

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER
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DESCRIPTION

2042

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2042

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2042**

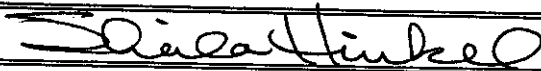
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 9, 2007

Recorder Job Number: **#810**

Committee Clerk Signature



Minutes:

**A BILL for an Act to amend and reenact section 65-01-15.1 of the NDCC relating to the workers' compensation presumption of compensability for firefighters and law enforcement officers; and to provide for application.**

**Jen w/Legislative Council & Economic Development**

**Jen:** 2042 & 2043 both come out of the activities of the interim committee and both closely related. 2042 is housekeeping, 2<sup>nd</sup> page line 14-18 and also an application provision.

**Section 65.01 See Senate Bill**

Neither in Favor or Opposition.

Says if you have anyone of these conditions, page 1, line 9-14 and you've met our requirements, employed long enough, not using tobacco, meeting necessary physical examination requirements. Then the presumption is that if you come down with one of these disorders that it was work related. Context of info.

Had a full-time firefighter and during her required physical examination, her test results indicated that she had a heart condition, one of these covered conditions, so unable to work, need further testing and was able to get into testing because of cancellation was able to get in

quickly, and was determined as a "false positive," which means that the specialist that evaluated her medical condition and something was going on with your heart, turns out everything is fine and you can go back to work. What she did with that period of time, she was unable to work. She will testify this morning on order of events that took place.

Leads to language on page 2, line 14-18. **See Bill**

"In case of a false positive result, neither the coverage of the condition nor the period of disability may exceed fifty-six days." What that is is 2 -28 day cycles. That means that the firefighter or law enforcement officer should have gotten into the specialist to determine the initial positive test was false or truly a positive.

Section 2 – would not apply to the firefighter heard from, but apply from that day forward.

Q?

**S. Klein:** The issue was the firefighter went for her annual physical, doctor said she had a heart attack, you can't go to work, but during that period of time she was denied benefits?

**Jen:** That's correct. There was an application and it was denied. The second bill talks about the application procedure.

**S. Klein:** When she found out she didn't have a heart attack, issue, how do we address the false positives, that's what this bill is attempting to do. Doesn't happen often.

Q?

Favor?

**Ed Grosbauer President of the Professional Firefighters of ND – In Favor**

**Ed G:** This bill will address on rare occasions when we have officers who go to their normal screenings that they have to stay covered by this presumption legislation, it will address those areas, using that "false positive" language, is the easiest terminology for everyone to understand. When someone is told they've had a heart attack, it's not a false positive, but lack

of better term, it works here. When you're told by a physician, that they've had a cardiac event or another ailment, or whatever else, it's a serious event and until we're able to get definitive testing and screenings done, this will address that interim period.

**S. Klein:** This presumption clause only applies to which groups?

**Ed G:** Professional firefighters and law enforcement officers at this time.

**S. Klein:** And that presumptive clause means.....

**Ed G:** It is presumed that during the course of our work, when we expose ourselves to the toxic nature of the work that we do, we are covered whether we are covered on duty or off duty. She wasn't at work at the time that the medical screening was going on, but the physician asked her, "When did you have your heart attack?" Required and paid for by the entity that we work for, medical screening, to continue to maintain our eligibility and coverage.

**S. Klein:** the presumptive clause is something that only applies for these groups. I wanted you to explain that because of the fact that you have to jump through some hoops....

**Ed G:** Our labor agencies have brought in specialists to train firefighters, called Certified Pure [Peer?] Fitness Trainers and every professional fire dept. that we're involved with has a mandatory physical agility training schedule that at work we are mandated to train not only for the job we do, but for the physical portions of it. We're mandated to participate in the workout time. Encouraged to do it off duty and required to do it on duty. There are additional workmen's comp premiums that are paid by our cities to provide this additional coverage. The paid professional firefighters and the law enforcement officers that are paid professionals, their entity that they work for are required to pay a fee.

**S. Potter:** Is there any question that the 56 day period might be too short? How selected?

**Ed G:** Talked earlier, 56-day period was a settlement because it comes to 2 28 day work cycles, scheduling cycle to provide benefits. Looked for a longer period, but I think 56 days will cover to get police officers and firefighters into a specialist. Prior timeline was much shorter.

**S. Potter:** If 56 days was a compromise, what would be your "druthers"?

**Ed G:** We talked about 75 days. The 56 days would encompass the 2 pay cycles and reasonable to get into a cardiologist within 2 months.

**Q? Favor?**

**Tim Wahlin, Staff Counsel with Workforce Safety and Insurance (WSI). *In Favor***

**TESTIMONY #1**

**S. Hacker:** Were any benefits paid out on this case?

**Tim W:** Yes, benefits were paid. Having "false positive" test comes in, we don't know it's false until sometimes down the road, so as the test comes in, it goes into the presumption status. Benefits may have been paid, it just depends upon how quickly we're able to determine if it was an inaccurate test result. If they were paid in error, they would be rebursed and asked for repayment.

**S. Hacker:** Did you have to ask for repayment on those benefits?

**Tim W:** I do not believe so, we had further information on the claim, there were never any benefits paid, that's my memory.

**S. Hacker:** Possible for bill to be made retroactive to a prior date?

**Tim W:** There have been bills in the past which have had an effective date which has already gone by. That would be possible.

**S. Klein:** Did the injured worker sustain a large out-of-pocket cost from their pocket? There's still insurance from their department to cover. Wondering if the worker experienced a lot of out-of-pocket costs.

**Tim W:** I believe the testimony was that there was out-of-pocket expenses, obviously there were co-pays. The injured worker in this case was lucky enough to have medical coverage, we realize that not everyone does, there would have been copays, time off work, which would have been uncompensated unless there was sick leave available to use.

**S. Hacker:** Are there any other cases since this case it would apply to, or just one case?

**Tim W:** I know of no other cases. Those would be anecdotal. If we find out there is not an injury, that would blow our rate up, we don't know if there is other's out.

**S. Behm:** Any difference between occupational cancer and regular cancer? Cancer's cancer, isn't it? Is there something in your profession that would cause cancer more so than just being a stressful job?

**Tim W:** The term "occupational cancer" is actually used within this particular statute. The statute was written for presuming compensability, the term "occupational cancer" is used, the reference was as a result of breathing fumes, gases, things like that resulting in some type of occupational cancer. Not just limited to lung cancer, but there did need to be a link.

**Q? In Favor?**

**Tanna Osley: Insured Party In Favor**

"During routine physical, it showed an abnormal EKG. The doctor, not her primary physician said she had a heart attack. Her primary care physician had her take a stress test which came back abnormal. Preferred to cardiologist. EKG happened Dec. 2004. Did a stress test 20Jan05, as there was a cancellation and could get in early. Didn't personally have a heart attack. Had an angiogram. Paid \$1000 cash, missed 109 hours of work accumulated as sick leave for the city of GF. If you didn't use it you would lose 50% of it. I felt it was out of pocket expense too. Fortunately nothing else happened. The wording doesn't allow for you to make your claim.

expense too. Fortunately nothing else happened. The wording doesn't allow for you to make your claim.

**S. Klein:** Have you been back to work?

**Tanna O:** Yes

**S. Hacker:** What was date went in?

**Tanna O:** Before I went in for any of stress tests, I actually went in to have them fill out the Workman's comp form. I felt it was going to be covered. Happened Jan 2005.

**Q? FAVOR?**

**Dave Kemnitz, President NDAFL-CIO – *In Favor***

In favor, support of ND Firefighters and Law Officers make sure under the law and subject to the law brings them to a crisis situation that the law is adjusted to make that person whole.

Was the law that put them out of work for that extended amount of time.

**S. Klein:** How long have we had the presumptive clause?

**D. Kemnitz:** Been decades, but been changed and modified over time. 1983/85 first time major changes. What does it mean? First section of bill describes the presumption.

**Q? FAVOR?**

**Ed Christensen, Insured Worker**

Question came up, can you go retroactive? 1997 the bureau went retroactive back to '95, just want to let you know you can go back.

**Q? FAVOR?**

**Deb Ness – Representing law enforcement. Chief of Police in Bismarck *In Favor***

Could some consideration be made for language change to perhaps cover law enforcement, because of methamphetamine labs? Being exposed to chemicals.

[Asking for rewording to include officers]



**Q?**

**Ed G:** There are careers that are more likely to be affected. Police officers are also required to be trained up to awareness level of hazardous materials because of their interaction with the meth labs. We are called in to do collection of evidence, but raids are done by police officers. There are specific cancers tied to smoke, but now more are coming because of hazardous materials that we deal with, but WMD we are dealing with.

**S. Hacker:** Have you had any cases due to meth.?

**Ed G:** I don't recall any that have affected us, but are made aware. We try to have proper personal protection equipment on, to prevent this from happening, but no failsafe.

**S Behm:** You have very good equip, right?

**Ed G:** We are more prepared than we were in the past, we don't have THE most up-to-date equipment, but we are more prepared than in the past.

**S. Klein:** I think not only fire depts., but volunteers have stepped up and done everything they could to protect the volunteers or paid professionals to be safe in all those situations. There are risks and hazards. We are certainly careful about approaching an abandoned farmhouse and it would be on fire. I think GF faced the motel issue. Equipment is important, we train a lot more now than we did to be ready and safe.

**Ed G:** I was on the WWHo fire, know what you are talking about. First one in with a hoseline. We did not know that it was a meth. lab. Went in with regular protection, but not nearly enough that we would normally encapsulate ourselves with. Federal level, been fire-act grants which allows paid dept to get grant money to get better equipment and has been fairly successful in getting those funds.

**S Heitkamp:** Do you represent just the firefighters?

**Ed G:** At this time I'm listed as the President of the Professional Firefighters

**S. Wanzek:** Whole issue of presumptive clause pertains to paid firefighters, what about volunteer firefighters? Doesn't cover them.

**Ed G:** At this time that's correct. All the work was done to get the presumptive legislature, That's not to say that volunteers aren't exposed to the same gases and toxic nature of combustibility. Paid Firefighters were required to go through the physical evaluations that required to pay additional Workforce safety premiums were required to stay more active and fit and have more equipment, as city is able to provide us with protection. We are not opposed to having volunteers covered by this, our Federal funds do cover a one month sum payment to a volunteer firefighter who succumbs to injuries, ie heart attack in the field, covered by PSOB Public Safety Officers Benefit. Benefits: \$270,000 paid to beneficiaries for that person affected. Not on their own, but not covered on this clause.

I started as a volunteer in state of NY, truly understand what volunteers do in this state.

**S. Klein:** Some of the districts have milled for their dept., we've advanced our equipment, doing pretty good job, but had to go to the people, and the opportunity to go up to 5 mills and that has provided us with resources.

**Q?**

**S. Heitkamp:** Served on interim committee with S. Klein, hearing 2 suggestions.

Posed to Chief Ness:

1. Should it have been retroactive to deal with injustice that happened earlier?
2. Suggestion: #2 on page 1 of Bill – line 18 “full time paid firefighter”, we would include or “law enforcement”? and on 20 says: “active duty as a full time paid firefighter”, we would include or “law enforcement”? and those would meet the needs?

And this should be included throughout the presumptive clause, not singled out with carsenogens and everything else?

**Chief Ness:** Oftentimes officers have no idea until they've been exposed to what they're walking into. Trend, directly tied back to exposure. If we can change who is being exposed, too early to tell.

**S Heitkamp:** You've had personal experience. You know your dept. inside and out. Do you feel as chief you can site examples that would justify the inclusion of this language?

**Chief Ness:** In one case one officer opened a container containing hydrous ammonia he inhaled as he opened a container and didn't know what was in it.

I firmly believe this is a trend in seeing health issues.

**S. Potter:** Q for Tim

Sen Hacker's amendment. If there was made retroactive, would it have to go back to the date of the false positive in Dec of '04 or to the date of the first treatment, Jan. '05?

**Tim W:** If we were to change the effective date, it would need to go back to the first date where there was treatment and medical diagnosis. I don't think that would change rate levels.

**S Klein:** We may need to make some adjustments here. Someone working on amendments, unless we have a volunteer.

**Senator Hacker and Intern Stephanie Wies requested to review issue and wording.**

**Q? Favor? Session closed.**

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2042 B**

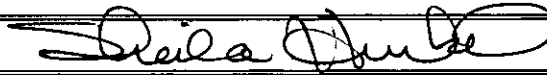
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 9, 2007**

Recorder Job Number: **1090**

Committee Clerk Signature



Minutes:

**S Klein:** Bill 2042 is for the "false positive". S Hacker, do you have an amendment?

There was discussion about making it retroactive. S Hacker had an amendment drafted.

**S Hacker:** Very last page shows it retroactive and application, very simple amendment.

Retroactive to Dec. 1, 2004, her case began, her injury took place, Dec. 14, so we wanted to make sure we caught that. WSI had no problem with this. No fiscal impact.

**S Behm:** None of her doing. Told you could do it over the telephone, that doesn't work, I guess.

**S Klein:** I think that falls into the next bill. This makes sure we cover her costs.

The amendment includes her in the law.

**M – S Hacker**

**2 – S Potter**

**Motion for Do Pass for Ammendment. 7-0**

**Carrier: Hacker**

[ends 3:31] 1090

# FISCAL NOTE

Requested by Legislative Council

01/18/2007

Amendment to: SB 2042

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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).*

The proposed legislation provides benefits for firefighters and law enforcement officers for a limited window of time in cases where a medical examination produces a false positive result for a condition covered under the presumption clause.

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.*

WORKFORCE SAFETY & INSURANCE  
2007 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed SB 2042

BILL DESCRIPTION: Presumption Clause Claims—False Positives

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation provides benefits for firefighters and law enforcement officers for a limited window of time in cases where a medical examination produces a false positive result for a condition covered under the presumption clause with a retroactive application for false positives occurring after December 1, 2004.

Reserve Level Impact: The proposed legislation applies retroactively to false positives occurring on or after December 1, 2004. There is one known false positive that has occurred since that date which would require an increase in reserve levels of less than \$10,000.

Rate Level Impact: Anticipate no material premium rate level impact as the types of occurrences identified within the legislation have been very infrequent historically.

DATE: January 18, 2007

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.

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-3760	<b>Date Prepared:</b>	01/18/2007

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/26/2006

Bill/Resolution No.: SB 2042

**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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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).*

The proposed legislation provides benefits for firefighters and law enforcement officers for a limited window of time in cases where a medical examination produces a false positive result for a condition covered under the presumption clause.

**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.*

WORKFORCE SAFETY & INSURANCE  
2007 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2042

BILL DESCRIPTION: Presumption Clause Claims—False Positives

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation provides benefits for firefighters and law enforcement officers for a limited window of time in cases where a medical examination produces a false positive result for a condition covered under the presumption clause.

Reserve Level Impact: Anticipate no reserve level impact as the proposed legislation applies prospectively.

Rate Level Impact: Anticipate no material premium rate level impact as the types of occurrences identified within the legislation have been very infrequent historically.

DATE: January 8, 2007

**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.

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-3760	<b>Date Prepared:</b>	01/08/2007









**REPORT OF STANDING COMMITTEE**

**SB 2042: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2042 was placed on the Sixth order on the calendar.**

Page 1, line 3, after "for" insert "retroactive"

Page 3, line 6, after "2." insert "**RETROACTIVE**"

Page 3, line 7, replace "the effective date of this Act" with "December 1, 2004"

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2042

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2042

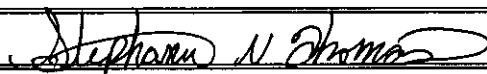
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3895

Committee Clerk Signature



Minutes:

**Chair Keiser** opened the hearing on SB 2042.

**Sen. Nick Hacker, District 42:** What I would speak to is the retroactive application, that's what the Senate put on here. The bill deals with the presumption clause for firefighters when it comes to certain impairments dealing with respiratory disease, hypertension, etc. When there is sometimes what's called a false positive, where they think something is wrong, and then they find out nothing was wrong, while during that period you still do need to pay medical bills, and that person wasn't aloud to work. What the retroactive application does, if you pass this bill is that it will apply to a firefighter in Grand Forks who experienced a false positive, and was out somewhere between \$5,000 and \$10,000. The amount of money to WSI is pretty insignificant, and that's what the retroactive application will do is make sure it's good and whole.

**Jennifer Clark, Legislative Council:** This came out of the Workers Compensation Review Committee. The subtenant part of this bill is on page 2 lines 14-18, which is dealing with a situation where you've got your firefighters, and law enforcement resumption, and that firefighter, and law enforcement officer is initially diagnosed with a prepensable disability or injury, and then come to find to find out through additional testing of some sort that was made

up of false positives. With further testing it's determined that there is no disability, however the nature of the law enforcement, and firefighters work with that initial incorrect diagnoses, they would probably be unable to work. The committee heard testimony from a firefighter who has this exact situation, and WSI told her that their interpretation of a compensable injury is that if you truly don't have a physical problem in this case that would result in an injury, you'd pay for it. So, this is saying this would be considered a compensable injury. There is a time limitation through it of 56 days is the max that somebody could draw under this, with the rationale being that hopefully within 56 days you'd have a final determination of whether you actually had that injury or not. The rest of it is housekeeping, cleaning up that section of law.

**Rep. Thorpe:** Those 56 days, is that 2 months of working days?

**Jennifer:** My understanding is that WSI does their cycles in 28 day cycles, so this would bring up for two of them.

**Rep. Amerman:** Along the 56 days, say I went into 60 or 65, they would still only be compensated for the 56, correct?

**Jennifer:** That's my understanding, but I think I would go to someone from WSI to confirm that.

**Tim Wahlin, WSI:** Support SB 2042. See written testimony #1.

**Edward Grossbauer, Professional Firefighters of ND:** Support SB 2042. As professional firefighters, we're required to take these mandatory tests, and medical evaluations to make sure we're fit for duty, and this is when these particular occasions might occur. The particular instance that reciprocated this was a firefighter who during a normal medical examination, that is required by the presumptive clause found that there was a cardiac event when this firefighter visited with the physician who did, and reviewed the tests that were done initially, and when the question was asked when this person had a heart attack, she in fact actually did not have a

heart attack. It did take a period of time for that to happen, and this 56 day window we hope will allow enough time to have a firefighter, or police officer who's presumed to have received those injuries from their work have the opportunity to visit a cardiologist, or a pulmonary specialist to make sure in fact these injuries are not in place.

**Rep. Amerman:** Say it takes 65 or 70 days to find out it's a false positive. It still would only recoup the 56 days, is that correct?

**Tim:** That's correct.

**Rep. Ruby:** Since this is retroactive, would this go on the experience rating of the department?

**Tim:** With the retroactive affect, yes anybody who would fall into that bucket that we're covering here; we would go back recalculate the extent that they are identifiable, and we would have to change the experience rating for those employers.

**Rep. Gruchalla:** I would move a do pass.

**Rep. Johnson:** Second.

**Roll call vote was taken. 13 Yeas, 0 Nays, 1 Absent, Carrier: Rep. Amerman**

Hearing closed.



Date: 2-26-07  
Roll Call Vote #: \_\_\_\_\_

**2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
BILL/RESOLUTION NO. SB 2042

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep Gruchalla Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper					
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep. Amerman

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