

1999 HOUSE POLITICAL SUBDIVISIONS

HB 1251

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1251

House Political Subdivisions Committee

Conference Committee

Hearing Date 1-21-99

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|----------|
| 1 | | x | 0.6-28.6 |
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| | | | |
| Committee Clerk Signature <i>Sam Dever</i> | | | |

Minutes: BILL SUMMARY: Relating to imposition of assessments by townships against property in the township for road and bridge degradation.

Chairman Froseth called the hearing to order with those present: Chairman Froseth, Vice Chair Maragos, Rep. Delmore, Rep. Disrud, Rep. Eckre, Rep. Ekstrom, Rep. Glassheim, Rep. Gunter, Rep. N. Johnson, Rep. Koppelman, Rep. Niemeier, Rep. Rose, Rep. Severson, Rep. B. Thoreson, and Rep. Wikenheiser.

Rep. DeKrey, Dist 14, : testified in support of this bill and brought it before committee because in my district of Kidder County, we have had problems with road repair costs not getting paid by those parties responsible for the damage. I also support the amendments brought with the bill.

Ken Yantes, N.D. Township Officers Assoc. board member,: 1.8 testified in support of bill and handed out amendments. (See attached testimony)

Rep. Delmore : 5.4 asked for explanation.

Ken : This bill gives authority to go directly to the one that caused the damage, so people in township won't be assessed for damages they should not be responsible.

Rep. Delmore : Mr. Chairman, I don't see this in the bill?

Chairman Froseth : 6.0 How do we make sure the landowners don't pay for all the damages?

Ken : In line 15, it says, at the annual meeting the township may impose. The majority of the electors will make the decision who and where it goes.

Chairman Froseth : e.g. A gravel company hauls heavy loads over township roads and ruin the roads. What is the gravel companies responsibility to repair the damage?

Ken : 7.3 In my opinion, the deal with the gravel company, prior to haul, you should have established an agreement, after inspection of the road, the gravel companies should fix the roads to prior condition. They should get a contract. The problem has been that the townships don't have the contract before starting.

Rep. Ekstrom : 7.7 I think you need to clarify accelerated damage as opposed to normal wear and tear. In a sense, it should be a violation beyond what is normal. How do you prove a direct cause without traffic counts; and also not to limit commerce?

Ken :8.4 There are 56,000 miles of township roads. For the cost of maintenance, there is money other than from general public, to fund this. What we want to address, is have an avenue to get the people who know, and we know, have done great damage, and get them to pay for repairs.

Rep. N. Johnson :10.1 Who determines the amount of damage; and what if the person being accused says that is not right? Is there an appeal process or do courts have to handle it.

Ken :10.6 In township government, the affected parties all come together in the annual meeting and talk about these issues. I don't know if township government has an organized appeal process.

Rep. Wikenheiser : gave an example in his county and the companies hauling promise everything, but then leave and don't fix anything and nothing is done.

Ken : In unorganized townships, the counties do have the responsibility to take over township responsibilities.

Rep. Koppelman : 12.9 Do townships have the authority to regulate road restrictions?

Ken: We do., on the ones they control. 56,227 miles is the exact count.

Rep. Delmore : Are most of these gravel roads? What is the cost assessed?

Ken : 13.9 The cost depends on the degradation amount.

Rep. Delmore : How are you going to decide how much damaged was caused by wear and tear, or how heavy the trucks, etc.

Ken : Generally, by the time of the annual meeting, the repairs have been done, so the price of damage is known for that infraction.

Vice Chair Maragos : How many townships in N.D.?

Ken : 14.8 There are 1800 townships in N.D., with 1355 being organized and the rest not. Most of the unorganized are in western N.D.

Rep. Severson : The 1% gas tax you receive, what % is used for road maintenance?

Ken : The N.D. Century Code spells out that counties must match what we get. We can't use it for anything else.

Rep. Severson : Will there be a citation from the sheriff to the party who did the damage, or is it at the discretion of the township board?

Ken : 16.0 According to the legislation before me, I see no such citation.

Rep. Severson : Who determines that?

Ken : The electors of the annual meeting.

Vice Chair Maragos : I have to assume, from what we've heard today, that if there are disagreements in the townships as to assessments; does this spill into the courts. If a person held liable for damages, disputes and takes this to court; has this ever happened?

Ken : I really haven't heard of it going that far.

Rep. Niemeier : I am wondering about the enforcement issues of this suggestion.

Ken : 17.7 In the bill, it speaks about enforcement. When anything goes to court, anything can happen.

Bryan Hoimes, N.D. Township Assoc. : If I can help clarify anything and go over the amendments, I will do what I can. 18.4 - 22.0 goes on to explain.

Rep. Delmore : 22.5 Do you see any problems in making the assessments on the people who are doing the damage as well as enforcing it? What are the legal problems? Or do you feel this is not even a problem?

Bryan : 22.9 Everyone who has property in a township has the right to come to the annual meeting. The only ones who can vote, are the one who actually live there. They are faced with the problem. The enforcement side, is addressed on page 2, which gives the township the right to put it on their taxes.

Rep. Ekstrom : Why don't you feel this can be handled by a citation?

Bryan : This would be the best, but to enforce weight limits, the highway patrol is the only one who can enforce this. You have to catch the person in the act. This is hard, when you know they did the damage, but you couldn't get the highway patrol there fast enough to see them.24.5

Rep. N. Johnson : 25.6 What happens if the person doing the damage is not a resident of the township, but goes through the area while doing business?

Bryan : We would not be able to do anything with that person, because they do not own property in the township. We can require a road contract prior to doing business in township.

Rep. Niemeier : 26.7 On pg.2, #2, "or the board of supervisors." Is it a vote or discussion in that section.?

Bryan : If a special meeting is called, there are provisions in law. This says there must be two weeks notice. 28.3

Hearing no more testimony on the bill, Chairman Froseth closed the hearing on HB 1251.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1251-a

House Political Subdivisions Committee

Conference Committee

Hearing Date 1-28-99

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-----------|
| 2 | | x | 36.0-43.0 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Pamalever</i> | | | |

Minutes:

Chairman Froseth : opened consideration of HB 1251.

Rep. Delmore : I think this bill creates more problems then it solves.

Chairman Froseth : I wouldn't want to be in a room with seven township landowners trying to decide how the assessments are going to spread among each other. A big problem.

Rep. Glassheim made a motion DO NOT PASS and Rep. B. Thoreson seconded the motion.

ROLL CALL VOTE: 14 YES and 0 NO and 1 ABSENT. Rep. Niemeier will carry the bill.

Amendments to House Bill No. 1251

update

Page 1, line 3, after "degradation" insert "or injury"

Page 1, line 8, replace the first comma with "or", remove the second comma

Page 1, line 9, remove "and construction"

Page 1, line 13, after "degradation" insert "or injury"

Page 1, line 16, replace the first comma with "or", remove ", and construction"

Page 1, line 17, after "bridges" insert "caused by degradation or injury"

Page 1, line 23, replace the first comma with "or", replace the second comma with a period.

Page 1, remove line 24

"caused by degradation or injury."

renumber accordingly

Date 1-29-99

Roll call vote # _____

Please type or use black pen to complete

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1251

House POLITICAL SUBDIVISIONS Committee _____

- Subcommittee on _____
 - Conference Committee
- } Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Glassheim Seconded By Rep. Thoreson

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------|---------------------|----|------------------|-----|----|
| Chairman Froseth | / | | Rep. Wikenheiser | / | |
| Vice Chair Maragos | / | | | | |
| Rep. Delmore | / | | | | |
| Rep. Disrud | / | | | | |
| Rep. Eckre | / | | | | |
| Rep. Ekstrom | / | | | | |
| Rep. Glassheim | / | | | | |
| Rep. Gunter | / | | | | |
| Rep. Johnson, N | / absent | | | | |
| Rep. Koppelman | / | | | | |
| Rep. Niemeier | / | | | | |
| Rep. Rose | / | | | | |
| Rep. Severson | / | | | | |
| Rep. Thoreson, B | / | | | | |

Total 14 0
(Yes) (No)

Absent 1

Floor Assignment Rep. Niemeier

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE (410)
January 28, 1999 4:48 p.m.

Module No: HR-18-1409
Carrier: Niemeier
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1251: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends DO NOT PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1251 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

HB 1251

1-21-99

Testimony for House Bill No. 1251
House Political Subdivision Committee
Prepared by Ken Yantes
North Dakota Township Officers Association

Mr. Chairman, members of the committee, I've served as a board member of NDTOA for almost 20 years, I'm also on the legislative committee. During my tenure I've heard many of our township officers across the state say our roads are being ruined for whatever reason and we as officers have no way to recuperate the cost of restoring roads that have been damaged by property owners other than through indirect means, for example, in NDCC 24-12 it lays out what causes an injury to public highways, and some remedies for those who cause damage to property under the care of townships. In Chapter 58 of the NDCC there are no references to the power of boards of township supervisors or electors concerning damage or degradation of roads and bridges.

We feel that the process of assessing property owners is of such great concern that the electors should be the ones in a township who approve the assessment not just the board of township supervisors. This bill reflects that idea in that section 1 of the bill references the powers of the electors in a township. Section 2 of the bill adds the necessary language which provides for the procedure needed to follow, the apportionment of assessments, notification, and remedy for non payment of the assessment.

There are a few problems with this bill however and we think some clarification should be given in certain areas. The use of the word "construction" throughout the bill refers to in my opinion construction of a road. Townships currently have the authority to "build" roads. Since this bill deals with degradation of existing roads the word "construction" should be removed throughout the bill. The term "degradation" is also unclear.. roads and bridges may be degraded by natural causes, misuse, or injury. If the term "degradation" can be defined as to what it actually means it will go along way in clearing up this question. Since its unclear we feel that when the term "degradation" is used that it should be followed by "or injury" since the intent of this bill is to provide a means to maintain or cause to be repaired roads and bridges which have been injured. Mr. Chairman, I've prepared some amendments which I feel will help clarify this bill. After these amendments are adopted I can fully support the intent of this legislation.