

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

4049

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

SCR 4049

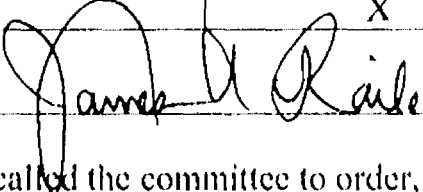
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR4049

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date March 29, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0-End
1		X	0.0-18.6
1		X	23.0-31.0
Committee Clerk Signature 			

Minutes: **Chairman Krebsbach** called the committee to order, the clerk called the roll.

Chairman Krebsbach opened the hearing on SCR 4049 which is a concurrent resolution directing the legislative council to study limiting actions for lead-based paint claims. Introducing the bill to the committee was **Senator Tim Mathern**, district 11, Fargo. A copy of his written testimony is attached. **Senator Dever** inquired where we are at now with the statute of limitations on this. **Senator T. Mathern** indicated that that issue is viewed as a complicated question and answer. It might relate to when this material was introduced, it might relate to when it was in terms of the manufacturing process, it might relate to when it was applied, it might relate to when someone became aware of it being a hazard. It seems somewhat complicated to determine exactly when the statute of limitations runs out in every specific instance. This resolution and hopefully a bill would clarify the end date, he hopes of a time when an action could be brought. For example all actions would have to be brought by August 1, 2005. He is not certain there is a specific date for every action. He doesn't believe there is such

a date. Maybe there are others who do believe so and they will be here to testify later. **Senator Kilzer** inquired which Senator Nelson and which Attorney General were the ones who suggested that this study be done. **Senator T. Mathern** indicated it was **Senator Gary Nelson**, Majority Leader of the Senate and **Attorney General Wayne Stenehjem**. **Representative George Keiser**, district 47, Bismarck appeared before the committee as a cosponsor of the delayed resolution SCR 4049. He indicated he supports the bill for basically the same reasons as Senator T. Mathern. He indicated his perspective is somewhat different in that he believes there is a need to bring closure to this issue and he thinks there are some unanswered questions that can be addressed in the interim. These should be selected as a study. He thinks we have an obligation to answer the basic questions. Are there any options for our political subdivisions to extend this date or not. If there aren't great, let's move on with it. If there are and there is some legal recourse for those entities then we should ensure that they have those opportunities. He doesn't know that answer to that. He doesn't know whether this will be selected as a study. He does think that there is enough of a question as Senator Mathern expressed with the asbestos case, we weren't sure and we investigated and ending up extending that. This is an entirely different case. Lead base paint came out of the system much earlier. There were a lot more voluntary actions by the industry relative to the control of lead based paint as a contaminant but he also recognizes that we have a very deteriorating school infrastructure in our state and some other public buildings and that from a policy standpoint we should do everything within reason to consider what are the options that we have and therefore he supports this study resolution. **Senator Wardner** inquired if there are schools that have a lot of lead based paint in their buildings. Has that been brought to you as a problem? **Representative Keiser** indicated no, that has not been brought to him specifically by the schools as a problem. Given the periods when our schools

were built and the products that were used there probably is a reasonable, it is reasonable to expect that we have used lead based paints during that period. That was the state of the art when many of the schools were constructed. **Senator Dever** inquired, is it your feeling that absent this study or a bill that this statute of limitations or considerations of this issue are indefinite. **Representative Keiser** indicated absolutely not. In fact he believes in the statute of limitations and he thinks companies should be protected. Once that statute has run its course they should have every right to consider that they have protection, but, as Senator Mathern explained there are a lot of questions out there about what or how does the clock start, when does it start. There are several states that are considering actions and some states have taken action. We could as a state take action but he thinks a study is far more appropriate as to determine whether it is warranted or not. **Representative Scott Kelsh**, district 11, appeared before the committee asking to go on record in support of SCR 4049. This issue warrants a closer look and hopefully the committee will agree and adopt the resolution. **Tim O'Keefe**, Assistant City Attorney for the City of Fargo appeared before the committee. He presented a packet of information to the committee regarding lead based paints and the problems it causes particularly to political subdivisions in the state of North Dakota. He indicated to the committee that he is disappointed with the course that this has taken. Admittedly this came to the city of Fargo's attention very late in the session. He believes that legislature was perhaps at it's midway point when this was raised to some of the Fargo legislators. They requested that some type of bill be brought forth to clarify the statute of limitations problem. However, it is really a simple issue. What he has been told and he hasn't confirmed this is the asbestos legislation went through the same process eight years ago in 1993. It is a simple issue that is clearly intended to allow the courts to make the determination as to the responsible party and not to have the legislature make that decision. It's

an ability for the legislature to say okay the issue of statute of limitations may be somewhat clouded and it may prevent the ultimate issue from being raised so we are going to say through this bill that there is a four year window of opportunity for public entities to bring litigation. It also means that the paint companies at the end of those four years can rest assured that they will not face any further litigation from these public entities regarding the abatement of lead based paint. Basically his point is that this is an issue for the courts to decide and that this body can give the courts that opportunity. When his office first proposed this legislation they contacted several individuals including legislators, public officials, supervising buildings and grounds, environmental engineers, health officials and lawyers, including this states attorney general, Wayne Stenehjem. Everyone we initially spoke with including Attorney General Stenehjem, seemed very supportive of this idea. Unfortunately, he thinks because this was delayed, he thinks we took a hard and a fast approach, people became very suspicious. He thinks the simple issue became clouded and maybe that is their fault. Hopefully today if nothing else he can clarify for the people in this room why this is an important issue and get those questions answered and get everything out into the open so that if nothing can be done in this session, at least this study resolution will allow things to go forward and in two years, maybe it's too late, maybe it's not, I guess we will find out. At least he can answer the committee's questions and clarify the city of Fargo's position on this issue. He has been told by several people that the paint manufacturers have sent in their lobbyists, that those people are here to speak on behalf of the paint manufacturers, to say that there is no need for this legislation. This is a dead horse issue, they have gotten to the attorney general, they have told him that there is no need for this, we've been very proactive and we've addressed the problem. We've removed it from residential buildings and that's great. What that tells him is that they are afraid to go to the courts because

they are afraid to face the judge and jury to determine ultimately who is the responsible party. Now, we have resolution 4049. It is before you and it calls for a study. What he has done in hopes that he can aid in the education aspect he handed out a very thick packet (see attached), and he noted that the first two pages of that packet are somewhat important. This is a letter from an environmental engineer in Grand Forks. He is a consultant who has dealt with public schools that have lead based paint. He has done so in very recent history. He has given some anecdotal evidence which he wanted to pass on to the committee. Litigation on a class action basis has begun in many locations around the country. If that is the case, why should we in the state of North Dakota just sit back and watch. We shouldn't take this position. He hates the word proactive, but this is an area where we are not so much being proactive because it's already happened. We didn't dream this up. We should get on board now. For the city of Fargo they have determined it is a problem. They have several buildings in the city that are from this era. There are several buildings which they are positive contain lead based paints. The city of Fargo is ready to go ahead in this litigation the day after the effective date of this bill. The city of Bismarek or the city of Dickinson or Minot may not be ready. They may not have a problem. Maybe this resolution is the appropriate vehicle. At the same time, he is very disappointed that Senator T. Mathern's bill is not being addressed this session because the city of Fargo has already done the research, we've already done the studies, they are very comfortable with the responsibility levels that are found with the paint manufacturers and they are ready to go forward. The window of opportunity if Senator Mathern's bill is passed is four years. It would allow cities like Bismarek, Langdon, like school districts around the state to study the issue over the next few years, to investigate in their own buildings what the problem is over the next few years. This litigation has been started. It is not their idea. It is similar to the stance taken with

asbestos manufacturers in the 1993 legislative session. What we are asking for is for a bill to be passed identical to the asbestos legislation saying that public entities have four years. The city of Fargo is ready. They would like to see the real bill passed but if they can't get that then they will settle for 4049. It is a good bill. What it will show over the next two years is that this is a problem. There are grounds for litigation. He agrees that we should protect businesses that they shouldn't fear that when this time runs out they shouldn't have to worry. What he doesn't like to see taxpayers put at risk because of a problem like this. He doesn't want out of state lobbyists who work for companies like Sherwin Williams or other paint manufacturers coming in and saying you know we've really been proactive. We've really taken a strong stand, can't you just help us out. We have the evidence, we have the ability to go forward. Let them share in the responsibility of putting this product into our schools and into our public buildings. Now is the time. Senator Kilzer inquired about the basis of the litigation. He inquired if it was because children have documented increases of serum levels of lead or is it because of the fact that there is violation of some federal level or standard of lead that might be on a wall or something. Are people getting hurt or is it because of the federal levels that are acceptable or not acceptable? Mr. O'Keefe indicated there is litigation that goes on for those individuals who have been hurt by lead based paint. That's not really what this is about. This is about the fact that it is a toxic material that could cause those problems that should be removed or dealt with in the public buildings. That comes at a very high cost to public entities. The allegations of the lawsuit is there is this material that we are being required to determine if the paint used in that building contains lead. If it does contain lead then the regulations are starting to say you had better make sure that it is encapsulated or you had better remove it. To remove it comes at a very high cost. What we are saying is that we are forced to deal with this problem that is in the schools or other

public buildings. The EPA indicates that they want to see the levels in children going down. They've removed lead from gasoline, from paint. They are taking measures to see that lead isn't getting into the dust particles and the basis of the litigation is who is going to pay for that.

noted that following up with what Senator Kilzer said, from what you are saying, it is federal entities that are pushing the issue. Why didn't this issue surface four years ago? Why is it coming now? Somebody is pushing the city of Fargo to do something about this lead based paint. Is that correct? Or is it something the city has decided it wants to do? I guess that is the question. Is it a federal mandate coming down or is something you've decided on your own you want to take care of? **Mr. O'Keefe** indicated it is a little bit of both. There is no federal mandate at this time that we have to go in and remove this in every situation. Yes there are regulations that deal with it. There are regulations that deal with how to remove it, but, you can see the pattern that is developing. It is already there as far as the HUD homes are concerned and some public assistance buildings, residential homes where communities are required to go in and test for this product. The next step is let's test our other buildings and when they've been tested and it is found, then we have to deal with our problems. The other thing that has pushed the city of Fargo is there is currently litigation in other communities. Their litigation has been examined a Fargo feels they are in the same position. This is expensive, the route these regulations are pushing us that it is going to create more expense for cities like Fargo and therefore we need the ability to find out if someone else is going to help us pay for this high expense. The discussion continued at length with questions offered by **Senators, Kilzer, Krebsbach, T. Mathern, Wardner, and Dever**. Responses were offered by Mr. Okeefe (Tape 1, Side A, Meter #'s 24.6-37.2) Appearing before the committee in a neutral position on SCR 4049 was **Mike Spiletto** with the community services division, his main job there is to manage a housing

program delivered by HUD. He responded primarily to questions which had been previously asked by the Senators. He responded to **Senator Wardners** question concerning who is pushing this. He also responded by questions from **Chairman Krebsbach** (Tape 1, Side A, Meter #'s 38.4-49.9). **Connie Sprynczynatik** representing the North Dakota League of Cities appeared before the committee. The league would have been supportive of Senator T. Mathern's proposed bill on this issue, however, she indicated that her organization is in support of this resolution as well. Appearing in opposition to the resolution was **Antonio Dias**, a lobbyist representing the Sherwin Williams company. His traditional position is in litigation and providing information for the Sherwin Williams Company. He hopes to provide the committee with some information which might be useful if the state is to move forward with a study commission in this area. It is never bad to study issues. He indicated they believe that this issue is one that bears careful consideration. Any time a statute of limitations is revived after it has been extinguished or it needs to be extended for some reason. It brings many issues to the forefront. One of those issues is why was the statute of limitations originally created to be the length that it was by the legislature? North Dakota has an existing statute of limitations in the state of North Dakota defined by this legislature, defined by the code of North Dakota. Whether or not the courts here in North Dakota can properly interpret that statute of limitations as it applies to this case is an important issue. When a legislature considers the issue of reviving an expired statute of limitations, many times that happens when conduct of companies that would be targeted by extended the statute of limitations or efforts of trying to vilify the activities of those companies which are currently ongoing. This is a corporate history with lead which bears no resemblance to those other companies. It is an industry which does not exist any more. He noted there was a reference to there is still lead paint being sold. He believes there are in some industrial uses.

