives you that sort of 3<sup>rd</sup> party arbitrator that a letter of credit or a bond does.

Ch. Hogue: As a policy matter why would we want to involve a 3<sup>rd</sup> party? If you, as the Commissioner, have decided that the letter needs to be called, then you call it. Then they have some administrative or judicial process to challenge that. But why would you want to interject a bank or a third party.

Gunner laCour: The AG, during our discussions, likened it to us being the plaintiff and the jury in the case where we were complaining that they had not paid us and then deciding that that they in fact owed us that amount. They did not think it was procedurally proper not to have an independent 3<sup>rd</sup> party involved. I pushed to try and do this because I think that having a lump sum of money in my account would be great to be able to be able to just pull from, but they felt that it was better to have this 3<sup>rd</sup> party available to make an independent determination.

Ch. Hogue: A bank isn't making an independent decision when they get your letter that says you are drawing, they don't have discretion to turn that down.

Gunner laCour: We essentially need to meet the terms of the letter of credit. So if I sent them a call and said that I was calling on their letter of credit because they had not paid something other than their taxes, something that wasn't designated in the letter of credit or the bond, then they could essentially turn down that call because it was not a covered risk essentially under that letter of credit or bond.

Sen. Armstrong: Well, if you really wanted to be the plaintiff, the judge and the jury, just look at the DOT statute and we are comfortable doing it in other areas.

Ch. Hogue: It's not that. You're holding the money and you are going to forfeit it to the Commission, they still have the right to challenge that.

Gunner laCour: Yes.

Ch. Hogue: But you are making sure you get paid.

Gunner laCour: Believe me, I liked the idea but I got turned down and when the AG said it, I had to abide by that decision.

Ch. Hogue: Well you should have asked our Committee, because we probably wouldn't have turned you down.

Gunner laCour: I will keep that in mind for next time.

Ch. Hogue: Further discussion. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing on SB 2071. What are the committee's wishes?

Sen. Grabinger: I move to approve SB 2071.

Sen. Luick: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Luick



**REPORT OF STANDING COMMITTEE**

**SB 2071: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2071 was placed on the  
Eleventh order on the calendar.

**2015 HOUSE POLITICAL SUBDIVISIONS**

**SB 2071**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Prairie Room, State Capitol

SB 2071  
3/5/2015  
24376

- Subcommittee  
 Conference Committee

Amanda Muscha

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

Relating to allowing North Dakota racing commission licensees to utilize letters of credit as security.

### Minutes:

Testimony 1

Chairman Klemin: Opened hearing on SB 2071

Gunner LaCour: Testimony 1

Representative Beadle: What level of dollar amounts are we talking about?

Gunner LaCour: We start around 25,000 to 100,000. There are smaller ones that don't make as much.

Chairman Klemin: I am going to assume the racing commission is going to require an irrevocable letter of credit.

Gunner LaCour: Yes.

Chairman Klemin: It doesn't say that in the bill and I am not proposing to amend that to put it in there but there are irrevocable and revocable letters of credit. In addition my experience is it is usually up to the bank issuing the letter of credit as to whether they will require collateral at all. They may not require full cash collateral but that's not stated in this bill either. I would think the letter of credit issued by a bank in good standing would be sufficient whether the bank itself required full cash collateral for that letter of credit wouldn't be up to the racing commission to tell the bank what kind of collateral they need if any. Would that be correct?

Gunner LaCour: They didn't amend for an irrevocable letter of credit either because no matter what letter of credit or bond I receive I will look at the terms of that and decide if they are appropriate for the racing commission on most of them. Most of them are termed irrevocable letters of credit but almost all of them contain a clause where upon notice the surety can tell you that they are pulling the letter of credit in 30 days which gives them (the racing commission and the entity) an opportunity to go out and obtain another letter of

credit. We have never had that happen but it is something they can do. They have the opportunity to notify the racing commission and the entity that their bonding that they are pulling the bond. In that case we would do the same thing. As far as the collateral that they take in those cases I have found that we have been dealing with they ask for full cash collateral but there may be cases where they don't, but as you say the bank may be as good as any surety.

Representative Becker: The racing commission covers all of the tracks in North Dakota?

Gunner LaCour: We do regulate the two tracks in the state as well as regulating all the account deposit wagering companies in simulcast wagering in the state.

Representative Becker: I am aware of the struggles the racing commission has come across and does this make it easier for them to attract a bond or a financial instrument from the bank?

Gunner LaCour: Yes it will.

Representative Maragos: Move a do pass

Representative Oversen: Second

A Roll Call Vote Was Taken: Yes 12, No 0, Absent 2 (Kelsh, Strinden)

Motion Carries

Representative Maragos will carry the bill

Date: 3/5/2015  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2071

House Political Subdivisions Committee

Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By maragos Seconded By oversen

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	—	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	—	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 12 No 0

Absent 2 (kelsh, strinden)

Floor Assignment maragos

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

motion carries

**REPORT OF STANDING COMMITTEE**

**SB 2071: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2071 was placed on the Fourteenth order on the calendar.**

**2015 TESTIMONY**

**SB 2071**

Senate Bill 2071  
ND Racing Commission  
Gunner laCour, Director  
January 7, 2015

64<sup>th</sup> Legislative Assembly  
Senate Judiciary Committee  
Senator David Hogue, Chairman

Over the past two bienniums, the North Dakota Racing Commission has focused on developing and refining its regulatory processes and procedures, including a review of all statutes and regulations to ensure conformity. As Director, I have made this a focus of my efforts during my tenure. In doing so I have run across issues requiring minor changes in operations or areas where our regulations needed revision to reflect today's best practices. This bill represents an instance where I have identified discrepancies between our operations, statute and best practices necessary for the continued development of the Racing Commission.

The Commission is required by statute to receive a bond to cover unpaid taxes for any entity conducting wagering under a North Dakota license. The Commission has received such a financial instrument for every licensed entity; however, in some cases, particularly in recent years, a letter of credit has been

provided rather than a bond as a result of the similarity of the two financial instruments.

Generally speaking, a bond is issued by a surety and essentially acts as insurance for the risks covered. The entity providing the bond pays a monthly or yearly fee to keep the bond in place. A letter of credit also functions as insurance for the risks covered, but is usually issued by a bank and requires full cash collateral to be provided. For the purposes of the Commission, a bond and letter of credit function identically.

The other significant difference between a bond and a letter of credit is that in today's market a letter of credit is easier to obtain. The reason is simply that the bank, as the insurer, is not taking any risk as they have collateral to offset any call. The surety, on the other hand, relies on the fact that a bond may not be called and hopes that the sum of all fees received for these operations exceeds any losses due to calls. Thus, a small company looking to get started may not have sufficient history to qualify for the riskier bond but will be able to easily obtain a letter of credit with cash collateral.

The North Dakota Racing Commission, while licensing several well established wagering entities, has built the current level of business and much improved tax revenue on the licensure and support of new and up-and-coming

companies. In fact, the companies which produce the majority of our tax revenue began their operations in North Dakota.

In order to continue to leverage our strength as a business environment favorable to start-up companies, it is critical that letters of credit be an acceptable form of surety. To do otherwise would make it difficult, if not impossible, for these companies to obtain the necessary documentation for licensure, through no fault of their own. Further, neither the Racing Commission nor the state is less protected by accepting letters of credit. In my personal opinion, the full cash collateral provided by a letter of credit seems safer than relying on the financial soundness of a surety as is the case with a bond. Therefore, the Commission is asking the legislature to allow for this minor change to statute to facilitate the continued growth of the North Dakota racing industry.

For these reasons the North Dakota Racing Commission put forward and supports this bill.

SB 2071  
3/5/2015

1.1

Senate Bill 2071  
ND Racing Commission  
Gunner laCour, Director  
March 5, 2015

64<sup>th</sup> Legislative Assembly  
Senate Judiciary Committee  
Representative Lawrence Klemin, Chairman

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