

2017 SENATE POLITICAL SUBDIVISIONS

SB 2166

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB2166
1/17/2019
Job Number 30948

- Subcommittee
 Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to increasing liability limits for political subdivisions.

Minutes:

Written attachments 1-7

Chairman Burckhard opened the hearing on SB2166. All senators are present.

Senator Vedaa, District 6, introduced the bill and spoke in favor of the bill. (:46-3:12) **Written attachment #1**.

Mr. Brennan Quintus, Chief Executive Officer of North Dakota Insurance Reserve Fund, Spoke in opposition to this bill. **Written attachment #2**. (3:13-8:46))

Senator Anderson: I need to understand what you're saying a little bit better. You're saying that in 2015 we increased the per-occurrence limitation from \$500 to 1Million. But the Tort cap afforded to state governments are \$250,000, so you're saying that the aggregate is a million so its over four people and you might spend \$250,000 four times to get to the million. Is that right?

Mr. Brennan Quintus: That is accurate one occurrence. You could have a cap at \$1 Million dollars.

Mr. Brennan Quintus: Continued his written testimony.

Senator Anderson: It seems to me that if there were going to be some analysis as your department would be the logical place to do that. Two things, one do you have any numbers about how many claims have been against political subdivisions that would fit into this new bill and how they were settled or whatever? Obviously we don't need specifics because some of them are confidential, but you should be able to pull those so that we can see how claims there were against it, how many were settled at the cap or below the cap, or whatever. Then maybe you could comment a little bit on how you might look at those things and do a study if we change this for an example into a study over the interim?

Mr. Brennan Quintus: We could certainly pull those numbers for you. I don't have them offhand. One thing in evaluating this bill, our actuaries mentioned it's likely that we would see up-kick in claims just because of the greater opportunity available for those folks that are seeking recovery or plaintiff's attorneys that are representing those folks. It is likely, currently because of the tort caps they are not moving forward with some of those lawsuits. But if it's higher you're going to invite more claims activity. But we could certainly provide that information and work with the committee on a study of this bill so the caps are set at an appropriate level.

Senator Anderson: Are you intimating that at \$250,000 isn't enough to attract an attorney to do this on a cost share basis?

Mr. Brennan Quintus: I am not. We certainly see enough claim activity as it is as referenced in my testimony with regard to our recent claims activity. But anytime there is a greater opportunity for recovery you're going to experience an up-take I believe.

Senator J. Lee: This sounds like a medical malpractice. The higher the limits in the states the more citizens are they too. So I get what you're saying. I am not worried about him not getting that.

Senator Dotzenrod: From the testimony you submitted here, can I draw the conclusion that there are 14 states that have no limits at all?

Mr. Brennan Quintus: There are 14 states that are not included in with liability limitations and there's a varying degree of either immunity's available to political subdivisions or in some cases they don't have tort caps whatsoever.

Senator J. Lee: We did have immunities until since I've been in this place. Political immunity went away for political subdivisions but I think that is a relevant thing as well.

Mr. Brennan Quintus: That is accurate. In the 1970's sovereign immunity was abolished arising from a Supreme Court decision. The Supreme Court then intimated to the Legislature that you have to do something about the caps because it's likely you want to have some sort of limitation, obviously public entities aren't bottomless, you're going to have something available for political subdivisions. They've got certain duties and responsibilities that are required of them to perform and it's not a wide open deal.

Senator Anderson: Are there any provisions in the Insurance Reserve Fund so that if for example my city has employees that are careless and cause more problems than others, is there any provisions in the fund rules to increase my premium or is just stay the same no matter how bad an actor I am?

Mr. Brennan Quintus: We do what's called experience rating or a rating based on the loss history of each member. So, those members that are contributing to higher loss activity of the reserve fund, are getting charged more for their exposure.

Senator Kannianen: What kind of dollar figure is this for these rates? Like for example, more of a rural county, small in populations and stuff like a smaller tax base, what would these

rates be for like when you say right now it's \$250,000 and \$1M, can you give us an idea? You have the idea of the increases what not, but what?

Mr. Brennan Quintus: I can tell you right now that smaller counties like McIntosh County for liability premium roughly they pay \$30,000 to \$35,000 a year. For auto it's really going to depend on the amount of vehicles they have, which kind of coverage they carry, so it's hard to throw somebody out there with regard to auto coverage. For some of our larger counties you're talking a few hundred thousand dollars for liability coverage. The same concept would go for cities and schools. The larger cities and schools you're getting into the hundreds of thousands of dollars for some of the smaller communities it's up to \$3000.

Senator Anderson: I just want to reinforce if we can get those numbers that I talked about how many claims there are and whether they were settled at the cap and so forth. That would be helpful.

Mr. Terry Traynor: Executive Director of the Association of Counties (15:23-18:32)
Written attachment # 3) He spoke in opposition to this bill.

Senator Anderson: I seem to hear you're saying you would not be opposed to looking at this. The committee you sit on is that the proper place to look at or are we looking at it on a regular basis. Would we be redundant to say that we're going to study something that we already know about? Give me some feedback on that or what would you suggest?

Mr. Terry Traynor: We can look at our internal issues, our loss history, our claims and things like that but if you're going to look at it more broadly the state tort caps, the private industry as Mr. Quintus mentioned, the mandatory insurance requirements for automobile liability and that sort of thing. Because it covers so many different areas I almost think that it would have to be some sort of legislative review or something like that if you're going to bring it altogether.

Senator J. Lee: Either Mr. Crosby or perhaps Mr. Traynor would answer? I understand Sen. Veda's motivation and bringing this up. When he talks about the limit that was set in 1977 it seems to me everybody has been talking about review in 2015. Four years ago is very different from 40 years ago. So can someone just clarify for me. It is important to point out there wasn't any protection for anybody before sovereign immunity went away. So this is a new deal when we got it in the first place. This is a good thing. I am trying to understand clearly whether all these limits set in 1970 or was the review again in 2015 which is a partial update covering part of what we're talking about here.

Mr. Brennan Quintus: (21:18) In 1975, the legislature enacted the first court tort caps after the abolishment of sovereign immunity. I believe those limits were \$100,000, \$300,000. But after that in 1977, that's when the tort caps were established at \$250,000 per person, \$500,000 per occurrence. Those tort caps remain the same up until 2015. In 2015 tort caps were then reviewed and then amended at that time to keep the per person cap at \$250,000 but the legislature felt that it was necessary to increase the per occurrence cap from \$500,000 to \$1M dollars. So that's the timeline there.

Mr. Blake Crosby, Executive Director, North Dakota League of Cities (22: 26-25:25) asked for a do not pass on SB2166. **Written attachment #4**. He read the comment from Commissioner Godfread in the 1/17/2019 edition of the Fargo Forum. Jon Godfread, Insurance Commissioner, said, "I think it is a good time to discuss state liability limits because as it stands now essentially lead to political subdivision limits if they change, will be four times what they are to the state". It has to be a conversation with everybody, underwriters, actuarial folks and those people in the business of providing insurance. This is in response to Sen. Kannianen question about some of the costs of some of the premiums. This is from an article in the Fargo Forum, "The city of Grand Forks is insured through the Insurance Fund and will in 2019 pay \$277,149 in premiums for general liability, \$271,001 premium for business auto insurance, and \$28,565 premium for heavy equipment insurance". So when we're looking at the potential for 50% increase we're talking a lot of impact on the taxpayers. With that I ask that we all be aware that local government has limited revenue sources and increasing local government costs is going to come back and it could result in long term disruption or elimination of services and or an increase in property taxes or fees. We are not opposed to discussion going forward but it needs to be a comprehensive discussion, insurance is an interesting instrument to try and understand and learn about. I respectfully ask for a do not pass on SB2166.

Senator Dotzenrod: You refer in your testimony to the insurance market for governing entities collapsed in the 1980's. I remember a term from that time called errors and omissions. I haven't heard that term for a long-long time, but errors and omissions was the kind of policies that subdivisions had to buy to protect themselves. Do you recall the term "errors of omissions"? Townships were paying like \$1000 a year to have error of omission, or perhaps it was \$2000. Now I haven't heard that term. Basically it was liability and it was for errors to cover acts that the bird may have made by an error or omission. I would be interested to know since this fund has been created now, and we referred several times back to the 1970's. I've seen these charts that show for the Reserve Fund the revenues that they have charted and the payoffs. The payoffs can be quite volatile. For the benefit of the committee, it would be good if we could see a chart and it shows over time how their revenues are coming in and their expenses going out, and how they have tracked with each other. It would be interesting to see over the last 10 years. I think they have it back going even further. Maybe I am talking to the wrong person, it would be interesting because I do think it has been a very good thing for the subdivisions to have this fund rather than to have them out as they were before trying to buy insurance independently from each other. I think by going together and having the fund its worked quite well. But I am not aware and I would like to know because of this bill how those payouts, out of the reserve fund have tracked relative to the collections.

Mr. Blake Crosby: I think that this a very appropriate question and we certainly can provide the committee with that information. We look at those on a monthly basis. I think it would be any eye opener. It would be very good information to share with the committee to see what we end up carrying for potential liability down the road. Understanding that sometimes litigation draws out for a number of years.

Ms. Alexis Baxley, Executive Director of the North Dakota School Board Association, spoke in opposition to SB2166. (29:02-30:08) **Written testimony # 5**.

Ms. Dana Shaar Jahner, Executive Director, North Dakota Recreation and Park Association, spoke in opposition to SB2166. **Written testimony #6** (30:24-30:46)

Mr. Larry Syverson: (31:07-31:35) North Dakota Township Officers Association spoke in opposition of SB2166.

Senator Anderson asked for neutral testimony on SB2166.

Mr. Todd Anderson, (31:56-) Director of the Risk Management of OMB. We administer the Tort Claims Act for the state which is the counterpart of the statutes that oversees and implements. As has been indicated by everyone here today, we welcome the conversation. Essentially we are talking about line drawing. The North Dakota Supreme Court in the recent Larimore case indicated that the line drawing that the Legislature makes, may simply be rational. So should that line be drawn and what is rational; there is lots of different viewpoints on that. I think as Terry indicated and as Brennan indicated, that you have to look at the big picture. In North Dakota, people can have \$25,000 and \$50,000 limits on an automobile. Driving an automobile is probably the most single dangerous activity that people undertake. Those are the limits that we have. So I do think when we're talking about line drawing that we need to have a broader conversation than this simply what should the political division caps be and what should the state Tort caps be? The only other point that I would make is that we believe that the political subdivision caps and the state caps although they need not be exact, they should be equal with one another. Our caps as has been indicated are \$250,000 and \$1Million which is exactly what the political subdivision caps are right now. Our system of collecting contributions is a little bit unique. We have an actuarial review undertaken every two years and its done on the off session year so contributions can be built into the budgeting process, the Governor's recommendations on the budget. So, when we get to the point of saying that the caps are going to be upped for the state, they really need to be upped prospectively 2 years out, because that's the only way we can get the monies that we're going to be demanding in contributions into those agencies budgets. So, that would be an important fine point.

Senator Diane Larson: The question that I have is just kind of glancing through Senator Vedaa's handout that he had done. Okay so then you have the payout, is there another way to recoup actual costs beyond that? Like in even in a civil suit or something so that when there is something extraordinary that cost the family so much more they can at least recoup their costs. Is there anything other than just this insurance cap to be able to do that for that without raising the cap across the board. I don't know if this has been covered earlier.

Mr. Todd Anderson: Something unique in the part of the century code that governs state liability does address that. In the event that there's something unique about a claim where a court allows a judgement to be in excess of the caps for some reason, there is a mechanism to have that put into the next legislative session in OMB's appropriation bill. So there is a mechanism for the state Tort Claims Act for catastrophic incidents. There isn't a comparable provision for the political subdivisions statues, but there is for the state. It's never been utilized and the parameters of exactly when the court could do that has never been defined but I guess that's the best I can answer that question.

Senator Diane Larson: It just seems that to just raise the rate across the board so that anybody that puts in a claim can just go ahead and get the maximum when their costs weren't up to that level. I think it's a good idea to have a cap. But when you can't even pay the medical bills for an incident like what Sen. Vedaa was referring to, it seems like there should be. I am glad the state has something in there.

Senator Dotzenrod: I just want to clear up some assumptions that I have that the subdivisions of the state their participation in this reserve fund is voluntary. They are not required to be, but I am also assuming there are some that do not participate and go out and have some other form of covering some, but I am not sure about that. If there are some they some be a very small number. I am guessing that most of the townships, cities, counties across the state are voluntarily participating. I guess if there were some that aren't I would be little bit curious to know how many and are they just going to private markets and buying insurance on their own or are they going uninsured?

Mr. Brennen Quintus: We have as mentioned all 53 counties, almost every single city, we aren't aware of another city in the state that purchases coverage outside of the city you're at. My guess would be that their going uninsured. I believe there are two school districts that were not members of the NDIRF. As far as township goes, I am not aware of another carrier for any coverage for townships and so I guess they would just go uncovered as well.

Senator Anderson: I am going to put a challenge out to those of you in the room that seem to be and I've heard from several of you that you would not mind looking at that. The easiest way for our committee is to just give this a do not pass, and then forget about it. But if your serious about wanting to look at it, you need to give Senator Burckhard some language about how that study should be done. If we should give that study to the insurance commissioner or to the insurance reserve fund or Todd's division of OMB whatever else, then we can mandate a particular agency to do a study or we can throw it into the Legislative Management and say will you pick this study which may or may not happen. So there is a couple of different options there, so if you're serious about looking at and put something together about how that might look and how you would like to see that, then give it to Chairman Burckhard and we could take a look at that. If you think it is a waste of time why then it sounds like we might give it a do not pass. But I don't that as we haven't voted yet. We'll hold this for a little while until you get a chance to talk among yourselves and come back to us with something that you think might work. Thank you.

Alexandra Carthew, Law Intern for the Senate Political Subdivision Committee sent the committee some legal background relevant to SB2166 (**Written testimony#7**).

Sen. Anderson: Closed hearing on SB2166.

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SB2166
1/31/2019
Job # 31904

- Subcommittee
 Conference Committee

Committee Clerk Signature: Mary Jo Wocken

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Relating to increasing liability limits for political subdivisions

Minutes:

Attach #1& 2 Brennan Quintus

Chairman Burckhard called the committee to order for discussion on SB2166. All senators are present.

Brennan Quintus, CEO of the North Dakota Insurance Reserve Fund. (:20-) I am here to provide information that was requested at the hearing for 2166, answer any questions and also kind of outline a plan that we've got with regard to really looking at political subdivision liability limitations and the impact of changing those liabilities. **Written attachment #1, 2.** During my testimony I mentioned that we had a rate increase in 2018, that was a direct result of that increase in claim activity reflected in the chart before you.

Senator Diane Larson: I don't remember if I asked this before. But I was trying to remember if this allowed for somebody to claim actual expenses without pain and suffering types of penalties on top of actual expenses if the actual expenses are greater than the maximum amount allowed? Like the school bus injury and bunch of kids injured with medical expenses and such.

Mr. Brennan Quintus: It would all depended on the type of claim I think, and then what would be allowed with regard to expenses and a description of what the expenses are. If you're talking about medical expenses those would be kind of formulated into what I think the damages that could be awarded and that would be included in the TORT cap. Expenses with regard to maybe the legal action that would ensue and if there is attorney's fees and expenses related to that. That would all kind of formulate depending on the facts of the claim and the type of claim that has been alleged against the political sub. But the medical expenses would be lumped in as part of the TORT cap.

Senator Diane Larson: So they would not be allowed if they exceeded that amount? Is that what I heard you say?

Mr. Brennan Quintus: They would be allowed. Now with regard to whether or not that political subdivision would be liable for those expenses, that would be dictated by the TORT.

Senator Diane Larson: So the rest would have to be held like in civil court to try to recover actual expenses for the.

Mr. Brennan Quintus: For medical expenses your likely going to fall on to some sort of medical insurance provider or if there's any alternative form of funding for those types of health care expenses yes.

Senator Diane Larson: Because I think that I would certainly be willing to allow for a greater payout for like actual costs to the family, but in terms of them I am going to get rich because my kid broke a leg is the pain and suffering types of claims I think are sometimes the things you know that is really costing everybody's insurance way too much to allow portion of it if it exceeds it. So that's what I am trying to find the balance in this.

Mr. Brennan Quintus: That is kind of the balance. We are looking at what catastrophic types of claims that are out there, and of course those are rare but then also looking at what you mentioned, some of the other exposures that could come up with regard to increase in the TORT caps and the impact they could have on political subdivisions. So you're exactly right that's kind of trying to find the balance of those types of claims.

Senator Judy Lee: This is kind of a follow up to Senator Larson's question. In the first place it's important to keep in mind that it's been maybe 20 years when sovereign immunity went away and there's any liability for political subdivisions at all. Before you couldn't see them at all. I don't have a problem so much with cost being covered of course, but if the parties involved have insurance coverage that's going to cover most if not all of the expenses I don't know that the state insurance fund should have to be responsible for it instead of the private providers or whatever else. So can you help me kind of walk my way through that. I am not supporting anything that would allow pain and suffering kinds of awards at all in this discussion.

Mr. Brennan Quintus: In claims that come into the NDIRF that allege some sort of injury that maybe a medical insurance type of carrier would've responded to and had liability not been imposed on the political sub, sure that's where the political subdivision in essence in the NDIRF would come in and say okay we'll take care of those expenses that you would have as a result of the liability of the political subdivision. There are circumstances that you can in that chart where there may be times where the medical insurer has not been able to recoup the entire amount that they are contractually obligated to pay to their insured because of the liability of political subdivision. Because of the TORT cap. So going back to what Senator Larson said, that is kind of the balancing act. There may be circumstances where if a political subdivision is liable your capping damages. Within those damage awards there is medical insurance or medical expenses that could be paid rising out of that, but then you're also taking a look at the greater public good of for the North Dakota taxpayer and trying to protect them as well in this concept. That's the balancing act again of the TORT cap, finding something that works for 99.9% of citizens in North Dakota.

Senator Diane Larson: So, thinking about that too, are some of these damages, now looking at the amounts that you have in here in the damages I don't know them what those damages are if they are actual costs of something or if it is just because they want to sue and get money because they think they can get a windfall through this. With these things then, does NDIRF take into consideration if the individual claiming injury is also, say for example they say they slipped and fell in front of BHS and so there's suing the high school. Now, NDIRF then covers the lawsuit for the high school. Now if the person also then choses to personally to sue the janitor, I would guess that they would look for someone who has the deepest pockets and who else can I put in there. I am going to sue the principal. Are those kinds of things I would think that those that you face as well? Is there any kind of trying to balance that, that no you 're not going to get multiple payouts for these kinds of things?

Mr. Brennan Quintus: Within the statute that allows for liability limitations there is language that kinds of lumps all of those types of claims into just one claim for the cap. If you were to end up suing the janitor along with the school district themselves all of those claims would be lumped and capped with the liability limitations are within the section.

Senator Anderson: I think Senator Larson if you look on line 11, of the bill that is current language there. It says it can't be held liable for punitive or exemplary damages. So it kind of rules out those things. My question is we had some concern about the numbers we were hearing for increasing the liability limits. Now as I see on this sheet here there is only two cases in the whole thing that reaches the limits that we talked about the \$250,000 or the \$1M. It's only two claims that come to the \$500,000 or \$1M. So my concern is do, we really have good numbers on what it would cost a political subdivision for example to increase their liability limits to double what they are or is this bill says the 4 times what they are? Because obviously you know you don't double the insurance bill just because you double the limit because most of the claims are still going to be small. So can you give us some feedback on that?

Mr. Brennan Quintus: You're exactly right. Within that list there are many claims that would fall lower than the TORT cap. Our concern with the caps if there to increase. I think you would invite additional activity and I think you would also invite a more challenging environment for settlement discussions as well, but with regard to the comment about the data and not having information available, to show the impact of rates. That is something that I was going to visit with the committee about today. We would invite the discussion. I know during my testimony we supported the conversation about it, we just weren't supportive of the quadrupling them without really thinking through what the impact would be. During testimony I indicated some initial estimates, from our actuaries on what the impact of what those rates could be, but we haven't had a long enough time to really study what those impacts could end up being and playing it out. So, the solution that I would propose to the committee we would like to take some time over the next biennium and study this and in partnership with Todd Anderson's group at OMB, and with the insurance department has actually jumped on board with the opportunity to take a look at this. The three parties can come together and say okay lets really dive in and figure out what the data is and what the actual impact is going to be and find a hard number then, what we would have to end up either adjusting for or not; where we think a solid number would be for those caps and then that will give us time for both the NDIRF and also OMB to find a happy medium there with their rates and not just get thrown into the mix with the quadrupling of the caps.

Senator Anderson: Do we need to direct you to do that? Will that happen during the interim anyway and we can just kill this bill for now or do we need to morph into a direction for you to study those things?

Mr. Brennan Quintus: What our goal it would be a do not pass recommendation with the idea of the bill dying on the Senate floor. Then we would commit to you the NDIRF and the insurance department as well to taking a solid look at this. We will come back next session with any recommendations we would have and if we found it necessary to increase the liability limitations we would certainly introduce, find a way to introduce legislation that would do just that.

Senator Judy Lee: I should know the answer to this I am sure, but Mr. Quintus, what does BA and GL stand for on the chart on the sheet?

Mr. Brennan Quintus: I should have indicated some sort of legend. You've got insurance jargon and I should've explained what that was. GL is liability essentially your traditional slip and falls, your errors in omissions those types of claims. The BA is auto types of claims.

Chairman Burckhard: When did you say your last rate was?

Mr. Brennan Quintus: Our last rate increase was in actually 2018. We experienced significant and much higher claim activity than what we had historically seen. We tend to not just off the cuff take rate increases for our political subs. We like to study the issue and find out what the impact is going to be, so as you can see in the chart, 2014-2015-2016 we had some higher than normal activity after letting that sink in we determined that 2018 there is going to be a need for a rate increase on our political subs just rising out of the additional claim activity that we were experiencing.

Senator Anderson: This is not so much a question but it seems to me that in the last 2 or 3 years we piggy-backed on the national television news and so there is a lot more claims against police departments for all of the things they try to do in their everyday activities. I can't help but think that watching things on the news peaks peoples' interest in maybe that we used excessive force or we did something else. Lots more claims, so the local political subdivisions contract out their law enforcement and then they can eliminate most of their claims and they can go on to the county or state police right?

Mr. Brennan Quintus: I will comment on the increase of claims activity with regards to police officers. We've certainly seen that at the NDIRF. But I will also comment that by and large those are defensible claims. So we find in almost all cases that our law enforcement acts very professionally. They have documented policies and procedures that allow us to defend the types of actions that are taking place. It is a different climate out there in regard to liability especially for political subdivisions.

Senator Judy Lee: In Mr. Quintus testimony on January 17, he mentions that the liability of limitations was most recently evaluated in 2015 and increase for occurrence limitation. Also that TORT caps were changed for one occurrence and then there was another one. Only one state of the 36, providing limitations on damages would have higher TORT caps than ND. So it doesn't sound like we are out of the marketplace if we refresh our memory from his earlier testimony.

Mr. Brennan Quintus: That is exactly the case right now. We are right smack dab in the middle with regard to where our liability limitations are for political subs. There are some states that obviously higher liability limitations and some states don't have any limitations at all. Then there are some states that have much lower caps as low as may be \$100,000. We are kind of right into the middle of where states are.

Senator Dotzenrod: The law we have now has this \$1million dollar limit for occurrence and I see on your chart that you handed out in 2016 there was an award of \$1M 21thousand. So was that award, it doesn't look like it was a litigation because I don't see litigation but that one doesn't. So was that a case of actual expense. You were just reimbursing someone for an actual expense? It seems awful high and it must have been for more than one person.

Mr. Brennan Quintus: First there are some claims that the TORT caps for liability on limitations do not apply to. Use of force claims most times if their brought as a federal matter a civil rights type of violation the state liability limitations aren't going to be available for a political sub and it can be much, much higher. So we are fighting for an over higher dollar amounts that way. Then inclusive of the amounts would include the defense costs as well that are imposed on the NDIRF.

Senator Kannianen: Could you talk about the cost of your premiums in regards to it? Does it make a big difference between for example if the \$250,000 per person, \$1M per occurrence, if the \$250,000 were left as it was, and the per occurrence rather than raising both of them if just the per occurrence was raised to protect more for a bigger accident or something. Now would that and how would that affect premiums versus raising both of them?

Mr. Brennan Quintus: With regard to the limits on both sides. If you were to raise, we've been told by our actuary consultant if you were to raise the per person limit, it would have a higher impact on rates versus just raising the current limit. That was reflected in 2015 discussions as well.

Senator Dotzenrod: I noticed like in 2016 you looked toward the bottom and there is quite a bit of use of force and your saying that those limitations we have in the Century Code probably don't apply in those cases. So are those awards actual expense for some sort of damage, hospitalization of someone with a wound or broken bones or some actual expense or those numbers look awfully big. They look like they would be numbers that would be in access of an actual expense. Is that the case?

Mr. Brennan Quintus: Unfortunately, you see a whole list there and 2016 related to use of force. Those were DAPL related matters, so we had a whole host of issues arising out of those protests. The comment with regard to the TORT caps not applying to use of force. There are instances where those could as well. It really depends on the mechanics of the lawsuit and how damages are alleged. If they are alleged as a negligence type of matter, then it's likely the liability limitations in the Century Code could apply. If they are alleged as a constitutional right violation, then it's likely that those liability limitations do not apply. Now increasing the caps would likely invite in my opinion more from a civil rights violation standpoint. Use of the Century Code in those lawsuits versus bringing them as civil rights because there is a greater opportunity to recover. Right now they try to get them out of the negligence type realm and into the civil rights type realm because caps aren't available and

there's more opportunity to recover. But increasing damage the liability limitations I think would continue to invite more use of the negligence type of statute versus awards.

Senator Dotzenrod: If I understood what you just said that if we raise the cap you wouldn't invite more civil types of action. But if the caps don't apply in civil types action why would that be the case?

Mr. Brennan Quintus: They can apply. It depends on the mechanics of the lawsuit. It depends on what they alleging. If they are alleging just pure negligence, the caps would apply. If there alleging a civil right violation; it's likely that they would not apply because they are coming under a different format that way.

Senator Dotzenrod: I think my sense was after the hearing was that the payouts that go out of the fund, are in all cases limited to actual damages. I guess that's wrong. It's not a case that the payouts coming out of NDIRF are always limited to actual damages. I was under the assumption that especially if it went to trial that any award the judge would give could not exceed actual expenses. I guess that is just not the way it really works.

Mr. Brennan Quintus: That is correct. There are many ways that one of our members or a plaintiff could end up gaining funds from the NDIRF and it could end up being damages arising out of an auto accident. But it also could be alleging other types of injury whatever the case may be.

Senator Dotzenrod: If there were someone who was injured, where they slipped and fell and those awards sometimes are \$100,000. That seems like a lot to when you slip and fall for \$100,000. I assume those are limited to actual expenses maybe I am wrong. But, if there is someone who slips and falls, and they have a \$100,000 of actual expense, which seems really high, if they have good insurance on their own, and there also is protection to the subdivision by your insurance fund, how does that work? Is there a priority of who pays if the private person's own insurance pays it seems to me then the NDIRF is off the hook and there is no loss to the fund, or is it the other way around? The fund has to pay before the private insurance company pays.

Mr. Brennan Quintus: I will make a comment on the first portion of your question. The numbers that are indicated on the chart as I mentioned would include defense costs as well, so it's likely in any of these claims that were defending along with paying out damages. The second portion of that slip and fall and the priority of payment. What likely would happen is if someone were to be injured initially they would end up going to the doctor and whatever health care to receive treatment. If they had health insurance, it's likely the health insurance would end up paying that initial payment in order to insure the doctor would be paid for services. Then the health insurer would likely segregate back against the NDIRF to recover those damages if it were found that the NDIRF were to be liable. That is kind of the crux of where we see some of these suits is finding who is liable. If it's found that a political subdivision is liable that's when payment would come from the NDIRF.

Senator Dotzenrod: A lot of these payments we see over here total loss are actually payments from the fund to an insurance company rather than from the fund to an individual.

Mr. Brennan Quintus: Not necessarily. We are probably paying all sorts of different entities. We are working with opposing council, our own council, working with other insurance companies whether it is a health insurer, or auto insurer or whatever the case may be. Or we are working with private individuals as well. It just really depends on the facts of the claim.

Chairman Burckhard: If the increase in years 2014, 2015, 2016 were they related to the oil activity?

Mr. Brennan Quintus: That is our opinion that with the increase in population in North Dakota you've got additional services that are being asked to be put into subdivisions, you've got more vehicles on the road. You've got more employees out there performing activities. It is just a higher likelihood of additional activity. We've also seen a significant uptake in our law enforcement and correctional facility type claims. I think that would come along to with an increase in population. It all kinds of stands from just having more people here. I do want to correct the comment that I made during the hearing with regard to the history of the caps. Senator Lee asked a question about how the caps have kind of morphed over the years. I mentioned in 1970's sovereign immunity was abolished by the Supreme Court. The first cap that was actually established was \$20,000 per person; and \$100,000 for any single occurrence. That was effective in 1975. In 1977 that is when they ended up increasing the caps to \$250,000 a person, \$500,000 per occurrence. So the first cap I was wrong I think I said \$100,000/ \$300,000 as a number I threw out there. It's actually \$20,000 per person- \$100,000 was the first cap established.

Senator Anderson: The last time you changed it was?

Mr. Brennan Quintus: It was 2015. So again what I would propose to the committee would urge the committee a do not pass recommendation with a commitment from the NDIRF and the insurance department to incorporate the state risk as well and really take a look at levels of liability limitations not only in ND but then also across the country. Determine based on rate studies and those types of things and what kind of impact adjusting caps would have on rates and then coming back in the next session with an idea of what we recommend after having time to really digest what the impacts would be. We would be allowed then to adjust internally rather than having the quadrupling of the TORT caps thrown on our lap and trying to figure out we are going to rate for it. We would have time to really digest and make sure what's being out there is fair to our political subs.

Senator Dotzenrod: The kind of work you intend to do over the interim is it the kind of work that would be benefitted by having some public hearings like in a legislative interim study or are you thinking more of an actuarially gathering of information from actuary tables and the trends in these kinds of occurrences and working internally more than gathering information from the public in the way that an interim study might do?

Mr. Brennan Quintus: Our intent would be to study from an actuarial standpoint in finding a way we can spread that cost risk out to our members any more in a measured manner rather than having a quadrupling like what could happen and put in the bill and jump to conclusions. We would like to really dive in and figure out the impact of those caps, and then again through whatever mechanism we would need to accomplish this having legislation introduced again in the next session if we found the TORT caps are out of step or out of line and then have a hearing process and input that way.

Senator Judy Lee: I have great respect for Sen. Dotzenrods' question there, but I think this is one of those examples when the experts are going to have the opportunity to work together and I think that would be beneficial. My experience has been very positive in trusting in the people who tell me they will do that to see and they do it. Then they bring a report back to us in the next session or whatever happens to be. But I think it would be it would certainly be beneficial to have the folks with the expertise in this area be involved with this. It's not that legislators aren't smart enough to listen to information about all of this, but I don't know that they are going to be able to add as much to it as the parties that you just mentioned in putting it together. So I personally would be quite comfortable with allowing those offices who have the major responsibilities in this sit down together and get this figured out. We know that they are all available for public comments that are here for legislators as well and then come back and I am confident they will do what they say they are going to do.

Senator Dotzenrod: I think the only concern that I have about this subject matter is what I thought I heard when we had the first hearing that there have been cases where actual expenses the actual cost to someone injured has exceeded the cap. In that case I felt there was a little bit like somehow we got somebody down there that if one of our subdivisions through some negligence and has created an injury, and that injury actual cost went over the cap, it just seemed like what we then we imposed on that individual very significant setback economically and not really been able to address it in any way. Too bad, you're out. Maybe their private insurance if they had private insurance would've covered that gap, I guess I don't know enough about the subject.

Senator Judy Lee: I agree about we don't someone being harmed but we didn't hear whether or not the individual's private insurance had any impact on this at all. I am not much interested in super ceding the private insurers responsibilities in these issues either. So that is what I would like to hear them figure on how we can do this better to make sure that everybody is kept whole in the best way, but that the responsibilities of the private insurers are here. I am not going to encourage people to give up their insurance so that the political subdivisions pay.

Mr. Blake Crosby, North Dakota League of Cities and a member of the NDIRF Board of Directors. (32:20-33:40) Let me assure you as the discussion has gone around the table that we take this very seriously. We will perform the study with OMB and the state in the interim and come back to you with our results. As you have had a number of discussions around the table this morning, you can see the complications that are involved in the insurance environment, and I agree with Senator Lee that putting persons in there that do not have the expertise and I certainly don't have that expertise, would severely complicate the conversation. We will work with the state and OMB and the NDIRF Board of Directors. We will come to rationale and logical and prudent decisions and we will get those back to you in the next session. On Senator Dotzenrod last comment, we are in a very litigious environment. The more you allow yourself to be sued for the more you're going to get sued. I mean it is just a fact of life. You have my assurance we will carry this forward and will get to you with a report.

Chairman Burckhard: We have heard a lot of testimony today. What do we want to do with 2166?

Senator Anderson: I move do not pass on 2166 as not amended.

2nd: Senator Kannianen

Roll call vote:

Committee Discussion:

Senator Dotzenrod: I just want to comment that I am going for the do not pass, but I am casting that vote with sort of trust. I am extending some trust here to those parties who are here today that they are going to, as what we are operating on is just sort of a verbal commitment here. As Senator Lee said, generally speaking we've can almost count on that being delivered on to us. If I thought that for some reason we wouldn't make headway. I do think this is something where it's probably is better than an interim study. What you get in an interim study is a lot of people getting anecdotal information which you really need is an understanding of what's going on in our culture. Are we headed to more increasing litigation and are we looking at a growth in award that are exceeding actual expenses? That would be concerning to me. It was good to have that information.

Senator Anderson: I agree with Senator Dotzenrod and one additional thing the study will give us is we'll be able to predict the cost for our political subdivisions based on whatever things are recommended because by then they will have some good actuarial figures and we'll be able to tell what the cost will be. The burden we're putting on the political subdivisions when they redo their budgets.

Chairman Burckhard: So this study is going to be with NDIRF, Office of Management and Budget and the state? Is that the thought?

Senator Diane Larson: I am kind of struggling with my vote. I was thinking I will vote for the bill because of the testimony from Senator Vedaa saying that this girl who drowned and she was paid the \$250,000 didn't cover her hospital and funeral expenses. So I was thinking that we perhaps should but then I read further in his testimony, and she referenced it, "This bill is reactive and I wonder if we shouldn't amend it to require the NDIRF to adjust these amounts as needed in the future". It sounds like we have the word of the NDIRF that they will do that, but there is nothing to require it. I don't like to increase the taxes on the jurisdictions to be able to cover frivolous lawsuits at a higher level. But my dilemma is I do want to see that people who have some actual expenses get those expenses paid. So that is where my struggle right now, and I am not certain if I really know how I am going to vote on this bill until she calls on me.

Chairman Burckhard: We have a motion for do not pass. Any more discussion?

Roll call vote: 5Yea 1No 0 absent - motion passes

Carrier: Senator Anderson

Senator Dotzenrod: Based on when the bill was presented Senator Vedaa, we may expect him to rise and give some comments on this, I would expect. He seemed very committed to this when he came in here.

REPORT OF STANDING COMMITTEE

SB 2166: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2166 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2166

SB2166
1.17.2019
att #1

SB2166

Chairman Burckhard members of the Committee of Political Subs for the record I am Senator Vedaa District 6.

The reason I am here today is because it was brought to my attention that the liability limits that is in NDCC is too low for today's insurance standard. The current levels that we have today were established in 1977 with \$250,000.00 per claim and \$1,000,000.00 per incidence. I don't even have that low of liability coverage on my farm and ranch policy or my business and automobile insurance and 18 years ago when I started selling insurance I won't have recommended that low of liability for the average home owner.

The reason the conversation started on this was because of a claim in my District that involved a young girl who drown. I'm not going to get into the case because the maximum limit was awarded, and it wasn't even enough to cover the hospital bills that were incurred.

Whose fault is the low limit? That is not for us to determine, government to many times is reactive instead of proactive. This is a bill that is reactive, and I wonder if we shouldn't amend it to require the NDIRF to adjust these amounts as needed in the future.

SB2166 would raise the limits to one million dollars per person and four million dollars for any number of claims arising from any single occurrence regardless of the number of political subdivisions, or employees of such political subdivisions which are involved in that occurrence.

This is simple liability insurance that most of us are required to carry on our motor vehicles and should carry on ourselves through our homeowners, businessowners, and excess liability. I know many people don't understand insurance but when one needs it becomes clear its usually not enough. Testimony in another committee yesterday said, " Insurance is selling someone Trust you can't see it you have to trust it's there".

Someone lost trust in insurance that day they were awarded the maximum of \$250,000.00 the amount set in 1977. Last night I used an inflation calculator and \$250,000 in 1977 is worth \$1,058,952.89 in today's dollars. I think it's time bring this outdated amount to date.

Mr. Chairman that concludes my testimony and I will stand for any questions.

L. B. 2166
1.17.2019
att #2

Testimony to the **Senate Political Subdivisions Committee**

January 17, 2019

Prepared by Brennan Quintus, CEO

North Dakota Insurance Reserve Fund

RE: Senate Bill No. 2166

Mr. Chairman and members of the Senate Political Subdivisions Committee, my name is Brennan Quintus and I am the CEO of the North Dakota Insurance Reserve Fund (NDIRF). The NDIRF is a government self-insurance pool that provides liability, automobile and equipment coverage to North Dakota's political subdivisions.

NDIRF membership includes all 53 counties, 338 cities, 176 school districts, and roughly 90-95% of the fire districts, ambulance districts, park districts, and other remaining political subdivisions in North Dakota.

While the NDIRF supports the conversation about liability limitations, or tort caps, for political subdivisions in North Dakota, it is opposed to quadrupling the tort caps as proposed in SB 2166. The NDIRF would encourage the committee to embark on a thoughtful evaluation of the tort caps for political subdivisions in North Dakota while keeping in mind the following:

- **The political subdivision liability limitations were most recently evaluated in 2015** which resulted in an increase to the per occurrence limitation from \$500,000 to \$1,000,000.
- Currently, **the tort caps afforded to state government are set at \$250,000 per person and \$1,000,000 per occurrence**, or the current levels for political subdivisions.
- Financial responsibility requirements for the ownership, maintenance, or use of an automobile in North Dakota are currently set at **\$25,000 per person, \$50,000 per accident for bodily injury or death and \$25,000 for property damage.**
- According to the most recent data available, 36 states currently maintain statutory limitations (tort caps), at some level, on liability-related damages that may be obtained from a political subdivision. **Of those 36 states, 29 states maintain per-occurrence tort caps equal to or less than North Dakota's current \$1,000,000 limitation.** These include a number of states much larger than North Dakota in terms of size and/or population, such as Texas, Pennsylvania, Maryland, Florida, Kentucky and Kansas. If the tort caps for political subdivisions in North Dakota were increased to \$1,000,000 per person and \$4,000,000 per occurrence as proposed in this bill, **only 1 state of the 36 providing limitations on damages would have higher tort caps than North Dakota.**
- **Increasing tort caps to the levels proposed in SB 2166 would significantly increase the contributions necessary from NDIRF members for their liability and automobile coverage.** Some initial estimates show rates could increase as much as 50% for some lines of coverage which would be in addition to a 25% rate increase seen in 2018 due to a significant increase in claims activity in recent years. As explained in a district court ruling pertaining to tort caps, **political subdivisions have limited taxing authority and every dollar siphoned away to purchase additional liability coverage removes limited resources and tax revenues collected for the specific public functions of a political subdivision.**

Thank you for allowing me to provide this testimony and I would be happy to respond to questions from the committee.

SB 2166
1.17.2019
att #3

Testimony to the
Senate Political Subdivisions Committee

Prepared January 17, 2019

By Terry Traynor, Executive Director
North Dakota Association of Counties

RE: Opposition to SB2166 – Liability Limit Increase

Chairman Burckhard and members of the Senate Political Subdivisions Committee, thank you for the opportunity to express the concerns and opposition to Senate Bill 2166 on behalf of North Dakota's counties.

By now you have likely heard the history of local government liability, with the elimination of sovereign immunity in the 1970's, the lack of insurance carriers willing to underwrite public risk, and the creation of the North Dakota Insurance Reserve Fund. This has been a long and challenging road to provide adequate protection for our tax payers and just compensation for those harmed by governmental actions.

We believe that the Legislature, local officials, and our insurance fund have worked well in periodically considering this chapter of Century Code and adjusting limits, as was done in 2015, when appropriate. I mention also that these liability limits were also reviewed by the Supreme Court in their unanimous 2018 decision in favor of local government. I think it is important to quote their analysis in that decision: *"Here, the damage cap operates alike for all similarly situated persons and political subdivisions. The language of the damage cap is written in general terms to apply to all similarly situated political subdivisions and persons and treats them alike for purposes of the special law provisions of N.D. Const. art. IV, § 13."* We believe this is important, and agree that this issue must be considered, but considered along with all such liability limits, not just political subdivisions.

As this Committee understands better that most, raising a local government cost through Legislative action will force one of two outcomes – higher property taxes or reduced services in other areas. Counties believe that in this case, a more thorough review of all such limitations is appropriate before such action is taken.

Mr. Chairman and Committee Members, on behalf of our state's counties I urge you to give SB2166 a Do Not Pass recommendation.

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att #4

January 17, 2019
SB 2166
Senate Political Subdivisions
Senator Burckhard, Chair

Chairman Burckhard and members of the Committee, for the record I am Blake Crosby, Executive Director of the North Dakota League of Cities and a member of the North Dakota Insurance Fund (NDIRF) Board of Directors.

On behalf of the League, we stand in opposition to SB 2166. When the private insurance market for government entities collapsed in the 80's or became unsustainably costly, it was the cities, counties, and other public entities that came together and created the North Dakota Insurance Reserve Fund. Political subdivisions needed to protect taxpayers by providing reasonable and prudent coverage while providing fair remedy for political entities actions.

Based on reviews by auditors, underwriters and actuarial services; NDIRF performs in an effective manner. In 2015, liability caps were appropriately adjusted, and the North Dakota Supreme Court agreed in their findings in 2018.

Liability limits are discussed within the Board but to provide fairness going forward it is imperative that all liability limits for all governmental entities need to be a part of the conversation. Equitable treatment in the marketplace is critical or we may find ourselves back to the '80s.

You are all aware that local government has limited revenue sources and increasing local government cost can only result in a long-term disruption/elimination of services and/or an increase in property taxes or fees.

We respectfully ask for a DO NOT PASS on SB 2166. I will try to answer any questions.

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Bill seeks better insurance for local governments in ND

By Emily Allen
Forum News Service



Forum News Service file photo

A North Dakota state trooper investigates the scene where a Larimore school bus collided with a train east of Larimore on Grand Forks County Road 4 in 2015.

BISMARCK — North Dakota lawmakers have introduced a bill to increase liability limits for political subdivisions in the event one is found at fault for damage or harm.

Bill sponsors say current limits aren't enough to cover hospital charges and other damages, while state officials dealing with insurance say raising limits could lead to higher premiums for city and county governments.

“We’ve had some issues in our state with some very unfortunate incidents,” North Dakota Insurance Commissioner Jon Godfread said. “But anytime you increase what the potential liability would be, it’s going to have an increase on the premiums, and you know these premiums for these political subdivisions are paid for by

property taxes.”

Many political subdivisions — including counties, cities and school districts — pay premiums to the North Dakota Insurance Reserve Fund so, in the event a judge finds a subdivision at fault, it can pay an impacted individual or group. Political subdivisions pay premiums based on the size of their population, the services they offer to constituents and a history of their losses, according to North Dakota Insurance Reserve Fund CEO Brennan Quintus.

The amount a subdivision can pay is capped at \$250,000 per person and \$1 million per incident.

A bill from Sen. Shawn Vedaa, R-Velva, would raise a subdivision’s liability limit per individuals to \$1 million and per incident to \$4 million.

“If I want to protect my assets, I can carry \$1 million to protect my assets,” Vedaa said. “Like, for cars, my car insurance has a liability of an aggregate of \$1 million. My farm and ranch has a liability of \$1 million, my business has a liability of \$1 million. So if little old me can be sued for \$1 million, why shouldn’t the political subdivisions be (liable for) more than \$250,000?”

Both Godfread and Quintus said Tuesday they’re pleased legislators are having a discussion on updating liability limits.

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“I think it’s always good to have this conversation and talk about these limits,” Godfread said, adding he thinks it’s also a good time to discuss state liability limits. “Because, as it stands now, essentially the political subdivision limits (if they change) will be about four times what they are to the state.” *

A recent update

The last time legislators updated liability limits for political subdivisions was in 2015, when a Senate bill increased the per-incident limit to \$1 million. Before then, it had been \$500,000.

The per-individual limit has been in place since 1977.

A Larimore state senator brought forward the bill after a train hit a school bus that failed to yield, killing the teacher driving the bus and a high school student in early January 2015 near the city.

Families and students connected to the incident were awarded a total of \$500,000 in court afterward, which lawmakers said still wasn’t enough to cover all of the resulting damages.

Vedaa said his district, which covers Renville, Bottineau and McHenry counties, recently had a similar incident. That prompted him to introduce the most recent liability limit bill.

“\$250,000 doesn’t go a long ways anymore when it comes to ending up in the hospital or losing work if you end up being completely disabled or something,” Vedaa said.

Risk of higher

premiums

* The city of Grand Forks is insured through the Insurance Reserve Fund and will in 2019 pay a \$277,149 premium for general liability insurance, a \$271,001 premium for business auto insurance and a \$28,565 premium for heavy equipment insurance.

“How much more will the additional coverage cost cities like Grand Forks?” City Administrator Todd Feland asked. “And it is a pretty significant jump for one year, for both limits. Is there a more incremental way we can work on this?”

The Senate committee on political subdivisions will consider the bill during a hearing on Thursday.

“The North Dakota Insurance Reserve Fund is still in process of evaluating the bill and potential impact to reserve fund and its political subdivision members,” Quintus said.

The group said it will research that impact and share its findings on Thursday, Jan. 17.



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

P.O. Box 7128
Bismarck ND 58507-7128
1-800-932-8791 • (701)255-4127
www.ndsba.org

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Att. #6

SB 2166
Testimony of Alexis Baxley
Senate Political Subdivisions Committee
January 17, 2019

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Alexis Baxley. I am the executive director of the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. I am here today in opposition to SB 2166.

While NDSBA also supports the conversation about liability limits for political subdivisions, we believe a more appropriate approach at this time would be to study the issue. We believe rather than quadrupling the limits, we should spend some time examining the issue and attempt to find a balance between increasing the limits and maintaining the financial health of our political subdivisions. In the North Dakota Supreme Court opinion issued on the ruling of Larimore Public School District #44 v. Aamodt, Justice McEvers writes, "Unlike private persons, political subdivisions are mandated to provide certain governmental services, and the public has an interest in the availability of those services within the limits of the political subdivision's financial resources." We agree, and believe that a 50 percent increase in premiums would be quite burdensome to our member districts, further limiting their ability to provide an equitable education to all North Dakota students.

NDSBA urges a do not pass recommendation for SB 2166. I would be happy to answer any questions.

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p.1

NDLA, S PSD - Wocken, Mary Jo

From: NDLA, Intern 02 - Carthew, Alexandra
Sent: Thursday, January 17, 2019 1:25 PM
To: Burckhard, Randall A.; NDLA, S PSD - Wocken, Mary Jo; Lee, Judy E.; Kannianen, Jordan L.; Anderson, Jr., Howard C.; Dotzenrod, Jim A.; Larson, Diane K.
Subject: Legal Background Relevant to SB 2166 (political subdivision liability increase)
Attachments: Larimore Public School District No 44 v Aamodt.pdf

Hello everyone,

I thought it might be helpful to provide some clarification on the legal mechanism of tort claim recovery, and I also took it upon myself to fact check a few assertions made in today's testimony on SB 2166. I did speak on these matters briefly before the committee this morning.

First, and please forgive me if I am stating the obvious, but if the legislature decides to increase the caps on liability for political subdivisions it does not make it easier for plaintiffs to recover higher damages so much as it simply makes it possible. There is still a jury that would weigh all of the evidence presented by the plaintiff and defendant in the case, and it is the jury's job to decide what amount of money would be appropriate to award a plaintiff. There is another safeguard in place, as well. If the judge decides the recovery awarded by the jury was excessive, the judge is capable of reducing the amount. So multiple safeguards exist in the legal process to protect defendant political subdivisions against excessive recovery.

Second, much of the opposition testimony quoted the North Dakota Supreme Court opinion in Larimore Public School District No. 44 v. Aamodt. I think it might be helpful to the committee to hear a neutral summary of this case. The incident at the heart of the case involved a collision between a district school bus and a train in 2015. There was no question that the driver's negligence was the cause of the accident. There were thirteen students onboard the bus at the time of the accident. One child died, and all of the other children suffered serious injuries. At the time the law as written limited the school district's total liability to \$500,000 for a single incident with three or more victims. It was in response to this 2015 incident that the legislature increased the total cap from \$500,000 to \$1,000,000 per single incident. The plaintiffs appealed from this judgement to the North Dakota Supreme Court by challenging the constitutionality of the cap.

In the testimony given today it was asserted several times, by different speakers, that the North Dakota Supreme Court agreed that the 2015 increase in the liability cap was appropriately adjusted. This is not entirely accurate. The Supreme Court was evaluating the constitutionality of the cap, but was not evaluating whether the monetary amount set in the cap was appropriate. The Supreme Court's 5 holdings in the case respectively dealt with whether the cap violated the North Dakota State Constitution or the United States Constitution. The Supreme Court held that the statutory damage cap was constitutional. This is not a judgement on whether the set monetary amount of the cap is appropriate, however.

On the specific subject of the amount of the cap, the North Dakota Supreme Court noted "Outside the constitutional context, to the extent genuine questions might be raised regarding the amount of the cap, we note that such questions require detailed study and analysis of all relevant policy factors in a complicated balancing act that is properly addressed to the General Assembly." Larimore Pub. Sch. Dist. No. 44 v. Aamodt, 908 N.W.2d 442, 460 (N.D. 2018). I have attached a pdf of the case for your convenience, should any of you want to delve further into Larimore. So, the North Dakota Supreme Court specifically declined to offer guidance on whether the monetary amount was appropriate, and instead referred on that matter to the Legislature.

Third, it is also helpful to note that the statutory language as it stands does not allow plaintiffs to recover punitive or exemplary damages. Punitive or exemplary damages are typically awarded when a defendant's actions could be

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characterized as willful with intent to cause harm, grossly reckless, or otherwise particularly egregious. Put simply, punitive damages is money that is awarded in excess of the plaintiff's actual costs incurred/reasonably foreseeable future costs. The statute as written does not allow political subdivisions to be held liable for these punitive or exemplary damages, even if a jury wanted to award them.

I hope this has been helpful! Please do not hesitate to reach out if you would like additional clarification or further research. See you all tomorrow!

Best,
Alex

NDRPA

North Dakota Recreation & Park Association •

advancing parks and recreation for quality of life in North Dakota



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p.3

**Testimony of Dana Schaar Jahner
North Dakota Recreation and Park Association
Senate Political Subdivisions Committee
Opposition to SB 2166
Thursday, January 17, 2019**

Chairman Burckhard and Members of the Committee, my name is Dana Schaar Jahner, and I am executive director of the North Dakota Recreation and Park Association (NDRPA). NDRPA represents more than 700 members across the state, primarily park districts and their elected park board commissioners and staff, and works to advance parks, recreation and conservation for an enhanced quality of life in North Dakota.

I am here on behalf of NDRPA to oppose Senate Bill 2166. While NDRPA recognizes the value in a discussion about liability limits for political subdivisions, we are opposed to the significant increase proposed in the bill, which could negatively impact park districts' ability to meet their missions and serve the people of their communities.

Thank you for your time.

NDIRF Liability and Automobile Liability Claims Exceeding \$100,000 (2013-2017)

*MB 2/16/6
1.31.15
OFF #1*

Year	2013	2014	2015	2016	2017
Number of Claims	6	8	21	18	7
Total Dollar Amount	\$ 915,847	\$ 2,100,541	\$ 4,654,995	\$ 4,994,019	\$ 1,662,110

Year	Description	Coverage	Total Loss
2013	ZONING	GL	\$ 113,973.46
2013	OTHER	GL	\$ 138,208.00
2013	CONTRACT DISPUTE	GL	\$ 122,108.48
2013	OT LAW ENFORCEMENT CONDUCT	GL	\$ 271,758.03
2013	CR: FALSE ARREST	GL	\$ 143,653.77
2013	ACCIDENT AT INTERSECTION	BA	\$ 126,145.06

Year	Description	Coverage	Total Loss
2014	INTERSECTION	BA	\$ 230,773
2014	WAGE DISPUTE	GL	\$ 245,982
2014	DOL/EEOC COMPLAINT	GL	\$ 273,834
2014	CR: DISCRIMINATION - GENDER	GL	\$ 350,172
2014	CR: OTHER	GL	\$ 345,887
2014	DETAINEE INJURY	GL	\$ 232,819
2014	POOL, BEACH, WATERSLIDE	GL	\$ 235,947
2014	POOL, BEACH, WATERSLIDE	GL	\$ 185,126

Year	Description	Coverage	Total Loss
2015	PEDESTRIAN	BA	\$ 211,905.02
2015	INTERSECTION	BA	\$ 124,032.08
2015	INJUNCTIVE RELIEF	GL	\$ 100,000.00
2015	TAKING	GL	\$ 427,762.67
2015	TAKING	GL	\$ 317,929.94
2015	CONTRACT DISPUTE	GL	\$ 292,916.83
2015	CONTRACT DISPUTE	GL	\$ 123,320.05
2015	ORDINANCE, POLICY, LICENSE	GL	\$ 224,520.53
2015	DETAINEE INJURY	GL	\$ 106,208.66
2015	DETAINEE INJURY	GL	\$ 116,401.84
2015	DETAINEE INJURY	GL	\$ 107,076.23
2015	PURSUIT	BA	\$ 189,101.14
2015	PURSUIT	BA	\$ 190,174.03
2015	SUICIDE	GL	\$ 230,466.77
2015	SUICIDE	GL	\$ 230,466.81
2015	CR: FALSE ARREST	GL	\$ 122,495.57
2015	CR: USE OF FORCE	GL	\$ 377,575.05
2015	CR: USE OF FORCE	GL	\$ 258,231.34
2015	CONDITION	GL	\$ 121,805.75
2015	ACCIDENT AT RAILROAD	BA	\$ 282,604.68
2015	ACCIDENT AT RAILROAD	BA	\$ 500,000.00

Year	Description	Coverage	Total Loss
2016	INTERSECTION	BA	\$ 250,000.00
2016	DOL/EEOC LITIGATION	GL	\$ 142,721.50
2016	CR: OTHER	GL	\$ 166,768.34
2016	DUE PROCESS	GL	\$ 180,225.44
2016	TAKING	GL	\$ 239,884.72
2016	CONTRACT DISPUTE	GL	\$ 245,346.78
2016	CONTRACT DISPUTE	GL	\$ 148,217.17
2016	OTHER FIRE FIGHTING ACTIVITY	GL	\$ 411,588.50
2016	SUICIDE	GL	\$ 319,343.14
2016	OT LAW ENFORCEMENT CONDUCT	GL	\$ 163,770.50
2016	CR: FALSE ARREST	GL	\$ 102,897.29
2016	CR: USE OF FORCE	GL	\$ 1,021,275.96
2016	CR: USE OF FORCE	GL	\$ 557,433.45
2016	CR: USE OF FORCE	GL	\$ 275,000.00
2016	CR: USE OF FORCE	GL	\$ 275,000.00
2016	CR: USE OF FORCE	GL	\$ 275,000.00
2016	SLIP, TRIP OR FALL	GL	\$ 109,887.50
2016	SLIP, TRIP OR FALL	GL	\$ 109,658.59

Year	Description	Coverage	Total Loss
2017	INTERSECTION	BA	\$ 275,000.00
2017	DOL/EEOC COMPLAINT	GL	\$ 180,917.10
2017	CONTRACT DISPUTE	GL	\$ 120,941.58
2017	DETAINEE INJURY	GL	\$ 199,088.84
2017	OT LAW ENFORCEMENT CONDUCT	GL	\$ 136,421.24
2017	CR: USE OF FORCE	GL	\$ 472,258.87
2017	CR: USE OF FORCE	GL	\$ 277,482.46



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PROTECTING THE PUBLIC TRUST

North Dakota Insurance Reserve Fund
2017 Annual Report



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Dear NDIRF Member:

The North Dakota Insurance Reserve Fund (NDIRF) is providing this copy of its 2017 Annual Report to inform you of the Fund's activities and financial performance in the past year.

The NDIRF operates with a goal of providing a stable source of risk services to North Dakota's political subdivisions. It is because of the efforts of NDIRF members, and the local agents who provide service to those members, that the NDIRF has been able to meet that goal for the past 32 years. In this report, we will describe some of the activities showing those efforts in action. As you will see, the collaboration between the NDIRF and its members is truly unique and just another reason why the NDIRF remains the best risk financing option available to North Dakota's local governmental entities.

The past 32 years have certainly not been without challenges, most recently the significant uptick in loss activity over the past 3-4 years. While the increase in loss activity was expected and prepared for, seeing that expectation come to fruition was nevertheless unnerving. I can confidently

communicate to you that the NDIRF remains in very strong financial health and the following report will provide more detail to elaborate on that statement. If you would like additional information beyond what is included in this report, the 2017 audited financial statements are available on the NDIRF website at www.ndirf.com/ndirf-info/financials.

Last, but certainly not least, I would like to thank former CEO Steve Spilde for his contributions to the NDIRF during his 25 year tenure. The NDIRF would not be the organization it is today without the efforts of Steve and I am sure you will join the NDIRF Board of Directors and staff in wishing him well in his retirement.

On behalf of the Board of Directors and staff, thank you for your continued participation in the NDIRF.

Sincerely,

Brennan Quintus
Chief Executive Officer
North Dakota Insurance Reserve Fund

MEMBERSHIP

All political subdivisions in North Dakota are eligible for membership in the NDIRF. Distribution of NDIRF membership by entity-type covers the broad spectrum of all categories of local government and the relative premium distribution among them has remained very stable historically. (Fig. 1)

In 2017, 2,556 local governmental entities participated in the NDIRF. This number means that well over 90% of the entities eligible for membership have become part-owners of the NDIRF through their purchase of coverage. (Fig. 2)

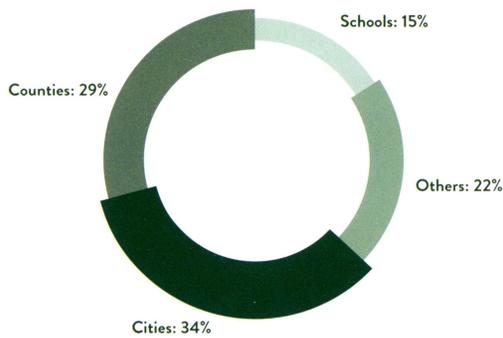


Fig. 1 - Member Premium Distribution

CONFERMENT OF BENEFITS

The NDIRF is pleased to be able to share its good years with its members through the Conferment of Benefits program. Over the past 24 years, since instituting this program, the Fund has paid out over \$61.5 million in benefits to members. While we understand this to be a valued feature of membership in the NDIRF, due to the volume of loss activity over the past few years, the NDIRF surplus growth has not kept pace with the levels required to declare a conferment of benefits to NDIRF members. So, unfortunately, the NDIRF Board of Directors did not declare a conferment of benefits for 2017. With that being said, **the NDIRF maintains very strong financial health.**

The conferment of benefits is not reflective of the NDIRF's financial health, overall, but reflective of the NDIRF's annual surplus level in relation to the surplus level requirement to declare a conferment of benefits set by the NDIRF Board of Directors in the Board Policy Manual. The NDIRF maintains over \$19 million in surplus which significantly exceeds the level required to meet a 90% confidence level in the opinion of the NDIRF's actuarial consultant.



Fig. 2 - NDIRF Membership

PREMIUMS AND LOSSES

Unlike the tendency of commercial insurance pricing to sometimes vary dramatically from year to year, the NDIRF's rates have historically remained quite stable. For example, we did not react immediately to dramatically increased claim loss in 2015 and 2016 with a general rate increase – the NDIRF staff chose to review an additional year of experience (2017) to better determine whether 2015 and 2016 incurred losses were an anomaly or if the results of those years represented a trend in the making. During 2017, however, NDIRF underwriting continued the process of evaluating individual member contributions based on specific member characteristics and claims activity. Loss experience adjustments and the rising value of covered autos and property, in large part, provided approximately a 7% rise in net written premium for 2017. **(Fig. 3)**

Losses in 2017 fell significantly from 2016, down to a level in line with 2015 loss activity. **(Fig. 4)** The NDIRF experienced \$8.6 million in total losses which produced a loss ratio of just over 62%. **(Fig. 5)** Liability losses contributed significantly to the overall total loss amount with over \$5 million in losses and a 77% loss ratio. Law enforcement, contractual dispute, and employment-related claim activity continue to lead to the high Liability loss ratio and will continue to be addressed through NDIRF loss control activity. Automobile and Public Assets loss activity were at a much more palatable level, which can, in part, be attributed to the NDIRF emphasis on Automobile and Public Assets loss control activity through Defensive Driving courses and other loss control programs. Automobile losses came in at \$3.1 million producing

a 54% loss ratio and Public Assets losses finished 2017 at \$543,000 producing a loss ratio just under 33%.

The more serious claims (claims reserved at \$10,000 or higher) open at any point in time continue to be higher than average, highlighting the trend toward a consistently higher level of claim activity and expense. The significant increase in population North Dakota has experienced in a relatively short time, while very beneficial to our state in many ways, continues to be a significant contributor to NDIRF loss activity.

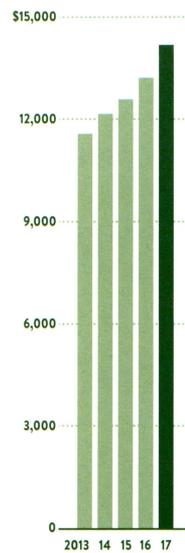


Fig. 3 - Net Written Premium [in thousands]

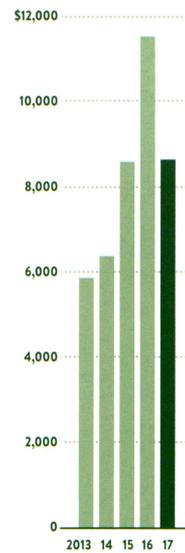


Fig. 4 - Losses [in thousands]

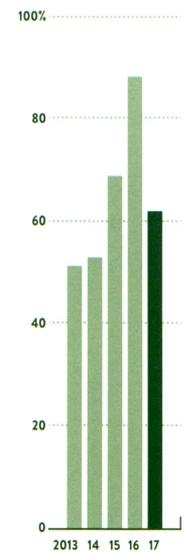


Fig. 5 - Loss Ratios

INVESTMENTS

The NDIRF's investment portfolio, as of December 31, 2017, was distributed 82% in fixed income; 15% in equities; and 3% in cash or equivalents. The quality of the fixed income portfolio is high, with an average S&P quality rating of AA/A.

Overall, the NDIRF investment portfolio provided a 5.4% total return in 2017 as compared to 3.1% for the prior year. Fixed income investment returns (2.7%) increased from 2016's 2.2% while significantly higher returns from the NDIRF's equity investments – moving from a 9.2% return in 2016 to 24.3% in 2017 – helped the total portfolio return establish a significant improvement over last year. The NDIRF has steadily maintained its equity exposure throughout the (sometimes dramatic) market swings of the past, so we have obtained maximum benefit from the equity markets' general recovery and expansion since 2008.

Reporting the NDIRF's investment portfolio at market value, especially the fixed-income portion (as has been required since 1998), rather than at amortized cost can result in wide variations of investment income. A strategy of including and maintaining a limited equity exposure in the portfolio has proven quite effective, over time, as a relatively small equity position frequently tends to counterbalance significant unrealized fixed-income market swings caused principally by fluctuating interest rates.



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EARNINGS AND EQUITY

With loss levels dropping significantly and premiums rising due to member claim experience and increased automobile and equipment values, the NDIRF ended 2017 with a net income of over \$1.96 million. **(Fig. 6)**

Members' equity increased to approximately \$19.7 million. The gradual addition to members' equity from 2009-2014 – in recognition of the possibility of an eventual increase in claims due to population growth – was designed to provide continued strength and stability of members' equity, even as the NDIRF found it necessary to use some of it in 2016 to offset the unprecedented loss activity. Fortunately, 2017's financial results allowed for much of the reduction in 2016 to be replenished. With continued success, the NDIRF members' equity levels will again fall back in line with levels that will allow for a conferment of benefits.

The Fund's consulting actuaries indicate that the current level of members' equity provides an outstanding confidence level (well in excess of 90%) that all expected future obligations can be met. **(Fig. 7)**

A review of the NDIRF's entire thirty-two year history regarding total revenues, net earnings, total assets and members' equity provides a graphic representation of the growth, maturity and overall success enjoyed by the NDIRF and its membership. **(Figs. 8 and 9)**



Fig. 6 - Net Earnings [in thousands]

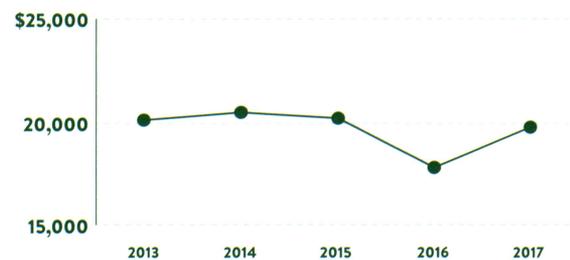


Fig. 7 - Members' Equity [in thousands]

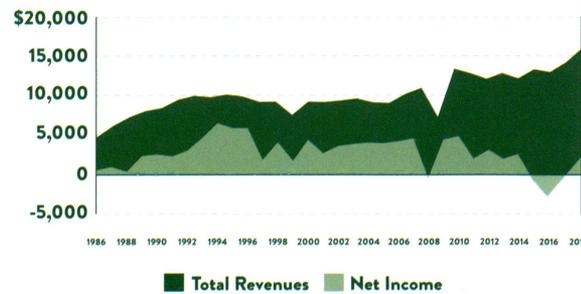


Fig. 8 - 32 Year Revenues [in thousands]

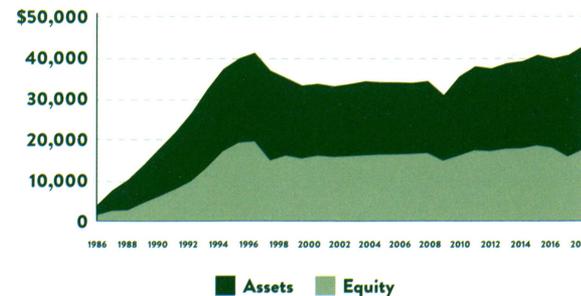


Fig. 9 - 32 Year Balance Sheet [in thousands]

TRAINING

In 2017, the NDIRF continued its commitment to assist members in controlling their cost of risk through appropriate training opportunities. This effort was substantial and included providing information and assistance to thousands of officials and employees of Fund members on the following subjects:

- Defensive driving
- Employment practices
- Road maintenance
- Law enforcement liability
- Playground safety
- Special coverage issues for specific member groups

Development and maintenance of online handbooks regarding employment practices and procedures, in addition to the live presentation of HR-related information to local government groups, have had a real impact and continued to be supported by the NDIRF in 2017. Internet-available documents are hosted on the NDIRF's website, regularly updated and linked to the websites of statewide political subdivision associations such as the ND Association of Counties, ND League of Cities, ND Recreation & Parks Association and ND School Boards Association.

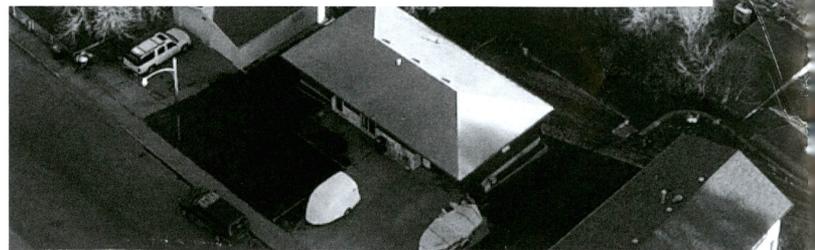
Since 2009, the NDIRF has been committed to a partnership with the North Dakota Firefighter's Association to bring emergency vehicle operations training to firefighters on a regional-availability basis, including the use of driving simulators. In 2017, this effort continued to grow and resulted in training opportunities for North Dakota firefighters at locations convenient to them.

The NDIRF also continues to support the North Dakota Local Technical Assistance Program (NDLTAP) in their efforts to educate local officials and employees regarding road maintenance and signage. In addition to funding, the NDIRF also provides support through loss control representative, Mark Verke, pictured on the next page of this report receiving the friends of NDACE (North Dakota Association of County Engineers) award.

All of these tools are intended to assist NDIRF members in meeting and dealing successfully with the multitude of challenges they encounter.

CONCLUSION

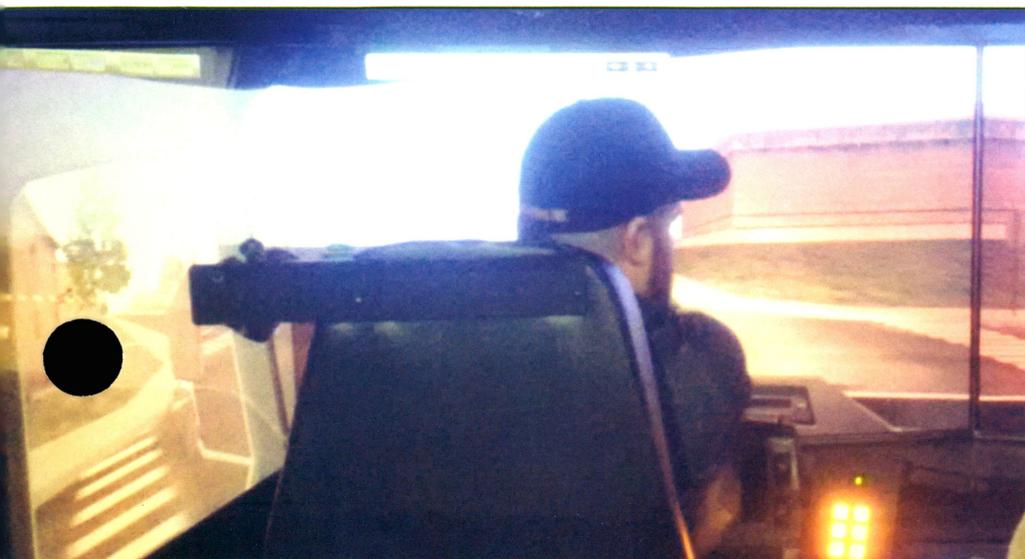
Since commencing operations in 1986, the NDIRF has consolidated its claim as **the stable source of risk services to local government in North Dakota.** Over the past 32 years, the NDIRF has proven its ability to meet a critical need for our members. As you have seen from this report, even though the prior few years have been challenging, the NDIRF and its staff are positioned very well to continue to be the provider of dependable risk services to North Dakota's political subdivisions well into the future. We look forward to working with our members to build upon the strength and stability that the past 32 years have created.





NDIRF Loss Control Representative, Mark Verke, is pictured here receiving the Friends of the NDACE award. Through NDIRF loss control staff and the partnership with the NDLTAP, the NDIRF provides road maintenance and signage training to hundreds of officials and employees of North Dakota's political subdivisions.

The NDIRF partnered with the Grand Forks Police Department to bring the "Below 100" training program to North Dakota. The NDIRF has always taken the law enforcement exposure seriously and we will continue to look for ways to bring meaningful training to our members.



The NDIRF continues to partner with the North Dakota Firefighter's Association to provide emergency vehicle operations training to hundreds of firefighters in ND. In this picture, you are able to see the driver simulator training in action.

NDIRF Loss Control Representative, Mark Verke, is pictured here receiving the President's Award from the North Dakota Township Officers Association (NDTOA). The NDIRF and the NDTOA have a strong partnership providing training to township officers throughout North Dakota.



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BOARD OF DIRECTORS

AND MEMBER AFFILIATION



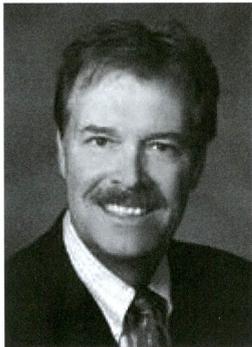
Burdell Johnson
Chairperson
Others



Randy Bina
Chairperson Elect
Others



Blake Crosby
Cities



Mark Johnson
Counties



Shawn Kessel
Cities



Mike Lautenschlager
Schools



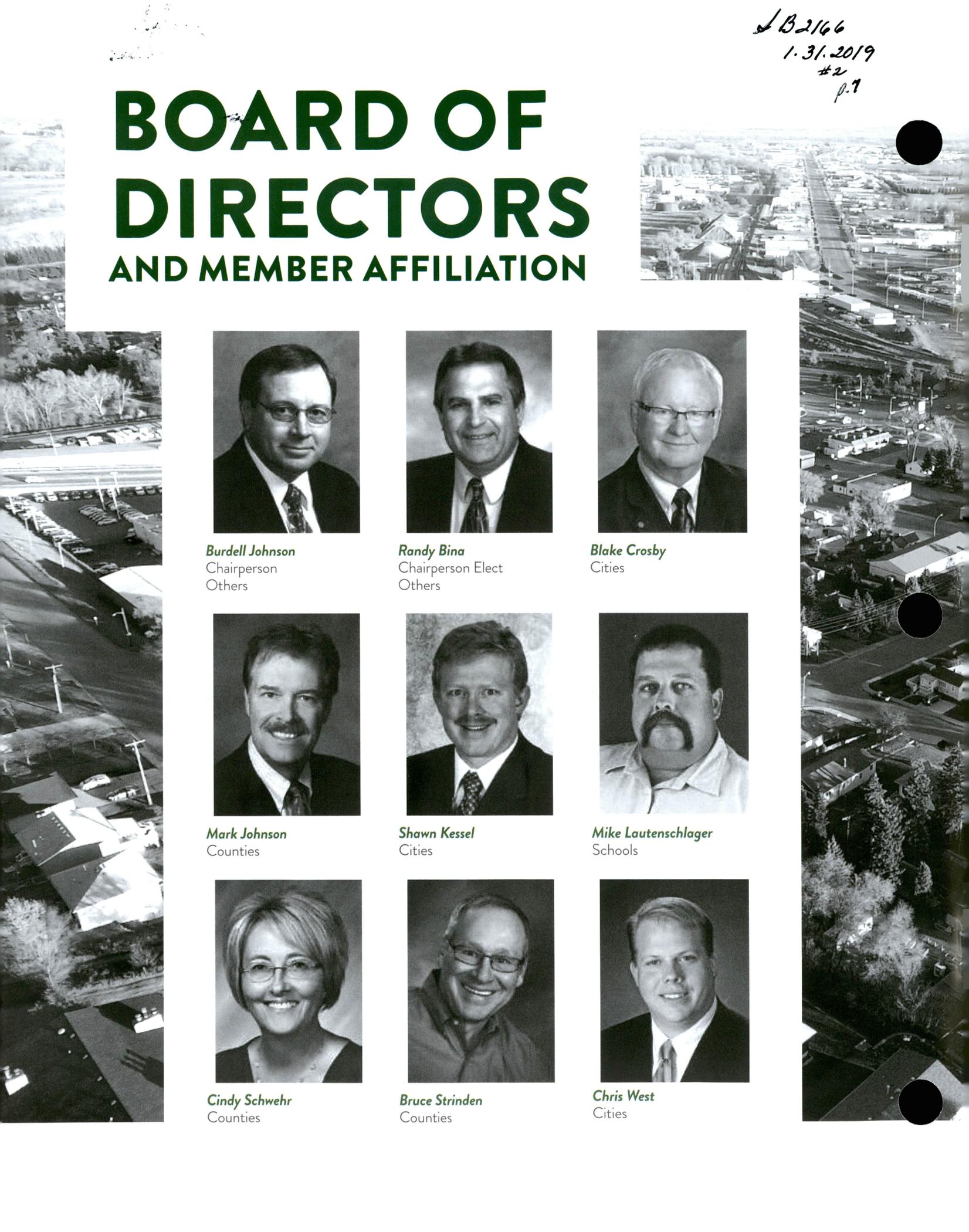
Cindy Schwehr
Counties



Bruce Strinden
Counties



Chris West
Cities





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Independent Auditor's Report

The Board of Directors
North Dakota Insurance Reserve Fund
Bismarck, North Dakota

Report on the Financial Statements

We have audited the accompanying financial statements of the North Dakota Insurance Reserve Fund, which comprise the balance sheets as of December 31, 2017 and 2016, and the related statements of activities and cash flows for the years then ended and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the North Dakota Insurance Reserve Fund as of December 31, 2017 and 2016, and the results of its changes in net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

A handwritten signature in black ink that reads "Eide Bailly LLP".

Fargo, North Dakota
February 28, 2018

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North Dakota Insurance Reserve Fund
Balance Sheets
December 31, 2017 and 2016
(Dollars in Thousands)

	<u>2017</u>	<u>2016</u>
Assets		
Cash and cash equivalents - Note 3	\$ 1,403	\$ 1,235
Investments - Note 4	39,123	37,025
Agents' balances	456	435
Interest receivable	218	231
Deferred policy acquisition costs - Note 5	628	589
Land, building and equipment, net - Note 6	668	734
Other assets	221	185
	<u>\$ 42,717</u>	<u>\$ 40,434</u>
Liabilities and Net Assets		
Liabilities		
Accounts payable	\$ 23	\$ 23
Conferment payable - Note 7	1	1
Accrued expenses	151	149
Unearned premiums	5,084	4,770
Reserve for losses and loss adjustment expenses	11,743	12,169
Reserve for incurred but not reported losses	5,982	5,555
	<u>22,984</u>	<u>22,667</u>
Net Assets		
Unrestricted	<u>19,733</u>	<u>17,767</u>
	<u>\$ 42,717</u>	<u>\$ 40,434</u>

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North Dakota Insurance Reserve Fund
Statements of Activities
Years Ended December 31, 2017 and 2016
(Dollars in Thousands)

	<u>2017</u>	<u>2016</u>
Revenues		
Premiums earned	\$ 13,928	\$ 13,058
Expenses		
Losses and loss adjustment expenses	8,664	11,552
Underwriting and administrative	5,350	5,121
Total expenses	<u>14,014</u>	<u>16,673</u>
Expenses over Revenues	<u>(86)</u>	<u>(3,615)</u>
Nonoperating Revenues		
Investment income, net of investment expenses of \$97 and \$92 in 2017 and 2016, respectively	920	921
Realized and unrealized gains on investments, net	<u>1,132</u>	<u>219</u>
Total nonoperating revenues	<u>2,052</u>	<u>1,140</u>
Change in Unrestricted Net Assets	1,966	(2,475)
Unrestricted Net Assets, Beginning of Year	<u>17,767</u>	<u>20,242</u>
Unrestricted Net Assets, End of Year	<u>\$ 19,733</u>	<u>\$ 17,767</u>

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North Dakota Insurance Reserve Fund
Statements of Cash Flows
Years Ended December 31, 2017 and 2016
(Dollars in Thousands)

	2017	2016
Cash Flows from Operating Activities		
Change in net assets	\$ 1,966	\$ (2,475)
Adjustment to reconcile change in net assets to net cash from operating activities		
Depreciation	72	76
Loss on disposal of equipment	-	5
Realized and unrealized gain on investments	(1,132)	(219)
Changes in assets and liabilities		
Agents' balances	(21)	(27)
Interest receivable	13	(14)
Deferred policy acquisition costs	(39)	(39)
Other assets	(36)	(103)
Losses and loss adjustment expenses	(426)	2,440
Incurred but not reported losses	427	623
Unearned premiums	314	302
Accounts payable	-	2
Accrued expenses	2	6
Net Cash provided by Operating Activities	<u>1,140</u>	<u>571</u>
Cash Flows from Investing Activities		
Purchase of investments	(11,884)	(14,056)
Proceeds from sale and maturities of investments	10,917	13,336
Purchase of property and equipment	(5)	(24)
Net Cash used in Investing Activities	<u>(972)</u>	<u>(744)</u>
Cash Flows from Financing Activities		
Conferment paid	-	(69)
Net Change in Cash and Cash Equivalents	168	(236)
Cash and Cash Equivalents at Beginning of Year	<u>1,235</u>	<u>1,471</u>
Cash and Cash Equivalents at End of Year	<u>\$ 1,403</u>	<u>\$ 1,235</u>

See Notes to Financial Statements



MISSION

To be a stable source of risk services to public entities,
using sound business practices.

NDIRF

**NORTH DAKOTA
INSURANCE
RESERVE FUND**

P.O. Box 2258 | Bismarck, ND 58502-2258
ND WATS: 800.421.1988 | Phone: 701.224.1988 | Fax: 701.224.0609
www.ndirf.com

