

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2347

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2347
February 2, 2011
Job Number 13846

Conference Committee

Committee Clerk Signature

Eric Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to financial responsibility; and relating to the petroleum compensation fund

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing on Senate Bill 2347.

Senator Oehlke: Introduced the bill. He gave handouts about the Petroleum Tank Release Compensation Fund. He said that the bill will tighten things up a bit. He then talks about the bill and what it will do.

Senator Andrist: Asked what rules to infrastructure compatibility meant.

Senator Oehlke: Explained how the tanks are made now compared to years ago.

Senator Andrist: Asked if this would make older tanks uninsurable.

Senator Oehlke: He said no, they want them to insure all tanks.

Senator Schneider: Asked how often the fund is utilized.

Senator Oehlke: Stated he didn't know but testimony should be coming on that.

William Delmore, North Dakota Petroleum Marketers' Association: Testimony Attached.

Senator Andrist: Asked if there were tanks that were uninsurable.

Bill: They are some that are not in compliance. You have the ability to buy yourself back in to get insured. They are very few tanks that are not insured. He also said that you are okay if the tank is pumped dry and if it is under a certain level

Mike Rud, President of the North Dakota Petroleum Marketers' Association: Testimony Attached.

Senator Larsen: Asked if they lapsed in paying what the cost of that would be.

Mike: You would have to do an environmental assessment and then a tank integrity test. Doesn't know the exact dollars but it could be a couple of thousands of dollars. He also talked about having some big clean ups. The fund can pay up to a million dollars for clean up on a site, also talked about the cost of the tanks to be insured.

Jeff Bitz, Administrator for the North Dakota Compensation Fund: Answered questions asked by Chairman Klein. Stated that there will always be a few that fall through the cracks. He believes they have 99.99% registered with the fund. Can't totally be sure they have them all.

Chairman Klein: Asked how they deal with the ones that are late in paying.

Jeff: They will send out three notices and after three they will call them and if they are in the area they will stop by.

Chairman Klein: Asked at the end of the year are there some that still haven't paid.

Jeff: There is about ten to fifteen percent of the total population of tank owners that are not paying in that fiscal window. They do let the health department know and they may be red tagged and they will not be able to fill up with fuel.

Senator Nodland: Asked what the balance of the fund is.

Jeff: It is a little under six million, that's including money set aside to pay claims that are on the books today.

Senator Nodland: What is an average cost of the reclamation?

Jeff: Stated that it has gone up. It could be from \$500,000 to one million.

Chairman Klein: Closed the hearing.

Senator Nodland: Moved a do pass and to be Referred to Appropriations.

Senator Larsen: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Larsen to carry the bill

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2347
February 2, 2011
Job Number 13864

Conference Committee

Committee Clerk Signature

Eva Leibel

Explanation or reason for introduction of bill/resolution:

Relating to financial responsibility; and relating to the petroleum compensation fund

Minutes:

Discussion and Vote

Chairman Klein: Opened the meeting and said they had an issue with the bill, in failing to fix the spelling of a word.

Senator Nodland: Moved to reconsider Senate Bill 2347 and said they forgot to take care of the wording, with the word, "withing".

Senator Murphy: Seconded the motion.

Chairman Klein: All in favor say "I". Opposed -no. Motion carried.

Senator Murphy: Moved to adopt the amendment.

Senator Andrist: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Nodland: Moved a do pass as amended and to rerefer to appropriations.

Senator Murphy: Seconded the motion.

Roll Call Vote: Yes-7 No-0

The bill did not need to be rerefered to appropriations.

FISCAL NOTE

Requested by Legislative Council
01/26/2011

Bill/Resolution No.: SB 2347

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				\$24,000		\$24,000
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).*

If enacted the bill requires tank owners or operators participating in the petroleum release compensation fund to pay a \$25 per month late fee for each tank if the registration fee is not paid within 60 days of July 1st.

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.*

Section 1 of the bill imposes a \$25 late fee per month for each tank if the registration payment is not received within 60 days of July 1st of each year.

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.*

Based on current activity, the Insurance Department estimates an additional \$24,000 in revenue would be generated in the 2011-2013 biennium.

The revenue generated will be deposited into the petroleum release compensation fund.

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.*

This bill will not affect expenditures.

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.*

This bill will not affect appropriations.

Name:	Larry Martin	Agency:	ND Insurance Department
Phone Number:	328-2930	Date Prepared:	01/28/2011

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

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2347

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 Nodland Seconded By Senator Larsen

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Larsen

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2347

Page 1, line 8, replace "withing" with "within"

Renumber accordingly

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

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2347

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 Murphy Seconded By Senator Andrist

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip 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:

*Amendment changing the wording: "withing"
to "within."*

Date: 2/2/2011
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2347

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 Nodland Seconded By Senator Murphy

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Larsen

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

REPORT OF STANDING COMMITTEE

SB 2347: 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 2347 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "withing" with "within"

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2347

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2347
March 15, 2011
15485

Conference Committee

Committee Clerk Signature

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Financial responsibility and petroleum compensation fund

Minutes:

Chairman Keiser: Opens the hearing on SB 2347.

Senator Dave Elke~District 15-Devils Lake: Introduces the SB 2347. (See attached testimony 1).

Mike Rud~President of the North Dakota Petroleum Marketers Association: (See attached testimony 2).

Representative Vigesaa: The registration for all tanks will be July 1?

Mike Rud: Yes, that's the annual renewal date.

Representative Vigesaa: Is there any late fee or penalty for not paying?

Mike Rud: You have one year to be in compliance, after that you fall out of the fund. Then you would have to go back through the steps we put in 2007, to get your site environmentally assessed to get back into the fund.

Representative Vigesaa: On line 21 & 22, are those related to EPA rules and regulations concerning prevention, is that why it's been added in?

Mike Rud: Lines 21 & 22 has to do with the certification of bio-fuels that was part of the blender pump program. We wanted to again, reiterate the importance of making sure people were doing due-diligence to make sure their infrastructure was compatible from the tank all the way to the dispenser. That gives us some coverage to make sure our fund doesn't get busted by a bunch of spills from higher blends of ethanol where the equipment wasn't compatible.

Chairman Keiser: The fiscal note shows the 24 thousand dollars increase, what is the status of the fund currently, is it below 6 million dollars?

Mike Rud: We should be right around 6 million dollars is what we should have in the fund as of June 30.

Chairman Keiser: Even with the 24 thousand?

Mike Rud: The 24 thousand would be in addition.

Jeff Bitz~Administrator of the Petroleum Tank Relief Compensation Fund: I'm here in support.

Representative Vigesaa: How do you go about to collection the money that isn't paid by these tank owners?

Jeff Bitz: We send out second and third notices and have our attorneys send out notices of delinquent fees to send them to small claims court. The statute does say that it's a Class B misdemeanor, which means that we turn over the information to the state's attorney for the county in which the facility is located. We have instituted a policy of taking those owners to small claims court and those that we can't, we work with the health department to red tag their tanks, which won't allow them to receive any more fuel until they bring their tanks into compliance, if it's in the one year.

Representative Amerman: July 1 deadline, right now everyone has a different anniversary date?

Jeff Bitz: July 1 is the renewal date for all tank owner/operators. Everyone has the same renewal date.

Representative Vigesaa: \$25 isn't a very large late fee. If they haven't paid their registration, I not sure another \$25 is going to spur them to pay the fee. If they don't pay the \$25, are you going to go through the same procedure of trying to collect the funds if the late fee isn't collect as well?

Jeff Bitz: Yes we would, but they are out of compliance.

Chairman Keiser: Is there anyone here to testify in support, in opposition, in the neutral position to SB 2347. Closes the hearing, what are the wishes of the committee?

Representative Kreun: Moves a Do Pass on SB 2347.

Representative Vigesaa: Second.

Chairman Keiser: Further Discussion?

Roll was taken for a Do Pass on SB 2347 with 12 yeas, 0 nays, 2 absent and Representative Vigesaa is the carrier.

Date: March 15, 2011

Roll Call Vote # _____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2347

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Rep Kreun Seconded By Rep Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	Ab	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	Ab				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 12 No 0

Absent 2

Floor Assignment Rep Vigesaa

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

REPORT OF STANDING COMMITTEE

SB 2347, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2347 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2347

(1)

Petroleum Tank Release Compensation Fund

The North Dakota Petroleum Tank Release Compensation Fund was established by the 1989 North Dakota State Legislature to financially assist tank owners for cleanup costs and third party liability caused by petroleum contamination.

All owners or operators of aboveground or underground petroleum storage tanks in North Dakota are required to register their tanks with the Fund and pay an annual registration fee of \$100 for each aboveground tank and \$100 for each underground tank. Violation of this law is a class B misdemeanor.

If a petroleum release occurs or petroleum contamination is discovered, an eligible tank owner is reimbursed 90 percent of necessary and reasonable costs between \$5,000 and \$155,000 for cleanup of contamination or third-party liability. The Fund reimburses 100% of costs between \$155,000 and \$1,000,000.

[Click here for the 2010 renewal packet.](#)

For more information, contact:

Jeff Bitz

jbitz@nd.gov

Program Director

701.328.9600

Sharon Gross

sgross@nd.gov

Administrative Assistant

701-328-9600

TESTIMONY IN SUPPORT OF SB 2347

February 2, 2011

Senate IBL

Chairman Klein and Members of the Committee:

My name is Bill Delmore and I represent North Dakota Petroleum Marketers' Association. The amendments contained in Senate Bill 2347 were brought on its behalf.

The purpose of the amendments is to clarify certain requirements in regard to the Petroleum Release Compensation Fund and to ensure that no payments are made from the Fund to tank owners or operators who are not in compliance with health, safety, and financial assurance requirements of the Fund.

The first amendment is contained on lines 8, 9, and 10 to ensure that registration payment will be made to the Fund in a timely manner to keep it healthy.

The second amendment contained on lines 21 and 22 relate to infrastructure compatibility requirements already promulgated by the North Dakota State Department of Health, but further clarifies that no payments will be made from the Fund unless a tank owner or operator is in full compliance with health, safety, and financial responsibility requirements.

Senate Bill 2347 will help to ensure that the Fund will remain stable and usable for remediation of properties of those who have contributed to its existence.



ND PETROLEUM MARKETERS ASSOCIATION

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Testimony SB 2347

February 2, 2011 – Senate IBL

Chairman Klein and members of the Committee:

For the record, my name is Mike Rud. I'm the President of the North Dakota Petroleum Marketers Association. On behalf of our association members, I'm here urging a **"DO PASS"** on **SB 2347**.

NDPMA believes SB 2347 clarifies and strengthens the current petroleum tank release fund regulations and definitions. This tank fund is our marketer insurance policy for cleaning up petroleum releases. We take the security of this fund very seriously. The amendments NDPMA is seeking in SB 2347 provide further security for the fund.

The first amendment in SB 2347 is designed to make sure marketers pay their annual tank fund registration fees in a timely manner. We believe if a person were

to lapse behind on his vehicle insurance premium payment, the insurance company would simply drop the person from their coverage after sending out a few notices.

NDPMA believes marketers utilizing the tank fund should be penalized in some way as well.

The other amendment in the bill is simple housekeeping language dealing with infrastructure compatibility relating to federal rules and regulations for petroleum dispensing systems.

NDPMA feels these amendments go a long ways toward ensuring the tank fund's longevity. Our membership urges a **"DO PASS"** recommendation on SB **2347**.

Thank you for your time and consideration.

2. Any money recovered by the fund under section 23-37-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

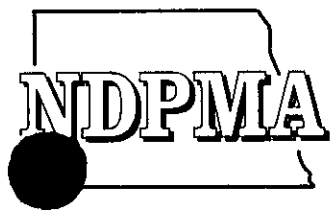
23-37-16. Penalty. A tank owner violating section 23-37-17 is guilty of a class B misdemeanor unless another penalty is specifically provided.

23-37-17. Registration fee.

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If on the first day of July in any year the amount of money in the petroleum release compensation fund is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year the amount of money in the petroleum release compensation fund is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. Annual registration fees must be reduced to five dollars if on the first day of July in any year the amount of money in the fund exceeds nine million dollars. Annual registration fees must continue at the fee of five dollars until the money in the fund does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund on or before July 1, 2007, shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not, on or before July 1, 2007, must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the commissioner along with the application for registration with the fund. If the commissioner rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for an underground tank for each underground tank for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years.
5. The registration fees collected under this section must be paid to the fund administrator for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.

23-37-18. Reimbursement for corrective action.

1. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administrator determines that:
 - a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility which were in effect at the time of the release;
 - b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
 - a. Findings reduced to judgment in federal or state district court within the state of North Dakota or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the commissioner or the commissioner's agent has participated. The settlement must be reviewed and approved by the commissioner.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.



Testimony 2

ND PETROLEUM MARKETERS ASSOCIATION

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Testimony SB 2347

March 15, 2011 – House IBL

Chairman Keiser and member of the Committee:

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The first amendment in SB 2347 is designed to make sure marketers pay their annual tank fund registration fees in a timely manner. We believe if a person were to lapse behind on his vehicle insurance premium payment, the insurance company would simply drop the person from their coverage after sending out a few notices. NDPMA believes marketers utilizing the tank fund should be penalized in the same way as well.

The other amendment in the bill is simple housekeeping language dealing with infrastructure compatibility relating to federal rules and regulations for petroleum dispensing systems.

NDPMA feels these amendments go a long way towards ensuring the tank funds longevity. Our membership urges a **"DO PASS" recommendation on SB 2347.**

Thank you for your time and consideration.