

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2028

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2028
1/12/2011
Job Number 12823

Conference Committee

Committee Clerk Signature

Eva Leibel

Explanation or reason for introduction of bill/resolution:

Relating to the payment of extraordinary medical expenses of medical expenses of inmates of correctional facilities

Minutes:

1 testimony attached

Chairman Senator Klein: Opened the hearing on Senate Bill 2028.

Tim Dawson, Legislative Management Committee, and Advisory Commission on Intergovernmental Relations: Came to explain the bill.

Senator Nodland: Wanted to know how the bill came about.

Tim: Stated that it was because of the high medical expenses coming from the inmates at correctional facilities.

Chairman Senator Klein: Asked if this was already a budgeted item and was it to help counties to be reimbursed.

Tim: This is not already in the budget but is to help the counties.

Senator Andrist: To what levels is the state obligated to pay medical expenses?

Tim: State is only responsible for people in the penitentiary; the counties are responsible for the correctional facilities. The same rule is the eighth amendment of the constitution, cruel and unusual punishment. If it is something that prevents you from doing something you have to do like, walk or eat. They have to pay for it.

Senator Andrist: Did the committee discuss a copayment?

Tim: In as much as they pay for everything under \$10,000. Not in the instances of which it is over \$10,000. That is just for one inmate.

Tracy Potter, Executive Director of the Fort Abraham Lincoln Foundation: Here as the **Chairman of the Advisory Commission of Intergovernmental Relations** that brings you the bill and also as a taxpayer. He doesn't want to see this going on the property tax bill and views this as a real problem. Stated that they started the advisory process by asking the cities and the townships and the county members to bring forward ideas or problems they had and one of those was inmate medical costs. We're working on eliminating the liability of counties for inmates who are on home detention or electronic monitoring. Each of North Dakota 16 grade one jails, 7 grade two jails and 3 grade three jails are responsible for all the medical costs of their inmates. Very few inmates have insurance. This is an impossible budgeting problem for the counties. After this went through the response from sheriffs and county commissioners was favorable. It is easier for the State Department of Corrections to come up with the money for these costs opposed to the individual counties. This would spread the risk to the entire state verses the county jails. It wasn't a unanimous decision by the committee.

Senator Schneider: Is there an insurance product available for these correctional facilities?

Tracy: Yes there is but it may be difficult to get it all together. Feels it would be easier for the State to reinsure this verses the county.

Terry Traynor, Assistant Director North Dakota Association of Counties: Testimony Attached. Did provide Department of Corrections a copy of his proposed amendment but didn't have time to communicate before the hearing. This would send a message from the Legislature that you would like them to work with us to develop this going forward.

Chairman Senator Klein: Have you tried to work together and has there been a study in the interim?

Terry: This has been an issue for sometime but it is because of a couple of high cost cases that caused it to be a critical issue with this committee. We brought in people from the National Insurance Company and they made a presentation to the Jail's Administrator's Association. We haven't come up with a solution.

Discussion was continued.

Chairman Senator Klein: Asked for anyone in opposition

Dave Krabbenhoff, Department of Correctional: He prepared the fiscal note. The information used for the fiscal note was information from the Department of Corrections. In Thirty-five percent of their expenditures they are over ten thousand dollars. In the way he reads the bill it states, that if the inmates medical expenses exceed ten thousand dollars then those medical expenses from zero to ten thousand and above become the responsibility of the Department of Corrections. He didn't feel it was a good bill for the DOC. He stated that they are sympathetic to the counties, but this bill doesn't have an appropriation and there is none provided for the DOC and they did not budget for this. They work hard to control the medical costs. If the bill goes through as it is they would be turning the check book over to someone else. They then lose control and any incentive to save

money at another level is gone because it is no longer a concern to the counties. As the bill is now we feel it is bad for the DOC and the State.

Discussion and questions continued.

Senator Nodland: Asked if he was willing to work with the counties to resolve the issue.

Dave: Gave examples of the different things the State has been doing for the Counties. They are willing to talk and explore the issues. Talked about how they try to keep costs down.

Senator Murphy: Feels Counties act largely as agents of the State, they help deliver services. Were you involved in the interim study and the crafting of the bill?

Dave: Was made aware of the bill when it was brought to the committee in draft form. They were not involved.

Senator Murphy: The bill would have been different if you were involved in the crafting of it?

Dave: It would of, because I don't believe it belongs in the DOC. This could tip us over.

Senator Murphy: If we were to vote this bill down as you wish, who would be responsible for this budget?

Dave: He feels it is a decision of the Legislature. He said that there are different mechanisms and funding sources provided to the counties and that they should be looked at. He doesn't feel it fits into the operation of the DOC.

Senator Nodland: Wanted to know in the opinion of Steve Splide, if this would be insurable.

Steve Splide, North Dakota Insurance Reserve Fund: They have been in discussion of this issue over the past years. The risk involved is why there is a national company that offers this. It isn't reasonable for a region or states situation to be able to take this on. The coverage could be offered but looking at a high risk population. To be able to offer at a price that would be reasonable, verses a national company, would be difficult to do.

Senator Nodland: Would it be something they should look at a national level?

Steve: Stated that it would and that a quote was given. The question is was it a reasonable amount.

Chairman Senator Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2028
January 25, 2011
Job Number 13350

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the payment of extraordinary medical expenses of medical expenses of inmates of correctional facilities.

Minutes:

Discussion

Chairman Klein: Talked about the amendment changes. To get most of the parties on board he felt they should put it into a form of, shall consider a studying resolution.

Senator Andrist: Wanted to know if it shouldn't be a mandatory study resolution.

Chairman Klein: Felt that they should keep it flexible and allow them to decide what study to do.

Senator Laffen: Also in support, said it makes sense to study.

Senator Larsen: Asked if the county is responsible with the ten thousand dollar initial fee and said he doesn't want the county to be strapped with the whole burden of that amount.

Chairman Klein: They almost have a system of managed care at the state penitentiary. The question is can they manage, from their position, the other thousands of inmates around the state. They don't know but we hope to find out in the study.

Senator Schneider: Comments that the state is probably in a better position to insure against this, a much bigger risk pool than these individual counties. He does like the amendment in that it identifies other cost management techniques that could be involved.

Chairman Klein: The other issue that came up, was what the insurance would cost if everyone came together.

Senator Nodland: Where the prisoner is right now is who pays for the cost of the medical care. This will get them to sit down and talk.

Senator Andrist: Made a motion for a do pass.

Senator Schneider: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Andrist to carry the bill



FISCAL NOTE

Requested by Legislative Council
12/16/2010

Bill/Resolution No.: SB 2028

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	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$1,718,014	\$0	\$1,718,014	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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
\$0	\$0	\$0	(\$1,718,014)	\$0	\$0	(\$1,718,014)		

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).*

SB2028 requires the department of corrections and rehabilitation to reimburse a correctional facility for an inmate's medical or health care expenditures paid by that facility which exceeds \$10,000 for that inmate. SB2028 does not provide for an appropriation.

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.*

SB2028 does not provide for an appropriation. The DOCR 2011-13 executive budget recommendation does not provide for the added cost of SB2028. The added cost (fiscal impact) of SB2028 is difficult to estimate due to the fact that the DOCR does not collect medical use or billing information from non-DOCR correctional facilities. For the purpose of estimating the fiscal impact of SB2023, medical use and expenditure data specific to the DOCR will be used. While the DOCR is able to access medical services at Medicaid rates, for the purpose of this fiscal note it will be assumed that medical services accessed by non-DOCR correctional facilities will be paid at non-Medicaid rates (assumption: non-medicaid rates = medicaid rates X 2). It is also assumed that the SB2028's reference to correctional facilities is limited to the 27 adult county or regional jails located within the State of North Dakota.

Other assumptions:

Total non-DOCR inmate population - 785

Est. number of inmates receiving medical services daily 2.23 - over a two year period (2.23 X 730) = 1,627.9

Est. non-Medicaid cost of inmate medical services over a 2 year period - \$2,822.24

Est. Total non-Medicaid cost of inmate medical services - (1,627.9 X \$2,822.24) = \$4,594,324

Est. percent of total cost consisting of medical claims which exceed \$10,000 - 35%

Est. total medical services cost reimbursable by the DOCR (\$4,594,324 X 35%) = \$1,608,014

Cost of drugs issued to inmates are an additional cost but can not be reasonably estimated for purposes of this fiscal note.

DOCR would require 1 new fte (RN) to administer SB2028 at an estimated cost of \$110,000

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.*

n/a

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.*

Using the assumptions noted above, the estimated total cost (fiscal impact) of SB2028 for a 2 year period is \$1,718,014 (general funds). It is estimated this amount would be reimbursed to county and regional jails for medical or health care expenditures paid by the county and regional jails which have exceeded \$10,000 per inmate. It is also estimated that an one additional FTE would be necessary due to the additional administrative burden SB2028 would create.

Expenditures related to SB2028 would be paid out the Adult Services line item of the DOCR budget.

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.*

No appropriation is included in SB2028. The 2011-13 DOCR executive recommendation does not provide for the estimated fiscal or administrative burden of SB2028.

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	12/29/2010

January 20, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2028

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study on the payment of extraordinary medical expenses for inmates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PAYMENT OF EXTRAORDINARY MEDICAL EXPENSES OF INMATES. During the 2011-12 interim, the legislative management shall consider studying the payment of extraordinary medical expenses of inmates in correctional facilities, including payment of those expenses through the department of corrections and rehabilitation or other state entity and other cost-management techniques. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Re-number accordingly

Date: 1/25/2011
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2028

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 Schneider

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 1/25/2011
 Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2028

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 Schneider

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Andrist

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

REPORT OF STANDING COMMITTEE

SB 2028: 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 2028 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study on the payment of extraordinary medical expenses for inmates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PAYMENT OF EXTRAORDINARY MEDICAL EXPENSES OF INMATES. During the 2011-12 interim, the legislative management shall consider studying the payment of extraordinary medical expenses of inmates in correctional facilities, including payment of those expenses through the department of corrections and rehabilitation or other state entity and other cost-management techniques. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

2011 HOUSE HUMAN SERVICES

SB 2028

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2028
March 7, 2011
Job #15035

Conference Committee

Committee Clerk Signature

Vicky Crabtree

Explanation or reason for introduction of bill/resolution:

Proved for a legislative management study on the payment of extraordinary medical expenses for inmates.

Minutes:

Chairman Weisz: Opened the hearing on SB 2028.

Tim Dawson: From Legislative Council. This bill required the Department of Corrections and Rehabilitation to reimburse a correctional facility for an inmate's medical expenses paid by that facility which exceeded \$10,000 for that inmate. It now has been amended into a study of extraordinary medical expenses.

Terry Traynor: From Associations of Counties testified in support of the bill. We are in support the study that is being proposed here. The bill that came out of the interim committee wasn't exactly what we were hoping would come out of there. We were looking more for a mechanism as we talked about on 2024 when you heard that. More of a mechanism to help those extraordinary costs. We had a number of facilities as I testified on the last bill, that have gone into six digits on medical costs on a single inmate. We were looking for a mechanism where counties could contribute to and we did not come up with a good one and the interim committee thought by pushing 2028 ahead at least we would keep the conversation going. We support this study although we are hearing where 2024 might end up out of this committee as a mechanism to help with costs of county inmate medical costs. The problem still exists that we have a handful of inmates that end up costing very large amounts. We think we need to continue to find a mechanism to better handle the costs in general we might have a better understanding of what we need to do to deal with the extraordinary costs. We hope to expand the language of study too.

NO OPPOSITION

Chairman Weisz: Closed the hearing on SB 2028.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2028
March 21, 2011
Job # 15744

Conference Committee

Committee Clerk Signature *Vicky Crabtree*

Minutes:

Chairman Weisz: 2028 it is the study and I figured we'd sit on it until we dealt with 2024 to see if we felt we needed the study.

Rep. Kilichowski: I recommend a Do Not Pass.

Rep. Louser: Second.

VOTE: 12 y 0 n 1 absent – Rep. Porter
Motion on a DO NOT PASS CARRIED

Bill Carrier: Rep. Schmidt

Date: 3-21-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2028

House HUMAN SERVICES 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. Kilichowski Seconded By Rep. Louser

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓	/	REP. CONKLIN	✓	/
VICE-CHAIR PIETSCH	✓	/	REP. HOLMAN	✓	/
REP. ANDERSON	✓	/	REP. KILICHOWSKI	✓	/
REP. DAMSCHEN	✓	/			
REP. DEVLIN	✓	/			
REP. HOFSTAD	✓	/			
REP. LOUSER	✓	/			
REP. PAUR	✓	/			
REP. PORTER	A	/			
REP. SCHMIDT	✓	/			

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Schmidt

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

REPORT OF STANDING COMMITTEE

SB 2028, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2028 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2028

**Testimony To The
SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE
Prepared January 12, 2010, by
Terry Traynor, Assistant Director
North Dakota Association of Counties**

REGARDING SENATE BILL No. 2028

Chairman Klein and members of the Senate Industry, Business & Labor Committee, the Association of Counties requested consideration of the issue of inmate medical costs during the interim, however we recognize that SB2028 is more of an attempt by the ACIR to bring this issue before the Assembly than a fully-endorsed solution to the problem.

As you may be aware from news reports over the last several months, the issue of jail inmate medical costs is one of increasing concern among jail administrators, sheriffs, and county commissioners. The growing total costs, but especially, the extraordinary costs of some individual inmates, have become somewhat alarming.

In order to put this issue in perspective, it may be wise to provide a brief background. As characterized in the Internet news magazine Stateline.org, "*jail and prison inmates are the only Americans with a constitutional right to health care, and the cost to deliver it is on the rise*".

The Eighth Amendment of the U.S. Constitution guarantees individuals the right to be free from cruel and unusual punishment, which the Supreme Court has determined to include the right of prisoners to have access to medical care. This access is not unlimited, but the denial of medical care is a Constitutional violation if prison or jail officials are "deliberately indifferent" to a "substantial risk of serious harm." The court has gone on to find that inmates have a claim against the correctional authority when poor treatment resulted in "sufficiently serious" harm.

Generally, for an injury to be considered "sufficiently serious," the harm must significantly change the prisoner's quality of life. For example, harm would be considered "sufficiently serious" if it "causes degeneration or extreme pain."

With all of the court cases and definitions, it still often comes down to what inmates report as their symptoms – which forces correctional administrators to err on the side of caution and authorize medical, as well as dental care, in situations involving pain or where health could deteriorate during the expected length of incarceration, (i.e. unable to eat due to severe tooth pain).

North Dakota's 53 counties maintain 26 jails, of which 16 are classified as "Grade 1" or can hold a prisoner up to one year. Seven are Grade 2 (up to 30 days) and three are Grade 3 (96 hours). As you can imagine, there are numerous joint powers agreements and contracts among the 53 counties to provide access to the appropriate facility for particular inmates.

Several of the smaller jails also noted that a one-year snapshot can be deceiving since one or two inmates can greatly skew costs in a given year. One would think therefore that the larger jails would be a better indicator; as they have enough inmates to somewhat mask the influence of peculiar cases – unfortunately, even in our largest jail, single cases can have catastrophic effects on costs.

The Cass County facility – our State's largest jail – reported a CY2009 inmate that had an enormous impact, even on a medical budget of over a half a million dollars. This inmate was arrested on a state felony charge of terrorizing and had a pre-existing cancer condition, for which he was rather sporadically receiving treatments from the VA Hospital in Fargo. The VA will not accept or pay medical costs for any veteran that is in custody (something, as noted, that holds true for Medicare and Medicaid as well). It was therefore left to the jail to cover those costs.

By the time this inmate was released by the District Court, the county had paid a local hospital \$109,217 – almost 20% of their entire medical budget for CY2009 – 50% of their “medical purchase” budget – a budget that was established for over 7,300 inmates.

I have been informed that Cass County had an inmate in CY2010 whose medical costs will likely overshadow this one.

It should be noted that State law allows a jail facility to seek reimbursement for these costs from the inmate; however this is seldom possible, as most inmates lack any significant financial resources.

During the interim, counties suggested several changes in state statute that will, hopefully, have some impact on overall inmate medical costs. These changes were incorporated into SB2024.

Jail Medical Survey - CY2009 Costs	
Facility	CY2009
Grade 1 - Up to One Year	
Barnes County (Valley City)	17,399
Bottineau County (Bottineau)	2,551
Burleigh County (Bismarck)	292,056
Cass County (Fargo)	637,857
Grand Forks County	284,397
Lake Region C.C. (Devils Lake)	37,049
McKenzie County (Watford City)	7,270
McLean County (Washburn)	3,600
Mercer County (Stanton)	7,574
Morton County (Mandan)	47,317
North Central CRC (Rugby)	5,459
Richland County (Wahpeton)	26,500
Stutsman County (Jamestown)	107,166
SW Multi-County (Dickinson)	25,553
Ward County (Minot)	12,936
Williams County (Williston)	13,843
Grade 2 - Up to 30 days	
Adams County (Hettinger)	828
Cavalier County (Langdon)	48
Mountrail County (Stanley)	5,500 ²
Pembina County (Cavalier)	11,000
Rolette County (Rolla)	9,000 ²
Traill County (Hillsboro)	9,650
Walsh County (Grafton)	5,099
Grade 3 - Up to 96 Hours	
Emmons County (Linton)	No Data
Logan County (Napoleon)	No Data
McIntosh County (Ashley)	No Data
	1,569,654

Notes:

- 1 McLean Jail opened in May 2009 - Not a full year of costs
- 2 Estimates based on statewide average