

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1391

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1391

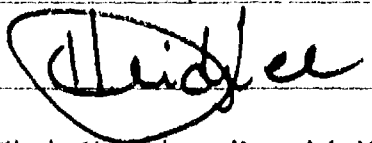
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1391

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb. 6, 2001

Tape Number	Side A	Side B	Meter #
2	X		36.37
		X	-39.54
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.
Rep Frank Wald: Sponsoring bill.

Rep Ole Aarsvold: Cosponsor and support amendments.

Calvin Rolfson: *ND Petroleum Marketers Assoc.* Written testimony in support.

Chuck Johnson: *ND Insurance Dept.* Written testimony in support with amendments.

Chairman Berg: Can you walk use through the procedure?

Johnson: First there's a spill. Then you apply to the administration. That can be appealed to the board and the board turn the plea and their suggestion to the Commissioner who has final auth.

Matt Bjornson: *NDPMA* I support the bill. Private insurance is only available for brand new tanks. We'll pay the coverage to stay in compliance. This doesn't put a risk on the fund.

Francis Schwind: *ND Health Dept.* Propose an amendment.

Page 2
House Industry, Business and Labor Committee
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Hearing Date Feb 6, 2001

Art Purdue: *Cenex of Mlnot* We do need coverages and I support this bill.

Chairman Berg: We'll close the hearing and take up again later on.

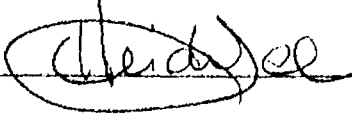
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1391(B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb. 14, 2001

Tape Number	Side A	Side B	Meter #
2	X		38
		X	-0.98
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Jensen: Amendments supplied and explained. Move to adopt.

Rep Kasper: Second.

Rep Jensen: More amendmends by the health dept. Move to adopt.

Rep M. Klein: Second.

Rep Keiser: Move a do pass as amended.

Rep M. Klein: Second.

14 yea, 0 nay, 1 absent Carrier Rep Jensen

FISCAL NOTE

Requested by Legislative Council
03/20/2001

Bill/Resolution No.:

Amendment to: Engrossed
HB 1391

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$900	\$0	\$900	\$0
Appropriations	\$0	\$0	\$900	\$0	\$900	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

1. General Fund

This bill increases the Petroleum Tank Board from three to five members. Assuming the board meets the minimum number of meetings (two per year or four per biennium), the additional meeting cost at \$62.50 per day per diem is \$500 (2 x 4 x \$62.50). We estimate additional mileage and meals at \$400 for a total impact of \$900 on the General Fund.

2. Petroleum Tank Fund

Engrossed House Bill No. 1391 appears to address the concerns of the Insurance Department with the original House Bill No. 1391, so that the potential impact to the Fund is no longer \$500,000 per biennium, but rather is now \$0.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

\$900 increase in General Fund expenditures per biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

\$900 increase in General Fund operating expense appropriation per biennium.

Name:	Charles E. Johnson	Agency:	Insurance Department
Phone Number:	328-2440	Date Prepared:	03/20/2001

FISCAL NOTE

Requested by Legislative Council

02/20/2001

REVISION

Bill/Resolution No.:

Amendment to: HB 1391

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$900	\$0	\$900	\$0
Appropriations	\$0	\$0	\$900	\$0	\$900	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

1. General Fund

This bill increases the Petroleum Tank Board from three to five members. Assuming the board meets the minimum number of meetings (two per year or four per biennium), the additional meeting cost at \$62.50 per day per diem is \$500 (2 x 4 x \$62.50). We estimate additional mileage and meals at \$400 for a total impact of \$900 on the General Fund.

2. Petroleum Tank Fund

Engrossed House Bill No. 1391 appears to address the concerns of the Insurance Department with the original House Bill No. 1391, so that the potential impact to the Fund is no longer \$500,000 per biennium, but rather is now \$0.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

\$900 increase in General Fund expenditures per biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

\$900 increase in General Fund operating expense appropriation per biennium.

Name:	Charles E. Johnson	Agency:	Insurance Department
Phone Number:	328-2440	Date Prepared:	02/20/2001

FISCAL NOTE
Requested by Legislative Council
2/20/2001

Bill/Resolution No.:

Amendment to: HB 1391

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$3,200	\$0	\$3,200	\$0
Appropriations	\$0	\$0	\$3,200	\$0	\$3,200	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

1. General Fund

This bill increases the Petroleum Tank Board from three to five members and allows for an increase in the daily meeting per diem from \$62 to an amount set by the Commissioner of Insurance by rule. Assuming that the Commissioner will increase the per diem to \$100 per day, which may or may not happen, the projected increase in meeting cost is \$400 per meeting to cover the \$38 per diem increase per member and additional travel and lodging expense and per diem for the two additional members. The board is expected to meet quarterly over the biennium so the projected impact is \$3,200 (\$400 x 8 meetings).

2. Petroleum Tank Fund

Engrossed House Bill No. 1391 appears to address the concerns of the Insurance Department with the original House Bill No. 1391, so that the potential impact to the Fund is no longer \$500,000 per biennium, but rather is now \$0.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each*

agency, line item, and fund affected and the number of FTE positions affected.

\$3,200 increase in General Fund expenditures per biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

\$3,200 increase in General Fund operating expense appropriation per biennium.

Name:	Charles E. Johnson	Agency:	Insurance Department
Phone Number:	328-2440	Date Prepared:	02/20/2001

FISCAL NOTE
Requested by Legislative Council
02/01/2001

REVISION

Bill/Resolution No.: HB 1391

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$3,200	\$500,000	\$3,200	\$500,000
Appropriations	\$0	\$0	\$3,200	\$500,000	\$3,200	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

1. General Fund

This bill increases the Petroleum Tank Board from three to five members and allows for an increase in the daily meeting per diem from \$62 to an amount set by the Commissioner of Insurance by rule. Assuming that the Commissioner will increase the per diem to \$100 per day, which may or may not happen, the projected increase in meeting cost is \$400 per meeting to cover the \$38 per diem increase per member and additional travel and lodging expense and per diem for the two additional members. The board will meet quarterly over the biennium so the projected impact is \$3,200 (\$400 x 8 meetings).

2. Petroleum Tank Fund

This bill changes the coverage provided by the Fund for petroleum tank owners. At present, the Fund reimburses tank owners for the cost of remedial action of a petroleum spill as determined by the Health Department. The Health Department requires cleanup as required to satisfy public health and safety concerns. This bill will change the Fund's obligation to require that the Fund restore the affected property to its fair market value. This significantly

increases the risk to the Fund. It is estimated that cleanup costs necessary to restore fair market value will be many times greater than cleanup necessary to protect the public health and safety. The impact to the Fund is impossible to quantify without an extensive actuarial risk assessment. Increasing the risk to the Fund without properly increasing the Tank Fund revenues will jeopardize the solvency of the Fund. This bill will have a serious impact on the Fund and should not be passed until an actuarial assessment is completed. The impact on the Fund could vary from \$0 to \$1 million per biennium. For our response to No. 1A, we are using an amount in the middle.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

\$3,200 - Increase in General Fund expenditures per biennium and an estimated \$500,000 increase in Petroleum Tank Fund expenses per biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

\$3,200 increase in General Fund operating expense appropriation per biennium.

Name:	Charles E. Johnson	Agency:	North Dakota Insurance Department
Phone Number:	328-2440	Date Prepared:	02/02/2001

FISCAL NOTE

Requested by Legislative Council
01/23/2001

Bill/Resolution No.: HB 1391

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$3,200	\$500,000	\$3,200	\$500,000
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

1. General Fund

This bill increases the Petroleum Tank Board from three to five members and allows for an increase in the daily meeting per diem from \$62 to an amount set by the Commissioner of Insurance by rule. Assuming that the Commissioner will increase the per diem to \$100 per day, which may or may not happen, the projected increase in meeting cost is \$400 per meeting to cover the \$38 per diem increase per member and additional travel and lodging expense and per diem for the two additional members. The board will meet quarterly over the biennium so the projected impact is \$3,200 (\$400 x 8 meetings).

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jeopardize the solvency of the Fund. This bill will have a serious impact on the Fund and should not be passed until an actuarial assessment is completed. The impact on the Fund could vary from \$0 to \$1 million per biennium. For our response to No. 1A, we are using an amount in the middle.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

\$3,200 - General Fund and an estimated \$500,000 Petroleum Tank Fund impact.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

\$3,200 increase in General Fund appropriation.

Name:	Charles E. Johnson	Agency:	North Dakota Insurance Department
Phone Number:	328-2440	Date Prepared:	01/29/2001

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1391

Page 1, line 12, remove the underscored comma

Page 1, line 13, remove "approve, and disallow"

Page 1, line 23, remove the overstrike over ~~"Administrator means the manager of the state
fire and tornado fund."~~

Page 1, line 24, remove the overstrike over "3:"

Page 2, line 1, replace "3" with "4"

Page 2, line 2, overstrike "4." and insert immediately thereafter "5." and overstrike "taken to"
and insert immediately thereafter "required by the department to"

Page 2, line 8, overstrike "5." and insert immediately thereafter "6."

Page 2, line 10, overstrike "6." and insert immediately thereafter "7."

Page 2, line 11, overstrike "7." and insert immediately thereafter "8."

Page 2, line 12, overstrike "8." and insert immediately thereafter "9."

Page 2, line 14, overstrike "9." and insert immediately thereafter "10."

Page 2, line 16, overstrike "10." and insert immediately thereafter "11."

Page 2, line 20, overstrike "11." and insert immediately thereafter "12."

Page 2, line 24, overstrike "12." and insert immediately thereafter "13."

Page 2, line 29, overstrike "13." and insert immediately thereafter "14."

Page 3, remove line 31

Page 4, line 1, replace "14" with "15"

Page 4, line 2, after "action" insert "or a person who suffers bodily injury caused by a petroleum
release"

Page 4, line 6, remove "There is established a petroleum release compensation board to assist
the"

Page 4, remove lines 7 and 8

Page 4, line 9, remove "effective date of this Act." and remove the overstrike over "advisory"

Page 4, line 10, replace "one" with "three", remove the overstrike over "~~are~~", and remove "is"

Page 4, line 21, remove the overstrike over "~~sixty-two dollars and fifty cents per diem~~" and remove "compensation as may be"

Page 4, line 22, remove "established by rule"

Page 4, line 27, remove the overstrike over "~~administrator~~", remove "commissioner", and remove "The"

Page 4, line 28, remove "commissioner may appoint an administrator to assist in the administration of the fund."

Page 4, line 29, remove the overstrike over "~~administrator~~", remove "commissioner", and remove the overstrike over "~~keep the board~~"

Page 4, line 30, remove the overstrike over "~~apprised of the fund's general operations~~" and remove "assist and advise the commissioner"

Page 4, line 31, replace "quarter" with "half"

Page 5, line 1, replace "commissioner" with "administrator"

Page 5, line 2, after "claims" insert "by the administrator"

Page 5, line 5, replace "commissioner" with "administrator"

Page 5, line 6, replace "commissioner" with "administrator" and after the second underscored period insert "The claimant or the administrator may appeal the board's decision to the commissioner."

Page 5, line 11, remove the overstrike over "~~administrator~~" and remove "commissioner"

Page 5, line 16, replace "commissioner" with "administrator"

Page 9, line 7, remove the overstrike over "~~administrator~~" and remove "commissioner"

Page 9, line 13, remove the overstrike over "~~administrator~~" and remove "commissioner"

Page 9, line 24, replace "commissloner" with "fund"

Page 9, line 28, remove "its preleak value or to"

Page 9, line 29, replace ", whichever is less, and includes compensation from the fund for tort or" with ","

3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:

Page 9, remove line 30

Page 10, line 2, after "matter" insert "In a proceeding in which the fund has been made a party"

Page 10, line 3, after "parties" Insert "in a proceeding in which the fund has been made a party"

Page 10, line 7, replace "3" with "4" and remove "preleak"

Page 10, line 10, replace "4" with "5"

Page 10, line 13, replace "5" with "6"

Page 14, line 15, remove the overstrike over "~~administrator~~" and remove "commissioner"

Page 14, line 22, remove the overstrike over "~~administrator~~" and remove "commissioner"

Page 14, line 29, after the underscored period insert "The administrator may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action."

Renumber accordingly

Date: 2-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1391

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Keiser Seconded By M. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper	✓	
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein	✓	
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich	✓		Rep. Doug Lemieux	✓	
Rep. Glen Froseth	✓		Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe	✓	

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep Jensen

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

REPORT OF STANDING COMMITTEE

HB 1391: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1391 was placed on the Sixth order on the calendar.

Page 1, line 12, remove the underscored comma

Page 1, line 13, remove "approve, and disallow"

Page 1, line 23, remove the overstrike over "~~Administrator~~ means the manager of the state fire and tornado fund."

Page 1, line 24, remove the overstrike over "3."

Page 2, line 1, replace "3" with "4"

Page 2, line 2, overstrike "4." and insert immediately thereafter "5." and overstrike "taken to" and insert immediately thereafter "required by the department to"

Page 2, line 8, overstrike "5." and insert immediately thereafter "6."

Page 2, line 10, overstrike "6." and insert immediately thereafter "7."

Page 2, line 11, overstrike "7." and insert immediately thereafter "8."

Page 2, line 12, overstrike "8." and insert immediately thereafter "9."

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Page 2, line 24, overstrike "12." and insert immediately thereafter "13."

Page 2, line 29, overstrike "13." and insert immediately thereafter "14."

Page 3, remove line 31

Page 4, line 1, replace "14" with "15"

Page 4, line 2, after "action" insert "or a person who suffers bodily injury caused by a petroleum release"

Page 4, line 6, remove "There is established a petroleum release compensation board to assist the"

Page 4, remove lines 7 and 8

Page 4, line 9, remove "effective date of this Act." and remove the overstrike over "advisory"

Page 4, line 10, replace "one" with "three", remove the overstrike over "are", and remove "is"

Page 4, line 21, remove the overstrike over "sixty-two dollars and fifty cents per diem" and remove "compensation as may be"

Page 4, line 22, remove "established by rule"

Page 4, line 27, remove the overstrike over "~~administrator~~", remove "commissioner", and remove "The"

Page 4, line 28, remove "commissioner may appoint an administrator to assist in the administration of the fund."

Page 4, line 29, remove the overstrike over "~~administrator~~", remove "commissioner", and remove the overstrike over "~~keep the board~~"

Page 4, line 30, remove the overstrike over "~~apprised of the fund's general operations~~" and remove "assist and advise the commissioner"

Page 4, line 31, replace "quarter" with "half"

Page 5, line 1, replace "commissioner" with "administrator"

Page 5, line 2, replace "that" with "by the administrator which"

Page 5, line 5, replace "commissioner" with "administrator"

Page 5, line 6, replace "commissioner" with "administrator" and after the second underscored period insert "The claimant or the administrator may appeal the board's decision to the commissioner."

Page 5, line 11, remove the overstrike over "~~administrator~~" and remove "commissioner"

Page 5, line 16, replace "commissioner" with "administrator"

Page 9, line 7, remove the overstrike over "~~administrator~~" and remove "commissioner"

Page 9, line 13, remove the overstrike over "~~administrator~~" and remove "commissioner"

Page 9, line 24, replace "commissioner" with "fund"

Page 9, line 28, remove "its preleak value or to"

Page 9, line 29, replace ", whichever is less, and includes compensation from the fund for tort or" with ","

3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:

Page 9, remove line 30

Page 10, line 2, after "matter" insert "In a proceeding in which the fund has been made a party"
proceeding in which the fund has been made a party"

Page 10, line 7, replace "3" with "4" and remove "preleak"

Page 10, line 10, replace "4" with "5"

Page 10, line 13, replace "5" with "6"

Page 10, after line 16, insert:

"7. The fund shall reimburse the department for all costs, attorneys' fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any monies reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly."

Page 14, line 15, remove the overstrike over "~~administrator~~" and remove "commissioner"

Page 14, line 22, remove the overstrike over "~~administrator~~" and remove "commissioner"

Page 14, line 29, after the underscored period insert "The administrator may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action."

Renumber accordingly

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1391

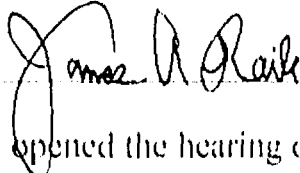
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1391

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date March 16, 2001

Tape Number	Side A	Side B	Meter #
2	X		1,8-45,6
Committee Clerk Signature 			

Minutes: **Chairman Krebsbach** opened the hearing on HB 1391 which relates to petroleum release remediation. Appearing before the committee to introduce the bill was **Representative Frank Wald**, District 37, who is the prime sponsor of the bill. HB 1391 is an old friend which was introduced in the 1981 session. At that time the Environmental Protection Agency said that operators who had underground storage tanks had to have liability insurance in the amount of \$1 million and that limit has now changed for on and off premises clean up and property damage and bodily injury. At that time insurance was not available in the commercial insurance market for any price at any cost. It was decided like most states to set up the states own pool. This pool has been in existence since then. Initially it started with ¼ cent per gallon at start up and then it was changed to a registration fee. **Representative Ole Aarsvold**, district 20, appeared before the committee as a proponent and cosponsor of the bill. He asked the committees favorable passage of the bill. **Calvin Rolfson**, representing the North Dakota Petroleum Marketers Association appeared before the committee. A copy of his written testimony is attached. **Senator T.**

Mathern indicated that when you were explaining the amendments I didn't understand or I thought maybe you said a different word than is in here. On the second line of the second amendment the last word. I thought I heard you say at. **Mr. Rolfson** indicated that he had misread it. **Matt Bjornson**, independent dealer from Cavalier, ND appeared before the committee. He was also before the committee as the chairman of the North Dakota Petroleum Marketers Association. He handed out copies of the locations of various independent dealers in North Dakota. They are scattered across the state in big cities and small towns. They represent jobbers, dealers, truck stops and convenience stores. Members are branded, unbranded and cooperatives. The tank fund was originated by tank owners in the late 80's in response to the EPA rules which required them to have some kind of mechanism to satisfy their insurance requirements. The fund is totally funded by tank owners. One of the essential changes of HB 1391 is that the fund is providing \$1 million coverage for corrective action and for compensating third parties for bodily injury and property damage. On the second sheet of the handout he included copies of the federal regulations which specifically state that and that has been one of the grey areas in the current status of the law that we really feel needs to be fixed. They don't want to jeopardize their businesses should the EPA feel that the fund is not adequate. Commercial insurance is too costly so this fund is essential to do this. We feel the proposed fee triggers in this bill are very appropriate considering the current and past financial condition of the fund. Questions were offered by **Senators Kilzer and Dever**. **Dave Froelich**, Missouri Valley Petroleum, Bismarck/Mandan, appeared before the committee and spoke in support of HB 1391. **Jeff Blitz**, Administrator of the Petroleum Tank Fund, appeared before the committee. He responded to Senator Kilzer's question regarding claims either pending or active. **Richard Schlosser** representing the North Dakota Farmers Union, representing approximately 35,000

members. He presented a resolution on behalf of **Jeff Wagner**, president of the North Dakota Cooperative Managers Association. They recommend a Do Pass on this piece of legislation. **Chuck Johnson**, representing the Insurance department, appeared in a neutral position. He indicated that with the addition of amendments on the house side plus the amendments proposed by the senate the Insurance Commissioner and his department support the bill. **Dave Glatt** of the health department also appeared before the committee and indicated they have no concerns other than liability. There was nothing further **Chairman Krebsbach** closed the hearing on HB 1391. A motion to amend was made by **Senator T. Mathern**, seconded by **Senator Wardner**. Roll Call vote indicated 5 Yeas, 0 Nays, with the vote left open for 1 Absent member. A motion for Do Pass as Amended was made by Senator T. Mathern, seconded by Senator Wardner. Roll Call Vote indicated 5 Yeas, 0 Nays, with the vote left open for 1 Absent member. It was discovered that an additional amendment needed to be added to the bill. A voice vote was taken for reconsideration of the committees action on HB 1391. All members were in favor. A motion to further amend SB 1391 was made by Senator Mathern, seconded by Senator Wardner. Roll Call Vote indicated 5 Yeas, 0 Nays, and the vote left open for 1 Absent member. A motion for Do Pass as Amended was made by Senator Wardner, seconded by Senator T. Mathern. Roll Call Vote indicated 5 Yeas, 0 Nays, and the vote left open for 1 Absent member. The absent member voted on the amendment adoption and the Do Pass motion on Monday March 19, 2001. The vote then became 6 Yeas, 0 Nays, and 0 Absent or Not Voting on the adoption of the amendment and the passage of the bill.

Date: 5/10/01
Roll Call Vote #:)

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 40 120/ (Fam

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken 10-10-77

Motion Made By Sen. T. Wright Seconded By Sen. Windham

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment

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

Date: 3/16/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1391 (Engrossed)

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen. Wordner Seconded By Sen. T. Mathern

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator Carolyn Nelson	✓	
Senator Dick Dever, Vice-Chr.	✓		Senator Tim Mathern	✓	
Senator Ralph Kilzer	✓				
Senator Rich Wardner	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Wordner

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

Date: 3/16/01
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1391 Engrossed

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on _____
or _____

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Further Amend

Motion Made By Sen. T. Mathern Seconded By Sen. Wordner

[illegible]

Total (Yes) 6 No 0

Absent	0
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Floor Assignment

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

Date: 3/16/01
Roll Call Vote #: 14

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1391 (Engrossed)

Senate GOVERNMENT AND VETERAN'S AFFAIRS

Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By

Sen. Wardner

Secondded

By

Sen. T. Mathern

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Wardner

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

REPORT OF STANDING COMMITTEE

HB 1391, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1391 was placed on the Sixth order on the calendar.

Page 4, line 2, after "injury" insert "or property damage"

Page 5, line 3, replace "board" with "commissioner"

Page 10, line 9, replace "If" with "In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue and if", replace the first "value" with "pre leak condition", and replace the second "value" with "condition"

Page 10, line 12, replace "finding does" with "fund may"

Page 10, line 15, after "accepting" insert "monetary" and after "compensation" insert "directly"

Renumber accordingly

2001 TESTIMONY

HB 1391

A detailed map of North Dakota, showing its geographical features, major cities, and neighboring regions. The map includes the following elements:

- Neighboring Regions:**
 - North:** CANADA
 - West:** SASKATCHEWAN
 - South:** SOUTH DAKOTA
 - East:** MANITOBA (Canada) and MINN. (Minnesota)
 - Southwest:** MONTANA
- Major Rivers:**
 - Missouri R. (flowing through the western part)
 - Red River of the North (flowing along the eastern border)
 - Big Horn R. (flowing through the southern part)
 - Sioux R. (flowing into the Red River)
- Major Cities and Towns:**
 - North:** Crosby, Bowbells, Toga, Stanley, Minot, Towner, Rugby, Bismarck, Grand Forks, Mayville, Fargo, Jamestown, Valley City, Cooperstown, Lisbon, Edgley, Wahpeton, Ellendale.
 - Central:** Bismarck, Enderbury, Carrington, McGlusky, Harvey, Sheyenne, Devils Lake, Park River, Grafton, Langdon, Pembina.
 - South:** Dickinson, Glendon, Mandan, Bismarck, Enderbury, Carrington, McGlusky, Harvey, Sheyenne, Devils Lake, Park River, Grafton, Langdon, Pembina.
 - West:** Williston, Minot, Towner, Rugby, Bismarck, Grand Forks, Mayville, Fargo, Jamestown, Valley City, Cooperstown, Lisbon, Edgley, Wahpeton, Ellendale.
- Geographical Features:**
 - Theodore Roosevelt National Park (North Unit):** Located in the northwest.
 - Theodore Roosevelt National Park (South Unit):** Located in the southwest.
 - White Sulphur Springs:** Located in the south-central part.
 - Fort Totten:** Located in the north-central part.
 - Fort Union:** Located in the south-central part.
- Scale and Coordinates:**
 - Scale:** 50 Miles / 50 Kilometers.
 - Latitude:** 46° N, 48° N.
 - Longitude:** 96° W, 98° W, 100° W.
- Other Labels:**
 - North Dakota Petroleum Marketers Association** (at the bottom left).
 - Water members** (at the bottom left).
 - Boys de Sioux R.** (at the bottom right).

311 marketer members

- 1 – 4 members
- ⊙ 5 – 9 members
- ★ 10 and over members

#B1391

relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

Tangible net worth means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

Termination under § 280.97(b)(1) and § 280.97(b)(2) means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

[53 FR 43370, Oct. 26, 1988, as amended at 54 FR 47081, Nov. 9, 1989]

Section 280.93 Amount and scope of required financial responsibility.

(a) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.

(2) For all other owners or operators of petroleum underground storage tanks; \$500,000.

(b) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(1) For owners or operators of 1 to 100 petroleum underground storage tanks, \$1 million; and

(2) For owners or operators of 101 or more petroleum underground storage tanks, \$2 million.

(c) For the purposes of paragraphs (b) and (d) of this section, only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in paragraph (c) of this section, if the owner or operator

HOUSE BILL NO. 1391

Presented by: Charles E. Johnson
General Counsel
North Dakota Insurance Department

Before: Industry, Business and Labor Committee
Representative Rick Berg, Chairman

Date: February 6, 2001

TESTIMONY

Good morning, Mr. Chairman and members of the committee:

My name is Chuck Johnson and I am the General Counsel for the North Dakota Insurance Department. This bill makes three major changes to the laws governing the operation of the Petroleum Tank Release Compensation Fund administered by the Insurance Commissioner:

1. It removes the Commissioner as the ultimate decision-maker for the Fund and replaces the Commissioner with a five-member private board (Sections 3, 4, and 5).
2. It replaces the Fund's present "public health and safety" standard for reimbursement for cleanup costs for third party property claims with a "fair market value" standard (Section 18).
3. It increases the Fund's present limit on third party claims, whether for property damage or personal injury, from \$250,000 to \$1 million (Section 27).

The Insurance Department opposes these major changes and offers amendments that:

1. Restores the Commissioner's authority as the ultimate decision maker for the Fund,
2. Restores the public health and safety standard for neighboring property cleanup, and
3. Restores the \$250,000 maximum liability limit for third party claims.

In lieu of accepting the Department's amendments, we ask that the bill be given a "Do Not Pass" recommendation.

The Fund originated in 1989 in response to federal environmental legislation that required that each petroleum tank owner or operator purchase insurance or otherwise provide security of at least \$1 million to cover cleanup costs for petroleum releases.

The federal legislation was in response to petroleum releases by tank owners who were not sufficiently financially solvent to pay for the needed cleanup costs. The states and the federal government ended up paying for the cleanup costs.

The federal law allowed states to establish a fund such as our Petroleum Tank Release Compensation Fund (the Fund). To meet the federal financial responsibility requirements, a tank owner was allowed to register his tanks with the Fund and pay a \$50 annual registration fee. In return the Fund covered the cost of cleanup as determined by the Health Department to be necessary to protect the public health and safety.

The Health Department decides which cleanup action is appropriate on a site-by-site basis. The extent of corrective action varies by site, depending upon the location of the site, local hydrogeology, the soils present, proximity to business, proximity to residences, proximity to and kind of public utilities present, presence of surface streams, etc. Pollution travels further and faster the looser the soils and is more of a danger when near groundwater sources.

The focus of determining appropriate corrective action (remediation) is on protecting public health and safety.

Assessing a site is a subjective task that also involves certain objective elements. It is a subjective task for Health Department professional or the contracted consultants. This bill would transfer that responsibility in third party situations to a private professional hired by the neighboring landowner. The standard would no longer be the public health and safety, but would be a fair market value standard. The cost of cleanup would increase substantially.

This bill will establish a dual standard for recovery for cleanup costs. For cleanup costs on land owned by the operator, the standard will be the Health Department's health and safety standard. For neighboring land, the standard will be an arbitrary standard set by some consultant hired by the neighboring landowner. It is virtually impossible to remove all traces of contamination from soils that are affected by a release. The Fund could be forced to spend numerous dollars trying to meet the demands of a landowner that insisted that all traces of petroleum be removed from his property before the property is deemed to have been returned to its fair market value.

This change will significantly increase the costs to the Fund. The actual impact is impossible to predict. Only an extensive study of location, age, construction, and other relevant factors impacting each existing tank site by a risk assessment actuary could reasonably estimate the impact on the Fund. Petroleum will naturally oxidize over a period of time. If the contamination does not affect public health or safety, there is no urgent public need to remove contaminated soil.

The tank owners are not left without a remedy. Each owner can purchase a commercial excess or commercial wrap-around insurance policy that reimburses the tank owner for cleanup costs over and above those required by the Health Department.

It should also be noted that adopting a fair market value standard creates a significant

disparity between tank owners. Major cities have much higher fair market land values than rural areas. Covering fair market values in major cities will provide a greater benefit to the urban tank owners than those in rural areas, yet premiums are the same for both. In reality, if this bill passes without the Department's amendments, premiums should be adjusted to reflect this disparity.

The changes remove the Commissioner as the Fund's ultimate decision-maker. It replaces the Commissioner with a private board of five members, the majority of which are petroleum tank owners. The supporters of this bill give no valid reason for the change. It seems that the Fund would be better managed by an disinterested elected official than by a private board with members that have an interest in receiving payments from the Fund.

Likewise, the supporters give no good reason for changing the limits of exposure for the Fund. The limits are the same as those for other actions against the state, and unless good reason for change is made, should remain the same.

This completes my formal testimony and I would be happy to answer any questions the committee may have.

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1391
(SET 1)**

Page 1, line 12, remove the underscored comma

Page 1, line 13, remove "approve, and disallow"

Page 1, line 23, remove the overstrike from "~~Administrator~~ means the manager of the state fire
and tornado fund:"

Page 1, line 24, remove the overstrike from "3:"

Page 2, line 1, replace "3" with "4"

Page 2, line 2, overstrike "4." and insert immediately thereafter "5." and overstrike "taken to"
and insert immediately thereafter "required by the department to"

Page 2, line 8, overstrike "5." and insert immediately thereafter "6."

Page 2, line 10, overstrike "6." and insert immediately thereafter "7."

Page 2, line 11, overstrike "7." and insert immediately thereafter "8."

Page 2, line 12, overstrike "8." and insert immediately thereafter "9."

Page 2, line 14, overstrike "9." and insert immediately thereafter "10."

Page 2, line 16, overstrike "10." and insert immediately thereafter "11."

Page 2, line 20, overstrike "11." and insert immediately thereafter "12."

Page 2, line 24, overstrike "12." and insert immediately thereafter "13."

Page 2, line 29, overstrike "13." and insert immediately thereafter "14."

Page 4, line 1, overstrike "14." and insert immediately thereafter "15."

Page 4, line 2, after "action" and before the period insert "or a person who suffers bodily injury
caused by a petroleum release"

Page 4, line 6, remove "There is established a petroleum release compensation board to assist the"

Page 4, lines 7 and 8

Page 4, line 9, remove "effective date of this Act." and remove the overstrike from "advisory"

Page 4, line 10, replace "one" with "three", remove overstrike from "are", and remove "is"

Page 4, line 21, remove the overstrike from "sixty-two dollars and fifty cents per diem" and remove "compensation as may be"

Page 4, line 22, remove "established by rule"

Page 4, line 27, remove the overstrike from "administrator", remove "commissioner", and remove "The"

Page 4, line 28, remove "commissioner may appoint an administrator to assist in the administration of the fund."

Page 4, line 29, remove the overstrike from "administrator", remove "commissioner", and remove the overstrike from "keep the board"

Page 4, line 30, remove the overstrike from "apprised of the fund's general operations" and remove "assist and advise the commissioner."

Page 4, line 31, replace "quarter" with "half"

Page 5, line 1, replace "commissioner" with "administrator"

Page 5, line 2, after "claims" insert "by the administrator"

Page 5, line 4, remove "A claimant aggrieved by a"

Page 5, line 5, replace "commissioner" with "administrator"

Page 5, line 6, replace "commissioner" with "administrator" and after the second period insert "The claimant or the administrator may appeal the board's decision to the commissioner."

Page 5, line 7, replace "board" with "commissioner"

Page 5, line 11, remove the overstrike from "administrator" and remove "commissioner"

Page 5, line 16, replace "commissioner" with "administrator"

Page 9, line 7, remove the overstrike from "administrator" and remove "commissioner"

Page 9, line 13, remove the overstrike from "administrator" and remove "commissioner"

Page 9, line 24, replace "commissioner" with "fund"

Page 9, line 28, remove "its preleak value or to"

Page 9, line 29, replace ", whichever is less, and includes compensation from the fund for tort or" with a period

Page 9, remove line 30

Page 9, after line 30, insert the following:

"3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:"

Page 10, line 2, after "matter" and before the semicolon insert "in a proceeding in which the fund has been made a party"

Page 10, line 3, after "parties" and before the semicolon insert "in a proceeding in which the fund has been made a party"

Page 10, replace lines 7 through 16 with the following:

"4. The fund shall not compensate for attorney's fees of owners, operators, dealers, or a third party or for exemplary damages, criminal fines, or administrative penalties."

Page 14, line 15, remove the overstrike from "administrator" and remove "commissioner"

Page 14, line 22, remove the overstrike from "administrator" and remove "commissioner"

Page 14, line 29, after the period insert "The administrator may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action."

Renumber accordingly

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1391
(SET 2)**

Page 5, line 6, after "may" insert "recommend that the commissioner"

Page 13, remove lines 20 through 25

Page 13, line 26, overstrike "7." and insert immediately thereafter "5."

Page 13, line 27, remove the overstrike from "the"

Page 13, line 28, remove the overstrike from "~~maximum liability allowed per person under
subsection 2 of section 32-12.2-02~~" and remove "one"

Page 13, line 29, remove "million dollars"

Page 14, line 1, overstrike "8." and insert immediately thereafter "6."

Page 14, line 5, overstrike "9." and insert immediately thereafter "7."

Renumber accordingly

February 6, 2001

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1391
(SET 3)**

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 23-37 of the North Dakota Century Code, relating to petroleum release remediation, and"

Page 1, after line 6, insert:

"SECTION 1. A new section to chapter 23-37 of the North Dakota Century Code is created and enacted as follows:

Limitations of liability.

1. A third party that accepts compensation from the fund for reimbursement for the costs of corrective action as required by the department due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund and against the tank owner, operator, or dealer.
2. A party may not seek compensation for property damage caused by a petroleum release from a tank owner, operator, or dealer covered by the fund in excess of the costs of corrective action as required by the department.
3. Liability of the tank owner, operator, or dealer to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars."

Renumber accordingly

**TESTIMONY
BY
CALVIN N. ROLFSON
ON BEHALF OF
NORTH DAKOTA PETROLEUM MARKETERS ASSOCIATION
IN SUPPORT OF
HOUSE BILL 1391**

My name is Cal Rolfson. I am an attorney in private practice here in Bismarck. I represent the North Dakota Petroleum Marketers Association. I appear on their behalf in support of House Bill 1391 with certain amendments.

Before beginning an overview of House Bill 1391, I will briefly explain the concept of the North Dakota Petroleum Tank Release Compensation Fund (the "tank fund").

The fund was created in 1989 to provide North Dakota's petroleum tank owners and operators with coverage that is required to be provided by regulations of the Environmental Protection Agency. The minimum coverage required by EPA regulations is \$1 million. The fund is used to pay cleanup costs when a petroleum release (meaning a leak or spill) has occurred. The law provides for a \$5,000 deductible that each petroleum owner must first pay before there is any coverage provided. The fund is administered by the North Dakota Insurance Department through an administrator appointed for that purpose. The administrator of the tank fund is the administrator of the state fire and tornado fund.

The fund has been generally effective since its inception. All the dollars in the fund are fully paid by the tank owners to provide for the required protection. There

are currently 6,123 tanks registered with the fund and covered by its protective provisions. Those tanks are situated at 1,834 sites across the State of North Dakota. There is currently \$8.2 million in the fund. The fund has continually grown since its inception. Two years ago, the fund balance was \$7.5 million.

The average claim paid from the fund amounts to \$15,106 with an average claim exposure (reserve for each claim) set at \$19,000. The fund has paid out since its inception a total of \$3.5 million in claims.

The fund is administered by the Insurance Department and provides tank owners with the coverage mandated by state law and federal regulations. Private insurance for fuel tanks is extremely expensive when purchased individually. Reinsurance and excess insurance coverage from the fund is needed and the Bill will address this issue.

To refresh the memories of the veteran legislators on the Committee, and for the new members on the committee who may not be familiar with the fund, the following overview might help.

The fund is in place for the protection of tank owners who serve a vital public function by storing petroleum products and for the protection of the general public as a whole. If a tank should release a petroleum product into the environment, a claim would be made to the fund by the third party who was affected or damaged by the release. The North Dakota Department of Health and their environmental engineers would decide if a cleanup process should begin and when the site would be fully remediated. The fund would pay for site remediation beyond the \$5,000

deductible amount and up to the maximum amount available under law, which is \$1 million per occurrence and \$2 million in the aggregate.

Currently, a party aggrieved by the decision of the administrator can currently seek a review by an advisory board of 3 members that has no statutory authority to approve, modify or reject the decision of the administrator. In other words, the review by the advisory board is strictly advisory. Following the advisory board review, the decision of the administrator can be appealed to the commissioner who is the final executive authority, subject to administrative appeal rights under NDCC Chapter 28-32 that go the District Court and ultimately to the Supreme Court of North Dakota.

While this is an oversimplification of how the fund works, I would like to next review the changes that are proposed by this Bill and overview the amendments that will be submitted to you by the Insurance Department. To begin with, I should state that representatives of the North Dakota Petroleum Marketers Association and representatives of the North Dakota Insurance Department, have visited many times over the past weeks to review this Bill and recommend changes that would be acceptable to both the Department and the tank owners. The Association has worked closely with Insurance Commissioner Jim Poolman, his legal counsel, Mr. Johnson and Mr. Holloway and Tank Fund Administrator, Jeff Blitz. We have also collaborated with the prime sponsor, Rep. Wald. We are collectively recommending amendments to the Bill that both the commissioner and the Association members can support and recommend to this committee. There a few amendments that the

Commissioner's office is proposing that we oppose and we leave to the decision of this Committee and the Legislative Assembly as to those public policy matters. You will hear more about that in just a bit.

What this Bill does, along with the amendments we have agreed upon with the Insurance Department, is to change the law in six basic areas.

First, under Section 3 of the Bill, the makeup of the board has been expanded from three to five members. Currently there are three members appointed by the Governor who are "active in petroleum marketing." Because a broader-based board would provide more depth of experience and input, the Bill expands the board to five members. The board currently receives no compensation and they are merely paid their expenses when attending meetings. Under the amendments, that would not change.

There is little guidance given in the law now to describe who should be on the board and the Bill provides an expansion in this area. The current law would be changed under this Bill to have 3 of 5 board members active in petroleum marketing, one would have a particular experience in petroleum, crude oil or refining, and one would be active in the insurance industry. The Governor would continue to appoint all members who would be subject to these qualifications at the time the legislation becomes effective.

The second change addressed by the Bill concerns whether the board should be advisory or a working board. Currently the board is merely advisory and the administrator is not required to follow any of their directions. It was the belief of the

Association, with which the Insurance Department has agreed, that with the expanded board, a mechanism should be established to provide for a more formal review process from decisions of the administrator in which the board's decisions would control, subject to the commissioner's right to sustain or overrule the board. This process seems more proper and creates an appropriate buffer between the administrator and the commissioner. There is also little need to have the Governor appoint the board if it is merely advisory. This provision provides more considered analysis by the board, moves the board from a perceived "puppet" board to one with more inherent responsibility, and provides more meaningful input to the commissioner if the board's decisions should be appealed to him.

The third change is to add a definition of "third party" to the chapter. Currently "third party" is undefined and has created some question or confusion in decisions by the administrator and the commissioner. "Third party" is defined at the top of page 4 of the Bill to mean any person who is damaged by any act of a registered owner that requires corrective action or a person who suffers bodily injury caused by a petroleum release. This brings the coverage of the fund in line with federal regulations. Since the dollars in the fund are contributed exclusively by the tank owners and the public they serve are the ones to whom protection is afforded under this state law and as required under the federal rules, that expanded definition is appropriate and plugs a hole in current law.

The fourth issue that is changed in the Bill is to limit the fund exposure of the contributing tank owners in cases of petroleum releases to payments of \$1 million

per occurrence and \$2 million in the aggregate as set out in Subsection 1 of Section 23-37-18 found on page 9 of the Bill. Since the state is limiting the fund's exposure to that cap, as a policy matter, the state also would limit the tank owners' exposure to corrective action liability, since it is the tank owners who are paying 100% of the premium to create the fund balance and pay for the administration of the fund in the first place. The amendments drafted by the Insurance Department calling for limit of liability for tank owners who contribute to the fund are supported by the Association and its members.

Fifth, because the fund has been continuously growing since its inception in 1989 and is now at over \$8 million, a change in the amount paid annually for each registered tank was added to the Bill. That's found on page 8 of the Bill. Note the floor, ceiling and trigger mechanism by which the fund is replenished. Currently, when the fund dips below \$6 million, the fee is \$100 per tank, after the \$100 increase and the fund is \$5.5 million or greater, the fee reduces to \$50 per tank. The new language reduces to \$5 per tank when the fund exceeds \$9 million. It will likely reach that level by July registration this year.

Finally, another important addition to the law in this Bill is found at the bottom of page 14. Section 23-37-30 is amended in this Bill to permit the commissioner to purchase reinsurance or excess insurance to cover claims that go beyond the fund maximums. The premiums for such insurance, if it is available, would be paid by the fund. The reason is that if all contributors to the fund spread the risk out among themselves, the premium to cover everyone would be significantly reduced. The

fund administrator has assured the Association that he has and will continue to explore this option to provide further additional coverage not only to protect the funds deposits but also the liability of tank owners that may exceed the statutory maximums. That reinsurance would again be funded by payments into the fund from the contributing tank owners and would not only protect the tank owners but also third parties who may be damaged by a petroleum release beyond the statutory maximums.

I hope this broad overview of the Bill explains not only the vital importance of this Bill to the contributing tank owners, but also to the State of North Dakota, to the assets of the fund that are administered by the Insurance Commissioner and to the general public that relies upon the fund in cases of petroleum releases.

In conclusion, I want to share with you some philosophical issues. Again, it is the tank owners and registrants of the fund that exclusively contribute the \$8.2 million that is currently in the fund and in the past 12 years have contributed the \$3.5 million that has been paid out. Those tank owners provide a vital public and national service to all North Dakotans by storing and supplying petroleum products to fuel our vehicles and agricultural machinery, heat our homes and improve our lives. Not only do the tank owners and operators provide millions of dollars in tax revenue to the State of North Dakota, they contribute in many multiples to the state's economy as well as to the health, safety and general well being of its residents. No vehicle, ambulance, interstate truck, diesel locomotive, farm combine or snowmobile runs without the risks taken by the contributors to this fund. They are active and

participating members of every community in the state, large and small. They include the many Cenex stations around the state and the single gas stations in your smallest towns. One underfunded or underinsured exposure can ruin the largest or smallest among them whose dollars provide protection to the public in this way.

On behalf of the 1,834 owners and the 6,123 tanks insured by the fund, I urge your favorable consideration of House Bill 1391 and the amendments that will be proposed by the Insurance Department. There are some gaps in the proposed amendments I have seen and I would ask the chair to allow us to get together with the fund to present a united set to the Committee in the next few days.

Proposed by Francis Schwind

PROPOSED AMENDMENTS TO HOUSE BILL 1391

Page 10, after line 16, insert:

6. The fund shall reimburse the department for all costs, attorneys' fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any monies reimbursed shall be deposited in the department's operating fund in the state treasury and shall be spent subject to appropriation by the legislative assembly.

Renumber accordingly

TESTIMONY
BY
CALVIN N. ROLFSON
ON BEHALF OF
NORTH DAKOTA PETROLEUM MARKETERS ASSOCIATION
IN SUPPORT OF
HOUSE BILL 1391

My name is Cal Rolfson. I am an attorney in private practice here in Bismarck. I represent the North Dakota Petroleum Marketers Association. I appear on their behalf in support of House Bill 1391.

Before beginning an overview of House Bill 1391, I will briefly explain the concept of the North Dakota Petroleum Tank Release Compensation Fund (the "tank fund").

The fund was created in 1939 to provide North Dakota's petroleum tank owners and operators with coverage that is required to be provided by regulations of the Environmental Protection Agency. The minimum coverage required by EPA regulations is \$1 million. The fund is used to pay cleanup costs when a petroleum release (meaning a leak or spill) has occurred. The law provides for a \$5,000 deductible that each petroleum owner must first pay before there is any coverage provided. The fund is administered by the North Dakota Insurance Department through an administrator appointed for that purpose. The administrator of the tank fund is the administrator of the state fire and tornado fund.

The fund has been generally effective since its inception. All the dollars in the fund are fully paid by the tank owners to provide for the required protection. There

are currently 6,123 tanks registered with the fund and covered by its protective provisions. Those tanks are situated at 1,834 sites across the State of North Dakota. There is currently \$8.2 million in the fund. The fund has continually grown since its inception. Two years ago, the fund balance was \$7.5 million.

The average claim paid from the fund amounts to \$15,106 with an average claim exposure (reserve for each claim) set at \$19,000. The fund has paid out since its inception a total of \$3.5 million in claims.

The fund is administered by the Insurance Department and provides tank owners with the coverage mandated by state law and federal regulations. Private insurance for fuel tanks is extremely expensive when purchased individually. Reinsurance and excess insurance coverage from the fund is needed and the Bill will address this issue.

To refresh the memories of the veteran legislators on the Committee, and for the new members on the committee who may not be familiar with the fund, the following overview might help.

The fund is in place for the protection of tank owners who serve a vital public function by storing petroleum products and for the protection of the general public as a whole. If a tank should release a petroleum product into the environment, a claim would be made to the fund by the third party who was affected or damaged by the release. The North Dakota Department of Health and their environmental engineers would decide if a cleanup process should begin and when the site would be fully remediated. The fund would pay for site remediation beyond the \$5,000

deductible amount and up to the maximum amount available under law, which is \$1 million per occurrence and \$2 million in the aggregate.

Currently, a party aggrieved by the decision of the administrator can currently seek a review by an advisory board of 3 members that has no statutory authority to approve, modify or reject the decision of the administrator. In other words, the review by the advisory board is strictly advisory. Following the advisory board review, the decision of the administrator can be appealed to the commissioner who is the final executive authority, subject to administrative appeal rights under NDCC Chapter 28-32 that go to the District Court and ultimately to the Supreme Court of North Dakota.

While this is an oversimplification of how the fund works, I would like to next review the changes that are proposed by this Bill and overview the amendments that will be submitted to you by the Insurance Department. To begin with, I should state that representatives of the North Dakota Petroleum Marketers Association and representatives of the North Dakota Insurance Department, have visited many times over the past months to review this Bill and to recommend changes that would be acceptable to both the Department and the tank owners. The Association has worked closely with Insurance Commissioner Jim Poolman, his legal counsel, Mr. Johnson and Mr. Holloway and Tank Fund Administrator, Jeff Blitz. We have also worked with the prime sponsor, Rep. Wald.

We are recommending further amendments to the Bill that both the commissioner and the Association members can support and recommend to this committee. You will hear more about those in just a bit.

What this Bill does, along with the amendments we have agreed upon with the Insurance Department, is to change the law in six basic areas.

First, under Section 3 of the Engrossed Bill, the makeup of the board has been expanded from three to five members. Currently there are three members appointed by the Governor who are "active in petroleum marketing." Because a broader-based board would provide more depth of experience and input, the Bill expands the board to five members. The board currently receives no compensation and they are merely paid their expenses when attending meetings.

There is little guidance given in the law now to describe who should be on the board and the Bill provides an expansion in this area. The current law would be changed under this Bill to have 3 of 5 board members active in petroleum marketing, one would have a particular experience in petroleum, crude oil or refining, and one would be active in the insurance industry. The Governor would continue to appoint all members who would be subject to these qualifications at the time the legislation becomes effective.

The second change addressed by the Bill concerns whether the board should be advisory or a working board. Currently the board is merely advisory and the administrator is not required to follow any of their directions. It was the belief of the Association, with which the Insurance Department has agreed, that with the expanded board, a mechanism should be established to provide for a more formal review process from decisions of the administrator in which the board's decisions would control, subject to the commissioner's right to sustain or overrule the board.

This process seems more proper and creates an appropriate buffer between the administrator and the commissioner. There is also little need to have the Governor appoint the board if it is merely advisory. This provision provides more considered analysis by the board, moves the board from a perceived "puppet" board to one with more inherent responsibility, and provides more meaningful input to the commissioner if the board's decisions should be appealed to him.

The third change is to add a definition of "third party" to the chapter. Currently "third party" is undefined and has created some question or confusion in decisions by the administrator and the commissioner. "Third party" is defined at the top of page 4 of the Bill to mean any person who is damaged by any act of a registered owner that requires corrective action or a person who suffers bodily injury caused by a petroleum release. This brings the coverage of the fund in line with federal regulations. Since the dollars in the fund are contributed exclusively by the tank owners and the public they serve are the ones to whom protection is afforded under this state law and as required under the federal rules, that expanded definition is appropriate and plugs a hole in current law.

The fourth issue that is changed in the Bill is to limit the fund exposure of the contributing tank owners in cases of petroleum releases to payments of \$1 million per occurrence and \$2 million in the aggregate as set out in Subsection 1 of Section 23-37-18 found on page 9 of the Bill. Since the state is limiting the fund's exposure to that cap, as a policy matter, the state also would limit the tank owners' exposure to corrective action liability, since it is the tank owners who are paying

100% of the premium to create the fund balance and pay for the administration of the fund in the first place.

Fifth, because the fund has been continuously growing since its inception in 1989 and is now at over \$8 million, a change in the amount paid annually for each registered tank was added to the Bill. That's found on page 8 of the Bill. Note the floor, ceiling and trigger mechanism by which the fund is replenished. Currently, when the fund dips below \$6 million, the fee is \$100 per tank, after the \$100 increase and the fund is \$5.5 million or greater, the fee reduces to \$50 per tank. The new language reduces to \$5 per tank when the fund exceeds \$9 million. It will likely reach that level by July registration this year (2001).

Finally, another important addition to the law in this Bill is found on page 15. Section 23-37-30 is amended in this Bill to permit the commissioner to purchase reinsurance or excess insurance to cover claims that go beyond the fund maximums. The premiums for such insurance, if it is available, would be paid by the fund. The reason is that if all contributors to the fund spread the risk out among themselves, the premium to cover everyone would be significantly reduced. The fund administrator has assured the Association that he has and will continue to explore this option to provide further additional coverage not only to protect the funds deposits but also the liability of tank owners that may exceed the statutory maximums. That reinsurance would again be funded by payments into the fund from the contributing tank owners and would not only protect the tank owners but also third parties who may be damaged by a petroleum release beyond the statutory maximums.

I hope this broad overview of the Bill explains not only the vital importance of this Bill to the contributing tank owners, but also to the State of North Dakota, to the assets of the fund that are administered by the Insurance Commissioner and to the general public that relies upon the fund in cases of petroleum releases.

The House added several technical amendments to the Bill with the working support of all these interested parties. These amendments essentially changed the Fund Board from one that was autonomous with the Commissioner of Insurance as the administrator of the fund, to its present form with the fund administered by the current administrator, Jr. Jeff Blitz, who also administers the state fire and tornado fund. The amendments in the House retained the autonomy of the Board and made Board decisions appealable to the Insurance Commissioner. The House amendments also clarified the law by allowing compensation from the fund to third parties injured by a tank release. In addition, the House added the authority of the administrator of the fund to investigate and purchase excess insurance in case of a catastrophic claim.

In conclusion, I want to share with you some philosophical issues. Again, it is the tank owners and registrants of the fund that exclusively contribute the \$8.2 million that is currently in the fund and in the past 12 years have contributed the \$3.5 million that has been paid out. Those tank owners provide a vital public and national service to all North Dakotans by storing and supplying petroleum products to fuel our vehicles and agricultural machinery, heat our homes and improve our lives. Not only do the tank owners and operators provide millions of dollars in tax revenue to

the State of North Dakota, they contribute in many multiples to the state's economy as well as to the health, safety and general well being of its residents. No vehicle, ambulance, interstate truck, diesel locomotive, farm combine or snowmobile runs without the risks taken by the contributors to this fund. They are active and participating members of every community in the state, large and small. They include the many Cenex stations around the state and the single gas stations in your smallest towns. One underfunded or underinsured exposure can ruin the largest or smallest among them whose dollars provide protection to the public in this way.

On behalf of the 1,834 owners and the 6,123 tanks insured by the fund, I urge your favorable consideration of Engrossed House Bill 1391 and the amendments proposed.

March 16, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1391

Page 5, line 3, replace "board" with "commissioner"

Page 10, line 9, replace "If" with "In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue and if", replace the first "value" with "pre-leak condition", and replace the second "value" with "condition"

Page 10, line 12, replace "finding does" with "fund may"

Page 10, line 15, immediately after "accepting" insert "monetary" and immediately after "compensation" insert "directly"

Renumber accordingly

North Dakota Cooperative Managers' Association

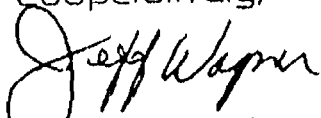
The North Dakota Cooperative Managers' Association is a statewide Association, comprised of over 120 managers of petroleum cooperatives, plus managers of grain marketing co-ops. At our statewide meeting, March 13, the membership unanimously voted to support the passage of HB 1391, the Petroleum Tank Fund Bill, with the following provisions included:

1. Expands the board to five members
2. Caps the registration fee at \$5 per tank when the fund reaches nine million dollars (\$9,000,000).
3. Clarifies the meaning of 3rd party
4. Limits the tank owner's liability to the extent determined by the ND Health Department.
5. Re-instates tank owner's liability coverage to one million dollars (\$1,000,000)

We urge you to vote YES on HB 1391.

Thank you for your consideration of our concerns.

Cooperatively,



Jeff Wagner, President